

JACKIE WALORSKI  
2ND DISTRICT, INDIANA

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON WORKER  
AND FAMILY SUPPORT  
RANKING MEMBER

SUBCOMMITTEE ON OVERSIGHT

COMMITTEE ON ETHICS

419 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-3915

202 LINCOLNWAY EAST  
SUITE 101  
MISHAWAKA, IN 46544  
(574) 204-2645

## Congress of the United States

House of Representatives

Washington, DC 20515-1402

October 17, 2019

The Honorable Wilbur Ross  
Secretary  
Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

Dear Secretary Ross,

I write to renew yet again my strong concerns surrounding the exclusion process for the Section 232 steel and aluminum tariffs run by the Department of Commerce (“the Department”), which continues to be plagued by a glaring lack of transparency, fairness, efficiency, and consistency. Nevertheless, I hope that we can work to understand and resolve these issues to improve the process for all participants.

That said, I begin by noting that the Department has yet to provide a substantive and comprehensive response to my letters dated March 11 and April 30 that raised numerous serious concerns with the process. Thus, in hopes of making true and lasting improvements, I am also sending this letter and the previous correspondence to relevant House and Senate Appropriations Committees, the House Ways and Means and Senate Finance Committees, the Government Accountability Office, and the Office of Inspector General for the Department of Commerce.

According to statistics compiled by my office, from February 26 (the first day decisions were released for requests that completed the rebuttal and surrebuttal process) through October 10, the Department has released 11,501 steel and 621 aluminum decisions in which it made a clear determination as to the domestic availability of the product. Of those, 1,919 and 175 respectively were approved, resulting in 16.69% and 28.18% rates of approval.

In this and other correspondence, I have asked for explanations regarding decisions that, on their face, seem to run counter to the facts presented by both sides, usually to the detriment of the requester. I have also pointed out instances where it seems that the Department has bent or ignored its own regulations. These, too, are typically to the detriment of the requester. Looking at the numerous examples across the three letters, it is difficult not to believe that there is a finger on the scale favoring objectors. Unfortunately, the Department has done little to dispel this notion, either.

Below, you will find yet more issues and questions concerning the exclusion process. I expect to receive a response to this and the previous correspondence as soon as possible.

1. All statistics and examples cited in this letter only cover requests submitted through regulations.gov. Unfortunately, my office has been unable to download any data from the new 232 exclusion portal since it went live in June 2019, having been informed that there is an issue with its API. In the interest of transparency, this must be resolved immediately, as it is nearly impossible to gain an understanding of how the portal is functioning otherwise.
2. According to statistics compiled by my office, as of October 10, 2019, 517 (505 steel and 12 aluminum) requests<sup>1</sup> have been posted on regulations.gov for 365 days or more without a decision. 18 of them (16 steel and 2 aluminum) have been posted for 500 days or more. 29 of them (27 steel and 2 aluminum) drew no objections. Additionally, between September 27, 2019 and October 10, 2019, the Department rendered 69 steel decisions<sup>2</sup> whose requests were posted on regulations.gov for 365 days or more. 36 of them drew no objections.
  - a. What is the reason for such a long delay on the requests with no decision?
  - b. Why did some of these decisions take over a year to adjudicate?
  - c. Is 500 days an acceptable amount of time for a requester to wait to get a decision?
  - d. Is the Department taking steps to expedite the remaining requests with no decision that have already waited over a year?
  - e. What is the reason for such a long delay on the requests with no objections?
3. The Department's September 11, 2018 Federal Register notice<sup>3</sup> states, "All objections to submitted exclusion requests must be in electronic form and submitted to the Federal rulemaking portal (<http://www.regulations.gov>) no later than 30 days after the related exclusion request is posted." However, according to statistics compiled by my office, as of October 10, 2019, there were 82 (62 steel and 20 aluminum) objections<sup>4</sup> that were submitted more than 30 days after the request was posted. Why were these objections posted and the underlying requests put into the rebuttal and surrebuttal process?
  - a. Why were these late objections posted?
  - b. Why were late objections apparently put through the rebuttal and surrebuttal process?
  - c. Did the Department factor these late objections into its decisions for the underlying requests? If so, why?
4. My office has heard anecdotally from requesters whose submissions were rejected because they apparently contained too many documents – for instance, the Excel request form and two PDFs with supporting information. The Department told the requesters that only two documents – the Excel request form and one PDF with supporting information – were allowed and forced them to resubmit the request.

However, it appears that no such requirement exists. The Excel request form only says: "Organizations electing to attach supporting documents must provide these documents in

---

<sup>1</sup> See Figure 1 in Supporting Information for specific examples

<sup>2</sup> See Figure 2 in Supporting Information for specific examples

<sup>3</sup> <https://www.federalregister.gov/documents/2018/09/11/2018-19662/submissions-of-exclusion-requests-and-objections-to-submitted-requests-for-steel-and-aluminum>

<sup>4</sup> See Figure 3 in Supporting Information for specific examples

PDF format and it must not exceed 25 pages.”<sup>5</sup> Indeed, “documents” is plural, apparently confirming that multiple supporting documents are allowed. Additionally, my office was unable to find a reference to such a limitation in any Federal Register notice, FAQ, or other Department document. Though my office did not hear of participants’ rebuttals or surrebuttals being rejected, it is worth noting that the Excel rebuttal<sup>6</sup> and surrebuttal<sup>7</sup> forms have identical language to the request form, except allowing for a maximum of ten pages instead of 25.

On the other hand, the Excel objection form *is* explicit about the number of documents that is allowed (emphasis added): “Organizations electing to attach supporting documents must provide a **single submission** only in PDF format that must not exceed 25 pages in total.”<sup>8</sup>

The number of documents is not at issue here. The Department is free to set such limitations. The issue is that the Department has been completely inconsistent in its application of this requirement. For instance, according to statistics compiled by my office, as of October 10, 2019, there are at least<sup>9</sup> 609 postings with 3+ documents.<sup>10</sup>

Postings with 3+ Documents	
Steel Requests	34
Steel Objections	180
Steel Rebuttals	239
Steel Surrebuttals	25
Aluminum Requests	80
Aluminum Objections	6
Aluminum Rebuttals	45
Aluminum Surrebuttals	0

For requests, where the document limit does not explicitly exist but was enforced, 114 were posted anyway. For objections, where the attachment limit does explicitly exist but apparently was not enforced, 186 were posted anyway. As noted earlier, it is unclear whether the limit exists for rebuttals and surrebuttals, but 284 and 25 respectively were posted.

- a. What is the Department’s policy on the number of supporting documents allowed?
- b. Why was there inconsistent treatment for requests, which do not have an explicit limit, and objections, which do have an explicit limit?
- c. Why were some requests with 3+ documents rejected, while others were posted?

<sup>5</sup> Steel: <https://www.regulations.gov/contentStreamer?documentId=BIS-2018-0006-0002&contentType=excel12book>  
 Aluminum: <https://www.regulations.gov/contentStreamer?documentId=BIS-2018-0002-6338&contentType=excel12book>

<sup>6</sup> Steel: <https://www.regulations.gov/contentStreamer?documentId=BIS-2018-0006-45144&contentType=excel12book>  
 Aluminum: <https://www.regulations.gov/contentStreamer?documentId=BIS-2018-0002-4393&contentType=excel12book>

<sup>7</sup> Steel: <https://www.regulations.gov/contentStreamer?documentId=BIS-2018-0006-45145&contentType=excel12book>  
 Aluminum: <https://www.regulations.gov/contentStreamer?documentId=BIS-2018-0002-4394&contentType=excel12book>

<sup>8</sup> Steel: <https://www.regulations.gov/contentStreamer?documentId=BIS-2018-0006-0003&contentType=excel12book>  
 Aluminum: <https://www.regulations.gov/contentStreamer?documentId=BIS-2018-0002-0003&contentType=excel12book>

<sup>9</sup> Regulations.gov will only export 103,000 rows worth of data, so this is an incomplete data set since there are well over 103,000 entries, and it would be too time intensive to identify each and every entry with 3+ documents

<sup>10</sup> See Figure 4 in Supporting Information for specific examples

- d. Did the Department stop enforcing the document limitation for requesters? If so, because resubmitting the request with two documents likely reset the date at which a requester is eligible for a refund on duties paid, did the Department take any steps to make whole those whose requests were initially rejected?
  - e. If the document limit does exist for requests, how was this communicated?
  - f. If the document limit does exist for requests, why were 114 posted?
  - g. Why were 186 objections that exceeded the explicit document limit posted?
  - h. Were objections that exceeded the explicit document limit but were posted taken into consideration for the underlying request?
5. The Department’s September 11, 2018 Federal Register notice<sup>11</sup> states, “For persons seeking to submit confidential or proprietary business information (CBI), the 232 submission available to the public must contain a summary of the CBI in sufficient detail to permit a reasonable understanding of the substance of the information... Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure.”

However, according to an analysis conducted by my office of publicly-available microdata covering submissions through June 17, 2019,<sup>12</sup> a vast majority of objections made no effort to summarize the data, as required by the regulations. As you can see below, most (93.4% steel and 98.9% aluminum) objections list a city where the product in question could be produced, but only 30.5% of steel and 31.1% of aluminum objections list capacity and 30.1% of steel and 31.1% of aluminum list utilization.

Given that raising capacity utilization is a stated goal of the steel and aluminum tariffs,<sup>13</sup> it seems that this is a rather crucial piece of information being omitted.

<b>Objections Listing City, State, Capacity, and Utilization</b>		
	<b>Steel</b>	<b>Aluminum</b>
<b>Total Objections (through June 17, 2019)</b>	<b>22210</b>	<b>2456</b>
Number Objections Listing City	20741	2430
Percent Objections Listing City	93.4%	98.9%
Number Objections Listing Capacity	6773	763
Percent Objections Listing Capacity	30.5%	31.1%
Number Objections Listing Utilization	6745	763
Percent Objections Listing Utilization	30.1%	31.1%

- a. Does the Department consider objections that did not include or make an effort to summarize capacity and/or utilization data, as required by the regulations, to be correctly submitted? If so, what is the reasoning?

<sup>11</sup> <https://www.federalregister.gov/documents/2018/09/11/2018-19662/submissions-of-exclusion-requests-and-objections-to-submitted-requests-for-steel-and-aluminum>

<sup>12</sup> Steel: <https://quantgov.org/wp-content/uploads/2019/08/Steel-Microdata-with-objections-June-17.xlsx>

Aluminum: <https://quantgov.org/wp-content/uploads/2019/08/Aluminum-Microdata-with-objections-June-17.xlsx>

<sup>13</sup> <https://www.govinfo.gov/content/pkg/FR-2019-05-21/pdf/2019-10759.pdf>

- b. If not, why were they posted?
- c. If not, did the Department make an effort to inform objectors who omitted this information that they were submitting incorrect objections and give them an opportunity to remedy the deficiencies?
- d. Many objections that omitted capacity and/or utilization data<sup>14</sup> state that they consider the information to be confidential business information and would be willing to share the data upon request. Did the Department request this important data? If not, why?
- e. As you can see below, the vast majority of requests that had one or more objections missing capacity and/or utilization data were denied. If such objections were not considered correctly submitted, did the Department factor these objections in any way as it was evaluating the underlying requests? If so, why?

<b>Decisions vs. Requests with 1+ Objections Missing Capacity and/or Utilization</b>		
	<b>Steel</b>	<b>Aluminum</b>
Requests Approved with 1+ Objections Missing Capacity	1548	147
Requests Denied with 1+ Objections Missing Capacity	8643	409
Requests Approved with 1+ Objections Missing Utilization	1489	147
Requests Denied with 1+ Objections Missing Utilization	8518	409

6. The Department’s September 11, 2018 Federal Register notice<sup>15</sup> defines production in a “sufficient and reasonably available amount” to mean that “a product is currently being produced or could be produced ‘within eight weeks’ in the amount needed in the business activities of the user of steel [or aluminum]...described in the exclusion request.”

However, an analysis conducted by my office of microdata covering submissions through March 18, 2019 reveals concerning trends in objectors’ stated, or more often unstated, ability to manufacture the product in question.

As you can see below, 1,086 steel objections did not answer Question 3.a on the Excel objection form,<sup>16</sup> which asks what percentage of the amount requested the objector can manufacture “on a timely basis.” Additionally, over 6,800 steel objections did not answer Questions 3.b, 3.c, and 3.d on the Excel objection form, which ask for the timeline to manufacture and deliver the product in question.

Furthermore, in many cases, the delivery timeline claimed by the objectors was well beyond the 56 days required by the regulations. Of the 12,739 steel objections that answered Question 3.b (days to ship from the objector’s plant from the time the order is received), 8,668 (68.0%) listed an answer that was greater than 56 days. In fact, the average timeline cited by steel objectors was 76.7 days, 20 days more than the 56-day timeframe in the regulations.

<sup>14</sup> Two such examples can be found at <https://www.regulations.gov/document?D=BIS-2018-0006-9575> and <https://www.regulations.gov/document?D=BIS-2018-0006-11203>

<sup>15</sup> <https://www.federalregister.gov/documents/2018/09/11/2018-19662/submissions-of-exclusion-requests-and-objections-to-submitted-requests-for-steel-and-aluminum>

<sup>16</sup> Steel: <https://www.regulations.gov/contentStreamer?documentId=BIS-2018-0006-0003&contentType=excel12book>  
Aluminum: <https://www.regulations.gov/contentStreamer?documentId=BIS-2018-0002-0003&contentType=excel12book>

To put a finer point on this, when considering only responses to Question 3.b, 15,471 (79.2%) of the 19,542 objections under examination appear to be deficient: 6,803 did not answer or attempt to summarize an answer to the question, while another 8,668 gave an answer that was beyond the timeline specified in the regulations.

So too is it with Questions 3.c and 3.d. For Question 3.c, 13,798 (70.6%) of the objections are similarly deficient, while 10,188 (52.1%) are deficient vis-à-vis Question 3.d.

<b>Responses to Objection Questions 3.a, 3.b, 3.c, and 3.d</b>		
	<b>Steel</b>	<b>Aluminum</b>
Total Objections (through March 18, 2019)	19542	933
<b>3.a (What percentage can be made)</b>		
Objections that did not answer	1086	25
Objections responding less than 100%	1462	99
<b>3.b (Days to ship from plant from time order received)</b>		
Objections that did not answer	6803	54
Objections responding over 8 weeks (56 days)	8668	449
Average days	76.7	49.3
Median days	84	60
<b>3.c (Days to manufacture from time order received)</b>		
Objections that did not answer	6803	54
Objections responding over 8 weeks (56 days)	6995	87
Average days	67.0	38.7
Median days	65	49
<b>3.d (Delivery time)</b>		
Objections that did not answer	6826	55
Objections responding over 8 weeks (56 days)	3362	0
Average days	32.0	2.9
Median days	7	3

- a. Does the Department consider objections that did not answer Questions 3.a, 3.b, 3.c, and/or 3.d to be correctly submitted? If so, what is the reasoning?
- b. If not, why were they posted?
- c. If not, did the Department make an effort to inform objectors who omitted this information that they were submitting incorrect objections and give them an opportunity to remedy the deficiencies?
- d. Many objections that did not answer one or more of these questions <sup>17</sup> state that they consider the information to be confidential business information and would be willing to share it upon request. Did the Department request this important data? If so, at what point in evaluating the request did the Department request it? If not, why not?

<sup>17</sup> Two such examples can be found at <https://www.regulations.gov/document?D=BIS-2018-0006-1940> and <https://www.regulations.gov/document?D=BIS-2018-0006-3699>

- e. As the below table shows, the Department denied thousands of requests where the objector failed to answer Questions 3.a, 3.b, 3.c, and/or 3.d. If such objections were not considered correctly submitted, did the Department factor these objections in any way as it was evaluating the underlying requests? If so, why?
- f. As the below table shows, the Department denied outright 1,095 requests where the objector stated they could not fulfill 100% of the tonnage in the exclusion request. The Department has stressed in previous conversations with my office that it has flexibility to partially approve a request. Why did the Department not use that flexibility in these cases? For instance, request BIS-2018-0006-20993 drew one objection (BIS-2018-0006-37239) that stated it could only fulfill 75% of the order. However, the Department ruled in decision memo BIS-2018-124891 that the product is made domestically “in a sufficient and reasonably available amount and of a satisfactory quality.” If the only objector could not fulfill 100% of the tonnage, why did the Department not grant an exclusion for 25% of the requested amount?
- g. Has the Department partially granted any exclusion requests, either for a percentage of the requested amount or for a duration of more or less than a year?
- h. As the below table shows, the Department denied thousands of requests where the objector stated it could deliver the product in a timeline greater than 56 days. What is the reasoning for denying the requests if the objectors could not deliver the product “immediately,” as required by the Department’s regulations? Did the Department contact objectors who cited a longer timeline to ensure that they could, in fact, meet the 56-day timeline before denying the underlying request?

<b>Decisions vs. Responses to Objection Questions 3.a, 3.b, 3.c, and 3.d</b>		
	<b>Steel</b>	<b>Aluminum</b>
Total Requests	17540	843
Total Decisions	16462	666
Requests with 1+ Objections Leaving 3.a Blank	1064	23
Requests Denied	587	4
Requests with 1+ Objections Having 3.a Less Than 100%	1385	98
Requests Denied	1095	4
Requests with 1+ Objections Leaving 3.b Blank	5854	52
Requests Denied	4729	4
Requests with 1+ Objections Having 3.b Greater Than 56 Days	8086	445
Requests Denied	6789	248
Requests with 1+ Objections Leaving 3.c Blank	5854	52
Requests Denied	4729	4
Requests with 1+ Objections Having 3.c Greater Than 56 Days	6543	87
Requests Denied	5726	24
Requests with 1+ Objections Leaving 3.d Blank	5874	53
Requests Denied	4749	5
Requests with 1+ Objections Having 3.d Greater Than 56 Days	3206	0
Requests Denied	2735	0

7. According to information compiled by my office, as of October 10, 2019, there are 136 requests<sup>18</sup> that drew one objection, from Republic Steel, who that cited the facility in Lorain, Ohio as the location where the product could be manufactured.

The Republic Steel facility in Lorain was in the process of being restarted at the time of the objections, and it appears the restart timeline has slipped at least twice. For instance, in objection BIS-2018-0006-45467 that was posted on September 13, 2018, Republic states in Question 3.e that it is “re-starting its Lorain 9”-10” rolling mill in October 2018 in order to roll and deliver the identified steel product, beginning in December, 2018.” However, it also contains a press release from June 20, 2018 stating that it would be “restarting the 9”/10” rolling mill at its Lorain, OH plant in September 2018,” which suggests one missed deadline.

Objection BIS-2018-0006-82678 was posted on November 16, 2018 and did not give an indication that the facility had restarted in October. In fact, the objection used word-for-word the exact same timeline and tenses as BIS-2018-0006-45467. It again also included the press release that projected a September 2018 restart. Objection BIS-2018-0006-98981 that was posted on February 12, 2019 continued to cite the same October 2018 timeline and included the same June 2018 press release.

A January 2019 press release shifted the timeline to the 2nd Quarter of 2019.<sup>19</sup> Objection BIS-2018-0006-92199 that was posted on February 19, 2019 confirmed this new timeline, stating that the “restarting of the Lorain rolling mill [is] anticipated to be in the 2nd Quarter of 2019.” There have been no press releases or other updates on the progress since then. A Google search<sup>20</sup> returned no significant updates since January, save for two articles about oil spills at the site. The most recent Republic objection that cited the Lorain facility (BIS-2018-0006-148057) was posted on June 14, 2019 and still refers to plans to restart the facility.

To sum up, the 136 requests in Figure 4 were all posted between August 8 and December 17, 2018, though the vast majority (120) were filed between August 8 and September 7. All 136 only drew one objection, which was from Republic Steel. In each request, Republic only cited its Lorain, Ohio facility as being capable of manufacturing the product in question. The Lorain facility was in the process of restarting, but the timeline apparently slipped twice (from September to October and from October to the less specific “2nd Quarter”). There does not appear to be publicly available information showing that the Lorain facility has fully restarted production.

However, despite all 136 requests having this same basic fact pattern, the Department’s decisions seem to have been decided by the toss of a coin. There is no consistency in the outcomes: 51 were approved, while 85 were denied, with the Department finding that the product is made domestically “in a sufficient and reasonably available amount and of a satisfactory quality.” The below table shows that filing a rebuttal did not appear to affect the odds of being approved, except in the few cases where a surrebuttal was not filed.

---

<sup>18</sup> See Figure 5 in Supporting Information for specific examples

<sup>19</sup> <https://www.cleveland.com/business/2019/01/republic-steel-plans-to-reopen-lorain-mill.html>

<sup>20</sup>

<https://www.google.com/search?q=%22Republic+Steel%22+Lorain&tbm=nws&source=Int&tbs=sbd:1&sa=X&ved=0ahUKEwiK99nV0JLIhUiTt8KHTRvDR4QpwUIIA&biw=1658&bih=942&dpr=1>

<b>Decisions vs. Objection/Rebuttal/Surrebuttal in Lorain Objections</b>				
<b>Type</b>	<b>Approved</b>	<b>Denied</b>	<b>Total</b>	<b>Approval Rate</b>
Objection Only	13	21	34	38.2%
Objection + Rebuttal	7	1	8	87.5%
Objection + Rebuttal + Surrebuttal	31	63	94	33.0%
Total	51	85	136	37.5%

The next table shows that the seven companies requesting exclusions did not receive consistent outcomes. The two companies with the lion's share (96) of the requests in question were approved 45.0% and 30.4% of the time. Only two received either all approvals or all denials (one other company had only one request). The final two had an outlier approval or denial for some reason.

<b>Decisions vs. Company in Lorain Objections</b>				
<b>Company</b>	<b>Approved</b>	<b>Denied</b>	<b>Total</b>	<b>Approval Rate</b>
Acument Global Technologies, Inc.	9	0	9	100.0%
Cold Heading Company	18	22	40	45.0%
Hercules Drawn Steel Corporation	0	2	2	0.0%
JFE Shoji Trade America Inc.	1	0	1	100.0%
Johnstown Wire Technologies, Inc	5	1	6	83.3%
KAMAX Limited Partnership	1	21	22	4.5%
Stanley Black & Decker	17	39	56	30.4%

The third table shows that the tariff code did not generally receive consistent outcomes. Only two HTS codes with more than one request received either all approvals or all denials, while the rest fell somewhere in between. The two HTS codes with most (88) of the requests were approved 31.1% and 25.9% of the time.

<b>Decisions vs. HTS Code in Lorain Objections</b>				
<b>HTS Code</b>	<b>Approved</b>	<b>Denied</b>	<b>Total</b>	<b>Approval Rate</b>
7213200010	3	4	7	42.9%
7213913015	19	42	61	31.1%
7213913093	0	1	1	0.0%
7213990030	2	5	7	28.6%
7213990060	1	0	1	100.0%
7213990090	1	0	1	100.0%
7217105030	3	2	5	60.0%
7217108010	0	5	5	0.0%
7227906010	7	20	27	25.9%
7227906030	4	0	4	100.0%
7227906035	4	2	6	66.7%
7227906040	2	3	5	40.0%
7227906090	5	1	6	83.3%

The final table shows that the tonnage requested did not appear to generally impact a decision. Lower-volumes requests tended to get approved slightly more often than higher-volume requests. It should also be noted that six of the requests did not list the volume in the correct field of the Excel request form, yet five were approved and one was denied. Those six are not included in the below table.

<b>Decisions vs. Tonnage Requested in Lorain Objections</b>				
<b>Amount</b>	<b>Approved</b>	<b>Denied</b>	<b>Total</b>	<b>Approval Rate</b>
0-49,999 kgs	14	19	33	42.4%
50,000-299,999 kgs	12	25	37	32.4%
300,000-999,999 kgs	13	20	33	39.4%
1,000,000-7,499,999 kgs	7	20	27	25.9%

- a. Why did this similar fact pattern not lead to similar outcomes?
  - b. Given the lack of public evidence that the Lorain facility has fully restarted, did the Department confirm with Republic Steel that the facility was fully restarted before denying the 85 requests? If it did not, why not? If it did and the facility was not restarted, why were any requests denied?
  - c. In each objection,<sup>21</sup> Republic Steel answered “Yes” to Question 1.c, which asks if the product in question is “currently manufactured” (emphasis added by the Department) or if it can “immediately be made (within 8 weeks).” However, as Republic readily admits in that same document, the facility in question has not been fully restarted and is not currently manufacturing anything. How did the Department consider these two clearly conflicting statements in its analysis?
  - d. Though most of the requests were posted between August 8 and September 7, 2018, the Department did not start to render decisions on these requests until February 26, 2019, which was closer to Republic’s eventual timeline of the 2nd Quarter of 2019 but well beyond the timeline stated in the original objections. Does the Department judge when a product can be made “immediately” based on when the objection was filed or at some later point as it conducts its analysis? If the latter, where is this authority specified in the Department’s regulations? If the latter, given that this is new information introduced presumably either during the surrebuttal stage or even after the rebuttal and surrebuttal process has run its course, does a requester have an opportunity to rebut any of the claims?
8. According to information compiled by my office, the Department denied 35 requests<sup>22</sup> from the same company, Best Stainless & Alloys, LP for the following reason: “Customs and Border Protection has advised BIS that the product description is inconsistent with the claimed classification under the Harmonized Tariff Schedule of the United States, providing the following guidance: HTSUS does not exist.”<sup>23</sup> In other words, the tariff code claimed

<sup>21</sup> A representative example can be found here: <https://www.regulations.gov/document?D=BIS-2018-0006-101775>

<sup>22</sup> See Figure 6 in Supporting Information for specific examples

<sup>23</sup> For a representative example: <https://www.regulations.gov/document?D=BIS-2018-0006-180757>

(7222.20.0075)<sup>24</sup> does not exist. However, the Department has also approved 81 requests from the same company for the same tariff code.

- a. If this tariff code indeed does not exist, why were the requests posted in the first place?
  - b. If Customs and Border Protection (CBP) has said that the tariff code in question does not exist, why were some requests approved?
  - c. None of the requests that were denied drew any objections. Yet 32 of the 35 requests were posted on regulations.gov for 364 days before they were finally denied. Two were posted for 412 days, while one was posted for 358 days. Why did it take a year to determine that the tariff code did not exist?
  - d. Does the new 232 exclusion portal prevent submissions of non-existent tariff codes?
9. According to statistics compiled by my office, between September 11, 2018 (when the rebuttal and surrebuttal process began) and October 10, 2019, 7,543 requests (6,911 steel and 632 aluminum) have been denied because Customs and Border Protection (CBP) advised that the wrong tariff code was used in the request. 1,057 of the requests (965 steel and 92 aluminum) were posted on regulations.gov for 200 days or more before being denied. 195 steel requests were posted for 300 days or more and 3 steel requests were posted for 400 days or more. 846 of the requests (829 steel and 17 aluminum) went through the rebuttal and surrebuttal process. As a reminder, the next step for the requester is to petition CBP for an e-ruling to obtain the correct tariff code and resubmit the request, starting all over again.

<b>Requests Denied for Using Wrong Tariff Code (from September 11, 2018 through October 10, 2019)</b>			
	<b>Steel</b>	<b>Aluminum</b>	<b>Total</b>
Total Denied for Wrong Tariff Code	6911	632	7543
Waited 0-99 Days	2684	115	2799
Waited 100-199 Days	3262	425	3687
Waited 200-299 Days	770	92	862
Waited 300-399 Days	192	0	192
Waited 400-425 Days	3	0	3
Denied for Wrong Tariff Code with 1+ Objections	829	17	846

- a. Why did so many requests take over 200 days before being denied for using the wrong tariff code?
- b. Why did so many requests go through the rebuttal and surrebuttal process, which wastes the time of the requester, the objector, and the Department's staff, before being denied for using the wrong tariff code?
- c. Is the Department planning to increase or otherwise alter the frequency or substance of its interactions with CBP in order to prevent such long wait times in these cases?
- d. Does the new 232 exclusion portal prevent such long wait times before being informed that the wrong tariff code was used?

<sup>24</sup> For a representative example: <https://www.regulations.gov/document?D=BIS-2018-0006-14982>

10. My office has heard from companies having a great deal of trouble trying to import under the quotas that apply to certain countries that have negotiated country exemptions from tariffs under Section 232. While CBP also has a role in the administration of the quotas, it appears that one key obstacle lies in the Department's interpretation of the application of exclusions from the quotas. Companies have reportedly been told by the Department that an exclusion from a quota only applies after the yearly quota is reached and that all imports (including by importers that have been granted an exclusion) count against the annual quota until it is exhausted. Because the quotas are administered on both an annual and a quarterly basis, this means that the exclusion can only be used in the 4th Quarter of a year, as opposed to year-round.

If, as the Department finds when it approves an exclusion request, the product in question is not manufactured in the United States in a sufficient quantity or quality, it would seem more appropriate to allow exclusions to be used without detracting from the overall quota on both an annual and a quarterly basis too. Otherwise, this makes importing vital inputs or other products uneven and unpredictable, which makes it incredibly difficult for companies operating in the United States employing hardworking Americans to plan for orders, pricing, and employment. Is the Department planning to change or clarify its interpretation to ensure that the quotas are administered in a more logical manner?

11. Two requests – BIS-2018-0006-18990 and 111220 – were denied on May 13, 2019 and September 30, 2019, respectively. In both cases, the Department found that the products in question are made domestically “in a sufficient and reasonably available amount and of a satisfactory quality.” However, no objection appears on regulations.gov for either request. It appears, based on the fact that both have rebuttals posted, that there were objections, which were withdrawn at some point. Indeed, the objections are referenced in the rebuttals – BIS-2018-0006-37635 and 144530 respectively – and show up in regulations.gov as having been withdrawn “Per company’s request.”

- a. Why were these requests that had no posted objections denied?
- b. When were the objections withdrawn and why did they apparently factor into these denials?
- c. Do withdrawn objections factor into the Department’s analysis? If so, why?

12. According to information compiled by my office, the Department approved 33 aluminum requests<sup>25</sup> for Metal Exchange Corporation on September 18, 2019. However, those 33 approvals were changed to denials on October 4, 2019, with the Department finding the product “is produced in the United States in a sufficient and reasonably available amount and of a satisfactory quality.” The Department cited “System Error”<sup>26</sup> in withdrawing the approvals.

- a. Why were these approvals reversed?
- b. Why did it take 16 days for the approvals to be reversed?

---

<sup>25</sup> See Figure 7 in Supporting Information for specific examples

<sup>26</sup> <https://www.regulations.gov/docketBrowser?rpp=50&so=ASC&sb=docId&po=18500&dct=PS&D=BIS-2018-0002>

- c. What was the "System Error" cited by the Department?
- d. Did the Department notify the Metal Exchange Corporation of the change in decision and explain why? If not, why not?
- e. In the 16 days between the initial reversal and eventual denial, were any refunds on tariffs paid out to Metal Exchange Corporation? If so, what happened to those funds?

My office continues to stand ready to assist you and your Department in bringing more transparency, fairness, efficiency, and consistency to the exclusion process for all participants.

Thank you in advance for your prompt response to this inquiry.

Sincerely,



JACKIE WALORSKI  
Member of Congress

CC: The Honorable Richard Neal, Chairman, House Ways and Means Committee  
The Honorable Kevin Brady, Ranking Member, House Ways and Means Committee  
The Honorable Chuck Grassley, Chairman, Senate Finance Committee  
The Honorable Ron Wyden, Ranking Member, Senate Finance Committee  
The Honorable Nita Lowey, Chairwoman, House Appropriations Committee  
The Honorable Kay Granger, Ranking Member, House Appropriations Committee  
The Honorable José Serrano, Chairman, House Appropriations Committee,  
Subcommittee on Commerce, Justice, Science, and Related Agencies  
The Honorable Robert Aderholt, Ranking Member, House Appropriations Committee,  
Subcommittee on Commerce, Justice, Science, and Related Agencies  
The Honorable Richard Shelby, Chairman, Senate Appropriations Committee  
The Honorable Patrick Leahy, Vice Chairman, Senate Appropriations Committee  
The Honorable Jerry Moran, Chairman, Senate Appropriations Committee,  
Subcommittee on Commerce, Justice, Science, and Related Agencies  
The Honorable Jeanne Shaheen, Ranking Member, Senate Appropriations Committee,  
Subcommittee on Commerce, Justice, Science, and Related Agencies  
The Honorable Gene Dodaro, Comptroller General of the United States  
The Honorable Peggy Gustafson, Inspector General of the U.S. Department of Commerce