



July 2023

# STEEL AND ALUMINUM TARIFFS

Agencies Should  
Ensure Section 232  
Exclusion Requests  
Are Needed and  
Duties Are Paid

# GAO Highlights

Highlights of [GAO-23-105148](#), a report to congressional requesters.

## Why GAO Did This Study

In March 2018, citing national security concerns, the President placed tariffs of 25 percent on some imported steel and 10 percent on some imported aluminum products, under Section 232 of the Trade Expansion Act of 1962. At the same time, Commerce established a process to provide relief, or exclusion, from the tariffs. Requesters apply to BIS for tariff exclusion. If BIS approves, the requester may import specific products without paying those tariffs. BIS transmits data about the specific parameters of the approved exclusions to CBP, which determines if an importer may use an exclusion.

GAO was asked to review how Section 232 exclusions are administered. This report examines (1) BIS's measures to ensure Section 232 exclusion requests are needed, (2) the extent to which BIS and CBP maintain consistent data in order to administer the exclusions, and (3) the extent to which importers invalidly used exclusions. GAO defines invalid use as the claiming of an exclusion in ACE in a way that does not comport with BIS's parameters.

GAO analyzed agency data, and reviewed agency documents related to the exclusion approval and import processes. GAO also interviewed BIS and CBP officials and spoke with industry stakeholders.

## What GAO Recommends

GAO is making four recommendations, for BIS to evaluate the results of the certification requirement and develop a more consistent data transfer process, and for CBP to implement controls to prevent overclaiming of exclusions and to recover duties owed. The agencies concurred with GAO's recommendations.

View [GAO-23-105148](#). For more information, contact Kimberly Gianopoulos at (202) 512-8612 or [gianopoulosk@gao.gov](mailto:gianopoulosk@gao.gov).

July 2023

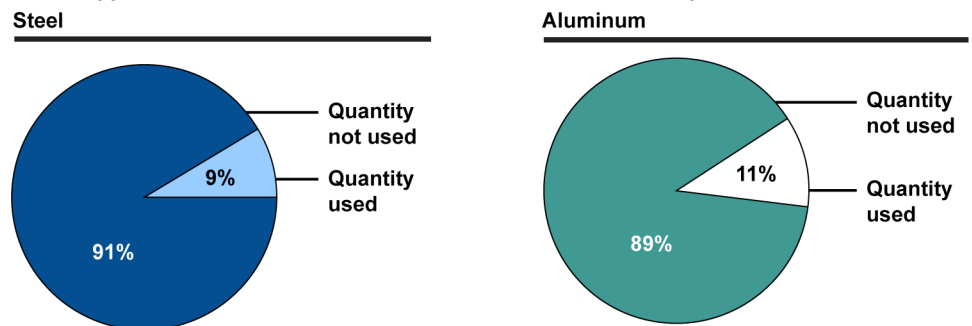
# STEEL AND ALUMINUM TARIFFS

## Agencies Should Ensure Section 232 Exclusion Requests Are Needed and Duties Are Paid

### What GAO Found

Importers can submit exclusion requests to the Department of Commerce's Bureau of Industry and Security (BIS) to seek relief from Section 232 steel and aluminum tariffs. GAO found that importers had used a small proportion of the quantities that BIS had approved (see figure). BIS implemented measures to ensure exclusion requests are needed, but has not evaluated the results. In December 2020, BIS reported that unneeded exclusion requests burdened the approval process, and began requiring requesters to certify that they expect to use the entire quantity if approved. Without evaluating the requirement's results, BIS lacks key information about whether it has helped ensure exclusion requests are needed and has improved the efficiency of the exclusion approval process.

Use of Approved Section 232 Exclusion Quantities, March 2018–September 2021



Source: GAO analysis of U.S. Department of Commerce Bureau of Industry and Security (BIS) and U.S. Department of Homeland Security Customs and Border Protection (CBP) data. | [GAO-23-105148](#)

Note: This figure presents exclusion use data available as of November 2021.

GAO found that BIS and the Department of Homeland Security's Customs and Border Protection (CBP) had inconsistent data for about 5 percent of the nearly 207,000 exclusions approved through September 2021. BIS transfers data about approved exclusions to CBP for use in the Automated Commercial Environment (ACE), the system importers use to bring goods into the U.S. BIS provides CBP partial data about the parameters, which requires CBP to derive additional information, such as the exclusion's validity period, for use in ACE. Without a more consistent data transfer process, CBP faces challenges in administering exclusions as BIS intends, creating a continuing risk of error and invalid use.

GAO's analysis shows that importers generally used tariff exclusions consistent with BIS's approved parameters. However, GAO identified an estimated \$32 million in unpaid duties resulting from invalid exclusion use as of November 2021. CBP officials said that when they programmed the Section 232 functionality in ACE, they did not have the time or resources to program automatic deactivation once the importer reaches the approved quantity. Instead, CBP has manually deactivated exclusions. However, the lag time between when importers reach approved quantities and CBP's manual deactivation allows importers to overclaim exclusions and not pay duties on the overage. Until CBP implements more effective controls to prevent overclaiming and to recover duties owed, the U.S. government is at risk of losing millions of dollars in revenue.

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## Abbreviations

ACE	Automated Commercial Environment
BIS	Bureau of Industry and Security
CBP	U.S. Customs and Border Protection
HTSUS	Harmonized Tariff Schedule of the United States
IOR	Importer of Record
ISO	International Organization for Standardization
TRB	Trade Remedy Branch
TRQ	Tariff-Rate Quota
TTO	Trade Transformation Office

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July 20, 2023

The Honorable Ron Wyden  
Chair  
Committee on Finance  
United States Senate

The Honorable Thomas R. Carper  
Chair  
Subcommittee on International Trade, Customs, and Global  
Competitiveness  
Committee on Finance  
United States Senate

The Honorable Andy Barr  
House of Representatives

The Honorable J. French Hill  
House of Representatives

The Honorable Bill Pascrell Jr.  
House of Representatives

In March 2018, the President placed tariffs of 25 percent on some imported steel and 10 percent on some imported aluminum products in the interest of national security,<sup>1</sup> under Section 232 of the Trade Expansion Act of 1962 (Section 232).<sup>2</sup> The presidential proclamations initiating the tariffs stated that the tariffs would help domestic producers and ensure that they could supply the aluminum and steel needed for national defense.<sup>3</sup> As of summer 2021, the U.S. Department of Homeland Security’s Customs and Border Protection (CBP) reported that it had assessed a total of about \$11 billion in Section 232 tariffs. The tariffs

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<sup>1</sup>Harmonized Tariff Schedule of the United States (HSTUS) codes specifically listed in the proclamations identify these steel and aluminum products. Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 15, 2018) and Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018).

<sup>2</sup>The Trade Expansion Act of 1962, Pub. L. No. 87-794, Title II, § 232, 76 Stat. 872, 877 (codified as amended at 19 U.S.C. § 1862).

<sup>3</sup>For the purposes of this report, “domestic producer” refers to a company that manufactures steel or aluminum products in the United States.

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apply to certain steel and aluminum products indicated by the specific Harmonized Tariff Schedule of the United States (HTSUS)<sup>4</sup> codes listed in the two presidential proclamations that initiated the tariffs.<sup>5</sup>

At the same time, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) established a process to provide relief, or exclusion, from these tariffs. Exclusions are granted to requesters in certain circumstances, such as when the product is not available domestically, or based on national security considerations.<sup>6</sup> From March 2018 through September 2021—the first 3½ years of the tariffs—BIS had approved a total of about 207,000 exclusions, about 188,000 for steel products and about 20,000 for aluminum products. Domestic steel and aluminum producers have raised questions about exclusions granted for what they consider to be large quantities of product, thus potentially undermining the tariffs.

Once BIS approves an exclusion request, it transmits data about the parameters of the request to CBP. CBP uses this data to determine whether an importer may use an exclusion. Therefore, it is important for exclusion parameter data to be accurately transferred from BIS to CBP to ensure that an exclusion is used in a way that comports with the BIS-approved parameters.

You asked us to review how Section 232 tariff exclusions are administered. In September 2020 and December 2021, we reported on BIS's process for approving exclusion applications. In September 2020, we recommended that BIS improve the timeliness of its exclusion

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<sup>4</sup>The HTSUS code, published and maintained by the U.S. International Trade Commission, provides the legal basis for the classification of every product that enters the United States and the corresponding tariff rate the importer must pay for each product. See 19 U.S.C. § 1202. The HTSUS is a hierarchical system that describes all imported products for duty, quota, and statistical purposes. The HTSUS classifies goods into broad categories using 4- and 6-digit codes, which it further subdivides into specific categories using 8- and 10-digit codes. The U.S. Department of Commerce's Bureau of Industry and Security (BIS) approves exclusions at the 10-digit level.

<sup>5</sup>Proclamation No. 9704, 83 Fed. Reg. 11,619 and Proclamation No. 9705, 83 Fed. Reg. 11,625.

<sup>6</sup>The proclamations establish the criteria BIS uses to approve or deny importers' requests for exclusions. If BIS finds that the potentially excluded product is available domestically (1) in a reasonable time frame, (2) in a sufficient quantity, and (3) of a satisfactory quality, BIS may deny the exclusion request. Further, BIS may consider national security concerns.

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application review. In December 2021, we recommended that BIS update its public guidance to better communicate changes in the exclusion request process.<sup>7</sup>

This report examines (1) importers' use of approved Section 232 tariff exclusions, and BIS's measures to ensure exclusion requests are needed, (2) the extent to which BIS and CBP maintain consistent data in order to administer the exclusions, and (3) the extent to which importers have invalidly used exclusions and CBP has taken steps to address risks of invalid use.

To address these objectives, we analyzed BIS, CBP, and U.S. Census Bureau data; reviewed agency documents; and interviewed agency officials. Specifically, we compared BIS data on the approved exclusions from March 2018 through September 2021 to:<sup>8</sup>

- U.S. Census Bureau data to determine how BIS-approved exclusion quantities compare to the quantities of these products historically imported;
- CBP import entry data to determine the extent to which approved exclusions had been used;
- CBP data on the approved exclusions used to program the Automated Commercial Environment (ACE)—the U.S. system of record for processing imports—to determine the extent of any data mismatch between BIS and CBP; and
- CBP import entry data to determine the extent to which invalid use of Section 232 exclusions occurred.

We found these data to be sufficiently reliable for our purposes. We assessed the reliability of the data by conducting several validity checks. We also reviewed agency documents related to the BIS exclusion approval process and CBP import processes. In addition, we interviewed agency officials about (1) steps taken to address what they characterized

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<sup>7</sup>GAO, *Steel and Aluminum Tariffs: Commerce Should Improve Its Exclusion Request Process and Economic Impact Reviews*, [GAO-20-517](#) (Washington, D.C.: Sept. 15, 2020), and *Steel and Aluminum Tariffs: Commerce Should Update Public Guidance to Reflect Changes in the Exclusion Process*, [GAO-22-104564](#) (Washington, D.C.: Dec. 13, 2021). The agency concurred with our recommendations, all of which remain open as of June 2023.

<sup>8</sup>The data cover the first 3½ years of the Section 232 tariff exclusions program and were the most current data available at the start of our analysis.



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as “unneeded exclusion requests,”<sup>9</sup> (2) the interagency data transfer process, and (3) the causes of any invalid exclusion use, as well as efforts to address invalid use risks and recoup any associated unpaid duties. We assessed BIS’s approach to ensure exclusion requests are needed against federal internal control standards related to using quality information and performing monitoring activities.<sup>10</sup> We assessed BIS and CBP’s processes for transferring exclusion parameter data against practices we identified in prior work for interagency collaboration<sup>11</sup> and federal internal control standards related to controls over information processing. We assessed CBP’s efforts to address any invalid use of exclusions against federal internal control standards for designing control activities to respond to program risks. For more information about our objectives, scope, and methodology, see appendix I.

We conducted this performance audit from April 2021 to July 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### BIS Reviews and Maintains Data on Exclusion Requests

In March 2018, BIS established a process that allows individuals or organizations that are located in the United States and importing steel or aluminum products subject to the Section 232 tariffs to submit exclusion requests.<sup>12</sup>

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<sup>9</sup>85 Fed. Reg. 81,060 (Dec. 14, 2020) (codified at 15 C.F.R. Part 705, Supp. No. 1).

<sup>10</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

<sup>11</sup>GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

<sup>12</sup>Commerce established regulations for the process including multiple interim final rules, published in the *Federal Register* on March 19, 2018; September 11, 2018; June 10, 2019; December 14, 2020; and December 9, 2021. 83 Fed. Reg. 12,106 (Mar. 19, 2018); 83 Fed. Reg. 46,026 (Sept. 11, 2018); 84 Fed. Reg. 26,751 (June 10, 2019); 85 Fed. Reg. 81,060 (Dec. 14, 2020); and 86 Fed. Reg. 70,003 (Dec. 9, 2021). Commerce codified these rules at 15 C.F.R. Part 705, Supp. No. 1, No. 2, and No. 3.

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Requesters submit specific information to BIS, which oversees the exclusion approval process and decides whether to approve or deny each request. When applying for an exclusion, a requester is asked to provide

- the quantity (measured in unit of weight, such as kilograms) requested for the exclusion;
- the name of the importer of record (IOR) that would be authorized to bring the product into the United States;
- the product HTSUS code;
- country or countries of origin and export;
- manufacturer name; and
- product dimensions.<sup>13</sup>

BIS assigns a unique identification number to each exclusion application. In the case of steel products imported from Korea and Brazil, as well as steel and aluminum products imported from Argentina, the United States agreed to institute a system of absolute quotas instead of applying the tariffs. Absolute quotas strictly limit the quantity of products that may enter the commerce of the United States for a specific period. In these cases, requesters apply for exclusion from the relevant quotas instead of from the tariffs. For additional information about the administration of quota exclusions, see appendix II.

Since June 13, 2019, BIS has publicly posted information related to exclusion requests to a website referred to as the Section 232 Exclusion Portal. Prior to this date, exclusion request materials and BIS decision memos were posted to dockets on the [regulations.gov](https://www.regulations.gov) website. Both of these websites continue to serve as the system of record for relevant exclusion requests. Each exclusion's validity period starts with the submission date and generally ends 1 year from the date BIS management signs the approval decision memo.<sup>14</sup>

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<sup>13</sup>In addition, requesters are asked to fully describe the properties of the product it seeks to import, including chemical composition, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data.

<sup>14</sup>Commerce generally will approve exclusions for 1 year from the date of signature or until all excluded product volume is imported. The exclusion may be valid for more or less than 1 year depending on the specifics of the exclusion request. 15 C.F.R. 705, Supp. No. 1, at (h)(2)(iv).

BIS maintains data about all exclusions, using the information submitted by requesters via either regulations.gov or the Section 232 Exclusion Portal. Data about approved exclusions are contained in approval lists, and changes are documented in change logs. Requesters can submit a change of IOR name, or, under certain circumstances, request that the submission date be changed. An exclusion may also be changed if BIS discovers the approval was made in error and withdraws the exclusion.

## CBP Administers Approved Exclusions Using Information from BIS

BIS sends specific information about approved exclusions to CBP via approval lists and change logs. We refer to the information in these documents as the six BIS-approved parameters of each exclusion (see fig. 1). CBP uses this information to administer the exclusions.

**Figure 1: CBP Uses Information on Six Parameters from BIS to Administer Section 232 Steel and Aluminum Tariff Exclusions**



Legend: BIS = Bureau of Industry and Security, CBP = U.S. Customs and Border Protection, HTSUS = Harmonized Tariff Schedule of the United States, Exclusion ID = Exclusion identification number, IOR = Importer of Record, ISO = International Organization for Standardization.

Source: GAO analysis of BIS and CBP information (data); GAO (icons). | GAO-23-105148

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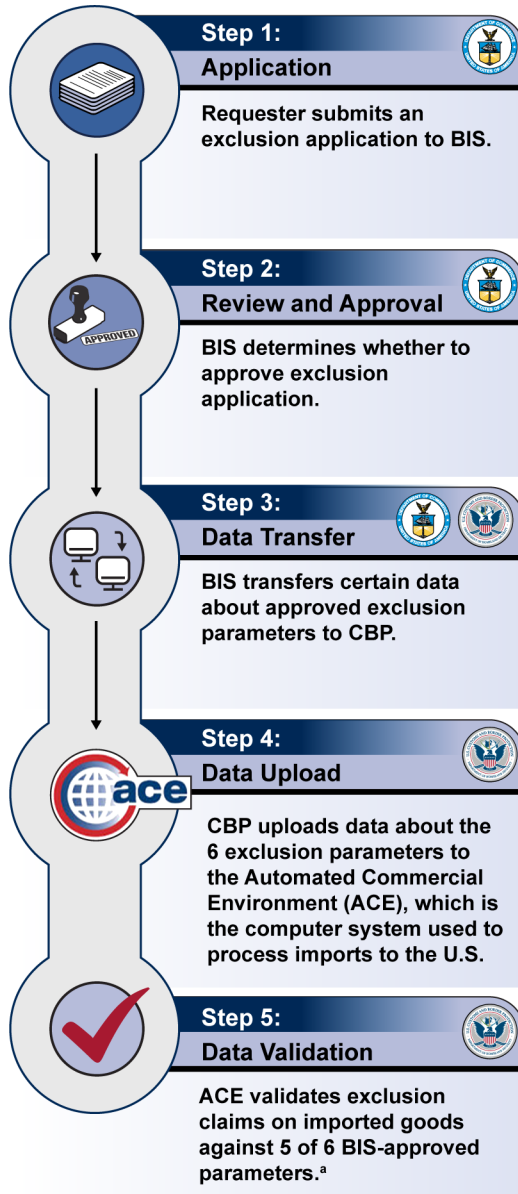
CBP then uploads this information to ACE, the agency's system of record for processing imports to the United States. When importers bring products into the United States, they must provide CBP with certain information about the products by completing forms in ACE, which is referred to as filing an entry and entry summary. Within each entry summary, there are "lines," with each line identifying a specific product (by HTSUS code), the quantity of that product, and other relevant information. Importers file entries and entry summaries with CBP through ACE. Each importer is assigned as an account to one of 10 Centers of Excellence and Expertise within CBP's Office of Field Operations. For a product subject to Section 232 tariffs, an importer may show it has a tariff exclusion by providing an exclusion identification number on the entry summary. ACE then automatically compares five of the six BIS-approved exclusion parameters to the information provided on the entry summary to determine whether the exclusion can be used.<sup>15</sup> This automatic process is referred to as data validation. If the entry summary information matches these five exclusion parameters, then ACE determines that the exclusion can be used (i.e., is valid)<sup>16</sup> and the importer does not pay Section 232 duties on the product or can import goods otherwise subject to an absolute quota. In contrast, if ACE determines that the exclusion parameters do not match, then ACE will reject the entry summary. See figure 2 for the data transfer and validation processes.

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<sup>15</sup>ACE does not automatically validate exclusion claims against the BIS-approved quantity.

<sup>16</sup>In contrast, if ACE determines that the parameters are not met, the use of the exclusion is invalid. For the purposes of this report, invalid use refers to an instance where an importer claimed an exclusion in ACE, on an import entry summary line, in a way that does not comport with the parameters set by BIS for the approved exclusion.

**Figure 2: Section 232 Steel and Aluminum Tariff Exclusion Data Transfer and Validation Process**



Legend: BIS= Bureau of Industry and Security, CBP= U.S. Customs and Border Protection.

Source: GAO analysis of BIS and CBP information (data); GAO (icons). | GAO-23-105148

<sup>a</sup>ACE does not automatically validate exclusion claims against the BIS-approved quantity.

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## BIS Implemented Measures to Ensure Exclusion Requests Are Needed but Has Not Fully Assessed Their Effectiveness

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### Importers Did Not Use the Majority of the Approved Exclusions and Quantities

Importers did not use most of their approved exclusions and the associated quantities during the period of our analysis, resulting in low exclusion utilization.<sup>17</sup> Of the exclusions BIS approved from March 2018 through September 2021, importers did not use 71 percent of steel and 62 percent of aluminum exclusions as of November 2021. The majority of the unused exclusions expired and therefore could not be used by importers for any new entry after September 30, 2021 (see fig. 3).<sup>18</sup> Specifically, 60 percent of the unused steel exclusions and 75 percent of the unused aluminum exclusions had expired by September 30, 2021.

When exclusion utilization is measured in terms of quantity, or weight, importers used an even smaller fraction of what BIS approved, in part due to the fact importers often do not use the full quantity even when they use exclusions.<sup>19</sup> Importers brought in about 9 percent of the total approved quantity for steel (6 of 70 billion kilograms) and 11 percent for aluminum (2 of 18 billion kilograms) from March 2018 through September 2021 (see fig. 3). The use of these exclusions resulted in an estimated \$2.2 billion in tariff savings for steel importers and \$440 million for aluminum importers.

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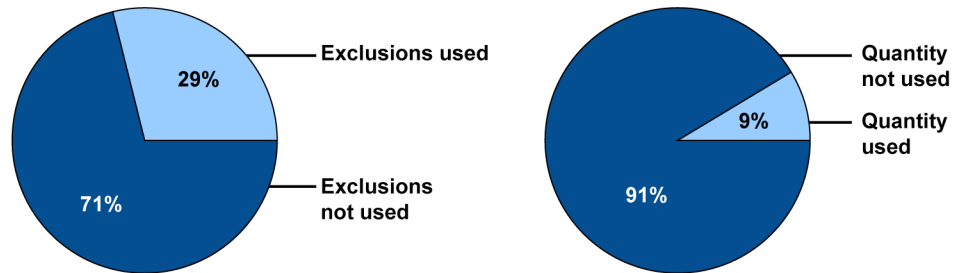
<sup>17</sup>We measure exclusion utilization in two ways: exclusions and associated quantities. For exclusions, we calculated the number of exclusions used divided by the total number of approved exclusions. For associated quantities, we calculated the quantities imported using exclusions divided by total quantities of approved exclusions.

<sup>18</sup>CBP sent us data as of November 10, 2021, on all import entries recorded in ACE subject to Section 232 tariffs that entered U.S. customs from March 2018 through September 2021.

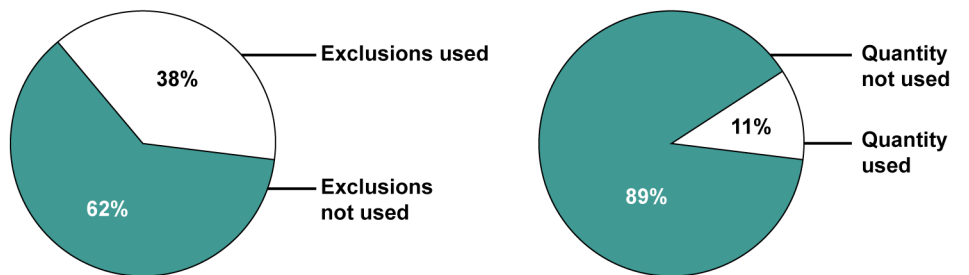
<sup>19</sup>For the exclusions importers used, they used an average of 36 percent of the approved quantity for steel and 37 percent for aluminum.

**Figure 3: Utilization of Approved Section 232 Steel and Aluminum Tariff Exclusions and Quantities, March 2018–September 2021**

**Steel**



**Aluminum**



Source: GAO analysis of U.S. Department of Commerce Bureau of Industry and Security (BIS) and U.S. Department of Homeland Security Customs and Border Protection (CBP) data. | GAO-23-105148

Note: In November 2021, CBP sent us data on all import entries recorded in their Automated Commercial Environment (ACE) subject to Section 232 duties from March 2018 through September 2021. In addition, BIS provided us data on all approved exclusions from March 2018 through September 2021. Because importers and CBP officials can make changes to transaction information, we report all statistics and analyses as of November 2021.

**Redundant Exclusion Requests and Large Approved Quantities Could Account for Low Exclusion Utilization**

Several reasons may help to explain why importers did not use many of their approved exclusions. Our analysis of BIS data on approved exclusions shows extensive exclusion clustering, indicating the possibility of what BIS characterized as “redundant exclusion requests.” We consider exclusion clustering to occur when groups of exclusions have the same HTSUS code, approval date, countries of origin, and IOR name, indicating that BIS approved multiple requests to exclude similar products from the same countries of origin for the same importer on the same day.<sup>20</sup> In instances where we identified exclusion clusters, we found an average of approximately seven exclusions for steel and five exclusions

<sup>20</sup>We included these parameters to identify similar approved exclusions with overlapping validity periods.

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for aluminum in each cluster. About 85 percent of approved steel exclusions and 80 percent of aluminum exclusions had at least one additional exclusion sharing the same characteristics. In one instance, we found a cluster of 948 steel exclusions showing the same IOR, for products with the same HTSUS code, from the same set of countries of origin, and approved on the same date. In another instance, we found a cluster of 722 aluminum exclusions with the same matching characteristics.

BIS approved large quantities of steel and aluminum for tariff exclusion, and, for some product categories, the approved quantities were substantially greater than historical imports. From March 2018 through September 2021, BIS approved Section 232 tariff exclusions for 70 million metric tons of steel in 297 product categories<sup>21</sup> and 18 million metric tons of aluminum in 28 product categories. The product categories with exclusion quantities greater than historical import levels accounted for over 80 percent of the number of approved exclusions for both steel and aluminum.

- **Among steel product categories**, the average monthly exclusion quantity BIS approved from March 2018 through September 2021 was more than 4 times the highest monthly average quantity imported during the 5 years prior to the year the Section 232 tariffs started in 2018. Among the five product categories with the highest number of approved exclusions, all five had higher monthly average approved exclusion quantities than the highest historical monthly average.<sup>22</sup> For example, in one steel product category (HTSUS 7304.41.60), BIS approved a monthly average quantity that was more than 100 times greater than the highest historical monthly average (see fig. 4.)
- **Among aluminum product categories**, the average monthly exclusion quantity BIS approved from March 2018 through September 2021 was almost 1.5 times more than the highest monthly average quantity imported during the 5 years prior to the year the Section 232 tariffs started in 2018.<sup>23</sup> Among the five product categories with the

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<sup>21</sup>We conducted this part of the analysis at the HTSUS-8 digit level, which we refer to as the product categories. Categorizations at this level remain largely constant year to year.

<sup>22</sup>These five product categories accounted for 45 percent of the approved exclusions.

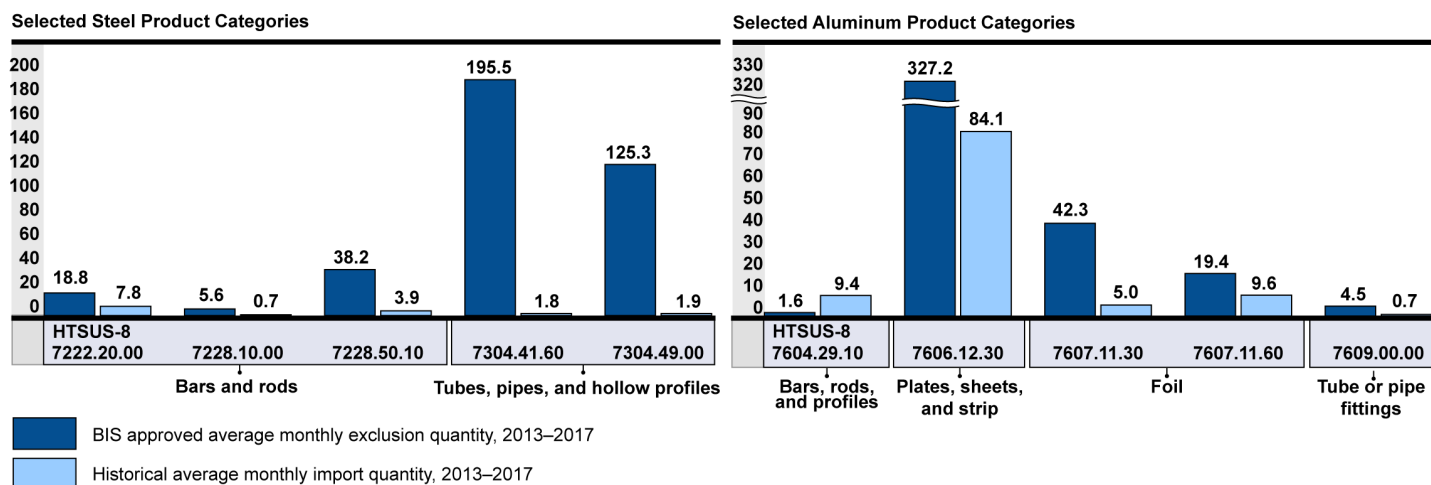
<sup>23</sup>We excluded product categories at the HTSUS-8 level that were not imported from 2013 through 2017, and then calculated the monthly averages of amounts approved and the highest amount historically imported.



highest number of exclusions, four had higher monthly average exclusion quantities than the highest historical monthly average quantity.<sup>24</sup> For example, in one aluminum product category (HTSUS 7606.12.30), BIS approved a monthly average quantity that was almost 4 times the highest historical monthly average quantity (see fig. 4.)

Figure 4 compares approved Section 232 exclusion quantities to historical imports for the five steel and aluminum product categories with the highest numbers of exclusions. For a comparison of the approved Section 232 exclusion quantities to historical imports for the top 15 product categories, see appendix III.

**Figure 4: Approved Section 232 Steel and Aluminum Tariff Exclusion Quantities (March 2018–September 2021) vs. Historical Import Quantities (2013–2017) for Selected Product Categories (in thousand metric tons)**



Legend: BIS = Bureau of Industry and Security, HTSUS-8 = Harmonized Tariff Schedule of the United States tariff subheadings.

Source: GAO analysis of U.S. Department of Commerce Bureau of Industry and Security (BIS) data and Census trade statistics. | GAO-23-105148

Notes: We selected the HTSUS-8 level categories with the most approved exclusions, five for steel and five for aluminum. While importers request exclusion for products defined within the HTSUS-10 digit level, a more detailed level of categorization, the categorizations at this level change frequently, making it difficult to compare exclusion quantities to historical import levels. For this analysis, we chose the HTSUS-8 level, which we refer to as the product categories, because categorizations at this level remain largely constant year to year. We calculated the monthly average import quantity each year from 2013 through 2017 for each product category with at least one approved exclusion and then used the highest monthly average across the 5 years as the historical comparison. To get the average monthly exclusion quantity, we divided the total approved quantity in each product category by 42, the number of months from April 2018 through September 2021. We used April as the starting month because the first exclusion request was submitted toward the end of March 2018.

<sup>24</sup>These five product categories accounted for 75 percent of the approved exclusions.

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Industry representatives noted a few potential reasons why importers may have requested more exclusions than they needed. One industry representative noted that the uncertainty over exclusion approvals might motivate requesters to ask for all they could because they did not know whether or when they would receive the exclusions. Another industry representative suggested that asking for large quantities might be a tactic to make it difficult for domestic producers to object to the exclusions. The representative noted that it is difficult for domestic producers to prove they could produce such large quantities. Additionally, requesters might ask for more exclusions than needed because of market uncertainties and supply chain issues. For example, one industry representative said companies might have requested more exclusions to hedge against the risk of supply chain disruptions.

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### BIS Implemented a Quantity Certification Requirement to Ensure Exclusion Requests Are Needed

BIS added a quantity certification requirement to the exclusion request process in December 2020 to ensure exclusion requests were needed and consistent with legitimate business needs.<sup>25</sup> The requester is required to certify that, among other things, the requester's organization expects to "consume, sell, or otherwise use" the full quantity of product across all the requester's active and pending exclusion requests within the next calendar year.<sup>26</sup> BIS also added a note to the updated rule reminding all parties submitting Section 232 exclusion requests of the prohibition against making false statements to the U.S. government, and the consequences that may occur for such false statements (see fig. 5).

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<sup>25</sup>85 Fed. Reg. 81,060 at 81,070. Commerce codified the quantity certification requirement at 15 C.F.R. Part 705, Supp. No. 1.

<sup>26</sup>The certification requirement refers to "total volume" instead of "total quantity" when referring to the quantity of product that the requester is asking to exclude. There are also references to "volume" in the certification requirement as codified in 15 C.F.R. Part 705, Supp. No. 1. For consistency throughout our report, we generally refer to "quantity" instead of "volume," and we refer to this certification requirement as a "quantity certification."

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**Figure 5: Quantity Certification Attestation from the Department of Commerce’s Section 232 Steel and Aluminum Tariff Exclusion Request Form, as of February 28, 2023**

Effective for all exclusion requests submitted on or after December 14, 2020, the undersigned certifies in the 232 Exclusions Portal that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

- A. My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request or I have a purchase order or orders for such products;
- B. My organization does not intend to use the exclusion for which I have filed an exclusion request, if granted, solely to hedge or arbitrage the price;
- C. My organization expects to consume, sell, or otherwise use the total volume of product across all my active exclusions and pending exclusion requests in the course of my organization’s business activities within the next calendar year;
- D. If my organization is submitting an exclusion request for a product for which we previously received an exclusion, I certify that my organization either imported the full amount of our approved exclusion(s) last year or intended to import the full amount but could not due to one of the following reasons:
  - 1. loss of contract(s);
  - 2. unanticipated business downturns; or
  - 3. other factors that were beyond my organizations’ control that directly resulted in less need for steel or aluminum articles; and
- E. I certify that the exclusion amount requested this year is in line with what my organization expects to import based on our current business outlook. If requested by the Department of Commerce, my organization shall provide documentation that justifies its assertions in this certification regarding its past imports of steel or aluminum articles and its projections for the current year, as it relates to past and current calendar year exclusion requests.

**It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.[18 U.S.C. 1001 (1984 & SUPP. 1197)]**

Source: U.S. Department of Commerce’s Section 232 Exclusion Portal. | GAO-23-105148

In the Federal Register notice announcing the certification requirement, BIS recognized the inefficiencies from reviewing and approving large numbers of exclusion requests that were not needed.<sup>27</sup> According to BIS, the large numbers of unneeded exclusion requests increased the workload on the fixed number of review personnel assigned to the Section 232 exclusion process. Further, BIS noted that the large numbers of exclusion requests also increased the burden on domestic steel and aluminum industries. Domestic industry must either dedicate additional resources to review the exclusion requests and potentially file large numbers of objections, or risk failing to object to requests related to

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<sup>27</sup>85 Fed. Reg. 81,060 at 81,061.

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products that may be sufficiently available domestically.<sup>28</sup> In addition, CBP noted that large numbers of approved exclusions increased its workload because of the resources it devoted to reviewing and uploading exclusion parameter data into ACE.

According to BIS officials, they hoped that the quantity certification requirement would help reduce the number of unneeded exclusion requests and improve the efficiency of the review and decision-making processes. According to BIS, it intended for the quantity certification to

- encourage parties to submit requests for quantities of product more aligned with business needs or demonstrated market demand;
- discourage parties from filing requests based on anticipated need—such as purchase inquiries or historical projections—rather than concrete purchase orders or business needs; and
- provide a basis for BIS to introduce further, more robust reviews of the requested quantities using documentation that requesters would provide of their past imports and projections for the current year, if requested by BIS.

BIS told us that they began requesting additional documentation for exclusion requests slated for approval that were assessed as “high volume” as part of their implementation of the quantity certification requirement starting in first 3 months of 2022. For these high volume requests, BIS emails each identified requester to ask for “documentation that justifies [the requester’s] assertions” that they expect to “consume, sell, or otherwise use” the quantity of product requested in the exclusion application. BIS told us that within 30 days of receiving the notice,

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<sup>28</sup>Domestic steel and aluminum producers may post objections to the exclusion request. Commerce asks objectors to demonstrate that they are capable of fulfilling the steel and aluminum needs of the requester within 8 weeks. If an exclusion request receives an objection, Commerce provides the requester a rebuttal period to rebut the objector’s claims through a separate posting. If the requester submits a rebuttal, the objectors may respond to the rebuttal during a surrebuttal period. Commerce’s International Trade Administration evaluates all exclusion requests that receive an objection and provides a recommendation to BIS to approve or deny requests. Large numbers of exclusion requests may make it difficult for domestic producers to review and file objections to all relevant cases. Because Commerce approves the majority of the exclusion requests without an objection, large numbers of exclusion requests may increase the likelihood of domestic producers not filing objections and thus may increase the likelihood of requesters receiving approvals. For more details on objections, see [GAO-20-517](#).

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requesters must provide this documentation,<sup>29</sup> which BIS reviews to determine whether it is sufficient to support the quantity certification. According to BIS, if the documentation is found sufficient, BIS advances the exclusion request for final approval; if it is found insufficient, BIS rejects the exclusion request for failing to meet the quantity certification requirement.

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**BIS Has Not Fully Assessed Whether the Certification Requirement Ensures Exclusion Requests Are Needed**

BIS has not fully assessed the effectiveness of the certification requirement implemented in December 2020. According to BIS, the quantity certification requirement is expected to reduce the exclusion requests that are not needed, leading to higher exclusion utilization. However, BIS's preliminary calculation suggested the certification requirement initially had a marginal positive effect on exclusion utilization. After requesting additional documentation for high volume requests and the introduction of tariff-rate quotas with some countries, BIS observed an increase in utilization in the first 6 months of 2022. However, we found that the approved exclusion quantities declined in 2022, but, as of November 2021, most exclusions remained unused within 150 days of approval. For more details, see appendix III. BIS stated that it has not conducted a longitudinal study to fully assess the quantity certification requirement. According to BIS, the 1-year validity period—the amount of time importers have to use the exclusions after approval—results in a lag period before the effect of the certification requirement can be accurately assessed.

According to Standards for Internal Control in the Federal Government,<sup>30</sup> federal agencies should monitor and evaluate the results of their activities. Management uses the evaluation to determine the effectiveness of its activities and remediate deficiencies. Without fully

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<sup>29</sup>According to BIS, if the company is a manufacturer, it may respond attesting that their company is a manufacturer engaged in manufacturing at facilities in the United States and provide evidence verifying that the imported product in the requested quantity is expected to be completely used within the next calendar year as part of the manufacturing process. According to BIS, if the company intends to use the imported product primarily for resale to other companies in the United States, they may provide documentation in the form of purchase orders or equivalent documents justifying the business need for the requested quantities and products listed in the exclusion request. BIS noted that purchase orders or equivalent documents must reflect sales from the requester to one or more domestic customers for the exact requested product and must be dated prior to the requester submitting the associated exclusion request. BIS does not accept requests for quotes, purchase inquiries, historical purchase orders older than 1 year, or any other form of narrative as supporting documentation, according to BIS.

<sup>30</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014), Principles 13 and 16.

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assessing the effect of the quantity certification requirement, BIS does not know the extent to which the certification requirement reduced the exclusion requests that were not needed, increased exclusion utilization, or improved the efficiency of the exclusion approval process.

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## BIS and CBP Have Inconsistent Data about the Parameters of Some Approved Exclusions

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### BIS Transfers Exclusion Data to CBP for Use in ACE

BIS generates the official data on approved exclusions in approval lists and change logs. The weekly approval lists and change logs related to exclusion parameters are maintained in spreadsheets, which BIS officials told us they transmit to CBP's Trade Remedy Branch (TRB).<sup>31</sup> The data used to create the approval lists are pulled directly from the online forms that requesters use when applying for exclusions. BIS officials told us they conduct quality checks on the data before sending it to TRB. BIS may not provide complete parameters for each exclusion in both the approval lists and change logs. For example, the BIS approval record for each exclusion shows the relevant HTSUS code, but if an exclusion is later changed, the change log may not include that information.

Because BIS approves the exclusions, they provide the approved exclusion parameters to CBP. CBP officials told us that their role is to implement the exclusions per BIS instructions. To use the data that BIS provides, TRB derives additional information and converts the information to formats that can be uploaded into ACE. TRB officials then derive some data elements from what BIS provides, and convert other data elements in order to upload complete information about exclusions parameters into ACE. These derivations and additions include

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<sup>31</sup>BIS officials told us that they provide cumulative approvals data each week, and that these may include any corrections or edits to previously approved exclusions. Such corrections are provided outside of the official change log documents.

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- deriving an exclusion ID by assigning the appropriate prefix to the application number,<sup>32</sup>
  - converting the country of origin name to the relevant two- or three-letter code,<sup>33</sup>
  - locating the correct IOR number associated with the approved IOR name,<sup>34</sup> and
  - deriving an expiration date from the approval date.

TRB officials told us that, upon receiving the data, they review it and request any necessary clarifications from BIS. BIS and TRB officials told us that questions about the data may come up, and corrections are made at this stage via email correspondence.

TRB then sends the reviewed and formatted data to CBP's Trade Transformation Office.<sup>35</sup> The Trade Transformation Office conducts a final review to identify possible formatting errors, and then uploads the data into ACE. Once this step is complete, the exclusions are ready to be used (see fig. 6). Generally, requesters can use an exclusion 7-10 business days after BIS approval.

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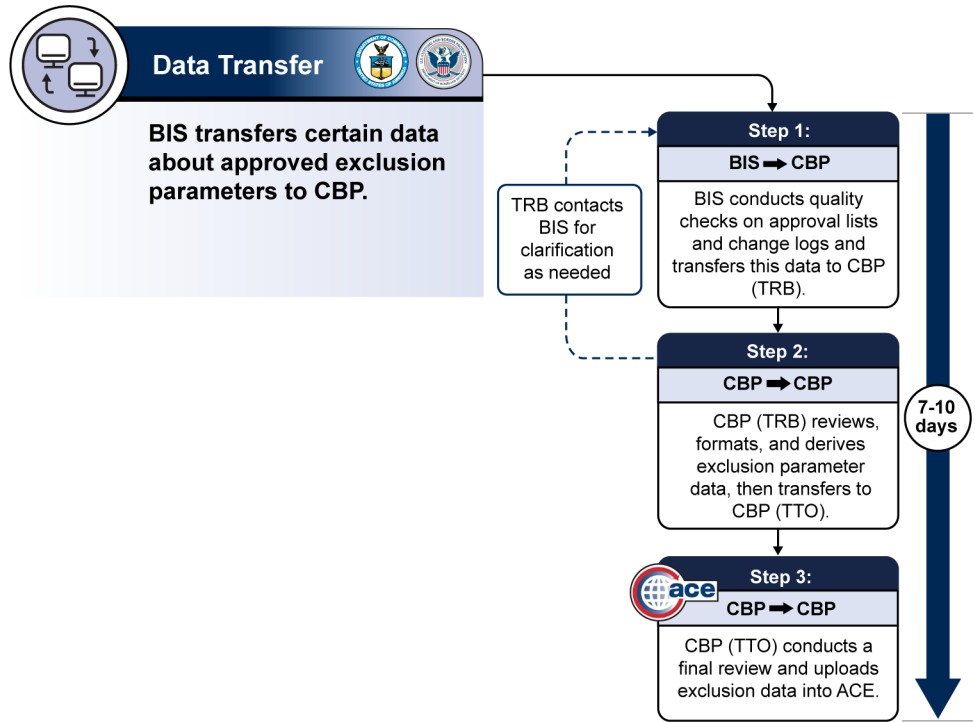
<sup>32</sup>For exclusions approved via regulations.gov, CBP assigns steel exclusions the prefix STL and aluminum exclusions the prefix ALU. For exclusions approved via the Section 232 portal, CBP assigns steel exclusions the prefix SPR and aluminum exclusions the prefix APR.

<sup>33</sup>To indicate country of origin in ACE, CBP uses International Organization for Standardization (ISO) codes, the internationally recognized system of codes that designate every country and most of the dependent areas.

<sup>34</sup>Importers are asked to provide an importer number on CBP entry forms. Depending on the importer's circumstances, this could be an Internal Revenue Service business registration number, a social security number, or a CBP-assigned number. Importers may request a CBP-assigned number by completing CBP Form 5106. CBP uses these types of IOR numbers to associate the entry of goods with specific companies.

<sup>35</sup>According to CBP officials, from March 2018 through November 2021, this transfer occurred through copy and paste. In November 2021, CBP began using an automated Excel macro to facilitate this transfer. A macro is a tool that Excel users can build to automate repeated tasks.

**Figure 6: BIS to CBP Process of Transferring Section 232 Steel and Aluminum Tariff Exclusion Data**



Legend: BIS = Bureau of Industry and Security, CBP = U.S. Customs and Border Protection, TRB = Trade Remedy Branch, TTO = Trade Transformation Office.

Source: GAO analysis of BIS and CBP information (data); GAO (icons). | GAO-23-105148

## BIS and CBP Maintain Inconsistent Exclusion Data

We found inconsistencies between BIS and TRB data for almost 10,000 exclusions—or about 5 percent of the total number of exclusions approved from March 2018 through September 2021.<sup>36</sup> Examples of such inconsistencies included differences in the start or end date of an exclusion’s validity period and differences in the approved countries of origin. These inconsistencies create a risk that CBP would administer these exclusions in a manner that does not comport with BIS approval.

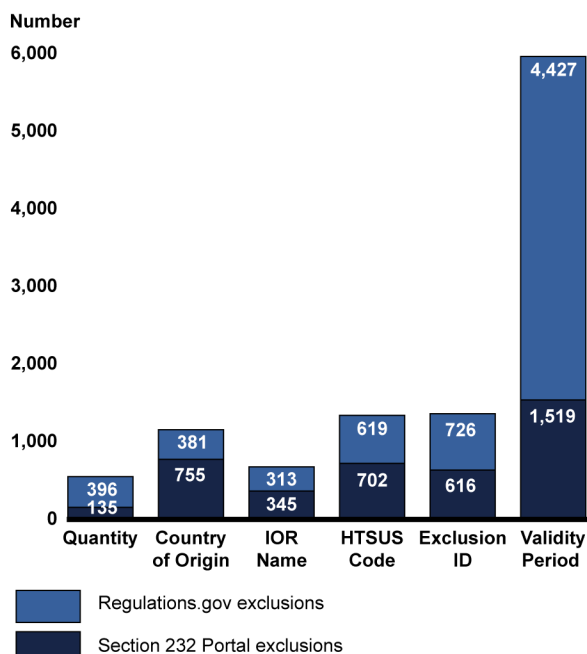
Inconsistencies between BIS and CBP data occurred in the exclusions approved through the portal as well as in regulations.gov. As noted above, in June 2019, BIS launched the Section 232 portal. Our analysis

<sup>36</sup>That is, data about at least one exclusion parameter was inconsistent between the two agencies.



found fewer instances of inconsistency related to exclusions approved through the portal. We found that about 9 percent of exclusions approved through regulations.gov showed inconsistency between BIS and CBP data, whereas about 3 percent of exclusions approved through the Section 232 portal showed inconsistencies, as of September 2021. We identified inconsistencies related to all parameters in both regulations.gov and the Section 232 portal (see fig. 7).<sup>37</sup>

**Figure 7: Inconsistent BIS and CBP Data for Approved Section 232 Steel and Aluminum Tariff Exclusions, by Parameter and System of Record, March 2018–September 2021**



Source: GAO analysis of U.S. Department of Commerce Bureau of Industry and Security (BIS) and U.S. Department of Homeland Security Customs and Border Protection (CBP) data. | GAO-23-105148

Note: The information presented here does not account for direct communication in which BIS may have instructed CBP to make certain changes. To the extent that this occurred and CBP made these changes in ACE, but BIS did not make related changes in their internal records, our analysis will show this as a mismatch. The exclusion ID mismatch category includes both (1) exclusion IDs that BIS approved but CBP did not upload to ACE and (2) exclusion IDs that CBP uploaded to ACE but were not included in BIS approval records. Some of the mismatch we identified in the quantity category may be due to exclusions that were withdrawn. In such cases, BIS informs CBP and CBP changes the allowed quantity to equal the quantity that has been used up to the date of the withdrawal. Mismatches in the IOR Name category are based on a Levenshtein Distance of 0.5,

<sup>37</sup>To determine whether or not BIS and CBP maintained different data about IOR names, we used a Levenshtein Distance of 0.5, meaning that in order to count as a mismatch, at least half of the characters were different between the BIS and CBP names. For more information about our data matching methodology, see appendix I.

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meaning we counted the names as a mismatch if at least half of the letters were different between the BIS and CBP names. We further refined this count by removing any mismatches at or below this threshold that could reasonably be assumed to be the same entity (e.g., ABC Inc. vs. ABC Incorporated). With respect to the validity period, where exclusions were approved in a leap year, we counted these as valid for 366 days instead of 365 from the date of approval, per BIS officials' statement that this is permitted.

CBP officials noted that our comparison of BIS and CBP data does not account for communications that CBP received directly from BIS via email, instructing CBP to process certain changes that would result in differences in the BIS and CBP records. BIS officials told us that such updates and corrections would not be reflected in BIS's approvals lists or change logs, but the necessary information would be reflected in ACE.

BIS officials provided various explanations for specific examples of inconsistencies we identified.<sup>38</sup> For example, BIS officials told us that, in many cases, human error was to blame, such as BIS administrative errors, and when CBP staff edit or format BIS data for uploading into ACE. In other cases, agency officials indicated the inconsistencies were the result of gaps in the records they provided to us.

**Quantity inconsistencies.** We found that in some cases CBP programmed an amount that differed from the BIS-approved quantity. BIS officials noted that when an exclusion is withdrawn after approval, CBP will change the approved quantity in ACE to reflect the quantity at the time of the withdrawal to prevent further use of the exclusion. The resulting CBP quantity is smaller than what BIS approved. However, for about 60 percent of the inconsistencies we identified, CBP data showed a larger quantity than what BIS approved—indicating that these inconsistencies could not be explained by withdrawn exclusions. With respect to the examples we provided, BIS noted that these inconsistencies were likely due to CBP programming error.

**Country of origin inconsistencies.** CBP noted that in some instances they may not program BIS-approved countries that are exempt from the tariffs.<sup>39</sup> However, this does not explain all of the inconsistencies we identified. About 14 percent of the country of origin inconsistencies we

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<sup>38</sup>We provided BIS with two examples of exclusions with inconsistent data in the following parameters: quantity, country of origin, IOR name, HTSUS code, and validity period.

<sup>39</sup>Australia has been exempt from the Section 232 tariffs since these tariffs were implemented. Canada and Mexico were exempt from Section 232 tariffs from the time they were implemented until May 31, 2018, and, after a period in which they were subject to the tariffs, they have generally been exempt from Section 232 tariffs since May 20, 2019.

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found were caused by CBP not programming an exempt country. BIS officials stated that inconsistencies we identified could be due to errors in CBP data entry or programming.

**IOR name inconsistencies.** BIS officials told us that in one case, for example, CBP had flagged an exclusion as potentially having the wrong IOR name; however, BIS did not have a record of any changes made via its official process through which requesters should ask for the exclusion's IOR to be changed, or for a new IOR to be added. In cases where an unclear IOR name is resolved through direct communication between the two agencies, BIS officials stated that so long as the record is correct in ACE, they do not need to maintain a separate record that reflects these updates.

**HTSUS inconsistencies.** BIS officials told us that HTSUS inconsistencies were due to either CBP data entry or programming error, or to an error in a BIS approval data file.

**Validity period inconsistencies.** BIS told us that these inconsistencies could be explained either by CBP data entry or programming error, or by human error at BIS—for example, that BIS processed an exclusion twice with different dates, or that BIS failed to provide updated data to CBP when changes occurred.

CBP officials told us that their process could be made more efficient if BIS were to provide data that required less manipulation. For example, CBP officials told us it would help if BIS were to provide exclusion parameter data (1) in formats that comport with existing ACE data fields (e.g., providing International Organization for Standardization (ISO) codes instead of country of origin names, and IOR numbers instead of importers' names), and (2) in a consistent fashion, across all BIS approval list and change log records.

BIS does not provide data in a way that comports with ACE data fields, or provide consistent information across all documents. The BIS data transmittal is built using information that requesters enter into the application forms, and requesters may enter erroneous information, or may wish to keep certain information protected. For example, if asked for an ISO code instead of country name, a requester may inadvertently provide the wrong code, and in this case BIS would unknowingly transmit an error to CBP. Similarly, some IOR numbers use sensitive information, such as a Social Security number. BIS also told us that, in some cases, a particular piece of data is not necessary to communicate a change; for

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example, changing an IOR name does not necessarily require information about a product HTSUS code. BIS officials told us that altering the Section 232 data transmittal process might in some cases require additional funding for upgrades to the Section 232 portal. BIS officials also stated that they had not explored other options, such as obtaining direct access to ACE in order to upload exclusion parameter data directly.

Federal internal control standards address the accurate and timely recording of transactions, and note that transactions, such as changes to a record, should be promptly noted to maintain the record's relevance and value to management in controlling operations and making decisions.<sup>40</sup> This applies to the entire process or life cycle of a transaction or event. In addition, according to leading practices for collaboration that we identified in previous work,<sup>41</sup> agencies should establish means to operate across agency boundaries and find common ground while satisfying their respective operating needs. Without a more consistent interagency data transfer process, CBP may not administer some exclusions as BIS intends, leaving a continuing possibility of error and invalid use.

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<sup>40</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014), Principle 10.

<sup>41</sup>GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

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## Importers May Owe an Estimated \$32 Million in Duties Because of Invalid Use of Exclusions; CBP Has Addressed Some Risks of Invalid Use

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### Importers May Owe an Estimated \$32 Million in Duties Because of Invalid Use Related to Five Exclusion Parameters

We estimate that importers may owe about \$32 million in duties because of invalid use of Section 232 exclusions, as of November 10, 2021.<sup>42</sup> Our analysis showed that, for the 61,243 exclusions used as of November 10, 2021, importers generally used exclusions—and therefore did not pay Section 232 duties—consistent with the parameters set by BIS for the approved exclusion. However, we found instances of invalid use related to five exclusion parameters: exclusion identification number, HTSUS code, country of origin, validity period, and quantity (see tab. 1).<sup>43</sup> These

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<sup>42</sup>For the purposes of this report, invalid use refers to an instance where an importer claimed an exclusion in ACE, on an import entry summary line, in a way that does not comport with the parameters set by BIS for the approved exclusion. We compared import entry summary lines from March 2018 through September 2021 where importers claimed Section 232 exclusions against the data BIS said it transmitted to CBP about the approved exclusions to determine whether invalid use occurred. CBP queried the import entry summary lines from ACE on an ongoing basis from October 25, 2021, through November 10, 2021. Because CBP's data reflect a snapshot in time, and under certain circumstances could have been revised by CBP or the importer after the snapshot, duties owed as a result of invalid use are estimates. See appendix I for further details on our scope and methodology.

<sup>43</sup>Our analysis does not reflect invalid use related to the IOR name parameter because BIS did not maintain authoritative data on approved IOR names. As previously discussed, BIS does not update its records to reflect changes made to the IOR name as a result of direct communication between BIS and CBP. Therefore, it is not possible to determine whether a mismatch between the IOR name approved by BIS and the IOR name used on an import entry summary line in ACE means an unauthorized importer used the exclusion. In February 2023, CBP issued guidance clarifying that CBP will only process an exclusion if the IOR name is listed on the BIS approved exclusion and matches the IOR name registered in ACE through the CBP Form 5106. Cargo Systems Messaging Service #55014059 - Updated Guidance: Processing Approved Section 232 Product Exclusions, available at <https://content.govdelivery.com/accounts/USDHSCBP/bulletins/34772ab>. According to the guidance, if the BIS approved IOR name does not match the IOR name registered in ACE, the IOR will need to submit an IOR name change request directly with BIS.

instances were associated with 3,959 exclusions and 9,099 import entry summary lines.

**Table 1: Estimated Amount of Duties Importers May Owe Due to Invalid Use of Section 232 Steel and Aluminum Tariff Exclusions, as of November 10, 2021 (Dollars in millions)**

Exclusion parameters	Number of exclusions with invalid use	Number of import entry summary lines with invalid use	Estimated Section 232 duties owed <sup>a</sup> (Dollars in millions)
<b>Non-quantity parameters</b>			
Exclusion ID	8	34	\$0.7
HTSUS code	25	37	\$0.3
Country of origin	7	36	\$0.6
Validity period	37	254	\$ .9
<b>Subtotal for non-quantity parameters</b>	<b>77</b>	<b>361</b>	<b>\$2.5</b>
<b>Subtotal for quantity parameter<sup>b</sup></b>	<b>3,884</b>	<b>8,738</b>	<b>\$29.4</b>
<b>Grand Total</b>	<b>3,959<sup>c</sup></b>	<b>9,099</b>	<b>\$31.9</b>

Legend: Exclusion ID = exclusion identification number; HTSUS = Harmonized Tariff Schedule of the United States.

Source: GAO analysis of U.S. Department of Commerce Bureau of Industry and Security (BIS) and U.S. Department of Homeland Security Customs and Border Protection (CBP) data. | GAO-23-105148

Notes: Invalid use refers to an instance where an importer claimed an exclusion in the Automated Commercial Environment (ACE), on an import entry summary line, in a way that does not comport with the parameters set by BIS for the approved exclusion. Because the data from ACE reflect a snapshot in time as of November 10, 2021, and under certain circumstance could have been revised by CBP or the importer after the snapshot, duties owed as a result of invalid use are estimates.

<sup>a</sup>To estimate duties owed for each exclusion parameter, we identified the import entry summary lines where invalid use of Section 232 exclusions occurred, derived the import value for each, and multiplied the import value by the applicable duty rate (25 percent for steel and 10 percent for aluminum imports). To derive the import value for the quantity parameter, we first identified the import entry summary line where the quantity imported triggered an overuse of the exclusion. For that import entry summary line, we calculated the unit value of the product (import value divided by import quantity) and then calculated the value of the overage amount by multiplying the unit value by the overage amount. We then added that figure to the import value of all remaining import entry summary lines.

<sup>b</sup>Our analysis could underestimate invalid use and corresponding duties owed for exclusions that had a partially approved quantity from BIS. For example, if the importer requested 10 kilograms, was approved for 5 kilograms, and used 15 kilograms, our analysis would capture the overage between requested and used (5 kilograms), not the overage between approved and used (10 kilograms).

<sup>c</sup>The subtotals do not add up to the grand total because, to avoid double counting, we excluded from the grand total the two exclusions that appeared as invalid use for both the non-quantity and quantity parameters.

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## CBP Automated Controls and Identified Data Entry Errors to Address Invalid Use Risks Related to Four Exclusion Parameters

According to CBP officials, the invalid use we identified related to the four non-quantity exclusion parameters (exclusion identification number, HTSUS code, country of origin, and validity period) occurred prior to CBP taking steps to address certain risks of invalid use. It could be attributed to 1) importers having made invalid exclusion claims before CBP implemented automated controls in ACE, or 2) CBP uploading incorrect exclusion parameter data to ACE and importers then claiming these erroneous exclusions before CBP identified and corrected the errors. For example:

- **CBP Automated Controls.** Importers used an incorrect exclusion identification number, or used exclusions for imports that entered the United States outside of the exclusion’s validity period, before CBP implemented ACE validations that would prevent either from occurring. To prevent importers from making invalid exclusion claims, CBP officials said they implemented ACE validations in mid to late 2018. Specifically, CBP programmed ACE to automatically compare an import entry summary line claiming an exclusion to specific parameters that CBP uploaded to ACE about the approved exclusion. CBP officials said ACE will reject an import entry summary line claiming an exclusion
  - that does not match the exclusion identification number uploaded to ACE for the exclusion;
  - that does not match one of the IOR numbers, HTSUS codes, or countries of origin uploaded to ACE for the exclusion; or
  - for imports that entered the United States outside of the exclusion’s validity period.

In addition, CBP officials said ACE is programmed to flag certain import entry summary lines for review by an import specialist as an additional control. However, import entry summary lines that are not flagged for review, and that pass ACE validations, will automatically liquidate—meaning importers are assessed duties at the rate reported on the import entry summary line at the time of entry.<sup>44</sup> Importers who claim an approved exclusion on an import entry summary line that passed ACE validations would be assessed a Section 232 duty rate of \$0.

- **CBP Identified Errors.** CBP had uploaded exclusions data to ACE with an incorrect HTSUS code or country of origin, and importers then claimed these erroneous exclusions before CBP identified and

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<sup>44</sup>Liquidation generally takes place within 314 days from the date of entry.

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corrected the errors. To address these specific data entry errors and prevent further invalid use related to these exclusions, CBP officials said they subsequently corrected the HTSUS codes and countries of origin uploaded to ACE, and provided training to staff on formatting the data.<sup>45</sup>

While CBP has taken steps to address certain risks of invalid use, CBP officials said in general that they would not be able to recover the estimated Section 232 duties that may be owed by importers due to invalid use, because most of the import entry summary lines we identified are beyond CBP's 90-day re-liquidation period.<sup>46</sup> Of the 9,099 import entry summary lines we identified in table 1, we found that about 90 percent were liquidated as of November 10, 2021. However, CBP may be able to recover Section 232 duties owed by importers for liquidated entries beyond CBP's 90-day re-liquidation period in some cases. CBP may, under section 1592 of title 19 of the United States Code, demand payment to recover duties owed and assess penalties<sup>47</sup> for entries within the statute of limitations.<sup>48</sup> CBP has identified revenue as a priority trade issue.<sup>49</sup> CBP's goal is to ensure CBP has effective internal controls to

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<sup>45</sup>While CBP has taken steps to address these specific data entry errors, as previously discussed, we found that BIS and CBP maintain inconsistent data for about 3 percent of exclusions approved through the Section 232 portal, which could present an invalid use risk if not addressed.

<sup>46</sup>CBP has 90 days from the liquidation date to correct the entry and assess the correct amount of duties owed. This is referred to as the re-liquidation period. Once the re-liquidation period expires, CBP cannot make further corrections to the entry.

<sup>47</sup>CBP can assess monetary penalties against any party who enters merchandise into the United States by a material and false act or a material omission, under 19 U.S.C. § 1592. The material and false act or material omission must result from the party's negligence, gross negligence, or fraudulent conduct. If the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of 19 U.S.C. § 1592, CBP must require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed. CBP officials said they were working on a template letter that potentially could be used to demand duty payments.

<sup>48</sup>According to CBP guidance, the statute of limitations is 5 years from the date of discovery for fraud, and 5 years from the date of entry for those violations involving gross negligence or negligence. U.S. Customs and Border Protection, *What Every Member of the Trade Community Should Know: Prior Disclosure: An Informed Compliance Publication* (Aug. 2017).

<sup>49</sup>U.S. Customs and Border Protection, *Office of Trade Priority Trade Issues Overview*, (May 30, 2022).



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protect the duties and taxes it collects for the U.S. government.<sup>50</sup> Taking steps to recoup duties owed would better position CBP to potentially recover millions of dollars in revenue.

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### CBP Lacks Effective Controls to Prevent Importers from Exceeding Approved Exclusion Quantities

CBP lacks effective automated and manual controls to prevent importers from overclaiming Section 232 exclusions with respect to the approved quantity. We found that importers may owe an estimated \$29.4 million in duties because of invalid use related to the quantity parameter as of November 10, 2021.<sup>51</sup> According to CBP officials, CBP had 90 days to develop and implement a method for validating Section 232 exclusion claims and did not have the resources to update ACE programming to provide for automatic validation of exclusion quantities. CBP officials told us that establishing an automated quantity control would have been highly time and labor intensive because ACE would need to be programmed to track each exclusion's quantity individually and then automatically deactivate the exclusion when the approved quantity has been reached.

Because of the lack of automated controls, CBP staff monitor exclusion use and manually deactivate exclusions that have reached the approved quantity.<sup>52</sup> However, the lag time between when an exclusion has reached the approved quantity and when it is deactivated creates an opportunity for importers to overclaim exclusions with respect to the quantity.

According to internal CBP reports, four Centers of Excellence and Expertise participated in special operations in an effort to recover Section 232 duties owed as a result of importers exceeding the approved quantity

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<sup>50</sup>U.S. Customs and Border Protection, "Priority Trade Issues," accessed Aug. 11, 2022, <https://www.cbp.gov/trade/priority-issues/revenue>.

<sup>51</sup>Our analysis could underestimate invalid use and corresponding duties owed for exclusions that had a partially approved quantity from BIS. For example, if the importer requested 10 kilograms, was approved for 5 kilograms, and used 15 kilograms, our analysis would capture the overage between requested and used (5 kilograms), not the overage between approved and used (10 kilograms).

<sup>52</sup>CBP created a report in ACE to track the total quantity claimed against each exclusion. CBP staff use this report to monitor exclusion use.

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of their exclusions.<sup>53</sup> While the centers assessed \$4.3 million in Section 232 duties,<sup>54</sup> CBP officials cited a number of limitations with these operations, including that most of the underlying import entry summary lines where invalid use occurred were liquidated and beyond CBP's 90-day re-liquidation period by the time CBP conducted the operations. This means CBP was not able to correct most entries and assess the correct amount of duties owed. As previously discussed, we found that about 90 percent of the 9,099 import entry summary lines we identified in table 1 were liquidated as of November 10, 2021.

CBP's goal is to ensure CBP has effective internal controls to protect the duties and taxes it collects for the U.S. government.<sup>55</sup> Federal standards for internal control call for management to design control activities to achieve objectives, such as to protect the revenue, and respond to risks.<sup>56</sup> Some control activities prevent an entity from failing to achieve an objective or address a risk, such as preventing importers from exceeding the approved quantity of their exclusions. Other control activities detect when an entity is not achieving an objective or addressing a risk before the entity's operation has concluded, and corrects the actions so that the entity achieves the objective or addresses the risk, such as identifying overages and recovering duties owed.

While CBP has taken steps to assess \$4.3 million in Section 232 duties owed by importers, CBP lacks both effective preventive and detective controls. That is, it lacks effective controls to prevent importers from exceeding the approved quantity of their exclusions or to recover the duties owed when there is an overage. Until CBP implements effective control activities for the Section 232 exclusions program, the U.S. government may be subject to revenue loss through excessive exclusion claims related to quantity. Effective control activities could include, for

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<sup>53</sup>These special operations took place in fiscal years 2020 and 2021, and included import entry summary lines dating back to the start of the Section 232 exclusions program in March 2018. CBP officials said the Office of Field Operations' 10 Centers of Excellence and Expertise are responsible for assessing and collecting duties—including through enforcement actions—and each center decides what enforcement actions, if any, to take.

<sup>54</sup>According to CBP officials, assessed means CBP has issued bills to the importers for the duties owed.

<sup>55</sup>U.S. Customs and Border Protection, "Priority Trade Issues," accessed Aug. 11, 2022, <https://www.cbp.gov/trade/priority-issues/revenue>.

<sup>56</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014), Principle 10.

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example, CBP establishing an automated control for the quantity parameter, as it did for the other exclusion parameters. Or, given that CBP has 90 days after liquidation to re-liquidate an entry and assess the correct amount of duties owed, CBP could address the lag time between when an exclusion exceeds the approved quantity and CBP's efforts to recover the duties owed.<sup>57</sup> In addition, as discussed above, CBP may be able to recover Section 232 duties owed by importers for liquidated entries beyond CBP's 90-day re-liquidation period in some cases by issuing demands for payment and assessing penalties. CBP officials told us that taking such steps would be feasible. Taking steps to prevent importers from overclaiming or to recoup duties owed would better position CBP to ensure that millions of dollars in revenue is protected.

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## Conclusions

In March 2018, presidential proclamations initiated tariffs on certain foreign steel and aluminum products, stating an intent to help domestic industries. At the same time, BIS and CBP implemented a process by which importers could obtain exclusions from paying the tariffs under certain circumstances. BIS has reviewed data and enacted some measures to reduce the exclusion requests that are not needed and to improve the efficiency of the exclusion approval process. BIS implemented a quantity certification in December 2020 as a part of the exclusion application process, and strengthened this requirement at the beginning of 2022. However, BIS has not determined whether this certification has been effective in ensuring the exclusion requests are needed and, relatedly, increasing exclusion utilization and improving the efficiency of the approval process.

BIS and CBP take several steps to transfer exclusion parameter data, including manual editing and formatting. While BIS made system changes that reduced inconsistencies, we found continued inconsistencies in agency exclusion records across all parameters. These parameters are necessary for CBP to determine whether or not the use of an exclusion is valid, and it takes CBP time and effort to resolve inconsistencies and

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<sup>57</sup>In an effort to address this lag time, CBP officials said that, in June 2022, the Office of Trade began to share with the Office of Field Operations on a weekly basis a list of exclusions that had been deactivated because they met or exceeded the approved quantity for the exclusion. CBP officials said the list could be used by the Office of Field Operations to identify overused exclusions to follow up on that week. However, until the process has been formalized by the Office of Field Operations' 10 centers, it is too early to tell if the process has addressed CBP's lack of an effective detective control to recover the duties owed when there is an overage.

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correct errors. Moreover, the inconsistencies in data across the agencies indicate a risk of invalid use.

CBP had a short window of time initially—90 days—to configure ACE to administer the Section 232 tariffs. CBP has made process improvements over the course of the program. However, because some automated data validations were not implemented until after the program’s start, and because no validation has been put in place to automatically enforce the approved quantity, revenue remains uncollected. In addition, invalid use risks remain unaddressed. We identified an estimated \$32 million in unpaid duties resulting from invalid exclusion use related to these issues from March 2018 through September 2021. Without implementing further validation measures, CBP may not be collecting the proper tariffs on some imports, and risks continued invalid exclusion use.

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## Recommendations for Executive Action

We are making a total of four recommendations, including two to Commerce and two to CBP.

Specifically:

The Secretary of Commerce should ensure that the Under Secretary for Industry and Security fully assesses the effectiveness of the quantity certification requirement BIS put in place and takes further actions, as needed, to improve the Section 232 exclusion request process. (Recommendation 1)

The Secretary of Commerce should ensure that the Under Secretary for Industry and Security, in consultation with CBP, explores the development of a data transfer process that reduces the potential for inconsistencies between the two respective agency systems. (Recommendation 2)

The Commissioner of CBP should ensure that additional steps are taken, as appropriate, to recover the duties owed by importers as a result of invalid use of Section 232 exclusions, including for liquidated entries beyond CBP’s 90-day re-liquidation period. (Recommendation 3)

The Commissioner of CBP should ensure that controls are implemented either to prevent importers from exceeding the approved quantities of their Section 232 exclusions or to promptly assess duties owed because of overages before CBP’s 90-day re-liquidation period expires. (Recommendation 4)

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## Agency Comments

We provided a draft of this report to Commerce and CBP for review and comment. In its comments reproduced in appendix IV, Commerce agreed with the recommendations. In its comments reproduced in appendix V, CBP agreed with the recommendations. CBP also provided technical comments, which we incorporated as appropriate.

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We are sending copies of this report to the appropriate congressional committees, the Secretary of Commerce, the Secretary of the Department of Homeland Security, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8612 or [gianopoulosk@gao.gov](mailto:gianopoulosk@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VI.



Kimberly M. Gianopoulos  
Director, International Affairs and Trade

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# Appendix I: Objectives, Scope, and Methodology

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This report examines (1) importers' use of approved Section 232 tariff exclusions and U.S. Department of Commerce Bureau of Industry and Security (BIS) measures to ensure exclusion requests are needed, (2) the extent to which BIS and U.S. Department of Homeland Security Customs and Border Protection (CBP) maintain consistent data in order to administer the exclusions, and (3) the extent to which importers have invalidly used exclusions and CBP has taken steps to address risks of invalid use.

To address the first objective, we analyzed the size of BIS-approved exclusions, the extent to which importers used approved exclusions, and the steps BIS has taken to ensure exclusion requests are needed. We also reviewed agency documents and spoke to agency officials and industry representatives for context. Specifically, we analyzed BIS data on the approved exclusions from March 2018 through September 2021 against the following:

1. U.S. Census Bureau import data to compare approved quantities to quantities of steel and aluminum actually imported in the past. To do this, we first calculated the monthly average import quantity for each year from 2013 through 2017 for Section 232 steel and aluminum products in each tariff subheading at the Harmonized Tariff Schedule of the United States (HTSUS)-8 level with at least one approved exclusion. We then selected the highest monthly average for each tariff subheading and compared those amounts to the total quantity BIS approved for products in each tariff subheading per month.<sup>1</sup> We used the highest monthly average imported to estimate the largest amount of these products U.S. entities had imported on a monthly basis in the 5 years prior to 2018, the year the Section 232 tariffs started. Since exclusions can be valid for more than a year and the time period importers could use different exclusions varies, we conducted our comparison on a monthly basis, to account for such differences. We conducted this part of the analysis at the HTSUS-8 level, which we refer to as the product categories. Categorizations at this level remain largely constant year to year. We did not use HTSUS

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<sup>1</sup>We conducted this part of the analysis at the HTSUS-8 digit level, which we refer to as the product categories. Categorizations at this level remain largely constant year to year. We calculated the monthly average import quantity each year between 2013 and 2017 for each product category with at least one approved exclusion and then used the highest monthly average as the historical comparison. To get the average monthly exclusion quantity, we divided the total approved quantity in each product category by 42, the number of months from March 2018 through September 2021, inclusive. We used April as the starting month since the first exclusion request was submitted toward the end of March 2018.

statistical reporting numbers (HTSUS-10 level), the level at which CBP administers the exclusions, for this analysis because the U.S. International Trade Commission makes frequent changes to statistical numbers. Conducting this analysis at the HTSUS-10 level could lead to misleading comparisons between amounts approved and amounts imported in the past. We conducted separate analyses for steel and aluminum products.

2. CBP import entry data from March 2018 through September 2021 to understand the extent to which U.S. importers used approved exclusions. For steel and aluminum exclusions separately, we counted the unique number of exclusions used at least once by importers in the CBP entry data and divided that by the total number of approved exclusions in the BIS data to report the percentage of approved exclusions used by importers at least once. We also computed the total quantities of steel and aluminum imported under exclusions by dividing the CBP entry data by the total approved exclusion quantities, in order to report the percentage of quantities eligible for exclusion that has been imported.

We found the data from BIS, CBP, and Census sufficiently reliable to analyze the extent to which importers have used approved exclusions and how imports under exclusions compared to historical imports.

In addition, BIS implemented a certification requirement in December 2020 to ensure exclusion requests were needed and consistent with legitimate business needs. We reviewed the Federal Register notice that contains the interim final rule on the certification requirement and BIS's responses to public comments.<sup>2</sup> We also obtained information from BIS officials and industry representatives. We assessed the steps BIS took to ensure exclusion requests are needed against the principles related to monitoring and evaluating the results of agencies' activities in the Standards for Internal Control in the Federal Government.<sup>3</sup>

In appendix III, to determine how the approved exclusion quantities might have changed after BIS implemented the certification requirement, we analyzed CBP's data on approved exclusions from March 2018 to March

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<sup>2</sup>85 Fed. Reg. 81,060 (Dec. 14, 2020) (codified at 15 C.F.R. Part 705, Supp. No. 1).

<sup>3</sup>GAO, Standards for Internal Control in the Federal Government, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

2022.<sup>4</sup> Specifically, we calculated the total quantity approved per month from exclusions requested before December 2020 and compared that figure to the total quantity approved per month from exclusions requested after December 2020 for steel and aluminum exclusions separately.<sup>5</sup> For the exclusions requested after December 2020, we compared total quantity approved per month in the time periods of December 14, 2020, through December 31, 2021, and January 1, 2022, through March 10, 2022, where the latter time period reflects when BIS started requesting additional documentation for certain exclusion requests. The results are preliminary because of the limited data.

In appendix III, we also compared the cumulative rate of use of approved exclusions requested before and after the certification requirement by merging BIS data on approved exclusions from March 2018 through September 2021 and CBP entry data on all transactions over the same time period. After merging the datasets, we calculated the cumulative daily percentage of approved exclusions used each day after the date of approval for exclusions requested before and after the certification requirement for a period up to 150 days. While exclusions are generally valid for 1 year, importers could use some of the unused exclusions after September 2021. To manage this limitation, we compared the rate of exclusion use within 150 days after the date of approval for exclusions requested before and after the certification requirement instead of the percentage of exclusions used overall. We then plotted the cumulative daily percentages to compare the rate of exclusion use between exclusions requested before and after December 14, 2020. We reported the percentage of exclusions used within 150 days after the date of approval for exclusions requested before and after the certification requirement. Therefore, we dropped all exclusions requested on or after April 29, 2021, 150 days before the date of the last approved exclusion in our data, because we do not have information on whether those

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<sup>4</sup>We decided to use CBP data on approved exclusions instead of BIS data because the former dataset had information on all approved exclusions for over 5 additional months, which allowed us to conduct a comparison with more data for exclusions requested after the certification requirement became effective. We found that the two datasets were similar enough such that any discrepancies between them would not materially affect our overall findings in this analysis. The CBP data we use is derived from BIS data on the approved exclusions. CBP converts and formats the information so that can be uploaded into the Automated Commercial Environment (ACE).

<sup>5</sup>We conducted our comparison on a monthly basis because the timeframes before and after the certification requirement are unequal. Our data contain nearly 33 months of approved exclusions before December 2020 and nearly 15 months of data after December 2020.



exclusions were used within 150 days after the approval date. Almost 70 percent of the used steel exclusions and almost 80 percent of the used aluminum exclusions were used within 150 days of the approval date.

We found the data to be sufficiently reliable to analyze the extent to which importers used approved exclusions and to characterize how the number of approved exclusions and quantity approved changed after the certification requirement.

To address the second objective, we completed a comparative analysis of BIS and CBP data. When BIS approves an exclusion, it transmits information related to six exclusion parameters. CBP uses this information to derive some data elements and then uploads the following to the Automated Commercial Environment (ACE)—the agency’s system of record for processing imports to the United States: 1) exclusion identification number; 2) importer of record (IOR) name; 3) HTSUS code; 4) quantity; 5) country of origin; and 6) validity period, which generally runs from the exclusion application submission date through 1 year after BIS’s formal approval.

We compared BIS data on the approved exclusion parameters from March 2018 through September 2021 to CBP data on the approved exclusion parameters to determine the extent of any data mismatch between BIS approval records and ACE. For each parameter, we counted the number of exclusions where the data CBP said it uploaded to ACE did not match the data BIS said it transmitted to CBP. The exclusion ID mismatch category includes both (1) exclusion IDs that BIS approved but CBP did not upload to ACE, and (2) exclusion IDs that CBP uploaded to ACE but were not included in BIS approval records. Mismatches in the IOR name category are based on a Levenshtein Distance of 0.5, meaning we counted the names as a mismatch if at least half of the letters were different between the BIS and CBP names. We further refined this count by removing any mismatches at or below this threshold that could reasonably be assumed to be the same entity (e.g., ABC Inc. vs. ABC Incorporated). With respect to the validity period, where exclusions were approved in a leap year, we counted these as valid for 366 days instead of 365 from the date of approval, per BIS officials’ statement that this was acceptable.

We separated our counts by system of record—whether [regulations.gov](https://www.regulations.gov) or the Section 232 Exclusion Portal—to determine the extent to which the

agencies' switch to the portal had resolved data transfer issues.<sup>6</sup> Due to the large number of mismatches, we provided selected examples of mismatches for each parameter to agency officials for their review and comment. Our analysis does not reflect direct communication in which BIS may have instructed CBP to make certain changes. To the extent that this occurred and CBP made these changes in ACE, but BIS did not make related changes to its internal records, our analysis will show a mismatch. Overall, on the basis of our review of the BIS and CBP data and interviews with agency officials, we found the data to be sufficiently reliable for reporting on data mismatches between BIS approval records and ACE for the abovementioned six exclusion parameters. In addition to the above, in order to assess the effectiveness of the agencies' procedures for transferring data about the exclusion parameters, we also reviewed best practices in interagency collaboration<sup>7</sup> and federal internal control standards for information processing.<sup>8</sup>

To address the third objective, we completed a comparative analysis of BIS and CBP data, interviewed agency officials regarding discrepancies in the data and their causes, and reviewed documents related to the exclusion approval and import processes as context. For the purposes of this report, invalid use refers to an instance where an importer claimed an exclusion in ACE, on an import entry summary line, in a way that does not comport with the parameters set by BIS for the approved exclusion. We compared import entry summary lines from March 2018 through September 2021 where importers claimed Section 232 exclusions against the data BIS said it transmitted to CBP about the approved exclusions to determine whether invalid use occurred for five exclusion parameters (exclusion identification number, HTSUS code, quantity, country of origin, and validity period). CBP queried the import entry summary lines from ACE on an ongoing basis from October 25, 2021, through November 10, 2021. Because CBP's data reflect a snapshot in time, and under certain circumstances could have been revised by CBP or the importer after the snapshot, duties that may be owed as a result of invalid use are

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<sup>6</sup>BIS used regulations.gov for exclusion requests from March 19, 2018, through June 12, 2019. As of June 13, 2019, BIS launched the Section 232 Exclusion Portal to handle all exclusion requests filed on or after that date.

<sup>7</sup>GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

<sup>8</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014), Principle 10.

estimates. To estimate corresponding duties owed for each exclusion parameter, we identified the import entry summary lines where invalid use of Section 232 exclusions occurred, derived the import value for each,<sup>9</sup> and multiplied the import value by the applicable duty rate (25 percent for steel and 10 percent for aluminum imports). We then added the number of exclusions, number of import entry summary lines, and corresponding duties owed for each parameter. When totaling the counts across parameters, we counted each unique exclusion and unique import entry summary line once so as to not overstate invalid use or corresponding duties owed. We also incorporated into our comparative analysis input from BIS and CBP officials regarding discrepancies in the data and their causes as well as efforts to address invalid use risks and recoup duties owed, specifically:

- **HTSUS code.** The U.S. International Trade Commission publishes changes to the HTSUS schedule. We mapped the evolution of the HTSUS codes and did not count as invalid use import entry summary lines that used HTSUS codes approved by BIS and subsequently changed by the commission.
- **Quantity.** For exclusions that had a partially approved quantity from BIS, we found inconsistencies in the BIS data. The “quantity requested” data field, which we used for our analysis, should reflect the approved amount; however, for partially approved quantities, the field sometimes reflected the requested amount and other times it reflected the approved amount. Therefore, we note in the report that our analysis could underestimate invalid use and corresponding duties owed for exclusions that had a partially approved quantity from BIS. For example, if the importer requested 10 kilograms, was approved for 5 kilograms, and used 15 kilograms, our analysis would capture the overage between requested and used (5 kilograms), not the overage between approved and used (10 kilograms).
- **Validity period.** According to CBP officials, ACE uses the line action date data field to validate whether an import entered the United States within an exclusion’s validity period. We used the line action date for our analysis.

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<sup>9</sup>To derive the import value for the quantity parameter, we first identified the import entry summary line where the quantity imported triggered an overuse of the exclusion. For that import entry summary line, we calculated the unit value of the product (import value divided by import quantity) and then calculated the value of the overage amount by multiplying the unit value by the overage amount. We then added that figure to the import value of all remaining import entry summary lines.

- **IOR name.** Our analysis does not reflect invalid use related to the importer of record (IOR) name parameter because BIS did not maintain authoritative data on approved IOR names. BIS does not update its records to reflect changes made to the IOR name as a result of direct communication between BIS and CBP. Therefore, it is not possible to determine whether a mismatch between the IOR name approved by BIS and the IOR name used on an import entry summary line in ACE means an unauthorized importer used the exclusion.<sup>10</sup>
- **Overall.** Overall, we dropped from our analysis apparent invalid use that could be explained by the agencies. For example, if there was a mismatch between what BIS approved and what was claimed on the import entry summary line in ACE that could be explained by correspondence between BIS and CBP, we dropped it from our analysis. For invalid use that the agencies corroborated, we incorporated agency comments in the report about what caused the invalid use and efforts to address invalid use risks and recoup duties owed.

Lastly, as context for the Section 232 exclusions program, we reviewed documents related to the BIS exclusion approval process and CBP import process. These documents included Federal Register notices, Cargo Systems Messaging Service notices, and standard operating procedures governing the Section 232 exclusions program; as well as customs regulations, guidelines, or reports related to the processing of imports in ACE and efforts to recover duties owed. Overall, on the basis of our review of the BIS and CBP data and related documents and interviews with agency officials, we found the data to be sufficiently reliable for reporting on invalid use of Section 232 exclusions related to the five exclusion parameters (exclusion identification number, HTSUS code, quantity, country of origin, and validity period). We assessed CBP's processes for addressing invalid use against federal internal control standards related to identifying and responding to program risks.<sup>11</sup>

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<sup>10</sup>In February 2023, CBP issued guidance clarifying that CBP will only process an exclusion if the IOR name is listed on the BIS approved exclusion and matches the IOR name registered in ACE through the CBP Form 5106. Cargo Systems Messaging Service #55014059 - Updated Guidance: Processing Approved Section 232 Product Exclusions, available at <https://content.govdelivery.com/accounts/USDHSCBP/bulletins/34772ab>. According to the guidance, if the BIS approved IOR name does not match the IOR name registered in ACE, the IOR will need to submit an IOR name change request directly with BIS.

<sup>11</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014), Principle 10.

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**Appendix I: Objectives, Scope, and Methodology**

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We conducted this performance audit from April 2021 to July 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Section 232 Steel and Aluminum Quotas

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Following the tariffs established on steel and aluminum products, the President also established absolute quotas in April and May 2018.<sup>1</sup> An absolute quota strictly limits the quantity of products that may enter the commerce of the United States for a specific period. In lieu of tariffs, absolute quotas were established for certain steel products from Korea, Brazil, and Argentina, and for certain aluminum products from Argentina. These quotas were in effect as of June 1, 2018. The Department of Commerce’s Bureau of Industry and Security (BIS) also grants exclusions from these quotas. We reviewed U.S. Customs and Border Protection (CBP) data about the fill rates of these quotas (i.e., the extent to which the quantities of goods imported reached the limits allowed for each country) in 2019 through 2021.

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## Country Absolute Quota Fill Rates, 2019-2021

We reviewed the extent to which the annual quotas were filled for 2019 through 2021. We define the fill rate as the amount of imports from each country divided by the total annual allowed amount under the quota for each country. We found that for all three steel quota countries, imports to the United States from these countries—and therefore, the overall country quota fill rates—declined in 2020, and then increased in 2021. In contrast, in the case of the aluminum quota, 2020 saw the largest amount of aluminum imports from Argentina and the highest quota fill rate of the years we examined.<sup>2</sup> Over this time period, the country quota fill rates ranged from a low of about 15 percent for steel products from Argentina in 2020 to a high of about 98 percent for steel products from Argentina in 2019 (see figs. 8 through 11). CBP officials told us that, because products imported under quota exclusion still count against the quarterly and annual limits, many importers do not use their approved quota exclusions until after such limits have been reached. According to BIS data, of the approximately 207,000 exclusions granted as of September 2021, about 10,000 of these exclusions were granted for products from absolute quota countries.

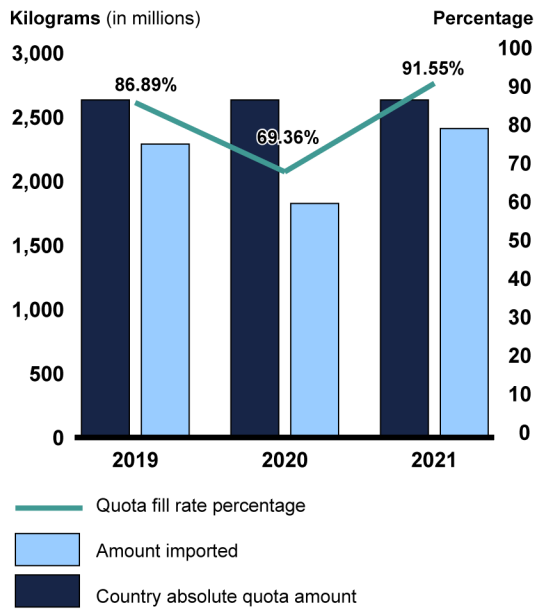
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<sup>1</sup>Proclamation 9740, 83 Fed. Reg. 20,683 (Apr. 30, 2018); Proclamation 9758, 83 Fed. Reg. 25,849, (May 31, 2018); and Proclamation 9759, 83 Fed. Reg. 25,857 (May 31, 2018).

<sup>2</sup>To calculate the fill rate by country, we divided the total amount imported from each country by the annual quota amount.

Appendix II: Section 232 Steel and Aluminum Quotas

Figure 8: Aggregate Steel Quota Fill Rates, 2019-2021: Korea

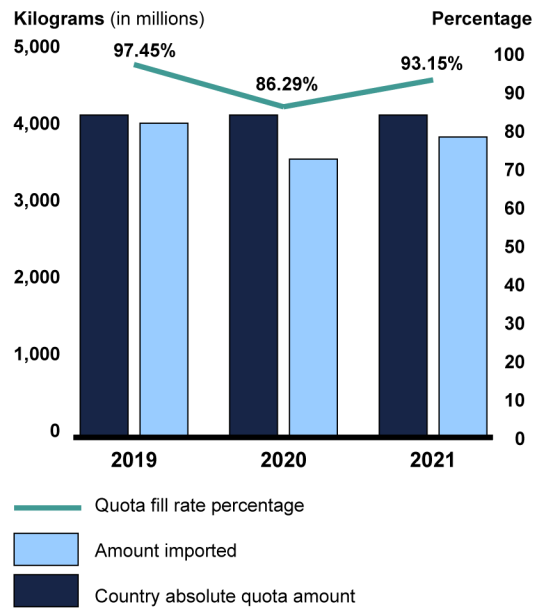


Source: GAO analysis of U.S. Department of Homeland Security Customs and Border Protection data. | GAO-23-105148

Note: To calculate the fill rate by country, we divided the total amount imported from each country by the annual quota amount, aggregating all individual product categories.

Appendix II: Section 232 Steel and Aluminum Quotas

Figure 9: Aggregate Steel Quota Fill Rates, 2019-2021: Brazil



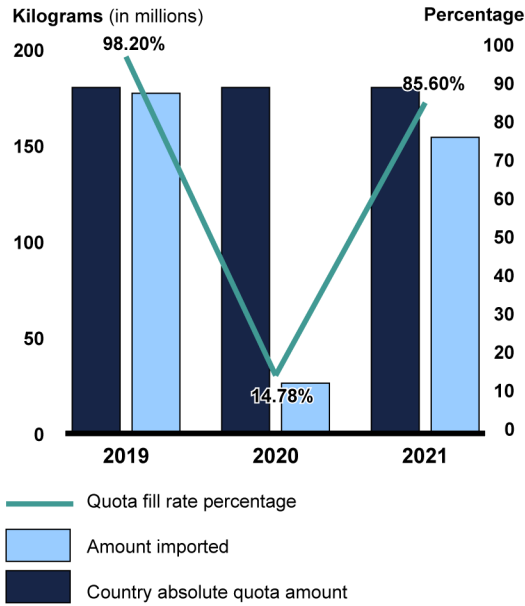
Source: GAO analysis of U.S. Department of Homeland Security Customs and Border Protection data. | GAO-23-105148

Note: To calculate the fill rate by country, we divided the total amount imported from each country by the annual quota amount, aggregating all individual product categories.



Appendix II: Section 232 Steel and Aluminum Quotas

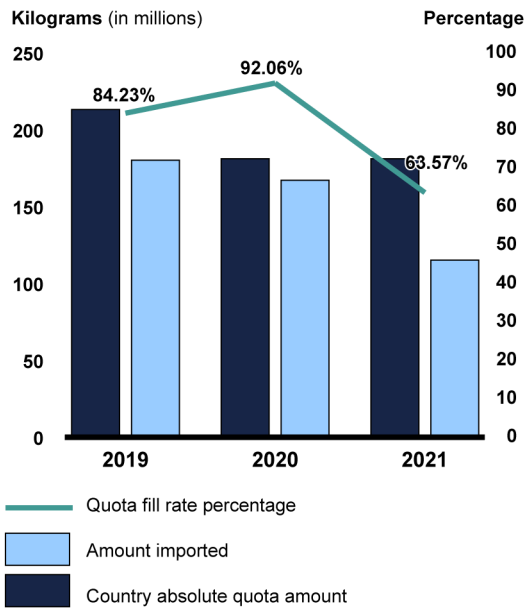
Figure 10: Aggregate Steel Quota Fill Rates, 2019-2021: Argentina



Source: GAO analysis of U.S. Department of Homeland Security Customs and Border Protection data. | GAO-23-105148

Note: To calculate the fill rate by country, we divided the total amount imported from each country by the annual quota amount, aggregating all individual product categories.

**Figure 11: Aggregate Aluminum Quota Fill Rates, 2019-2021: Argentina**



Source: GAO analysis of U.S. Department of Homeland Security Customs and Border Protection data. | GAO-23-105148

Note: To calculate the fill rate by country, we divided the total amount imported from each country by the annual quota amount, aggregating all individual product categories.

## Tariff-Rate Quotas

Tariff-rate quotas (TRQ) permit a specified quantity of a product to be imported at a reduced rate of duty during the quota period. Once the TRQ limit is reached, goods may still be entered, but importers must pay the applicable duty rate. As of January 2023, the United States had established Section 232 steel and aluminum TRQs with 29 countries. In January 2022, the United States and the countries of the European Union implemented an agreement that established TRQs instead of Section 232 tariffs for certain steel and aluminum products.<sup>3</sup> In April 2022, TRQs were implemented for steel imports from Japan.<sup>4</sup> As of June 2022, the United

<sup>3</sup>Proclamation 10327, 87 Fed. Reg. 1 (Dec. 27, 2021) and Proclamation 10328, 87 Fed. Reg. 11 (Dec. 27, 2021). The TRQs went into effect in January 2022 and are currently set to remain in effect under these proclamations until December 31, 2023.

<sup>4</sup>Proclamation 10356, 87 Fed. Reg. 19351 (Mar. 31, 2022). The TRQs went into effect in April 2022.

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States established TRQs on steel and aluminum products on steel and aluminum products from the United Kingdom as well.<sup>5</sup>

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## CBP Administration of Quotas

We identified some gaps and errors in reported data for the Section 232 steel quotas, and informed CBP. CBP corrected their reports. Officials noted they took steps to administer and manage the absolute quota and TRQ aspects of the Section 232 program. They described some challenges in doing this:

- **No data for 2018.** CBP officials told us that it is difficult to provide accurate 2018 data related to quotas, because many aspects of the Section 232 program were still changing at that time.
- **Difficult to enforce.** CBP officials also said that the additional, country-specific rules for quotas can make them labor-intensive to administer, thereby hindering effective monitoring and enforcement. For example:
  - The absolute annual quotas for Korea, Brazil, and Argentina also contain quarterly quota amounts. Officials told us that these quarterly quotas are more difficult to enforce because of the additional resources needed to program different limits for each quota, and oversee the filling of these additional quotas.
  - CBP officials stated that, in some cases, quotas were established via presidential proclamations and Federal Register notices issued within days of taking effect. The short amount of time between the announcement of the quotas and the deadline to implement them complicated CBP's ability to execute the ACE programming necessary for effective enforcement.
  - CBP officials told us that the EU TRQs are particularly difficult to program—and, therefore, to enforce—because each of the 27 EU countries is subject to different limits by product. Further, for steel products, some amount (up to 4 percent) of the unused first quarter amount can roll into the third quarter to become available for use at that time; the same is true for unused TRQ amounts rolling from the second quarter into the fourth. For aluminum products, TRQs are administered on a semi-annual basis, with no more than 60 percent to be filled in the first half of the year. Additionally, according to CBP officials, TRQs for Japan and the UK allow exclusions to extend the quarterly and annual limits,

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<sup>5</sup>Proclamation 10405, *Adjusting Imports of Aluminum Into the United States* (May 31, 2022) and Proclamation 10406, *Adjusting Imports of Steel Into the United States* (May 31, 2022). These TRQs went into effect in June 2022.

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while also counting against the quarterly and annual limits. CBP officials said calculating limits subsequent to exclusion usage is complex and laborious.

# Appendix III: Tariff Exclusion Approvals and Use before and after the Quantity Certification Requirement

## BIS Approved Exclusion Quantities Substantially Greater than Historical Imports

The Bureau of Industry and Security (BIS) reviews requests for Section 232 steel and aluminum tariff exclusions. Between March 2018 and September 2021, BIS approved large quantities, and, for some product categories, the approved quantities were substantially greater than historical imports. Among the 15 steel product categories with the highest number of approved exclusions, 14 had higher monthly average approved exclusion quantities than the highest historical monthly average.<sup>1</sup> Among the 15 aluminum product categories with the highest number of exclusions, eight had higher monthly average exclusion quantities than the highest historical monthly average quantity (see tab. 2).<sup>2</sup>

**Table 2: Average Monthly Section 232 Steel and Aluminum Tariff Exclusion Quantity BIS Approved vs. Historical Monthly Average Import Quantity for Selected Product Categories**

Broad product category description	HTSUS-8 subheading	Historical monthly average import quantity, in thousand metric tons (2013–2017)	Approved Section 232 tariff exclusions (March 2018–September 2021)	
			Average monthly quantity BIS approved, in thousand metric tons	Percentage of total number of approved exclusions
<b>Steel</b>				
Flat-rolled products	7211.90.00	0.7	2.7	2.5
Bars and rods	7222.20.00	7.8	18.8	5.3
	7227.90.60	49.8	77.8	2.1
	7228.10.00	0.7	5.6	11.2
	7228.30.80	38.5	12.1	1.3
	7228.50.10	3.9	38.2	7.3
	7228.50.50	7.3	8.5	1.4
Wire	7229.90.50	6	21.6	1.4
Tubes, pipes, and hollow profiles	7304.31.60	4.1	11.4	1.2
	7304.39.00	19.2	48.9	2.2
	7304.41.30	0.7	21.3	1.7
	7304.41.60	1.8	195.5	11.5
	7304.49.00	1.9	125.3	9.8
	7304.59.20	1.4	119.5	4.7
	7304.59.80	26.2	62.5	2.8

<sup>1</sup>These 15 product categories accounted for 66 percent of the approved exclusions.

<sup>2</sup>These 15 product categories accounted for 97 percent of the approved exclusions.

**Appendix III: Tariff Exclusion Approvals and  
Use before and after the Quantity Certification  
Requirement**

Broad product category description	HTSUS-8 subheading	Historical monthly average import quantity, in thousand metric tons (2013–2017)	Approved Section 232 tariff exclusions (March 2018–September 2021)	
			Average monthly quantity BIS approved, in thousand metric tons	Percentage of total number of approved exclusions
<b>Aluminum</b>				
Bars, rods, and profiles	7604.21.00	6.7	1.6	0.8
	7604.29.10	9.4	1.6	7.9
	7604.29.30	1.6	0.8	3.5
	7604.29.50	1	0.0	0.7
Plates, sheets, and strip	7606.11.30	5.6	6.3	3.6
	7606.12.30	84.1	327.2	24.4
	7606.12.60	2	4.2	4.7
	7606.91.30	1.7	0.9	1.7
	7606.92.30	1.3	1.5	3.7
Foil	7607.11.30	5	42.3	25.1
	7607.11.60	9.6	19.4	9.7
	7607.11.90	1.7	1.8	1.1
	7607.20.50	5.2	2	0.7
Tubes and pipes	7608.20.00	2.1	0.4	1.6
Tube or pipe fittings	7609.00.00	0.7	4.5	8.1

Source: GAO analysis of U.S. Department of Commerce Bureau of Industry and Security (BIS) and Census trade statistics. | GAO-23-105148

Notes: We selected the HTSUS-8 level categories with the most approved exclusions, 15 for steel and 15 for aluminum. While importers request exclusions for products defined within the HTSUS-10 digit level, a more detailed level of categorization, the categorizations at this level change frequently, making it difficult to compare exclusion quantities to historical import levels. For this analysis, we chose the HTSUS-8 level, which we refer to as the product categories, because categorizations at this level remain largely constant year to year. We calculated the monthly average import quantity each year between 2013 and 2017 for each product category with at least one approved exclusion and then used the highest monthly average across the 5 years as the historical comparison. To get the average monthly exclusion quantity, we divided the total approved quantity in each product category by 42, the number of months from April 2018 through September 2021. We used April as the starting month because the first exclusion was requested toward the end of March 2018. To calculate the percentage of total number of approved exclusions for each HTSUS-8 product category, we divided the number of approved exclusions for a product category by the total number of exclusions approved, which was 187,922 for steel and 19,566 for aluminum.

**BIS Implemented a  
Quantity Certification  
Requirement**

BIS started implementing an exclusion quantity certification requirement in December 2020 and according to BIS officials, started to require additional documentation for high volume requests from the first 3 months

of 2022.<sup>3</sup> BIS specified that in order to ensure that exclusions are requested for quantities consistent with legitimate business needs, requesters need to certify their needs in the Section 232 Exclusions Portal when submitting a Section 232 exclusion request. The exclusion certification for quantity must be signed in the Section 232 Exclusions Portal by an organization official specifically authorized to certify the document as being accurate and complete to the best of the official's knowledge. The official signing the certification must attest to the following:

- The requester's organization intends to manufacture, process, or otherwise transform the imported product for which the requester has filed an exclusion request, or has a purchase order or orders for such products.
- The requester's organization does not intend to use the requested exclusion, if granted, solely to hedge or arbitrage the price.
- The requester's organization expects to consume, sell, or otherwise use the total quantity of product across all their active exclusions and pending exclusion requests in the course of their organization's business activities within the next calendar year.
- If the requester is submitting an exclusion request for a product for which they previously received an exclusion, then the requester must certify that the organization either imported the full amount of their approved exclusion(s) last year, or intended to import the full amount but could not due to one of the reasons specified below:
  - loss of contract(s),
  - unanticipated business downturns, or
  - other factors that were beyond the organization's control that directly resulted in less need for steel or aluminum articles.
- The exclusion quantity requested this year is in line with what the requester's organization expects to import based on their current business outlook.

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<sup>3</sup>The certification requirement refers to "total volume" instead of "total quantity" when referring to the quantity of product that the requester is asking to exclude. There are also references to "volume" in the certification requirement as codified in 15 C.F.R. Part 705, Supp. No. 1. For consistency throughout our report, we generally refer to "quantity" instead of "volume," and we refer to this certification requirement as a "quantity certification."

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**Appendix III: Tariff Exclusion Approvals and  
Use before and after the Quantity Certification  
Requirement**

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- If requested by BIS, the requester’s organization will provide documentation that justifies the assertions in the certification regarding past imports of steel or aluminum articles and projections for the current year, as it relates to past and current calendar year exclusion requests.

BIS also added a note to the updated rule reminding all parties submitting Section 232 exclusion requests of the prohibition against making false statements to the U.S. government and the consequences that may occur for such false statements.

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**Exclusion Quantities  
Approved before and after  
the Quantity Certification  
Requirement**

We assessed the preliminary trends in the exclusion quantities approved. Fully assessing the effect of the quantity certification requirement, and, in particular, the effect of BIS’s decision to start requesting additional documents from requesters in 2022, would require more up to-date exclusion approval data.

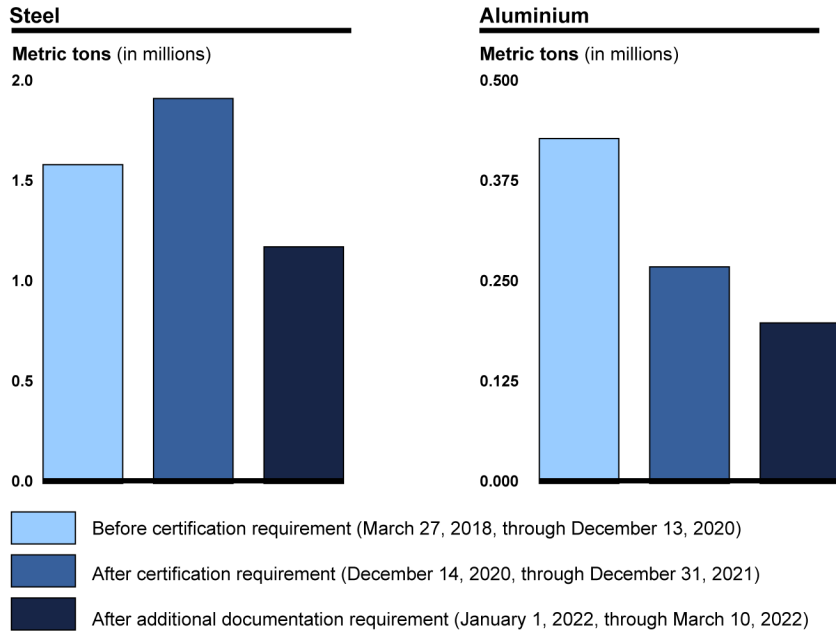
- **Steel.** Our analysis shows monthly average approved exclusion quantities for steel did not decline in 2021, but declined in the first 3 months of 2022.
- **Aluminum.** Our analysis shows that, after BIS implemented the quantity certification requirement, monthly average approved exclusion quantities declined for aluminum.

See figure 12 for the average quantity approved before and after the quantity certification requirement and the additional high volume documentation reviews.



Appendix III: Tariff Exclusion Approvals and Use before and after the Quantity Certification Requirement

**Figure 12: Monthly Average Approved Section 232 Steel and Aluminium Tariff Exclusion Quantities, before and after Quantity Certification Requirement, March 2018–March 2022**



Source: GAO analysis of U.S. Department of Homeland Security Customs and Border Protection data. | GAO-23-105148

Notes: We calculated the monthly average quantity approved on the basis of the submission dates of the approved exclusions.

Exclusion Use before and after the Quantity Certification Requirement

We assessed preliminary trends in the percentages of exclusions used before and after the quantity certification requirement. We found that utilization of exclusions remained similar after the quantity certification requirement was implemented. Specifically, we analyzed the percentages of exclusions importers used within 150 days from the date of approval and found that:

- **for steel exclusions** requested before the quantity certification requirement was implemented, importers used 21 percent of approved exclusions within 150 days from the date of approval; for exclusions requested after the quantity certification requirement was

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**Appendix III: Tariff Exclusion Approvals and  
Use before and after the Quantity Certification  
Requirement**

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implemented, importers used 23 percent within 150 days from the date of approval;<sup>4</sup> and

- **for aluminum exclusions** requested before the quantity certification requirement was implemented, importers used 31 percent of approved exclusions within 150 days of the date of approval; for exclusions requested after the quantity certification requirement was implemented, importers used 33 percent.

Fully assessing the effect of the quantity certification requirement, and, in particular, the effect of BIS's decision to start requesting additional documents from requesters in 2022, would require more up to-date exclusion approval and exclusion use data. The effect of changes to the exclusion approval process on use rates can have a long lag time because exclusions are generally valid up to 1 year after approval. Additionally, because importers apply exclusions retroactively, the final exclusion utilization rates could be higher, particularly for the exclusions granted after the certification requirement.<sup>5</sup> These exclusions were more recent and therefore importers would have time to claim them. See figures 13 and 14 below for a comparison of cumulative percentages of exclusions used, before and after the implementation of the quantity certification requirement for up to 150 days after the approval date.

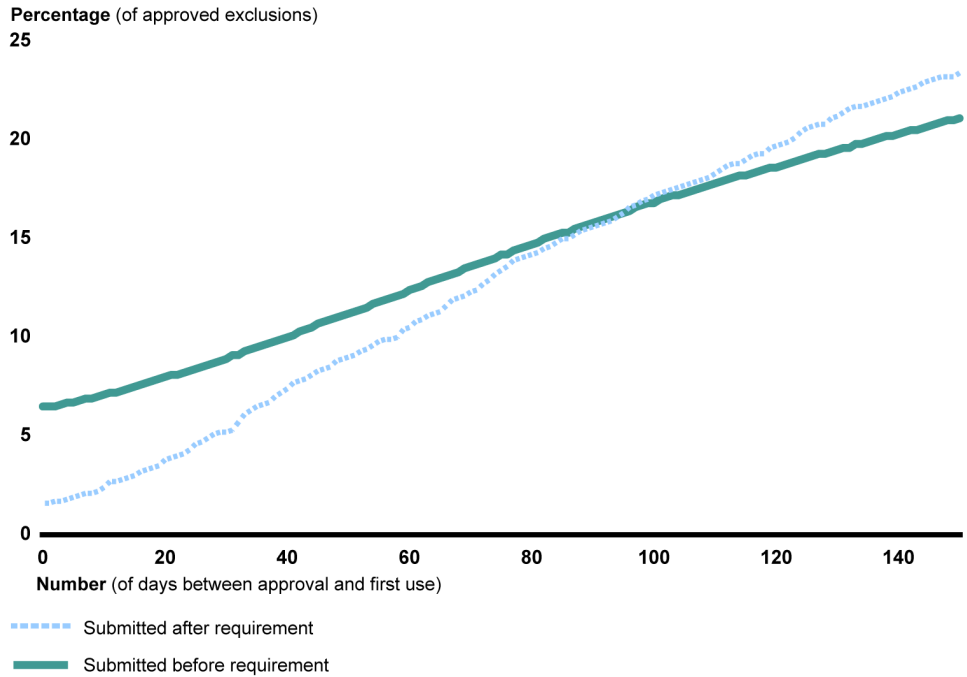
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<sup>4</sup>With the data we have, we examined the utilization rate within 150 days from the day the exclusions were approved. Almost 70 percent of the used steel exclusions and 80 percent of the used aluminum exclusions were used within 150 days of the approval date. See appendix I for our methodology.

<sup>5</sup>Importers can claim the exclusions before liquidation, which generally takes roughly 300 days after the date of entry. CBP sent us data as of November 10, 2021, on all import entries recorded in ACE subject to Section 232 tariffs from March 2018 through September 2021. Therefore, we do not have information on whether importers claimed exclusion for import entries in our analysis retroactively after November 10, 2021.

**Appendix III: Tariff Exclusion Approvals and Use before and after the Quantity Certification Requirement**

**Figure 13: Cumulative Percentages of Section 232 Steel Tariff Exclusions Used within 150 days of Approval**

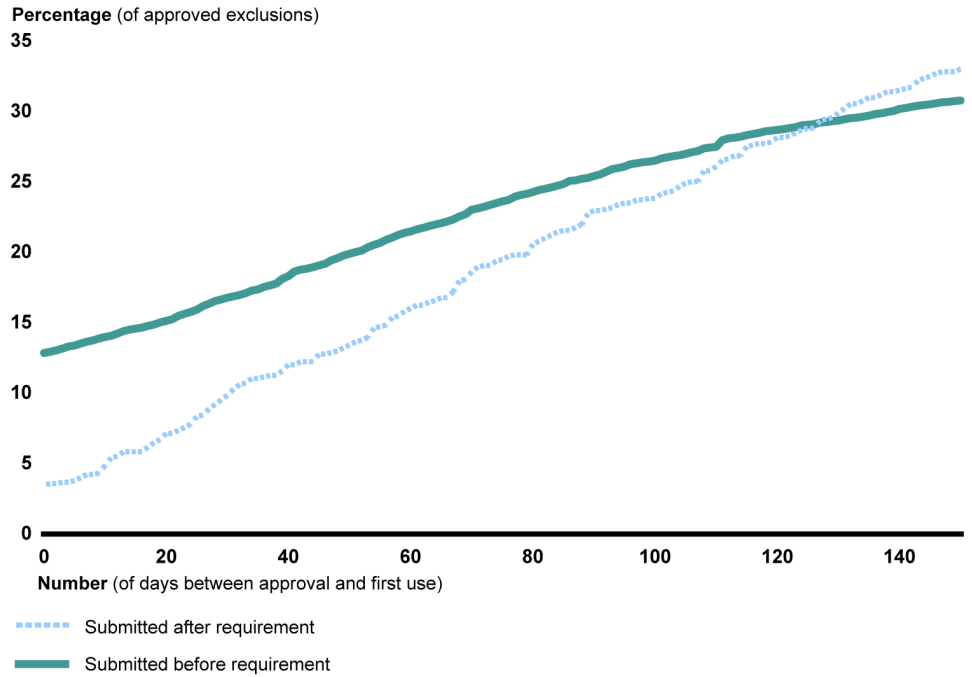


Source: GAO analysis of U.S. Department of Commerce Bureau of Industry and Security and U.S. Department of Homeland Security Customs and Border Protection data. | GAO-23-105148

Notes: This figure plots the percentages of steel exclusions used by the number of days after approval for exclusions requested before and after the quantity certification requirement went into effect on December 14, 2020. In this figure, exclusions are used on the approval date (day 0) if importers used exclusions retroactively before the date of approval. BIS provided us data on all approved exclusions from March 2018 through September 2021, and CBP sent us data as of November 10, 2021, on all import transactions recorded in ACE subject to Section 232 duties from March 2018 through September 2021. Exclusions can be applied retroactively to unliquidated entries or to liquidated entries where the liquidation is not final and the protest period has not expired. Importers may be more likely to claim exclusion retroactively after November 10, 2021, for exclusions requested after the certification requirement because entries applicable to those exclusions are more likely to be unliquidated or fall within the protest period. We do not observe whether importers claimed exclusions for import entries that entered U.S. customs from March 2018 through September 2021 retroactively after November 10, 2021. As a result, exclusion utilization rates could be higher than reported after analyzing more current import entry data especially for exclusions requested after the certification requirement because importers that own those exclusions would have had more time to make retroactive claims.

**Appendix III: Tariff Exclusion Approvals and Use before and after the Quantity Certification Requirement**

**Figure 14: Cumulative Percentages of Section 232 Aluminum Tariff Exclusions Used within 150 days of Approval**



Source: GAO analysis of U.S. Department of Commerce Bureau of Industry and Security and U.S. Department of Homeland Security Customs and Border Protection data. | GAO-23-105148

Notes: This figure plots the percentages of aluminum exclusions used by the number of days after approval for exclusions requested before and after the quantity certification requirement went into effect on December 14, 2020. In this figure, exclusions are used on the approval date (day 0) if importers used exclusions retroactively before the date of approval. BIS provided us data on all approved exclusions from March 2018 through September 2021, and CBP sent us data as of November 10, 2021, on all import transactions recorded in ACE subject to Section 232 duties from March 2018 through September 2021. Exclusions can be applied retroactively to unliquidated entries or to liquidated entries where the liquidation is not final and the protest period has not expired. Importers may be more likely to claim exclusion retroactively after November 10, 2021, for exclusions requested after the certification requirement because entries applicable to those exclusions are more likely to be unliquidated or fall within the protest period. We do not observe whether importers claimed exclusions for import entries that entered U.S. customs from March 2018 through September 2021 retroactively after November 10, 2021. As a result, exclusion utilization rates could be higher than reported after analyzing more current import entry data especially for exclusions requested after the certification requirement because importers that own those exclusions would have had more time to make retroactive claims.

# Appendix IV: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE  
Office of the Acting Chief Financial Officer and  
Assistant Secretary for Administration  
Washington, DC 20230

June 23, 2023

Ms. Kimberly Gianopoulos  
Director, International Affairs and Trade  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Ms. Gianopoulos:

Thank you for the opportunity to review the Government Accountability Office's draft report, *Agencies Should Take Additional Actions to Ensure Section 232 Exclusions Are Needed and Duties Are Paid* (GAO-23-105148, July 2023).

We concur with the two recommendations for the Department of Commerce. We appreciate that GAO has highlighted some of the known challenges in administering the Section 232 Exclusions Portal. We also appreciate that GAO has noted the prior and ongoing work taken proactively by Commerce, even prior to the release of this report, to limit the amount of unutilized and underutilized exclusions in the Section 232 Exclusions Process and improve the transfer of information with U.S. Customs and Border Protection. The Bureau of Industry and Security will submit technical edits as required in response to its review of the draft report. We otherwise look forward to receipt of the final report and will follow up as needed.

Should you have further questions, please contact MaryAnn Mausser, Department GAO Audit Liaison, at (202) 482-8120 or [mmausser@doc.gov](mailto:mmausser@doc.gov).

Sincerely,

JEREMY PELTER  
Digitally signed by JEREMY PELTER  
Date: 2023.06.23 20:03:30 -0400

Jeremy Pelter  
Acting Chief Financial Officer and  
Assistant Secretary for Administration

# Appendix V: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

June 23, 2023

Kimberly M. Gianopoulos  
Director, International Affairs and Trade  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Management Response to Draft Report GAO-23-105148, "STEEL AND ALUMINUM TARIFFS: Agencies Should Take Additional Actions to Ensure Section 232 Exclusions are Needed and Duties are Paid"

Dear Ms. Gianopoulos:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

DHS leadership is pleased to note GAO's recognition of U.S. Customs and Border Protection's (CBP) efforts to administer and enforce exclusions to duties under Section 232 of the Trade Expansion Act of 1962, as well as the steps, such as automated controls, that CBP has implemented to address certain risks of invalid use of Section 232 exclusions. The enforcement of Section 232 duties is a priority for CBP. GAO acknowledged that, as of summer 2021, CBP had assessed approximately \$11 billion dollars in Section 232 tariffs. GAO also noted that CBP assessed millions of dollars of Section 232 duties from special operations in fiscal year (FY) 2020 and FY 2021 to assess Section 232 duties owed on entry summaries dating back to March 2018, as a result of importers exceeding the approved quantity of their exclusions. In total, as of May 31, 2023, CBP has assessed more than \$16 billion in Section 232 duties. DHS remains committed to ensuring that Section 232 duties are appropriately assessed on entries claiming exclusions to the duties.

The draft report contained four recommendations, including two for CBP with which the Department concurs. Enclosed find our detailed response to each recommendation. DHS

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**Appendix V: Comments from the Department  
of Homeland Security**

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previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

**JIM H CRUMPACKER** Digitally signed by JIM H  
CRUMPACKER  
Date: 2023.06.23 16:25:25 -04'00'

**JIM H. CRUMPACKER, CIA, CFE**  
Director  
Departmental GAO-OIG Liaison Office

Enclosure

**Enclosure: Management Response to Recommendations  
Contained in GAO-23-105148**

GAO recommended that the Commissioner of CBP:

**Recommendation 3:** Ensure that additional steps are taken, as appropriate, to recover the duties owed by importers as a result of invalid use of Section 232 exclusions, including for liquidated entries beyond CBP’s 90-day re-liquidation period.

**Response:** Concur. CBP’s Office of Trade (OT) will issue guidance to the CBP Office of Field Operations (OFO) on the appropriate steps to recover duties owed when an importer exceeds approved quantities of Section 232 exclusions, or makes any other invalid use of Section 232 exclusions. For liquidated entries beyond CBP’s 90-day re-liquidation period, CBP OT will evaluate its authority under 19 U.S.C. § 1592(d), “Penalties for fraud, gross negligence, and negligence; Deprivation of lawful duties, taxes, or fees,” to recover such duties, and issue appropriate guidance to OFO to use this authority when an importer exceeded approved quantities of Section 232 exclusions. Estimated Completion Date (ECD): December 29, 2023.

**Recommendation 4:** Ensure that controls are implemented either to prevent importers from exceeding the approved quantities of their Section 232 exclusions or to promptly assess duties owed because of overages before CBP’s 90-day re-liquidation period expires.

**Response:** Concur. CBP OT will issue updated guidance to OFO to ensure that duties are assessed on overages of Section 232 exclusions before CBP’s 90- day re-liquidation period expires. In addition, CBP OT submitted a request for development of the Automated Commercial Environment (ACE) entitled, “Automate the Inactivation of Section 232 Product Exclusions,” that was entered on April 21, 2023, to the Product Management Committee, which will ensure that there are automated controls in place to prevent importers from exceeding the approved quantities of their Section 232 exclusions. CBP OT’s request for development to automate these controls in ACE is the first step to determine the resources needed for this programming. ECD: December 29, 2023.



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# Appendix VI: GAO Contact and Staff Acknowledgments

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## GAO Contact

Kimberly M. Gianopoulos, (202) 512-8612, [GianopoulosK@gao.gov](mailto:GianopoulosK@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Ming Chen (Assistant Director), Adam Cowles (Assistant Director), Cristina Ruggiero (Analyst-in-Charge), Esther Toledo, James Boohaker, John Hussey, Christopher Keblitis, Terry Richardson, Paras Sharma, and K. Nicole Willems made key contributions to this report.

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