



December 2021

STEEL AND ALUMINUM TARIFFS

Commerce Should Update Public Guidance to Reflect Changes in the Exclusion Process



A Century of Non-Partisan Fact-Based Work

GAO@100 Highlights

Highlights of [GAO-22-104564](#), a report to congressional requesters

Why GAO Did This Study

Citing national security concerns over excess global supply of steel and aluminum, in March 2018 the President placed tariffs on the import of some products under Section 232 of the Trade Expansion Act of 1962. Commerce established a process to provide relief, or exclusion, from the tariffs for importers of eligible products. Commerce originally accepted exclusion requests through the website [Regulations.gov](#), but in June 2019 launched a custom-built website, the Exclusion Portal, for these requests.

GAO was asked to review Commerce's Section 232 tariff exclusion process, and previously reported on exclusion requests submitted to [Regulations.gov](#) in [GAO-20-517](#). This current report examines the process since the launch of the Exclusion Portal; specifically: (1) changes to the procedures Commerce uses to decide tariff exclusion requests, and the guidance it provides; (2) the extent to which Commerce rejects requests because of errors; and (3) the timeliness of its decisions.

GAO analyzed records from March 2018 to June 2021 from Commerce's Bureau of Industry and Security and International Trade Administration, and interviewed agency officials.

What GAO Recommends

GAO is making two recommendations for Commerce to establish policies to regularly update its public guidance to incorporate changes in procedures and reflect its decision-making time frames. Commerce concurred with both recommendations.

View [GAO-22-104564](#). For more information, contact Kimberly Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov.

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Commerce Should Update Public Guidance to Reflect Changes in the Exclusion Process

What GAO Found

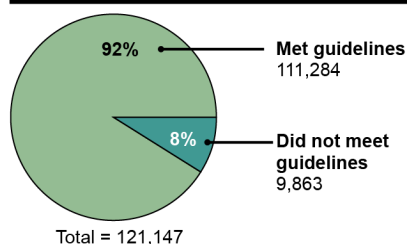
In 2020, Commerce made numerous changes to its procedures for deciding requests for relief, or exclusion, from steel and aluminum tariffs. For instance, the agency established general tariff exclusion for certain products, so that some importers no longer have to apply for case-by-case approval. However, Commerce's public guidance does not reflect the changes because it has not been updated since June 2019, and the agency has no process to review and update its guidance as needed. For example, the guidance does not state that domestic producers who object to a tariff exclusion request may have more time than previously allowed to supply comparable products. Without regularly updated public guidance, importers and producers may not be informed of important details about the process, which could lead to challenges and delays for eligible requesters and potential objectors.

Commerce has rejected a lower percentage of exclusion requests for containing errors since launching its Exclusion Portal website in June 2019: 10 percent of requests compared with 18 percent of requests submitted to [Regulations.gov](#). Rejected requests typically include incorrect or incomplete information. Nevertheless, more than 22,000 requests submitted to the Exclusion Portal have been rejected for such errors, which means importers must submit new requests and wait longer for relief. Commerce stated that it plans to further reduce the rejection rate by adding features to the Exclusion Portal to prevent these errors.

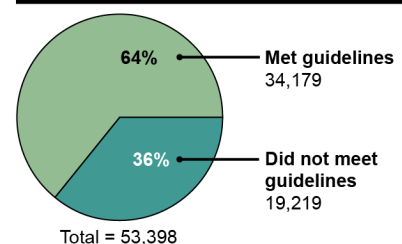
Commerce has improved its timeliness since the introduction of the Exclusion Portal. More than 80 percent of all requests are now decided within its timeliness guidelines, and the agency reduced its backlog of undecided requests. However, many requests that received objections are still not decided within those guidelines, as shown in the figure. Also, Commerce's public guidance does not reflect the time it takes Commerce to decide many requests. Although Commerce states in its public user guide that most requests will be decided within 90 days, Commerce on average took 143 days to decide requests with objections. Requests without objections were decided in about 45 days, half of the publicly posted time frame. Commerce has not assessed and updated its guidance concerning timeliness since 2019. As a result, the public lacks accurate information about how long Commerce takes to make a decision, increasing business uncertainty for those submitting and objecting to requests.

Department of Commerce Decisions on Tariff Exclusion Requests, with and without Objections, That Met Its Established Timeliness Guidelines as of June 2021

Exclusion requests without objections



Exclusion requests with objections



Source: GAO analysis of the Department of Commerce's Exclusion Portal website data. | [GAO-22-104564](#)

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Abbreviations

BIS	Bureau of Industry and Security
Commerce	Department of Commerce
CBP	Customs and Border Protection
HTSUS	Harmonized Tariff Schedule
IFR	interim final rule
ITA	International Trade Administration

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December 13, 2021

Congressional Requesters

Steel and aluminum are critical to the nation's infrastructure and defense, but excess global supply of these products poses risks to U.S. industry, according to the Department of Commerce. In the interest of protecting national security under Section 232 of the Trade Expansion Act of 1962 (Section 232),¹ the President in 2018 imposed additional tariffs of 25 percent on some steel imports and 10 percent on some aluminum imports (products).² The President also authorized Commerce to provide relief, or exclusion, from these tariffs for U.S. steel and aluminum importers in certain circumstances, such as when the product is not available domestically or based on national security considerations.

You previously asked us to review the process Commerce uses to decide requests for exclusion from Section 232 tariffs for steel and aluminum imports. In September 2020, we reported on Commerce's use of the Regulations.gov website to process exclusion requests.³ In that report, we did not analyze exclusion requests Commerce had processed using its new online Section 232 Exclusion Portal (Exclusion Portal), because at the time of our review Commerce had not posted enough decisions on the Exclusion Portal to form an analyzable sample.

In our 2020 report, we found that a large number of requests were rejected at the onset of the process because of errors in the submitted

¹The 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). Section 232 of the act gives the President authority to limit imports if, after an investigation, he determines that they threaten to impair the national security. The President has also imposed quantitative limits on imports of steel and aluminum from certain countries because of these Section 232 investigations, and Commerce may grant exclusion from these quotas.

²Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 15, 2018) and Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018). These proclamations provided a means for product-based exclusions and country-based exemptions. Proclamation No. 9704 para. 8 (country exemption) and provision 3 (tariff exclusion), 83 Fed. Reg. at 11,620-21 and Proclamation No. 9705 para. 9 (country exemption) and provision 3 (tariff exclusion), 83 Fed. Reg. at 11,626-27. Commerce reviews and grants product-based exclusions to individual requesters for specified products. The United States Trade Representative negotiates country-based exemptions, which will apply to all steel or aluminum imports from the country granted an exemption.

³GAO, *Steel and Aluminum Tariffs: Commerce Should Improve Its Exclusion Request Process and Economic Impact Reviews*, [GAO-20-517](#) (Washington, D.C.: Sept. 15, 2020).

exclusion request and recommended that Commerce identify, analyze, and respond to factors in the process that may cause these errors. We also recommended it make decisions in a timelier manner and review the economic impact of the tariffs on imports. Commerce agreed with our recommendations, while stating that the Exclusion Portal had already substantially mitigated the issues causing exclusion request errors and lack of timeliness. To address the recommendations, Commerce stated that it would publish an annual notice of inquiry to solicit input on additional improvements to the Exclusion Portal, and would take other actions.

This report evaluates steps Commerce has taken since it launched its Exclusion Portal in June 2019. Specifically, this report examines the extent to which Commerce (1) issued public guidance that reflects procedural changes for deciding tariff exclusion requests, (2) continues to reject requests because of errors in the submissions, and (3) reduced the time it takes to decide exclusion requests and updated its timeliness guidance.

To address these objectives, we reviewed Commerce's policies, plans, and related documents and interviewed agency officials to identify the process and criteria that Commerce uses to decide exclusion requests, and any changes since our September 2020 report. We compiled available data from Commerce to analyze the process since the launch of the Exclusion Portal in June 2019, including numbers of exclusion requests rejected without decision. The data include information for exclusion requests submitted through Regulations.gov and the Exclusion Portal from March 2018 to June 2021 and nonpublic agency records.⁴ We performed extensive electronic testing for errors in the data obtained. We found that the data obtained from Regulations.gov and from Commerce were sufficiently reliable for our review of various aspects of the exclusion process. We then compared statistics with Commerce's established timeliness guidelines to determine the extent to which Commerce's decisions met those guidelines. We also spoke with agency officials about the data collected. Finally, we examined Commerce documentation and interviewed agency officials to determine the extent to which Commerce

⁴Commerce used Regulations.gov, a pre-existing public comment system, to receive exclusion requests and related information prior to launching the Exclusion Portal website. The federal government established Regulations.gov to allow the public to find and submit comments on federal rules and other documents that the *Federal Register* publishes and opens for comment. According to BIS officials, Commerce introduced the [Exclusion Portal](#) to streamline and simplify the exclusion request process and replace Regulations.gov.

documented changes to its procedures and the time it takes to decide exclusion requests. For a more detailed description of our scope and methodology, see appendix I.

We conducted this performance audit from October 2020 to December 2021 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.

Background

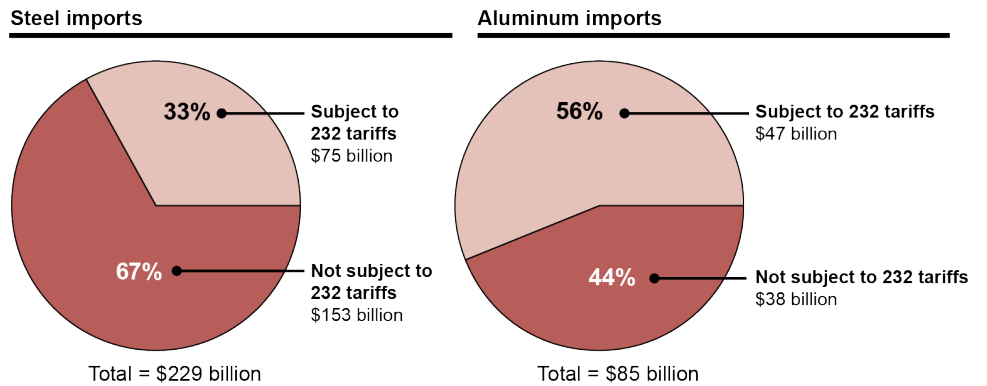
Tariffs on Imports of Certain Steel and Aluminum Products

Through two presidential proclamations released on March 8, 2018, the President placed tariffs of 25 percent on imports of selected steel products and of 10 percent on imports of selected aluminum products to protect national security. The tariffs apply only to certain steel and aluminum products, indicated by specific Harmonized Tariff Schedule of the United States (HTSUS) codes listed in the proclamations.⁵

In terms of trade values, from March 2018 to May 2021 approximately 33 percent of the value of imported steel and 56 percent of the value of imported aluminum has been subject to the Section 232 tariffs (see fig. 1).

⁵All goods imported into the United States are classified according to the HTSUS code. 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.

Figure 1: Percentage of Steel and Aluminum Product Imports by Value, Subject and Not Subject to the Section 232 Tariffs, from March 2018 to May 2021



Source: GAO analysis of U.S. Census trade statistics. | GAO-22-104564

Notes: Numbers may not sum to totals because of rounding. To determine the total import value of products covered under the Section 232 tariffs, we used U.S. Census import statistics. Customs value is the value of imports as appraised by U.S. Customs and Border Protection. This value is defined as the price actually paid or payable for merchandise excluding U.S. import duties, freight, insurance, and other charges. We calculated the total import value of all products with Harmonized Tariff Schedule of the United States (HTSUS) codes listed in Presidential Proclamations 9704 (for aluminum) and 9705 (for steel). To determine the total import value of products not covered under the Section 232 tariffs, we calculated the total import value for products with HTSUS codes not in the proclamations mentioned above but listed in Chapters 72, 73 (for steel) and 76 (for aluminum) of the HTSUS.

These Section 232 tariffs are the tariffs imposed by the President in Proclamations 9704 and 9705. See, 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); Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 15, 2018); and Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018).

The presidential proclamations initiating the tariffs authorized the Secretary of Commerce to establish a process to provide relief from the tariffs to eligible parties located in the United States.⁶ With this process, Commerce would accept requests for exclusion from the steel and aluminum tariffs and grant exclusions for eligible products.⁷

⁶Commerce established regulations for the process including multiple interim final rules (IFR), one published in the *Federal Register* on March 19, 2018, one on September 11, 2018, one on June 10, 2019, and the final on December 14, 2020. 83 Fed. Reg. 12,106 (Mar. 19, 2018), 83 Fed. Reg. 46,026 (Sept. 11, 2018), 84 Fed. Reg. 26,751 (June 10, 2019); and 85 Fed. Reg. 81,060 (Dec. 14, 2020). Commerce codified these IFRs at 15 C.F.R. Part 705, Supp. No. 1, No. 2, and No. 3.

⁷The President also imposed quantitative limits, or quotas, on imports of steel and aluminum from certain countries because of the Section 232 investigations. CBP enforces these quotas. Commerce may grant exclusion from these quotas.

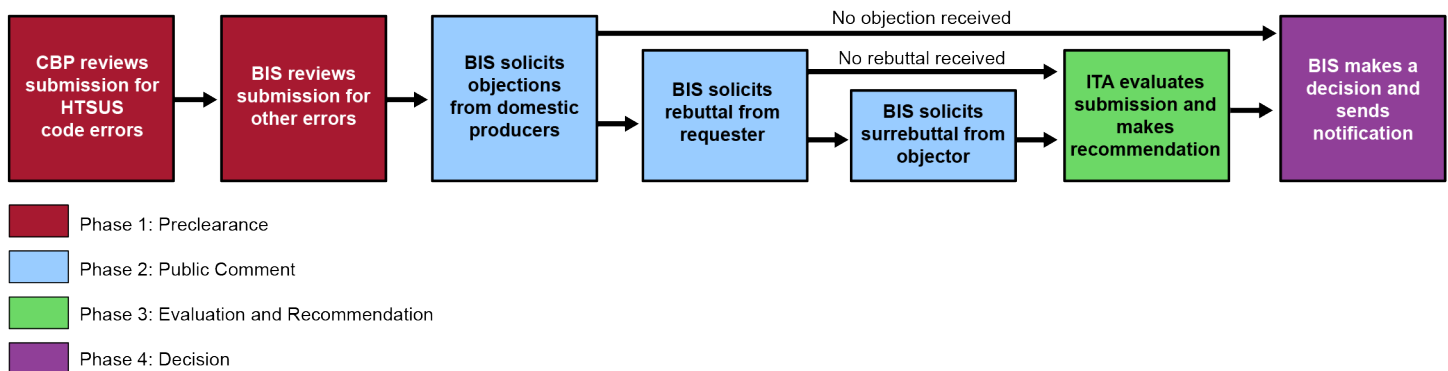
The Exclusion Process

Commerce established a process on March 19, 2018 that allows individuals or organizations (requesters) located in the United States importing steel or aluminum products subject to the tariffs to submit exclusion requests. Commerce's Bureau of Industry and Security (BIS) oversees the exclusion process and decides whether to approve or deny each request. BIS reviews and publicly posts materials related to exclusion requests to the Exclusion Portal. During the review process, Commerce's International Trade Administration (ITA) evaluates all exclusion requests that receive an objection and provides a recommendation to BIS to approve or deny requests. Customs and Border Protection (CBP), within the Department of Homeland Security, determines whether the HTSUS code provided accurately matches the specifications of the article described in the request, and is therefore administrable. If Commerce approves an exclusion, CBP then implements it and the importer is able to use it to exclude imports or receive a refund from the duties associated with the Section 232 tariffs, as appropriate.

The exclusion process consists of four phases: preclearance, public comment, evaluation and recommendation, and decision (see fig. 2). When Commerce opened the process to the public on March 19, 2018, requesters applied for exclusion by submitting their requests on the public comment system Regulations.gov. On June 13, 2019, Commerce launched a custom-built replacement website, the Exclusion Portal, to receive all exclusion requests submitted on or after that date.⁸

⁸Commerce still allowed objections, rebuttals, and surrebuttals to be submitted to Regulations.gov after June 13, 2019. A rebuttal is a response submitted by the requester to an objection. A surrebuttal is a response submitted by the objector to a rebuttal.

Figure 2: Department of Commerce’s Process to Decide Section 232 Steel and Aluminum Tariff Exclusion Requests



Legend: BIS = Bureau of Industry and Security, CBP = Customs and Border Protection, HTSUS = Harmonized Tariff Schedule of the United States, ITA = International Trade Administration.

Source: GAO analysis of Commerce’s interim final rule published on September 11, 2018, 83 Fed. Reg. 46,206 (Sept. 11, 2018) and Commerce documentation. | GAO-22-104564

Note: A rebuttal is a response submitted by the requester to an objection. A surrebuttal is a response submitted by the objector to a rebuttal.

Preclearance. A requester submits an exclusion request via the Exclusion Portal, and before any further consideration, BIS and CBP review the information to determine whether it is complete and “administrable.” CBP uses a computer program to identify submissions that contain HTSUS code inconsistencies. If CBP determines the request to be administrable, BIS officials, using internal guidance and checklists, next determine whether the request contains other errors, such as missing required information. The information includes the amount, descriptions, specifications, strength, and chemical composition of the requested steel or aluminum product. When BIS rejects an exclusion request, it does not issue a public decision. Instead, it notifies the requester by email of the rejection and the reason. BIS accepts exclusion requests that have all the correct and required information and advances them for further consideration to the public comment phase.

Public comment. BIS posts the accepted exclusion request on the Exclusion Portal for public comment, which provides domestic steel and aluminum producers an opportunity to object. Commerce asks objectors to demonstrate that they are capable of fulfilling the steel and aluminum needs of the requester immediately. If an exclusion request receives an objection, Commerce provides the requester a rebuttal period to rebut the objector’s claims through the Exclusion Portal. If the requester submits a rebuttal, the objector may respond during a surrebuttal period. After BIS receives all public comments, it advances the request to the next phase.

In contrast, BIS advances an exclusion request that does not receive an objection to the decision phase.

Evaluation and recommendation. Requests that received an objection, along with all information obtained in the public comment phase, then go to ITA for technical evaluation to determine whether the product requested for exclusion is available from a U.S. domestic producer.⁹ ITA staff, including analysts and subject matter experts, using checklists and established criteria, compare the information in the exclusion request, the objections, the rebuttals, and the surrebuttals. ITA evaluators use the findings from this analysis to prepare a draft recommendation memorandum for the exclusion request. ITA can recommend that BIS approve, partially approve, or deny a request.¹⁰ When it is complete, ITA forwards the recommendation to BIS to use in the decision phase.¹¹

Decision. BIS officials review the materials to determine whether to approve or deny the request. Prior to a decision, BIS conducts a national security review and makes an initial recommendation to the Deputy Assistant Secretary for Export Administration. The Deputy Assistant Secretary reviews the recommendation and makes a decision. If BIS grants an exclusion from the steel and aluminum tariffs, it notifies CBP, which implements it. The requester is then able to use it as its

⁹For the purposes of this report, “domestic producer” refers to a company that manufactures steel or aluminum products in the United States. HTSUS codes specifically listed in the proclamations identify the steel and aluminum products subject to the section 232 tariffs. Proclamation No. 9704, 83 Fed. Reg. 11,619 and Proclamation No. 9705, 83 Fed. Reg. 11,625.

¹⁰According to Commerce officials, when ITA evaluators finish their analyses the draft recommendation memorandum goes through a two-level review within ITA: first by a team of agency officials who work with the evaluators to address outstanding questions about the analyses, and then typically by a more senior team, which includes the Director of the 232 team, that reviews the analyses for accuracy, consistency, and completeness. According to ITA officials, the ITA recommendation is not an individual recommendation from one ITA official, but is instead a collective internal recommendation from ITA to BIS for its consideration.

¹¹According to Commerce officials, BIS considers ITA recommendations as part of its decision-making process, but also considers other information within the request.

covered imports enter the country.¹² The requester must provide CBP the BIS approval letter and all of the information required to verify every specification that is listed on the approved exclusion request, in order to have the qualifying imported items excluded from the Section 232 tariff.

Requesters can use tariff exclusions 7 to 10 business days after BIS posts the approval letter, and the exclusions are generally valid for 1 year from the signature date on the decision.¹³ Commerce officials told us that a requester can use the approval to gain retroactive relief for imports made after the date of the original submission.¹⁴ The approval specifies the type and amount of steel or aluminum the requester can import exempt from the Section 232 tariffs from specific countries of origin. At the end of the validity period, or after importing the amount granted for exclusion, the requesters are not permitted to claim exclusion on additional imports unless BIS approves a new exclusion request. If BIS denies a request, the requester can submit a new request, purchase the

¹²Alternatively, if Commerce determines and announces a retroactive exclusion after the covered imports have already entered the United States, then covered imports are excluded as the importer corrects the entry documentation, or upon a timely and properly filed administrative protest if the entry has already liquidated. See 19 U.S.C. § 1500(e); 19 C.F.R. § 159.1 (defining liquidation); 19 U.S.C. § 1514 (protests); CBP CSMS #42566154–Section 232 and Section 301–Extensions Requests, PSCs, and Protests, available at <https://content.govdelivery.com/accounts/USDHSCBP/bulletins/289820a> (explaining the process for claiming retroactive Section 232 exclusions for entries already made, but for which liquidation is not yet final). According to CBP officials, approved exclusion requests grant an importer the right to claim an exclusion of the Section 232 duties but are limited to the specified (1) merchandise, (2) quantity, and (3) time frame. In addition, the importer must be importing products from the country or countries included in the exclusion request.

¹³While requesters can directly use the tariff exclusion themselves, they may also designate third-party importers of record in the exclusion request to use the exclusion on their behalf as an agent of the requester. 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. 83 Fed. Reg. at 46,060.

¹⁴According to Commerce officials, before August 29, 2018 a requester could gain retroactive relief only to the date BIS publicly posted the exclusion request. CBP provides retroactive relief to requesters in the form of a refund of deposited Section 232 duties that requesters must separately apply for from CBP as the importer corrects the entry documentation, or upon a timely and properly filed administrative protest if the entry has already liquidated, i.e., if the goods have entered commerce and the agency has completed processing the entry. CBP regulations define liquidation as the final computation or ascertainment of duties on entries for consumption or drawback entries. 19 C.F.R. § 159.1.

steel or aluminum product domestically, or pay the Section 232 tariff on the product.

Criteria for Deciding Exclusion Requests

The presidential proclamations established the criteria that Commerce uses to approve exclusion requests. Commerce reviews all submitted information to determine whether the requested steel or aluminum product can be supplied by a domestic company (1) in a reasonable time frame, (2) in a sufficient quantity, and (3) of a satisfactory quality. Further, Commerce may consider national security concerns in the decision phase (see fig. 3).

Figure 3: Criteria Used by the Department of Commerce to Decide Section 232 Steel and Aluminum Tariff Exclusion Requests

Considered during Phase 3, Evaluation and Recommendation			Considered only during Phase 4, Decision
Reasonably available	Sufficient quantity	Satisfactory quality	National security
Is there evidence that domestic producers can produce the requested article within the specified time frame?	Is there evidence of sufficient domestic production to fulfill the requester's needs?	Is there evidence of domestic production of satisfactory quality to fulfill the requester's needs?	Are there national security concerns pertaining to submitted exclusion requests?

Source: GAO analysis of Commerce's interim final rule published on September 11, 2018 and Commerce documentation. See Interim Final Rule, 83 Fed. Reg. 46,026 (Sept. 18, 2018). | GAO-22-104564

- **Reasonably available.** Commerce may approve an exclusion request if it determines that the requested steel or aluminum product is not reasonably available in the United States within a specified time frame. Commerce will approve this request if no domestic producer submitted an objection to the request, or if one did object but cannot demonstrate the ability to supply the product in the United States within that time frame.
- **Sufficient quantity.** Commerce may approve a request if it determines that no domestic producer can produce the requested steel or aluminum product in the United States in a sufficient quantity to fulfill the needs of the requester. Commerce will approve a request if no domestic producers have submitted an objection to the request, or if they have objected but cannot demonstrate the ability to produce the product in a sufficient quantity.¹⁵ For example, if a company

¹⁵As explained below, "sufficient quantity" is any amount between 10 percent and less than 100 percent of the amount stated in the exclusion request.

requests exclusion for 100,000 pounds of a steel product and an objecting producer indicates that it can produce only 9,000 pounds domestically, Commerce officials said they would likely determine that the product is not available in a sufficient quantity and grant full approval.

- **Satisfactory quality.** Commerce may approve a request if it determines that domestic producers cannot produce the requested steel or aluminum product in the United States in a satisfactory quality. Commerce will make this determination if no domestic producers have submitted an objection, or if they have objected but cannot demonstrate the ability to produce a product with the requester's specifications. For example, if an objector claims to make an identical product, Commerce compares the specifications listed in the exclusion request, objection, rebuttal, and surrebuttal to verify that they match.¹⁶ If the objector claims that it can make a suitable substitute product, Commerce reviews the specifications to determine whether the proposed substitute product may be functionally substituted for the requested product. Commerce will determine that the producer cannot produce the product in a satisfactory quality if its product specifications are unsuitable to the requester's business needs as stated in the request.
- **National security.** During the decision phase, BIS considers any national security concerns related to the request. According to an interim final rule (IFR) released on September 11, 2018, Commerce may approve an exclusion request for national security considerations such as when the requested item is needed to make critical items for use in military weapons.¹⁷ However, as of August 5, 2021, Commerce had not used the national security criterion to decide an exclusion request.

Commerce Established Timeliness Guidelines

Commerce has guidelines outlining the time it should take to decide tariff exclusion requests using the process and criteria outlined above. Commerce established these guidelines in the IFR of September 11, 2018¹⁸ and internal documentation. According to the guidelines,

¹⁶As previously mentioned, a rebuttal is a response submitted by the requester to an objection, and a surrebuttal is a response submitted by the objector to a rebuttal.

¹⁷83 Fed. Reg. at 46,062.

¹⁸83 Fed. Reg. 46,026.

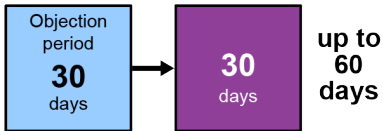
Commerce will issue a decision in a specific period depending on the extent to which the exclusion request receives public comments:

- requests that receive no objections will take up to 60 days to decide;
- those with an objection, but no rebuttal, will take up to 112 days;
- those with an objection and a rebuttal, but no surrebuttal, will take up to 134 days; and
- those with an objection, a rebuttal, and a surrebuttal will take up to 149 days (see fig. 4).¹⁹

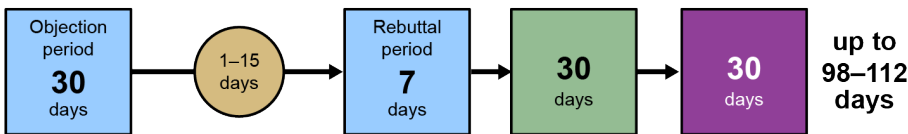
¹⁹The IFR of September 11, 2018, expanded the review process, which incorporated rebuttal and surrebuttal periods into the public comment phase. 83 Fed. Reg. at 46,058-59 and 46,063-64. Commerce also stated in the IFR that the public comment period would include a 1- to 15-day processing period between the objection, rebuttal, and surrebuttal periods. 83 Fed. Reg. at 46,059 and 46,063. This processing period enables Commerce to review the information provided in the objection, rebuttal, and surrebuttal periods, and post the completed submissions to Regulations.gov. 83 Fed. Reg. 46,026.

Figure 4: Department of Commerce Guidelines for the Timely Resolution of Tariff Exclusion Requests

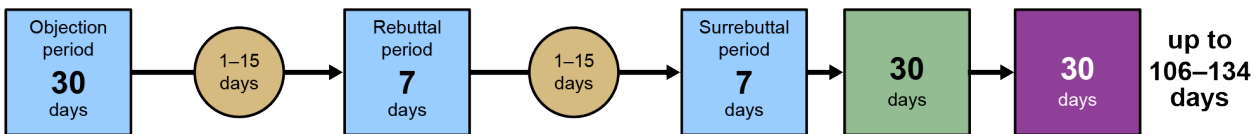
Exclusion requests with no objections



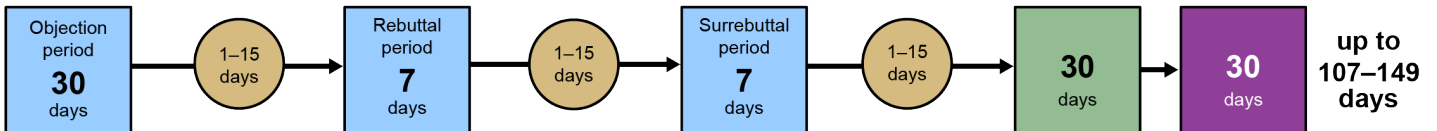
Exclusion requests with objections but no rebuttal



Exclusion requests with objections and rebuttals, but no surrebuttals



Exclusion requests with objections, rebuttals, and surrebuttals



Exclusion process periods

- Public Comment
- Processing Time
- Evaluation and Recommendation
- Decision

Source: GAO analysis of Commerce's interim final rule published on September 11, 2018 and Commerce documentation. See Interim Final Rule, 83 Fed. Reg. 46,026 (Sept. 18, 2018). | GAO-22-104564

Note: Commerce's September 11, 2018, Interim Final Rule stated that the public comment period would include a 1- to 15-day processing period between the objection, rebuttal, and surrebuttal periods. 83 Fed. Reg. at 46,059 and 46,063. This processing period enables Commerce to review the information provided in the objection, rebuttal, and surrebuttal and post completed submissions to Regulations.gov. A rebuttal is a response submitted by the requester to an objection, and a surrebuttal is a response submitted by the objector to a rebuttal.

Commerce Made Procedural Changes to Its Exclusion Process but Has Not Updated Public Guidance

Procedural Changes Include Creating General Exclusion for Eligible Products and Allowing Potentially More Time to Supply Domestic Goods

The Department of Commerce stated that the overall four-phase exclusion process had not changed since our previous report, but it has made a number of changes to the procedures for deciding exclusion requests in an interim final rule (IFR) released in December 2020.²⁰ For instance, as we discuss in more detail below, Commerce created general tariff exclusion for certain steel and aluminum products, a volume certification requirement for importers, and a potentially longer time frame for objectors to supply comparable domestic goods. In addition, Commerce clarified its policy concerning partial approval of some tariff exclusion requests.

General Approved Exclusion (GAE). Commerce announced a list of specific HTSUS codes for steel and aluminum products that were generally excluded from the tariff.²¹ The change means that importers of GAE products are not required to submit a request and obtain an approval to receive tariff exclusion, for products that fall under these HTSUS codes. Instead, importers whose product has an HTSUS code listed as a GAE can import that product without paying the Section 232 tariff. Unlike individual exclusions, there is no limit on the quantity that can be imported under GAEs and the exclusion does not expire.

Commerce officials said they created the initial list of 123 HTSUS codes under which products are eligible for general exclusion after analyzing data for exclusion requests submitted before September 12, 2020. Commerce examined the exclusion requests that had been submitted through Regulations.gov and the Exclusion Portal to identify the requests

²⁰85 Fed. Reg. 81,060. Commerce codified this interim final rule at 15 C.F.R. Part 705, Supp. No. 1, No. 2, and No. 3.

²¹The full list of 123 GAE HTSUS codes, which includes 108 steel and 15 aluminum HTSUS codes, is found in in supplements no. 2 and no. 3 to part 705 of title 15 of the code of federal regulations as published in the December 2020 IFR.

that had, up to that point, never received objections. Commerce published a Notice of Inquiry on May 26, 2020, requesting public comment on several proposals, including “one-year blanket approvals of exclusion requests for product types that have received no objections as of a baseline date,” which included a preliminary list of potential HTSUS Codes that could be excluded from the tariff.²² According to Commerce officials, the small number of comments Commerce received on the proposal generally supported the proposed change. In the December 2020 IFR, Commerce announced the list of HTSUS codes covered by general approved exclusion.²³

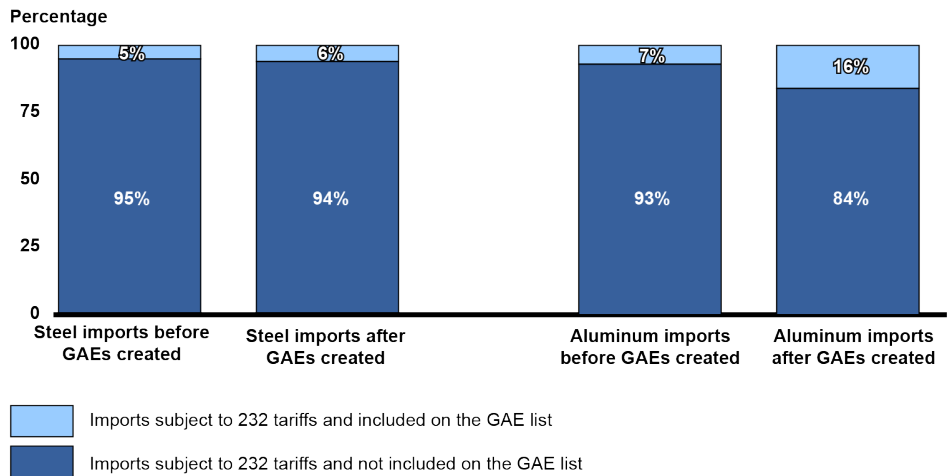
According to Commerce officials, this change was intended to make the exclusion process more efficient. The December 2020 IFR states that the adoption of these GAEs would eliminate an estimated 5,000 exclusion requests per year.²⁴ This number amounts to approximately 6 percent of the 78,264 requests Commerce received in 2020. Our analysis of Census import statistics shows that from January 2021 to May 2021, the products covered by GAE accounted for 6 percent of the value of imported steel products and 16 percent of the value of imported aluminum products that were subject to Section 232 tariffs. Before GAE went into effect, imports of products on the GAE list accounted for a smaller proportion of imports subject to the tariffs (see fig. 5).

²²85 Fed. Reg. 31,441 (May 26, 2020).

²³The policy published in the December 2020 IFR states that the GAEs are indefinite in length rather than limited to 1 year as mentioned in the May 2020 Notice of Inquiry.

²⁴Commerce estimated in the December 2020 IFR that the reduction in exclusion requests would result in an expected reduction of 5,000 burden hours for the public and 30,000 burden hours to the U.S. government. According to Commerce, this would equate to a savings of \$740,000 for requesters and \$1,170,000 for the U.S. government.

Figure 5: Imports of Products Subject to Section 232 Tariffs and Covered by General Approved Exclusion (GAE) by Share of the Value of Imports



Source: GAO analysis of U.S. Census trade statistics. | GAO-22-104564

Note: Commerce announced GAEs in an interim final rule published on December 14, 2020. 85 Fed. Reg. 81,060 (Dec. 14, 2020). To determine the imports before GAEs were created, we analyzed U.S. Census trade statistics from March 2018 through December 2020. To determine the imports after GAEs were created, we analyzed the trade statistics from January 2021 through May 2021.

While GAE status was intended for products that had not received objections, Commerce officials discovered an error in their GAE analysis. As a result, they told us they plan to revoke GAE status for 30 of the initial 123 HTSUS codes initially listed as covered by a general exclusion by the end of 2021. Commerce will revoke these after updating the analysis it used to determine eligibility with more recent data that takes into account objections submitted after the original analysis. After GAE status is revoked, importers will have to apply for exclusion for the products covered by a GAE if they want to have their import excluded from the section 232 tariffs. Commerce officials said they plan to identify additional steel and aluminum products for inclusion as GAEs in subsequent IFRs.

Volume certification requirement. In the December 2020 IFR, Commerce added a volume certification requirement to the exclusion request form. After receiving concerns about inflated requests from industry stakeholders, Commerce now requires requesters to specifically certify that the amount in their exclusion request is what is needed for their business purposes and that they will provide documentation of their past imports if requested. The December 2020 IFR states that this was done to help ensure that requesters do not submit requests for more than they need for their business purposes. Otherwise, according to

Commerce officials, requests containing inflated volume numbers could greatly affect steel and aluminum markets. The certification also states that it is a criminal offense to willfully make a false statement to the U.S. government (see fig. 6).²⁵

Figure 6: Volume Certification Attestation from the Department of Commerce’s Tariff Exclusion Request Form as of August 2, 2021

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: Commerce’s Exclusion Portal. | GAO-22-104564

Commerce officials said they do not independently confirm whether the requester actually requires the quantity requested or whether a domestic producer can produce the quantity it states it is able to provide. Officials said it would be inappropriate for Commerce to tell individual firms how much of a product they may need, or how much of a product a domestic producer could supply to any particular firm, and they do not have the resources to do so.

²⁵There is a similar reminder about making false statements on forms submitted by objectors. Those forms must also be signed to ensure that the signers are truthful about the products they claim they can deliver within the time frame specified.

Clarification of the “reasonably available” criterion. Commerce clarified the definition of “immediately available,” which gives objectors potentially more time to provide a comparable domestic product. The previous guidance stated that objectors must be able to manufacture the item within 8 weeks or Commerce might approve the exclusion request.²⁶ After domestic suppliers complained that they were being held to a higher standard, the December 2020 IFR clarified that “immediately” means produced and delivered within 8 weeks or, if that was not possible, then produced and delivered within a time frame that is equal to or earlier than the time needed to obtain the product from the requester’s foreign supplier. This clarification potentially results in a time frame longer than 8 weeks. As a result, domestic suppliers can object to an exclusion request as long as they are able to supply the product within 8 weeks or in the amount of time it takes a foreign supplier to deliver it.

Policy of partial approval. Commerce clarified its policy to reflect its practice of partially approving an exclusion request when an objector can produce and deliver more than 10 percent but less than 100 percent of a request. A domestic producer that objects to an exclusion request must state that it is capable of providing the product requested. Typically, Commerce denies a request for being reasonably available if an objector states that it is able to provide the entire amount of the requested product domestically. Although published guidance did not refer to the practice of approving partial exclusions until the December 2020 IFR, Commerce has made 287 partial approvals (less than 1 percent of all exclusion requests approved) since the exclusion process was created in 2018.²⁷ However, in the December 2020 IFR, Commerce announced to stakeholders that it may deny a portion of the requested amount if a domestic company says it is able to produce a portion of the request. For instance, if a domestic producer states that it can provide 25 percent of

²⁶We reported in September 2020 that Commerce officials said they exercised discretion when applying these criteria. For instance, ITA officials stated that they would typically recommend approving exclusion requests if objecting parties are unable to produce the requested product within an 8-week period. However, ITA also had the ability to recommend that BIS deny the request if ITA determined that a manufacturing time longer than 8 weeks would reasonably address the needs of the requester. We found that Commerce denied 201 steel and 21 aluminum requests submitted to Regulations.gov as of November 18, 2019 even though all of the objecting companies stated that it would take longer than 8 weeks to manufacture the product. We also found 6,548 instances where BIS denied the exclusion requests even though the objector had indicated it would possibly take longer than 8 weeks to provide the product. [GAO-20-517](#).

²⁷According to Commerce, it made 101 steel partial approvals and 140 aluminum partial approvals for submissions made through Regulations.gov, and 11 steel partial approvals and 35 aluminum partial approvals in the Exclusion Portal as of August 5, 2021.

the amount requested for exclusion, Commerce may approve only the remaining 75 percent for exclusion from the tariff.

Additional changes. Commerce made several more procedural changes and clarifications through the December 2020 IFR. For instance, Commerce made several clarifications, including the following:

- domestic producers have grounds to object to an exclusion request even if they are not currently producing the product;
- a single exclusion request can include a range of dimensions rather than a single, distinct dimension; and
- exclusions will generally be approved for 1 year from the date of the signature on the decision memorandum.

Further, Commerce reduced the page limits for exclusion requests and objections. It changed the 25-page limit for exclusions and objections to 5,000 words, and the 10-page limit for rebuttals and surrebuttals to 2,500 words. In addition, Commerce clarified that the 30-day period for objections starts at 11:59 p.m. on the day an exclusion request is posted in the Exclusion Portal.²⁸

Commerce Has Not Updated Its Public Guidance to Reflect Procedural Changes and Clarifications

Commerce has not updated its public guidance documents about the tariff exclusion process to encompass the changes made in the December 2020 IFR. Commerce's existing public guidance for the exclusion process includes a document of frequently asked questions (FAQ) and a user guide for the Exclusion Portal. None of the changes made in the December 2020 IFR, such as the creation of GAE, the clarification of the reasonably available criterion, the new certification requirement, and the clarification of the policy for partial approval, were reflected in this existing public guidance as of August 9, 2021.

Standards for Internal Control in the Federal Government states that management should externally communicate the necessary information to achieve the entity's objective, and that it should periodically review this information for continued relevance and effectiveness.²⁹ Commerce last updated its public guidance soon after it launched the Exclusion Portal in

²⁸See the December 2020 IFR for the complete list of changes. 85 Fed. Reg. 81,060.

²⁹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014), Principle 15 – Communicate Externally.

June 2019, more than 2 years ago.³⁰ Officials said that they have no policies to regularly review and update the public guidance, and no plans to update the public guidance until after Commerce publishes another IFR in late 2021, because Commerce updates guidance only as needed, on an ad-hoc basis.

Without updating the public guidance, objectors, requesters, and other stakeholders may be uninformed about important details regarding the procedures and criteria Commerce uses to decide exclusion requests. For example, Commerce warned all registered Exclusion Portal users by email on July 6, 2021, that failure to follow the new standards or provide all necessary evidence could result in a rejection. Commerce officials said they sent this email after receiving a high volume of emails from requesters and objectors with questions about the changes announced in the December 2020 IFR.

As a result of the outdated guidance, potential objectors may not know that they could submit an objection if they are able to produce only some of the requested amount. Additionally, potential objectors may be unaware that they could object based on a delivery time other than 8 weeks because of the updated definition of “immediately available,” thus missing the opportunity to tell Commerce they can provide the product. Also, potential requesters may waste resources applying for exclusions on products that are covered by GAE.³¹

Further, the existing guidance does not explain how allegations of violations of the new volume certifications may be reported to Commerce. Commerce officials said that the main sources of allegations regarding violations are objections, rebuttals, and surrebuttals submitted through the Exclusion Portal, which are gathered and investigated by the Commerce Office of Inspector General (OIG). This information does not

³⁰The 232 Exclusion Portal user guide was last updated July 18, 2019, and the FAQ was dated June 19, 2019. Commerce’s website also includes instructional videos that were published by BIS between January 8, 2020, and March 26, 2020. The instructional videos pull information from the user guide and direct users to consult the user guide for more detailed instructions.

³¹Commerce officials said requesters are still applying for exclusions for products covered by the GAEs, although the number of requests have declined. Commerce intends to eventually deactivate the HTSUS codes covered by the GAEs in the 232 Exclusion Portal.

appear in the published guidance.³² Potential certification violations or other misstatements could go unreported because requesters and objectors may not be aware of how to report them.

Commerce Has Reduced Its Overall Rejection Rate and Plans Additional Actions to Address Factors That Lead to Errors in Submitted Requests

Rejections delay relief for those requesting tariff exclusion and create additional work for Commerce. Requesters must submit a new request with the correct information, which Commerce accepts in the preclearance phase. Then the request can proceed to the other phases until Commerce ultimately approves or denies it. We previously recommended that the Secretary of Commerce direct BIS to identify, analyze, and respond to factors in the process that may cause requesters to make errors in the exclusion request form. Commerce has rejected a lower percentage of tariff exclusion requests submitted to the Exclusion Portal as of June 1, 2021, than it did requests submitted to Regulations.gov. However, according to Commerce officials, it has not addressed some factors that have caused about 40,000 requests to be rejected for containing errors since the program began over 3 years ago.

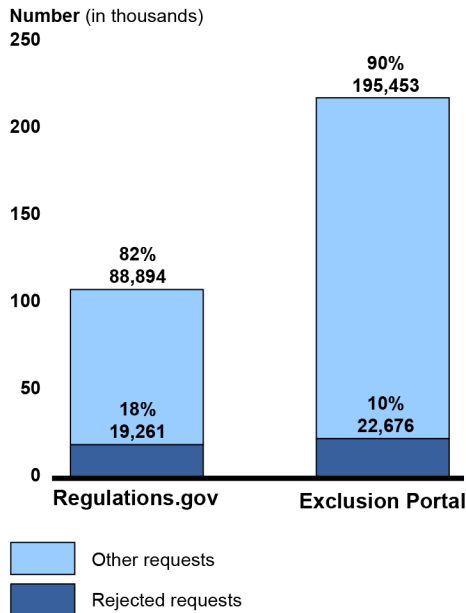
Commerce Has Rejected a Lower Percentage of Requests since It Implemented the Exclusion Portal

Commerce has reduced its rejection rate since our September 2020 report, rejecting a lower percentage of exclusion requests submitted to the Exclusion Portal than Regulations.gov. Of the total 218,129 exclusion requests submitted to the Exclusion Portal, Commerce rejected without further consideration 22,676 requests, or 10 percent, for containing errors in the request. The rejection rate for Exclusion Portal requests decreased from the rejection rate for requests submitted to Regulations.gov. We determined that as of November 18, 2019, Commerce had rejected 18 percent of all exclusion requests submitted to that website (see fig. 7).³³

³²As of July 9, 2021, the Commerce OIG told us that it had received eight complaints since fiscal year 2017. Five were sent back to BIS with no response required from the OIG, and the remaining three require a response and are still pending.

³³Individuals or organizations had submitted 92,527 steel and 13,628 aluminum requests to Regulations.gov as of November 18, 2019, and 202,565 steel and 15,564 aluminum exclusion requests to the Exclusion Portal as of June 1, 2021.

Figure 7: Percentage of Exclusion Requests Rejected without Decision in Regulations.gov and the Department of Commerce’s Exclusion Portal Website, March 18, 2018–June 1, 2021



Source: GAO analysis of Regulations.gov and Exclusion Portal data. | GAO-22-104564

Commerce rejected requests that did not contain required information such as a correct HTSUS code. According to Commerce officials, of all requests submitted to the Exclusion Portal that Commerce had rejected as of August 24, 2021, about 53 percent were rejected for inaccurate HTSUS codes, while about 38 percent were rejected for other errors, such as incomplete documentation. The exclusion request form asks that requesters provide information on the amounts, dimensions, chemistry, and other physical characteristics of the steel and aluminum products requested for exclusion.

In addition to these rejections, Commerce ultimately denied some exclusion requests that it initially accepted in the preclearance phase for having similar errors. Specifically, Commerce denied 1,192 requests that contained a technical error in the submitted exclusion request. These

denials represent about 5 percent of the 25,915 requests that Commerce denied in the exclusion portal.³⁴

Commerce Still Faces Challenges Addressing Factors That Lead to Errors in Submitted Requests

Commerce has analyzed factors in its process that caused a large number of requests to be rejected but has not yet addressed some of the identified issues. We previously recommended, after reviewing requests submitted to Regulations.gov, that the Secretary of Commerce direct BIS to identify, analyze, and respond to factors in the process that may cause errors in submitted requests.³⁵ In response to this recommendation, Commerce officials said that they had taken a number of actions to improve the process, such as launching the Exclusion Portal website.

As we reported in September 2020, rejections can create additional work for requesters and the agency. When rejecting requests, BIS officials must notify requesters by email. Requesters then may contact BIS or CBP by phone or email with questions about the cause of the error, make changes, and submit a new request. Requests revised and then submitted after a rejection are considered new requests. Requesters are not eligible for tariff relief retroactive to the date the first request is submitted, but to the date the new request is submitted if it is accepted by Commerce, according to Commerce officials.

Despite the overall reduction in the percentage of rejections, Commerce had rejected more than 20,000 requests submitted to the Exclusion Portal, as of June 1, 2020. Many companies submitted multiple requests during the past 3 years, and even importers with experience developing requests continue to receive a significant number of rejections for exclusion requests they submitted. For instance, one steel company submitted 5,542 exclusion requests to the Exclusion Portal from June 2019 to December 2020 and 2,218 of those requests—40 percent—were rejected without further consideration. These data indicate that the challenge of filing an accepted request is not limited to infrequent or inexperienced importers.

Commerce has taken steps to identify and analyze the factors in the process that may cause errors in submitted exclusion requests. For

³⁴For this analysis, we examined only exclusion requests submitted to the Exclusion Portal between June 2019 and December of 2020. Commerce denied 22,482 requests because it found evidence of domestic availability. We were unable to determine the reason for denial of 2,241 exclusion requests because of data gathering errors.

³⁵[GAO-20-517](#).

instance, the agency collected information and analyzed exclusion requests submitted to Regulations.gov and the Exclusion Portal that had been rejected as of November 19, 2020. That analysis identified a list of common reasons exclusion requests were rejected. According to that analysis, many requests submitted to the Exclusion Portal were rejected because information about the dimensions of the product being requested for exclusion was incorrect. For example, according to Commerce officials, some requests were rejected for including measurements that could not possibly be accurate given the product requested to be excluded from the tariff. Commerce’s analysis did not explain the reason why many requests contained inaccurate HTSUS codes.

According to Commerce officials, the agency is still working to examine the reasons exclusion requests are rejected in the Exclusion Portal and plans to take additional steps to further reduce the rejection rate. For instance, Commerce officials said they were considering but had not yet implemented additional data validation features in the Exclusion Portal that will prevent requests that do not contain certain required information from being submitted. BIS officials have discussed the development of a pre-screening tool for HTSUS codes to test whether the requester’s HTSUS code would pass CBP review before requests are submitted, but they have not established a timeline to implement this tool. Such additional actions to reduce errors could lead to fewer resubmitted requests, fewer delays, and less administrative burden.

Commerce Has Improved Timeliness Overall and Reduced Its Backlog, but Lags on Decision-making for Some Requests and Timeliness Guidance Has Not Been Updated

As of June 1, 2021, Commerce had decided over 80 percent of requests submitted to the Exclusion Portal within its established timeliness guidelines and had reduced its backlog of pending requests. However, Commerce did not decide 36 percent of the requests that received objections from domestic producers within those time frames, increasing uncertainty. Further, its public guidance does not reflect the time it often takes to decide many requests, and Commerce has not assessed and updated this guidance, which could leave requesters and objectors without important information.

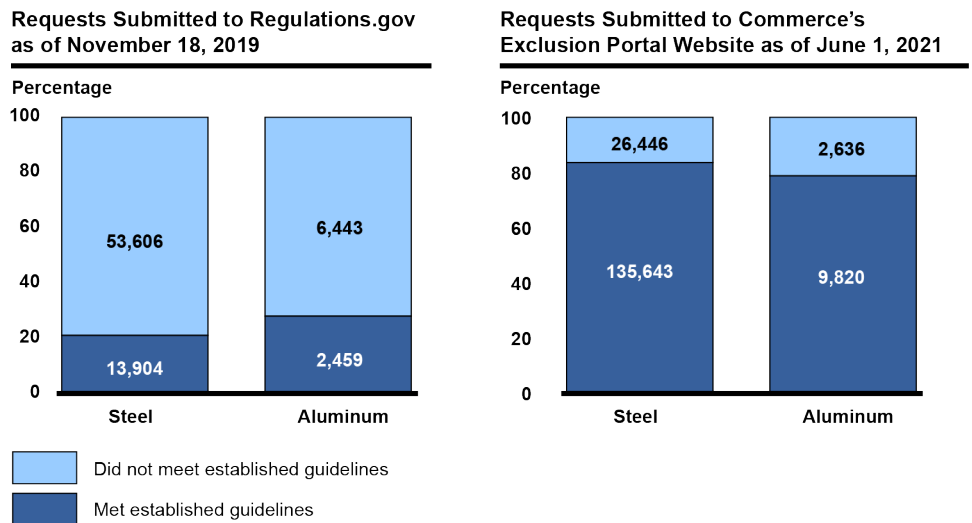
Commerce Has Reduced the Time It Takes to Decide Requests

Commerce has significantly reduced the time it takes to decide requests submitted to the Exclusion Portal compared with those submitted to Regulations.gov. According to its established timeliness guidelines,

Commerce will issue a decision in a specific time frame depending on whether the exclusion request received an objection, rebuttal, or surrebuttal. According to Commerce’s guidelines, no request should take longer than 149 days to process.

As we previously reported, as of November 18, 2019, Commerce had not decided about three-quarters of requests submitted to Regulations.gov within its established timeliness guidelines and had taken more than 1 year to decide 841 requests submitted to that website. We found that as of June 1, 2021, the number of exclusion requests meeting Commerce’s established timeliness guidelines had improved significantly since the introduction of the Exclusion Portal. Specifically, 83 percent of requests submitted to the Exclusion Portal were decided within Commerce’s guidelines, compared to 21 percent of requests submitted to Regulations.gov (see fig. 8).

Figure 8: Department of Commerce’s Performance in Meeting Its Timeliness Guidelines for Steel and Aluminum Tariff Exclusion Decisions



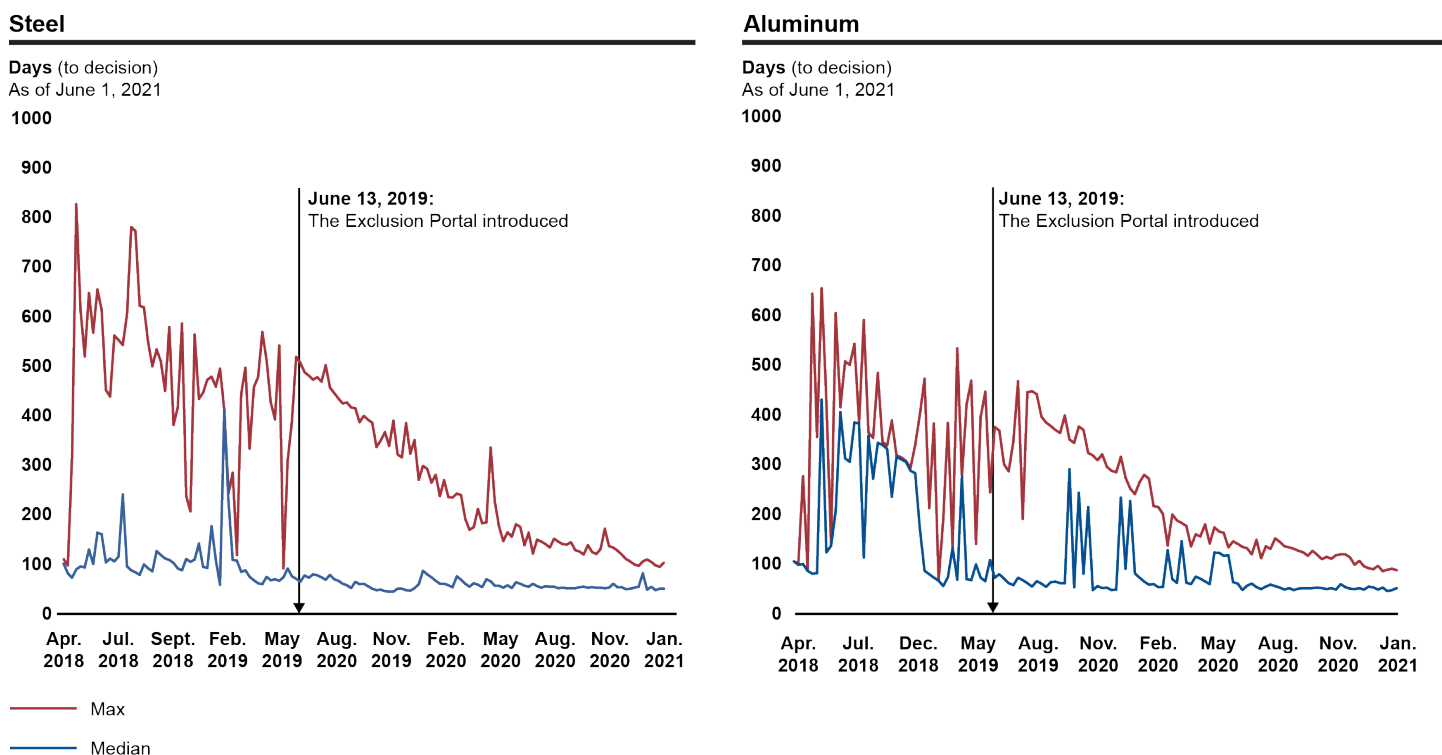
Source: GAO analysis of Regulations.gov and Exclusion Portal data. | GAO-22-104564

Commerce took steps to reduce the time that requests spend in various phases of the process. In our September 2020 report, we noted that Commerce was beginning to implement changes such as launching the Exclusion Portal, adjusting the number of staff reviewing submissions, approving as a standard practice all exclusion requests without an objection from a domestic producer, and adding a semi-automated review

of HTSUS codes. Since then, we found that Commerce had made additional changes in December 2020 meant to improve the timeliness of exclusion request decisions. For instance, as mentioned above, after reviewing the list of exclusion requests that did not receive objections, Commerce created a list of products eligible for General Approved Exclusion.

Our analysis of all exclusion requests found that the median number of days from submission to decision had generally decreased since the Exclusion Portal was introduced. Further, the maximum number of days requests remained pending in the process had declined (see fig. 9).

Figure 9: Median Number of Days Accepted Steel and Aluminum Requests Awaited a Decision by the Department of Commerce, by the Week the Request Was Received, April 2018–January 2021



Source: GAO analysis of Regulations.gov and Exclusion Portal data. | GAO-22-104564

Note: This analysis includes only requests that had been submitted and received a decision from Commerce as of January 1, 2021. None of the requests in this analysis were pending a decision as of June 1, 2021, when we conducted this analysis.

We previously found that Commerce frequently did not meet its timeliness guidelines for completing any of the individual phases of the process.

However, for requests submitted to the Exclusion Portal, Commerce has decreased the amount of time requests spend in those phases. For instance, steel requests submitted to Regulations.gov spent 59 days in the public comment phase, on average. In contrast, requests submitted to the Exclusion Portal spent just 36 days in this phase, on average (see table 1).

Table 1: Median Number of Days Steel and Aluminum Tariff Exclusion Requests with Objections Spent in Phases of the Department of Commerce’s Tariff Exclusion Process

Phase	Product type	Regulations.gov as of November 18, 2019	Exclusion Portal as of June 1, 2021
Phase 1: Preclearance	Steel	34	n/a
	Aluminum	50	n/a
Phase 2: Public Comment	Steel	59	36
	Aluminum	72	36
Phase 3: Evaluation and Recommendation	Steel	78	49
	Aluminum	72	64
Phase 4: Decision	Steel	52	19
	Aluminum	48	23

Legend: n/a = not available

Source: GAO analysis of Regulations.gov and Exclusion Portal data. | GAO-22-104564

Notes: Because of limitations with Commerce data, for the Regulations.gov analysis, we examined a subset of 11,005 steel and 2,193 exclusion requests to determine the average length of time they spent in each phase of the process. The analysis of Regulation.gov data examined only exclusion requests that received an objection, as exclusion requests that received no objections proceed directly to the decision phase. Further, we did not examine the preclearance phase (Phase 1) of the process for requests submitted to the Exclusion Portal because of data readability limitations.

Commerce Has Reduced Its Backlog of Exclusion Requests Pending Decision

We previously found that Commerce had accumulated a backlog of about 28,000 pending requests, many of which had already exceeded Commerce’s established internal timeliness guidelines. Since our September 2020 report, Commerce has decided all requests in Regulations.gov. Commerce now has exclusion requests pending only in the Exclusion Portal. As of June 1, 2021, Commerce was in the process of deciding 9 percent (17,064 of 191,609) of all accepted exclusion requests submitted to the Exclusion Portal (see table 2 for a detailed breakout).

Table 2: Department of Commerce Decisions on Accepted Steel and Aluminum Exclusion Requests Submitted to the Exclusion Portal, as of June 1, 2021

Status	Steel products		Aluminum products	
	Number of requests	Percentage	Number of requests	Percentage
Approved	120,723	68	9,908	77
Partially approved ^a	11	0	35	0
Denied	41,355	23	2,513	19
Subtotal	162,089	91	12,456	96
Pending	16,570	9	494	4
Total	178,659	100	12,950	100

Source: GAO analysis of Exclusion Portal data. | GAO-22-104564

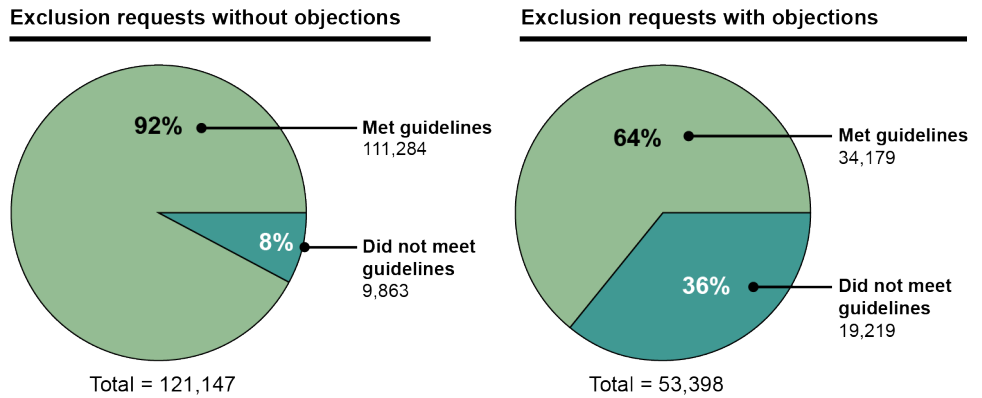
^aFor these exclusion requests, Commerce had approved less than the total amount requested for exclusion.

None of these pending requests had yet exceeded Commerce’s established internal timeliness guidelines, thus indicating that Commerce had significantly reduced the backlog of pending requests. According to Commerce documents, the number of undecided exclusion requests decreased from 39,500 in June 2019 (with 25,600 actively awaiting review by BIS or ITA after finishing the public comment phase) to 21,300 in August 2021 (with 12,400 actively awaiting BIS or ITA review.)

Commerce Has Not Met Its Time Frames for Many Exclusion Requests That Received Objections

Commerce is still less likely to meet its established timeliness guidelines if a domestic producer submitted an objection to the request. Commerce processed 92 percent of the 121,147 exclusion requests submitted to the Exclusion Portal that did not receive objections within established timeliness guidelines. However, of the 53,398 requests that did receive objections, decisions for only 64 percent of these requests met the timeliness guidelines (see fig. 10). Specifically, decisions for 35 percent of steel requests and 56 percent of aluminum requests with objections did not meet timeliness guidelines. In contrast, decisions for only 8 percent of steel and aluminum requests without objections did not meet those guidelines.

Figure 10: Department of Commerce Decisions on Tariff Exclusion Requests, with and without Objections, That Met Its Established Timeliness Guidelines as of June 2021



Source: GAO analysis of Exclusion Portal data. | GAO-22-104564

We previously recommended that the Secretary of Commerce direct BIS to identify, assess, and make program changes to address issues that have impeded timeliness and created the backlog of exclusion requests. The agency identified specific steps to reduce the number of decisions that do not meet timeliness guidelines. For example, Commerce streamlined its review process so that exclusion requests without an objection are not required to go through the evaluation and recommendation phase of the process.

According to Commerce officials, the agency will continue to identify, assess, and address issues that affect timeliness in the Exclusion Portal. However, Commerce has not identified specific steps, such as developing new procedures or techniques or reallocating resources, to similarly improve the timeliness of decisions for requests with objections. If Commerce does not take further steps to address the number of exclusion requests with objections that do not meet its timeliness guidelines, a significant number of requesters may continue to face delays.

Commerce Has Not Assessed and Updated Its Public Guidance to Ensure It Accurately Reflects the Time It May Take to Decide Requests

Commerce has not assessed and adjusted its public guidance outlining the amount of time the agency says it will take to decide an exclusion request. Requesters and objectors rely on this guidance to develop business expectations. According to federal internal control standards, agencies determine when to revise a baseline to reflect changes in the internal control system. Further, management should externally communicate the necessary quality information to achieve the entity's objectives.³⁶

In a user guide for the Exclusion Portal available on Commerce's website, which was last updated in July 2019, the agency states that most exclusion requests will be decided within 90 days. However, this information is inconsistent with expectations established by other time frames stated in the IFRs and internal documentation, which lay out a process expected to take up to 149 days. As previously mentioned, according to Commerce officials, the agency updates its public guidance only as needed, on an ad-hoc basis.

Despite the improved timeliness, Commerce's guidance does not accurately reflect the amount of time Commerce has taken in the past to decide requests with and without an objection. We found that Commerce had exceeded the 90-day time frame stated in the user guide for more than half of all requests that received objections in the Exclusion Portal. Of the exclusion requests submitted to the Exclusion Portal that received an objection, Commerce on average took 143 days to decide them. Of the requests with objections, 25 percent of steel requests took longer than 141 days to decide while 25 percent of aluminum requests took longer than 275 days to decide. In contrast, requests without an objection were decided in about 45 days, half of the publicly posted time frame. Without guidance that accurately reflects how long Commerce may take to decide requests both with and without an objection, participants may not have quality information, increasing confusion and business uncertainties for requesters and objectors alike.

Conclusions

Commerce has made a number of changes to the procedures it uses to decide exclusion requests since it introduced its Exclusion Portal website, including creating a category of exclusion that generally applies to eligible steel and aluminum products. However, lacking a policy on periodically reviewing and updating the information it presents to the public, Commerce has not updated the existing 2-year-old public guidance to

³⁶[GAO-14-704G](#), Principle 15 – Communicate Externally.

reflect these changes. As a result, requesters and domestic producers may be uninformed about important details regarding the procedures and criteria Commerce uses to decide exclusion requests and, therefore, may miss opportunities to receive relief from tariffs or to submit objections.

In September 2020, we recommended that the agency identify, analyze, and respond to factors that may cause errors in submitted materials. Commerce has made some improvements but still rejects tens of thousands of requests before any further consideration because they contain errors. These rejections will continue to delay any potential tariff relief for those resubmitting exclusion requests and create additional work for Commerce. The agency expects to take further steps to reduce this number and continue to address our previous recommendation.

Commerce has improved the timeliness of its exclusion decisions overall and reduced its backlog of undecided requests. If Commerce makes additional progress on our previous recommendation and improves the timeliness of its decision-making for requests with objections, fewer companies should experience long waiting periods before finding out the outcomes. However, more than one-third of exclusion requests with objections still have not been decided within Commerce's established timeliness guidelines. Because it has no policy to do so, Commerce has not assessed and updated its public guidance to ensure it is consistent and reflects the time it takes the agency to decide requests with and without objections. This situation can add to business uncertainty for those companies requesting relief from the tariffs.

Recommendations for Executive Action

We are making the following two recommendations to Commerce:

The Secretary of Commerce should ensure that the Acting Under Secretary of Commerce for Industry and Security creates a policy to regularly review and update the public Section 232 exclusion process guidance. (Recommendation 1)

The Secretary of Commerce should ensure that the Acting Under Secretary of Commerce for Industry and Security creates a policy to regularly assess and update its public guidance to ensure that it is consistent and accurately reflects the time the agency takes to decide exclusion requests. (Recommendation 2)

Agency Comments

We provided a draft of this report to Commerce and DHS for review and comment. In its comments, reproduced in appendix II, Commerce concurred with both of our recommendations. We requested comments

from DHS, but none were provided. Commerce and DHS provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Commerce, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://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. 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 II.



Kimberly M. Gianopoulos
Director, International Affairs and Trade

List of Requesters

The Honorable Ron Wyden
Chairman
Committee on Finance
United States Senate

The Honorable Thomas R. Carper
United States Senate

The Honorable Pat Toomey
United States Senate

The Honorable Andy Barr
House of Representatives

The Honorable French Hill
House of Representatives

The Honorable Bill Pascrell
House of Representatives

The Honorable Jackie Walorski
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report evaluates steps the Department of Commerce has taken since it launched its Exclusion Portal in June 2019. Specifically, this report examines the extent to which Commerce (1) issued public guidance that reflects procedural changes for deciding tariff exclusion requests, (2) continues to reject requests because of errors in the submissions, and (3) reduced the time it takes to decide exclusion requests and updated its timeliness guidance.

The scope of our review includes

- exclusion requests submitted through Regulations.gov from the start of the Section 232 exclusion request process in March 19, 2018, to the day that Commerce stopped using Regulations.gov to accept requests on June 12, 2019; and
- exclusion requests submitted to the Exclusion Portal from the launch of the website on June 13, 2019, to June 1, 2021.

To determine the changes Commerce made to the procedures it uses to decide tariff exclusion requests and the extent to which its public guidance reflects those changes, we reviewed relevant interim final rules (IFR) published by Commerce, in addition to publicly available Commerce documents and internal agency documents and process manuals. In particular, we examined an IFR released in December 2020 that contains changes Commerce made since our September 2020 report on this topic. After identifying changes Commerce made to its procedures, we reviewed its existing public guidance on the exclusion process, which includes a document of frequently asked questions (FAQ) and a user guide for the Exclusion Portal published on the Exclusion Portal website—to determine the extent to which it reflected the procedural changes.¹ We assessed these materials against *Standards for Internal Control in the Federal Government*.²

To determine the extent to which Commerce reduced the number of exclusion requests rejected because of errors in the submitted request, we analyzed data we received from Commerce and data gathered from the Exclusion Portal, the Federal Document Management System, and

¹The 232 Exclusion Portal user guide was last updated July 18, 2019, and the FAQ was dated June 19, 2019. Commerce's website also includes instructional videos that were published by BIS between January 8, 2020, and March 26, 2020. The instructional videos pull information from the user guide and direct users to consult the user guide for more detailed instructions.

²[GAO-14-704G](#), Principle 15 – Communicate Externally.

through Regulations.gov. After previously using Regulations.gov to receive exclusion requests, Commerce began using a new online system to receive and decide exclusion requests for steel or aluminum products from Section 232 tariffs (exclusion requests), the Section 232 Exclusion Portal, in June 2019. In our last report on this subject, we did not analyze exclusion requests Commerce had processed using its new online exclusion portal since at the time of our review Commerce had not posted enough decisions on the Exclusion Portal to form an analyzable sample. For this report, we examined all of the 324,284 steel and aluminum exclusion requests submitted to both of those websites as of June 1, 2021.

For our review of requests submitted to Commerce’s Exclusion Portal, we examined data from 202,565 steel and 15,564 aluminum exclusion requests submitted to that website from its launch on June 13, 2019, to June 1, 2021 (see table 3).

Table 3: Department of Commerce Decisions on Steel and Aluminum Exclusion Requests Submitted to the Exclusion Portal and the Outcome of Those Requests, June 13, 2019–June 1, 2021

Submitted exclusion requests		Steel		Aluminum		Combined steel and aluminum	
		Number	Percentage	Number	Percentage	Number	Percentage
Status of submitted exclusion request after the preclearance phase	Rejected	20,509	10	2,167	14	22,676	10
	Withdrawn	3,397	2	447	3	3,844	2
	Accepted	178,659	88	12,950	83	191,609	88
	Total	202,565	100	15,564	100	218,129	100
Outcomes of accepted exclusion requests	Approved	120,723	68	9,908	77	130,631	68
	Partially approved ^a	11	0	35	0	46	0
	Denied	41,355	23	2,513	19	43,868	23
	Pending	16,570	9	494	4	17,064	9
	Total	178,659	100	12,950	100	191,609	100

Source: GAO analysis of Exclusion Portal data. | GAO-22-104564

^aFor these exclusion requests, Commerce had approved less than the total amount requested for exclusion.

We compared data on requests submitted to the Exclusion Portal to our findings from our previous work examining requests submitted to Regulations.gov. That analysis examined 92,527 steel and 13,628 aluminum exclusion requests submitted to Regulations.gov, as shown in table 4. In that report, we examined the status of all exclusion requests

submitted to Regulations.gov as of November 18, 2019, though at the time of that review, Commerce had not decided all requests submitted to that website. As of June 1, 2021, Commerce had no pending requests remaining in Regulations.gov.

Table 4: Department of Commerce Decisions on Steel and Aluminum Exclusion Requests Submitted to Regulations.gov and the Outcome of Those Requests, March 19, 2018–June 12, 2019

Submitted exclusion requests		Steel		Aluminum		Combined steel and aluminum	
		Number	Percentage	Number	Percentage	Number	Percentage
Status of submitted exclusion request after the preclearance phase	Rejected	16,631	18	2,630	19	19,261	18
	Withdrawn	870	1	189	1	1,059	1
	Accepted	75,026	81	10,809	79	85,835	81
	Total	92,527	100	13,628	100	106,155	100
Outcome of accepted exclusion requests	Approved	48,672	65	7,798	72	56,470	66
	Partially approved ^a	105	0	44	0	149	0
	Denied	18,733	25	1,060	10	19,793	23
	Pending decision	7,516	10	1,907	17	9,423	11
	Total	75,026	100	10,809	100	85,835	100

Source: GAO analysis of Regulations.gov data. | GAO-22-104564

Notes: This table includes all exclusion requests submitted through Regulations.gov from March 19, 2018, through June 12, 2019. Percentages may not sum to totals because of rounding.

^aFor these exclusion requests, Commerce had approved less than the total amount requested for exclusion.

We compared rates of rejection for requests submitted to Regulations.gov with requests submitted to the Exclusion Portal. We presented data on the status of each request, for instance, whether the request was pending or decided, for the Exclusion Portal as of June 1, 2021, and Regulations.gov as of November 18, 2019. In some cases, we used supplemental information provided by Commerce to help describe the reasons Commerce rejected exclusion requests submitted to each website. We assessed steel and aluminum requests separately to identify potential differences between the two industries. We used *Standards for Internal Control in the Federal Government* to identify whether the agency needed to take steps to address the rate of rejections for exclusion requests.

To identify the percentage of steel and aluminum imports by value, subject and not subject to the Section 232 tariffs, we used U.S. Census

import statistics. We calculated the total import value of all products with Harmonized Tariff Schedule of the United States (HTSUS) codes listed in Presidential Proclamations 9704 (for aluminum) and 9705 (for steel). To determine the total import value of products not covered under the Section 232 tariffs, we calculated the total import value for products with HTSUS codes not in the proclamations mentioned above but listed in Chapters 72, 73 (for steel) and 76 (for aluminum) of the HTSUS.

To determine the extent to which Commerce reduced the time it takes to decide exclusion requests and whether it met its timeliness guidelines, we reviewed agency documents and interviewed agency officials to identify the guidelines Commerce had established for how long the agency should take to decide exclusion requests, both overall and within each phase of the process. We reviewed the IFR of September 11, 2018,³ and a Commerce procedure manual that contained established review timelines as well as deadlines for phases of the review process. We then obtained non-public agency records and available data on exclusion requests submitted through Regulations.gov from March 19, 2018, to June 12, 2019, and requests submitted to the Exclusion Portal from June 13, 2019, to June 1, 2021. Using these data, we conducted an analysis generating statistics on various aspects of the process, including the median, maximum, and average number of days it took Commerce to decide exclusion requests. We then compared these statistics against the agency's timeliness guidelines to determine how often it met those guidelines. We did not update our analysis of Regulations.gov data to reflect subsequent decisions.

For our analysis examining the time an exclusion request spent in individual phases of the process, we calculated the time it spent in a specified segment of the review process. Because of limitations with Commerce data, for the portion of the analysis examining the timeliness of the phases in Regulations.gov, we examined only a subset of 11,005 steel and 2,193 aluminum exclusion requests with available data to determine the average time Commerce spent in each phase of the process. These were submitted exclusion requests with objections that Commerce's International Trade Administration (ITA) had reviewed, for which the timeliness data concerning the evaluation and recommendation phase of the process were available. As a result, this portion of the analysis examined the timeliness of only about 15 percent (13,198 out of

³83 Fed. Reg. 46,026 (Sept. 11, 2018).

85,835) of the exclusion requests submitted from July 1, 2018, to November 18, 2019.

To ensure the reliability of all the data examined within this report, we performed extensive electronic testing for errors in the data obtained. For instance, we worked to identify instances of decisions, objections, and rebuttals posted before requesters had submitted the exclusion request. We also tested electronically for outlier values in the exclusion requests themselves to find instances in which a recorded value was in pounds in one request but tons in another. Finally, we did an extensive manual examination of samples of the records at different points throughout the engagement to ensure reliability. We found that these data obtained from Regulations.gov, the Exclusion Portal, and Commerce were sufficiently reliable for our review of various aspects of the exclusion process.

Finally, we reviewed agency documents and spoke with officials from Commerce's Bureau of Industry and Security and ITA to identify the factors that affected the timeliness of their decisions and the steps Commerce had taken to improve timeliness. We also reviewed Commerce's public guidance to determine the amount of time Commerce stated it would take to decide exclusion requests. We used *Standards for Internal Control in the Federal Government* to determine whether the agency had documented its guidelines as directed.

We conducted this performance audit from October 2020 to December 2021 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.

Appendix II: Comments from the Department of Commerce



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

November 30, 2021

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, *Commerce Should Update Public Guidance to Reflect Changes in the Exclusion Process* (GAO-22-104564, December 2021).

The Department of Commerce concurs with the two recommendations in the Draft Report. Further, we appreciate that GAO has noted that the Section 232 Exclusions Portal, which was implemented in June 2019, has resulted in substantial improvements to the 232 Exclusions Process. The Bureau of Industry and Security will also submit technical edits in response to its review of the draft report. We 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.

Sincerely,

WYNN COGGINS Digitally signed by WYNN COGGINS
Date: 2021.11.30 12:26:29 -05'00'

Wynn W. Coggins

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Kimberly Gianopoulos, (202) 512-8612, gianopoulosk@gao.gov

Staff Acknowledgments

In addition to the contact named above, Adam Cowles (Assistant Director), Anthony Costulas (Analyst-in-Charge), James Boohaker, Ming Chen, Debbie Chung, William Johnson, Chris Keblitis, Lauren Lochocki, Grace Lui, Andrew Olson, and Sam Portnow made key contributions to this report.

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