



Tri Star Metals
Delivering Stainless, Aluminum & Nickel Solutions

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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:

Tri Star Metals, LLC (“Tri Star”) has been in business since 1985 as a distributor of stainless-steel bar, rod and wire providing crucial semi-finished products to over 3,000 customers across the United States. Tri Star employs over 140 people in our manufacturing operations, and has experienced healthy growth since the 2008 financial crisis. In 2010, Tri Star purchased a stainless-steel mill in Freeport, Illinois. Since purchasing that facility, Tri Star has invested over \$20 million, serving as an engine of growth and opportunity for our community. Our Illinois facility is now the most technologically advanced stainless-steel and nickel redraw facility in the United States. Tri Star has invested significant resources in attaining the relevant quality certifications to serve our customers’ markets, including advanced aerospace, automotive, food and other industries.

When the inputs we require are not available domestically, Tri Star participates in the Section 232 exclusion process to secure the inputs needed to manufacture the high-quality products demanded by our customers. Tri Star has invested significant time and resources into gaining an understanding of – and complying with – the exclusion process. The lack of formality and uncertain nature of the Section 232 exclusion process has made long-term planning and strategic investment difficult, inhibiting our ability to grow Tri Star’s 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, Tri Star respectfully submits that further changes to the Section 232 exclusion process are required to meet the goals outlined in GAO’s report.

1. Transparency, evaluation criteria, and internal processes.

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 have contributed to the streamlining and increased formality of the Section 232 exclusion process. Tri Star believes, however, that further changes to the Section 232 exclusion process are needed to continue Commerce’s push for transparency, fairness, and efficiency. Tri Star, like most interested parties, 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 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, Tri Star has re-filed its exclusion requests with additional information to address Commerce’s concerns, resulting in the granting of these requests.⁴ Tri Star 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 public 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 upon initial submission, 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. Establishing an amendment process for Section 232 exclusions.

The Section 232 exclusion process currently does not allow requestors to make amendments once exclusions have been submitted on the Section 232 Portal. According to the Section 232 FAQs published by BIS, changes are permitted for active exclusion requests only after an exclusion has

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 – Steel Section 232 Remedy Exclusion Request for Exclusion No. 156478 (November 27, 2020).

⁴ See BIS Decision Document – Steel Section 232 Remedy Exclusion Request for Exclusion No. 197785 (May 16, 2021).

been granted.⁵ The only permissible reasons for revising information contained in an exclusion request is: 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”).⁶ 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 one-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 Tri Star’s 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. Formalizing the Section 232 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, issuing decision memoranda, and streamlining the exclusion review process. Additional improvements are required, however, to formalize the Section 232 exclusion evaluation process. As mentioned above, the Section 232 determination criteria are still opaque for requestors. BIS also does not have an established administrative deadline, often fails to provide a detailed evaluation of all record evidence and lacks an appeals processes for denied exclusion requests.

As noted in the GAO report, BIS frequently fails to adhere to its timeliness guidelines regarding its evaluation of Section 232 exclusion requests.⁷ BIS claims that the average review period for exclusions not receiving an objection is 43 days, and the average review period for exclusions receiving an objection is 98 days.⁸ In Tri Star’s experience, the normal processing time for an exclusion that has not received an objection is 52 days. For exclusions that did receive an objection, however, this process extends to an average of 123 days to issue a determination. The lack of a firm administrative schedule restricts the requestors’ ability to make key business decisions, such as scheduling purchases and product shipments. In turn, domestic production can be disrupted, which can result in Tri Star and our U.S. customers being adversely affected. Often, Tri Star must place orders for key input materials without knowing when a determination will be issued. Tri Star proposes that BIS establish a firm timeline for issuing determinations. This change

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

⁶ Id.

⁷ 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).

⁸ Request for Public Comments on the Section 232 Exclusions Process 87 Fed. Reg. 7778 (Bureau of Indus. and Sec., February 10, 2022).

to the Section 232 exclusion process would benefit both BIS and the requestor, as BIS would receive fewer email 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. For example, BIS denied exclusion request 120590 based on statements by an objector that it could manufacture an identical product and deliver that product in a shorter timeframe than Tri Star's foreign supplier.⁹ In the decision memorandum, however, BIS did not address evidence provided by Tri Star confirming that the objector could not meet Tri Star's required tolerances.¹⁰ Tri Star later filed exclusion 170573, which covered an identical product and volume, and included the evidence on the objector's inability to meet required tolerances in the initial exclusion request rather than in an objection rebuttal. Exclusion 170573 was granted.¹¹ Tri Star's concern is not that an adverse determination was issued for exclusion request 120590. Rather, Tri Star is concerned that BIS did not evaluate, or at a minimum failed to provide a public evaluation, of the supporting evidence provided by Tri Star. As a result, Tri Star 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 an opportunity for administrative appeal. A full analysis of record evidence and 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. Changes to the Section 232 Portal and exclusion request form.

The Section 232 Portal currently offers limited interactivity, restricting users' search capabilities and access to relevant product information. In its present format, users can filter the Section 232 Portal by the following categories: exclusion ID number, company name, product (steel or aluminum), HTS code, exclusion status, number of days remaining in the applicable phase, and

⁹ See BIS Decision Document - Steel Section 232 Remedy Exclusion Request for Exclusion No. 120590 (November 27, 2020).

¹⁰ Id.

¹¹ See BIS Decision Document – Steel Section 232 Remedy Exclusion Request for Exclusion No. 170573 (January 22, 2021).

the date the exclusion posted. To remedy the limitations of the Section 232 Portal, BIS should add the following search categories:

- Class of product (E.g., stainless products, carbon and alloy flat, etc.)
- Product type (E.g., 302HQ, 304L, 304H, etc.)
- Keyword search

The class of product is already part of the selective criteria within the Section 232 exclusion form. As with the HTS code field, BIS could similarly automate the requestor's response to appear on the Section 232 Portal. Likewise, the keyword search feature was available on regulations.gov prior to the adoption of the Section 232 Portal and should be reinstated to provide greater navigation ability. By adding these categories, specific information on the Section 232 Portal would be more accessible to all users. These changes would offer domestic manufacturers an opportunity to better identify and file objections for exclusions for products they can supply.

Additionally, requestors currently cannot list multiple IORs in the Section 232 exclusion form. To add an IOR, the requestor must wait until an exclusion is granted and then email BIS directly to request the addition of an IOR. Once this request has been reviewed, BIS then forwards the IOR change request to CBP, who registers the IOR changes in ACE. This process takes multiple days and results in added work for BIS, CBP and the requestor. BIS should add an option in the exclusion form to include multiple resident and non-resident IORs. This change would reduce the need for, and volume of, IOR change requests, which would help alleviate the administrative burden placed upon BIS and CBP and streamline the post-determination exclusion process, allowing exclusion holders to use their product exclusions faster.

5. BIS-CBP Registration Process

BIS lacks a system whereby exclusions can be automatically sent to CBP for registration. At this time, exclusion holders are required to monitor the Section 232 Portal for determinations and, once an exclusion determination is issued, alert CBP to register a granted exclusion. Tri Star suggests that BIS collaborate with CBP to implement a system to automatically register granted exclusions with CBP. Automatic registration would help streamline the Section 232 exclusion process and reduce unnecessary administrative work for both agencies.

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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



Nick Pigott
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