

COMMERCE SHOULD IMPROVE THE OBJECTION PROCESS FOR THE SECTION 232 TARIFF EXCLUSION REQUESTS

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas
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I write today in response to the request by the Bureau of Industry and Security of the US Department of Commerce for public comment regarding the exclusion process for Section 232 steel and aluminum import tariffs and quotas.

I appreciate the opportunity to submit this public comment on how to improve the tariff exclusion process. The Mercatus Center at George Mason University is dedicated to bridging the gap between academic ideas and real-world problems and to advancing knowledge about the effects of regulation on society. This comment, therefore, does not represent the views of any particular affected party or special interest group. Rather, it is designed to help policymakers as they consider how to change these policies. Specifically, the comment seeks to help the Department of Commerce explore ways in which it can improve the objection process.

Throughout this comment I refer to US steel or aluminum producers as “producers,” and I refer to the US manufacturers requesting the tariff exclusion as “manufacturers.”

PROBLEMS WITH THE OBJECTION PROCESS

The original intent of the tariff exclusion process was to minimize undue impact on downstream industries.¹ Later I explain how the current process for exclusions and objections undermines the

1. US Department of Commerce, “U.S. Department of Commerce Announces Steel and Aluminum Tariff Exclusion Process,” press release, March 18, 2018, <https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-steel-and-aluminum-tariff-exclusion>.

Department of Commerce's ability to meet that that objective. I propose modifying the objection process so that objecting producers have the burden of proof of showing that they can meet the manufacturer's needs in a timely fashion. This modification would help eliminate baseless objections from the process.

Under the existing system, an objection is nearly costless for the producer. Over time, objection filings have become excessive, and producers object to quantities of imports that are unrealistic relative to annual production capacity. Producers also often file numerous objections as soon as the new requests for exclusions are filed and then later withdraw some of them.

Every single objection filed, regardless of whether it is later withdrawn, creates costs for US manufacturers. Objections slow the process and lengthen the duration of the tariffs. In cases where producers do not have the technical capacity to produce their products to specification or any genuine intent to meet manufacturer demand, this practice benefits the producers but can cause undue or excessive harm to US manufacturers. Consequently, the objection process can result in the opposite of the intent of the tariff exclusion process.

In April 2019, I reported that in the first 12 months since Section 232 tariffs were established and their accompanying exclusion process went into effect, US steel companies objected to 149.7 million metric tons (mmt) of steel imports, which was 183 percent of their total production of 81.6 mmt in 2017 (the year before the tariffs went into effect).²

Objecting to unrealistic quantities is seen clearly in the filing patterns by four steel companies, Nucor, US Steel, Timken, and AK Steel, which accounted for 53 percent of total objections (10,417 out of 19,543) in that first year. Each steel company objected to quantities of imports that exceeded its average annual production, as shown in figure 1. Specifically, in the first 12 months, Nucor objected to 41.31 mmt; its 2017 production was only 24.39 mmt. US Steel objected to 47.90 mmt; its 2017 production was only 14.43 mmt. And AK Steel objected to 30.32 mmt; its 2017 production was only 5.6 mmt.

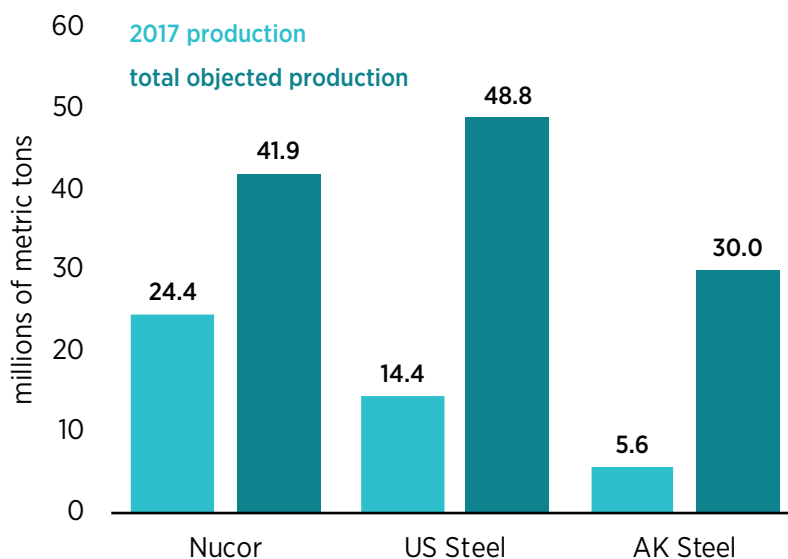
At the same time, objections are consequential. As of March 14, 2020, just 1 percent of steel tariff exclusion requests with an objection have been approved, and less than 1 percent of aluminum tariff exclusion requests with an objection have been approved.³ Further, producers are not required to confirm that they have the technical capacity to produce products to specification.

Ultimately, objections lead to delays. While a pending status could result in an approval or denial, after a certain amount of time the pending status for US manufacturers is effectively a denial for those companies because they face the tariffs if they import the products. That is, to the extent that US manufacturers have continued their business operations, they are essentially operating with a tariff in place.

2. Christine McDaniel and Danielle Parks, "Tariff Exclusion Requests: A One-Year Update," *The Bridge*, April 11, 2019.

3. This is also not a new phenomenon. By my count back in March 2019, less than 1.0 percent of steel tariff exclusion requests with an objection had been approved, and just 2.7 percent of aluminum tariff exclusion requests with an objection had been approved. See McDaniel and Parks, "Tariff Exclusion Requests."

FIGURE 1. THE TOP THREE FIRMS' OBJECTION VOLUME EXCEEDED THEIR 2017 STEEL PRODUCTION IN FIRST YEAR OF THE TARIFF EXCLUSION REQUEST PROCESS



Source: International Trade Administration, *Global Steel Trade Monitor: Steel Imports Report: United States*, September 2018; author's calculations based on data from Regulations.gov (website), accessed March 18, 2019, <https://www.regulations.gov/>.

IMPROVING THE OBJECTIONS PROCESS

In order to minimize excessive objection filings and prevent disingenuous objections, I offer three ways to revise the Section 232 tariff exclusion request process for the Department of Commerce, which require proof that the objecting producer can supply the product in a timely manner and offer it to the producer:

1. Require objecting producers to demonstrate and prove (1) that they are qualified suppliers for the specific product in the original request and (2) that they can fulfill the request with the technical product specifications in no fewer than, say, 90 days. If suppliers cannot prove that they are qualified suppliers of the product with the correct technical product specification, then their objections should be disregarded.
2. Require objecting producers to file a midpoint progress report to verify that production is on track to meet production targets. If no midpoint progress report is filed, then the objection is disregarded, and objecting producers should be required to pay manufacturers the amount of duties paid plus interest.
3. Require objecting producers to demonstrate that the subject good was produced in the targeted time and offered for sale to the manufacturer. If the producer cannot make the demonstration or if the manufacturer indicates that the sale was not made, then the objection is disregarded and the producers should be required to compensate the manufacturer the amount of duties paid plus interest.

Minimizing excessive objection filings and preventing disingenuous objections can help the Department of Commerce to avoid unintended consequences, minimize undue harm to US manufacturers, and more effectively fulfill the original intent of the tariff exclusion request process.

The Mercatus Center regularly collects and analyzes Section 232 steel and aluminum tariff exclusion requests. It publishes all of its data on the QuantGov website.⁴

CONCLUSION

For more than two years, the Department of Commerce has administered the tariff exclusion request process for the Section 232 steel and aluminum tariffs. Despite updates and reforms, there are alarming signals that the process is ineffective at achieving its regulatory aims. Revising the objection process would be a good step toward achieving the goals and taking into account the activities in the marketplace since the beginning of the tariffs.

Thank you for this opportunity to submit my comments, and thank you for your consideration.

4. Tariff exclusion requests and associated data are available at QuantGov.org. See Christine McDaniel and Joe Brunk, "Section 232 and 301 Tariff Data and Interactive Maps," QuantGov, accessed July 7, 2020. My analyses are available in the following articles: Christine McDaniel and Joe Brunk, "Investigating Product Exclusion Requests for Section 232 Tariffs: An Update," *The Bridge*, August 21, 2019; McDaniel and Parks, "Tariff Exclusion Requests"; Christine McDaniel and Danielle Parks, "Growing Backlog, Inconsistent Rulings Cast Doubt over Tariff Exclusion Request Process," *The Bridge*, January 28, 2019; Christine McDaniel and Danielle Parks, "US Steel Manufacturers Claim Unrealistic Quantities of Production in Objections," *The Bridge*, November 13, 2018; Christine McDaniel, "Tariff Exclusion Requests Soar Past Projections," *The Bridge*, October 2, 2018; Christine McDaniel and Joe Brunk, "Section 232 Steel and Aluminum Tariff Exclusion Requests Continue Apace," *The Bridge*, January 21, 2020. These articles have been published at *The Bridge* (a publication of the Mercatus Center) and at *Forbes*. Also, they can all be found through my Mercatus bio page: "Christine McDaniel," Mercatus Center at George Mason University, accessed July 7, 2020, <https://www.mercatus.org/scholars/christine-mcdaniel>.