



Thea D. Rozman Kendler
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Constitution Avenue NW
Washington, DC
20230

April 18, 2022

Re: Request for Public Comments on the Section 232 Exclusions Process

Dear Assistant Secretary Kendler:

Horizons Incorporated (“Horizons”) is an aluminum products manufacturer founded in 1946 and headquartered in Cleveland, Ohio. Horizons currently employs 185 people, with additional facilities in Cincinnati, Ohio (USA), Bristol, United Kingdom (UK) and Melbourne, Australia (AU). Through hard work and dedication, Horizons has grown to become a leader in the asset labeling and tracking sector. Horizons is the developer of Metalphoto[®] photosensitive anodized aluminum. The Metalphoto[®] technology is used to create durable, high-resolution labels and nameplates with the purpose of identifying and tracking items in critical applications such as defense, aerospace, transportation, energy and healthcare. Although Horizons has repeatedly attempted to source its aluminum from U.S. suppliers, due to extremely narrow allowable elemental tolerances, U.S. suppliers cannot manufacture the specialized aluminum required by Horizons in sufficient quantity, nor do they produce a substitutable product that Horizons can use in its patented manufacturing process.

Horizons utilizes the Section 232 exclusion process to secure the inputs needed to manufacture the high-quality products demanded by our customers only when those products are not domestically available. The lack of formality and uncertain nature of the Section 232 exclusion process makes long-term planning and strategic investment difficult, inhibiting our ability to grow Horizons’ operations.

On September 15, 2020, the U.S. Government Accountability Office (“GAO”) issued a report regarding the Section 232 exclusion process which recommended that the Department of Commerce (“Commerce”) direct the Bureau of Industry and Security (“BIS”) to change certain aspects of the Section 232 exclusion process. BIS has since implemented several changes which have considerably improved the overall Section 232 exclusion and objection processes. Despite Commerce’s and BIS’ efforts, Horizons respectfully submits that further changes to the Section 232 exclusion process are required to meet the goals outlined in GAO’s report.

1. Commerce Should Improve Transparency by Releasing More Detailed Decision Documents



Since the enactment of Section 232 duties on steel and aluminum articles, Commerce and BIS have periodically revised the Section 232 exclusion process “to ensure a transparent, fair, and efficient exclusion and objection process.”¹ These changes, such as the standardization of the request form and the adoption of the Section 232 Portal for exclusion submission have contributed to the streamlining and increased formality of the Section 232 exclusion process. Horizons believes, however, that further changes to the Section 232 exclusion process are needed to continue to improve transparency, fairness and efficiency. Horizons seeks only to fully understand the systems and criteria by which exclusion requests are evaluated in order to provide Commerce with a complete record of the information necessary to reach a speedy decision supported by substantial record evidence.

The Court of International Trade has found that past exclusion determinations by Commerce suffered from a “paucity of analysis,” rendering its decisions unsupported by substantial evidence in the eyes of the Court.² Recent decision memoranda released by BIS reveal, however, that insufficient progress has been made to establish a transparent record upon which exclusion determinations are reached. For example, BIS continues to routinely release to requestors only a brief determination memorandum at the conclusion of its evaluation process, preventing parties from fully understanding the steps necessary to remedy any potential errors or inadequacies.³ On occasions in which Commerce has released supplementary information regarding the reasoning for the denial of a request, Horizons has refiled its exclusion requests with additional information to address Commerce’s concerns; as a result, Commerce granted these requests.⁴ Horizons seeks the release of similarly detailed information for all requests, but especially for denied requests, which would allow for the objective assessment of Commerce’s evaluation standards.

To accomplish its goals of increased transparency, fairness and efficiency, Commerce should release more detailed analyses of exclusion requests, particularly in the event of a denial, and any relevant internal analysis or communication related to such requests. Making this information publicly available would also decrease the overall administrative burden on Commerce by ensuring that exclusion requests submitted by interested parties are complete and meet Commerce’s evaluation criteria, reducing unnecessary evaluation of incomplete or meritless exclusion requests and minimizing resubmissions of requests denied on opaque bases. Only by providing this information and establishing a complete record will Commerce allow for a fair and transparent process by which parties are fully aware of the criteria for evaluation of exclusion requests.

2. Commerce Should Establish an Amendment Period for Exclusion Requests

¹ Section 232 Steel and Aluminum Tariff Exclusions Process, 85 Fed. Reg. 81,060 (December 14, 2020).

² JSW Steel, Inc. v. United States, 466 F. Supp. 3d 1320, 1331 (Ct. Int’l Trade 2020).

³ See BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request for Exclusion No. 195248 (June 18, 2021).

⁴ See BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request for Exclusion No. 247639 (October 23, 2021).



The Section 232 exclusion process does not allow requestors to amend exclusions once they have been submitted on the Section 232 Portal. According to the Section 232 FAQs published by BIS, the only instances in which changes are permitted for active exclusion requests is after an exclusion has been granted. The only permissible reasons for revising information contained in an exclusion request are the following: a company name change in the case of merger or acquisition, a change in the point of contact information or a change in the importer of record (“IOR”).⁵ The inability to amend clerical errors, such as the HTS code, exclusion quantity and product dimensions frequently results in the unnecessary withdrawal, rejection, denial and refiling of exclusion requests. This process increases the administrative burden on BIS due to the additional review of refiled exclusion requests. Similarly, requestors must allocate large amounts of time to correcting errors and refiling product exclusions. Since Section 232 exclusions are retroactive to the filing date, refiled exclusions can also cause unnecessary delays in the applicable date for exclusions and the incursion of added costs to the requestor.

To remedy these issues, BIS should institute a two-day correction period wherein a requestor can amend an exclusion prior to its posting on the Section 232 Portal. This change would not require an extra day of consideration by BIS nor would exclusions be amendable after they post to the Section 232 Portal. Objecting parties would also not be disadvantaged as exclusions are not available to the public until they post to the Section 232 Portal, which, in Horizons’ experience, takes 5 days on average. Allowing requestors to amend an exclusion during BIS’ initial review process, prior to posting publicly on the Section 232 Portal, would reduce the administrative burden on BIS by decreasing the number of exclusions that are rejected or refiled, while simultaneously streamlining the exclusion process.

3. Commerce Should Formalize the Determination Process

BIS has made considerable improvements to the Section 232 exclusion process since the release of GAO’s report by decreasing the number of days required to issue a determination and streamlining the exclusion review process. Additional improvements are required, however, to formalize the Section 232 exclusion evaluation process. In its present condition, the Section 232 determination criteria are still opaque for requestors. BIS does not have an established administrative timeline, often fails to provide a detailed evaluation of all record evidence and lacks an appeal process for denied exclusion requests.

As noted in the GAO report, BIS frequently fails to adhere to their timeliness guidelines regarding its evaluation of Section 232 exclusion requests.⁶ BIS claims that review periods “normally will not exceed 90 days.”⁷ In Horizons’ experience, processing time for a determination that has not received an objection is generally well within the 90-day target. For exclusions that

⁵ See 232 Exclusion Process Frequently Asked Questions (FAQs) at 18 (June 19, 2019).

⁶ See Steel and Aluminum Tariffs: Commerce Should Improve Its Exclusion Request Process and Economic Impact Reviews at 23-35, U.S. Government Accountability Office (September 2020).

⁷ Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum, 83 Fed. Reg. 12106 (Bureau of Indus. and Sec., March 19, 2018).



did receive an objection, however, determinations can take up to 96 days. The lack of a firm administrative schedule restricts the requestors' ability to make key business decisions, such as scheduling purchases and product shipments. Often, Horizons must place orders for key input materials without knowing when a determination will be issued. Horizons proposes that BIS establish a firm timeline for issuing determinations. This change to the Section 232 exclusion process would benefit both BIS and the requestor, as BIS would receive fewer inquiries on the status of exclusion requests and would be relieved from providing responses. Similarly, requestors would gain clear insight into when they could expect a determination and schedule orders and shipments accordingly. Additionally, a firm administrative timeline would provide deadlines, which would further streamline and formalize the Section 232 exclusion determination process.

In addition to the processes described in Section 1 above, BIS should also provide more detail in its decision memoranda, including discussion of all available record evidence for each exclusion. Currently, BIS is not required to address any specific comments or attachments. Instead, BIS often cites to disparities in delivery time as the reason for denial of exclusions. For example, BIS denied exclusion request 203030 because an objector could purportedly meet the quality, quantity and timeliness criteria in Horizons' request. More specifically, the objector claimed it could manufacture an identical product with a delivery time of 70 days compared to Horizons' foreign supplier, which had a delivery time of 178 days.⁸ In the decision memorandum, however, BIS did not address Horizons' assertion that the objector declined to offer a quote due to limitations at their manufacturing facility. Additionally, BIS did not address the evidence provided in Horizons' objection rebuttal showing that the objector was unwilling to match the specific chemical composition of the product and could not meet the nameplate quality.⁹ Following the denial, Horizons contacted the objector to request a quote; however, the objector declined once again.¹⁰ Horizons' later filed exclusion 247624, which covered an identical product and volume, and included similar product availability comments in relation to the objector. Exclusion 247624 was granted.¹¹ Horizons' concern is not that an adverse determination was issued for exclusion request 203030. Rather, Horizons is concerned that BIS did not evaluate, or at a minimum failed to provide an evaluation to Horizons, of the supporting evidence provided by Horizons. As a result, Horizons has no insight into how this information influenced BIS' determination in either instance.

To rectify this issue, BIS should provide an analysis of all supporting comments and documents that are placed on the record in the BIS decision memoranda. Furthermore, in cases where record evidence calls into question a determination, BIS should provide interested parties

⁸ See BIS Decision Document - Aluminum Section 232 Remedy Exclusion Request for Exclusion No. 203030 (July 24, 2021).

⁹ Id.

¹⁰ See Exclusion Request No. 247624 at Product Availability Information (September 9, 2021).

¹¹ See BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request for Exclusion No. 247624 (October 23, 2021).



an opportunity for administrative appeal. A full analysis of record evidence and an opportunity to appeal would provide greater transparency into the Section 232 exclusion determination process and offer interested parties an improved understanding of how BIS assesses exclusions, objections, rebuttals and surrebuttals. Furthermore, an appeal process would prevent requestors from having to file a new exclusion and repeat the protracted Section 232 exclusion process. An appeal process would also reduce the number of exclusion requests that BIS would have to review, thus reducing the administrative burden placed on BIS.

4. U.S. Customs and Border Protection and BIS Should Automatically Register Granted Exclusions

BIS does not have a system in place whereby exclusions can be automatically sent to U.S. Customs and Border Protection (“CBP”) for registration. At this time, exclusion holders are required to monitor the Section 232 Portal for determinations. Once an exclusion determination is issued, the requestor must then register the exclusions with CBP. Horizons suggests that BIS collaborate with CBP to implement a system to automatically register granted exclusions with CBP. This would help streamline the Section 232 exclusion process and reduce unnecessary administrative work for both agencies.

* * *

Thank you for your ongoing efforts to improve this process and please do not hesitate to contact the undersigned with any questions regarding the comments above.

Sincerely

A handwritten signature in blue ink that reads "Thomas Zbiegien". The signature is fluid and cursive, with the first name being more prominent.

Thomas Zbiegien
Chief Financial Officer
Horizons Incorporated