

RECORD OF PUBLIC COMMENTS

NOTIFICATION OF INQUIRY:

Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Publication in *Federal Register*: May 26, 2020 (85 FR 31441)
Comments due July 10, 2020

	SOURCE¹	SIGNER(S) OF COMMENT	DATE
1.	Anonymous	Anonymous	5/28/20
2.	Business Results LLC	Mike Tanchuk	5/28/20
3.	Tree Island Wire USA Inc	Brian Liu	5/29/20
4.	Individual	Prabhakar Agrawal	6/1/20
5.	Anonymous	Anonymous	6/3/20
6.	Brunner and Lay	T Farrell	6/4/20
7.	Anonymous	Anonymous	6/10/20
8.	Zurn Industries, LLC	Ana M. Esper	6/12/20
9.	Anonymous	Anonymous	6/19/20
10.	Webco Industries	David E. Boyer	6/19/20
11.	Metropolitan Staple Corp.	Howard Kastner	6/23/20
12.	American Iron & Alloys LLC	Rick Janes	7/2/20
13.	Preferred Wire Products, Inc.	Robert Actis Jr	7/7/20
14.	Micro Stamping Corporation	Brian Semcer	7/7/20
15.	Norca Industrial Company LLC	Juan Garibaldi	7/8/20
16.	POSCO-America, Corp.	Jung-Jyn Ha	7/8/20
17.	Valbruna Slater Stainless, Inc.	Valter Viero	7/8/20
18.	Sumitomo Corporation of Americas Tubular Products Group	Tubular Products Group	7/8/20
19.	Muangthong Aluminium Industry Company Limited	Kanakan Chonnucha	7/8/20
20.	The Japan Iron and Steel Federation (JISF)	Shunichi Uchiyama	7/9/20
21.	Prysmian Group North America	Brian Schulties	7/8/20
22.	Air Conditioning, Heating, and Refrigeration Institute (AHRI)	James K. Walters	7/9/20
23.	Sumitomo Corporation of the Americas	Chad Foster	7/9/20
24.	UP	Jaimie Ryan	7/9/20
25.	Felker Brothers Corporation	Jeff Wefel	7/9/20

¹ Sources followed by an asterisk also submitted Business Confidential comments.

26.	Anonymous	Anonymous	7/9/20
27.	Universal Stainless	Brian A. Kane	7/9/20
28.	Autoform Tool & Mfg. Inc.	Gregory J.Durante	7/9/20
29.	Voestalpine Group.	Anonymous	7/9/20
30.	California League of Food Producers	Trudi Hughes	7/9/20
31.	MAHLE Behr USA Inc.*	Daniel Roberts	7/10/20
32.	Constellium	Christophe Vescovi	7/10/20
33.	Ball Corporation	Dan Cosio	7/10/20
34.	Schagrín Associates	Roger B. Schagrín, Christopher T. Cloutier	7/10/20
35.	Steel Warehouse	Marc Lerman	7/10/20
36.	Steel Warehouse ²	Marc Lerman	7/10/20
37.	ERD Metal Inc.	Ender Guneyman	7/10/20
38.	NLMK	Robert D. Miller	7/10/20
39.	California Steel Industries, Inc.	Anonymous	7/10/20
40.	Coalition of American Metal Manufacturers and Users (CAMMU)	Paul Nathanson	7/10/20
41.	Government of Brazil	Aluisio De Lima Campos	7/10/20
42.	American Iron and Steel Institute (AISI)	Kevin M. Dempsey	7/10/20
43.	Anonymous	Anonymous	7/10/20
44.	The J.M. Smucker Company	Julia L. Sabin	7/10/20
45.	Steel Manufacturers Association (SMA)	Philip K. Bell	7/10/20
46.	United States Steel Corporation (U.S. Steel)	Matthew J. McConkey	7/10/20
47.	Nucor Corporation (Nucor)	Alan H. Price	7/10/20
48.	American Line Pipe Producers Association (ALPPA)	Timothy C. Brightbill, Tessa V. Capeloto	7/10/20
49.	Commercial Metals Company (CMC)	Alan H. Price, John R. Shane, Tessa V. Capeloto	7/10/20
50.	Gerdau Long Steel North America (Gerdau)	Alan H. Price John R. Shane Tessa V. Capeloto	7/10/20
51.	Mercatus Center, George Mason University	Christine McDaniel	7/10/20
52.	Kopo International, Inc.	Andrew Towey	7/10/20
53.	Magellan Corporation (Magellan)	David Craven	7/10/20
54.	Crown Cork & Seal USA, Inc.	Carlos Baila	7/10/20
55.	Motor & Equipment Manufacturers Association (MEMA)	Leigh Merino	7/10/20
56.	Industrial Fasteners Institute (IFI)	Dan Walker	7/10/20
57.	Alliance for American Manufacturing (AAM)	Scott N. Paul	7/10/20
58.	Century Aluminum Company	Robert E. DeFrancesco	7/10/20
59.	Vallourec USA Corporation*	Chris Cunningham	7/10/20

² Commenter requested their comment 36 to supersede their submitted comment 35. Both comments 35 and 36 are posted in www.regulations.gov

60.	Congress of the United States House of Representatives	Rep. Jackie Walorski	7/10/20
61.	Erasteel Inc.	Christophe Lemaire	7/10/20
62.	Mauser Packaging Solutions	Les Bradshaw	7/10/20
63.	Arconic Corporation	Mark J. Vrablec	7/10/20
64.	New Castle Stainless Plate, LLC	Michael J. Stateczny	7/10/20
65.	Crucible Industries	John Shiesley	7/10/20
66.	Tri Star Metals, LLC	Nick Pigott	7/10/20
67.	The Aluminum Association	Lauren Wilk	7/10/20
68.	Aleris	Patrick McCabe	7/10/20
69.	Aleris Lewisport	Patrick McCabe	7/10/20
70.	United Aluminum	John Lapidés	7/10/20
71.	Conagra Brands, Inc.	Megan L. Garcia	7/10/20
72.	Tata Steel Europe	Joel D. Kaufman, Thomas J. Trendl, Stephanie W. Wang	7/10/20
73.	National Foreign Trade Council (NFTC)	Vanessa Sciarra	7/10/20
74.	Electralloy	Tracy Rudolph	7/10/20
75.	Beer Institute	Jim McGreevy	7/10/20
76.	Specialty Steel Industry of North America (SSINA)*	Dennis M. Oates	7/10/20
77.	Now Plastics, Inc.	David Craven	7/10/20
78.	Ardagh Metal Beverage USA	Jennifer Cumbee	7/10/20
79.	Ardagh Metal Beverage USA ³	Jennifer Cumbee	7/10/20
80.	Can Manufacturers Institute (CMI)	Robert Budway	7/10/20
81.	Central National Gottesman Inc. (CNG)	Howard Herman	7/10/20
82.	The American Petroleum Institute (API)	Stephen E. Comstock	7/10/20

³ Comments 78 and 79 appear to be the same, but were submitted as two separate submissions in www.regulations.gov, so both are posted in [regulations.gov](http://www.regulations.gov).

accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Richard E. Ashooh,
Assistant Secretary for Export Administration.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 200514-0140]

RIN 0694-XC058

Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry with request for comment.

SUMMARY: In rendering decisions on requests for exclusions from the tariffs and quotas imposed on imports of steel and aluminum articles, the Bureau of Industry and Security (BIS) is seeking public comment on the appropriateness of the information requested and considered in applying the exclusion criteria, and the efficiency and transparency of the process employed.

DATES: Comments must be received by BIS no later than July 10, 2020.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (www.regulations.gov). The www.regulations.gov ID for this rule is: BIS-2020-0012. Please refer to RIN 0694-XC058 in all comments and in the subject line of email comments.

Material submitted by members of the public that is properly marked business confidential information and accepted as such by the Department will be exempted from public disclosure as provided for by § 705.6 of the National Security Industrial Base Regulations (15 CFR parts 700 to 709) (“NSIBR”).

Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential submission which can be placed in the public file on <http://www.regulations.gov>.

Communications from agencies of the United States Government will not be made available for public inspection. For comments

submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC”. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The non-confidential version must be clearly marked “PUBLIC”. The file name of the non-confidential version should begin with the character “P”. The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a “P” or “BC” will be assumed to be public and will be placed in the public file on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For questions regarding this Notice of Inquiry, contact Erika Maynard at 202-482-5572 or via email Erika.Maynard@bis.doc.gov.

SUPPLEMENTARY INFORMATION: On January 11, 2018, the Secretary of Commerce (Secretary) transmitted a report to the President on his investigation into the effect of imports of steel articles on the national security of the United States. On January 19, 2018, the Secretary similarly transmitted a report to the President on his investigation into the effect of imports of aluminum articles on the national security of the United States. Both reports were issued pursuant to Section 232 of the Trade Expansion Act of 1962, as amended.

In Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States), and Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States), the President concurred in the Secretary’s findings that aluminum articles and steel articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States. The President therefore decided to take initial action to address the threatened impairment by adjusting the imports of aluminum articles, as defined in Clause 1 of Proclamation 9704, as amended, by imposing a 10 percent ad valorem tariff on such articles imported from most countries, beginning March 23, 2018. The President similarly decided to take initial action by adjusting the imports of steel articles, as defined in Clause 1 of Proclamation 9705, as amended, by imposing a 25 percent ad valorem tariff on such

articles imported from most countries, beginning March 23, 2018. In subsequent Proclamations, the President imposed quotas on imports of steel and aluminum from Argentina, and steel from Brazil and the Republic of Korea.

Exclusion Process

Proclamations 9704 and 9705 authorized the Secretary to provide relief from the additional duties imposed on steel and aluminum imports for any steel or aluminum determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or based on specific national security considerations, after a request for relief is made by a directly affected party located in the United States.

On March 19, 2018, the Bureau of Industry and Security issued the interim final rule *Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the filing of Objections to Submitted Exclusion Requests for Steel and Aluminum* (83 FR 12106) which established the exclusion request process authorized by Proclamations 9704 and 9705.

On August 29, 2018, Proclamations 9776 and 9777 authorized the Secretary to provide relief from quantitative restrictions (quotas) on steel and aluminum imports established by prior proclamations using the same criteria set forth in Proclamations 9704 and 9705 and further authorized all relief granted to be retroactive to the date the request was accepted by the Department of Commerce.

On September 11, 2018, BIS issued a second interim final rule *Submission of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum* (83 FR 46026), which revised the exclusion request process, including the addition of rebuttal and surrebuttal submissions.

On June 10, 2019, BIS issued a third interim final rule *Implementation of New Commerce Section 232 Exclusions Portal* (84 FR 26751), which transitioned the exclusion request process from the www.regulations.gov platform to the Section 232 Exclusions Portal.

To further inform the public on how to use the exclusion process BIS has posted website guidance, Frequently Asked Questions, and training videos.

As of March 23, 2020, BIS has received 179,128 exclusion requests, with 157,983 for steel and 21,145 for aluminum. Of those requests, 34,970

were rejected and 33,297 received objections. BIS has posted 114,009 decisions, with 78,569 exclusions being granted and 25,440 exclusion requests being denied.

BIS is seeking public comment on the appropriateness of the factors considered, and the efficiency and transparency of the process employed, in rendering decisions on requests for exclusions from the tariffs and quotas imposed on imports of steel and aluminum articles.

Specific topics for potential comments include: (1) The information sought on the exclusion request, objection, rebuttal and surrebuttal forms; (2) expanding or restricting eligibility requirements for requestors and objectors; (3) the Section 232 Exclusions Portal; (4) the requirements set forth in **Federal Register** Notices, 83 FR 12106, 83 FR 46026, and 84 FR 26751; (5) the factors considered in rendering decisions on exclusion requests; (6) the information published with the decisions; (7) the BIS website guidance and training videos; (8) the definition of “product” governing when separate exclusion requests must be submitted; and (9) incorporation of steel and aluminum derivative products into the product exclusion process.

Comments can also address potential revisions to the exclusion process, including, but not limited to: (1) One-year blanket approvals of exclusion requests for product types that have

received no objections as of a baseline date (see Annex 1 and 2); (2) one-year blanket denials of exclusion requests for product types that have received 100 percent objection rates and never been granted as of a baseline date (see Annex 3 and 4); (3) time-limited annual or semi-annual windows during which all product-specific exclusion requests and corresponding objections may be submitted and decided; (4) issuing an interim denial memo to requesters who receive a partial approval of their exclusion request until they purchase the domestically available portion of their requested quantity; (5) requiring requestors to make a good faith showing of the need for the product in the requested quantity, as well as that the product will in fact be imported in the quality and amount, and during the time period, to which they attest in the exclusion request (e.g., a ratified contract, a statement of refusal to supply the product by a domestic producer); (6) requiring objectors to submit factual evidence that they can in fact manufacture the product in the quality and amount, and during the time period, to which they attest in the objection; (7) setting a limit on the total quantity of product that a single company could be granted an exclusion for based on an objective standard, such as a specified percentage increase over a three year average; (8) requiring that requesters citing national security reasons as a basis for an exclusion

request provide specific, articulable and verifiable facts supporting such assertion (e.g., a Department of Defense contract requiring the product; a letter of concurrence from the head of a U.S. government agency or department that national security necessitates that the product be obtained in the quality, quantity and time frame requested); (9) clarifying that the domestic product is “reasonably available” if it can be manufactured and delivered in a time period that is equal to or less than that of the imported product, as provided by requestor in its exclusion request; (10) requiring that requestors, at the time of submission of their exclusion requests, demonstrate that they have tried to purchase this product domestically; (11) in the rebuttal/surrebuttal phase, requiring that both requestor and objector demonstrate in their filings that they have attempted to negotiate in good faith an agreement on the said product (i.e., producing legitimate commercial correspondence).

Any specific details about the commenters’ experience with the exclusion/objection process as background to their comment to this NOI would be helpful.

Richard E. Ashooh,
Assistant Secretary for Export Administration.

Annex 1: Steel HTS Codes With 0% Objection Rates

232 PROCESS STATISTICS—OBJECTION RATE BY STEEL HTSUS, AS OF 3/23/20

HTSUS code	HTS description	Requests	Requests with objections	Objection rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection *
7208370060	FLAT-ROLLED IRON/NA STL, WIDTH >= 600MM, HOT-RLD, NOT CLAD/ PLATED/COATED, COILS, NOT PCKLD, THK 4.75-10MM, NESOI.	2	.....	0	454	.....	0	0
7208380015	FLAT-ROLLED IRON/NA STL, WIDTH >= 600MM, HOT-RLD, NOT CLAD/ PLATED/COATED, COILS, THK 3-4.75MM, HIGH-STRENGTH STL.	2	.....	0	1,000	.....	0	0
7208380030	FLAT-ROLLED IRON/NA STL, WIDTH >= 600MM, HOT-RLD, NOT CLAD/ PLATED/COATED, COILS, THK 3-4.75MM, UNTRIMMED EDGES.	4	.....	0	49,000	.....	0	0
7208390015	FLAT-ROLLED IRON/NA STL, WIDTH >= 600MM, HOT-RLD, NOT CLAD/ PLATED/COATED, COILS, THK < 3MM, HIGH-STRENGTH STL.	4	.....	0	2,000	.....	0	0
7208390090	FLAT-ROLLED IRON/NA STL, WIDTH >= 600MM, HOT-RLD, NOT CLAD/ PLATED/COATED, COILS, THK < 3MM, NESOI.	2	.....	0	3,591	.....	0	0
7209170030	FLAT-RLD IRON/NA STL, WIDTH >= 600MM, COLD-RLD, NOT CLAD/ PLATD/COATED, COILS, THK 0.5-1MM, HI-STRENGTH, ANNEALED.	2	.....	0	2,890	.....	0	0
7209270000	FLAT-ROLLED IRON/NONALLOY STL, WIDTH >= 600MM, COLD-RLD, NOT CLAD/PLATED/COATED, NOT COILS, THK 0.5-1MM.	5	.....	0	50	.....	0	0

232 PROCESS STATISTICS—OBJECTION RATE BY STEEL HTSUS, AS OF 3/23/20—Continued

HTSUS code	HTS description	Requests	Requests with objections	Objection rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection*
7209900000	FLAT-ROLLED IRON/NONALLOY STL, WIDTH >= 600MM, COLD-RLD, NOT CLAD/PLATED/COATED, WHETHER OR NOT IN COILS, NESOI.	33	.....	0	1,319	.....	0	0
7210706030	FLAT-ROLLED IRON/NA STL, WIDTH >= 600MM, PAINTD/VARNSHD/COATD W/PLASTICS, ELECTROLYTICALLY PLATD/COATD W/ZINC.	2	.....	0	8,500	.....	0	0
7211140090	FLAT-ROLLED IRON/NONALLOY STL, WIDTH < 600MM, NOT CLAD/PLATED/COATED, HOT-RLD, THK >= 4.75MM, COILS.	2	.....	0	20	.....	0	0
7211234500	FLAT-ROLLED IRON/NONALLOY STL, WIDTH < 300MM, NOT CLAD/PLATED/COATED, COLD-RLD, <0.25% CRBN, THK <= 0.25MM.	1	.....	0	273	.....	0	0
7211296080	FLAT-ROLLED IRON/NONALLOY STL, WIDTH 300-600MM, NOT CLAD/PLATED/COATED, COLD-RLD, >= 0.25% CRBN, THK <= 1.25MM.	70	.....	0	29,953	.....	0	0
7212200000	FLAT-ROLLED IRON/NONALLOY STL, WIDTH < 600MM, ELECTROLYTICALLY PLATED/COATED WITH ZINC.	36	.....	0	26,869	.....	0	0
7212600000	FLAT-ROLLED IRON/NONALLOY STL, WIDTH < 600MM, CLAD, NESOI.	232	.....	0	11,031	.....	0	0
7213200080	BARS/RODS IRON/NONALLOY STL, HOT-RLD, IRR COILS, FREE-CUTTING STL, NESOI.	4	.....	0	365	.....	0	0
7213913020	BARS/RODS IRON/NA STL, IRR COILS, HOT-RLD, CIRC CS <14MM DIAM, NOT TEMPRD/TREATD/PARTLY MFTD, WELDING QUALITY WIRE ROD.	29	.....	0	149,700	.....	0	0
7215500018	OTHER BARS/RODS IRON/NONALLOY STL, COLD-FORMED/FINISHED, NOT COILS, < 0.25% CARBON, DIAM 76-228MM.	74	.....	0	300	.....	0	0
7215500090	OTHER BARS/RODS IRON/NONALLOY STL, COLD-FORMED/FINISHED, NOT COILS, >= 0.6% CARBON.	9	.....	0	720	.....	0	0
7216100010	U SECTIONS IRON/NONALLOY STL, HOT-ROLLED/DRAWN/EXTRUDED, HEIGHT < 80MM.	4	.....	0	4	.....	0	0
7216330090	H SECTIONS IRON/NONALLOY STL, HOT-RLD/DRWN/EXTRD, HEIGHT >= 80MM, NESOI.	26	.....	0	491	.....	0	0
7216400010	L SECTIONS IRON/NONALLOY STL, HOT-ROLLED/DRAWN/EXTRUDED, HEIGHT >= 80MM.	5	.....	0	5	.....	0	0
7217104045	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, < 0.25% CARBON, DIAM < 1.5MM, HEAT-TREATED, NESOI.	6	.....	0	93	.....	0	0
7217104090	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, < 0.25% CARBON, DIAM < 1.5MM, NOT HEAT-TREATED.	3	.....	0	1,200	.....	0	0
7217106000	OTHER WIRE IRON/NONALLOY STL, NOT PLATED/COATED, < 0.25% CARBON.	11	.....	0	36,420	.....	0	0
7217107000	FLAT WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >= 0.25% CARBON.	500	.....	0	18,359	.....	0	0
7217108025	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, > 0.6% CARBON, HEAT-TREATED, DIAM < 1.0MM.	6	.....	0	2,344	.....	0	0
7217108030	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, > 0.6% CARBON, HEAT-TREATED, DIAM 1.0-1.5MM.	42	.....	0	2,669	.....	0	0
7217108060	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, > 0.6% CARBON, NOT HEAT-TREATED, DIAM < 1.0MM.	198	.....	0	12,092	.....	0	0

232 PROCESS STATISTICS—OBJECTION RATE BY STEEL HTSUS, AS OF 3/23/20—Continued

HTSUS code	HTS description	Requests	Requests with objections	Objection rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection *
7217108075	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, > 0.6% CARBON, NOT HEAT-TREATED, DIAM 1.0-1.5MM.	82		0	11,173		0	0
7217108090	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, > 0.6% CARBON, NOT HEAT-TREATED, DIAM >= 1.5MM.	116		0	9,598		0	0
7217109000	OTHER WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >= 0.25% CARBON, NESOI.	99		0	5,768		0	0
7217201500	FLAT WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC.	61		0	22,661		0	0
7217204550	ROUND WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC, DIAM 1.0-1.5MM, 0.25-0.6% CARBON.	1		0	2		0	0
7217204560	ROUND WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC, DIAM 1.0-1.5MM, >= 0.6% CARBON.	38		0	3,678		0	0
7217304541	ROUND WIRE IRON/NONALLOY STL, PLATED/COATED W/OTH BASE METALS, DIAM 1.0-1.5MM, < 0.25% CARBON.	9		0	463		0	0
7217901000	Wire, Iron Or Nonalloy Steel, Coated With Plastics.	44		0	9,544		0	0
7217905030	WIRE IRON/NONALLOY STL, PLATED/COATED, < 0.25% CARBON, NESOI.	26		0	2,304		0	0
7217905060	WIRE IRON/NONALLOY STL, PLATED/COATED, 0.25-0.6% CARBON, NESOI.	15		0	4,999		0	0
7217905090	WIRE IRON/NONALLOY STL, PLATED/COATED, >= 0.6% CARBON, NESOI.	21		0	2,355		0	0
7218910030	SEMIFINISHED STAINLESS STL, RECTANGULAR CROSS SECTION, WPTH < 4X THK, CS AREA >= 232 CM2.	1		0	3,622		0	0
7219110030	FLAT-ROLLED STAINLESS STL, WPTH 600-1575MM, HOT-RLD, COILS, THK > 10MM.	34		0	3,241		0	0
7219110060	FLAT-ROLLED STAINLESS STL, WPTH > 1575MM, HOT-RLD, COILS, THK > 10MM.	39		0	4,107		0	0
7219120021	FLAT-ROLLED STAINLESS STL, WPTH 1370-1575MM, HOT-RLD, COILS, THK 6.8-10MM.	10		0	1,185		0	0
7219120026	FLAT-ROLLED STAINLESS STL, WPTH > 1575MM, HOT-RLD, COILS, THK 6.8-10MM.	50		0	10,630		0	0
7219120051	FLAT-ROLLED STAINLESS STL, WPTH 1370-1575MM, HOT-RLD, COILS, THK 4.75-6.8MM.	16		0	2,136		0	0
7219120071	FLAT-ROLLED STAINLESS STL, WPTH 600-1370MM, HOT-RLD, COILS, THK 4.75-10MM, > 0.5% NICKEL, NESOI.	13		0	1,341		0	0
7219120081	FLAT-ROLLED STAINLESS STL, WPTH 600-1370MM, HOT-RLD, COILS, THK 4.75-10MM, NESOI.	3		0	8,620		0	0
7219130081	FLAT-ROLLED STAINLESS STL, WPTH 600-1370MM, HOT-RLD, COILS, THK 3-4.75MM, NESOI.	2		0	54		0	0
7219210005	FLAT-ROLLED STAINLESS STL, WPTH >= 600MM, HOT-RLD, NOT COILS, THK > 10MM, HIGH-NICKEL ALLOY STL.	2		0	38		0	0
7219220005	FLAT-ROLLED STAINLESS STL, WPTH >= 600MM, HOT-RLD, NOT COILS, THK 4.75-10MM, HIGH-NICKEL ALLOY STL.	6		0	111		0	0
7219220015	FLAT-ROLLED STAINLESS STL, WPTH 600-1575MM, HOT-RLD, NOT COILS, THK 4.75-10MM, > 0.5% NICKEL, 1.5-5% MOLYBDENUM.	10		0	541		0	0

232 PROCESS STATISTICS—OBJECTION RATE BY STEEL HTSUS, AS OF 3/23/20—Continued

HTSUS code	HTS description	Requests	Requests with objections	Objection rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection *
7219220035	FLAT-ROLLED STAINLESS STL, WDTN 600-1575MM, HOT-RLD, NOT COILS, THK 4.75-10MM, > 0.5% NICKEL, NESOI.	29	.....	0	1,482	.....	0	0
7219220040	FLAT-ROLLED STAINLESS STL, WDTN 1575-1880MM, HOT-RLD, NOT COILS, THK 4.75-10MM, > 0.5% NICKEL, NESOI.	15	.....	0	1,364	.....	0	0
7219240060	FLAT-ROLLED STAINLESS STL, WDTN 600-1370MM, HOT-RLD, NOT COILS, THK < 3MM.	22	.....	0	543	.....	0	0
7219310010	FLAT-ROLLED STAINLESS STL, WDTN >= 600MM, COLD-RLD, THK >= 4.75MM, COILS.	54	.....	0	11,621	.....	0	0
7219320020	FLAT-ROLLED STAINLESS STL, WDTN >= 1370MM, COLD-RLD, THK 3-4.75MM, COILS, > 0.5% NICKEL.	54	.....	0	6,431	.....	0	0
7219320036	FLAT-ROLLED STAINLESS STL, WDTN 600-1370MM, COLD-RLD, THK 3-4.75MM, COILS, > 0.5% NICKEL, 1.5-5% MOLYBDENUM.	14	.....	0	4,346	.....	0	0
7219320038	FLAT-ROLLED STAINLESS STL, WDTN 600-1370MM, COLD-RLD, THK 3-4.75MM, COILS, > 0.5% NICKEL, NESOI.	20	.....	0	1,798	.....	0	0
7219320045	FLAT-ROLLED STAINLESS STL, WDTN >= 1370MM, COLD-RLD, THK 3-4.75MM, NOT COILS.	15	.....	0	332	.....	0	0
7219330025	FLAT-ROLLED STAINLESS STL, WDTN >= 1370MM, COLD-RLD, THK 1-3MM, COILS, <= 0.5% NICKEL.	21	.....	0	3,970	.....	0	0
7219330042	FLAT-ROLLED STAINLESS STL, WDTN 600-1370MM, COLD-RLD, THK 1-3MM, COILS, <= 0.5% NICKEL; > 15% CHROMIUM.	15	.....	0	2,236	.....	0	0
7219340020	FLAT-ROLLED STAINLESS STL, WDTN >= 600MM, COLD-RLD, THK 0.5-1MM, COILS, > 0.5% NICKEL, 1.5-5% MOLYBDENUM.	9	.....	0	1,140	.....	0	0
7219350005	FLAT-ROLLED STAINLESS STL, WDTN >= 600MM, COLD-RLD, THK < 0.5MM, COILS, 0.5-24% NICKEL, 1.5-5% MOLYBDENUM.	13	.....	0	8,110	.....	0	0
7219900060	OTHER FLAT-ROLLED STAINLESS STL, WDTN >= 600MM, FURTHER WORKED THAN COLD-RLD, <= 0.5% NICKEL; > 15% CHROMIUM.	5	.....	0	38	.....	0	0
7220121000	FLAT-ROLLED STAINLESS STL, WDTN 300-600MM, HOT-RLD, THK < 4.75MM.	32	.....	0	6,916	.....	0	0
7220125000	FLAT-ROLLED STAINLESS STL, WDTN < 300MM, HOT-RLD, THK < 4.75MM.	14	.....	0	852	.....	0	0
7220206010	FLAT-ROLLED STAINLESS STL, WDTN < 300MM, COLD-RLD, THK > 1.25MM, > 0.5% NICKEL, 1.5-5% MOLYBDENUM.	52	.....	0	18,005	.....	0	0
7220206060	FLAT-ROLLED STAINLESS STL, WDTN < 300MM, COLD-RLD, THK > 1.25MM, <= 0.5% NICKEL; > 15% CHROMIUM.	23	.....	0	1,058	.....	0	0
7220206080	FLAT-ROLLED STAINLESS STL, WDTN < 300MM, COLD-RLD, THK > 1.25MM, <= 0.5% NICKEL, NESOI.	1	.....	0	12	.....	0	0
7220207060	FLAT-ROLLED STAINLESS STL, WDTN < 300MM, COLD-RLD, THK 0.25-1.25MM, <= 0.5% NICKEL, < 15% CHROMIUM.	172	.....	0	11,768	.....	0	0
7220208000	FLAT-ROLLED STAINLESS STL, WDTN < 300MM, COLD-RLD, THK <= 0.25MM, RAZOR BLADE STL.	170	.....	0	63,021	.....	0	0
7220900060	OTHER FLAT-ROLLED STAINLESS STL, WDTN < 600MM, FURTH WRKD THAN COLD-RLD, NICKEL CONTENT NESOI, < 15% CHROMIUM.	561	.....	0	7,212	.....	0	0

232 PROCESS STATISTICS—OBJECTION RATE BY STEEL HTSUS, AS OF 3/23/20—Continued

HTSUS code	HTS description	Requests	Requests with objections	Objection rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection *
7221000045	BARS/RODS STAINLESS STL, HOT-RLD, IRR COILS, NOT HIGH-NICKEL ALLOY, CIRC CS >= 19MM DIAM.	114		0	19,047		0	0
7222300001	OTHER BARS/RODS STAINLESS STL, FURTH WRKD THAN COLD-FRMD/ FNSHD, ELECTROSLAG/VACUUM ARC REMELTED, NESOI.	39		0	101		0	0
7222403045	SHAPES/SECTIONS STAINLESS STL, HOT-RLD, NOT DRILLED/ PUNCHED/ADVANCED, MAX CS >= 80MM.	48		0	4,387		0	0
7222403085	SHAPES/SECTIONS STAINLESS STL, HOT-RLD, NOT DRILLED/ PUNCHED/ADVANCED, MAX CROSS SECTION < 80MM.	44		0	2,205		0	0
7222406000	Angles Shapes And Sections Stainless Steel Nesoi.	625		0	2,948		0	0
7223005000	FLAT WIRE OF STAINLESS STEEL	170		0	9,894		0	0
7224100005	INGOTS AND OTHER PRIMARY FORMS OF HIGH-NICKEL ALLOY STEEL.	3		0	743		0	0
7225403005	FLAT-ROLLED OTH ALLOY STL, WIDTH >= 600MM, HOT-RLD, NOT COILS, THK >= 4.75MM, HIGH-NICKEL ALLOY STL.	1		0			0	0
7225501110	FLAT-ROLLED OTH ALLOY STL, WIDTH >= 600MM, COLD-RLD, TOOL STEEL, HIGH-SPEED STL.	15		0	103		0	0
7225506000	FLAT-ROLLED OTH ALLOY STL, WIDTH >= 600MM, COLD-RLD, THK >= 4.75MM, NESOI.	6		0	286		0	0
7226918000	FLAT-ROLLED OTH ALLOY STL, WIDTH < 300MM, HOT-RLD, NOT TOOL STL, THK < 4.75MM.	14		0	625		0	0
7226923030	FLAT-ROLLED OTH ALLOY STL, WIDTH < 300MM, COLD-RLD, TOOL STEEL OTH THAN HIGH-SPEED, BALL-BEARING STL.	26		0	1,606		0	0
7226923060	FLAT-ROLLED OTH ALLOY STL, WIDTH < 300MM, COLD-RLD, TOOL STEEL OTH THAN HIGH-SPEED, NESOI.	168		0	19,874		0	0
7226928005	FLAT-ROLLED OTH ALLOY STL, WIDTH < 300MM, COLD-RLD, NOT TOOL STL, THK > 0.25MM, HIGH-NICKEL ALLOY STL.	10		0	199		0	0
7226990110	FLAT-ROLLED OTH ALLOY STL, WIDTH < 600MM, FURTH WRKD THAN COLD-RLD, ELECTROLYTICALLY PLATD/COATD W/ZINC, NESOI.	6		0	6,461		0	0
7227100000	BARS/RODS OTH ALLOY STL, HOT-RLD, IRR COILS, HIGH-SPEED STL.	693		0	5,976		0	0
7227200030	BARS/RODS SILICO-MANGANESE STL, IRR COILS, HOT-RLD, WELDING QUALITY WIRE RODS, STAT NOTE 6.	8		0	161,800		0	0
7227901060	BARS/RODS TOOL STL (NOT HIGH-SPEED), HOT-RLD, IRR COILS, NOT TEMPRD/TREATD/PARTLY MFTD, NESOI.	178		0	19,659		0	0
7227906020	BARS/RODS OTHER ALLOY STL, IRR COILS, HOT-RLD, NOT TOOL STL, WELDING QUALITY WIRE RODS.	17		0	17,646		0	0
7228308005	OTHER BARS/RODS OTHER ALLOY STL, HOT-ROLLED/DRAWN/EXTRUDED, HIGH-NICKEL ALLOY STL.	3		0	15		0	0
7228501040	OTHER BARS/RODS TOOL STL (NOT HIGH-SPEED), COLD-FRMD/ FNSHD, MAX CS < 18MM, NESOI.	35		0	10,133		0	0
7229200015	ROUND WIRE SI-MN STL, DIAM <= 1.6MM, < 0.20% C, > 0.9% MN, > 0.6% SI, FOR ELEC ARC WELDING, NOT PLATD/COATED W/ COPPER.	1		0	1,500		0	0
7229901000	FLAT WIRE OF OTHER ALLOY STEEL	30		0	1,045		0	0

232 PROCESS STATISTICS—OBJECTION RATE BY STEEL HTSUS, AS OF 3/23/20—Continued

HTSUS code	HTS description	Requests	Requests with objections	Objection rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection *
7229905016	ROUND WIRE OTHER ALLOY STL, DIAM < 1.0MM.	80	.....	0	421	.....	0	0
7229905031	ROUND WIRE OTHER ALLOY STL, DIAM 1.0–1.5MM.	78	.....	0	622	.....	0	0
7302101015	OTHER RAILS IRON/NONALLOY STL, NEW, NOT HEAT TREATED, > 30KG/M.	3	.....	0	480	.....	0	0
7302101045	OTHER RAILS IRON/NONALLOY STL, NEW, HEAT TREATED, > 30KG/M.	8	.....	0	465	.....	0	0
7302105020	RAILS OF ALLOY STEEL, NEW	2	.....	0	796	.....	0	0
7302901000	SLEEPERS (CROSS-TIES) OF IRON OR STEEL.	3	.....	0	21,498	.....	0	0
7304243010	CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, THREADED/COUPLED, OUTSIDE DIAM < 215.9MM, WALL THK < 12.7MM.	34	.....	0	20,849	.....	0	0
7304243020	CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, THREADED/COUPLED, OUTSIDE DIAM < 215.9MM, WALL THK >= 12.7MM.	2	.....	0	160	.....	0	0
7304243040	CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, THREADED/COUPLED, OUTSIDE DIAM 215.9–285.8MM, WALL THK <= 12.7MM.	2	.....	0	860	.....	0	0
7304244040	CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, NOT THREADED/COUPLED, OS DIAM 215.9–285.8MM, WALL THK <= 12.7MM.	8	.....	0	7,855	.....	0	0
7304244060	CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, NOT THREADED/COUPLED, OS DIAM 285.8–406.4MM, WALL THK <= 12.7MM.	2	.....	0	5,000	.....	0	0
7304246030	TUBING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, OUTSIDE DIAM <= 114.3MM, WALL THK > 9.5 MM.	74	.....	0	71,809	.....	0	0
7304293120	CASING (OIL/GAS DRILLING) OTH ALLOY STL, SEAMLESS, THREADED/COUPLED, OS DIAM < 215.9MM, WALL THK >= 12.7MM.	4	.....	0	1,028	.....	0	0
7304293160	CASING (OIL/GAS DRILLING) OTH ALLOY STL, SEAMLESS, THREADED/COUPLED, OS DIAM 285.8–406.4MM, WALL THK >= 12.7MM.	7	.....	0	2,625	.....	0	0
7304293180	CASING (OIL/GAS DRILLING) OTH ALLOY STL, SEAMLESS, THREADED/COUPLED, OUTSIDE DIAM > 406.4MM.	4	.....	0	4,500	.....	0	0
7304390002	TUBES/PIPES/HLLW PRFLS IRON/NA STL, SMLESS, CIRC CS, NOT COLD-TRTD, SUITABLE FOR BOILERS ETC, OS DIAM < 38.1MM.	15	.....	0	3,417	.....	0	0
7304390016	TUBES/PIPES/HOLLOW PROFILES IRON/NA STL, SEAMLESS, CIRC CS, NOT COLD-TRTD, GALVANIZED, OS DIAM <= 114.3MM..	8	.....	0	211	.....	0	0
7304413005	TUBES/PIPES/HOLLOW PRFLS STAINLESS STL, SEAMLESS, CIRC CS, COLD-DRWN/RLD, EXT DIAM < 19MM, HIGH-NICKEL ALLOY STL.	5	.....	0	237	.....	0	0
7304515005	TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL, SEAMLESS, CIRC CS, COLD-DRWN/RLD, HIGH-NICKEL ALLOY STL.	44	.....	0	4,965	.....	0	0
7304592030	TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, NOT COLD-TRTD, SUITABLE FOR BOILERS ETC, HEAT-RESISTING STL.	1,071	.....	0	169,986	.....	0	.0
7304592080	TUBES/PIPES/H PRFLS ALLOY STL, SMLSS, CIRC CS, NOT COLD-TRTD, SUIT FOR BOILERS ETC, NOT HT-RSST STL, OS DIAM > 406.4MM.	1,082	.....	0	89,791	.....	0	0

232 PROCESS STATISTICS—OBJECTION RATE BY STEEL HTSUS, AS OF 3/23/20—Continued

HTSUS code	HTS description	Requests	Requests with objections	Objection rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection *
7304598010	TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL, SEAMLESS, CIRC CS, NOT COLD-TREATED, OUTSIDE DIAM < 38.1MM, NESOI.	83		0	19,487		0	0
7304598045	TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, NOT CLD-TRTD, OS DIAM 190.5-285.8MM, WALL THK < 12.7MM, NESOI.	65		0	84,783		0	0
7304598060	TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, NOT CLD-TRTD, OS DIAM 285.8-406.4MM, WALL THK < 12.7MM, NESOI.	96		0	119,499		0	0
7304901000	TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, SEAMLESS, NONCIRCULAR CROSS SECTION, WALL THK >= 4MM.	15		0	4,440		0	0
7304905000	TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, SEAMLESS, NOT CIRCULAR CS, WALL THK < 4MM, NESOI.	6		0	223		0	0
7305316090	OTHER TUBES/PIPES ALLOY STL (NOT STAINLESS), CIRC CS, EXT DIAM > 406.4MM, LONGITUDINALLY WELDED, NESOI.	7		0	1,421		0	0
7305391000	OTHER TUBES/PIPES IRON/NONALLOY STL, CIRC CS, EXT DIAM > 406.4MM, WELDED OTH THAN LONGITUDINALLY, NESOI.	1		0	8		0	0
7306191010	LINE PIPE (OIL/GAS PIPELINES) IRON/NONALLOY STL, WELDED/RIVETED/SIM CLOSED, OUTSIDE DIAM <= 114.3MM.	1		0	8		0	0
7306213000	CASING (OIL/GAS DRILLING) STAINLESS STL, WELDED, THREADED/COUPLED.	1		0	400		0	0
7306401010	OTH TUBES/PIPES/HOLLOW PRFLS STAINLESS STL, WELDED, CIRC CS, WALL THK < 1.65MM, < 0.5% NICKEL, 1.5-5% MOLYBDENUM.	15		0	358		0	0
7306401090	OTH TUBES/PIPES/HOLLOW PRFLS STAINLESS STL, WELDED, CIRC CS, WALL THK < 1.65MM, <= 0.5% NICKEL.	76		0	5,117		0	0
7306617060	OTH TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL (NOT STAINLESS), WELDED, SQ/RECT CS, WALL THK < 4MM.	28		0	500		0	0
7306695000	OTH TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, WELDED, OTH NONCIRCULAR CS, WALL THK < 4MM.	4		0	31,500		0	0
7306697060	OTH TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL (NOT STAINLESS), WELDED, OTH NONCIRCULAR CS, WALL THK < 4MM.	8		0	32,594		0	0
7306901000	OTH TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, RIVETED/SIMILARLY CLOSED (NOT WELDED), NESOI.	585		0	23,065		0	0

* Percent of requests granted despite receiving one or more objections, out of the total number of requests with objections and rendered decisions.

Annex 2: Aluminum HTS Codes With 0% Objection Rates

232 PROCESS STATISTICS—OBJECTION RATE BY ALUMINUM HTSUS, AS OF 3/23/20

HTSUS code	HTS description	Requests	Requests with objections	Objection rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection *
7601106030	ALUMINUM ALLOY OF GREATER THAN 99.8 PERCENT ALUMINUM.	3		0	349		0	0

232 PROCESS STATISTICS—OBJECTION RATE BY ALUMINUM HTSUS, AS OF 3/23/20—Continued

HTSUS code	HTS description	Requests	Requests with objections	Objection rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection *
7601209080	ALUMINUM ALLOY, SHEET INGOT (SLAB) OF A KIND DESCRIBED IN STATISTICAL NOTE 3 TO THIS CHAPTER.	7	.....	0	6,880	.....	0	0
7601209095	ALUMINUM ALLOY, UNWROUGHT, NESOI.	1	.....	0	5	.....	0	0
7604210000	ALUMINUM ALLOY HOLLOW PROFILES.	76	.....	0	38,723	.....	0	0
7604293090	ALUMINUM ALLOY BARS AND RODS HAVING A ROUND CROSS SECTION, NESOI.	27	.....	0	1,043	.....	0	0
7604295050	ALUMINUM ALLOY BARS/RODS HAVING OTHER THAN ROUND CROSS SECTION, HEAT-TREATABLE INDUSTRIAL ALLOYS.	4	.....	0	5	.....	0	0
7604295060	ALUMINUM ALLOY BARS A RODS HAVING OTHR THAN ROUND CROSS SCTN W A MAX CROSS-SECTIONAL DIMENSION OF 10MM OR MORE.	17	.....	0	85	.....	0	0
7604295090	ALUMINUM ALLOY BARS AND RODS HAVING OTHER THAN ROUND CROSS SECTION, NESOI.	2	.....	0	741	.....	0	0
7605290000	ALUMINUM WIRE ALLOY OF WHICH THE MAXIMUM CROSS-SECTIONAL DIMENSION IS 7MM OR LESS.	15	.....	0	202	.....	0	0
7606116000	ALUMINUM PLATES SHEETS AND STRIP RECTANGULAR (INCLUDING SQUARE) NOT ALLOYED CLAD, WTH A THICKNESS OVER 0.2MM.	18	.....	0	2,390	.....	0	0
7606123015	ALUMINUM PLATES SHEETS & STRIP RECTANGULAR (INC SQUARE) NOT CLAD, THICKNESS MORE THAN 6.3MM, HIGH-STRENGTH HEAT-TREATABLE ALLOY, STAT NOTE 5, CH 76.	8	.....	0	44	.....	0	0
7607116010	ALUMINUM FOIL, BOXED, WEIGHING LT = 11.3 KG, OF A THICKNESS GT 0.01 MM AND LT = 0.15 MM, ROLLED, NOT BACKED.	8	.....	0	1,015	.....	0	0
7607191000	ALUMINUM FOIL OF A THICKNESS NOT EXCEEDING 0.2MM NOT BACKED, ETCHED CAPACITOR FOIL.	22	.....	0	11,350	.....	0	0
7607196000	ALUMINUM FOIL NESOI NOT BACKED.	71	.....	0	23,244	.....	0	0
7607201000	ALUMINUM FOIL OF A THICKNESS NOT EXCEEDING 0.2MM BACKED, COVERED OR DECORATED WITH A CHARACTER, DESIGN, FANCY EFFECT OR PATTERN.	3	.....	0	389	.....	0	0
7607205000	ALUMINUM FOIL OF A THICKNESS NOT EXCEEDING 0.2MM BACKED, OTHER THAN COVERED OR DECORATED WITH A CHARACTER, DESIGN, FANCY EFFECT OR PATTERN.	84	.....	0	41,696	.....	0	0
7608200090	TUBES AND PIPES ALUM AL EXCPT SEAMLESS.	45	.....	0	5,621	.....	0	0
7609000000	ALUMINUM TUBE OR PIPE FITTINGS (COUPLINGS, ELBOWS SLEEVES).	1,469	.....	0	188,157	.....	0	0
7616995160	ALUMINUM CASTINGS	2	.....	0	242	.....	0	0
7616995170	ALUMINUM FORGINGS	8	.....	0	12,597	.....	0	0

* Percent of requests granted despite receiving one or more objections, out of the total number of requests with objections and rendered decisions.

**Annex 3: Steel HTS Codes With 100%
Objection Rates**
232 PROCESS STATISTICS—OBJECTION RATE BY STEEL HTSUS, AS OF 3/23/20

HTSUS code	HTS description	Requests	Requests with objections	Objection Rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection
7207120010	SEMIFINISHED IRON/NONALLOY STL, <0.25% CARBON, RECTANGULAR CROSS SECTION, WIDTH <4X THK.	20	20	100	1,128,815	1,128,815	100	0
7208106000	FLAT-ROLLED IRON/NA STL, WIDTH >= 600MM, HOT-RLD, NOT CLAD/PLATD/COATD, COILS, PATTERNS IN RELIEF, THK <4.75MM.	3	3	100	499	499	100	0
7209160091	FLAT-RLD IRON/NA STL, WIDTH >= 600MM, COLD-RLD, NOT CLAD/PLATD/COATED, COILS, THK 1-3MM, NOT HI-STRENGTH, NOT ANNEALED.	4	4	100	4,246	4,246	100	0
7209182585	FLAT-ROLLED IRON OR NONALLOY STEEL COILS 600MM OR MORE WIDE COLD-RLD NOT CLAD, PLATED OR COATED, LESS THAN 0.361MM THICK(BLACKPLATE), NESOI.	2	2	100	2,782	2,782	100	0
7209186090	FLAT-RLD IRON/NA STL, WIDTH >= 600MM, COLD-RLD, NOT CLAD/PLATED/COATED, COILS, THK 0.361-0.5MM, NOT ANNEALED, NESOI.	20	20	100	666,193	666,193	100	0
7210110000	FLAT-ROLLED IRON/NONALLOY STL, WIDTH >= 600MM, PLATED/COATED WITH TIN, THK >0.5MM.	9	9	100	22,100	22,100	100	11
7210610000	FLAT-ROLLED IRON/NONALLOY STL, WIDTH >= 600MM, PLATED/COATED WITH ALUMINUM-ZINC ALLOYS.	11	11	100	124,100	124,100	100	40
7212303000	FLAT-ROLLED IRON/NONALLOY STL, WIDTH <300MM, PLATED/COATED WITH ZINC (NOT ELECTROLYTICALLY), THK <25MM.	1	1	100	1,800	1,800	100	0
7217104040	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON, DIAM <1.5MM, HEAT-TREATED, COILS WGHT <= 2KG.	3	3	100	2,080	2,080	100	0
7218990090	SEMIFINISHED STAINLESS STL, CROSS SECTION OTHER THAN RECT/SQ/CIRC, NESOI.	1	1	100	1,814	1,814	100	0
7226119060	FLAT-ROLLED OTH ALLOY STL, WIDTH <300MM, SILICON ELECTRICAL STL, GRAIN-ORIENTED, THK >0.25MM.	1	1	100	130	130	100	0
7226191000	FLAT-ROLLED OTH ALLOY STL, WIDTH 300-600MM, SILICON ELECTRICAL STL, NOT GRAIN-ORIENTED.	3	3	100	6,852	6,852	100	0
7304292020	CASING (OIL/GAS DRILLING) IRON/NA STL, SEAMLESS, NOT THREADED/COUPLED, OS DIAM <215.9MM, WALL THK >= 12.7MM.	3	3	100	18,000	18,000	100	0
7304292030	CASING (OIL/GAS DRILLING) IRON/NA STL, SEAMLESS, NOT THREADED/COUPLED, OS DIAM 215.9-285.8MM, WALL THK <12.7MM.	12	12	100	200,153	200,153	100	0
7304292050	CASING (OIL/GAS DRILLING) IRON/NA STL, SEAMLESS, NOT THREADED/COUPLED, OS DIAM 285.8-406.4MM, WALL THK <12.7MM.	4	4	100	35,000	35,000	100	0
7304295045	TUBING (OIL/GAS DRILLING) IRON/NONALLOY STL, SEAMLESS, OUTSIDE DIAM 114.3-215.9MM.	2	2	100	5,000	5,000	100	0
7304390006	TUBES/PIPES/HLLW PRFLS IRON/NA STL, SMLESS, CIRC CS, NOT COLD-TRTD, SUITABLE FOR BOILERS ETC, OS DIAM 190.5-285.8MM.	1	1	100	4,000	4,000	100	0
7304390008	TUBES/PIPES/HLLW PRFLS IRON/NA STL, SMLESS, CIRC CS, NOT COLD-TRTD, SUITABLE FOR BOILERS ETC, OS DIAM >285.8MM.	1	1	100	4,000	4,000	100	0

232 PROCESS STATISTICS—OBJECTION RATE BY STEEL HTSUS, AS OF 3/23/20—Continued

HTSUS code	HTS description	Requests	Requests with objections	Objection Rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection *
7306195110	LINE PIPE (OIL/GAS PIPELINES) ALLOY STL, WELDED/RIVETED/SIM CLOSED, OUTSIDE DIAM.	3	3	100	60	60	100	0
7306298110	OTHER TUBING (OIL/GAS DRILLING) OTH ALLOY STL, WELDED/RIVETED/SIMILARLY CLOSED, IMPORTED WITH COUPLING.	2	2	100	573	573	100	0

* Percent of requests granted despite receiving one or more objections, out of the total number of requests with objections and rendered decisions.

Annex 4: Aluminum HTS Codes With 100% Objection Rates

232 PROCESS STATISTICS—OBJECTION RATE BY ALUMINUM HTSUS, AS OF 3/23/20

HTSUS code	HTS description	Requests	Requests with objections	Objection rate (%)	Volume requested (mt)	Volume with objections (mt)	Volume objection rate (%)	Percent granted despite objection *
7606123055	ALUMINUM ALLOY CAN STOCK, NOT CLAD, LID STOCK.	3	3	100	45,000	45,000	100	33

* Percent of requests granted despite receiving one or more objections, out of the total number of requests with objections and rendered decisions.

[FR Doc. 2020-11173 Filed 5-22-20; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-967; C-570-968]

Aluminum Extrusions From the People's Republic of China: Notice of Second Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 22, 2018, the Court of Appeals for the Federal Circuit (the CAFC) reversed and remanded the Court of International Trade's (CIT) earlier decision regarding the Department of Commerce's (Commerce) scope ruling under the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (China) involving Meridian Products, LLC's (Meridian's) Type B door handles. The CAFC instructed the CIT to vacate Commerce's initial remand redetermination that the CIT had previously sustained, reinstate Commerce's original scope ruling, and remand for further proceedings consistent with its opinion. In the original scope ruling, Commerce found that Meridian's Type B door handles were covered by the scope of the AD and CVD orders. In Commerce's redetermination upon remand from the CAFC, Commerce found that the

extruded aluminum component of each Type B handle is within the scope of the AD and CVD orders while the other components (plastic end caps and screws) are not. On April 6, 2020, the CIT sustained Commerce's remand redetermination. Accordingly, Commerce is issuing a second amended final scope ruling.

DATES: Applicable May 26, 2020.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-6071.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2013, Commerce issued a final scope ruling in which it determined that three types of kitchen appliance door handles (Types A, B, and C) imported by Meridian are within the scope of the *Orders*¹ and do not meet the scope exclusions for "finished merchandise" and "finished goods kits."² Meridian challenged

¹ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011); *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively, *Orders*).

² See Memorandum, "Final Scope Ruling on Meridian Kitchen Appliance Door Handles," dated June 21, 2013 (Kitchen Appliance Door Handles Scope Ruling) at 12-15.

Commerce's final scope ruling at the CIT.

On December 7, 2015, the CIT affirmed, in part, Commerce's Kitchen Appliance Door Handles Scope Ruling finding that Meridian's Type A handles (consisting of a single piece of aluminum extrusion) and Type C handles (consisting of a single piece of aluminum extrusion packed as a "kit" with a tool and an instruction manual) are within the scope of the *Orders* based on a plain reading of the scope language.³ The CIT, however, remanded Commerce's determination that Meridian's Type B handles are also within the scope of the *Orders*. The CIT also instructed Commerce to provide clarification on its scope ruling in view of the CIT's decision that Type B handles are "assemblies" not within the scope of orders, because the extruded aluminum handles are packaged with two plastic injection molded end caps and two screws.⁴ The CIT further found that, assuming *arguendo* that Meridian's Type B handles were covered by the scope language, Commerce erred in finding that the products did not satisfy the scope's "finished merchandise" exclusion.⁵

On March 23, 2016, Commerce issued its Final Results of Redetermination, in which it found, under respectful protest, that Meridian's Type B handles are not covered by the scope of the *Orders*,

³ See *Meridian Products LLC v. United States*, Court No. 13-00246, Slip Op. 15-135 at 6-9.

⁴ *Id.* at 10-13.

⁵ *Id.* at 13-16.

PUBLIC SUBMISSION

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0002

Public comment 1 on 232 NOI. Anonymous. 5-28-20

Submitter Information

Name: Anonymous Anonymous

Email: emmylovescrossfit@gmail.com

General Comment

There is a complete lack of transparency (example, zero status updates from the ITA) and no consistency in rulings (one company got an exception for the exact same amount and type of pipe that I was denied). The 232 tariff program is confusing mess and a huge failure. It cannot be fixed and should be ended immediately.



Future Potential for Primary Aluminum Industry in the United States

***Comments on Section 232 Tariff for Aluminum –
RIN0694-XC058***

Mike Tanchuk – Business Results LLC

businessresultsmt@gmail.com

28 May 2020

I watch with great concern the continued, dramatic decline in the U.S. of a key industry – the production of primary aluminum. Primary aluminum is a key, light weight material that is part of virtually every aspect of our lives from our phones, military and commercial aircraft, our cars, and the beverages we drink.

My concern has mostly been for the well-being of the bright, hard-working people of this industry and their families. Now, I also see a potential future with no U.S.

capacity for this essential metal and worry about our Country being totally dependent on foreign sources. The recent announcement of the curtailment of the Intalco smelter in Washington state hit hard. This will not only greatly impact the local economy in an unprecedented time of crisis and uncertainty but will leave only a handful of domestic smelters.

Background - I started in the U.S. aluminum industry when there were 31 smelters. The military and commercial lessons learned during WW II had resulted in a vibrant domestic primary aluminum industry. The U.S. at the beginning of WW II did not produce enough aluminum to build the needed military aircraft to support the war. Post WWII, with enough primary aluminum smelters, the strategic concern changed to insufficient domestic bauxite, the raw material needed for the first step of making aluminum. Today the supply chain has changed, with the drop in primary aluminum plants coupled with the dramatic increase in usage of aluminum in commercial and military applications, we find ourselves almost totally dependent on foreign aluminum metal.

The U.S. is currently “short” about 3 million metric tones per year of primary aluminum a year needed to feed mostly commercial applications such as the beverage can, aircraft skin, and automobiles. Our neighbors in Canada supply some of this shortfall with the remaining needed metal units mostly coming from China and the Middle East. At a high level, the current supply chain works and is driven by the basic global economic fundamentals of supply and demand. However, for the U.S., the unprecedented impact of COVID-19 has shown us that “normal” can change rapidly. A global disruption of aluminum supply would leave the U.S. unprepared to maintain economic stability and be fully prepared for a prolonged military conflict.

U.S. domestic policy needs to underpin a guaranteed supply and inventory of primary aluminum. This policy would be most effective with the following cornerstones.

1. **Energy supply** – Primary aluminum uses a large amount of firm electrical energy to drive the reduction process. Smelters operate 24 hours a day, every day of the year. Historically, smelters provided the base load that allowed for the construction of some our base energy system like the hydroelectric dams in the Northwest the Midwest energy base.

The supply and cost of this energy must be competitive with foreign smelters. Some plants in Canada operate with energy a half of the cost of a U.S. smelter because of local government policy. In the Middle East, smelters run on “free” or very low-cost energy as part of government policy to diversify local economies away from dependency on oil. Energy supply policy needs to be long term and not fluctuate with the political cycles.

2. **Section 232 tariffs under the Trade Expansion Act** – The duty applied to the Midwest (MW) premium in 2018 was largely successful in attracting the restart of domestic capacity at Century Aluminum (Kentucky) and Magnitude 7 (Missouri). However, the recent sharp downturn in aluminum consumption driven by COVID-19 and the previous restart of Canadian capacity have negated the impact short term resulting in tariffs imbedded in the MW premium rapidly dropping from about 10 cents/lb. to less than 1 cent/lb. This has had a devastating impact on the industry and immediately threatens the gains already made. Adjustments to the tariffs should be implemented quickly to return benefits to the U.S. industry while working cooperatively with the needed Canadian supply. The U.S. and Canada are essential partners in the production of primary aluminum. Short term, the exemption for Canada should be modified to limit the volume (hard quota) of metal units that are exempted and the tariff impact monitored closely.

3. **Creation of Strategic Metal Reserves (SMR)** - Within the U.S., the Defense Production Act and other existing legislation provides broad authority to develop the needed reserves of strategic materials. Aluminum is an important strategic material.

A SMR for primary aluminum would maintain primary metal production in the U.S. and build an inventory of primary metal units reserved for emergency uses. This SMR would also include the high purity aluminum needed for many military and electrical applications. A potential SMR alliance involving Australia, the U.S. and Canada would provide access to

approximately 6.7 million metric tonnes/year of aluminium while maintaining long term primary aluminium production domestically.

The creation of a U.S. based SMR having several options to control metal supply and build metal inventory with the goal of acquiring lower-cost metal units while supporting domestic primary production within the SMR members.

- Initial target stockpile located at the most efficient points in the supply chain with a target 4 million metric tonnes.
- Carefully craft a metal price-based premium for SMR metal units (MW+) to complement existing Section 232 tariffs.
- Allow for direct federal investment into energy supply for or modernization of U.S. smelters.

The overall objective is to ensure sufficient U.S. controlled metal units are purchased and strategically placed to weather a global disaster such as COVID-19 and a prolonged military engagement in a cost-effective manner. In addition, to ensure the long-term stabilization of U.S. primary aluminum assets and some security for the people of the primary aluminium industry. A precedent policy in the U.S. is the large Strategic Petroleum Reserves used to counter potential interruption of critical fuel supplies contemplated in 1973. The physical storage of aluminium is much simpler thus less expensive than petroleum.

4. Development of a long-term plan for sustainable U.S capacity – The domestic smelters are aging and need significant investments to modernize. It would make sense to evaluate modernizing existing locations in Kentucky, Washington, New York, Indiana, and Missouri because needed infrastructure and skilled workers are in place.

Also, we should evaluate locating a new, modern smelter capable of producing metal for military and commercial applications in the U.S. where there is a confluence of renewable energy sources and lower cost peaking power. Modern energy control systems allow the use of a smelter as a high capacity “battery” to maximize the use of renewables such as solar and wind power to balance the inherent daily and weekly fluctuations in residential and business energy use with varying renewable energy supply. Smelters can again play a positive role in the development of economic power systems and to help maximize the use of

renewable energy. Smelters very consistent load factors make them ideal for stabilizing power systems.

However, to make this concept a reality, the economics must be anchored by fundamental policy.

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0004

Public comment 3 on 232 NOI. Tree Island Wire USA Inc. B Liu. 5-29-20

Submitter Information

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General Comment

Tree Island Wire USA Inc (Tree Island) is a North American manufacturer and supplier of premium quality steel wire and wire products for a broad range of industrial/OEM, commercial construction, residential construction and agricultural applications. Tree Island has had in-depth experience with the Section 232 Steel exclusion process. Tree Island's experiences have been challenged by the lack of transparency and delays in the exemption decisioning process. As an example, the following details Tree Island's experience with submitting exemption requests for a critical manufacturing input that it cannot source within the US.

One product that Tree Island proudly manufactures and sells from their San Bernardino California facility is 20 gauge woven stucco mesh. While Tree Island manufactures the steel wire for the majority of their other products, they do not have the capability to produce the fine diameter 20-gauge (0.81mm) electro-galvanized steel wire required to produce 20 gauge (0.81mm) woven stucco mesh. In fact, there is only one competing wire manufacturer in the US that is capable of producing 20 gauge galvanized wire. This manufacturer, however, produces and uses that wire for their own production of 20 gauge woven stucco mesh, and sells it in competition to Tree Island. This has left Tree Island and other US stucco mesh producers to

import the 20 gauge electro-galvanized steel wire from abroad.

Tree Island Wire USA Inc. initially filed for an exemption request in spring of 2018. Unfortunately, the aforementioned competitor objected to its exemption request and, subsequently, its exemption request was denied. This objection, in our opinion was not grounded in fact, but an attempt to handicap a competitor. Because there was a single objection from a competitor, the exemption request dragged on. The final decisioning and denial would only come after almost a year of our request filing.

Beyond the long delay, Tree Island does not believe the merits of the request were weighed in a thorough manner. Another competing stucco mesh manufacturer had also filed an exemption request for the exact same 20 gauge galvanized wire, in spring of 2018; however, because they were lucky and did not receive an objection, they were shortly granted an exemption. They were also subsequently granted another exemption, when they renewed in 2019, because, once again, there were no objections filed and, as a result, an exemption was granted quickly. This competitor is also located in California.

In September of 2019, Tree Island filed another exemption request. This time it was fortunate and there were no objections and its exemption request was granted in Nov 2019. Between the implementation of the Section 232 tariffs and the granting its request, Tree Island had to continue to source the 20 gauge galvanized wire from our long-term suppliers in China. Tree Island had no choice, because, as it mentioned in its exemption request, it had to other avenues. Between the implementation of the Section 232 tariffs on steel wire and the granting of their exemption request, Tree Island paid over \$2.5 million in duties. Tree Island also lost substantial market share, not to the competitor whom objected, but to the other competitor that got their exemption and to imports of finished 20 gauge woven stucco mesh (i.e. the product Tree Island manufacturers) that were not under the scope of Section 232 steel tariffs and could be imported tariff free.

Tree Island's experience with the process is that decisioning appears to be solely based on whether there is an objection or not. The merit of the request or objection does not appear to have much weight in the outcome. Consequently, Tree Island believes that improvements need to be made to ensure submissions are decided on an informed and just manner. Furthermore, Tree Island believes that improvements need to be made to ensure timeliness in decisioning, when an objection is submitted, and that an appeal process be implemented.

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0005

Public comment 4 on 232 NOI. Individual. Prabhakar Agrawal. 6-1-20

Submitter Information

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General Comment

I come from the side of protecting jobs and American workers. Since 232 were enacted in 2017, there were high hopes that American demands for Steel products would be satisfied by the manufacturing capacity within the United States. Sadly, the reverse has been taking place. Steel jobs that were created in anticipation of increased sales due to 232 have been eliminated and Steel companies are being left with no alternative but to shut down plants and decrease production. Nobody anticipated this to happen.

Clearly the intent behind 232 is not working. This may be due to a large number of waivers being issue to importers of foreign steel into the United States. This is preposterous. In general, there should be no waivers for anyone unless the product cannot be manufactured within the United States. If you want to protect the workers of this country you have to tell the corrupt wealthy importers of cheap steel that they have to buy only the American made steel.

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0006

Public comment 5 on 232 NOI. Anonymous. 6-3-20

Submitter Information

Name: Anonymous Anonymous

General Comment

Companies applying for exemptions should be required to submit a list of the USA steel companies they contacted in an attempt to source the material in question domestically for a thorough review prior to being granted an exemption.

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0007

Public comment 6 on 232 NOI. Brunner and Lay. T Farrell. 6-4-20

Submitter Information

Email: tfarrell@brunnerlay.com

Organization: Brunner & Lay Inc.

General Comment

We are submitting a document today that addresses some of our concerns with the Steel 232 process. We appreciate all of the hard work by Steel 232, BIS, Department of Commerce, Trade Remedy, CBP base metals division, and all those associated with this process. Please consider what we've said here as we are trying to constructively point out some issues that we hope can be addressed.

Attachments

BIS-2020-0012 RIN 0694-XC058



06/04/2020

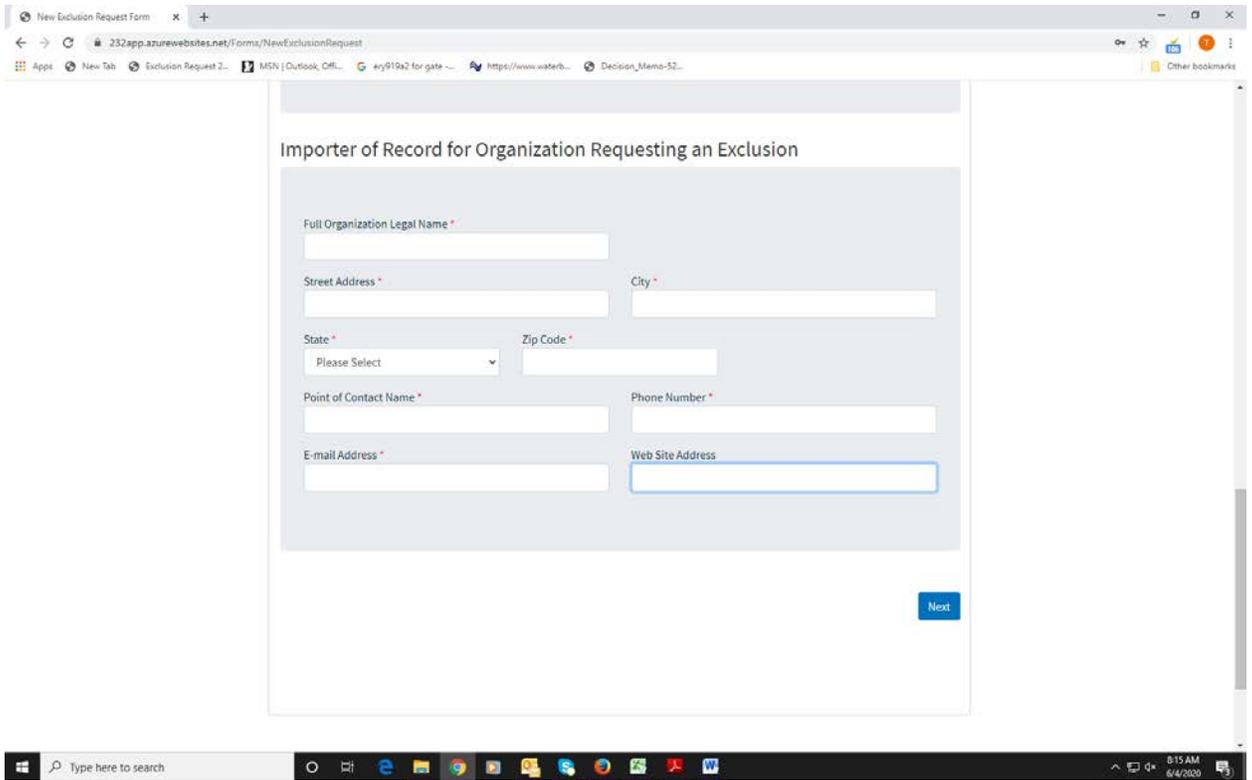
BIS-2020-0012 RIN 0694- XC058

This document is a response to the request by Steel 232 for “Bureau of Industry and Security (BIS) is seeking public comment on the appropriateness of the information requested and considered in applying the exclusion criteria, and the efficiency and transparency of the process employed.”

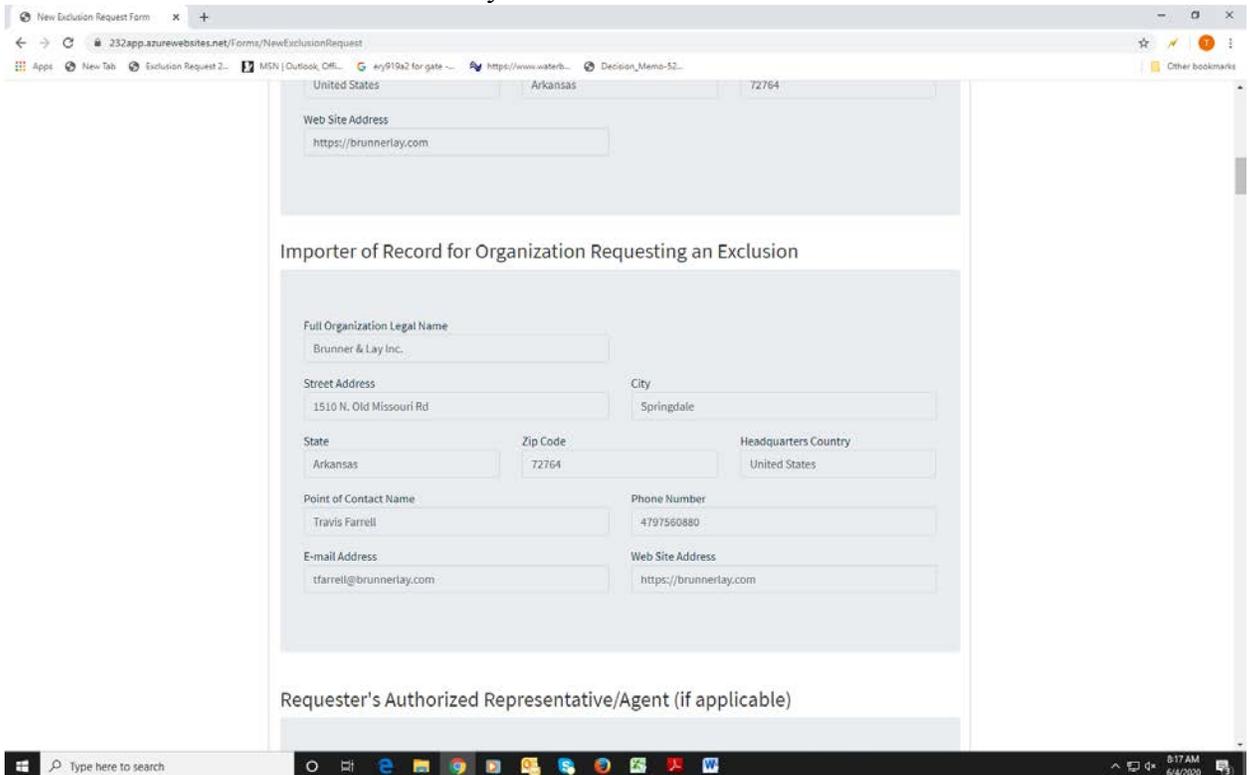
There are a few items that we would like to publicly comment.

1. Regarding Section 232 of the Trade expansion Act. This tariff was levied for national security reasons. If an item is just not made in the U.S., Why would an importer need to continue to go through this exclusion process? We purchase Hollow Drill Bar under HS code 7228800000. This product is not made in the U.S. U.S. Steel mills are not interested in this product as it is a specialty process used to make steel for the mining industry. There isn't a tremendous volume for this type of steel and the process to make it is difficult. A review of HS codes associated with 232 should be done to insure that if it is subjected to the tariff that the item is made in the U.S.
2. Regarding Section 232 of the trade expansion act. If, through this process, it is recognized that a product is not made in the U.S., then how do U.S companies identify countries that should receive preferential treatment. We currently purchase our Hollow drill bar from a company in England. This product is made in only a few places in the world. Japan, South Africa, England, Sweden, and China. We would like to request that more work be done to create trade agreements for the affected steel items with ally countries (like England)
3. Regarding information sought on the exclusion request form. We request a review of the Importer of Record section on the Steel 232 portal. *The new Steel 232 portal does not allow for a foreign entity to be entered on the document.* Steel 232 has given guidance on how to work around this issue. They suggest that you enter the foreign importer's name on the name section and to enter the domestic address of the end user as the address associated with the importer of record. This is false information if entered. Under the Regulations.gov process, Exclusion requests were allowed to be entered using the True importer of record. This process changed when the new 232 portal was implemented. We would like to request that an Importer of Record can be a foreign entity. The truth is the truth and if the true importer of record is our vendor in England, then we should be able to enter this info on the Importer of Record section of the 232 portal.

4. One main difference between the Regulations.gov process and the Steel 232 process is that under Regulations.gov, exclusion requests were allowed to be entered for multiple part numbers as long as the only difference is the length of the product. We purchase the same steel, but at different lengths. All of those different lengths now have to have a separate exclusion request. This is adding a tremendous workload for Steel 232, CBP, and trade remedy to process each exclusion request. We preferred the regulations.gov process as it allowed for multiple products to be excluded using the same exclusion request.
5. Regarding the 232 portal. The Regulations.gov process used an excel spreadsheet that was then downloaded onto Regulations.gov as a comment for BIS-2018-0006. The new portal uses a google style automated form. This form does not allow one to enter the exact same information as was entered under the Regulations.gov process. When using the regulations.gov process one could create an excel template and process multiple exclusions by only changing a few items on the spreadsheet. Now with the regulations.gov process, unless you want to fill out each request manually you have to use Google, Auto fill function. It is concerning that using Google auto fill is our government's method of having people fill out these requests. (does google retain the info that we enter under auto fill?)
6. Regarding the 232 portal. There is a problem with the way this google auto form was created. Under the Importer of Record section, one cannot enter a foreign entity as the importer of record. There is no box on this Google form to allow for a foreign address. Upon completion of the exclusion request, all submitters must confirm under penalty of law that their submissions are true and accurate. **WE ARE BEING FORCED TO FILL OUT FALSE INFORMATION DUE TO THE 232 PORTAL DOCUMENT NOT ALLOWING A FOREIGN ADDRESS FOR THE IMPORTER OF RECORD.** The steel 232 workaround for this is to submit an Importer of Record update spreadsheet adding the true Importer of record as an additional entity associated with our shipments. Why can't the true importer of record be entered in this section? **WE ARE BEING FORCED TO SUBMIT AN EXCLUSION REQUEST WITH INCORRECT INFORMATION.** The other Steel 232 work around for this would be to enter the name of the true (foreign) importer of record, but to use our domestic address. This is also false information and we should not be forced to enter anything but the absolute truth. **WHY CAN'T AN IMPORTER OF RECORD BE A FOREIGN ENTITY?** The problem with the IOR update is that it has not been possible to find out if the IOR update is active. We would appreciate a review of this process as there is no legitimate reason that we can find that an Importer of Record entered on this form can't be the true Importer of Record. We also have issue with the fact that the form does not allow one to pick a headquarters country. When you fill out the form there is no location to enter this information. When you have a chance to review the exclusion request before submitting, the form automatically lists the United States as the Headquarters country. There is no option to change this information. We are being forced to file incorrect exclusion submissions due to this aspect of the 232 portal's construction. Here is a screenshot of the allowable information that can be entered.



Here is a screenshot of what is actually submitted.



Notice that the Headquarters country is listed as the United States. We did not have an opportunity to enter any information for the “Headquarters Country” Why does the 232 portal automatically enter the United States? The true Importer of Record could be a foreign entity. We have our vendor take care of all transport of our material to us. This is a legitimate reason for an Importer of Record to be a foreign entity.

This IOR update spreadsheet is a work around to a problem created by the new 232 portal.



This image cannot currently be displayed.

7. We have no objections to one year blanket approvals for items that have received no objections. We also think that a review should be done of the objections to see if rebuttals or sur rebuttals occurred. If there are rebuttals that then allow the exclusion request to further process then the objection should be nullified.
8. We have no objections on one year blanket denials if all subsequent requests were denied.
9. We do not think that it would be a good idea to limit the time to submit exclusion requests to an annual or semi annual time period. There have been so many requests submitted already that at times it takes 2-3 months for the exclusion request to post on either the 232 portal or the regulations.gov website. Trade Remedy and Steel 232 are already overloaded with work. Shortening the time period won't lessen the work. It will make it more difficult for each bureaucratic entity to process each request in a timely manner.
10. If a product is truly available in the US. We don't have an issue with interim denials until the product is purchased.
11. We do not agree to demonstrating good faith showing of the needed quantity and that it will be imported. If we need it we will buy it, If we don't we won't. The 232 process is cumbersome enough without this requirement. What entity would confirm that the

- submitted documents are true? Would this be yet another step in the review process by Steel 232? How long would this review take for each submitted request?
12. We have no issues with objectors having to submit factual evidence that they can in fact manufacture the product in the quality and amount and during the time period.
 13. We do not agree with setting a limit on the total quantity of product that a single company could be granted an exclusion based on an objective standard such as a specified increase over 3 years. We are constantly bidding out different mining projects. If we get a contract, we should not be limited on what we can purchase. Often the items are specific to that mine and we may not have history of purchase. This clause does not allow for exponential growth of our business.
 14. Requiring that requesters citing National Security Reasons as a basis for an exclusion request provide specific articulable and verifiable facts supporting such assertion. Again this will make the steel 232 process more cumbersome. We supply consumables to some of the largest mines in the U.S. and abroad. These mines make the raw materials needed to manufacture all kinds of defense products. Our domestic mines are critical to our National Security. (Defense contracts, letter of concurrence from the head of a government agency will be difficult if not impossible to receive and verify by 232.) This 232 exclusion process needs to be simplified not made more difficult.
 15. We do not agree that we have to prove that we've tried to purchase this domestically. There are only a few domestic mills and they do not make Hollow drill Bar. We think a better idea would be for the Department of Commerce to look at the HS Codes that are a part of this 232 declaration. If an item is not made in the U.S. then the HS code needs to be removed from the 232 list.
 16. We have no issues with the rebuttal/ surebuttal process requiring both objector and requestor to attempt to negotiate in good faith.
 17. Another issue that we would like to possibly address is that under the Regulations.gov process, one could query by part number to find individual exclusions. Before under the regulations.gov process, one could enter a part number in the search field and you could pull up the individual exclusion request. This is not possible under the 232 portal. Please look at expanding the search parameters.

To all that read this we would like to also comment that there have been hundreds of hours of work done by Brunner and Lay staff to have the items that are not made in the U.S. excluded. Those hundreds of hours probably equate to thousands of hours of Bureaucratic work done by our government. This is only for exclusions associated with Brunner and Lay.

Of the 114k rendered decisions only 25k were denied. From this we can deduce that all of the other exclusion requests were granted. Of the 25k requests that were denied, How much money was taken in under CBP 9903.80.01? Of the companies that were denied, Are they purchasing domestically now, or did they have to shut down? This tariff is a tremendous amount of work for all involved. We only ask for a review of the process to see if there is any possibility of streamlining and possibly removing some items that don't need to be a part of this tariff.

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0008

Public comment 7 on 232 NOI. Anonymous. 6-10-20

Submitter Information

Name: Anonymous Anonymous

General Comment

Requiring companies to actually seek out domestic sources prior to submitting an exemption request should greatly reduce the number of requests and allow the DOC to focus on products that are needed but unavailable in the USA.



June 12, 2020

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
Bureau of Industry and Security
14th Street & Constitution Ave., N.W.
Washington, DC 20230

Re: BIS-2020-0012; RIN 0694-XC058; Written Comments by Zurn Industries, LLC in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Dear Secretary Ross:

On behalf of Zurn Industries, LLC ("Zurn"), I submit the following in response to the Department of Commerce, Bureau of Industry and Security ("BIS") *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441 (May 26, 2020). Zurn appreciates this opportunity to provide comments on the processing of exclusion requests pursuant to Section 232 of the Trade Expansion Act of 1962, particularly because Zurn's U.S. manufacturing operations depend on a reliable and consistent supply of certain steel articles that are subject to the Section 232 duties. Zurn files these comments based on its experience as a participant in the exclusion request process and strongly encourages BIS to hold objectors accountable for the accuracy of their comments and to investigate or, at a minimum, demonstrate that it has considered contrary evidence with respect to unsubstantiated claims submitted in objections.

In Zurn's case, an objector claimed that the covered products are currently available from a U.S. producer (the objector). Zurn, having no relationship with the objector, sought a quote for the product and for the first time, provided its proprietary product specifications. The objector confirmed that it **cannot** manufacture the product. This raises an important point --- Zurn's specifications are proprietary, meaning that a categorical declaration that one has the capacity to produce Zurn's products rings hollow. Objections can be - and are - lodged even where a commenter may not know whether it can make the product. Such comments should not be given any weight. Zurn provided uncontroverted documentation to BIS that the objections were factually invalid, and yet, Zurn's exclusion requests remain pending for now more than 9 months. BIS must engage in a full and complete review of the documentation submitted and must make accurate and reasoned decisions on whether to grant an exclusion. It is only if BIS makes the basis of its decision known that a requester can confirm that BIS considered all evidence submitted. This must be accomplished within a reasonable time period. To accomplish this, Zurn provides two specific suggestions below.

ZURN INDUSTRIES, LLC
511 W FRESHWATER WAY MILWAUKEE WI 53204 U.S.A. PHONE: 855-ONE-ZURN (855-663-9876)
www.zurn.com



By way of background, Zurn is a U.S. manufacturer located in Wisconsin and a top supplier of water control products used to maintain safe and efficient operations of buildings, plumbing systems, drinking water, sanitation, drainage, and fire suppression. Zurn products support critical infrastructure by connecting public water and waste water systems to the water or fire sprinkler systems inside commercial or residential buildings. Zurn products are not only critical to hospitals, nursing homes, medical facilities, agriculture and food production businesses, but also to manufacturers and suppliers producing the needed medical supplies required to fight the COVID-19 pandemic. All of these critical operations require clean environments to protect human health and provide their essential services. Zurn incorporates steel inputs, such as in building risers, into these water control and waste management products for sale in the United States.

Zurn filed 12 exclusion requests in September 2019 that remain pending before BIS for decision. This more than 9-month period for processing with no movement toward completion is too long. With these pending exclusion requests, the company is subject to uncertainty and administrative expenses associated with continuing to post Section 232 duties. At the same time, these specific steel articles are subject to cumulative Section 301 duties, making a combined duty rate of 50%. A speedy resolution of these requests is essential to U.S. companies grappling with these costs, Customs compliance, and already stressed supply chains.

This is particularly so where the product is not available from U.S. suppliers, and Zurn has established the unavailability with documentation. Zurn's exclusion requests cover products that require expensive equipment and tooling that take an extended period of time to develop. As such, Zurn cannot simply switch suppliers or otherwise qualify a U.S. producer without significant lead time --- during which Zurn requires a seamless supply of product in order to maintain its U.S. production. The current exclusion process leaves little room to account for these issues or otherwise provide companies with an opportunity to avoid the duties while reassessing supply chains and qualifying new suppliers.

As Commerce is aware, a bipartisan group of U.S. Senators sent a letter noting issues with the pace, transparency, and fairness of the exclusion process in December 2018 and called on the Government Accountability Office ("GAO") to investigate. In response, BIS has taken steps to improve the process, including implementing a separate exclusion portal and creating opportunities for requesters to rebut comments that were filed. These are welcome and necessary changes to increase transparency and the effectiveness of the process. Even so, important additional and verifiable improvements are needed to ensure that where product is not available from U.S. producers, BIS does not permit unsupported opposition comments to delay or block exclusions for downstream U.S. producers that depend on these inputs sourced abroad.

To address the risk posed by unsupported or unverified opposition comments, Zurn urges BIS to implement two specific changes to the process of handling objections:



1. **Commenters filing objections should be held accountable and subject to investigation, verification, and/or requirements of proof for assertions made, including claims that that the product is available in the United States.**
2. **Where a submittal rebuts an opposition comment with evidence and documentation, BIS should expedite the processing of the exclusions and treat the request as if it is unopposed.**

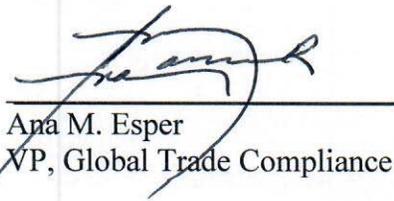
With respect to the first point, BIS has previously been made aware of instances where commenters claim that a product is available in the United States but it is not true. BIS established a process by which requesters have an opportunity to rebut assertions made in opposition comments. This is an important improvement. However, it is critical that BIS fully considers the comments made in rebuttal - and all documentation provided that fairly contradicts claims made in opposition comments. Otherwise, the rebuttal process is without meaning or force.

Further, Zurn has specifically experienced opposition comments that are baseless. Zurn demonstrated that the opposition comments it received were baseless. Where a requester can demonstrate conclusively that a claim made in opposition comments are invalid, then the requester's exclusion request should not be sidelined for months. Rather, it should be treated as if it were unopposed and processed quickly. Accordingly, BIS should approve Zurn's pending exclusion requests. To do otherwise provides a perverse incentive for companies to oppose exclusion requests where they may be able to hypothetically produce a product and derail much needed relief from Section 232 duties for other U.S. manufacturers with significant employees who depend on the current supply chain.

This type of accountability can reduce the risk that even unsubstantiated objections will drive the approval process, whether or not based on fact or evidence. When that happens, BIS fails to carry out the statutory purpose of Section 232, which authorizes tariffs on national security grounds, after taking into account "**the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, . . .** without excluding other factors." 19 U.S.C. § 1862(d). Zurn is a significant domestic employer whose interests and continuing operations employ hundreds of U.S. employees, including manufacturing-related workers. A full and fair exclusion process is essential to Zurn's operations.

We greatly appreciate your attention to these comments and commitment to continually improving the process of providing relief for U.S. companies that qualify.

Sincerely,



Ana M. Esper
VP, Global Trade Compliance

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PUBLIC SUBMISSION

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Docket: BIS-2020-0012

Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0010

Public comment 9 on 232 NOI. Anonymous. 6-19-20

Submitter Information

Name: Anonymous Anonymous

General Comment

The number of steel related exemption requests is approximately 158,000. This number could be reduced if multiple submissions for the same material are not allowed. Once an exemption request has been denied, another request for the same product should not be considered.



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David E. Boyer
President & Chief Operating Officer

June 19, 2020

SUBMITTED VIA PORTAL
WWW.REGULATIONS.GOV
BIS-2020-0012

Department of Commerce
Bureau of Industry and Security
1401 Constitution Ave. NW
Washington, DC 20230

Re: RIN 0694-XC058

Webco Industries, Inc., situated in the heartland of the U.S. since 1969, is a manufacturer and value-added distributor of high-quality carbon steel, stainless steel and other metal tubular products designed to industry and customer specifications ("Webco"). Since the 232 process was first instituted in 2018, Webco has been actively involved in submitting both exclusions and objections through the 232 portal and is keenly interested in how the process evolves.

In response to the Department of Commerce ("Department") request for public input on the 232 process, Webco offers these comments and would be pleased to further discuss should the Department so desire. Webco's experience with the process has overall been positive. Initially, we found the process cumbersome, time-consuming and, at times, frustrating. However, Webco has discovered under the new portal, the filing ability is much easier and less time-consuming than under the old portal.

Firstly, Webco would like to address the portal's search function. When conducting a search and pulling up detail on an exclusion request, one does not have the ability to simply hit the back button and return to the search results. To the contrary, one must start the search process over every time. It would be helpful if there was a way to return to search results instead of having to start over with the same search.

Department of Commerce
Bureau of Industry and Security
June 19, 2020
Page Two

When completing exclusions and objections, there are areas that allow the user to insert additional locations (these are indicated with a "+") such as facilities where goods are manufactured as well as source countries. If there are similar, multiple filings using most of the same information, Webco has taken advantage of the autofill function. However, there is no way to save these additional locations using the autofill function and one must re-enter these locations with each submittal. If there is a fix for this, it would be extremely helpful.

Webco asks for clarity on whether the "total requested annual exclusion quantity in kilograms" required in the exclusion form must match the quantity listed by the requestor when identifying its current source countries. Webco has been submitting its exclusions with these quantities matching but have seen other requestors' exclusions where the quantities do not match.

Lastly, Webco would like to understand the internal process for the timing on when an exclusion is granted and subsequently posted. Our experience has been that the BIS Memo gets posted long after it is dated and signed by the examiner.

In summary, our comments address the functionality of the portal and not the exclusion review and decision process itself. We hope the Department finds these comments helpful and should you like to discuss, please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Boyer". The signature is fluid and cursive, with the first name "David" and last name "Boyer" clearly legible.

David E. Boyer

PUBLIC SUBMISSION

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0012

Public comment 11 on 232 NOI. Metropolitan Staple Corp. H Kastner. 6-23-20

Submitter Information

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Organization: Metropolitan Staple Corp.

General Comment

On January 24th, President Trump signed Proclamation 9980 which extended 232 steel tariffs to derivative items such as steel nails. In the proclamation, it states that there will be an exclusion process for items that are not available in the United States.

As of today, June 23, 2020, nearly five months after this proclamation was issued, to the best of my knowledge, there is yet no exclusion process for the items listed in Proclamation 9980.

Our company kindly and urgently requests that the Department of Commerce issue this process as soon as possible. Our company has made a significant investment with a producer of nails overseas to develop a new type of nail that is not available in the United States, and for which our overseas supplier has applied for a patent in the United States. We should have the opportunity to import this product without the tariff, but we do not even yet have a process to request the exclusion.

Thank you.



AMERICAN IRON & ALLOYS LLC

July 1, 2020

Via Regulations.gov

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
Bureau of Industry and Security
1401 Constitution Ave. NW
Washington, DC 20230

Re: BIS-2020-0012; RIN 0694-XC058; Written Comments by American Iron & Alloys, LLC in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Dear Secretary Ross:

American Iron & Alloys, LLC (AIA) writes in response to the Department of Commerce's (Department of Commerce) Bureau of Industry and Security's (BIS) request for comment regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas.¹ AIA appreciates the opportunity to address the current process for product import under the Section 232 Presidential Proclamation. At issue is the need for an abbreviated process for products that were previously granted an exclusion, as well as providing allowances for product size variations within granted requests.

The Department maintains an ongoing role in assessing the BIS exclusion request process for purposes of evaluating its effectiveness as a tool to meet the intent of the Section 232 Trade Remedies Proclamation. In doing so, Commerce weighs tariff impact on domestic companies that import against the supply of products in the United States. In the instance of AIA, significant burden was put on its manufacturing and supply capabilities due to the time, resources and unintended consequences associated with supply chain uncertainty. The impact was particularly profound due to the company's small size and annual revenues. Consequently, AIA is a case study for exclusion request process improvement as noted by Secretary Ross in his call to AIA Chief Executive Officer Rick Janes on November 21, 2019; this recognition and consideration is consistent with BIS regulations governing the proclamation, as well as the *Federal Register* notice of September 11, 2018 that declined to offer "broad based product exclusion" but left the door open for "reevaluating this determination once additional exclusion requests are submitted."²

¹ Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas, 85 Fed. Reg. 31441 (May 26, 2020).

² Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum, 83 Fed. Reg. 46026, 46046 (Sep. 11, 2018) ("2018 Notice").

After significant delay in product supply resulting from the Section 232 Exclusion Process, AIA customers requested small variations in product diameters for 2020 which impacts the exclusion requests that have been granted for this period. Minor size adjustments were at issue and amount to millimeters in difference for granted exclusions. For example, certain variances amounted to a 1.625 millimeter difference, and it was unreasonable to assume another supplier could offer this product with a slight size variance in short order and according to all requirements noted in the granted exclusions. Given this, AIA requested allowances in existing exclusions for 2020 which was subsequently denied in the March 13, 2020 response from BIS legal staff.

In its March 13, 2020 response to AIA regarding the exclusion request variance, BIS counsel offered:

Under the existing Presidential Proclamations, the Department is only authorized to grant exclusion requests upon request for products that it can determine are not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, or based on specific national security considerations. Currently, there is no process to request a “variance” under the Section 232 exclusion request Regulations which would allow the Department to solicit any objections from U.S. producers. Without posting the proposed modified dimensions for such potential objections, BIS would be unable to determine that the requested product is not available domestically.

AIA does not believe BIS counsel intended for its regulatory interpretation to adversely impact domestic small businesses, particularly during the challenges faced resulting from COVID-19 that require employee furloughs. Nonetheless, the process for requesting and receiving exclusions for products sold in the United States impose a burden that could not have been contemplated or intended when aluminum and steel tariffs were imposed on the industry. It is important to note the need for considering minor diameter variances stems from real time domestic customer demand. As a small business, AIA is in the process of rebuilding its customer base subsequent to the tariff order and uncertain roll out of the exclusion process.

While it is believed the applicable regulations for AIA products provided for tolerances when requests were submitted in 2019 and subsequently approved, the exclusion requests filed were for specific product sizes without providing for a range of sizes and/or critical dimensions. The requests were filed in this manner out of an abundance of caution given the novel process for requests, the need to supply product in timely manner as a small business and the guidance offered by the Department of Commerce at the early stages of the exclusion process in 2018.

Supplement No. 1 to Part 705 of the BIS Regulations sets forth the requirements for submitting exclusion requests to the Section 232 trade remedy and provides that separate exclusion requests must be filed for steel products with chemistry, surface quality and distinct critical dimensions.³ The BIS exclusion request forms allow for minimum and maximum dimensions. Further, the regulations provide that “ranges are acceptable if the manufacturing process permits small

³ 15 CFR Appendix Supplement No. 1 to Part 705(c)(2).

tolerances.”⁴ BIS has updated rules for filing exclusion requests in the *Federal Register* notice for September 11, 2018 where several commenters requested that the Department consider “broad based product exclusion” which would obviate the need for individual requests in instances when there are minute variances in product size.⁵ While the Department did not agree at this early stage that any of the requests received justified a “broad based product exclusion,” it commented that “this does not preclude the Department from reevaluating this determination once additional exclusion requests are submitted and additional information . . . is evaluated.”⁶

With any new process, there is a need to reevaluate systems. The Section 232 Exclusion Process is not immune, and the transition from paper requests to a portal through the BIS website was a positive change. This effort has decreased the application and response time. While opportunities have and should be allowed for comment, additional modifications are necessary to decrease response times and limit supply chain disruptions. For requests that have been granted previously, additional streamlining can enhance efficiencies and give greater certainty to industry. For example, simplifying the notification of a renewal request should be considered.

Moving forward, AIA requests that BIS consider a streamlined process for allowing products to be excluded from Section 232 tariffs. Specifically, BIS should consider the following adjustments to the exclusion process to minimize delay in getting product to market:

1. Allow for an abbreviated exclusion process for products that have previously been granted an exclusion; and
2. Offer minimal allowances among product size differences.

First, if a product or products imported by a domestic business have previously received an exclusion and have gone through the necessary review and comment period, BIS can provide for an expedited exclusion. Once industry has had the opportunity to give comment on potential imports, streamlining the process in subsequent years will allow the importing business to have greater certainty and minimize the supply chain impact that results from the exclusion process. This can include removing or shortening the comment period for objection.

Second, if the manufacturing process permits small tolerances, the Exclusion Process should as well. Currently, variable lengths are allowed within granted exclusions. Sufficient guardrails can be implemented to safeguard the process. For example, a diameter variance can be stipulated in the guidance offered for the exclusion process to allow for minor differences that have a de minimis impact on products and industry.

Overall, efficiencies in the BIS Exclusion Process have been realized since its first roll out and implementation. The portal for inputting data decreases the need for paper transactions and allows users to check updates to requests for exclusions. The interface with Customs and Border Protection is less understood and will undoubtedly take time to seamlessly correlate. We look forward to working with you to create a fully integrated process where requests are received,

⁴ *Id.*

⁵ 2018 Notice, *supra* note 2, at 46046.

⁶ *Id.*

evaluated and granted. This will ensure that product is brought to market in a “just in time” manner to best mitigate unintended impact to the industry and the economy during this uncertain time for domestic businesses and employees.

* * *

Thank you for considering these comments by AIA concerning the Section 232 Exclusion Process. We welcome continued conversation regarding the Exclusion Process as it is reevaluated, refined and implemented. Feel free to reach out to the undersigned at rick@versa-bar.com or (262) 544-4800 if you have questions or need further clarification.

Sincerely,



Rick Janes
President and CEO



Preferred Wire Products, Inc.

401 N. Minnewawa Ave., Clovis, CA 93611

Tel: 559/324-0140 ♦ Fax: 559/324-0144

July 7, 2020

Messrs.
Department of Commerce
Bureau of Industry & Security
1401 Constitution Ave. NW
Washington, DC 20230

Re: RIN 0694-XC058

Thank you for this opportunity to comment on the 232 Exclusion Process. Preferred Wire Products, importing wires for its manufacturing facility; has applied for, and received, Exclusions since 2018.

Our biggest concern is that there can be a multi-month-long backlog of Exclusion Requests waiting a decision. Understanding that COVID-19 has caused some delay, it's still doesn't answer for many Exclusions still waiting a determination. Here are a few:

- #17370, posted 9/12/19 - B&Z
- #53692, posted 1/22/20 - Perfection
- #56365, posted 2/3/20 - Perfection
- #74163, posted 3/25/20 - Tree Island

Here are some suggestions to solve these backlogs:

Suggestion 1. Allow a Granted Exclusion to be valid for two years, instead of one.

This would cut down the work for both sides, but predominantly for the BIS' side, as the number of yearly re-filings would drop significantly. As it stands currently, our company has to plan on re-filing only 3-4 months after receiving an Exclusion in order not to have a window occur between the two Exclusions in which the tariff will be applied.

Suggestion 2. Objectors need to include evidence that they (recently/currently) make, and sell, the Requested product. There are companies that will just make a plain statement, something to the effect of "we object, because we can manufacture this in the U.S." But they do not provide any evidence for such a statement. It is understood that the penalty of perjury is supposed to deter a company from making false statements. Unfortunately, some companies will Object even if:

- 1) they haven't ever contacted the Requestor;
- 2) they don't, or won't, make the Requested product in sufficient quantities, despite stating that they have the 'capacity' to do so;
- 3) are importers themselves of the Requested product &/or similar products. Yet, still Object to another's because of their 'lost' or 'unused' capacity.

The BIS could consider amending its Objection and Rebuttal guidelines to strongly recommend that both sides provide evidence of their statements. It can be as simple as recent correspondence between the Requestor and the Objector, an invoice, etc. This would better assist the BIS for making determinations, which in turn will better alleviate determination back-logs.

Suggestion 3. The Rebuttal comment windows only allow 1000 C H A R A C T E R S, which is extremely short. The Rebuttals' 'Other' comment window only allows 100 characters. This should be increased to 1000 WORDS, or the equivalent in characters, plus extra for spaces and punctuation.

Suggestion 4. The portal could be programmed to flag for special attention those Requests that have been waiting a certain number of days/months for a determination. The BIS would then be able to better monitor & handle those lagging Requests.

Thank you,

Robert Actis, Jr.
Preferred Wire Products, Inc.



Manu(acturin!) Solutt'ons (or Life

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July 6, 2020

The Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
U.S. Department of Commerce
Bureau of Industry and Security
14th Street and Constitution Avenue
Washington, DC 20230

Re: RIN 0694-XC058

Dear Assistant Secretary Ashooh:

In accordance with the notice set forth in 85 FR 31441 dated May 26, 2020, Micro Stamping Corporation ("Micro") hereby submits its comments on the exclusion process for steel and aluminum products subject to tariffs and quotas under Section 232 of the Trade Expansion Act of 1962, as amended. As a company that has received exclusions and exclusion extensions for more than 30 stainless steel tubes imported from Korea for incorporation into medical devices produced in the United States, we have extensive experience and recommendations for improvement of the process, in order to significantly reduce the workload for both applicants and the government.

Micro is a full service United States contract manufacturer engaged in medical device assembly, precision metal stamping, insert and injection molding, machining, sharpening and finishing, delivering high quality products to customers in many industries including medical device, automotive, aerospace and electronics. Established in 1945 and now in its third generation of family management, Micro, with manufacturing facilities in New Jersey, produces precision medical devices, injection/insert moldings, precision components, instrument assemblies, and fabricated tube assemblies. Micro currently has 450 employees in the United States.

Micro's continued viability and future growth are directly dependent upon Micro's expansion of the medical device area of its business. These devices consist of single-use, hand-held surgical instruments, which are critical to patient treatment during primarily endoscopic surgical procedures. Micro's medical devices require specific precision-made stainless steel tubes as essential components. The medical grade tubing is produced, by welding and annealing, to extremely tight tolerances, with proven statistical capability, which is required to meet customers' critical requirements. Since Micro was, and continues to be, unable to locate a qualified manufacturer of precision tubes in the United States, it partnered, in 2007, with a South Korean Company in Pocheon-Si, Gyeonggi-Do. Micro has provided essential and abundant technical and capital support over many years, and assisted the South Korean company in obtaining necessary ISO Quality certifications. Micro is not aware of any supplier in the United States that is willing or capable of producing these tubes to the quality levels necessary to

produce our medical devices to the highest standards. This has been proven by three rounds of exclusion approvals with no objections to all 30+ tubing programs. Accordingly, Micra's medical device business is dependent upon Korean supply. Moreover, Micro is the sole supplier of devices, incorporating the steel tubing, to many of the largest US Medical Device OEMs.

Accordingly, the ability to obtain and renew exclusions for the company's medical grade tubing from Korea is essential to Micro's continued operations. Micro's comments on the exclusion and exclusion extension processes are set forth below.

Specific Topics

7/6/2020

Presidential Proclamations 9776 and 9777 Should Be Amended

With the issuance of Proclamations 9776 and 9777 on August 29, 2018, allowing for exclusions from the quotas established for aluminum and steel products from certain countries, companies were given what were purported to be the same rights as those given to exclusions from tariff countries. As a result, Micro applied for and received exclusions for its stainless steel tubing in September of 2018. Nevertheless, due to the following language in the Proclamations, the company has been unable to take significant advantage of its exclusions and the subsequent extensions of the exclusions in 2019:

Until such time as any applicable quantitative limitation for a particular article has been reached, CBP shall count any steel article for which relief is granted under this clause toward such quantitative limitation at the time when such steel article is entered for consumption or withdrawn from warehouse for consumption.

The effect of this clause in the Proclamation for steel products is that Micro is unable to utilize most of the exclusions it has received. In this regard, the government of South Korea manages exports of steel products subject to quota by providing exporters with the appropriate export license documentation. Since the U.S. government has broken down the annual quota into quarterly quotas, the South Korean government also has to regulate exports under quota on a quarterly basis. The South Korean government does not want shipments of excluded products to prevent shipments of quota merchandise from being entered during the year.

Micro's supplier is only able to ship the exclusion quantities at the end of the calendar year, when the quota is filled or close to filling. This situation is simply not sustainable as a business model. No manufacturer can conduct business and meet customer requirements without regular access to the materials needed to create their products, and the current situation is simply untenable for Micro. As outlined in the attached chart, Micro's shortfall of stainless steel tubing in 2020 will be 93 metric tons and it grows to 113 metric tons in 2021 and 138 metric tons by 2022. As the situation stands today the vast majority of our yearly tubing volume must be received in the prior year in order to meet the current year's volume demand, as our quota only

makes up approximately 35% of our total yearly demand. This puts stresses on the company from a space, cash flow, quality, and production planning standpoint.

While Micro understands that from the U.S. government's perspective, Micro is free to ship exclusion quantities at any time, in reality the Korean government will only permit shipments of excluded product to proceed at the end of a quota year, significantly disrupting the supply chain and having a major adverse impact on Micro's cash flow. Accordingly, the company requests that the language in the Proclamation be amended to state the following:

Until such time as any applicable quantitative limitation for a particular article has been reached, CBP shall count any steel article for which relief has not been granted under this clause toward such quantitative limitation at the time when such steel article is entered for consumption or withdrawn from warehouse for consumption. However, U.S. Customs and Border Protection (CBP) shall not count any steel article for which relief is granted toward any applicable quantitative limitation, and shall allow such steel articles to enter at any time during the period for which relief is granted regardless of whether the applicable quantitative limitation for such steel article has been reached.

Micro respectfully submits that the Proclamation's initial concern of opening the floodgates to foreign supply has been obviated by the exclusion process currently in place. Since each applicant must specify the requested exclusion quantities, BIS retains the option to deny the request in whole or in part if it deems the quantities excessive.

Transparency Regarding Rejections for Technical Issues

Not only should BIS notify applicants of the rejection of any exclusion requests for technical reasons (for example, the use of inches rather than centimeters, or the omission of a specification such as tensile strength), but the agency also allow the applicant to correct the exclusion request rather than having to resubmit the entire request, saving both the applicant and the government additional time and expense.

Definition of "Product"

Currently BIS requires separate submissions for each individual article, even when the articles are virtually identical in terms of materials and use, the only significant difference being a difference in size. Thus, Micro has been required to submit over 30 exclusion and extension requests each year, even though there are only two variations in the chemical properties of its stainless steel tubes.

Accordingly, Micro supports the idea of grouping individual articles together for purposes of requesting exclusions or exclusion renewals based upon material composition and use, in order to save time and expense on the part of applicants and the government.

This streamlined approach would be beneficial to all parties, since it would significantly reduce the number of filings that would have to be submitted each year. Moreover, there would be no prejudice to BIS since it could always reject an application if it considered the product scope to be overreaching.

Potential Revisions to the Exclusion Process

Blanket Extensions

Micro supports the concept of automatic one-year blanket approvals of exclusion requests for product that has received no objections. Micro's recommendation is to adopt a process similar to Sunset Reviews conducted in antidumping and countervailing duty cases. Rather than requiring companies to submit exclusion renewal requests every year, any exclusion that has been granted without objection should be extended automatically, unless a domestic party files an objection, with concrete evidence of its ability to produce in the quality, quantity and time constraints of the exclusion applicant.

This could be easily accomplished by BIS publishing groups of exclusions up for renewal for designated time periods, that have not received objections in the past. The notice would include a time frame for any objections by domestic parties and any amendments to quantities required by exclusion applicants. This would allow for the applicant to submit a simplified request to change the requested amount, if necessary, and for any domestic party to submit an objection to the extension. Any objection by a domestic party should require the submission of probative evidence of ability to produce the quantities required at a competitive price within a time frame comparable to the imports that will satisfy all quality and quantity requirements of the purchaser, as well as all Federal agencies such as the Food & Drug Administration.

Limitations On Quantities

Micro does not support a limitation on the total quantity of product that a single company could be granted based on an objective standard. The Federal Register notice mentions an example of a specified percentage increase over a three-year period. Because a company's needs can change over the course of time, depending on the development of new product lines, orders placed by customers, and movement in the supply chain, such a restriction could hamper the company's ability to operate properly. Establishing an arbitrary limit is not supported by normal business operations and could prevent a company from developing new products and expanding its business.

The absence of a quantity limitation is particularly compelling for companies such as Micro whose total exclusions represent less than 1.1 percent of the total annual quota for the category.

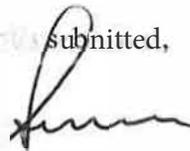
Attempts To Source in the United States

The proposal to require requestors to demonstrate that they have tried to purchase this product domestically should not be necessary for exclusions granted without objection since the lack of domestic interest is self-evident. In order to change the landscape with respect to exclusion extensions, the burden should be on the domestic producers, not the applicants, who would be required to prove a negative.

Certainly, for those exclusion applications for which no objection has been filed, it is evident that there is no need to make further attempts to source in the United States.

We thank you for the opportunity to submit these comments on the Section 232 exclusion process. Should you require any additional information, please do not hesitate to contact the undersigned.

< 611y submitted,



Brian Semcer
President, Micro Stamping Corporation

NORCA INDUSTRIAL COMPANY, LLC

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July 7, 2020

U.S. Department of Commerce
Bureau of Industry and Security
1401 Constitution Ave. N.W.
Washington, DC 20230

RE: RIN 0694-XC058: Comments in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Dear Bureau of Industry and Security:

Norca Industrial Company LLC (“Norca”) appreciates the opportunity to submit comments regarding the Section 232 steel and aluminum import tariff and quota exclusion process (Docket No. BIS-2020-0012).¹ We have been a petitioner in the Section 232 process and are able to provide comments based on our experience.

I. Objectors Should Be Held to Higher Standards

Our customers are US companies, including manufacturers, distributors, and service centers. In our experience, many steel products are not produced in the United States in sufficient quantities to supply US companies, or sometimes even at all. Even though a US producer may claim it can produce a specific product, it does not mean that it will actually produce that product and make it available for sale, especially in situations where the US producer does not already do so. Therefore, US producers that do not already produce a particular product should be required to substantiate any claim that they will begin to do so. A simple claim that “we can make this product” should not suffice.

Further, if the US producer already manufactures the product, it should have to certify that it is in fact able and willing to supply that petitioner for the requested quantity. In many instances, US companies are objecting to essentially all petitions in the docket for a particular product. However, in doing so, objectors often assert they can produce a significantly larger quantity than their domestic facilities are even capable of putting out. In certain situations, the objector does not even currently supply the product, but is arguing that it could make the product in the future. These scenarios leave petitioners with denied exclusions, forcing them to secure product with costly tariffs, and no viable domestic sourcing option.

US companies can object to a petition if they claim that they can produce a viable substitute. The Bureau of Industry and Security (BIS) often denies exclusion requests on simply this basis. Complex

¹ *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31441 (May 26, 2020).

manufacturing is quite technical. BIS cannot properly judge whether the claimed substitute truly is substitutable for the requested product based on the information provided. Further, objectors often claim products are substitutable when they are not. For example, US companies regularly object to our exclusions for seamless pipe, arguing that they can produce welded pipe as a substitute product. Welded pipe is not a substitute for seamless pipe. It is a different product.

Specifically, welded pipe is made by rolling steel coil; the strip is cut to the width of the desired tube size. The cut coil move through rollers to make tube; the seam of the tube is welded. A rolling function forges the welded seam. Seamless pipe has no weld. Conditioned steel round bar is heated/pierced/worked. The bar is made to flow around a piercer point to form a hollow billet. The tube interior is supported with a mandrel/plug while the billet roller is elongated. The tube is sized by additional rolling on the outside diameter. Seamless has 20% higher ASME working pressures than welded tube of same material/size due to lack of welded seam. Seamless offers superior corrosion resistance because it is less likely to contain impurities. Unlike welded, seamless lowers the risk of defects and malleability variances.

While petitioners have the opportunity to rebut objections, the objector always has the last word. Therefore, it can prove impossible to prevail over the substitute claims of an objector, even when the petitioner has accurate and direct information as to why the alleged substitute is not valid.

II. Petitioners Cannot Execute Business with Extended Decision Timelines and Require a Shorter Decision Timeline

We understand the objective of these tariffs and that the accompanying exclusion process requires some time to thoroughly adjudicate exclusion requests. However, in instances where a petition receives an objection(s), even after the process is complete (i.e., surrebuttal filed), the decision can take a very long time. In many instances, decisions on petitions that received an objection can take six months or more from the date of submission. This makes it nearly impossible to make reasonable and responsible business decisions. While the objectives of these tariffs are critical, it is also critical to ensure that US businesses can continue to operate effectively, as they employ countless Americans and are integral to the health of our economy. If petitioners, US businesses who fuel our economy and employ Americans, are unable to make timely decisions, their businesses and the US economy will be harmed. We urge BIS to expedite decisions on petitions that received objections.

a. The Decision Timeline for Renewal of Previously Granted Petitions Should be Expedited

While the 232 exclusion request portal provides the opportunity to link to a previously granted petition, this has not expedited the decision timeline. We believe that filings of previously granted petitions should have an expedited decision timeline. As a way to achieve this, we recommend limiting objections to only those parties that have not previously objected. For example, if a petitioner is applying for a seamless pipe product and a petition for the exact product was previously granted to the exact petitioner over a substitute product objection, that objector should not be able to submit another substitute product objection during renewal. This would expedite renewals and deter objectors from filing objections to all exclusions for particular HTS codes regardless of merit.

III. Shipments Should be Within the Scope of an Eligible Petition if the Bill of Lading is Dated Prior to the Expiration of the Petition

Currently, granted petitions can only be applied to imports that enter the United States prior to the expiration of the petition. Oftentimes shipments are on the water when the granted petition expires. However, if petitioners were able to apply granted petitions to shipments based on a Bill of Lading, petitioners would

be able to account for product already en route. This change would not harm objectors since the petition was already granted and deemed not a threat to US production.

IV. Petitioners Should Be Permitted to File Petitions By Product, Not Individual Sizes

Petitioners should be permitted to file petitions for one product and should not be required to file petitions by individual product size. This would save petitioners an enormous amount of time, but it would also save time for BIS and for objectors. This will significantly shorten decision timelines, as BIS would receive exponentially less petitions.

We note that this recommendation is not to allow petitioners to file petitions by HTS code, as multiple products may be included into one HTS code. If petitioners file by product, petitioners are still bound by the technical parameters of the exclusion request form and will not be able to include more than one product in an exclusion request form.

We appreciate the opportunity to submit these comments and welcome questions or requests for additional information. Thank you in advance for your consideration.

July 08, 2020

Re: BIS-2020-0012; RIN 0694-XC058; Written Comments by POSCO-America Corp. in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas.

On behalf of POSCO-America, Corp. ("POSCO-America"), I submit the following in response to the Department of Commerce, Bureau of Industry and Security ("BIS") Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas, 85 Fed. Reg. 31,441 (May 26, 2020). POSCO-America appreciates this opportunity to comment on substantive and procedural aspects of the product exclusion process. Processing of exclusion requests pursuant to Section 232 of the Trade Expansion Act of 1962 is important particularly because POSCO-America and its U.S. based customers greatly depend on a reliable and consistent supply of certain steel articles that are subject to the Section 232 measures. POSCO-America, which depends on a reliable, predictable, and transparent exclusion process to deliver certain steel articles that would otherwise be available in sufficient quantities to meet the demand of its U.S. customers, provides the following comments based on its experience both as a requestor and as an exporter supporting exclusion requests filed by customers.

1. Objecting entities should be required to provide factual evidence to support assertions regarding their own production capability and capacity.

: In many cases, objections are filed with no support for claims made by an objector that it can manufacture the merchandise that is the subject of the exclusion request other than marketing materials (e.g. websites or brochures). Critically, the supporting materials provided frequently reflect material differences between the merchandise subject to the exclusion request and assert, without support, that identical merchandise can be manufactured as a special order in a relatively short time frame. Objectors frequently fail to recognize the processes necessary to produce new merchandise, which requires development, testing, and qualification, or to provide factual evidence to support that these steps can be performed in the claimed time frame.

BIS should require objectors to provide factual support for claims that they can manufacture merchandise in the quality and amount of the request to which they object, including, but not limited to, evidence that demonstrates past capability to deliver on such assertions. Specifically, such factual support should include at least past commercial documentation reflecting an actual sale of merchandise that is materially identical to the subject merchandise in a similar quantity to existing customers.

In addition, objectors should likewise be required to provide factual support for claims that they have unutilized production capacity to devote to production of the subject merchandise. As many observers have noted, including the Mercatus Center at George Mason University, the total production capacity claimed in the objections far exceeds the current capacity of U.S. steel producers. Requiring objectors to submit factual evidence supporting their claims, by requiring the objector to demonstrate the capability and capacity to produce the merchandise in both the quality and quantity necessary, will: (1) reduce the

administrative burden on BIS of considering unsupported objections; (2) reduce the accumulation of undisposed requests that receive objections by eliminating incentive for objectors to file objections without basis merely to delay the granting of a meritorious exclusion request; (3) reduce the administrative burdens on United States Customs and Border Protection (“CBP”) in processing requests for refunds on entries that may be subject to a granted exclusions that for which disposition is otherwise needlessly delayed; and (4) ensure that U.S. customers will not needlessly be denied access to imported merchandise only to find, at a later date, that the objector cannot deliver on its claimed capacity.

2. BIS should adopt a fixed timeline for disposition of exclusion requests subject to quantitative limitations (i.e., quotas), including time-limited annual or semi-annual windows for consideration and disposition of all product-specific exclusion requests.

: BIS should implement a uniform, fixed, and expedited timeline for consideration and disposition of requests seeking exclusion from quantitative limitations (i.e., quotas) because delays placed on requesters requesting exclusions from quotas cannot be rectified retroactively in the form of refunds. Because relief from a quarterly quota is time-sensitive and can only be applied prospectively, it is critical to ensure fairness in the exclusion process and to facilitate determining quantities for which to request an exclusion and to allow customers forecast and plan adequately to meet future production targets that BIS both adopt a fixed and uniform time frame for disposition for requests seeking exclusions from quotas and prioritize the disposition of such requests. Specifically, limiting product-specific exclusions to be submitted and disposed to a time-limited annual or semi-annual window would facilitate better forecasting by both exporters and importers and allow requesters to better calibrate the quantities in their requests to their actual needs.

First, a fixed and uniform timetable is necessary to ensure maximum fairness in the administration of the exclusion process for requests subject to quotas. Unlike a request for exclusion from additional duties, a request for an exclusion from a quota cannot be compensated retroactively during the period of time during which a request is being considered. Therefore, because of the time-sensitive nature of requests subject to quotas and the unavailability of retroactive compensation for delays in the consideration and disposition of such requests, it is critical that BIS implement a uniform, fixed schedule for requests subject to quotas. The suggestion in BIS’s notice of time-limited annual or semi-annual windows for consideration of product-specific requests would accomplish the goal of ensuring uniformity and timeliness of consideration of requests subject to quotas while facilitating more accurate forecasting of future supply to ensure efficiency of supply chains.

Second, any delay in the disposition of a request for exclusion from a quota prejudices exporters and importers to a greater extent than requests not subject to quotas because importers cannot be assured of access to merchandise subject to a quota even while paying additional duties. Delaying the disposition of requests subject to quotas, therefore, creates supply uncertainty as to available quantities and the timing of such availability. Because many U.S. producers require long-term forecasting to meet production schedules, unnecessary delays may result in lower U.S. downstream production, which hampers growth in downstream U.S. manufacturing capacity and U.S. manufacturing jobs. Moreover,

because many quotas are applied on a quarterly basis, requesters subject to quotas have to constantly monitor import quantities in order to forecast how much of an exclusion from a quota that has been granted must be used in a given period. Therefore, a predictable time frame for consideration and disposition is critical to ensure that requesters can calibrate the quantities for which they request exclusion to the quantitative limitations imposed and to actual demand. Currently, because of uncertainty in the timeline for disposition of exclusion requests in general, exclusion requesters subject to quotas may have incentive to err on the side of requesting a higher quantity than otherwise necessary because of these uncertainties.

Implementing clear and predictable time frames for disposition of requests subject to quotas will improve fairness to requests for exclusion subject to quotas by minimizing delay in disposition of these time-sensitive requests while reducing uncertainty and allowing for requesters to better tailor requests to actual quota limitations and supply conditions.

3. Automatic renewal should be granted those previously approved applications unless commenters submitting objections file factual evidence to support the production capability and/or change of circumstances since the request was previously granted.

: For all previously granted exclusion requests based upon the unavailability of the product or a suitable substitute in the United States, BIS should automatically renew such requests unless an objector submits factual evidence to support that they can in fact manufacture the product in the quality and amount on or before 30 days from the date an annual exclusion is set to expire. This proposal would reduce the administrative burden on BIS of wholly reconsidering requests where an objector cannot claim that the circumstances concerning lack of availability of the same or substitutable merchandise in the United States has changed. If new or different facts or circumstances do exist, it is reasonable and necessary for the requester to re-file the application for review. However, if objectors cannot demonstrate a fundamental change of circumstances for this subset of requests, there is no reason for BIS to devote resources to reconsidering the facts concerning a request that it has already considered. Potential delays caused by renewed consideration of the same request and objection will only negatively impact the U.S. manufacturing operations and the downstream businesses that need a consistent supply of materials.

4. BIS should broaden the definition of ‘product’ governing when separate exclusion requests must be filed to allow for more than one HTS subheading to be included in single product exclusion.

: BIS should allow a requester to list more than one HTS subheading to be identified in a single “product” exclusion to reflect certain commercial realities. Specifically, where the tolerance permitted in a given single product specification causes different shipments of merchandise subject to an exclusion to fall into different HTS subheadings and the exclusion can otherwise be administered by CBP to allow CBP to identify merchandise subject to a valid exclusion request based on some criteria available in the commercial documentation other than HTS subheading, a requester should not be required to either file multiple requests for quantities falling on either side of the threshold set out in the HTSUS or otherwise restrict exports to merchandise falling on one side of the threshold. In other words, a requester should

not be required to file multiple requests for a single specification because the single specification allows for a tolerance that straddles two subheadings of the HTSUS. So long as the requester can present some other means for CBP to identify a single product that may fall into two or more HTS subheadings—depending on the chemical or physical allowed characteristics of merchandise ultimately produced to meet the specification in question—based on commercial documentation, BIS should allow a requester to identify two or more subheadings of the HTSUS in a single exclusion request.

For example, for a recent request filed by the customer of an affiliate of POSCO-America, the merchandise specification permitted a nickel tolerance that straddled two individual HTSUS subheadings at the ten-digit level. Specifically, in subheading 7219.34.00, HTSUS, the nickel content of the subject merchandise determines how the merchandise product is classifiable at the ten-digit level. If the tolerance of a single specification of merchandise allows for the merchandise produced to be classified in 7219.34.0020 or 7219.34.0025—or alternatively, 7219.34.0030 or 7219.34.0035—depending upon the nickel content of the actual finished merchandise produced, BIS should allow the requester to identify either of these identified 10-digit subheadings in a single request.

Allowing a requester to identify more than one subheading of the HTSUS for a single specification would lower the burden on requesters and objectors and on BIS by reducing the number of individual requests and objections that would need to be disposed. Allowing more than one HTS subheading to be identified in a single exclusion request will not increase the burden of administering the exclusion request by CBP because this proposal would only allow a requester to identify more than one HTS subheading where there is some other means to identify the specification subject to the exclusion based on the commercial documentation. This would allow BIS to devote more resources to considering each individual application without the need for a thorough review and investigations if necessary to prove the information submitted.

POSCO-America is a long-standing investor in the U.S. and also a reliable business partner to a significant number of downstream manufacturers. A fair and transparent exclusion process is essential to not only POSCO-America's operations but also our customers in the U.S.

We greatly appreciate BIS's consideration of these comments and commitment to continually streamlining the process for considering Section 232 exclusion requests.

Sincerely,

Jung-Jyn, Ha
Chief Representative
POSCO-America Corp.



VALBRUNA
SLATER STAINLESS, INC.

July 8, 2020

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
Bureau of Industry and Security
Office of Technology Evaluation
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Re: BIS-2020-0012 – RIN 0694-XC058: Valbruna Slater Stainless, Inc.’s (“VSSI”) Comments Concerning the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Dear Secretary Ross:

Valbruna Slater Stainless, Inc. (“VSSI”) of Fort Wayne, Indiana respectfully provides the below comments for consideration by the Bureau of Industry and Security (“BIS”) of the Department of Commerce (“Department”) concerning the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas. *See* 85 Fed. Reg. 31,441 (May 26, 2020) (RIN 0694–XC058).

VSSI is a member of the Specialty Steel Industry of North America (“SSINA”) and produces high quality stainless steel at VSSI’s plant in Fort Wayne, Indiana, where more than 130 people work in manufacturing, distribution, and sales. VSSI is accredited as a Materials Testing Laboratory by the National Aerospace and Defense Contractors Association (“NADCAP”), and manufactures stainless steel products for numerous U.S. defense customers and applications. The Defense Contract Management Agency (“DCMA”), one of the subscribers to the NADCAP program, has identified VSSI as a supplier and indicated VSSI as part of the U.S. Department of Defense’s (“DOD”) supply chain. VSSI is also one of the Valbruna group companies, which have been producing stainless steel products from Valbruna’s manufacturing facilities in Vicenza, Italy — an important NATO ally — for more than 80 years. Vicenza is home to two US military bases, Camp Ederle and Camp Dal Din, which are home to the U.S. Army Africa and the 173rd Airborne Brigade Combat Team.

In light of VSSI’s unique position, VSSI has experience on both sides of Section 232 exclusion request process. VSSI has objected to exclusion requests for imported products manufactured by VSSI in Fort Wayne, and in certain limited circumstances where stainless steel products are not available domestically, VSSI and its affiliates have requested exclusions for imports of stainless steel made by Valbruna in Vicenza, Italy. As a result of its unique position and experience, VSSI has developed several recommendations for improving the application of the Section 232 exclusion process to achieve the goals set forth by the President.

1. Preferential Treatment for Products Further Manufactured or Substantially Transformed in the US

In determining to adjust imports of steel and aluminum articles, the President recognized



that a goal of the tariffs and quotas was to help and revive the domestic steel and aluminum industry by maintaining or increasing production, and ensuring that domestic producers can continue to supply all the steel necessary for critical industries and national defense. *See* Proclamation 9704 of March 8, 2018, Adjusting Imports of Aluminum Into the United States, 83 Fed. Reg. 11,619 (Mar. 15, 2018), as amended (“Proclamation 9704”); *see also* Proclamation 9705 of March 8, 2018, Adjusting Imports of Steel Into the United States, 83 Fed. Reg. 11,625 (Mar. 15, 2018), as amended (“Proclamation 9705”).

The current regulations, however, do not adequately protect domestic producers, such as VSSI, that rely on imported semi-finished steel and aluminum products as an input into their U.S. manufacturing operations, and further manufacture and substantially transform steel products in the United States. Such producers are an essential part of the U.S. steel and aluminum industry.

VSSI has made significant capital investments in the United States so that it could produce a broad range of stainless steel bars at its Fort Wayne plant. For example, VSSI has purchased two vacuum remelt (VAR) furnaces, an electroslag (ESR) furnace, vastly expanded its testing facility, added an automated finishing line, purchased heat treatment equipment, and recently added a straightening and peeling line. In 2017, VSSI completed an investment of over \$30 million to construct a new 166,000 square foot processing facility in Fort Wayne, renovate two older buildings, and install two new state of the art processing lines, a move which has added over 40 new jobs. As a result of these capital investments, the Valbruna group companies employ more than 200 people across the United States in manufacturing, distribution, and sales, including union steelworkers.

Despite the essential role played by U.S. producers, such as VSSI, in the domestic steel and aluminum industry, the current Section 232 process evaluates exclusion requests for imported semi-finished steel products the same as any other imported finished product. This disadvantages U.S. producers, such as VSSI, that depend on imported semi-finished steel products as an input into their U.S. manufacturing operations. The Department should provide preferential treatment to exclusion requests submitted by U.S. producers that further manufacture and substantially transform semi-finished steel and aluminum products.

2. Preferential Treatment for Products Manufactured in a “Qualifying Country” under DFARS and/or NATO Member Countries

The President determined to adjust imports of steel and aluminum articles not only to help the domestic steel and aluminum industry, but also to address the threat that imports of steel and aluminum articles pose to the national security. *See* Proclamation 9704 and Proclamation 9705.

Imports of steel and aluminum articles from countries that are national security allies — such as NATO member countries — do not threaten to impair U.S. national security. Indeed, pursuant to the Defense Federal Acquisition Regulation Supplement (“DFARS”), the DOD has determined not “to apply restrictions of the Buy American Act/Balance of Payments Program to the acquisition of defense equipment which is mined, produced, or manufactured in one of the . . . ‘qualifying countries,’” which include several NATO member countries, such as Italy. *See* 48 C.F.R. Ch. 2, Part 225.872-1.



The combination of regulations such as DFARS and Section 232 results in an inconsistent regulatory scheme, in which stainless steel manufactured by Valbruna in Vicenza, Italy (only miles from strategic U.S. military bases) may be sold for use in U.S. defense applications, but is also subject to a tariff, purportedly to protect U.S. national security interests. The existing Section 232 exclusion request process does not adequately resolve these inconsistencies, and should be revised to take account of the country of origin of steel and aluminum products.

In the past, commenters recommended that the Department prioritize the requests of those countries that are national security allies because such an approach would be consistent with the national security aims of the tariffs. The Department rejected these comments without further explanation. *See Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum*, 83 Fed. Reg. 46,026, 46,041 (Sept. 11, 2018) (“September 11, 2018 Interim Rule”). VSSI agrees with those commenters, and urges the Department to reconsider the country of origin of steel and aluminum products as part of the process for determining product-based exclusion requests. In particular, the Department may provide preferential treatment to steel and aluminum products manufactured in “qualifying countries” under DFARS, which do not threaten to impair the U.S. national security. The Department may also consider providing preferential treatment for any other countries with important national security relationships with the United States.

3. Permit Filing of Single Exclusion Requests for Similar Products Within the Same Commercial Size Ranges

Under the current regulations, importers must submit separate exclusion requests for steel and aluminum products with distinct dimensions covered by a common HTSUS subheading; ranges are acceptable in exclusion requests only if the manufacturing process permits small tolerances. *See Supplement No. 1 to Part 705—Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamation 9705 of March 8, 2018 Adjusting Imports of Steel Articles Into the United States*, 83 Fed. Reg. 46,026, 46,056 (Sept. 11, 2018), as amended; *see also Supplement No. 2 to Part 705—Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamation 9704 of March 8, 2018 To Adjusting Imports of Aluminum Into the United States*, 83 Fed. Reg. 46,026, 46,060 (Sept. 11, 2018), as amended.

VSSI suggests that the Department permit importers to file exclusion requests for similar products within the same commercial size range. Requiring importers to file separate exclusion requests for slightly different dimensions of the same product is inconsistent with commercial realities. For example, manufacturers, importers, distributors, and end users would generally consider stainless steel bars of the same grade having diameters less than one inch apart to be the same or similar products. Requiring importers to file multiple exclusion requests for two stainless steel bars of the same grade in the same commercial size range simply creates more work for everyone in the process, including the Department, importers, and U.S. producers, and most often will not affect the Department’s substantive analysis of U.S. commercial availabilities.



4. Automatically Approve Renewal Exclusion Requests Without Objections

If there are no objections to exclusion requests that are renewals of previously granted exclusions, then VSSI suggests the Department automatically grant the requests without requiring further consideration and delay. Under the current regulations, each exclusion request is reviewed on its own merit on a case-by-case basis, which the Department has justified based on the hypothetical chance that domestic production capabilities and product availability could change. *See* September 11, 2018 Interim Rule, 83 Fed. Reg. at 46,044.

VSSI's experience suggests that there is no need for the Department to undertake a separate, *de novo* review of requests for renewal of previously granted exclusions if there are no objections submitted by U.S. producers. In such cases, the Department already reviewed and analyzed the relevant factors in granting the previous request, and any changes in domestic production capabilities and product availabilities may be assessed in the event of an objection. For companies attempting to renew previously granted requests, the Department's *de novo*, case-by-case review adds uncertainty to the length of time the Department will take to grant renewals, which leaves importers uncertain as to when they should file renewal requests to avoid interruptions in supply.

5. Analysis of Basis for Denial of Exclusion Requests in the BIS Decision Memorandum

The form of the BIS Decision Document denying an exclusion request for steel articles currently includes the following language:

“BIS has considered the evidence provided, including in the exclusion request as well as any applicable objection filings and its report to the President of January 11, 2018, has solicited and taken into account analysis provided by the International Trade Administration (ITA), and assessed other interagency comments as applicable.

In examining whether the relevant steel article is produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, ITA recommends finding, based on all of the evidence presented, that the product referenced in the above-captioned exclusion request is produced in the United States in a sufficient and reasonably available amount and of a satisfactory quality, and recommends denying the request for an exclusion.”

Using the same standard wording in every request undermines public confidence in the process, and contributes to a lack of transparency and certainty regarding the standards applied by the Department in its determinations. Decision memorandums should, at a minimum, (i) explain the evidence considered by the Department, and (ii) provide the specific bases for the Department's denial, including how the Department determined that the steel or aluminum product identified in the exclusion request is available in the United States. Finally, VSSI recommends that in the event a requester validly asserts that its products have special chemical or mechanical properties, which are protected by a patent, a trade secret, or a trademark related to certain performance qualities, the Department grant an opportunity to the requester to engage directly with the Department's metallurgists and specialists.



VALBRUNA
SLATER STAINLESS, INC.

6. Formal Appeals Process for Denied Exclusion Requests

To facilitate certainty and transparency, the Department should establish a formal appeals process for parties to challenge BIS's exclusion request determinations, and promulgate regulations governing such an appeals process. Pursuant to the current regulations, of course, there is no appeals process, and in the past other parties requested the Department to initiate an appeals procedure. *See* September 11, 2018 Interim Rule, 83 Fed. Reg. at 46,043-44.

In declining to adopt such a procedure, the Department noted that the current procedure allows requesters to rebut objections presented by the domestic industry, and that a requester is free to submit another exclusion request and provide additional details or information. *See id.* Neither process is comparable to an administrative appeal of the BIS decision. A rebuttal procedure *before* a determination does not provide requesters with any opportunity to challenge BIS's decision. While requesters have the opportunity to re-file an exclusion request after a denial, as noted above, the BIS Decision Document provides no information as to the evidence considered by BIS, or the specific bases or reasoning for the denial. Thus, it is impossible for a requester to provide relevant additional details or information in a second filing if the requester does not know what details or information BIS would require. VSSI therefore recommends that the Department should establish a formal appeals process for parties to challenge BIS's exclusion request determinations.

VSSI thanks the Department for the opportunity to provide these comments.

Respectfully Submitted,

Valter Viero

Secretary

Valbruna Slater Stainless, Inc.

Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Public Comment

RE: RIN 0694–XC058

Please see the responses shown below regarding your request for public comments on the appropriateness of the information requested and considered in applying the exclusion criteria, and the efficiency and transparency of the process employed.

The Sumitomo Corporation of Americas Tubular Products Group has significant experience with the exclusion process and offers the following comments.

1. The information sought on the exclusion request, objection, rebuttal and surrebuttal forms

Sometimes, the range of values for tensile strength does not contain a maximum value in the specification. It would be preferable if the maximum tensile strength value field could be left blank and the request still be valid.

Example 1: Rejected Exclusion Request # 85787 had the explanation "Product strength: no yield strength value may exceed the maximum tensile strength (reported yield strength range is 861.8 to 999.7; the reported tensile strength range is 896.3)."

Example 2: Rejected Exclusion Request # 76622 had the explanation "BIS Rejected: Yield Strength cannot be greater than Tensile Strength."

2. The Section 232 Exclusions Portal

The portal shows much improvement over the previous BIS version. We have additional recommendations for improvement in the list below.

- A. The requestor should have the ability to save a form and come back to it later, if needed. The current process is that the requestor must complete and submit the form or, in the case of an error, website issue, internet issue, etc., the requestor must completely start

the form entry over again.

- B. If there is a rejection of the exclusion request for any reason, the requestor must initiate a new request. It would be simpler and easier correcting the rejected submission rather than starting an entirely new exclusion request from scratch.
- C. It would be extremely valuable for the requestor to receive system-generated status updates via email (e.g., "submitted - posted", "Objection window Open - Objection Window Closed", "Granted", "Denied") for every exclusion request.
- D. There are delays in getting decision memos posted onto the website. Sometimes, the posting can take weeks and this can have an impact on the timing of document and information sharing in conjunction with vessel arrival and product import.
- E. It would be beneficial having the ability to download the query data to a report for reviewing the status of each application. This option was available on the regulations.gov website but not on the trade website.

3. The definition of “product” governing when separate exclusion requests must be submitted

Consider allowing the submission of a single exclusion request for the entire list of products having the same HTS code. The product variation is not significant to the final assessment. Doing this will minimize the number of applications needing to be submitted and reviewed.

4. One-year blanket approvals of exclusion requests for product types that have received no objections as of a baseline date (see Annex 1 and 2)

HTS codes exist that are nearly 100% granted (e.g., 7304246045).

- A. It would make sense to provide a blanket approval for such HTS codes and reduce the amount of work by requestors, CBP, and end users who must fill out a request for every individual product.
- B. An alternative solution is allowing the requestor to request a range of products falling under one HTS code. This would allow the submission of a blanket application request once per year.

5. Time-limited annual or semi-annual windows during which all product-specific exclusion requests and corresponding objections may be submitted and decided

Having such time-limited annual or semi-annual windows for requests will restrict our ability to make exclusion requests. Our requests are dependent on business activity that is not consistent and predictable. Instituting time-limited windows could lead to applicants submitting requests for all potential scenarios. This would lead to heavier volumes of requests needing a review and decision.

6. Setting a limit on the total quantity of product that a single company could be granted an exclusion for based on an objective standard, such as a specified percentage increase over a three year average

This is a problematic concept. The requestor may receive a new sales opportunity for which they previously had a limited supply. By applying a baseline of previous supply, this could inhibit a company from meeting the contractual obligations in the supply chain.

7. Requiring that requestors, at the time of submission of their exclusion requests, demonstrate that they have tried to purchase this product domestically

Applying this requirement would be very onerous and unnecessary for products with no domestic supply options.

8. In the rebuttal/surrebuttal phase, requiring that both requestor and objector demonstrate in their filings that they have attempted to negotiate in good faith an agreement on the said product (i.e., producing legitimate commercial correspondence.

It seems that this might have the potential for causing anti-trust issues.

9. Other Comments

Here are our additional comments.

A. Minimize the amount of time it takes for the importer to receive refunds if they had to pay the tariff prior to the granting of the exclusion.

B. If an original request is rejected prior to posting onto the 232 website for a minor error (e.g., chemistry, yield strength, HTS code, etc.), and a new request with the corrections is subsequently approved, the requestor would like to use the submission date on the original request for import or post-summary correction purposes.

There are some ways to streamline the entire process. We have presented our ideas for doing this.

Thank you for the opportunity to present our ideas and comments. We appreciate your dutiful consideration of them.

Tubular Products Group
Sumitomo Corporation of Americas

PUBLIC SUBMISSION

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0020

Public comment 19 on 232 NOI. Muangthong Aluminium Industry Company Limited. K Chonnucha. 7-8-20

Submitter Information

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General Comment

We are writing this letter on behalf of Muangthong Aluminium Industry Company Limited located at 66 soi Vilalai Km.20, Bangna-trad road, Bangchalong, Bangplee, Samutprakarn 10540 Thailand established since 1980.

We are Aluminium extrusion manufacturer established and are certified ;

AS 9100 : 2016

ISO 50001 : 2011

ISO 14001 : 2015

ISO 9001 : 2015

IATF 16949 : 2016

who have supplied Aluminium extrusion profile to US market more than twenty years.

We regularly export Aluminium extrusion profile, Aluminium goods and some accessories to US 50-100 MT monthly at least.

We would like to request Import Duty 0% rate for Aluminium extrusion profile and Aluminium goods from Thailand to US which is helpful for our trade possibility between Thailand and US.

It much appreciate your consider to give Import Duty 0% rate for Aluminium extrusion profile and Aluminium goods from Thailand to US in order we can continue business with US market smoothly.

Sincerely yours,

Thank you



The Japan Iron and Steel Federation

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9 July 2020

Comments of the Japan Iron and Steel Federation regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

We, the Japan Iron and Steel Federation (“JISF”), hereby submit comments on the exclusion process for Section 232 Steel and Aluminum Import Tariff and Quotas.

These comments are submitted pursuant to the invitation for comments set forth in the Commerce Department’s *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* that was published in the Federal Register on May 26, 2020. JISF appreciates the opportunity to provide these comments.

Please find below our comments in the list of problems based on more than one year of experiences of our customers and importers who have been actually involved in submission of applications for exclusion of steel products. We are also submitting our proposals to solve these problems.

Problem 1: Unclear standards for decisions regarding exclusion applications.

Proposals for solutions:

- (1) If U.S. steel mill(s) objecting to the exclusion would claim that they could manufacture products equivalent to the products in the exclusion application, submission of factual evidence should be required.
- (2) If exclusion application would be denied, thorough information about the process leading to this decision and the basis for the decision should be explicitly disclosed.
- (3) When a decision about the exclusion application is made, the following special circumstances should be taken into consideration.
 - For products that were contracted before the enactment of the Section 232 measures and products that account for a large share of the purchases of end users, the enormous effect on end users should be taken into consideration for the decision about the exclusion.
 - Even if U.S. steel mills would claim they could make equivalent products, the decision about the exclusion should take into consideration such

problems about the U.S. mills as a very limited production capacity, inferior quality, a very long lead time or other issues that do not meet end user requirements.

Problem 2: Lengthy examination period in excess of the stipulated deadline.

Proposal for solution:

Deadline for the application examination process should be made mandatory (the stipulated deadline of no more than 106 days after submission of the application). In addition, certain periodic deadline should be set in order to expedite processing of the current long time overdue backlog of exclusion applications.

Problem 3: Inappropriate and excessive demands for proof to companies submitting exclusion applications.

Proposal for solution:

Companies submitting exclusion applications are required to provide excessive explanations due to the inclusion of inappropriate questions that are irrelevant to reach a decision about the application. In order to avoid such a problem, please limit questions only to those indispensable to judge whether domestic mills are able to supply the products or not.

(Examples of items we believe are inappropriate: tons of imports in prior years, number of shipments, names of ports, and a proof of having made attempts to purchase the product in the U.S., as required by the new U.S. proposal.)

Problem 4: The one year validity of the exclusion is too short

Proposal for solution:

In some cases, due to a long time before gaining the approval for the exclusion, the validity is too short considering the lead time for manufacturing and exporting the products and delivering it to the customers. Please consider making approvals permanent or increasing validity to two to five years.

At the very least, consideration should be made to ensure enough validity period (e.g. one year) after making the approval for exclusion.

Problem 5: Insufficient information about the status of an application during the examination process

Proposal for solution:

Applicants should automatically be notified of any significant changes in the status of an application during the examination process.

- When the final decision is made to deny or grant exclusion
- When U.S. steel mill(s) submit an objection to the application

Conclusion

The Japan Iron and Steel Federation respectfully requests that the Commerce Department fully consider these comments when rendering its decision.

Respectfully submitted,



Shunichi Uchiyama
Executive Director



July 8, 2020

VIA ELECTRONIC FILING

Mr. Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Re: **Prysmian Group North America
Comments Regarding the Exclusion Process for Section 232 Aluminum Import
Tariffs
BIS-2020-0012; RIN 0694-XC058**

Dear Secretary Ashooh:

On behalf of Prysmian Group North America (“Prysmian” or the “Company”), I submit the following in response to the Department of Commerce, Bureau of Industry and Security’s (“BIS”) *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441 (May 26, 2020). At the outset, Prysmian appreciates the opportunity to share its experiences with the BIS’s Section 232 Exclusion Process (the “Exclusion Process”). As detailed below, based on such experiences, Prysmian respectfully suggests a number of recommendations for the improvement of the process to ensure that the legal and equitable interests of all affected parties are adequately addressed.

I. COMPANY BACKGROUND

Headquartered in Highland Heights, Kentucky, with almost 140 years of experience, and 25 facilities in operation across the United States (employing over 5,000 workers), Prysmian is a world leader in the energy and telecom cable systems industry. In fact, Prysmian is one of the world’s largest producers of telecom cables, offering a comprehensive range of optical fibers, optical and copper cables, and connectivity systems. In its energy business, Prysmian designs and produces cables and systems for the transmission and distribution of low, medium, high and extra high voltage systems. In essence, Prysmian’s products create the vital connections that ensure energy and information is carried effectively and efficiently throughout the residential and commercial infrastructure of the United States and other countries around the Globe.

II. EXPERIENCE WITH EXCLUSION PROCESS

1. Need for Imported Aluminum

As a U.S.-based manufacturer of energy cabling products, Prysmian is heavily reliant on a stable and reliable source of Aluminum, and specifically Aluminum Redraw Rod. Prysmian's subsidiaries import Aluminum Redraw Rod in coils, which they then use to manufacture conductive cable ("Cable"). Such Cable provides essential conductive connectivity critical to electrical power generation, transmission, and distribution in overhead, underground, and underwater applications. Specifically, the Company produces transmission Cable, distribution Cable, substation Cable, and generation station Cable, and is one of only two United States companies currently producing the majority of Cable used for extra high voltage overhead lines. Accordingly, Prysmian's Cable products are vital to the United States' infrastructure requirements.

At this time, the Aluminum Redraw Rod necessary to manufacture Prysmian's Cable is only produced by one domestic manufacturer. However, given the substantial requirements of the United States power grid, said domestic manufacturer does not remotely have sufficient supply to meet the current U.S. demand. Accordingly, despite multiple attempts to source domestically, Prysmian is annually forced to import hundreds of millions of kilograms of Aluminum Redraw Rod in order to meet its operational production needs.

2. The Requests

Given the substantial economic impact of the Section 232 tariffs assessed against imports of Aluminum Redraw Rod, in June 2019, two of Prysmian's subsidiaries filed a cumulative nine (9) requests through the Exclusion Process for various specifications of imported Aluminum Redraw Rod (the "Requests"). Two U.S. companies (the "Objector #1" and "Objector #2") filed objections to the Requests. The parties then went through the rebuttal and surrebuttal processes. The Requests were subsequently denied on January 7, 2020.

The consideration and denial of the Requests raised concerns as to how domestic objectors are able to manipulate the Exclusion Process for their own benefit. Specifically, Prysmian highlights the following troubling facts:

1. Relating to Objector #1:

- a. At the time of its filings, which indicated its ability to domestically produce the Aluminum Redraw Rod required by Prysmian, Objector #1 had no aluminum rod mills in operation.
- b. After both the objections and rebuttals were filed, Objector #1 informed Prysmian, *in writing*, that it had no intention of producing the Aluminum Redraw Rod needed by Prysmian.
- c. Given the foregoing, Prysmian was distressed when Objector #1 filed a surrebuttal again alleging its ability to produce the needed product.
- d. To this day, Objector #1 still has no aluminum rod mills in operation.

2. Relating to Objector #2:

- a. Objector #2 filed objection forms to all of the Requests with *inaccurate Chemical Composition information*. A product meeting the Chemical Compositions set forth in the objections *would not* be any acceptable variation of Aluminum Redraw Rod, the Chemical Composition requirements of which were clearly reported in the Requests.
- b. Despite the material flaws in its objection forms, Objector #2 was permitted to correct the Chemical Compositions in their surrebuttal filings, calling the serious errors “mere oversight.”
- c. Had Prysmian misstated the Chemical Composition of the Aluminum Redraw Rod in its Requests, Prysmian would have been forced to file entirely new Exclusion Requests. However, a double standard appears to be at play for material and substantive errors made by objectors.
- d. Prysmian provided written evidence that it attempted to purchase the Aluminum Redraw Rod from Objector #2 and was unable to do so. Specifically, Objector #2: (1) refused to sell Prysmian one series of aluminum rod; (2) offered a second series of aluminum rod that would fill less than 10% of Prysmian's needs, then defaulted on purchase orders issued for that rod; and, lastly, (3) indicated it was completely sold out of aluminum rod.
- e. Objector #2 never provided evidence directly rebutting Prysmian's supported allegations.

3. Relating to the Limitations of the Exclusion Process:

- a. Prysmian had no opportunity to respond to factual inaccuracies in both surrebuttals.
- b. Prysmian accordingly sought an in-person hearing with the BIS where all relevant parties could be present to submit evidence, but never received any response to its written request.
- c. Prysmian is left with no administrative avenue through which to pursue an appeal of the denial of its Requests; a denial which poses serious economic harm to the Company.

III. CONCERNS AND RECOMMENDATIONS

1. Concerns

Unfortunately, Prysmian's experience with the Exclusion Process, as outlined above, has led the Company to believe that there are serious inequities built into that process that benefit objectors over exclusion filers. A review of the comments thus far submitted regarding the

Exclusion Process indicate that the struggles experienced by Prysmian are not unique. A number of commentators have indicated widespread concern that objectors receive preferential treatment during the Exclusion Process.

In its submission, Tree Island Wire USA Inc. ("Tree Island") notes a concern that too much deference was given to the objection made to its exclusion request and that the factual "merits of the request were [not] weighed in a thorough manner," resulting in a denial. In support of said theory, Tree Island notes two subsequent exclusion requests made for identical products that were granted. According to the commentator, the only difference between these filings and Tree Island's first request was that no objections were made to the granted requests. Accordingly, "Tree Island's experience with the process is that decisioning appears to be solely based on whether their [*sic*] is an objection or not. The merit of the request or objection does not appear to have much weight in the outcome." As a result, Tree Island has lost market share to their competitor (who was granted an exclusion) and paid over \$2.5 million in duties. Prysmian echoes Tree Island's concerns that the presence of an objection is given undue weight, while the substance of the objection is not subjected to sufficient scrutiny by the BIS.

Like Prysmian, Zurn Industries, LLC ("Zurn"), another comment filer, was forced to combat an objection that contained inaccurate information. Despite Zurn providing "uncontroverted documentation to BIS that the objections were factually invalid," Zurn maintains that its requests have remained pending for over nine (9) months. Prysmian strongly agrees with Zurn that the BIS should "not permit unsupported opposition comments to delay or block exclusions for downstream U.S. producers that depend on these inputs sourced abroad." Zurn is absolutely correct when it notes that the current process unfortunately "provides a perverse incentive for companies to oppose exclusion requests where they may be able to hypothetically produce a product and derail much needed relief from Section 232 duties for other U.S. manufacturers with significant employees who depend on the current supply chain[. . .]."

2. Recommendations

To address the inequities suffered not only by Prysmian, but other commenters as well, Prysmian recommends the following reforms:

1. Once a prima facie showing of domestic unavailability is made by an exclusion filer, the burden of proof should shift to the objector to provide concrete evidence of their ability to produce the product required by the filer. It is important that an objector must affirmatively prove that it can provide a product matching the technical specifications, quality, and quantity needs of the filer. The BIS must subject such evidence to careful scrutiny rather than taking unsupported statements of domestic availability as incontrovertible fact.
2. Equity demands that the same standard of accuracy should apply to objectors as applies to exclusion filers; so that technical changes or corrections to objections post-filing are impermissible.

3. A process should be put in place to allow an exclusion filer to challenge factual inaccuracies contained in surrebuttals which, under the current system, must remain unanswered.
4. Given the critical importance of the Exclusion Process to the parties, if parties submit contradictory evidence so that the BIS (or International Trade Administration) is unable to determine domestic (un)availability based on materials submitted, a hearing (telephonic or in-person) should be held in which both sides might be heard and present further evidence.

In summary, both exclusion filers and objectors are valuable members of our domestic economy. They should be treated equally as such without giving preference to objectors, who have no greater claim to the U.S. Government's protection under the Exclusion Process.

IV. CONCLUSION

On behalf of Prysmian, we appreciate the opportunity to express our concerns and make recommendations for improvement of the Exclusion Process. If you have any questions regarding the information provided herein, or if there is any other way that we might help in this inquiry, please do not hesitate to contact me.

Thank you for your time and consideration.

Best Regards,



Brian Schulties
Chief Procurement Officer, North America



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Section 232 Tariffs Exclusion Process Comments

July 9, 2020

Mr. Richard Ashooh
Office of Technology Evaluation
Bureau of Industry and Security, U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: Bureau of Industry and Security, *Federal Register*, Vol. 85, No. 101, Tuesday, May 26, 2020, pp. 31441-31451, *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*.

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI)¹ is pleased to submit comments to the Department of Commerce (DoC) in response to its May 26, 2020 *Federal Register* notice cited above regarding the process companies may use to exclude critical products from Section 232 tariffs, , and to re-emphasize the industry's position.

The imposition of the steel and aluminum tariffs as a result of the Section 232 investigation completed in 2018 and the exclusion process are viewed by a substantial majority of AHRI's members as having an adverse effect on their business performance vis-a-vis the resulting higher commodity costs. Consistent with past communications to the Administration, AHRI opposes² the Section 232 tariffs.

Industry Concerns Remain and Are Now More Acute

AHRI members' concerns with the Section 232 tariffs, which were initially defined in our May 18, 2018 letter and are listed below, remain in place. However, these concerns not only remain, they are heightened and more damaging today because of the effect of the COVID-19 pandemic on industry operations. Members' concerns include:

- The negative effect on their competitiveness in the United States;

¹ AHRI is the trade association representing manufacturers of heating, cooling, water heating, and commercial refrigeration equipment. With more than 300 manufacturing members from virtually every continent, AHRI is an advocate for the industry, and develops standards for and certifies the performance of many of the products manufactured by the global industry. The annual output of the heating, ventilation, air conditioning, refrigeration (HVACR) and water heating industry is worth more than \$44 billion. In the United States alone, the HVACR and water heating industry supports 1.3 million jobs and \$256 billion in economic activity annually, and accounts for more than 90 percent of residential and commercial HVACR and water heating equipment manufactured and sold in North America.

² Which AHRI expressed in letters to [Ambassador Lighthizer](#) and [Secretary Ross](#) on July 17, 2017, a [letter to the President](#) on February 27, 2018, and a [letter to the Department of Commerce](#) on May 18, 2018.

- The suppression of more energy efficient equipment for consumers;
- Price volatility of basic materials and an inflationary effect on prices in the supply chain from the manufacturers to the consumer;
- Unplanned and costly administrative adjustments to conducting business;
- A burdensome exclusion process that is costly to comply with.

The tariffs harm U.S. competitiveness and provide an unfair advantage to imported equipment not affected by tariffs. Products manufactured and/or assembled in the U.S. using globally sourced components will be at a competitive disadvantage compared to finished products entering the U.S. without tariffs. Domestically, this will put inflationary pressure on final costs for consumers and these higher costs result in lower exports as global customers buy products from more cost-competitive countries. Our members view these tariffs as a tax, and they also have several unintended and distortionary effects, outlined below.

The resulting limited and more costly product selection for consumers will reduce the availability of affordable energy efficient products. In all likelihood, this has led to consumers' fixing older, less efficient equipment, and deferring the purchase of newer, more energy efficient equipment, putting added stress on electric grids across the country and compromising national energy efficiency goals.

In addition to HVACR and water heating equipment, crucial ancillary components have also been affected, such as steel sheet metal for ductwork. These increased costs are likely passed on to the consumer in addition to the higher priced equipment.

These price increases also put a considerable administrative burden on our members, distributors, and installers of HVACR and water heating equipment. Complex changes in supply chain management and of inventory & accounting methods for all these companies (manufacturers, distributors, installers) will be necessary. All this burden is particularly heavy for small- and medium-sized enterprises (SMEs). Time wasted on these extra activities has been an enormous drain on their labor productivity.

Section 232 Exclusion Process

AHRI's members are very concerned about the exclusion process that they and their suppliers must execute to seek relief from these tariffs. The Section 232 exclusion process is burdensome and overly complex. Each exclusion request requires the compilation of extensive supporting information that manufacturers must submit in addition to the lengthy Excel form on either steel or aluminum. According to a prior Department of Commerce *Federal Register* notice³, the estimated reporting burden for the collection of information in the exclusion request should average four (4) hours per request. But this is a misleading estimate and does not account for the time taken to identify the pertinent data to be entered or attached in a company's business records.

The exclusion process creates an unnecessary government bureaucracy to assess our members' exclusion requests and presumably greatly lengthens the time from when the request was submitted to when the company may hear a decision. This situation leaves our members' supply chains in limbo and creates uncertainty in the business environment. This compounds the issues which justify AHRI's opposition to the Section 232 tariffs. Overall, the effect will be a loss of private sector and government labor productivity, lower manufactured goods sales, higher costs and limited product choice for consumers,

³ Section III: <https://www.federalregister.gov/documents/2018/05/01/2018-09139/proposed-information-collection-comment-request-procedures-for-submitting-requests-for-objections>

added stress on our electric grid, and a less competitive U.S. manufacturing base, likely resulting in a higher trade deficit in several manufacturing sectors.

AHRI understands that the Trump Administration is a strong supporter of U.S. manufacturing. However, the Section 232 tariffs and the required exclusion process are detrimental to our manufacturing member companies.

AHRI appreciates that the government has improved the exclusion process somewhat since its inception. However, those improvements need to be expanded to make the process easier. Exclusions for our members during this pandemic play an increasingly important role in ensuring their competitiveness, if not survival – an important outcome given the Administration’s national goals. Nevertheless, our members view the process as evidence of why tariffs specific to steel and aluminum are not a good policy for U.S. manufacturing, and result in various unintended consequences as described above.

For these reasons, which are even more important to our members during the COVID -19 pandemic, AHRI requests that the Administration, at a minimum, expand and simplify the exclusion process. For the same reasons, AHRI urges the rescission of the Section 232 tariffs as soon as possible and the exploration of less distortionary methods to meet the current challenges faced by U.S.-based steel and aluminum producers.

AHRI appreciates the opportunity to provide its members’ views on this important topic.

Best Regards,

A handwritten signature in black ink that reads "James K. Walters". The signature is written in a cursive, flowing style.

James K. Walters
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RE: RIN 0694–XC058

Please see our comment below, on the appropriateness of the information requested and considered in applying the exclusion criteria, and the efficiency and transparency of the process employed.

We have first-hand experience with the exclusion process, as we have submitted several requests, met with Commerce staff to discuss these exclusion requests, and made additions and clarifications to these requests based on these conversations with Commerce staff. Despite having provided evidence that a product is not available at all in the U.S., the exclusion requests were denied, which contradicts the whole intent of the exclusions to Section 232 steel tariffs. Below, we outline our experiences with the specific areas of the exclusion process, detailing how the process did or did not meet the standards laid out by Commerce, as well as which areas can be clarified or improved.

- 1. The information sought on the exclusion request, objection, rebuttal and surrebuttal forms:**

Physical properties, such as dimensions and chemical composition of the product seeking an exclusion were requested but do not appear to have been considered, despite the fact that this information should be one of the primary factors in Commerce's determination. For example, rails of 480ft as-rolled lengths are not available in the U.S., but the exclusion requests were denied.

2. The factors considered in rendering decisions on exclusion requests

- a) A fair and transparent decision rendering process is expected.
 - 15 CFR Part 705, RIN 0694-AH55 provides, in relevant part, that "[t]he Commerce Department will only consider information directly related to the submitted exclusion request that is the subject of the objection." However, the precise information and/or factors considered in rendering decisions is unknown/unclear, as physical properties were not considered in rendering decisions.
 - Additionally, the rails that were the subject of our exclusion requests are a finished product that is specifically engineered and optimized for each respective end user. Therefore, the rails should not be simply categorized and viewed as a single commodity (such as blooms, sheets, or wires), yet somehow a decision was rendered based on unknown factors.

- The factors considered by Commerce in rendering its decisions on exclusion requests should be disclosed in a fair and transparent process.
- Commerce should take into consideration contracts in place between the end user(s) and supplier(s) for the product(s) on which an exclusion is being requested when rendering a decision, to avoid a deleterious impact to the end user's business.

b) Irrelevant information included in objections should be disregarded.

- Objectors have included irrelevant factors that are not directly related to the intent of the exclusion request. The exclusion process should make clear that such irrelevant factors are disregarded in the future process. (For example, an objector claimed that an Electric Arc Furnace used in manufacturing its rail is more environmentally friendly than other furnaces. Such information, even if true, is entirely irrelevant to the availability of substitute products in the U.S., nor is it any indication of product quality.)
- Misleading information should also be disregarded as a factor in rendering decisions. Further, it is unclear what efforts Commerce undertakes to verify the accuracy of information provided by objectors. Additional information on how Commerce determines accuracy of information provided should be required.

3. The information published with the decisions

a) Fair and logical reasoning that supports the decisions should be clearly disclosed.

- Decision memos state: "BIS has considered the evidence provided, including in the exclusion request as well as any applicable objection filings and its report to the President of January 11, 2018, has solicited and taken into account analysis provided by the International Trade Administration (ITA), and assessed other interagency comments as applicable. In examining whether the relevant steel article is produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, ITA recommends finding, based on all of the evidence presented, that the product referenced in the above-captioned exclusion request is produced in the United States in a sufficient and reasonably available amount and of a satisfactory quality, and recommends denying the request for an exclusion." However, the statement lacks transparency in regards to the factors considered in rendering decisions. Fair and logical reasoning that supports the decision should be disclosed.

4. Extensive time for a decision to be rendered

a) The duration of processing time for each exclusion that receives an objection(s) is extremely long, leaving the end-users in the U.S. in difficult positions with many

uncertainties. Although Commerce states that the review period normally will not exceed 90 days, the actual time for the decisions rendered was on average approximately 300 days.

In conclusion, appropriate evidence proved that there is no domestic availability or even production of a 480ft rail and a rail of equal or satisfactory quality, yet the final decision was a denial of our exclusion requests, contradicting the intent of the exclusion process.

The entire process could be improved by increasing transparency, allowing all related entities to fully comprehend the factors used in the consideration undertaken prior to rendering fair decisions to grant or deny each exclusion request. Such transparency, fair decision making and reduced processing time, could potentially contribute in reducing the number of future exclusion requests submitted.

Thank you for your consideration of the above, and we truly look forward to improvements in the exclusion process which should grant fair and agreeable decisions.

Public Comment

RE: RIN 0694–XC058

Please see our comment below, on the appropriateness of the information requested and considered in applying the exclusion criteria, and the efficiency and transparency of the process employed.

We have first-hand experience with the exclusion process, as we have submitted several requests, which include both accepted and rejected exclusions. Below, we outline our experiences with the specific areas of the exclusion process, detailing how the process did or did not meet the standards laid out by Commerce, as well as which areas can be clarified or improved.

1. The information sought on the exclusion request, objection, rebuttal and surrebuttal forms:

Commerce requested extensive physical property information, but does not seem to have actually understood the impacts that physical differences have on the user nor utilized that information in its decision making. When evaluating whether a good has a domestic substitute, the specific dimensions of the good should be a primary consideration. Close is not always good enough and in many cases has broader impacts. For example, rails of 480ft as-rolled lengths are not available in the U.S., but the exclusion requests were denied. While it is not clear from the vague exclusion denial response, apparently Commerce views 320 ft rail to be the same as 480 ft rail and dismisses the safety impact that the difference in length of rail makes to weld reductions. The exclusion decisions do not acknowledge the important differentiation and benefits a user experiences related to the difference in the physical differences of the products.

- The factors considered by Commerce in rendering its decisions on exclusion requests should be disclosed in a fair and transparent process. The decision summaries provide no detail on what factors justified the decision rendered. For Example, : “BIS has considered the evidence provided, including in the exclusion request as well as any applicable objection filings and its report to the President of January 11, 2018, has solicited and taken into account

analysis provided by the International Trade Administration (ITA), and assessed other interagency comments as applicable. In examining whether the relevant steel article is produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, ITA recommends finding, based on all of the evidence presented, that the product referenced in the above-captioned exclusion request is produced in the United States in a sufficient and reasonably available amount and of a satisfactory quality, and recommends denying the request for an exclusion.” In our request, no U.S. manufacturer produced a product of the same critical dimension.

2. The information published with the decisions

a) Commerce should disclose the reasoning that supports the each decision. Applicants are simply dismissed with a vague denial and not provided any direction or indication about why. The lack of transparency raises concerns that the decisions are arbitrary and not grounded in an analysis of the facts specific to the exclusion at issue.

- Decision memos state: “BIS has considered the evidence provided, including in the exclusion request as well as any applicable objection filings and its report to the President of January 11, 2018, has solicited and taken into account analysis provided by the International Trade Administration (ITA), and assessed other interagency comments as applicable. In examining whether the relevant steel article is produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, ITA recommends finding, based on all of the evidence presented, that the product referenced in the above-captioned exclusion request is produced in the United States in a sufficient and reasonably available amount and of a satisfactory quality, and recommends denying the request for an exclusion.” However, the statement lacks transparency in regards to the factors considered in rendering decisions. Commerce provides no indication about the basis on which the exclusion was denied.

3. Extensive time for a decision to be rendered

a) The review periods significantly exceed the time line published by the Department of Commerce. Although Commerce states that the review period normally will not exceed 90 days, the actual time for the decisions rendered has

taken upwards of 300 days. The extended timelines hinders our ability to properly plan establish the most cost effective supply chain.

In conclusion, appropriate evidence proved that there is no domestic availability or even production of a 480ft rail, yet the final decision was a denial of our exclusion requests, contradicting the intent of the exclusion process.

The entire process could be improved by increasing transparency, allowing all related entities to fully comprehend the factors used in the consideration undertaken prior to rendering fair decisions to grant or deny each exclusion request. Such transparency, fair decision making and reduced processing time, could potentially contribute in reducing the number of future exclusion requests submitted.

Thank you for your consideration of the above, and we truly look forward to improvements in the exclusion process which should grant fair and agreeable decisions.

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July 9, 2020

The Honorable Richard W. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Constitution Avenue
Washington, DC 20230

RE: RIN 0694-XC058

Dear Assistant Secretary Ashooh,

In response to the invitation to comment on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas, Felker Brothers Corporation would like to provide the following comments regarding the process in the order that the suggestions were offered in the Federal Register.

Felker Brothers Corporation serves major industries in multiple locations throughout the United States, Canada, Mexico, and many other countries, from our facilities in Wisconsin and Kentucky. We offer a combined package of the highest quality stainless-steel pipe, tube, fittings, and customized prefabricated piping systems.

First more transparency in decisions would be beneficial to all interested parties. Currently the decisions that are posted are identical, without comment as to what actual numbers were used to determine if there was sufficient quantity in the United States, or, in cases of substitution, if the proposed substitute product was considered as a substitute. Explaining the reasons for the decision, with detail, would allow both the requestor and any objector to understand why a decision was made. In turn, this would allow either party to supply more usable supporting documentation in future filings. Additionally, once the reason for the decision is understood, either party can assess the government's position on the decision and decide if requests or objections are necessary in the future. This may reduce the number of filings.

Secondly, a time-limited annual, or semi-annual window allowing exclusion requests and objections would be another beneficial implementation. Instead of allowing an exclusion request to be filed at any time, for any product, creating an annual window for different categories of products will allow all interested parties, including the government, to focus their efforts on a specific category for a certain amount of time. Once the window for one category is closed,

interested parties and the government can focus on a different category. This will allow limited resources to be applied more effectively when processing these filings.

Thirdly, requiring requestors to show the actual need or demand for the requested product is imperative for Section 232 tariffs and quotas, and subsequently the exclusion requests, to be effective. Nearly all of the exclusion requests for stainless steel pipe and tube provide no evidence, and none have provided any evidence of the demand for the quantity requested. In the majority of requests, the same amount is submitted for each item. Furthermore, the vast majority of exclusion requests are for amounts that are significantly higher than the stated average annual usage. By requiring this documentation, it both keeps the requestor honest with the amount being requested, and it allows potential objectors to make better decisions when deciding whether to object.

Requiring that the requestor provide evidence that they have tried to purchase this product domestically will reduce the burden on the government. This will help show whether the product in questions is domestically available, which in turn will allow the adjudicator to make a more informed decision. To date, nearly all of the exclusion requests made for stainless steel tube and pipe are submitted without any supporting documentation. By requiring that this evidence be produced at the outset, it will diminish the burden on the government to research this information internally.

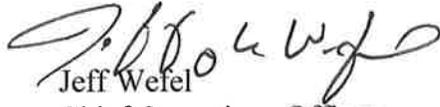
Requiring good faith negotiation between the parties will benefit the process. By having the parties negotiate in good faith, it will show domestic availability of said product. Additionally, if the parties come to terms, either the capacity of the domestic manufacturer will increase to 100%, or the demand for the product from the requestor will be reduced to zero. Either of these results will eliminate filings, and diminish the burden on the government.

We strongly disagree with the suggestion that was made in some comments that if a rebuttal is made, any objection should be immediately discarded and the exclusion request should be granted. The purpose of rebuttals and surrebuttals is to allow the parties to exchange information and comment on the other party's position. The comment shows a lack of understanding of the purpose of the rebuttal and surrebuttal process, which means that it is likely being misused. It is imperative that the rebuttal and surrebuttal process remains, so as to give the parties an opportunity to address the other's concerns, and to allow the adjudicator to make a decision with the most information available.

Other comments suggest that if an exclusion request is granted, that it should be automatically renewed, and not allow an objection to be filed. This would prevent a U.S. manufacturer from presenting new evidence that may not have been presented at the time of the original filing. Also, it would negate any changing circumstances that may have happened throughout the year. It is possible that a U.S. manufacturer has invested in new equipment or has had a change in capacity. Not allowing an objection on a renewal filing would prevent this evidence from being considered.

We sincerely appreciate the opportunity to offer suggestions, and appreciate the hard work that the BIS is doing with these section 232 tariffs.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Wefel". The signature is fluid and cursive, with the first name "Jeff" being more prominent than the last name "Wefel".

Jeff Wefel
Chief Operations Officer
Felker Brothers Corp.

JW/ajr

PUBLIC SUBMISSION

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0028

Public comment 26 on 232 NOI. Anonymous. 7-9-20

Submitter Information

Name: Anonymous Anonymous

General Comment

The volume of the material for which an exemption is being requested should be verified. Some initial requests we have seen are for extremely low volumes. The volumes can then be increased in subsequent renewal exemption requests.



The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
Bureau of Industry and Security
Office of Technology Evaluation
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

July 7, 2020

Re: BIS-2020-0012; RIN 0694-XC058: Written Comments of the Specialty Steel Industry of North America in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas. 85 Fed. Reg 31,441

Dear Secretary Ross:

I know the US Steel Industry is a topic with which you have extensive experience. That is very much appreciated as we manage through the administration of the governing rules regarding the exclusion process for Section 232 Steel and Aluminum Import Tariffs and Quotas. I am writing in support of the issues raised by the SSINA as well as to highlight some of the challenges directly.

The largest challenge that I recognize as a more frequent reviewer of the exclusions portal is the sheer volume of requests being submitted. It is overwhelming for a company such as ours as we simply do not have the resources to review all filings that may be related to the products that we produce domestically. In an environment where we are unfortunately being forced to take drastic actions with employment terminations, a company like ours cannot allocate the multiple full-time dedicated employees it would take to review all exemption filings that we deem appropriate to investigate following an initial sort. The filter options on the portal are negligible and one gets defaulted back to the first page with all filters deleted upon review of an exemption filing. I know the HTS codes were created to help filter down to a family of products but many exemption filings do not match as inaccurate information is often input. One must reset the filter option(s) at the home screen for every new "look-up." I would think that a trained, experienced reviewer at the Commerce Department could be provided with a list of domestic producers portfolio of products to conduct a "first look" comparison to determine if the exemption request should be denied prior to even one having to review to see if an objection is warranted.

Beyond the enormous volume, I frequently see exemption requests for standard products that are produced by many domestic mills. Some of those requests are very clear in calling out the domestic grade and specification identifiers while some are not. Yet, the exemption requests frequently call out "no domestic production." Some of those filings are blatant misrepresentations while others could be misunderstandings. I do contend, however, that many



are filed with some verbiage that attempts to identify distinguishing factors that make the product being requested appear unique or proprietary. I have filed many objection requests identifying that all mills claim to have a “secret recipe” or special manufacturing method that the industry desperately needs, when, at the end of the day, we are obliged to hit chemistry and specification requirements, regardless of branding and marketing tactics to differentiate.

There are also many exemption filings whereby the filing company has had zero to minimal presence in the market yet are appealing for large volumes to be imported. I contend that the 232 system itself has published information regarding grades and specifications that some foreign mills use to determine if they can make subject products and then have any myriad of alleged “United States” based companies file an exemption for on their behalf. Further, there will be multiple requests from different companies as the mills sought assistance on getting these products into the US. In addition, some of these “United States” based companies are only domestically established brokers of a given mill’s product.

Many exemption filings list volumes that far exceed domestic demand. I think the strategy there is to have the Commerce Department think a given market is huge and they are only looking for a small percentage to import.

Another noticeable improvement would be for the objectors to have the ability to file a “blanket” objection covering multiple exemption filings or simply note a previously submitted objection number. This would at least help reduce some of the redundancy, especially when filing objections against the same product forms with only the size being the differentiating factor among the exemption filings.

I thank you for the opportunity to submit commentary on the 232 process and wanted to highlight a few issues that we see frequently. Beyond these comments, I fully support the issues noted in the submission from the SSINA.

Respectfully,

Brian A Kane

National Sales Manager

Universal Stainless & Alloy Products



Autoform Tool & Mfg. Inc.

1501 Wohlert St
Angola, IN 46703

Phone: (260) 624-2014 • Fax: (260) 624-2017

July 8, 2020

The Honorable Richard Ashooh
Assistant Secretary for Export Administration
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: BIS-2020-0012: Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (RIN 0694-XC058)

Dear Mr. Ashooh:

Thank you for the opportunity to provide comments in response to the above referenced Notice of Inquiry. Autoform Tool & Manufacturing ("ATM") has filed a number of petitions for exclusion from Section 232 tariffs since the launch of the process in 2018, and we provide the below comments based on our experience to date.

Founded in 1996, ATM is a U.S. manufacturer located in Angola, Indiana, with approximately 300 employees. We are a leading supplier of direct injection fuel rails, high pressure inlet and crossover pipes, low pressure inlet pipes, and conventional low pressure multi-port injection fuel rails used in passenger vehicles. Specializing in stainless steel materials, we provide the finest components and systems available on the market, and our customers include major U.S. auto manufacturers. We appreciate the complexities of the product exclusion procedures, and commend the BIS team for its work establishing and maintaining this process. However, we urge BIS consider the following as it undertakes any revisions to the current system.

First, BIS must consider that not all steel products are created equal and cannot be treated as such. We deal with products for auto manufacturing. These goods have undergone rigorous testing and certification procedures. When we supply our product from overseas, we do so because we have not been able to identify a U.S. producer that meets our customer's various requirements – including quality, production capability and capacity, and price. We cannot shift our supply chains to other producers at the drop of a hat, or easily substitute one item for another, as some proponents of the Section 232 process would like to believe. BIS should include a section on the product exclusion form where petitioners can include information on whether the product requested has undergone certification procedures by the final end-user and take that information into consideration when reviewing exclusions.

BIS also must hold objectors accountable. For many filing petitions, the concern is not "will BIS grant my exclusion," but rather "will a domestic company object to my exclusion." Objectors are motivated to file objections against as many exclusions as possible, an act that seems – with exceptions – to ensure that the exclusions will be denied. In many instances, objectors state they "could" make a product, but do not actually do so. Whether they ultimately shift or expand manufacturing operations to the production of new goods depends on any number of complex factors beyond simply demand, including profit margin and the ability to retool existing equipment. Steel users cannot wait for these companies to decide whether and how to offer different products for sale – we implement contracts based on what is available when we are looking for product, before we file for exclusions. BIS should not examine petitions with a look forward to what U.S. producers can make, but rather what they actually do manufacture at the time of the exclusion. For example, you might require objectors provide evidence that they advertise the product for sale, or how they might retool or expand production to meet this demand in the immediate future. The agency should



"We Sell Solutions"

Autoform Tool & Mfg. Inc.

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also consider the volume that producers are claiming they can manufacture across all petitions when considering production capacity.

We recognize and appreciate the administration's efforts to expand U.S. steel production. We urge you consider how the process might be improved to increase certainty and accessibility of key products for manufacturers like us that remain critical to U.S. supply chains.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory J. Durante', with a stylized flourish at the end.

Gregory J Durante | Vice President of Purchasing
Autoform Tool & Mfg. Inc.
1501 Wohlert St
Angola, IN 46703
(260) 624-2014

BIS is seeking public comment on the appropriateness of the factors considered, and the efficiency and transparency of the process employed, in rendering decisions on requests for exclusions from the tariffs and quotas imposed on imports of steel and aluminum articles

On behalf of the voestalpine Group, an Austrian based steel group with major facilities and investments in the United States, we are submitting these comments in response to the Department of Commerce Bureau of Industry and Security’s (BIS) request dated May 26, 2020, “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas.” voestalpine is a foreign producer/exporter, U.S. importer, and U.S. manufacturer and user of steel products. voestalpine has over \$2 billion invested in U.S. facilities.

voestalpine appreciates the opportunity to submit these comments. Our comments are based on actual experience in requesting thousands of exclusion requests for a variety of steel products which are either not produced in the United States, or for which there is inadequate domestic capacity to meet demand. We hope these comments are considered constructively and will assist BIS in streamlining and improving the transparency of the exclusion process.

Revisions to Existing Exclusion Request Process

1. Eligibility Requirements for Objectors: BIS Should Require Basic Burden of Proof for Factual Claims Made in Objections and Surrebuttal Comments to Prevent Blanket Objections Not Based on Fact

BIS should require that parties objecting to exclusion requests and submitting surrebuttal comments are required to provide documentation and affidavits to support their claims. Although BIS has stated that domestic manufacturers are required to prove they can manufacture the product(s) which they claim to be able to manufacture, within the requisite timeline to file an objection, we have found objectors seldom submit supporting documentation verifying their ability to produce a particular product—yet BIS accepts their statements as fact.

We have observed parties objecting to exclusion requests claiming they can manufacture the product for which the exclusion is sought, do not provide supporting evidence, and BIS accepts their statement without question. We have submitted exclusion requests on the basis of there not being a US manufacturer who can produce the particular product. US manufacturers will then object to the exclusion request, claiming they can produce the particular product but fail to provide supporting evidence. We file rebuttal comments, asserting that the US manufacturer cannot make this particular product within the requisite timeline, often attaching customer support letters documenting this fact. To date, very few, if any, US manufacturers have submitted surrebuttals to address voestalpine

rebuttal comments, yet approval rate on voestalpine rebutted objections, with such supporting documentation, is less than 10%.

BIS should require US manufacturers asserting the ability to produce a particular product to report the following: 1) production history for particular production, 2) melting and conversion process (i.e. sheet/plate rolling, bar rolling), 2) sales history and statistics (duration, volume) for the particular product, 3) capacity, 4) mill test certificate, 5) lead times, 6) description of characteristics and performance parameters of particular product, and 7) an affidavit certifying to the accuracy of the above.

If US manufacturers objecting to an exclusion request do not file any surrebuttal comments or evidence to address valid rebuttal comments filed in response to their objections, then BIS consider the absence of surrebuttal as the inability of the US manufacturers to substantiate their claims and therefore exclude such claims from their decision-making process.

2. HTSUS Code Revisions of Exclusions Submitted and Approved

BIS should automate the submission of HTSUS code revisions to granted exclusions. Currently, exclusion requests submitted with an expired HTSUS code after an HTSUS code change will be deemed non-administrable and rejected. Certain exclusion requests are also denied due to incorrect HTSUS codes, although requestors are eligible to re-submit. Finally, often times the end user for a given product receives a granted exclusion request for a product, yet assigns an HTSUS code to the particular product which is not aligned with the HTSUS assignment by the IOR. In these cases, the mismatch is often not determined until the request has been fully processed/granted and is applied (many months after the original submission) and the only option currently is to submit a new request. If BIS were to allow requestors to submit HTSUS corrections through the portal (for example as a result of updated CBP classification rulings, changes in HTSUS codes, or human error), this would significantly reduce the administrative burden for BIS. The current process to change Importer of Record for a granted exclusion request would also be an ideal solution for allowing changes to HTSUS code designations.

3. Automated Reference to Previously Granted Exclusions or Ability to Add Additional Importers of Record to Requests

BIS should allow for requestors submitting new exclusion requests to reference previously granted exclusions which are applicable to the same product specification and manufacturer but granted for a different importer of record. This ability to automatically reference or link a previously granted exclusion will streamline the process and allow BIS to better administer the request.

Alternatively, BIS should allow requestors to designate more than one importer of record, at the time of filing, to lessen the number of exclusion requests submitted and thus the burden on BIS to review those requests. BIS should also consider allowing requestors to request additions or changes to the importer of record listed in the exclusion, on an automated basis.

4. **Allowance for Comments Filed in Support of Exclusion Requests**

BIS should allow the public to file comments in support of exclusion requests and publish these comments along with any objections filed to the exclusion request. Many US companies—manufacturers, distributors, and end-users alike—are impacted when an exclusion request is denied. BIS should permit the submission of supporting comments to gain a complete understanding of the importance and impact of an exclusion request being granted or denied for a particular product.

5. **Total US Demand and Capacity**

BIS should revise the exclusion requests forms to solicit detailed information for both requestors and objectors on total estimated US demand and total estimated US capacity, instead of solely relying on the individual demand of requestors compared to the individual capacity of objectors. Prior to making a decision to deny a request based on sufficient US capacity, BIS should take into account *total* US capacity compared to *total* US demand. For certain groups of products the total available US capacity is limited and cannot support total US market demand. Unless total capacity and demand information is solicited, BIS will not be able to make informed decisions on exclusion requests made claiming insufficient US capacity for the product covered by the request, but for which an objection has been filed by a US manufacturer claiming they have sufficient capacity and can meet demand.

6. **Broaden Scope of Certain Types of Permitted Exclusions**

There are specialty steels of certain grades and/or specialty steels produced via proprietary processes which are either not produced or produced only in insignificant quantities in the United States. These products come in a range of dimensions. Where it is clear that a particular grade of product, or a product made by specialty process, is not produced or not sufficiently produced in the United States, the exclusion should be expanded to allow for a range of dimensions. This will reduce the volume of exclusion requests and impact on BIS resources.

Content of BIS Decision Memoranda

7. To improve the transparency of the decision making process, BIS should articulate which evidence from the record (including all submissions made by both requesting and objecting parties) were considered and served as the basis for its decision to either deny or approve a particular exclusion request. Current decision memoranda contain generic language which does not indicate that BIS's decision was the result of reasoned decision-making based on the specific evidence before it.

BIS Exclusion Request Review Team Staffing

8. BIS should ensure that government employees and/or contractors responsible for reviewing each exclusion request (and subsequent objections, rebuttals and sur-rebuttals)

should be assigned as a case manager and arbiter, to provide internal transparency regarding responsibility and decision making of each request from submission to the completion of the decision-making process. This individual should remain the same person for each exclusion request from start to finish. We note that we have experienced inconsistent decisions (for example exclusion requests covering product grades within an existing quality, HTS number, and production route are not treated the same do not have consistent decisions). Internal transparency regarding the responsible individuals assigned as case managers to evaluate exclusion requests would promote consistency, accountability, and provide both requesting and objecting parties with the identity of the individual responsible for managing each request.

BIS Decision Timeframe and Blanket Approvals for Requests Not Processed Within Timeframe

9. BIS should issue blanket approvals for exclusion requests filed and for which no decision has been made 30 days after the submission of the last document (exclusion request, objection, rebuttal, or surrebuttal). Currently, exclusion decisions are taking up to four months to be announced for a request with no objections and up to 8 or more months to be announced for a request with objection(s), rebuttal(s), and surrebuttal(s).

Information Accessible to Public on Existing Exclusions

10. BIS should make available an online tracker for each granted exclusion to allow the public to view available quantities per CBP import data to prevent mismatches in the effective status of requests. BIS should also reactivate the process of turning off a granted request, upon reaching the granted request quantities, to prevent any mismatches in timing/data and resulting over-shipments of granted request quantities by the IOR.
11. BIS should make available an online tracker for products subject to quotas to allow the public to track the status of quotas, total volumes imported under quota, and total volumes imported under particular exclusions. BIS should include approved quota exclusion requests in the online tracker to allow for better oversight and management by importers.

Revising Process to Renew Granted but Expired of Exhausted Exclusions

12. BIS should expedite the process for requesting additional volumes for exclusions which have already granted but for which the volumes covered by the exclusion have been exhausted.
13. BIS should automatically renew previously granted exclusions for which no objections have been filed and for which there are no substantive data changes.
14. BIS should allow the roll-over of volumes covered by a previously granted exclusion which has not been fully used within the effective 12-month period.

15. For the renewal process of granted exclusions, BIS should automatically extend the validity date for those exclusions as an interim-measure until a decision has been made by BIS.

Automatic Blanket Approval for Exclusion Requests Covering Patented Products

16. BIS should grant automatic blanket approvals for exclusion requests covering patented products, which by definition cannot be produced in the United States because they are patent protected. U.S. producers should not be permitted to ask for licenses to produce such products as a condition of not objecting to an exclusion request.

Automatic Blanket Approval for Exclusion Requests Covering Tool Steel and High Speed Steel

17. BIS should grant automatic blanket approvals for exclusion requests covering tool steel and high speed steel, as tonnage is limited and domestic capabilities are limited and cannot meet total domestic demand.

The Section 232 Exclusion Portal Accessibility and Usability

18. BIS should revise the exclusion portal to either eliminate or reduce system CAPTCHAs when users are submitting exclusion requests. It frequently takes longer to clear the system CAPTCHAs than to populate a new exclusion request.
19. BIS should ensure that all public documents filed are published in the portal within 7 days.
20. BIS should add an Application Programming Interface (API) to the portal site to allow for faster downloading/uploading of exclusion request information, exclusion request status, as well as data contained in the exclusion requests.

Other Comments

21. While not directed at the BIS process, we note that the current activation process from when an exclusion request is granted until CBP acknowledges receipt of—and activates—the exclusion could be made more efficient through automation. Currently, after an exclusion has been granted and notice of approval has been published, the requestor of the exclusion must administer the activation process with CBP through a manual process. We note that in our experience CBP may activate an exclusion prior to submission of the request for activation, but this is not always consistently done, and the requirement to submit an activation request is still in place unless the exclusion has already been activated by CBP. Creating an automated system between BIS and CBP for granted exclusions, through which approved exclusions are automatically sent from BIS to CBP for activation, would reduce the burden both on parties requesting and receiving exclusions and CBP.



Bureau of Industry and Security
Department of Commerce
1400 Constitution Ave NW
Washington, D.C. 20230

Docket No. 200514-0140
RIN 0694-XC058
Regulations.gov ID: BIS-2020-0012

RE: California League of Food Producers comments in response to the “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs”

The California League of Food Producers (CLFP) respectfully submits comments in response to the “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas,” in Docket No. 200514-0140. The CLFP membership includes a wide range of food processing companies including driers/dehydraters, freezers, and canners of fruits and vegetables. We also have nut processors, dairy processors, beverage manufacturers, soups, and specialty sauces, baked goods and more.

The 232 steel and aluminum import tariffs are having a real impact on the bottom line of California food producers that rely on these materials for safe and affordable packaging of their products. Aluminum cansheet and steel tinmill products need to be imported from foreign suppliers because domestic aluminum and steel manufacturers have not been able to meet domestic packaging industry needs in terms of available volumes and quality levels. The tariffs have added significant costs to domestic producers and have thus adversely impacted the competitiveness of California food producers both domestically and globally. Due to the tariffs, domestically produced products became more expensive than imports, including finished food products from China, which are not subject to the Section 232 tariffs. And American food producers lost business in foreign markets as they were outbid by competitors from countries in Asia due to the higher tariff-induced costs for metal in the United States.

General concerns

The 232 tariffs and the exclusion process have created undue hardship and uncertainty for food packaging manufacturers as well as food processors. Enormous numbers of hours have been spent by can industry personnel applying for exclusions. Some requests have been granted quickly, but others have remained pending eighteen months or more after submittal.

Domestic can manufacturers applying for exclusions also find themselves the subject of a disproportionate percentage of objections from the domestic steel industry.

Specific comments and suggestions regarding the exclusion process

CLFP aligns itself with the comments made below by the Can Manufacturers Institute (CMI) that specifically address the Section 232 exclusion process based on the experiences of their member companies, which have submitted hundreds of applications over the course of the last two years.

- 1) Shorten the application form: The technical detail required by the current application regarding product specification is unnecessary and cumbersome. Less detailed applications may allow for the Department to review and rule on applications in a quicker manner, to the benefit of all interested parties and the agency alike.
- 2) Allow similarly situated companies to apply for exclusions as a group: In other tariff exclusion procedures, companies sourcing generally similar materials were allowed to submit group applications, and the same process should be embraced today for Section 232 exclusions. Allowing group applications saves the applicants' valuable resources, and would also save staff time at the Department.
- 3) Grant categorical exclusions: The Department has considered categorical exclusions for tinmill products during the past 18 months, as contemplated by the implementing regulations. The Department should formally adopt a categorical exclusion process, and should actually utilize it on behalf of products like tinmill steel that the domestic industry does not and cannot produce in sufficient volumes.
- 4) Allow requests for multiple products: Companies should be able to apply for groups of similar products on a single application, such as for different sizes of the same specification. Like other proposed changes, this would save the Department and industry considerable time.
- 5) Impose real deadlines for decisions: To provide predictability to applicants, adopt a rule under which requests must be resolved within 60 days of the final comment submission. If the 60-day period lapses without action by the Department, the application should be deemed to have been approved. This change would make the system far more reliable than the Department's current soft target of 90 days from initial submission, which has not been meaningful.
- 6) Remove surrebuttals from the exclusion process: Objectors from the domestic industry are allowed more than sufficient opportunity to rebut an applicant's assertions in their initial objections. Most surrebuttals merely repeat claims advanced in the original objections. A three-round approach of request, objection, and rebuttal should provide the Department with all required information and enable it to make informed determinations.
- 7) Allow and grant multi-year exclusions: One-year exclusion grants create market and price distortions by creating sudden demand for large volumes of product, which leads to related transportation and inventory issues. Extending exclusions over a longer time

period would help avoid or reduce such distortions. Additionally, most manufacturing companies work on a calendar year procurement cycle. The sporadic granting or denial of applications disrupts these procurement processes. Allowing longer exclusion grants that are coordinated with an applicant's procurement cycles would allow for more productive and efficient manufacturing processes.

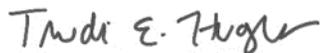
- 8) For Aluminum Exclusion Requests, the Portal Should Be Modified to Eliminate Requirements in the Chemical Composition Field that Are Inconsistent with the Aluminum Association Specifications: The current Section 232 Exclusion Request portal contains certain limitations for aluminum exclusion requests to be successfully filed and posted by BIS, including that the content of aluminum be specified and that a maximum be designated for each chemical with a minimum content listed. However, these requirements are often inconsistent with the Aluminum Association ("AA") specifications for a particular product, which do not include the aluminum content and frequently list a minimum chemical composition with no corresponding maximum. For example, AA 3104 lists a minimum content for silicon, iron, zinc, titanium, gallium, and vanadium. Because there is no maximum range for those six chemicals, and no range at all for aluminum, the submission of an exclusion request for AA 3104 material requires the requester to (i) assume a maximum content, which may or may not be consistent with the actual mill certifications, and (ii) calculate an aluminum content based on the remainder of all chemicals designated in the AA specifications, which again may or may not be consistent with the composition of the material imported. These arbitrary requirements create an added burden for requesters, potentially delay the exclusion process and unnecessarily limit the scope of granted exclusions.
- 9) Improve Post Summary Correction Process: One can manufacturer said the process is "painful and costly," as it continues to await refunds of tariffs for exclusions on imports in May 2019, more than a year ago. The Department should work with Customs to make the refund process more efficient and effective.
- 10) Ensure that linked resubmissions are fully effective: Some can manufacturers report that they have waited months for decisions on requests to link a granted resubmission back to the date of the original denied request. The delays have been so extended that certain entries are no longer eligible for protest or other actions to claim refunds. The Department should work with Customs to ensure that decisions to link resubmissions are fully effective and provide real relief to applicants.
- 11) Identify submission deadlines clearly: Unlike the original system, the 232 Portal does not specify the date and time on which the system will no longer accept submissions. The "days remaining" countdown indication is ambiguous and inconsistent. The resulting uncertainty is entirely unnecessary and can be avoided by simply including a specific deadline.
- 12) Allow draft requests to be saved: The 232 Portal should allow account holders to create and save draft requests, rather than requiring them to start over each time a browser window is closed.

- 13) Disclose BIS decision dates: When a new decision is issued by the Department, include in the 232 Portal – as well as in the JSON file – the date on which the decision was added to the system and the date of signature.
- 14) Allow tracking of specific requests: The 232 Portal should allow account holders to identify and track a subset of specific requests of interest, rather than requiring new searches each time.
- 15) Improve search functionality: As was the case with the prior Regulations.gov system, general word searches should be enabled in the 232 Portal, among other search improvements.

CLFP appreciates the opportunity to provide comments and hopes that the Department will seriously consider the specific suggestions made by CMI to improve the Section 232 exclusion process, which thus far has not operated in the equitable, predictable, and reliable manner that both can manufacturers and food producers would prefer.

Please let me know if you have any questions about these comments.

Sincerely,



Trudi Hughes
Director of Government Affairs

PUBLIC

MAHLE

Driven by performance

MAHLE Behr USA Inc.
2700 Daley Drive
Troy, MI 48083
www.us.mahle.com

July 9, 2020

ELECTRONIC SUBMISSION VIA REGULATIONS.GOV

The Honorable Wilbur Ross
Secretary
U.S. Department of Commerce
Washington, D.C. 20230

Re: *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas [Docket No. 200514-0140; RIN 0694-XC058]*

Dear Secretary Ross:

MAHLE Behr USA Inc. ("MAHLE") respectfully submits these written comments in response to the Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas issued by the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce ("DOC") on May 26, 2020.

MAHLE manufactures parts and equipment for the automotive industry including pistons, crankshafts, intake manifolds and filtration, and engine cooling and HVAC components. MAHLE and its subsidiaries and affiliates are United States ("U.S.") entities registered to do business in over 25 states, with sales in all 50 states. MAHLE has over 6,000 employees in the U.S. as well as over 20 facilities located throughout the country.

As a global supplier with global automobile customers, MAHLE positions itself to manufacture within the region of consumption. MAHLE has the majority of its U.S. based purchasing spend within the U.S. Tier 2 supplier market ranging from small businesses to Fortune 500 companies. However, as a means of strategic and competitive priorities, MAHLE relies on open markets to access the global Tier 2 supplier market for reasons including innovation, technical competence, diversification and risk mitigation. In fact, there are certain commodities and/or components that are not readily available within the U.S. either due to technical competence or capacity constraints to support total demand or unique low volume/high mix applications. Therefore,

access to an open, free trade global supplier market is essential for a healthy, viable automotive market.

Given that in many cases U.S. companies do not produce aluminum meeting MAHLE's required specifications and quantities, MAHLE relies on global suppliers for its aluminum supply and has therefore had to pay significant Section 232 tariffs. As a result, MAHLE has submitted Section 232 exclusion requests on a number of its products and has experienced first-hand the flaws within the current Section 232 exclusion request process. MAHLE applauds BIS for recognizing that problems exist within the current process and for seeking comments on how to improve the process from those who have been directly affected by its flaws.

MAHLE would therefore like to express the following concerns and potential revisions regarding the Section 232 exclusion request process:

1) Lack of Transparency Regarding the Outcome of an Exclusion Request

One of the most common criticisms of the Section 232 exclusion request process is its lack of transparency. MAHLE agrees with many other companies that this lack of transparency is a serious flaw in the process. BIS grants exclusions to some companies and denials to others while providing little to no explanation as to what caused the exclusion or denial. Since the beginning of the Section 232 exclusion request process, BIS has consistently taken significantly longer than expected to render decisions on exclusion requests. Given the amount of time needed for BIS to make decisions, one could reasonably assume that BIS engages in a thorough analysis of the arguments for and against granting each request. However, the decision document that BIS sends to requestors provides little evidence that BIS is engaging in any sort of sophisticated analysis. The decision document simply states that BIS has considered the evidence, including any objections filed, and has decided either to accept or reject the request. In certain instances BIS will consult with other agencies, such as the International Trade Administration, while reviewing an exclusion request. However, BIS has provided no transparency as to when such additional consultation is necessary, nor does it provide any information regarding the results of any such consultation.

2) Unreasonable Weight Placed on Whether the Exclusion Request Received an Objection

In its decision document sent to requestors, BIS states either that it has considered objections to the exclusion request or that no objections exist. Unfortunately, in rendering its decision regarding any exclusion request, BIS places an unreasonable emphasis on whether another party objected to the particular exclusion request. In fact, BIS' standard operating procedure appears to be that: (1) a party is granted an exclusion if there are no objections, and (2) a party is denied an exclusion if there are one or more objections. For every exclusion request, BIS is supposed to determine whether a domestic supplier can produce the product in the quality and quantity that the requestor requires. As a result of the lack of transparency described above, parties do not know if BIS is completing this analysis, and the evidence appears to suggest that BIS is simply

looking to whether an objection was submitted when making its decision. This approach causes significant problems because a domestic supplier that cannot meet the quality and quantity requirements is still able to submit an objection, even if the objection has no merit. As such, BIS cannot make decisions simply based on if a party uploaded an objection. Rather, BIS must always complete an analysis of whether a domestic supplier can meet the requestor's quality and quantity requirements prior to rendering a decision on whether to grant or deny the exclusion request.

3) Unreasonable Weight Placed on the Product Quantity Stated in the Exclusion Request

As previously discussed, little is known about the factors that BIS considers when making a decision on an exclusion request. However, one factor that BIS appears to consider is the quantity of excluded product stated in the exclusion request. Parties requesting a higher amount of excluded product are more likely to receive a denial. While BIS is supposed to consider whether domestic suppliers can produce the product in the quantities required by the requestor, this does not necessitate a correlation between quantity of excluded product requested and rate of denial. If two parties are requesting exclusions for the same product, one party should not receive a denial simply because it has a higher quantity request. The parties may operate under different business models requiring different quantities of a particular product.

4) Lack of Consistency in Rendering Decisions

All of the problems described above ultimately result in a lack of consistency in rendering decisions. This lack of consistency has resulted in companies receiving exclusions while their competitors importing the same product receive denials. The resulting competitive imbalance can have drastic economic implications with companies only left to wonder why BIS denied their exclusion request yet granted an exclusion to their competitor.

5) Instructions Lack Clarity and Are Not Enforced Consistently

In certain instances, the Section 232 exclusion request process instructions have lacked clarity, resulting in BIS rejecting "incorrect" submissions. While BIS does allow parties to correct their exclusion requests and re-submit, parties lose valuable exclusion time and, if other parties are submitting similar exclusion requests, potentially increase the chances that the request will receive an objection (which, as described above, unfortunately appears to be extremely critical to the process). Even more importantly, however, on at least one occasion BIS has instructed a party that it has provided an "incorrect" response to a question while at the same time accepting a competitor's application which provided the exact same answer to the question. This situation is even more troubling when BIS denied the exclusion request of the party that had to re-submit and accepted the exclusion request of the competitor.

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6) Objectors Must Provide Factual Evidence That They Can Supply the Products in the Required Quantity and Quality

From MAHLE's perspective, one important way to ameliorate the exclusion request process is to require objectors to provide factual evidence that they can supply requestors with the applicable products in the required quantity and quality. This requirement will ensure that objections are supported by evidence and provide BIS with transparent justification for denying an exclusion request. Parties will understand why BIS denied their request and it will be impossible for BIS to deny an exclusion request based solely on the fact that the request received an objection.

Ultimately, BIS needs to present transparency with regard to its exclusion decisions and ensure that it is considering the appropriate factors related to the domestic industry's ability to produce the applicable product in the quantity and quality that the requestor requires. As such, parties requesting exclusions for the same product should receive the same decision. If the parties do not receive the same decision, BIS must be able to provide a thorough analysis as to why the decision was different. BIS' lack of consistent treatment between competitors is causing economic distortions far beyond BIS' intentions, and therefore BIS must correct this problem as soon as possible.

MAHLE is grateful for the opportunity to submit comments on the 232 exclusion request process. MAHLE is also submitting additional business confidential information and will gladly provide any further information upon request.

Sincerely,



Daniel Roberts
Corporate Counsel



300 East Lombard Street, 17th floor
Baltimore, MD 21202
(443) 420 7881

Constellium Submission Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

July 10, 2020

Constellium is a downstream aluminum leader, listed on the NYSE and with global headquarters in Baltimore, MD, which designs and manufactures products mostly for the aerospace, automotive, packaging and defense markets. With 13,000 employees, we generated \$5.9 billion in revenue in 2019, with the U.S. representing around 40% of our business. We have a large industrial presence with plants in Ravenswood, WV, Muscle Shoals, AL, Van Buren, MI, Bowling Green, KY and White, GA, and with a R&D hub in Plymouth, MI. Since 2013, we have opened two brand new plants and significantly upgraded and expanded our existing ones.

We consider the US to be one of our key markets, and our most promising growth market. This is why we have heavily invested in the U.S.: in the last five years, we invested over \$1.8 billion in our U.S. plants to maintain our assets and prepare for future growth.

However, our business is threatened today by the unintended consequences of the 232 exclusion system, which is incentivizing imports of aluminum products, making us less competitive. As we see imports growing in the US and increased pressure on price as a result, our capacity to maintain our investment and employment level may be impacted, jeopardizing our future.

Every granted exclusion is an immediate threat to the U.S. domestic producers as importers then benefit from a metal cost advantage. Importers do not pay the regional transaction premium embedded in the cost of U.S. aluminum products, meaning every successful exclusion request forces a U.S. producer to compete for that sale with a foreign producer who suddenly has a built-in advantage. On average, we estimate that granted exclusions give to importers a price advantage ranging from 5 to 10% - well beyond the industry's average profitability.

There is a level of gamesmanship happening – importers are asking for huge volumes of exclusions, both in individual requests and in aggregate over multiple requests, which are so large that no single domestic producer could possibly meet the hypothetical demand, and which are often well above the requesters' true needs. Those importers can then use the granted exclusions as leverage in negotiations.

This is all the more threatening when exclusions are granted from non-market economies such as China, a country documented for its trade-distorting behavior and unfair government subsidies. As of today, China continues to outpace the rest of the world in terms of the volume of exclusions granted - 4.6 billion pounds since the beginning of the 232 and 80.7% of exclusion requests coming from China were granted. Constellium, as any other U.S. aluminum producers, cannot compete against Chinese subsidized products. For all our products, we are denied access to Chinese lower cost inputs while at the same time, having to compete on price with subsidized Chinese products. A trade policy paper done in January 2019 by the Organization for Economic Cooperation and Development (OECD) documented massive subsidies for Chinese aluminum producers - \$70 billion over the past 5 years¹.

Consequences of this broken exclusion process are very clear with the cansheet market. We estimate that the total volume of exclusions granted for can sheet thus far in 2020 has reached 5.1 billion pounds while the total estimated demand for can sheet in 2019 was 4.1 billion pounds, with imports at a record level of 403 million pounds. In addition, the U.S. beverage can market increased by 3.5% in 2019 vs. 2018. During the same period, canmakers have decreased their orders from U.S. mills by 1.8% while increasing imports by 114.5% (mainly from Saudi Arabia, China, Thailand, Japan and South Korea).

As the cansheet example demonstrates, volumes of granted exclusion today are significantly disproportionate to historic import volumes. We have had several discussions with the BIS to highlight this critical issue and ask that granted exclusions remain proportionate with the average level of imports before the 232 duties were put in place.

As a result, domestic aluminum manufacturers have had to dedicate significant resources and personnel to monitor the portal and respond to the growing numbers of exclusion requests as they are the only ones able to object. As requests (even from China) are automatically granted unless there is an opposition, many requesters have a strategy to overflow the portal with numerous requests so that the US aluminum manufacturers cannot keep up with them.

¹ Measuring distortions in international markets: the aluminium value chain, OECD, 07 Jan 2019

The current objection process is also impacting some of our customer relationships. Allowing trade associations to oppose on behalf of their members would alleviate the pressure that we are getting from some of our clients not to file an objection, with threat of retaliation on future business.

At a time when the aluminum domestic industry is fighting the unprecedented impact of the COVID-19 pandemic, the current exclusion system presents an additional and significant threat to the domestic aluminum cansheet industry. The pandemic has also shown the importance of being able to rely on a domestic supply chain when it comes to critical industries such as food and beverage. Constellium has significantly invested in the U.S and is looking forward to continuing its investments to respond to its U.S. customers' needs, as long as we can operate in a fair and transparent market.

As such, we support the Aluminum Association's recommendations, which would lead to a fairer and more transparent process while simultaneously meeting the administration's stated policy goal of supporting U.S. manufacturing. The following action points below in particular are critical to protect our business:

- **Market Review:** Subject all exclusion requests to a comprehensive evaluation including market analysis to ensure that exclusion volumes requested are not disproportionate to historic import volumes.
- **Presumptive Denial:** Adopt a stance of presumptive denial for aluminum and aluminum products manufactured in non-market economy countries like China.
- **Limit Exclusions:** Allow exclusions only for products outside of the capability of domestic producers or for which there is no U.S. production.
- **Open Objection Process:** Allow domestic producers **and trade associations** to oppose exclusion requests on these grounds (disproportionate volumes; non-market economy country).
- **Increased Analysis & Reporting:** Analyze utilization of granted exclusion requests to understand the extent to which importers are using the granted exclusions and whether the volumes identified are unnecessarily large.
- **Improve Web Portal:** Implement various technical fixes to ease use and analysis capabilities of the Commerce Department's exclusion request web portal. In particular, the possibility to list origin/ requested quantity/ alloy/ temper/specs on the posted exclusion homepage would facilitate review and analysis of all exclusion request posted.

We welcome the opportunity to discuss these recommendations with the Department of Commerce.

PUBLIC SUBMISSION

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0035

Public comment 33 on 232 NOI. Ball Corporation. D Cosio. 7-10-20

Submitter Information

Name: Richard Johnson

Organization: Ball Corporation

General Comment

Please see attached comment from Ball Corporation. Ball Corporation is a Fortune 500 manufacturing company with a 140-year history of providing manufacturing jobs in the United States. Ball Corporation was founded in the United States and has its headquarters in the United States. Today, Ball employs 7,745 individuals in 32 states across the United States. Each year, Ball produces approximately 100 billion metal beverage cans and the number continues to grow organically each year, in no small part due to domestic beer, soft drink and other beverage customers turning to the infinitely recyclable aluminum can. In addition to this strong organic growth fueled by consumers shifting to the environmentally sustainable aluminum can, we have seen a significant and sudden increase in sales volumes during the COVID-19 pandemic as Americans increasingly rely on convenient canned beverages that they can consume in the safety of their own homes. This further illustrates the importance of having access to adequate metal to supply cans to our customers whose beverage products have been deemed critical during the pandemic. Ball must purchase large quantities of aluminum cansheet from foreign suppliers, as cansheet is not available in sufficient quantities to meet our domestic needs. Ball has successfully navigated the Section 232 exclusion process since its implementation and has received much needed exclusions for aluminum cansheet from ally countries such as France and Germany. Such granted exclusions help us avoid the closure of plants across the United States and maintain well-paying American manufacturing jobs. While we are grateful for the necessary exclusions BIS has granted Ball and the significant time, dedication, and resources that BIS has dedicated to processing and evaluating exclusion requests, we do have some

respectful suggestions on how the process might be improved. Our suggestions are as follows.

- Ball recommends that BIS require objectors to disclose the location of their parent company's global headquarters and their parent company's country of formation.

- Ball recommends that BIS require objectors to disclose their new investments to increase domestic aluminum cansheet production capacity.

- Ball recommends that BIS remove the surrebuttal phase from the exclusion request process.

- Ball recommends that BIS shorten the application form and shorten product descriptions.

- Ball recommends that BIS not create time-limited annual or semi-annual windows during which all product-specific requests and corresponding objections may be submitted and decided.

- Ball requests that BIS not issue blanket interim denial memos to requestors who receive a partial approval of their exclusion request. Each application should be evaluated individually and on its merits.

- BIS should not require any additional certification from applicants.

- Ball recommends that BIS require objectors to certify not only that they can in fact manufacture the product in the quality and amount requested, and during the time period to which they attest in the objection, but that they will in fact do so.

- Ball recommends that BIS not attempt to set a limit on the total quantity of product that a single company could be granted an exclusion for.

Requiring applicants to further demonstrate they have tried to purchase the relevant product domestically would be redundant and represent an unnecessary and burdensome addition.

Attachments

RIN 0694-XC058-LetterToCommerce-BallCorporation-ResponseToRequestForComments-ExclusionApplicationProcess-10July2020



Ball Corporation

10 Longs Peak Drive, Broomfield, CO 80021-2510 (303) 469-3131 Fax (303) 460-2691
Reply to: P.O. Box 5000, Broomfield, CO 80038-5000

July 10, 2020

Docket No. 200514-0140
RIN 0694-XC058
Regulations.gov ID: BIS-2020-0012
Notice of Inquiry with request for comments

The Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Assistant Secretary Ashooh:

I am writing on behalf of Ball Metal Beverage Container Corp. and its parent company, Ball Corporation (together, "Ball") in order to address the May 26, 2020 Notice of Inquiry (NOI) seeking comment on the current processes conducted by the Bureau of Industry and Security (BIS) when considering requests for exclusions from the Section 232 tariffs and quotas imposed by Proclamations 9704 and 9705 (RIN 0694-XC058).

Ball Corporation is a Fortune 500 manufacturing company with a 140-year history of providing manufacturing jobs in the United States. Ball Corporation was founded in the United States and has its headquarters in the United States. Today, Ball employs 7,745 individuals in 32 states across the United States. Each year, Ball produces approximately 100 billion metal beverage cans and the number continues to grow organically each year, in no small part due to domestic beer, soft drink and other beverage customers turning to the infinitely recyclable aluminum can. In addition to this strong organic growth fueled by consumers shifting to the environmentally sustainable aluminum can, we have seen a significant and sudden increase in sales volumes during the COVID-19 pandemic as Americans increasingly rely on convenient canned beverages that they can consume in the safety of their own homes. This further illustrates the importance of having access to adequate metal to supply cans to our customers whose beverage products have been deemed critical during the pandemic.¹ Ball must purchase large quantities of aluminum cansheet from foreign suppliers, as cansheet is not available in sufficient

¹ See, for example, [the Department of Homeland Security's guidance](#) from March 19, 2020 identifying Critical Infrastructure Sectors and related stated orders. The DHS guidance identifies food manufacturing and their suppliers as a critical infrastructure sector.

quantities to meet our domestic needs. Ball has successfully navigated the Section 232 exclusion process since its implementation and has received much needed exclusions for aluminum cansheet from ally countries such as France and Germany. Such granted exclusions help us avoid the closure of plants across the United States and maintain well-paying American manufacturing jobs. While we are grateful for the necessary exclusions BIS has granted Ball and the significant time, dedication, and resources that BIS has dedicated to processing and evaluating exclusion requests, we do have some respectful suggestions on how the process might be improved. Our suggestions are as follows.

Ball recommends that BIS require objectors to disclose the location of their parent company's global headquarters and their parent company's country of formation. As Ball states in all of its exclusion applications, Ball's requests for exclusions are based on a legitimate need for cansheet in order to continue our domestic operations and protect our employees' jobs and the communities we operate in and serve. To the contrary, many of the companies that object to Ball's applications are foreign-owned companies with only a portion of their operations in the United States. These foreign-owned companies rely on their domestic subsidiaries' names and addresses in order to oppose imports when doing so will provide them with less competition in a market characterized by insufficient supply. Such foreign-owned objectors interfere with legitimate requests by companies like Ball. Requiring objectors to disclose the location of their parent company's global headquarters and country of formation would provide far greater transparency to the exclusion application process.

Ball recommends that BIS require objectors to disclose their new investments to increase domestic aluminum cansheet production capacity. Over the past two years, Ball received objections from the same companies, many of which are foreign-owned. Each of these companies has claimed in their objections that they have the capacity to make the products requested or that they can add such capacity within a year. These assertions have proven to be false. Despite the claims of these objectors and the benefit of tariffs as high as 38%² on incoming aluminum cansheet, no company, including the companies that object to our requests, has added any significant domestic capacity since the Section 232 tariff went into effect.

To help prevent this misuse of the system, Ball recommends that BIS disregard or discount objections from any company that has not evidenced material investments in domestic cansheet production capacity in the past two years. Additionally, BIS should require that these companies provide detailed plans, including capital expenditure timelines, to add such capacity and require that such plans be subject to review and comment by applicants.

Ball recommends that BIS remove the surrebuttal phase from the exclusion request process. The surrebuttal phase is unfair because it gives objectors the final word in an already lengthy process. This redundant and unfair stage creates unnecessary delay and forces

² The prevailing ad valorem tariffs of 3% (general), 10% for 232, and 25% for 301, total 38% on the value of the cansheet imported.

companies to dedicate additional resources to the already time and resource-intensive exclusion application process. In summary, the surrebuttal stage provides an unfair advantage to objectors, it lacks transparency, and it unnecessarily consumes time and resources from BIS and American companies. The surrebuttal phase should therefore be removed from the application process.

Ball recommends that BIS shorten the application form and shorten product descriptions.

Currently, Ball must submit a separate exclusion application if any one of the following factors differs in an application: country of origin, producer, importer, and specific sub-product, among others. These aspects are often burdensome and confusing, and are not actually descriptive of the product. Ball submits exclusion applications exclusively for aluminum can and end sheet, but as a result of the requirement to specify so many details about the product, Ball must submit hundreds of different applications because these products have a slightly different end use (aluminum canstock for beer versus soft drinks, or 12oz cans versus 16oz cans, for example). This requirement to file a separate application for each sub-product forces Ball to submit hundreds of exclusion applications each year for nearly identical products. For example, in the case of aluminum cansheet, the same cansheet product can come in different widths, heights, and even different compositions of chemicals such as magnesium and manganese. It is burdensome to have to coordinate with suppliers to make sure that their products and bills of lading match the exact granted exclusion. Additionally, while we always apply based on our legitimate needs, the requirement for separate applications on our many different sub-types of aluminum cansheet forces us to apply near the upper end of our forecasts for each product, as we cannot afford to shut down operations because we cannot obtain needed domestic products at a profitable price. In certain periods we have ended up applying for more aluminum than needed because our customers did not order certain sizes or types of cans. Amending the application process to allow for broader exclusions encompassing different can sizes (8, 12, 16, and 24 ounces), and coil widths and heights, would allow us to better forecast our needs and would greatly reduce the likelihood that we would over-apply for aluminum exclusions.

Additionally, the time required to submit applications would be greatly reduced if BIS were to require only the basic product type, the HTSUS number, the country of origin, and the general end use (for aluminum beverage cans, for example) for the product in question. Shortening the application form would not detract from the purpose of the Section 232 tariff or the safeguards against abuse provided by the application process, but it would greatly simplify the application process for domestic consumers with legitimate needs and reduce paperwork for filers, objectors, and BIS. For these reasons, Ball recommends that BIS delete the requirement to list all aspects of the size, weight, and detailed chemical composition in the exclusion applications.

Ball recommends that BIS not create time-limited annual or semi-annual windows during which all product-specific requests and corresponding objections may be submitted and decided. Companies like Ball do their very best to predict their upcoming needs and file exclusion applications accordingly, but we must file applications throughout the year to meet our

constantly shifting needs. The need to file year round is even more pronounced due to the COVID-19 pandemic and the uncertainty it has caused in supply and demand throughout the world. We strongly encourage BIS to continue to allow companies to submit application requests throughout the year.

Ball requests that BIS not issue blanket interim denial memos to requestors who receive a partial approval of their exclusion request. Each application should be evaluated individually and on its merits. There is no practical way to require companies to purchase the domestically available portion of their requested quantity, as companies like Ball are often maxing out purchases throughout the year and are always simultaneously purchasing from several domestic and international suppliers. For these reasons, we request that BIS not implement any requirement to purchase the domestically available portion of their requested quantity.

BIS should not require any additional certification from applicants. We realize that certain companies may be abusing the application process, but the majority of companies, like Ball, are submitting only legitimate requests that are within the range of our reasonable requirements. All exclusion requests are already subject to a comprehensive analysis to ensure that volumes requested align with historic import volumes and market size. As we state and certify in our applications, Ball has long partnered with U.S. aluminum cansheet suppliers, and we continue to purchase a large majority of our aluminum cansheet domestically. If an adequate supply of quality cansheet were available to meet all of our needs in the United States, we would prefer to rely almost exclusively on domestic sources. Unfortunately, despite the protection afforded by the Section 232 tariff, the domestic supply of cansheet is still inadequate to meet our needs.³ Any additional measures to force companies to prove that their requests are based on legitimate needs would not harm the companies that are abusing the system, as these companies would simply provide additional documents. Instead, it would only harm companies like Ball who would have to dedicate additional resources to proving their needs.

Ball recommends that BIS require objectors to certify not only that they can in fact manufacture the product in the quality and amount requested, and during the time period to which they attest in the objection, but that they will in fact do so. Additionally, Ball recommends that these objectors also disclose whether they have stated in past objections to ultimately denied exclusions that they have additional capacity that could be brought online, and whether they have in fact brought any capacity online, and how much. Many of the companies that object to Ball's exclusion applications do not make the product in question. Other times, foreign-owned and foreign-headquartered companies rely on their domestic subsidiaries and affiliates to object in order to limit competition from imports in the U.S. market. Ball has also received objections to requests where the same objectors have denied Ball metal. Additionally, objectors often rely on research conducted by the Aluminum Association (AA) and the American Primary Aluminum Association (APAA), which represent domestic

³ See Harbor Aluminum, Jorge Vazquez and Tom Leary, "Why US Aluminum Cansheet Imports are Vital." April 4, 2018.

primary aluminum producers and therefore do not conduct unbiased research. Ball therefore urges BIS to require more factual evidence from objectors, including evidence of conversations with companies like Ball regarding supplies or data from the objecting parties themselves. We believe that requiring more information and more certification from objectors will create a more streamlined request process.

Ball recommends that BIS not attempt to set a limit on the total quantity of product that a single company could be granted an exclusion for. As discussed above, objectors often rely on research conducted by AA and the APAA, which represent domestic primary aluminum producers only and therefore do not conduct unbiased research. If BIS attempted to set a limit based on an objective standard, Ball would like to be involved in determining who sets this objective standard, as even industry experts can disagree on these issues. We are unaware of any metrics that applicants and objectors would both agree upon, and fear that any standard would be biased and partial. We therefore urge BIS not to set a limit on the quantity of product for which a single company could be granted an exclusion. However, if BIS decides to set such a limit, we encourage BIS to engage with Ball to find a truly disinterested party to set an objective standard before implementing this revision to the exclusion request process.

Requiring applicants to further demonstrate they have tried to purchase the relevant product domestically would be redundant and represent an unnecessary and burdensome addition. Because Ball already certifies that it has contacted domestic producers when submitting an exclusion request, Ball does not have a strong opinion on this point. However, we feel that such a requirement would represent an unnecessary burden on both domestic manufacturers like Ball and on Commerce/BIS. Accordingly, Ball recommends that BIS not add an additional requirement for domestic manufacturers to demonstrate their efforts to purchase the product in question.

Ball appreciates the opportunity to participate in this comment period and thanks you again for taking the time to hear about Ball Corporation's experience with and suggested improvements for the Section 232 exclusion process. Ensuring that our exclusions are approved quickly and transparently is vitally important to Ball and its thousands of employees across the United States and their communities. Please let me know if you have any questions or would like to discuss any of the foregoing matters.

Sincerely,

s/ Dan Cosio

Name: Dan Cosio

Title: Vice President, Sourcing

Cc: Richard Johnson

Senior General Attorney

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July 10, 2020

PUBLIC DOCUMENT

The Honorable Wilbur Ross, Jr.
Secretary of Commerce
Office of Technology Innovation
Bureau of Industry and Security
U.S. Department of
Commerce Room 1093
1401 Constitution Avenue,
NW Washington, DC 20230

Submitted via www.regulations.gov

Re: Comments on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas, BIS-2020-0012: RIN 0694-XC058

Dear Secretary Ross,

These comments are filed on behalf of numerous domestic producers of steel and steel products pursuant to the *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* published in the Federal Register on May 26, 2020 (85 Fed. Reg. 31,441).

As an initial matter, we appreciate that the Bureau of Industry and Security (“BIS”) is seeking comments on the appropriateness of information requested and considered in applying the exclusion criteria, as well as the efficiency and transparency of the process employed. Schagrín Associates represents a broad range of steel producers and consumers, including manufacturers of both seamless and welded tube as well as producers of various flat rolled and long products. Many of our clients have participated in the exclusion process both as objectors and as requesters.

1. Separate Requests for Different Sizes

At present, a party must file a separate exclusion request for each specific size of a particular product. Although BIS has set up procedures to allow the transfer of information from one request to another in the Portal system, it remains burdensome for requesters to physically transfer this information to additional requests. Moreover, this difficulty has led to a multitude of errors in derivative requests when appropriate corrections are not made to reflect the different product. In addition, there is a burden on parties objecting to the exclusions, who must state their objection for multiples requests with essentially the same mechanical and chemical characteristics but only slightly different dimensions.

BIS should allow the consolidation of multiple sizes of the same grade/specification/type of product in future requests. If there is concern with these broader categories and the objector's ability to respond meaningfully to the range of sizes requested, BIS could add a question to the objector questionnaire asking to address all sizes sought in the exclusion. If the objector could not produce certain sizes, it should report this to BIS and those sizes could then be exempted.

2. Tariff Classifications

It appears that the BIS places significant weight on the appropriate Harmonized Tariff Schedule (HTS) classification. This can present problems because certain products may straddle the definitions of alloy and non-alloy steels, which have separate tariff classifications. Because many requests are based on a ranged chemical specification, such products could potentially be classified as either alloy or non-alloy under the HTS. In such cases, a party may not know whether a product is an alloy or non-alloy steel until after it is made.

BIS has been inconsistent in how it processes these types of requests. In some instances, requests have been rejected. In other instances, the requests were posted. In still other instances, parties have filed two requests for the same product, modifying the chemistry in each request so that one request addresses alloy material and the other addresses only non-alloy material. BIS should allow parties to submit a single request noting both the alloy and non-alloy HTS classifications.

3. Explanation of Decisions

BIS has provided little insight into how it makes decisions. Many decision memoranda state only that a submission was incomplete, there is insufficient supply to meet demand, or that there is sufficient supply to meet demand. In some instances involving our clients, there is no indication that their objections were considered. Should BIS implement changes to its procedures and continue issuing decision memoranda, it should provide further discussion of how the decision was made.

4. Certification

Based on our experience reviewing thousands of requests, in some cases requesters provide clearly inaccurate information. These inaccuracies could relate to efforts to source material domestically, consumption levels during 2015-17, and the quantity needed. Various companies have, for example, indicated there is no U.S. production of certain products despite presently sourcing material from domestic mills. There are also certain requesters who provide the same historical consumption levels and quantity sought for numerous requests, notwithstanding that these values cannot be identical across a broad array of products.

As indicated in the Federal Register notice, requesters must make a “good faith showing of the need for the product in the requested quantity” and certify the accuracy of the information submitted. BIS should remind submitters that 18 U.S.C. § 1001 applies to exclusion requests and, where appropriate, refer individuals providing false information to the Department of Justice.

5. Lack of Support

Requesters should provide more exhaustive factual information explaining why they are requesting exclusions. In many instances, requests are based on the barest of assertions that there is no U.S. production and/or insufficient U.S. availability, with no elaboration. Requesters should explain why available domestic products cannot be used in the relevant applications. For example, they could cite a lack of domestic production due to unique chemistry, tight tolerances, or the absence of a qualified supplier. They should also explain why potential substitute products (*e.g.* welded pipe for seamless) are unacceptable. Requiring this information would improve the process by providing all parties with a better understanding of why the request was made and whether a domestic substitute may be available. Objectors could then be required to address whatever the explanation for the request and provide evidence of why they believe their product to be acceptable.

6. Rebuttal and Surrebuttal Deadlines

There is some uncertainty regarding the time frame for the filing of rebuttals and surrebuttals. Once the 30-day window for filing objections has closed, at present a requester must check each of its requests daily to determine whether any objections have been filed. If there is an objection, or objections, the requester will have only seven days to file rebuttals. There is no specific time frame for when this posting will take place. The issue also affects surrebuttals. To facilitate parties' ability to participate meaningfully in these aspects of the exclusion process, BIS should make the effort to notify parties when these seven-day windows open.

7. Domestic Availability Timeline

As noted in a previous submission, establishing an order-to-delivery requirement of eight weeks for domestic mills to supply the requested product is problematic. Although domestic mills generally could supply material within that time frame, many imported products could not due to the longer distances involved. There have, in fact, been exclusion requests for an imported product that could not be supplied for over one year. A more reasonable order-to-delivery period should be equal to or less than the imported product, but never less than eight weeks.

8. Submission Windows

BIS requested comments on whether time-limited annual or semi-annual windows during which all exclusion requests and corresponding objections may be submitted and decided. During the section 203 exclusion process in the early 2000's, the Department established this type of system in which parties were given specific windows of opportunity to submit requests. When this window closed, objectors were given a specific window to file objections. All requests were made public at the same time and all objections were also due on a specific date. This system permitted the Department to process submitted requests without the interruption of new requests. There were no rebuttals or surrebuttals. The Department made all determinations on these requests at the same time.

Determinations were not made through decision memoranda, but rather by notification to CBP of granted exclusions. Shortly after decisions were made on all requests from a particular period, the Department opened another window for new requests. If a party believed that the denial in the previous window was in error, it could submit a new request with new information.

9. Portal Access

Although the Portal provides access to a variety of information regarding requesters, HTS numbers, the quantity of requests on specific dates, the date of postings of requests, objections, rebuttals, and surrebuttals, it has limitations. For example, the Portal does not allow an aggregation of requests for specific variables that span a period of time. In addition, requests by a specific company cannot be aggregated for a specific period. Finally, it is not possible to go to specific pages in the Portal without accessing every prior page. Thus, if a party wishes to review page 20, it must access each page before it. The system should be modified to allow this aggregation and access in the database.

10. Conclusion

We appreciate the efforts the BIS has made to manage this program, and its willingness to entertain ways in which the process could be made more efficient and transparent. As noted, the consolidation of products by size and eliminating the distinction between alloy and non-alloy steels in specifications overlapping those chemistries are critical to reducing the workload of all parties and improving the efficiency of the process. The other proposals made are efforts to ensure that the system will provide transparency, predictability, and ways to make the process more efficient.

Please contact the undersigned with questions regarding this submission.

Respectfully Submitted,



Roger B. Schagrin
Christopher T. Cloutier

Schagrin Associates



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Secretary of Commerce
Bureau of Industry and Security
Office of Technology Evaluation
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

RE: Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas BIS-2020-0012
RIN-0694-XC058

As requested by the Department of Commerce, Steel Warehouse, a Steel Service Center and Distributor with over 20 operating facilities in the United States is pleased to offer our comments on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas, as below. Steel Warehouse purchases most of its requirements from US steel mills and is a strong proponent of ensuring the existence of a healthy US steel industry. We purchase material from foreign sources when US supply is not readily available and feel that there are number of issues and concerns with the current exclusion process that should be addressed.

1. Harmonized Tariff Codes (HTS)
 - A. HTS should not be used as a reason for an exclusion request to be granted or denied as this is irrelevant to the process.
 - B. Exclusion requests with ranges such as thickness and mechanical properties can overlap more than one HTS. This forces multiple exclusions to be filed for the same item which increases the burden on the entire process.
 - C. There are cases where an exclusion has been granted with an incorrect HTS, thus the check and balance system that was implemented to catch does not appear to be working.

All of the above issues create extra work for all in the process as well as slowing down the process. We strongly feel; if the HTS continues to be a requirement of the exclusion process, a company should have the final decision applied to the original submission date, even if they make HTS related errors in the original submission.

2. Notifications of actions on exclusions – Currently, there are no notifications of actions that are taken on exclusions an organization is involved with. It would be helpful to all users if a notification could be sent to any party that has acted upon an exclusion advising something has occurred. As examples, an email to an exclusion filer that an objection has been filed, rebutted and/or granted or denied would be very helpful. Additionally, an email to an objector that a rebuttal was filed and/or exclusion was granted or denied to which it objected would be helpful. Currently none of these exist and it is only through searching the website on a daily basis that this information can be obtained.

3. Allow for ranges of sizes to be submitted on an exclusion request for the same product, specification and application. This would speed up the process and benefit all involved as they would have to review fewer requests and objections, and rebuttals and surebuttals would be focused on the products that are of issue.
4. Timeliness of the exclusion process – The current process does not have specified time lines for actions to be completed. Currently, we have exclusion requests that have been submitted over one year ago and they still have not been posted for the process to start. Additionally, we have exclusions that are in various stages of the process where we are waiting for decisions to be made, and in some cases these have been sitting for over 8 months. We feel that if an exclusion does not have an objection filed it should be granted immediately. Additionally, we believe any exclusion should be acted upon promptly once it is filed, rebutted and/or surebutted to speed up the process and be of value to all involved. We feel Commerce should do whatever changes they can implement to speed up this process provided there are adequate checks and balances.
5. Objections to exclusions
 - A. Quality objections. Currently there is no measurement for proving that an objector can supply a product in the quality that is needed by the customer. In the current system, an objector can state they simply make the product with no burden of proof or repercussions for misrepresentation. This responsibility lies solely on the filer. Additionally, once it is proven that a domestic product cannot meet the quality requirements; a new exclusion needs to be filed. The time during the qualification process is lost in the exclusion process.
 - B. Substitute products – Currently there are no measurements or definitions of what constitutes a substitutable product. In the current system, an objector can advise they have a substitute product they can supply. Once again there is no burden of proof that the substitute will work or even be accepted, and the objector should be required to provide substantive evidence to support their proposed substitute. Additionally, a substitute product can be offered without regard to customer specification tied to the requested exclusion. In many cases, customers' specifications are related not only to the chemical and physical requirements of the product they require, but also to the ability of this material to function properly in their manufacturing processes. This becomes more of a concern in demanding applications or in the qualification process of a potential substitute, as the risk lies with the consumer and not the objector. Finally, the qualification process can take an extended period of time, in some cases up to a year or greater depending on the requirements, and there is no remedy that is available to the requestor during this time.
 - C. Competing products – We feel it is unfair for objections to be filed for products that are not the same as the requested excluded material. In cases, domestic producers are filing objections for plate product when the requested excluded product is a hot rolled coil. These are two dissimilar products and should not be viewed as equivalent or a substitute.
 - D. Imported finished products - Similar to competing products, when a domestic producer cannot supply the product in the same finished form as the imported product and objects offering a product that is partially finished as compared to the requested product, this should not be accepted as an acceptable objection. The objector should be required to supply product in the same form and finish as the requested product.

- E. Order Quantities – There are cases where domestic producers are objecting to an exclusion, but at the same time require order quantities that far exceed the annual anticipated consumption of the requested product. We think a domestic mill needs to state their minimum order quantity in their objection, and in cases where the minimum order quantity exceeds the annual requested consumption, these objection should be prohibited.
 - F. It is our opinion that during the time required to ensure the proper quality and substitutability, a product should be allowed to enter without a tariff. We feel this will put pressure on all parties to move these processes effectively and efficiently to a conclusion.
6. Exclusion Quantities – Exclusion quantities are based upon best estimates of annual consumption at the time of filing. There are many factors that impact the volume required, such as an increase or decrease in demand, production of parts being moved into and out of the United States, dimensional changes and part obsolesce to name a few. Coupled with the previously stated issue with timeliness, this compounds the quantity issue as requestors have to deal with the uncertainty in the length of time Commerce takes to act upon an exclusion request. This adds more uncertainty to the quantity needed. We strongly feel that if an exclusion is granted for one year there should not be a restriction placed on the volume during this timeframe. Additionally, we believe that if a quantity will continue to be required, any volume imported during the exclusion process should be exempt from the total volume of the exclusion.
 7. Chemistry and Mechanical property requirements – Currently, Commerce is requiring all chemical and at least one mechanical property field to be completed. Since the entering of this information is a manual process with the opportunity for errors, we feel it would be much more effective to only enter any deviation from the required standard. At the same time, Commerce is requiring at minimum one mechanical property to be completed. We believe this leads to confusion and some cases misrepresentation of the request. Some requested products do not have mechanical property requirements, and by requiring this information to be provided the request is not accurate.
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 9. Decision memos – Currently the reasoning for decisions made by commerce do not provide supportive documentation for the ruling. We would appreciate a more comprehensive and detailed explanation supporting their ruling.

10. Process inconsistencies – We have encountered inconsistencies in the process and how requests are handled. As an example, recently we filed four exclusion requests for the same product and thickness with the only variation being the width. Based upon our understanding, all four were filed properly which included the same mechanical requirement. Three of these requests were accepted and posted. One request was returned advising, “Incorrect HTSUS requested no ductility”. Based upon this response it appears to us there is a lack of clarity of what information is required, and we believe Commerce should clarify all the requirements needed to have a proper filing.

Sincerely,

Marc Lerman
Exec VP and Chief Commerical Officer



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Secretary of Commerce
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14th Street and Constitution Avenue, N.W.
Washington, DC 20230

RE: Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas BIS-2020-0012
RIN-0694-XC058

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0039

Public comment 37 on 232 NOI. ERD Metal Inc. E Guneyman. 7-10-20

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Organization: ERD Metal Inc.

General Comment

We would like to thank you for your help on our inquiry of which I will give the details about it below.

This inquiry is related with organization called ERD Metal, Inc. regarding additional tariffs to extruded aluminium profiles.

Before I get into details, I would like to give you a brief how ERD Metal was formed.

ERD Metal, Inc. is located in Avon, MA operating as a sales, logistics and distribution facility for aluminum extrusions.

In March 2018, for the products that ERD Metal sells under HTS Code 7604.29.1000, there was an additional 10% tariff added and this is resulting in difficulties in promoting marketing, reaching to new sectors and conducting sales to different industries.

ERD Metal was also an exporter to Canada which started in 2017 but the additional tariff caused the pricing and business offers uninteresting for Canadian Market therefore the organization had to start an operation in Canada too.

At the moment, the actual pricing does not allow ERD Metal to export to Canada from the

United States.

We would like to know; if there can be an exemption (application of additional 10% tariff) put in place for the products that ERD Metal sells as these products are all semi finished, essential products for ERD Metal's customers.

We believe that, since the tariff was in force back in 2018, an exemption will give further sales power to ERD Metal.

Your help on this inquiry is much appreciated to discuss with your office or any other institution in the United States.

As an entity ERD Metal, Inc located in Avon, MA we would like to increase our service levels and sales including exports to Canada and Mexico.

Yours faithfully,



Robert D. Miller
President & CEO

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July 10, 2020

The Honorable Richard Ashooh
Assistant Secretary for Export Administration
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS-2020-0012; RIN 0694-XC058)

Dear Mr. Ashooh:

Thank you for the opportunity to provide comments in response to the above-referenced Notice of Inquiry. NLMK USA is a steel producer employing hundreds of Americans at our steel mills in Farrell, Pennsylvania and Portage, Indiana.

Since the launch of the Section 232 exclusion process in March 2018, NLMK USA has filed 136 petitions requesting exclusions from tariffs and absolute quotas on imports of semi-finished steel slabs, our feedstock for U.S. production. BIS denied 100 of our petitions and 36 are still pending. Through the 232 exclusion process, the Bureau of Industry and Security (BIS) sought to encourage increased U.S. steel production but still allow for duty-free imports of unfinished and semi-finished feedstock needed by U.S. businesses. In practice, however, the process has favored a few at the expense of many, skewed the market, and reduced U.S. manufacturing production more broadly, picking winners and losers from within the American steel industry.

II. NLMK USA

NLMK is a steel producer with a slab convertor mill in Pennsylvania and an electric arc furnace mill in Indiana. In Pennsylvania, NLMK emerged from the bankrupt and shuttered Sharon Steel mill; in Indiana, NLMK saved the failing Beta Steel mill. Our Pennsylvania employees are members of the United Steelworkers and our Indiana employees are members of the

International Longshoremen’s Association. We put unemployed steelworkers back to work and have been operating successfully for over 20 years.

NLMK’s U.S. steel mills employ 1,122 workers and support over 7,854 indirect jobs, for a total of over 8,976 American jobs. NLMK USA brought steel jobs back to communities that had seen steep declines in their steel and manufacturing bases. NLMK is the anchor tenant of the Paulsboro Marine Terminal on the New Jersey side of the Port of Philadelphia, an economic driver for Pennsylvania and New Jersey projected to bring over 2,000 jobs to the area.

Our feedstock is 20-25 ton slabs. The only domestic slab producer with slab available for sale is U.S. Steel. Both NLMK and U.S. Steel use slabs to make the same end-product: coil. U.S. Steel has never made enough slab available to meet our production needs, and regardless, over 94 percent of the orders from our Pennsylvania mill are for coil made from steel slab that is 250-255 millimeters (mm) thick. U.S. Steel cannot make 250-255 mm slab at any of its facilities. The dimensions of our reheat furnaces require this specific size.

Regardless, by objecting to each of our petitions submitted, U.S. Steel, AK Steel, and Nucor (which conceded in its objection to NLMK’s latest petitions that “it does not sell slab, as the design of most of its plants limits its ability to offtake slab”¹) blocked our requests for exclusion. As a result, we must either import our feedstock with a 25 percent tariff or jostle for the limited quantities available under the Brazil quota (the only steel quota country that has slab available for sale on the commercial market).

Two years later, and despite repeated findings by BIS of a sufficient quantity of slab available domestically, U.S. Steel still cannot, or will not, supply us with slab. U.S. Steel, the only domestic producer with the capacity to sell slab on the commercial market, has provided us with a limited amount of 200 mm thick slab, which accounts for less than 10 percent of our needs. It cannot make 250 mm thick slab which is what our customers require. We have suffered greatly as a result and have been forced to lay off up to half of our employees, approximately 550 hard-working American steelworkers, in rolling lay-offs when we could not secure enough slabs to fill customer orders. These rolling layoffs have only been further heightened by the challenges posed by the ongoing COVID-19 pandemic. We are an essential business, and so have continued operating, but cannot secure enough feedstock to fill our customers’ orders or to keep our employees working. The Section 232 process has skewed the market for steel in the United States, and rather than incentivizing increased domestic production, it has set new barriers for companies across the country seeking access to critical feedstock. The exclusion process is deeply flawed, resulting in biased decisions; and U.S. companies are suffering the consequences.

III. NLMK Requests for Exclusions

NLMK has repeatedly tried to purchase slabs domestically, but U.S. Steel has historically provided only a small fraction of the slab we require. Even then, U.S. Steel cannot produce 250-255mm slab at any of its facilities, which represents over 90 percent of the slab we need to fill our customers’ orders. As we have repeatedly argued to BIS, we need to secure reliable slab

¹ See, e.g., “Nucor Corporation Objection to the Exclusion Request of NLMK Pennsylvania) (hereinafter “Nucor objection”), available at: <https://232app.azurewebsites.net/Forms/ObjectionFilingItem/10702>.

supply from outside the U.S. to meet this supply shortfall and fill our customers' orders. But our requests – which include detailed information on our attempts to secure slabs from U.S. Steel and the company's failure to engage in meaningful contract negotiations with us – have been denied across the board.

BIS has not approved a single petition for steel slab since establishing the exclusion process. In 2019, we filed a new batch of 51 petitions, this time only for exclusion from quotas on slab imports from Brazil. So far, BIS has denied 15, and the rest remain pending.

IV. Comments on Current Exclusion Process

NLMK has significant concerns with the current exclusion process, which continues to have a devastating effect on our operations.

BIS guidance and interpretations are inconsistent with the exclusion request form.

BIS issued a request form that petitioners must submit to seek exclusion from Section 232 tariffs or quotas. However, BIS guidance and practice have disregarded the parameters set out therein.

The exclusion request form allows requestors to indicate whether they have proprietary information to provide as part of the agency's consideration of the petition. We so indicated, and provided that proprietary information– including on our previous communications with U.S. Steel seeking regular and reliable access to slabs – to BIS. BIS officials later stated that the information we provided was not considered as part of our petition. We received no explanation for why, even though our objectors claimed critical production and capacity data as proprietary, and their confidential submissions appear to have served as the basis for BIS' final decision.

BIS also failed to follow the policies that it said it would apply when it issued regulations applicable to the exclusion process. On September 11, 2018, BIS issued an interim final rule updating the Section 232 exclusion process.² In the preamble, BIS stated that it will take into account whether domestic producers are capable of providing the total exclusion amount requested across petitions, and not just single petitions, in determining domestic capacity.³ Commerce officials appear to have completely ignored this directive, and instead focused on analyzing domestic availability on a petition-by-petition basis. Similarly, in the same preamble, BIS says it will not consider whether a product is available from an exempted country, stating that the only consideration is whether “the steel or aluminum article for which the exclusion is requested is...produced in the United States in a sufficient and reasonable available amount or of a satisfactory quality.” However, agency officials asked us how much slab we could source from Brazil, suggesting this information was taken into account. We cannot source nearly enough from Brazil to meet our needs, a fact that BIS seemed to disregard as well.

² “Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum,” 83 Fed. Reg. 46026 (Sep. 11, 2018), <https://www.federalregister.gov/documents/2018/09/11/2018-19662/submissions-of-exclusion-requests-and-objections-to-submitted-requests-for-steel-and-aluminum>.

³ See response to Comment (f)(6)(iii)(C). *Id.*

BIS' failure to follow its own guidance is wholly unfair to those who participate in the exclusion process. Most troubling, it risks – and has certainly already led to – completely inconsistent application of guidelines across requestors and a tipping of the scales towards one or the other party – in our case, consistently in favor of objectors.

BIS does not provide any information on how its own factors are applied when rendering decisions, including how evidence submitted by requestors and objectors is weighed.

NLMK took care to provide overwhelming evidence in petitions and rebuttals – on the industry generally (including DOC investigations and academic studies) and on our own efforts to secure slab (including correspondence from U.S. Steel and statistics on slab sold to us by U.S. producers to date, as well as draft contracts and other evidence of U.S. Steel's continued inability and unwillingness to sell us slab). Our evidence showed that slab is not available in the U.S. in sufficient quantities to meet our own demand, let alone that of all slab consumers.

We still do not know what information served as the basis for BIS' decision to deny all of our petitions to date. BIS' decision memos provide no petition-specific rationale, and no indication of how it weighed the evidence presented. Even the ITA memoranda on domestic availability, which we secured as part of pending litigation on our first 85 exclusions, were deficient – they summarized the various filings, and then sided with the objector. Some of our objectors presented false, contrary evidence to claims we made, but we do not know what process BIS used to balance competing claims. Instead, it appears that officials simply sided with the objector, picking winners and losers from among American companies and workers.

BIS has taken almost a year to decide most of our exclusion requests, over three times the normal review period.

In its September 2018 interim final rule, BIS indicates that the normal review period will not exceed 106 days, but it took a nearly year to issue decisions on our first set of petitions, over three times the estimate. We have been waiting six months for decisions on our petitions that remain pending, still well over the estimated review period. Businesses need certainty – long delays make it impossible for us to plan.

V. Comments on Proposed New Policies

As part of this Notice of Inquiry, BIS proposes a number of new policies applicable to review of exclusion petitions. A number of these proposals would only further tip the scale against requestors and in favor of objectors, rather than promote fairness and equity in what is supposed to be an objective process.

BIS should not implement “blanket denials” on any product types.

BIS proposes issuing “blanket denials” on certain categories of goods that have to date faced consistent objection. Doing so denies requestors the opportunity to argue their individual circumstances, including evidence that objectors have consistently failed to provide the requested product. It also institutionalizes biased and unfair rulings, guaranteeing to objectors that their competitors will not be able to import needed materials to manufacture competing end products.

We have provided BIS with evidence of U.S. Steel’s unwillingness to fill our slab orders, showing that this company cannot even make slabs in the sizes we require and thus clearly establishing that this product is not available in sufficient quantity. If BIS issues any blanket denial against our petitions, it is essentially stating that it will not consider such evidence and it will merely institutionalize the bias it has held against us to date.

BIS should not establish time-limited windows for the submission of exclusion requests.

While we recognize the burden BIS faces in the volume of exclusions, it absolutely cannot establish limited windows of time for the submission of exclusion petitions. Customers’ requests and related contracts are made throughout the calendar year, and suppliers and producers need to be able to access product – and thus also exclusions – year-round. However, BIS should set more stringent timelines on its own decision-making process – for example, if BIS is unable to render a decision on a petition within 120 days, it should be granted.

BIS should put the burden of proof on the objector to show it has both the capacity and the willingness to produce and sell the product.

BIS absolutely should place the burden of proof on the objector to provide clear, rebuttable evidence that it has the capacity to produce the requested product, and a willingness to make it available for sale. BIS regulations and the objection forms require that objectors prove they can supply the requested product, in sufficient quantity and of sufficient quality, in the requisite period. It must enforce this requirement more strictly. For example, BIS could require that objectors file evidence that they make the product available for sale, by requesting copies of advertising or statistics on the amount of product sold commercially.

In our case, an objector, Nucor, admitted that it does not make slab, the subject of our exclusion request, and NLMK’s feedstock to make its end product, coil. Nucor stated that it also makes coil, and listed their coil as a substitute, saying “Nucor and other domestic steel producers are capable of producing the same downstream products as NLMK without the need to import steel slab.”⁴ Therefore there was no need for NLMK. Nucor’s comments should never have even been considered, let alone posted as valid, since the company does not manufacture the product that was the subject of the exclusion request or a substitute. It is not for BIS to consider or decide NLMK’s exclusion requests based on a competitor making the same end product. Doing so is anticompetitive and improperly undermines certain U.S. companies to the benefit of others.

BIS should not proceed with any “interim denial memo” granting a small portion of a request until they purchase what is domestically available.

An “interim denial memo” granting a small portion of a company’s request would only make it easier for objectors to stand in the way of granting exclusions that should just be granted, and at the same time hold ransom the remaining quantity to complex contract negotiations. “Availability” is about much more than capacity. It is about size, price, and quality – and about a willingness to engage in good faith contract negotiations on the same. Because objectors have

⁴ Nucor objection.

so much power in this situation, they could claim that they had product “available” but in such a way that makes it impossible for the petitioner to secure the necessary product.

Requiring a “good faith” showing of the need for the product beyond what is already provided is only tipping the scales further for objectors.

Requestors already certify that the information they provide as part of their exclusion request is true to the best of their knowledge, which would include their need and the state of product availability. BIS need not add yet another hurdle to the exclusion process.

Furthermore, any requirement of a “statement of refusal to supply” from a U.S. producer, as suggested by BIS in this Notice of Inquiry, only institutionalizes the power objectors already hold over the process. The only U.S. producer of slabs makes the same end product that we do with the very slabs that we are asking them to sell to us. They are our competitor - what incentive would they have to ever provide us with a “statement of refusal to supply” to help us get an exclusion so we could secure the material elsewhere and compete with them? They have no incentive to sell us our raw material or to allow us to secure it elsewhere, if they can stop it by simply withholding such certification.

Objectors should be required to submit factual evidence verifying that they will produce the product in question, within the time required, and sell it on the market.

Objectors should be required to provide public, and thus rebuttable, information on production (including size), time to produce, and sale offers. Only then will requestors be able to file meaningful rebuttals. The fact that BIS does not already require – let alone consider – this evidence further underscores the fact that it takes objections at face value. BIS should require evidence showing that the objector actually makes this product available for sale, including the amount that it makes available for sale (i.e., how many contracts has the objector signed with, and how much volume of product has it actually sold to, customers for the product). It is one thing for an objector to argue it can make the product – it is another to show that the company has and will continue to make that product available for sale.

BIS should not set any limits on quantities requested.

Customers decide quantity based on their needs, and BIS should not place any limits on their ability to do so. BIS should not insert itself in what is a wholly business decision.

BIS should not issue any sort of blanket standard on what constitutes “reasonably available” that is tied simply to production capacity and time to manufacture.

By now, BIS must see – among the hundreds of thousands of petitions received – how unique each individual petition is, and how each U.S. company requesting exclusions faces unique circumstances, including in the availability of its product. Limiting the concept of availability to two standards – production capacity and time to manufacture – disregards any number of additional considerations that play into availability, including willingness to supply. Any blanket standard like the one proposed by BIS here fails to take into account the realities of complex

manufacturing operations and contract negotiations and yet again seeks to tip the scales in favor of objectors, to the detriment of U.S. companies like ours.

BIS already directs petitioners to provide information on their attempts to purchase the product domestically.

Requiring petitioners to provide information on attempts to purchase product domestically is reasonable. However, BIS must actually consider information for it to have any meaningful impact on the process. We provided this information as part of our previous filings, but BIS still denied our petitions. We do not even know how or even if that information was weighed.

Finally, requiring “good faith” negotiations to reach an agreement on supply during the rebuttal/surrebuttal stage only slows the process down further.

Contract negotiations are complex and can take months or more. Shoe-horning them into an administrative process is completely unworkable, and it is not for BIS to insert itself in what are otherwise business negotiations. Regardless, we provided information on our previous contract negotiations with U.S. Steel as part of our petitions, and this information did not seem to have an impact on our applications – again, it is one thing to require such information, but BIS must actually consider it.

VI. Additional Proposals

Objections should be limited to companies that make the good requested, not ones that only make the same end product.

As indicated above, one U.S. producer, Nucor, objected to all of our exclusions, but freely admitted that it does not make slabs, nor a suitable substitute for slab. Instead, Nucor argued that it makes the same end product as NLMK. Nucor’s comments never should have even been considered, let alone posted as valid. BIS should make sure that objections are limited only to those companies that make the requested product or a suitable substitute for that product.

Objectors should not be able to hide critical information behind the wall of proprietary information.

Objectors should be required to provide some minimum amount of information publicly. In our case, U.S. Steel filed business proprietary information, including production capacity and time to manufacture, as part of its objection filing, but to which we could not even respond. BIS should require certain information, at least enough to allow petitioners to respond, be provided to petitioners, and grant exclusions should objectors fail to provide such information.

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The Section 232 exclusion process is about supporting U.S. industry, ensuring that petitioners – all U.S. companies – that are unable to secure critical steel and aluminum products in sufficient quantity or of sufficient quality domestically can import needed supplies without facing steep duties or restrictive quotas. NLMK USA is a proud part of the U.S. steel industry. But the

Section 232 exclusion process is putting us at a severe disadvantage as compared to others. Despite BIS' claims of impartiality, the system as it currently stands places a heavy burden on requestors. The government has allowed one of our competitors – one that makes and sells the same end product – to control our access to key raw materials. We have made clear – in our filings under penalty of perjury, in citing official ITA studies, and with the evidence our extensive efforts to secure slab from domestic producers – that we would love nothing better than to secure our slab supplies domestically. But we cannot force these domestic companies to supply to us. For our objectors, this is about putting us out of business and clearing competition in the United States, and they are using this process to do so. This process is not balanced – the scales are tipped to the objectors. But remember that there are U.S. companies and workers on both sides, so every time the government unfairly favors one side, it is costing jobs on the other. BIS decisions have real impacts on jobs and companies like ours. How do we explain to our employees – themselves U.S. steelworkers – that they simply are not the right kind of steelworker? That the U.S. government does not prioritize our operations as they do others?

Is BIS basing its decisions on that product that is the subject of the exclusion request, as their own regulations require? Or is it making some broader judgment on what companies they think should be allowed to manufacture coil in the United States? By repeatedly denying our exclusions, and seemingly disregarding evidence showing our repeated attempts at securing slab domestically, it suggests the latter.

BIS must consider how the process as it currently stands appears to be helping some companies at the expense of others. It must reexamine its petition review procedures and consider whether they truly examine domestic availability – as they should – or if they seek some other outcome, such as promoting the downstream products of certain U.S. companies over others. And finally, BIS must streamline and simplify the exclusion process, including by reconsidering acceptable ranges and how it defines individual products. U.S. businesses now spend countless hours filing – and sometimes refile – petitions and responding to objections, and trying to plan complex manufacturing operations around the months it takes to get a decision. BIS should not adopt any new policies that make this process any more burdensome. U.S. industry relies on critical inputs and feedstock to operate and manufacture steel products for further production and manufacture by downstream U.S. companies, and to employ hard-working Americans. Without a fair and objective process, U.S. businesses will continue to suffer.

Kind regards,



Robert D. Miller
President & CEO
NLMK USA
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724-813-4041

July 9, 2020

RE: Bureau of Industry and Security Docket No. 200514-0140, RIN 0694-XC058, “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas;”

California Steel Industries, Inc. (CSI) is pleased to provide comments in response to the U.S. Department of Commerce (DOC) referenced inquiry.

CSI is a steel rolling facility in San Bernardino County, CA. We have approximately 900 onsite employees, 50% of whom are minorities and 20% of whom are U.S. military veterans. Our business model relies upon purchased carbon steel slabs as our feedstock for coil and pipe products. We reheat the slabs to approximately 2,300 degrees Fahrenheit and roll them into hot rolled steel sheet coils. We then further process much of the hot rolled steel into pickled, cold rolled and galvanized sheet, as well as line pipe. We are the largest steel producer in the Western U.S., with capacity for approximately 2.3 million metric tons of finished product. Unfortunately we are currently operating at less than 40 percent of capacity due primarily to steel shortages caused by the Section 232 import restrictions on slabs.

In our 35+ years of existence, we have seen continuing severe shortages of available steel slabs for sale by the U.S. domestic steel integrated mills, all of whom are located along the Mississippi River and eastward, creating significant costs to transport slabs to California. There have been no new blast furnace integrated mills built in the U.S. since 1964. Instead, integrated mills have been closing with regularity. In 1982 there were 35 operating integrated facilities with slab production capability. Today there are nine. Against that background, the vast majority of CSI slabs have come from Brazil, Mexico and Japan, with less than 5 percent on average from domestic slab producers. It should be noted that CSI has no ownership in any slab facilities and operates at “arm’s length” from its two 50/50 shareholders – Vale of Brazil and JFE Steel Corp. of Japan – in its slab procurement decisions.

In past trade investigations, starting in 2001, DOC has studied availability of domestic steel slabs for sale. It has always found that such availability is severely limited as integrated mills prefer to make the slabs for their own consumption to produce value added products. As recently as 2013, the report accompanying the House of Representatives’ FY Commerce, Justice, Science, and Related Agencies (“CJS”) Appropriations directed DOC to conduct a new review of domestic slab availability. DOC submitted the study to the House CJS Subcommittee. The Subcommittee has not released it but has allowed congressional staff to read it, take notes, and quote from it. Staff has verified that the study confirmed that steel slabs are almost never available for sale domestically. At the time, the report found that only about 1.1 percent of total U.S. production of slabs was available for sale in the domestic market.

As part of the Section 232 process, CSI has filed dozens of tariff and quota exclusion requests for imported slabs from various countries, only to be denied in all final determinations thus far. In

each request, CSI dutifully noted the historical findings of slab availability studies, and cited, to no avail, its own extensive experience with the problem of domestic slab availability.

With that as background, CSI is duty-bound to provide the following feedback in critique of the Section 232 exclusion process:

1. The exclusion review process did not allow use of reasonable size/specification ranges for steel products, creating a huge administrative burden for both requesters and for Commerce. Imported slab orders fill an entire ship's cargo with 50,000 to 60,000 metric tons of metal. CSI's general practice is to order a mixture of grades, chemistries and dimensions in keeping with its historical needs. CSI could have covered its exclusion requests in a few ranges of these specific dimensions but, after much initial confusion, was required to file separately for each minute dimension distinction.
2. Difficulties when opening an exclusion request include:
 - a. The 232 web portal only allows the filing of one exclusion request at a time. Given the variance in chemistry and suppliers, this can mean spending hours filing 150 exclusion requests.
 - b. The website relies on an external Chrome Extension/app in order to automatically populate all the form fields in order to save time on filing. Sometimes this fails and doesn't populate saved criteria such as U.S State.
 - c. After filing four exclusion requests, the Section 232 web portal will begin requiring Google ReCaptcha tests in order to determine that the filer is not a robot. This is one of the most exhausting exercises, where instead of continuously filing exclusions, you are stopped during filing of each request and must "Select all the palm trees", "cars", or "sidewalks". The very nature of the system is discouraging someone from filing.
3. Initial determinations on exclusion requests have been taking months, some as long as a year. For CSI and companies like ours, the delay creates uncertainty and cost.
4. Because there was little to no flexibility in the product ranges, requests inevitably were for higher volumes of every product than CSI actually required, even though CSI did clarify this in our written supportive remarks. This overage gave fodder to objectors and may have contributed to exclusion requests being denied. DOC ignores the fact that for slab converter mills such as CSI, the ability to purchase slabs in a timely fashion to match anticipated customer needs several months in the future is a major factor in business survival. There was no way for CSI, as an example, to know how much of any exclusion request would be granted. So even though our requests totaled far more than we could buy and use in our production, our attached written comments for each request detailed our capacity and clarified our immediate tonnage needs.

5. Thus far, DOC has only issued denial decisions on exclusion requests for imports of semi-finished steel slabs. Requests were filed for a number of nations by a number of U.S. slab converter companies. DOC denied all requests despite their own studies showing significant shortfalls in available domestically produced slabs in the U.S. And DOC also ignores the fact that since the most recent of those studies in 2013-14, multi-million metric tons of U.S. domestic slab capacity has been taken off line, exacerbating an already significant shortfall of commercially available domestic slab in the U.S.
6. As with any business transaction, price is a vital part of the negotiation and the buy/sell decision. However, DOC, in following the President's proclamation, ignores pricing as a viable factor for slab converters to reject slab offers from a U.S. domestic producer. This is especially hurtful and unfair as there is only one occasional domestic slab supplier in the United States, U.S. Steel -- which certainly values price in its decisions to sell, and which has tremendous pricing power as the sole U.S. supplier of slab.
7. DOC allowed Nucor Corp. to object to Section 232 tariff and quota exclusion requests – by CSI and other U.S. companies – on semi-finished steel (slabs) even though Nucor admits that it doesn't make discrete slabs. Nucor objected to tariff and quota exclusions on slabs on the basis that it makes competing finished products and could readily supply CSI's customers. This is anti-competitive and DOC should throw out such objections.
8. Finally, regarding the fairness of the exclusion process, the numbers speak for themselves:

George Mason University Section 232 Analysis:

*"In our earlier analysis, we reported that objections are important because they appear to significantly influence Commerce's decisions. **When we wrote that analysis, less than one percent of the steel exclusion requests with an objection had been approved.** Of those remaining, some were denied, but most (89 percent) were still pending. Similarly, Commerce had approved only 2.7 percent of aluminum tariff exclusion requests with an objection, and most of those (95 percent) were still pending. Just looking at the exclusions with an objection (not reported in the table), with the new portal, **none of the steel or aluminum exclusion requests with an objection have been approved and all remain pending.** Specifically, for steel, producers have filed objections against 6,371 steel tariff exclusion requests, and of those, none have been approved and all remain pending. Of the steel tariff exclusion requests with no objection (24,765), 16,595 were approved, 1 was denied, and 8,169 remain pending."*

<https://www.mercatus.org/bridge/commentary/section-232-steel-and-aluminum-tariff-exclusion-requests-continue-apace>

As far as some of the additional comment opportunities presented by DOC regarding the exclusion process:

1) One-year blanket approvals of exclusion requests for product types that have received no objections as of a baseline date (see Annex 1 and 2).

CSI does not support blanket approvals as there may be unique circumstances in some requests.

2) One-year blanket denials of exclusion requests for product types that have received 100 percent objection rates and never been granted as of a baseline date (see Annex 3 and 4);

CSI does not support blanket denials, which would be weighted in favor of objectors. If this stance is adopted, what DOC is really saying is that there are no facts or opinions that will cause it to grant any future exclusion requests for steel slabs. This would be turning a blind eye to reality. For instance, since the start of the Section 232 tariffs and quotas many changes have occurred with massive reductions in both domestic and foreign steelmaking and casting. The COVID-19 crisis has further changed the picture. CSI has pointed this out in our most recent exclusion requests on steel slab tariffs and quotas, as completely different circumstances from earlier exclusion requests.

3) Time-limited annual or semi-annual windows during which all product-specific exclusion requests and corresponding objections may be submitted and decided;

CSI does not support this because it fails to take into account rapid changes in the steel industry.

4) Issuing an interim denial memo to requesters who receive a partial approval of their exclusion request until they purchase the domestically available portion of their requested quantity;

This is a bad idea. There may never be domestically available slab products. And any available domestic slabs at any particular point in time may have no correlation with the customers' finished product requirements.

5) Requiring requestors to make a good faith showing of the need for the product in the requested quantity, as well as that the product will in fact be imported in the quality and amount, and during the time period, to which they attest in the exclusion request (e.g., a ratified contract, a statement of refusal to supply the product by a domestic producer);

CSI opposes this as overly legalistic and impractical. CSI has always made "a good faith" showing of its need to import slabs, but has seen only denials on its exclusion request for slabs. And good luck in getting a domestic steel company to provide a "statement of refusal to supply the product." All they have to do is raise the price or disagree on other key terms and they can say they offered the slabs for sale but the potential customer refused to buy.

6) Requiring objectors to submit factual evidence that they can in fact manufacture the product in the quality and amount, and during the time period, to which they attest in the objection;

This sounds good but in fact there will almost always be a theoretical case that can be made that a supplier can supply. In reality, much of the slab making capacity that is referenced in domestic steelmaker objections is capacity that is idled due to quality and cost restraints. It may not be "dead" in the legal sense, but it is dead capacity in the practical sense. And even if the domestic

steel company “can in fact manufacture the product” there is no guarantee that they will choose to do so or choose to sell the product.

7) Setting a limit on the total quantity of product that a single company could be granted exclusion for based on an objective standard, such as a specified percentage increase over a three year average;

This is too theoretical and arbitrary in our view. It is difficult to forecast one quarter ahead with all the changes in the world steel market. It is virtually impossible to forecast needs beyond that. Using a prior three-year average to make determinations has proven to be a bad idea, for instance, in the Brazil slab quota, which was based on a three-year average that predicted much lower volumes than were actually demanded under the quota.

8) Requiring that requestors citing national security reasons as a basis for an exclusion request provide specific, articulable and verifiable facts supporting such assertion (e.g., a Department of Defense contract requiring the product; a letter of concurrence from the head of a U.S. government agency or department that national security necessitates that the product be obtained in the quality, quantity and time frame requested);

CSI has no comment on this potential requirement.

9) Clarifying that the domestic product is “reasonably available” if it can be manufactured and delivered in a time period that is equal to or less than that of the imported product, as provided by requestor in its exclusion request;

CSI objects to this as a “clarification,” since delivery times are changed frequently by both parties, based on downstream customer requirements, change orders, production problems and other variables. The fact that a domestic product “can be manufactured and delivered in a time period that is equal to or less than that of the imported product” is a promise made by producers which is often not kept and is not guaranteed.

10) Requiring that requestors, at the time of submission of their exclusion requests, demonstrate that they have tried to purchase this product domestically;

CSI has always tried to purchase slabs domestically, with sporadic success. During the exclusion request process, CSI provided documentation of its efforts to buy domestic slabs. Thus far, CSI has seen only denials of its exclusion requests. The demonstration of effort to purchase domestically becomes a subjective question. DOC should look at the cold hard numbers that its own studies have shown, proving that domestic steel slabs are largely not a commercially available product in the U.S.

11) In the rebuttal/surrebuttal phase, requiring that both requestor and objector demonstrate in their filings that they have attempted to negotiate in good faith an agreement on the said product (i.e., producing legitimate commercial correspondence).

The trick is in defining “good faith.” CSI has confidentially documented negotiation attempts in its exclusion requests. Documenting the negotiations has proven to be an unproductive exercise. As stated many times, there is but one U.S. supplier of domestic steel slabs, and that is U.S. Steel, on a very limited basis. So there is no level playing field on pricing and terms, in any negotiations where there is but one supplier of domestic slabs. And where price cannot be cited as the reason to reject a slab offer, it becomes an impossible task to prove that the buyer could not have bought more product from the single seller.



July 10, 2020

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

RE: BIS-2020-0012, RIN 0694-XC058 Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Dear Secretary Ross,

The Coalition of American Metal Manufacturers and Users (“CAMMU” or “the Coalition”) is pleased to offer the following comments on the Department of Commerce’s (“Department”) Bureau of Industry and Security (BIS)’s Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas. These comments follow the filing of a Notice of Inquiry seeking comments on the exclusion process.¹ While we recognize efforts made by BIS to improve the exclusion process, CAMMU members remain concerned that denials of requests by BIS lack transparency, objectors are not held accountable for their statements and claims, and the review period lasts much longer than the 90 days maximum stated by BIS in its March 2018 Federal Register notice announcing the exclusion process.

CAMMU is a broad organization of U.S. businesses and trade associations representing over 30,000 companies and over one million American workers in the manufacturing sector and the downstream supply chains of a wide variety of industries including aerospace, agriculture, appliance, automotive, consumer goods, construction, defense, electrical, food equipment, medical, and recreational industries, among others.²

CAMMU previously submitted comments to the BIS to provide information and the experience of our members so that the Commerce Department could address problems with the exclusion process. Unfortunately, numerous problems continue to plague the exclusion process, resulting in U.S. manufacturers being unable to obtain essential steel and aluminum inputs, thus injuring thousands of American businesses. This is a critical problem, particularly as U.S. manufacturers are attempting to recover from the economic harm caused by the COVID-19 pandemic.

¹ Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas, 85 Fed. Reg. 31,441 (March 26, 2020) <https://www.federalregister.gov/documents/2020/05/26/2020-11173/notice-of-inquiry-regarding-the-exclusion-process-for-section-232-steel-and-aluminum-import-tariffs>. (Hereinafter “Notice of Inquiry.”)

² CAMMU members include: American Institute for International Steel, Associated Builders and Contractors, Industrial Fasteners Institute, the Hands-On Science Partnership, the National Tooling & Machining Association, North American Association of Food Equipment Manufacturers, the Precision Machined Products Association, and the Precision Metalforming Association.

CAMMU does not believe that the exclusion process alone can solve the economic harm caused by the Section 232 steel tariffs experienced by U.S. steel- and aluminum-using manufacturers since they were imposed in March 2018. CAMMU continues to urge the Trump Administration to terminate the Section 232 tariffs and quotas on steel and aluminum products. More than two years after imposition of the tariffs, U.S. steel producers continue to face structural and technological challenges that tariffs simply cannot resolve by taxing the domestic steel industry's customers. U.S. steel- and aluminum using manufacturers, who employ millions of more Americans than the steel producers, have paid billions of dollars in tariffs over the past two years, money that could have been used to hire more American workers, and invest in capital equipment and research & development, critical elements for the manufacturing sector to recover from the recession caused by the COVID-19 pandemic.

Short of terminating the tariffs, it is essential for U.S. manufacturers that changes be made to the product exclusion process to make it more fair and transparent, and to eliminate the delays that are common for companies who file for a product to be excluded from the Section 232 tariffs on steel and aluminum.

1. Comments Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

As of July 6, 2020, through the online 232 Exclusion Portal, BIS had received 91,149 exclusion requests for steel and aluminum products from U.S. businesses, with 30,463 listed as "pending." One importer who belongs to a CAMMU member trade association has been waiting for a decision on its exclusion request since August 2019, which still pales in comparison to some exemptions pending for more than 600 days, even without an objection.

The delays in obtaining information on whether Commerce will grant exclusions has caused significant problems for U.S. manufacturers. If manufacturers cannot determine the price and/or delivery time for an important input like steel and aluminum, their customers may choose to source the part from an overseas competitor who is able to charge less because they are paying world prices for steel and aluminum instead of the increased prices paid by U.S. manufacturers as a result of the Section 232 tariffs.

In the Notice of Inquiry, BIS requested comments on the efficiency and transparency of the process employed, indicating specific areas of primary concern. CAMMU's comments on specific topics are below.

a. The information sought on the exclusion request, objection, rebuttal, and surrebuttal forms;

The process for populating fields should be updated to allow for additional commentary on the specifics of specialized materials. Commerce should review all commentary in addition to the standard request information prior to rejecting a request. CAMMU also encourages Commerce to continue to require certain types of information that promote fairness and transparency, as indicated in paragraphs 3(e), (f), (h), (j), and (k), below.

b. Expanding or restricting eligibility requirements for requestors and objectors;

The current qualifications for filing a product exclusion is limited to qualified applicants to only individuals and organizations who use steel or aluminum, meaning that trade associations cannot file on behalf of their members, many of whom use an identical item. This limitation and the product requirement described below in paragraph 2(h) are particularly harmful to small businesses that often do not have the

resources needed to submit exclusion applications for the products that are not available from domestic sources and therefore must be imported.

In addition, this duplicative process creates a clear and overwhelming burden on the BIS staff tasked with reviewing identical requests and will continue to lead to unnecessary delays slowing down the review process. Overall, these two requirements have led to an inundation of filings, which is neither fair to requestors nor an efficient use of time and resources for BIS.

Permitting trade associations to submit requests on behalf of affected members would help to address the unreasonableness and inefficiency of the current exclusion process and would reduce the burden, particularly on small businesses.

c. *The Section 232 Exclusions Portal;*

CAMMU members report that the new portal is difficult to use. Requests cannot be saved as “drafts” and do not allow for editing. If an exclusion request is returned for additional information, the requestor must fully recreate a new request. Members report that obtaining downloadable information regarding the status of exclusions, quantities, etc. was much easier when the portal used an excel spreadsheet format.

d. *The requirements set forth in Federal Register Notices, 83 FR 12106, 83 FR 46026, and 84 FR 26751;*

CAMMU has no specific comments.

e. *The factors considered in rendering decisions on exclusion requests;*

CAMMU requests that BIS more thoroughly consider whether the information presented by objectors is factual and confirmable in rendering decisions on product exclusion requests. Specifically, it should be verified that companies who file objections actually have the capacity and ability to produce the requested product in the time required by the company that filed the request. Unfortunately, there are numerous examples of BIS denying product exclusion requests based on objections from domestic steel producers that claim they have the “capacity” to make and supply the requested product but do not accept a purchase order. These objectors often provide no evidence that they can actually supply the steel or aluminum with the specifications requested by the applicant despite their attestation in the affirmative. CAMMU members have requested quotes from domestic steel producers who objected to an exclusion request, only to be told that the steel or aluminum is unavailable, again, despite the objection filed.

Requestors have provided to BIS no-quote letters from domestic steel producers and other evidence showing that they could not obtain the steel or aluminum product in the required quality and quantity from the objector or other domestic producers, but have had their product exclusion requests denied on the basis of an unsubstantiated objection.

CAMMU recommends that, just as companies filing product exclusion requests are required to provide detailed information on their purchases, BIS should require objectors to present detailed information on the products they produce and their immediate or near term availability for purchase by U.S. steel- and aluminum-using manufacturers. BIS should place significant weight on the objector’s factual response in rendering a decision on an exclusion request. Denying a product exclusion to an applicant if that product is unavailable from U.S. domestic producers despite their claims undermines the integrity of the exclusion process.

f. *The information published with decisions;*

CAMMU believes that information published by BIS in rendering denials to product exclusion requests is insufficient. Currently, decisions rejecting product exclusion requests provide no specific substantive information about the reason the request was denied. There are numerous cases where documentation was provided to BIS by an applicant seeking an exclusion for the product showing that the product was not available for purchase from a U.S. producer, only to have that exclusion denied with no explanation.

BIS should provide basic information to the applicant when it denies an exclusion request so that the applicant can understand the reason for the denial as part of due process. Currently, this lack of transparency has created a perception by many applicants that the process is unfair and weighted against applicants.

g. *The BIS website guidance and training videos;*

CAMMU has no specific comments on the BIS website guidance and training videos.

h. *The definition of “product” governing when separate exclusion requests must be submitted;*

The Second Interim Rule for “Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the Filing of Objections to Submitted” states that “[approved] exclusions will be made on a product basis and will be limited to the individual or organization that submitted the specific exclusion request to apply to additional importers.”³ The BIS requirement that a product exclusion, if granted, is exclusive to the company that filed the exclusion request has created a massive burden for all participants in the exclusion process, from companies who apply for exclusions to the BIS staff that must review each application.

If a product is not available in the United States for one company, it is not available to its competitors, therefore, BIS should issue exclusions product wide, as is the case with the Section 301 exclusion investigations conducted by USTR. If USTR can utilize a product wide exclusion process having already rendered over 45,000 decisions on requests, the Commerce Department can do the same. The requirement that each product exclusion is company-specific is unnecessary and is one of the primary reasons why there are thousands more exclusion requests than predicted by the Commerce Department.

In addition, the requirement that applicants file a separate request for each different measurement of a product that fall under the same HTS code (for example, where a product length or other measurement might vary per production) is unnecessary and burdensome. An applicant should have the ability to file an exclusion request for a certain range of length or measurements that fall within the HTS code instead of requiring separate exclusion requests for every potential length or measurement of that product.

CAMMU recommends that BIS allow companies to file a single unified exclusion request application. Applicants should have the ability to group products with small variations in length and width in one exclusion application. The single, unified request should apply to the specific product’s chemistry, and

³ Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum, 83 Fed. Reg. 12,106, 12,107 (March 19, 2018). (Hereinafter “Second Interim Rule”).

would cover a grouping of products within a similar size range. This would eliminate the unnecessary burden that the above requirements currently impose on manufacturers, not to mention ease the burden on BIS by eliminating duplicative filings.

- i. *Incorporation of steel and aluminum derivative products into the product exclusion process.*

Even prior to the COVID-19 pandemic, there is little evidence to show that domestic steel and aluminum producers used the protection of Section 232 tariffs to invest in new technologies to improve their product quality, increase the manufactured products available, or to significantly bring online sufficient capacity. Thus the Section 232 tariffs have simply been a tax on imports that shift any perceived injury to producers into actual injury for industrial users of the subject materials.

Imposing tariffs on derivatives of steel or aluminum is an admission the Section 232 tariffs did not serve their intended purpose, but did cause injury to users of steel and aluminum. CAMMU is concerned that imposing tariffs on derivatives will further shift the injury until the Administration is left with no choice but to tariff the end consumer product and all its inputs, rendering the item too costly for American consumers.

2. CAMMU’s Comments on “Potential Revisions to the Exclusion Process” per the Notice of Inquiry

The following are CAMMU’s comments on certain proposed revisions to the product exclusion process that were listed in the Commerce Department’s Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas.

- a. *One-year blanket approvals of exclusion requests for product types that have received no objections as of a baseline date;*

As noted, the current process for companies applying for a product exclusion where, if granted, the exclusion only applies to the product and to the company that filed the exclusion, has created a massive burden for all participants in the exclusion process, from companies who apply for exclusions to the BIS staff that must review each application.

CAMMU strongly supports BIS granting one-year blanket approvals of exclusion requests for product types that have received no objections as of a baseline date; however, BIS should further specify that the word “objections” means *substantive* objections. Without specifying that an objection must be substantive to prevent one-year blanket approvals, the process would incentivize objectors to submit boilerplate, duplicative objections in order to prevent the automatic granting of an exclusion request under the one-year blanket approval provision.

Akin to frivolous lawsuits, the filings of non-substantive objections simply to create the appearance of available domestic capacity is an abuse of the process and should be investigated by BIS. The 232 Exclusion Portal and the docket before it include countless objections filed where the producer clearly copied and pasted the information from one objection to another, particularly in the early stages of the exclusion process. Therefore, the Department should invoke the one-year blanket approval if none of the objections submitted are substantive in nature.

- b. *One-year blanket denials of exclusion requests for product types that have received 100 percent objection rates and have never been granted as of a baseline date;*

As with the above, one-year blanket denials of exclusion requests for product types that have received 100 percent objection rates could perpetuate an abuse of the system, *unless* the blanket denial only applies when those objections are substantive and the review comprehensive. If the objections are not required to be substantive, there is nothing to stop producers from filing boilerplate, unsubstantiated objections to reach the 100% mark to prevent BIS from even considering an exclusion request.

CAMMU would strongly suggest that, should BIS move forward, Commerce must provide a transparent justification for the 100 percent objection rate. Without knowing why BIS denied a request, U.S. industrial users of the subject material cannot submit a comprehensive request addressing specific concerns raised by BIS in denying a request for similar products. Without transparency and specific reasons for denial, CAMMU would oppose this change.

- c. *Time-limited annual or semi-annual windows during which all product-specific exclusion requests and corresponding objections may be submitted and decided;*

BIS should continue to accept exclusion requests on an open and rolling basis. Especially during these times of uncertainty with a constantly changing landscape, manufacturers need the ability to seek relief more than ever. A more structured process with specific deadlines for decision-making will allow BIS to manage its volume while providing requesters with certainty surrounding an already opaque process. Many steel- and aluminum-using manufacturers are supporting the effort to respond to the COVID-19 pandemic by increasing their production of medical device components or by converting their facilities to produce products needed to fight the pandemic. These manufacturers often require specialty metals only produced in Europe.

- d. *Issuing an interim denial memo to requestors who receive a partial approval of their exclusion request until they purchase the domestically available portion of their requested quantity;*

CAMMU respectfully recommends that the Commerce Department consider an alternative to issuing an interim denial memo. CAMMU is concerned that interim decisions often operate under a presumption of finality, which negatively implicates the due process rights of those affected by them and adds to the continued uncertainty for U.S. industrial users of the steel or aluminum. Were BIS to impose a transparent process with timelines for decision-making, it would not need to consider issuing interim denial memos.

- e. *Requiring requestors to make a good faith showing of the need for the product in the requested amount, as well as that the product will in fact be imported in the quality and amount, and during the time period which they attest in the exclusion request (e.g. a ratified contract, a statement of refusal to supply the product by a domestic producer);*

See below.

- f. *Requiring objectors to submit factual evidence that they can in fact manufacture the product in the quality and amount, and during the time period, to which they attest in the objection;*

This comment pertains to points 3(e) and (f).

CAMMU strongly supports requiring objectors to “submit factual evidence that they can in fact manufacture the product in the quality and amount, and during the time period, to which they attest in

the objection.” This requirement, in fact, is already imbedded in the Department’s exclusion request and objection forms. However, the requirements will only foster transparency and expediency if the Department enforces this requirement in practice. When submitting a product exclusion application, requestors are required to make a good faith showing of the need for a product in a certain requested quantity and also that the product will be imported in the quantity requested and in the time period alleged in the exclusion request. If the applicant does not provide this information, the product exclusion request is denied. BIS should equally ensure that an objector provide factual evidence proving that they can in fact produce the product in the requisite quality and quantity within the time period identified by the requestor. However, as described in paragraph 2(e), above, this requirement for objectors is not, in practice, being adequately enforced.

CAMMU strongly encourages BIS to require that product exclusion objectors provide evidence that they can make the product and encourages the Department to stringently enforce this requirement.

- g. Setting a limit on the total quantity of product that a single company could be granted an exclusion for based on an objective standard, such as a specified percentage increase over a three year average;*

CAMMU does not support “setting a limit on the total quantity of product that a single company could be granted an exclusion for based on an objective standard, such as a specified percentage increase over a three year average.” Commerce has already created stringent requirements for applicants to prove that the product they seek an exclusion for is needed and not available from domestic producers. There is no evidence to suggest that applicants for product exclusions are stockpiling inventory or trying to “game” the system. Limiting the quantity of a product would be counter to the stated objective of having an exclusion process: to ensure that manufacturers can obtain products that are not produced in the United States. Under the current circumstances created by the COVID-19 pandemic, where reduced cash flow is a major concern for most manufacturers, a requestor is not likely to request an exclusion for a product to put in inventory. Commerce cannot be in the business of regulating U.S. manufacturers’ ability to service their customers’ needs.

- h. Requiring that requestors citing national security reasons as a basis for an exclusion request provide specific, articulable and verifiable facts supporting such assertion (e.g., a Department of Defense contract requiring the product; a letter of concurrence from the head of a U.S. government agency or department that national security necessitates that the product be obtained in the quality, quantity and time frame requested);*

The BIS exclusion request form already requires requestors citing national security reasons as a basis for an exclusion request to provide facts supporting such assertion. As discussed above in paragraph 3(f), CAMMU supports this provision as it provides clarity and transparency to the process, and encourages the Department to continue enforcing this requirement. Many specialty metals used by manufacturers in the aerospace and defense sectors have specific tolerances and chemical characteristics not manufactured domestically. To address this, the Defense Federal Acquisition Regulations (DFARs) includes a list of qualifying countries permitted to supply metal or other materials to U.S. defense contractors. BIS should similarly follow this national security guideline from the Department of Defense (DoD) and approve exclusion requests based on DoD contract requirements and DFARs protocols.

- i. *Clarifying that the domestic product is “reasonably available” if it can be manufactured and delivered in a time period that is equal to or less than that of the imported product, as provided by requestor in its exclusion request;*

Because “reasonably available” can only be proved after the fact, steel/aluminum suppliers may still fail to deliver a product on time, or simply choose not to respond to a request for quote. This creates problems for U.S. steel- and aluminum-using manufacturers who then do not have the raw material needed to produce parts on customer deadlines. In addition, metals suppliers often must be qualified by the original equipment manufacturer (OEM) before the manufacturer of highly engineered products for safety-critical industries can use them. There is a difference between whether the product can be sourced domestically and if our members’ customers will allow us to substitute suppliers. Even if the customer is willing to consider a substitution, there are substantial costs in qualifying a new supplier.

- j. *Requiring that requestors, at the time of submission of their exclusion requests, demonstrate that they have tried to purchase this product domestically;*

See below.

- k. *In the rebuttal/surrebuttal phase, requiring that both requestor and objector demonstrate in their filings that they have attempted to negotiate in good faith an agreement on the said product (i.e., producing legitimate commercial correspondence);*

Points 3(j) and (k) are similar to points 3(e) and (f) above. These requirements already exist under the current exclusion request process. In practice, providing evidence of good faith negotiations by providing email communications, letters of intent, etc. should be enough to show that a requestor has tried to purchase the product domestically and that an objector could not deliver the product in the quality and quantity needed. Similarly, “no quotes” and non-responses by producers should also serve as adequate proof that domestic producers cannot supply the product for an exclusion to be approved. There are numerous examples where this type of information has been provided by a requestor, but the requestor still received a denial based on “sufficient domestic capacity”. However, as previously stated, simply stating that a producer has the capacity to manufacture a product is not adequate grounds for denial of a request. Capacity to manufacture a product is different than the ability to deliver the product on the specified timeframe required by steel- and aluminum-using manufacturers and their customers. CAMMU believes its members have already taken these steps, including by “producing legitimate commercial correspondence,” yet those submissions are still often denied.

Additional Recommendation: Implementing a presumption of approval if a decision is not rendered by BIS within 90 days of submission.

CAMMU respectfully submits an additional recommendation to strengthen the Section 232 product exclusion process. Combined with adequate transparency, BIS can easily achieve many of its intended goals by simply setting a firm deadline for reviewing requests. In its March 2018 Federal Register Notice announcing the exclusion process, BIS stated that, “the review period normally will not exceed 90 days, including adjudication of objections submitted on exclusion requests.”

As noted, as of March 2020, the average time that an applicant must wait from submission to decision in cases in which no objections were filed was 125.6 days for steel exclusion requests and 156.5 days for aluminum exclusion requests. These delays were significantly exacerbated in instances in which one or more objections are filed. The average time from submission to decision in cases where an objection was

filed was 294.5 days for steel exclusion requests and 294.6 days for aluminum exclusion requests. The time that BIS is taking to render decisions on exclusion requests is unreasonable, and serves to prevent manufacturers from efficiently and successfully conducting business. In fact, steel-using and aluminum-using manufacturers are experiencing economic harm by the delays in obtaining a decision by BIS on an exclusion request.

CAMMU recommends that the Commerce Department implement a presumption of approval and the automatic issuance of an approval letter for use with U.S. customs officials if a decision is not rendered within 90 days of submission. This revision would ensure that the process is conducted fairly and efficiently and help relieve the administrative burden on BIS. More importantly, a set timeline that conforms to the initial proposal published in the Federal Register will provide certainty for the thousands of manufacturers often left in limbo by a seemingly endless exclusion process, which lacks transparency.

Conclusion:

The Coalition of American Metal Manufacturers and Users appreciates the opportunity to comment on, and provide recommendations to improve, the Department's Section 232 steel and aluminum product exclusion process. It is essential that the process of applying for exclusions from the Section 232 tariffs be conducted in an improved and expeditious manner to minimize the burden for affected businesses. CAMMU encourages the Department to implement the recommendations contained in these comments to help improve the transparency and fairness of the exclusion process.



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To the Bureau of Industry and Security - Department of Commerce

Ref.: RIN 0694-XC05

Mr. Cordell Hull

Acting Under Secretary for Industry and Security

On behalf of the Government of Brazil and in reference to the *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, published in the Federal Register on May 26, 2020, which allows for comments on *the appropriateness of the factors considered, and the efficiency and transparency of the process employed, in rendering decisions on requests for exclusions from the tariffs and quotas imposed on imports of steel and aluminum articles*, we would like to present the following considerations:

1. Brazilian exports of steel and aluminum to the U.S. market do not pose a threat to U.S. national security. They should therefore be exempted from trade measures imposed under Section 232 of the Trade Expansion Act of 1962. Most of the steel imported from Brazil is reprocessed by the U.S. industry, thereby adding value to American products and generating jobs in the U.S. territory. Moreover, several Brazilian exports of steel and aluminum articles are already subject to antidumping duties, which, by definition, are established at a rate capable of eliminating the injury that those imports could cause to American producers. It is important to emphasize that Section 232 trade measures also have the effect of increasing prices of final products in steel-reliant production chains, such as automobiles, trucks, harvesting machines, and appliances.

2. The Government of Brazil would also like to suggest some improvements on transparency and fairness of the exclusion process employed by the DoC. It would be highly appreciated that:

(i) the DoC is consistent in its decision on exclusion requests, so that all grades within an existing quality, HTS number, and production route are subject to the same treatment;

(ii) the DoC Decision Memos directly and specifically address which aspects and evidences from both the requesting and objecting party's submissions were taken into consideration for the decision;

(iii) the information on the public officials conducting the process of the exclusion requests are predetermined and made public; also, that the same official remains in charge of the entire process, in order to improve accountability;

(iv) the DoC allows not only objections but also comments in support of exclusion requests from interested parties (e.g. pipe yards, licensees, freight companies, distributors, user etc.), and that those comments are made public in the process;

(v) the DoC streamlines and accelerates the analysis of exclusion requests, so that commercial transactions are not compromised by long periods of analysis.

3. The Government of Brazil recalls that all exclusion requests for semi-finished steel slabs were denied, despite studies from the Department of Commerce in recent years showing significant shortfalls in available domestically produced slabs in the United States. Since the most recent of those studies, multi-million metric tons of U.S. domestic slab capacity have been taken off the manufacturing line, exacerbating an already significant shortage of commercially available domestic slab in the U.S.

4. The Government of Brazil would like to convey the additional following requests on quotas administration and operation:

(i) creation of an expedited process for requesting additional volumes for granted but exhausted exclusion request volumes.

(ii) possibility of roll-over of previously granted exclusion request volumes which have not been used within the 12-month effective period.

(iii) automatic renewal of previously granted exclusion requests, with no changes in request data.

(iv) automatic extension, at the same volume, for requests that have been objected until a decision is made.

(vi) on-line tracking of available quantities for each specific granted exclusion, per Customs and Border Protection import data, to prevent mismatch in request effective status.

(vii) revision of objection, rebuttal and surrebuttal templates so that they feature product specific details from the originator, in order to prevent blanket objections of exclusion requests.

(viii) improvement of the 232 web portal to allow filling of multiple exclusion requests at one time. Given the variance in chemistry and suppliers, using the current web portal can be extremely time-consuming to the exporters as it allows only one request at a time.

The Government of Brazil appreciates the opportunity for consultation and is confident that the U. S. Department of Commerce will take the comments above into consideration.

Respectfully submitted,



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Kevin M. Dempsey
Interim President and CEO

July 10, 2020

The Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas [RIN 0694-XC058; BIS-2020-0012]

Dear Assistant Secretary Ashooh:

In response to a request¹ from the U.S. Department of Commerce (DOC), the American Iron and Steel Institute (AISI), on behalf of its U.S. producer member companies, is pleased to submit the following comments regarding the product exclusion process for the Section 232 steel import tariffs and quotas. AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI also plays a lead role in the development and application of new steels and steelmaking technology. AISI is comprised of producer member companies, including both integrated and electric arc furnace steelmakers, and associate members who are suppliers to or customers of the domestic steel industry.

I. Introduction

It has now been more than two years since the DOC found that the “present quantities and circumstances of steel imports” threaten to impair U.S. national security pursuant to Section 232 of the Trade Expansion Act of 1962 and President Trump implemented tariffs and quotas to address this national security threat. The 25 percent tariff on steel imports from most countries, combined with quota arrangements with respect to imports from several others, has allowed the domestic steel industry to make a number of investments that have improved the competitiveness and reliability of the supply of domestically-produced steel. Unfortunately, the recent COVID-19 public health crisis

¹ Department of Commerce, “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas,” May 26, 2020, 85 FR 31441-31451.

has caused a significant drop in demand for steel in the United States, making the domestic steel industry even more vulnerable to renewed surges in steel imports. It is thus critical to maintain the effectiveness of the Section 232 program given current economic conditions and it is essential that the product exclusion process not undermine the purpose of the Section 232 remedy on steel.

Year-to-date data through May 2020 indicates that just one-third of total steel imports into the United States currently are from countries subject to the 25 percent tariff. This calculation does not account for the user/importer-specific product exclusions that have been granted, which further reduce the volume of steel imports subject to the tariff remedy. The product exclusion process was instituted to address the narrow circumstances where a steel product is not “produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality” or for exclusion requests “based upon specific national security considerations.” However, it is clear that many of the tens of thousands of exclusion requests that have been filed to date are designed solely to undermine the Section 232 remedy, as importers have requested exclusions in volumes that vastly exceed historical levels of steel imports generally.

It remains the position of AISI that product exclusion requests should only be granted where they meet the narrowly-prescribed circumstances outlined in the original product exclusion guidelines issued in March 2018. As further detailed below, any effort to adjust or modify the Section 232 product exclusion process that may result in a decrease in the number of steel imports subject to the remedy has the potential to render the program ineffective and could ultimately harm U.S. national security.

II. Product Exclusion Process

In March 2018 following the Presidential Proclamation implementing the Section 232 remedy on steel imports, the Bureau of Industry and Security (BIS) issued the interim final rule outlining the three reasons that product exclusion requests would be granted for steel imports: (1) an article is not produced in the United States in a sufficient and reasonably available amount; (2) an article is not produced in the United States in a satisfactory quality; or (3) for a specific national security consideration.² The product exclusion process was designed to allow domestic steel producers the ability to review requests and contest claims if the request did not meet the threshold for relief from the Section 232 remedy. Later that year, DOC modified the process to allow for further

² Department of Commerce, “Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum,” March 19, 2018, 83 FR 12106-12112.

submission of relevant information by requestors and objectors through rebuttal and surrebuttal processes.

Over the past two years, steel importers have filed over 150,000 product exclusion requests based largely on claims of insufficient availability of certain steel products from U.S. steelmakers, despite significant continued unused capacity in the domestic industry. The quality of steel produced by U.S. steelmakers has rarely been challenged, particularly compared to similar products sourced abroad, and very few exclusions have been requested based on the grounds of national security.

AISI affirmatively believes that product exclusions on steel imports must remain requestor-specific: each exclusion request should continue to be limited for use by the U.S. entity that requested it. Each exclusion request should also be limited to one year to ensure that domestic steelmakers have the option to analyze market conditions that could warrant changes in domestic capabilities. Granting exclusions for steel products without regard to specific user needs would essentially cede entire product categories to imports that would undercut the ability of U.S. steelmakers to compete. Foreign governments could then heavily subsidize particular firms that specialize in those product categories, causing significant harm to domestic steel producers.

Domestic steelmakers are not seeking significant changes to the current system for granting exclusion requests. However, the burden of proof that an exclusion is warranted must remain on the user/importer requesting the exclusion. The current process lays out the narrow framework that importers must meet in order to merit an exclusion from the Section 232 remedy; this should not be expanded beyond its current application. Exclusions should only be granted if the requested product is not produced in the United States in sufficient volumes or quality, or where there is a compelling and well-documented national security need for the exclusion, including specific documentation from the government agency or military service requiring the use of the imported product. AISI strongly supports DOC continuing to collect detailed information in the submissions that will allow DOC to assess the specific justification for each exclusion request.

III. Concerns on Requests for Excessive Volumes

One area where AISI believes DOC could enhance and tighten the application of the product exclusion process is with regard to the significant volume of steel imports requested for exclusion. DOC should not allow individual entities to submit requests for exclusions in volumes that exceed their historical annual consumption of the specific steel products. From March 2018 to March 2020, over 206 million metric tons of steel

import volume was requested for exclusion from the steel Section 232 measures,³ for an annual average import volume of 103 million metric tons. However, the annual average volume of all steel imports into the United States during the years 2015-2017 was just 33.2 million metric tons,⁴ so importers have requested exclusions for over three times the total volume of steel imports in each year. In fact, in the two years in which the Section 232 program has been in effect, users/importers have consistently requested more import volume to be excluded from the Section 232 remedy than the entire annual consumption of steel in the United States in each year from 2015 to 2019.⁵

The problem of repeated product exclusion requests that vastly exceed annual import volumes and consumption trends could be mitigated by DOC implementing a certification requirement for importers to document recent consumption trends in the exclusion request application. Requestors should be required to provide the following documentation alongside their exclusion request: (1) historic consumption data for the steel product subject to the request, including annual data from three prior years; (2) ability to consume the requested product, with historic product mix for the relevant production facility; and (3) a certification that the requested quantity does not exceed historic consumption or requestor's processing ability by more than five percent.

If the user/importer requests an exclusion for volume above historic levels, DOC should also require a detailed explanation of market conditions that justify excessive levels of requested volumes. DOC should also require that requestors make a good faith showing of the need for the product in the requested quantity during the requested time period, such as a ratified contract, statement of refusal to supply the product by a domestic steel producer, or other relevant documentation. DOC should require documentation alongside the exclusion request application that demonstrates the unsuccessful effort undertaken to source the product domestically. Additionally, if users/importers seek an exclusion request based on national security considerations, DOC should require certification that such a need exists and cannot be supplied domestically, such as a contract with a government agency or military branch. If requestors continue to over-load the exclusions system with unrealistic and wildly-inflated volume requests, the burden must fall on those same entities to provide

³ QuantGov, "Section 232 Tariffs," last updated April 24, 2020, available at <https://www.quantgov.org/tariffs#section-232>.

⁴ International Trade Administration, "Global Steel Trade Monitor," last accessed June 24, 2020, available at <https://beta.trade.gov/gstm>.

⁵ World Steel Association, "Steel Statistical Yearbook 2019," available at <https://www.worldsteel.org/steel-by-topic/statistics/steel-statistical-yearbook.html> and World Steel Association, "worldsteel Short Range Outlook June 2020," June 4, 2020, available at <https://www.worldsteel.org/media-centre/press-releases/2020/worldsteel-short-range-outlook-june-2020.html>.

detailed data on recent import and consumption trends to validate the need for such exclusions from the Section 232 remedy.

IV. Immediately Available

The current system laid out by DOC on eligibility requirements for requestors and objectors should remain in place. The relevant information required to complete the request and objection (as well as the rebuttal and surrebuttal) submission forms should only be completed by the user/importer requesting the exclusion or the steelmaker that has the capacity to produce the desired product. However, the current eight-week timeframe for determining immediate availability from domestic steelmakers is unreasonable. DOC should expand the definition of “immediately available” to reflect current market conditions that may exist, including backlogs. Order books for domestic steelmakers often fill up three-to-four months ahead of time, so the current framework does not take commercial considerations necessary for adjustments into account.

DOC should also consider different levels of processing and finishing times involved, as well as the volume requested, in determining what is “immediately available.” For instance, requests for semi-finished steel products could be subject to a shorter time period, while certain downstream finished steel products, such as corrosion resistant steel, should have longer time periods for determining immediate availability. Requests for larger volumes should also have longer lead times given the requirements involved in producing larger volumes of steel.

AISI therefore recommends that DOC update the regulations to reflect an immediate availability definition of between 12 (for semi-finished products) and 16 weeks (for more processed downstream finished products), which falls more in line with comparable availability of steel imports. If the rationale for an exclusion request is insufficient available time because the domestic steel industry cannot deliver the requested product with a short lead-time, then DOC should require requestors to provide documented evidence that the imported product can be produced and delivered within the timeframe that domestic steelmakers allegedly cannot.

V. Decisions and Repeated Requests

In the request for comments, DOC included annexes detailing exclusion requests for steel products that received no opposition during the objection window (Annex 1) and exclusion requests for steel products that received objections for every request filed (Annex 3). While AISI understands the rationale for consideration of blanket approvals or blanket denials, this amendment could inadvertently harm the domestic steel industry. One of the foundations of the Section 232 program is to promote investment

in key market segments and domestic steelmakers have increased investments to align steelmaking capacity to better serve the domestic market. Granting certain blanket approvals on products that may not have received objections in the past would limit the opportunity for domestic steelmakers to fulfill market demand from customers. Just because a domestic steelmaker objected to or did not object to an exclusion request in the past does not predict current or future market considerations and should not hamper the ability of the domestic industry to adapt to changing market conditions. In its September 2018 improvements to the product exclusion system, DOC already expedited the process to grant exclusions to requests that have received no objections within the 30-day objection window and granting these approvals promptly should continue to be a priority moving forward.

DOC should also put in place restrictions to limit users/importers from repeatedly requesting an exclusion on a product that has been recently denied. At a minimum, requestors should be required to wait at least one year from DOC's decision date before refiling substantially the same exclusion request, and any requests in conflict with this rule should be subject to an immediate rejection of the request – i.e., not posting the exclusion request on the portal. DOC could maintain a list of products that would be subject to immediate denial and the date at which such exclusion requests would once again be considered.

DOC should also consider prohibiting requestors from submitting duplicate exclusion requests for products that are identical, except for minor, non-meaningful distinctions outside of routine specification differences.

Additionally, in circumstances where DOC issues a procedural denial because of an error by the requestor in the original exclusion request, and then the requestor re-submits the request with corrected information, DOC should only grant retroactive relief to the date of the revised filing request. It is our understanding that the current practice is to honor the original date of the requestor's filing, but the resubmission is a new exclusion request and the retroactivity should only apply to that period.

VI. Requestor and Objector Eligibility

In terms of eligibility, DOC should continue to only allow “individuals or organizations using steel articles identified in Proclamation 9705 in business activities (*e.g.*, construction, manufacturing or supplying steel to users) in the United States” to submit product exclusion requests.⁶ Since our position remains that each exclusion request should be considered at the requestor-level and not the product level, it is important

⁶ DOC FR Notice on Product Exclusion Request Process, March 19, 2018.

that only specific steel consumers remain authorized to file exclusion requests. Similarly, DOC should also maintain the current practice of eligible objectors.

VII. Section 232 Product Exclusion Portal

The Section 232 product exclusion portal, which began operation in June 2019, has offered several improvements over the prior Regulations.gov system for monitoring and filing product exclusion requests. However, several additional enhancements could be implemented that would improve the usability for all interested stakeholders. AISI has provided detailed feedback⁷ to DOC on the operability of the exclusions portal in December 2018 and August 2019 and we listed several ideas to streamline the portal, which include:

- (1) Providing augmented tracking capability for users to better track submissions;
- (2) Including a built-in export function;
- (3) Adding the ability to save draft submissions;
- (4) Identifying due dates for submissions instead of days remaining;
- (5) Establishing separate steel and aluminum portals;
- (6) Providing for the ability to withdraw submissions seamlessly in the portal; and
- (7) Providing a system status indicator when/if the portal is down for routine maintenance.

We remain committed to working with DOC to ensure that these items are addressed, which would enhance the functionality for all users, including steel users/importers, domestic steelmakers, and government officials.

VIII. Conclusion

The intent of the Section 232 product exclusion process is to address situations in the U.S. market where products are needed that (1) cannot be supplied domestically because no domestic production exists; (2) cannot be supplied to meet necessary (and legitimate) quality specifications; or (3) where special national security considerations should be taken into account to grant an exclusion to the Section 232 remedy. It is important that any changes DOC implements during this review process take a narrow approach to ensure the integrity of the Section 232 program at large. The burden must

⁷ See Letter from Kevin M. Dempsey to Deputy Assistant Secretary for Export Administration Matthew S. Borman on Comments on User Testing of the New Commerce 232 Exclusion Process Portal, December 14, 2018; and Letter from Kevin M. Dempsey to Assistant Secretary for Industry and Analysis Nazak Nikakhtar on Comments on the New Commerce Department Section 232 Exclusions Portal, August 9, 2019.

The Honorable Richard E. Ashooh

July 10, 2020

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continue to be placed on the requestor of the exclusion request, particularly given current weak steel market conditions in the United States. Domestic steel producers are ready, willing and able to fulfill the needs and obligations of steel consumers in this country, as we have shown for the past two years through repeated submissions in the product exclusion process.

Thank you for the opportunity to provide detailed feedback to DOC on the Section 232 product exclusion process. We appreciate the continued efforts by you and your team to ensure that product exclusion process is a fair and equitable process that ensures the continued effectiveness of the Section 232 remedy on steel.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Dempsey". The signature is written in a cursive, slightly slanted style.

Kevin M. Dempsey

Interim President and Chief Executive Officer

PUBLIC SUBMISSION

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0045

Public comment 43 on 232 NOI. Anonymous. 7-10-20

Submitter Information

Name: Anonymous Anonymous

General Comment

One of the main issues with the current 232 process is that domestic manufacturers are required to file for individual exclusions for minimal variations in specifications. For example, companies are required to file for various exclusions where the length of carbon and alloy flat steel changes by several inches, but the differences do not affect the HTS code of the material. By allowing for exclusions for groups of steel rather than individual steel, Commerce saves time and resources, and simplifies the 232 process altogether. If domestic producers can file for a general exclusion that can cover several steel items, the process becomes much simpler. This streamlined application request furthers the Department's goals and is focused strictly on the 232 application process.



Bureau of Industry and Security
Department of Commerce
1400 Constitution Ave NW
Washington, D.C. 20230

Docket No. 200514-0140
RIN 0694-XC058
Regulations.gov ID: BIS-2020-0012

RE: The J.M. Smucker Company comments in response to the “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs”

The J.M. Smucker Company respectfully requests a categorical exclusion for tinplate steel in response to the “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas,” in Docket No. 200514-0140.

About Smucker

Inspired by more than 120 years of business success and five generations of family leadership, The J. M. Smucker Company makes food that people and pets love. The Company's portfolio of 40+ brands, which are found in 90 percent of U.S. homes and countless restaurants, include iconic products consumers have always loved such as *Folgers*®, *Jif*® and *Milk-Bone*® plus new favorites like *Café Bustelo*®, *Smucker's*® *Uncrustables*® and *Rachael Ray*™ *Nutrish*®. Over the past two decades, the Company has grown rapidly by thoughtfully acquiring leading and emerging brands, while ensuring the business has a positive impact on its 7,000+ employees, the communities it is a part of and the planet.

The J.M. Smucker Company uses tinplate steel, a material used for packaging a variety of products across all Strategic Business Areas with the largest category being wet pet food. Tinplate steel makes up approximately 60% of the cost of one of our cans. Canned food is an accessible and affordable solution to the nation's need for safe, nutritious food, and is a vitally important tool in the nation's response to the looming coronavirus outbreak. Additionally, the metal food can is environmentally friendly, curbs food waste and fuels the economy.

General concerns

Domestic canmakers rely on a mix of foreign and domestic tinplate steel for manufacturing needs. While the canned food industry would prefer to buy domestically produced steel, domestic tinplate manufacturers have been unable to satisfy the total industry demand of tinplate steel. Due to insufficient domestic steel capacity and reoccurring problems with on-time delivery and quality, it became necessary for the canned food industry to source tinplate steel from outside the U.S.

Since the section 232 tariffs have been announced, the primary producers in the U.S. tinplate industry have stated either directly to their customers or indirectly through public statements that their planned investments in tinplate are focused on quality and delivery performance with their existing assets.



However, we have seen no evidence that the investments being made will apply to improvement of tinplate capacity. For example, the United States Steel Corporation (U.S. Steel) has publicly announced plans to invest \$1.5B as part of their Asset Revitalization Program. Since the program is “designed to prioritize investment in the areas with the greatest expected returns,” less than 3% of the \$1.5B is slated to go toward tinplate. Furthermore, the program is only intended to cover investments in their existing assets. Our can suppliers have approached domestic steel makers in the past to see if they were willing to address the quality and reliability concerns and supply them with a larger share of their tinplate spend. Through communication with U.S. Steel and other manufacturers, they justify not increasing capacity because of the lack of growth in the tinplate market, as well as how burdensome, time-consuming and specialized tinplate processing is from an operational standpoint.

Tinplate steel represents only approximately 2% of the overall U.S. steel market and given the small footprint, tinplate steel exclusions will not undermine the intent of Section 232 to return the domestic steel industry to an 80% capacity utilization.

The J.M. Smucker Company believes that the Department of Commerce should grant a categorical exclusion for tinplate steel for the following reasons:

Supplies of Domestically Produced Tinplate Are Extremely Limited

- In 2016, U.S. demand was 2.1 million tons, while domestic tinplate production was 1.2 million tons. U.S. tinplate makers supplied at most 58% of the requirements of domestic can manufacturers. Imports have been required to fill the remaining gap. Since that time, U.S. domestic tinplate capacity has declined, not increased, despite the imposition of the Section 232 tariff.
- The International Trade Commission found that overall U.S. production of tinplate steel fell 25% from 2014 to 2016 and was 9.5 % lower in January-September 2017 than in January-September 2016.
- USS has eliminated their Tin Free Steel (TFS) line in East-Chicago laying off 150 workers, reducing USS & overall domestic capacity.
- ArcelorMittal USA has laid off 100 workers at the ArcelorMittal Weirton tin mill in West Virginia.
- According to industry reports, canned food suppliers have had to delay production due to domestic mills not meeting supply commitments.
 - Overall steel capacity production is measured in different ways and it is important to recognize the uniqueness of tinplate steel in the overall steel market.
 - Canmakers require a specific mix of gauges (thicknesses) and widths to produce the variety of cans required for the diverse food market; specifically, wide DWI, ECCS, laminated steel and Easy peel ring materials. Some of these specifications of tinplate are not produced in the United States.
 - Domestic steel producers do not have the specific equipment to produce all the varieties of tinplate steel that the canned food industry needs.
 - Recent public filings for both U.S. Steel and Arcelor Mittal do not indicate any capital investments for increasing domestic tinplate production.



Disruptive Delays in Delivery Are Increasingly Common

- The steel industry's targeted goal of 95% for on-time delivery is to avoid supply disruption, downtime and to ensure operation efficiency, examples from suppliers shows that the range for on-time delivery is significantly below the targeted goal.
 - An industry example from a canmaker reports a nearly unworkable rate of 15% of on-time deliveries of tinplate.
 - Multiple canmakers have reported delays, with fewer than half of tinplate deliveries arriving on time. An industry example from a canmaker reports that the largest domestic tinplate steel supplier is under 50% for on-time deliveries.
- There have been significant issues with domestic steel suppliers delivering tinplate steel on time. Multiple can makers have been forced to accept delivery delays from domestic producers, resulting in multiple food companies reporting that they had been forced to consider shutting down one of their production lines at some point due to these delivery delays.
- Due to the types of thinner, lighter steel that the canned food industry needs, more time is required to produce tinplate than other types of steel. Overall statements of domestic industry capacity in tons are inflated if based on heavier, thicker types of steel than tinplate.
- There are specific qualifications that are required to make materials relating to tinplate coil widths, which result in some of those qualifications taking a minimum of a year to be met. This clearly demonstrates that domestic suppliers are unable to meet qualifications to produce specific tinplate widths in U.S. facilities within the eight weeks timeframe established.

Quality Problems Are Frequent

- Canned food is an accessible and affordable solution to the nation's need for safe, nutritious and quality produce and protein; the integrity and quality of packaged food cannot be compromised or result in food safety issues relating to tinplate steel packaging.
- Tinplate that is delivered by U.S. producers often has significant quality problems—and quality tinplate steel used in food packaging is important to prevent food safety issues.
- In recent years, the number of quality claims being filed against domestic producers has increased. The average claim rate for a large canned food company is 1.5% for domestic and .5% for imports.

Based on the industry-wide supply conditions described above, I respectfully urge the Department of Commerce to grant the canned food industry's request for a categorical exclusion for tinplate steel based on quality and accessibility exclusion criteria outlined in the President's executive order. Thank you for your consideration of these comments.

Best regards,

Julia L. Sabin

Vice President, Government Relations & Corporate Sustainability
The J.M. Smucker Company



Philip K. Bell
President

Phone: (202) 296-1515
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21st Century Steelmakers

Tuesday, July 7, 2020

Submitted via www.regulations.gov

Department of Commerce
Bureau of Industry and Security
1401 Constitution Ave., NW
Washington, DC 20230

Re: **RIN 0694-XC058:** Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Export Tariffs and Quotas

In response to the Department of Commerce's request for public input on the 232 product exclusion process, the Steel Manufacturers Association (SMA) offers these comments and would welcome the opportunity to discuss them further with the Department of Commerce.

About the SMA

The SMA is the largest North American steel industry trade association, in terms of membership, and is the primary trade association for EAF steel producers. EAF steelmaking facilities are geographically dispersed across the U.S. and account for 70 percent of total domestic steelmaking capacity. EAF companies proudly employ over 150,000 people directly and support over one million indirect jobs in associated industry sectors (i.e. automotive; construction; energy; rail; etc.).

As recyclability is one of steel's best attributes, members of the SMA positively contribute to the environment through investments that continually advance the use of recycling and lower carbon emissions in production processes. New steel products, from EAF operations, typically contain as much as 90 percent recycled content.

SMA Observations and Recommendations

1. As an initial matter, we would like to commend the Department on its Section 232 portal, which has streamlined the exclusions process and has facilitated the tracking of Section 232 filings. In our view, the excessive, duplicative, and unsupported filings made by requestors is one of the main problems with the exclusions process, as it places an unnecessary burden on the Department and domestic producers who must review and respond to requests. These abuses of the process make it more difficult for U.S. importers that have a legitimate need for an exclusion – *i.e.*, they have sufficiently demonstrated that a product is not produced in the United States in a satisfactory quality, or there is a compelling national security need.

2. The Department should prohibit exclusion requests for tonnage that exceeds actual consumption. Since the start of the exclusions process, domestic importers have requested exclusions totaling several times the total volume of steel imports. Again, this places an unnecessary strain on both the Department and potential objectors. To address this issue, the Department should require requestors provide the following information with their exclusion request: historical consumption data for the prior three years for the product subject to the request; the requestor's capacity to consume the product, with its historic product mix for the relevant production facility; a certification that the requested quantity does not exceed historical consumption or a requestor's capacity to consume by more than 5 percent; and a detailed explanation if more than historic levels are requested. These requirements will help ensure the tonnage requested in exclusion requests more closely align with actual consumption.
3. The Department should require companies that apply for exemptions provide compelling and un rebutted evidence demonstrating that one of the three limited grounds for an exclusion has been met. To clarify, exclusion requests should be rejected if the request cannot provide information to demonstrate that the requested product is not produced domestically in sufficient volumes or a satisfactory quality or that a demonstrated national security reason exists to justify the exclusion. If the requestor claims insufficient domestic volumes or lack of domestic production, they should be required to provide documentation showing their attempts to solicit information on the requested product in commercially reasonable volumes from domestic suppliers. This information should be subject to review, audit, and verification by the Department.
4. To the extent that a requested product is available from a country already subject to an exemption from Section 232 tariffs (*i.e.*, Canada, Mexico, and Australia), an exclusion should not be granted. Continuing to process exclusion requests on products not subject to 232 tariffs imposes an unnecessary burden on the Department's limited resources.

Conclusion

The SMA appreciates the opportunity to provide comments and recommendations regarding the Section 232 exclusion process. Prior to the COVID-19 pandemic, 232 tariffs were critical in helping the domestic steel industry increase its capacity utilization and protect national security. Given the decline in domestic steel demand that has resulted from COVID-19, it is imperative that a robust Section 232 program remain in place.

Our recommendations are designed to enhance the exclusions process, while maintaining the effectiveness of the Section 232 program. We hope the Department finds these comments helpful.

Sincerely,



Philip K. Bell

July 10, 2020

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Submitted via *regulations.gov*, docket number BIS-2020-0012

Re: *Comments on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (RIN 0694-XC058)*

Dear Director:

On behalf of United States Steel Corporation (“U. S. Steel”), we appreciate the opportunity to provide comments in response to the Federal Register notice regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (RIN 0694-XC058) published by the Bureau of Industry and Security of the U.S. Department of Commerce (“BIS”) on May 26, 2020.¹ U. S. Steel recognizes the significant efforts by BIS to continually make improvements to the substantive and procedural aspects of the 232 exclusions request process – including this request for additional comments. To ease BIS’s consideration of our recommendations, we have organized our comments following the nine categories laid out in the *May Request for Comments*.

¹ *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31441 (May 26, 2020) (“*May Request for Comments*”).

1. INFORMATION SOUGHT ON THE EXCLUSION REQUEST, OBJECTION, REBUTTAL, AND SURREBUTTAL FORMS

Through March of 2020, over 170,000 exclusion requests have been posted. To assist all involved in the Section 232 exclusion request process (BIS, requestors, and objectors) with this high volume of requests, U. S. Steel recommends the following:

- Implement an additional field requiring requestors to report any previous requests—whether pending, granted, or denied—for an identical product; and
- When the request is for the renewal of an exclusion, additional fields requiring the requestor to report (a) the expiry date of the original exclusion; and (b) the volume filled/used from the original exclusion.

The inclusion of these new fields, and the information they will collect, will provide all interested parties, including BIS and the International Trade Administration, a better understanding of the scope of each request and potential impact on the domestic market if granted.

2. EXPANDING OR RESTRICTING ELIGIBILITY REQUIREMENTS FOR REQUESTORS AND OBJECTORS

With respect to expanding/restricting requestor/objector eligibility, U. S. Steel recommends that BIS limit the types of entities that are eligible to file exclusion requests by allowing only end users to submit exclusion requests. Currently, trading companies and distributors are permitted to file exclusion requests. However, such entities are ill-equipped to provide certain information required in BIS's exclusion request form, including detailed historical consumption, required volume, product availability, and highly detailed technical specifications. End users are in a much better position to accurately present these facts in both exclusion requests and in response to any subsequent objections, especially regarding issues of qualification and substitutability. To the extent trading companies and distributors are allowed to continue filing exclusion requests, such entities should be required to demonstrate that the

requested product will be sold to a specific end user in the full requested quantity and, as such, that the requested product is not being imported simply for inventory. Not only will these proposed restrictions improve the accuracy of exclusion requests, it will also alleviate duplicate filings and prevent excess volumes from being excluded from the Section 232 remedies.

3. SECTION 232 EXCLUSIONS PORTAL

Below, U. S. Steel outlines various suggestions regarding improvement of the Section 232 Exclusions Portal (the “Portal”).

A. Improve Search Functionality

U. S. Steel notes that the Portal’s ability to allow users to filter published exclusion requests based upon seven distinct criteria is very helpful. Displaying the product type (*i.e.*, “Steel” or “Aluminum”) on the main Portal screen is a particularly valuable data point, but it is less specific than the additional product class (*e.g.*, “carbon and alloy pipe and tube” or “carbon and alloy long”) information that was provided on the previous regulations.gov docket . Therefore, U. S. Steel suggests that BIS add “product class” to the main Portal page with a filtering function consistent with the current product type filtering function. In addition, it would be beneficial if users were able to search filings by determination date. These changes would improve efficiency in checking for newly published determinations and provide greater transparency and ease of use for all parties reviewing and evaluating exclusion requests.

U. S. Steel further submits that all interested parties would appreciate a function that allows each user to quickly access or filter for all exclusion request ID numbers the user is a party to (requestor or objector). This would greatly reduce the burden of monitoring for objections, rebuttals, and decision memoranda.

Finally, we propose that the Portal should include a function allowing users to search broadly for a party's involvement in exclusion requests beyond requesting company (*e.g.*, requestor, objector, importer, parent company, or foreign manufacturer). The prior Regulations.gov platform had an open text search function, which provided greater transparency regarding which companies are seeking exclusions, their relationship to foreign producers, and who is objecting.

B. Ability to Save Drafts and Import Previously-Filed Submissions

U. S. Steel recommends that users be permitted to save drafts of in-progress filings and to import previously-filed submissions. It would be helpful for users to save in-progress filings and return to them at a later time. While U. S. Steel appreciates efforts made by BIS to implement auto-population of certain fields in the web forms, it would be even more efficient if the platform allowed users (both requestors and objectors) to save draft filings and import previously filed submissions. This proposed function would enhance the accuracy of all filings and reduce the burden of submitting requests or comments.

4. REQUIREMENTS SET FORTH IN FEDERAL REGISTER NOTICES

Below, U. S. Steel addresses two important changes it would like to see in the way that BIS evaluates exclusion requests.

A. Lead Time Requirement Set Forth in 83 FR 46026

U. S. Steel appreciates that BIS has previously considered comments regarding the meaning of “immediately” in the context of an exclusion request alleging that the necessary quantity of the requested steel is not “immediately” available in the United States. U. S. Steel respectfully submits that the current definition of “immediately” – production “within eight weeks” in the amount needed for the requestor’s business activities – undermines the objective of

the Section 232 measures. Instead of a rigid eight-weeks definition, BIS should apply a reasonable standard that balances the a requestor's need to obtain steel in a timely fashion with an opportunity for domestic manufacturers to expand production. Unfortunately, eight weeks is an unrealistic lead time for many products and is significantly shorter than most overseas shipping times, which are often reported to be well over 17 weeks in exclusion requests. Also, irrespective of a domestic manufacturer's fastest production timeline, consumers frequently negotiate longer delivery lead times to accommodate their warehousing and logistical needs. As such, U. S Steel respectfully submits that "immediately" available should be construed to account for varying levels of steel processing/finishing (*e.g.*, semi-finished slab and billet, hot-rolled steel produced from slab, cold-rolled steel produced from hot-rolled steel, metallic-coated products produced from cold-rolled steel, and polymer-coated or cut/slit materials have progressively longer production lead times), as well as the quantity requested (*i.e.*, the larger the quantity, the longer the time period). "Immediate" availability should also be considered relative to the production and delivery lead time reported in the exclusion request for relevant imported materials. This approach would better reflect the commercial realities of both end users and domestic manufacturers.

B. "Substitute Product" Defined in 83 FR 46026

U. S. Steel appreciates that BIS previously considered comments regarding the meaning of "substitute product" in the context of evaluating whether an exclusion request identifies a product that is "not produced in the United States in a satisfactory quality." Currently, when a domestic manufacturer asserts that it can provide a substitute product (*i.e.*, a product with "similar form, fit, function, and performance"), BIS examines the proposed substitute's ability to immediately meet the quality (*e.g.*, industry specifications or internal company quality controls

or standards), regulatory, or testing standards necessary for use in the end user's U.S. business activities. First, U. S. Steel reiterates that only requestors that are end users, as opposed to trade companies and distributors, are adequately equipped to address issues of substitutability. Furthermore, in considering the substitutability of a product, U. S. Steel urges BIS to take into account evidence of product shifting. As BIS is aware, several objections filed by U. S. Steel have raised serious concerns that certain exclusion requests are driven by product shifting strategies to avoid the 25 percent Section 232 tariffs (*e.g.*, requestors seeking exclusions for already cut, slit, or polymer-coated flat-rolled steel on the basis that the U.S. industry largely relies on third party processing partners for such finishing operations or for steel coils that are fractionally wider than known domestic manufacturer capabilities). In such situations, we ask that BIS consider any evidence of product shifting that is provided in opposition comments when deciding whether the domestic product is a substitute. Otherwise, this substitutability loophole will remain open and continue to undercut the overall efficacy of the Section 232 action.

5. FACTORS CONSIDERED IN RENDERING DECISIONS ON EXCLUSION REQUESTS

With respect to the factors considered by BIS in rendering decisions on exclusion requests, as noted above, U. S. Steel respectfully submits that BIS should amend its current eight-week interpretation of "immediately" available, replacing it with a variable definition based on the level of processing and finishing involved in manufacturing the requested steel product and accounting for the production and delivery timelines reported for the requested imports.

In addition, BIS should consider whether a requestor rebutted reliable statements and evidence of sufficient U.S. availability in an objector's opposition comments. In the absence of

rebuttal information, there should be a presumption that such evidence is undisputed and supports denial of the request.

Finally, BIS is urged to always conduct a comprehensive analysis of each exclusion request to ensure that the volumes requested by end users align with historic import volumes and market size.

6. INFORMATION PUBLISHED WITH THE DECISIONS

With respect to the information included in the decision memoranda issued by BIS, U. S. Steel has no suggestions or recommendations.

7. BIS WEBSITE GUIDANCE AND TRAINING VIDEOS

In the *May Request for Comments*, BIS seeks suggestions on its website guidance and video trainings. U. S. Steel has found the existing guidance to be sufficient. Therefore, we have no suggestions beyond updating the guidance to reflect any process changes that are made as a result of this opportunity for comment.

8. DEFINITION OF “PRODUCT” GOVERNING WHEN SEPARATE EXCLUSION REQUESTS MUST BE SUBMITTED

BIS approves exclusions on a product-specific basis, with approvals limited to the individual or organization that submitted the specific exclusion request. U. S. Steel submits that this is entirely appropriate in the Section 232 context, as it would be extremely difficult to administer exclusions that span broader product categories due to the highly technical, product-specific nature of each requested steel material. For example, because many Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings for steel products are basket categories, broad “product” exclusions based on one or more HTSUS subheading would cover many products that are widely available from domestic manufacturers and, thus, defeat the entire

purpose of the Section 232 action and this exclusion process. Furthermore, the current requestor-specific exclusion framework is appropriate given the specialized end-use applications of many steel products and varying technical qualification requirements. As such, U. S. Steel advises BIS against revising its current definition of “product” governing when a requestor must submit multiple/separate exclusion requests.

9. INCORPORATING DERIVATIVE PRODUCTS INTO THE EXCLUSION PROCESS

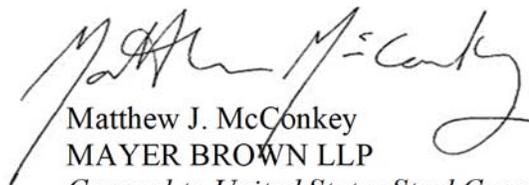
U. S. Steel does not currently have any substantive or procedural comments on the possibility of BIS incorporating derivative products into the exclusion process.

* * *

U. S. Steel believes implementing the above-enumerated suggestions will not unduly burden Commerce and will be appreciated by all parties by further improving the efficiency of the 232 Exclusions Portal, as well as continuing to contribute to the fair and transparent review of the exclusion request process. Of course, it is important that any modifications to the Steel 232 exclusion process be consistent with the objectives of the Section 232 program – to stimulate domestic steel production and capacity for national security purposes.

If you have any questions regarding these concerns or suggestions, please do not hesitate to reach out to the undersigned.

Sincerely,



Matthew J. McConkey
MAYER BROWN LLP

Counsel to United States Steel Corporation



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July 10, 2020

VIA REGULATIONS.GOV

The Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: *RIN 0694–XC058: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0012)*

Dear Assistant Secretary Ashooh:

On behalf of Nucor Corporation (“Nucor”), we hereby submit the following comments in response to the Department of Commerce’s (the “Department”) request for comments in its *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (“Request for Comments”).¹

Nucor is the largest steel producer in the United States, with production capacity that exceeds 27 million tons and a workforce of more than 26,000 teammates. Headquartered in Charlotte, North Carolina, Nucor has approximately 300 operating facilities throughout North America. Using scrap as its primary feedstock, Nucor has become the leading U.S. producer of structural steel, steel bars, steel reinforcing bars, and steel joists and girders. Nucor is also a major producer of steel in sheet and plate form, cold finished steel, and steel fasteners, among other steel

¹ See *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441 (Bureau of Industry and Security May 26, 2020).

products. Many of Nucor's products are used in national defense and critical infrastructure projects throughout the United States.

I. INTRODUCTION

At the outset, Nucor commends the Department for its ongoing efforts to ensure that the Section 232 product exclusion process is as efficient, effective, and transparent as possible. These efforts include issuing determinations on the vast majority of the 150,000 exclusion requests that the Department has received since the start of the process, which is no easy feat given that the volume of requests has significantly exceeded expectations. Nucor also appreciates that the Department has made modifications to the product exclusion process in response to concerns raised by interested parties, including developing a mechanism for submitting confidential information with product exclusion filings and implementing procedures for increasing the transparency of the process.

Nucor strongly urges the Department to ensure that any future modifications to the product exclusion process are consistent with the objectives of the Section 232 program – to stimulate domestic steel production and capacity for national security purposes. Maintaining a robust and effective 232 program has become even more important given the dramatic declines in U.S. steel consumption and capacity utilization rates resulting from the current COVID-19 crisis. According to the American Iron and Steel Institute, the domestic industry's capacity utilization dropped to 55.4% for the week ending June 27, 2020, with production falling by more than 33% as compared to the same time last year.² These capacity utilization and production levels have not been seen since the immediate aftermath of the global financial crisis in May 2009. Put simply, the domestic

² American Iron and Steel Institute, This Week's Raw Steel Production (June 2020).

steel industry is even more vulnerable today than in prior years to the import surges that would result from any further weakening of the Section 232 program.

As it stands, significant volumes of U.S. steel imports are currently entering the U.S. market free from Section 232 tariffs. Nucor estimates that less than 10% of all U.S. steel imports were subject to Section 232 tariffs between January and May 2020.³ Approximately 35% of imports entered duty-free as a result of tariff exemptions on Canada, Mexico, and Australia. An additional 34% of imports entered duty-free subject to a quota arrangement (*i.e.*, Brazil, South Korea, and Argentina), and roughly 25% of imports entered duty-free pursuant to the product exclusion process.

In light of this limited coverage and the collapsing U.S. demand for steel, any further erosion of the 232 measures – including any adjustment to the exclusions process that results in an increase in import volume excluded from tariffs – would render the program completely ineffective. As a result, product exclusions should only be granted in very limited, narrowly prescribed circumstances – *i.e.*, if the product is not produced in the United States in sufficient volumes or of a satisfactory quality, or if there is a compelling and well-documented national security need for an exclusion. Moreover, the requestor must bear the burden of establishing that an exclusion is warranted. Any adjustments to the product exclusion process in response to the Department's *Request for Comments* should be made with these considerations in mind, as well as those detailed below.

³ This is a decline from 2019, where roughly 28% of U.S. steel imports were subject to Section 232 tariffs.

II. COMMENTS ON THE SECTION 232 EXCLUSION PROCESS FOR STEEL

Grounds for Product Exclusions Must be Narrow: In the Proclamation establishing Section 232 tariffs on steel, the President authorized the Department to provide relief from the 232 duties for any steel articles determined “not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality and is also authorized to provide such relief based upon specific national security considerations.”⁴ Consistent with this Proclamation, the Department’s regulations state that exclusions will only be granted if “an article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations.”⁵ The Department’s regulations also emphasize that “the request should clearly identify, and provide support for, the basis upon which the exclusion is sought.”⁶

Therefore, as a threshold matter, the Department should only grant an exclusion if the requestor clearly identifies one or more of the enumerated grounds for an exclusion. Unless an exclusion request provides information regarding domestic availability, domestic quality, and/or national security to justify the exclusion, it should be rejected outright (*i.e.*, not processed by the Department). If a requestor’s sole basis for requesting an exclusion is price or an inability (or unwillingness) to qualify a domestic producer, for example, the Department should not even post the request on its Section 232 Portal. Processing such requests creates an unnecessary strain on

⁴ See Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018) (adjusting imports of steel articles into the United States).

⁵ 15 C.F.R. § 705 at Supplement 1(c)(5); see also *Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum*, 83 Fed. Reg. 12,106, 12,110 (Bureau of Industry and Security Mar. 19, 2018).

⁶ 15 C.F.R. § 705 at Supplement 1(c)(5).

the Department's already limited resources and places a significant burden on the domestic industry, which must analyze and respond to these requests.

Furthermore, requestors must also adequately support their request.⁷ To this end, requestors must bear the burden of establishing that an exclusion is warranted based on domestic availability, domestic quality, or national security. Before the Department even considers an exclusion request, requestors should be required to provide compelling and un rebutted evidence demonstrating that one of these limited grounds for an exclusion has been met. Placing the burden on the domestic industry, as requestors often suggest, undermines domestic steel production and capacity, and is contrary to the purpose of the Section 232 program.

Product Exclusions Must be Importer-Specific: The Department should continue to limit exclusion requests to the specific company that requested the exclusion.⁸ The Department has stated that “{t}he company that filed the original exclusion request has exclusive rights” to the exclusion.⁹ There is no reason for the Department to modify this approach. Indeed, requiring that product exclusions are importer-specific is necessary given that exclusions are frequently granted based on importer-specific circumstances and requirements. Moreover, reversing course by granting exclusions for steel products more broadly, and without regard to specific user needs/supplier capabilities, would essentially cede entire product categories to imports. This would undercut the ability of domestic steel producers to compete and therefore severely

⁷ *Id.*

⁸ *Id.*

⁹ Bureau of Industry and Security, *232 Exclusion Process Frequently Asked Questions (FAQs)* (June 19, 2019) at 18, available at <https://www.bis.doc.gov/index.php/documents/section-232-investigations/2409-section-232-faq/file>.

undermine the effectiveness of the 232 program. The current importer-specific approach also helps prevent circumvention of the 232 tariffs and quotas.

The Department Should Prohibit Exclusion Requests for Tonnage that Exceeds Consumption: From March 2018 to March 2020, product exclusion requests were filed for more than 206 million metric tons of steel imports, for an annual average import volume of 103 million metric tons.¹⁰ By contrast, during the three years immediately preceding the implementation of Section 232 measures (2015-2017), the annual average volume of all U.S. steel imports was only 33.2 million metric tons. This means that, for each year that the process has been in effect, U.S. importers have requested exclusions totaling more than *three times* the total volume of steel imports.

One of the more egregious examples of requests for excessive tonnage is slab. In total, U.S. slab importers CSI,¹¹ AM/NS Calvert, Evraz, JSW, and NLMK have submitted exclusion requests for slab totaling at least 34 million metric tons in 2018 from Brazil, Japan, Russia, India, Turkey, and, prior to their exclusion from Section 232 tariffs, Canada and Mexico.¹² By contrast, U.S. imports of slab from *all sources* totaled only 6.2 million metric tons in 2018. That requestors have submitted requests to exclude slab tonnage far exceeding total U.S. slab import volumes from all sources – in 2018, roughly 6 times the amount – underscores the significant disconnect between requested exclusion tonnages and actual consumption in certain exclusion requests. This is an abuse of the process that should not be permitted to continue. Processing such requests creates an

¹⁰ See QuantGov, *Section 232 Tariffs* (Apr. 24, 2020), available at <https://www.quantgov.org/tariffs#section-232>.

¹¹ CSI alone has requested exclusion tonnage for slab totaling more than 32 million metric tons since the exclusions process was implemented.

¹² See generally slab exclusion requests submitted by AM/NS Calvert, CSI, Evraz, JSW, and NLMK.

unnecessary backlog of exclusion requests. It also places a significant strain on the Department's limited resources and on the domestic steel industry, which must evaluate and object to each request posted.

In order to address the many exclusion requests that are being filed for volumes far in excess of historical consumption patterns or an entity's capacity to consume, the Department should require that requestors provide the following information with their exclusion requests: (i) historical consumption data for the product subject to the request (for the previous three years); (ii) the requestor's capacity to consume the product, with its historic product mix for the relevant production facility; and (iii) a certification that the requested quantity does not exceed historical consumption or a requestor's capacity to consume by more than 5%, and a detailed explanation if more than historic levels are requested. These requirements will help to ensure that the tonnage requested in exclusion requests more closely aligns with actual consumption.

Supporting Documentation for Exclusion Requests: In addition to requiring that requestors submit documentation to support their requested tonnage volume, the Department should also require that requestors demonstrate with documentary evidence that they have tried to purchase the requested product domestically at the time they submit their exclusion requests. This evidence should include, for example, email correspondence between the requestor and domestic suppliers demonstrating a legitimate attempt to purchase commercially reasonable volumes.

To the extent that requestors claim an exclusion based on national security grounds, they should be required to submit documentation showing a legitimate national security reason for granting the request. In general, requestors citing national security in support of an exclusion provide no support for their claim beyond stating that the underlying application for the requested product involves national security – *e.g.*, critical infrastructure, defense, etc. For instance, one

U.S. importer recently argued that national security considerations support its June 26, 2020 request to exclude seamless cold-drawn tubes from tariffs because the “product is needed for maintenance or replacement for the application product listed above. Available supply of energy is critical to the infrastructure especially when it comes to our Oil & Gas and Power Generations plants.”¹³ No specific national security application was identified, nor was any documentary evidence provided – only mere assertions. Many other U.S. importers have made similar claims, citing national security as a basis for exclusion simply because the underlying application for the requested product involves infrastructure.¹⁴ These assertions should be rejected absent compelling evidence of a national security need for an exclusion.

Specifically, the Department should require that requestors citing national security reasons as a basis for an exclusion request provide precise, articulable and verifiable facts supporting such assertions (*e.g.*, a Department of Defense contract requiring the product or a letter of concurrence from the head of a U.S. government agency or department that national security necessitates that the product be obtained in the quality, quantity and time frame requested). Imposing this requirement will help to ensure that any exclusion granted in whole, or in part, on national security grounds is adequately supported.

Time Frame for “Immediately Available”: According to the Department, the “exclusion review criterion ‘not produced in the United States in a sufficient and reasonably available amount’

¹³ See U.S. Department of Commerce, Webco Industries, Inc. Exclusion Request (June 24, 2020), *available at* <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/106178>.

¹⁴ See *e.g.*, U.S. Department of Commerce, Marubeni-Itochu Tubulars America, Inc. Exclusion Request (June 29, 2020), *available at* <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/107150> (stating only that “{t}he Subject Product allows for greater overall United States oil and gas production and helps achieve United States energy independence, which is a national security objective.”); U.S. Department of Commerce, Tioga Pipe, Inc. Exclusion Request (June 24, 2020), *available at* <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/106219> (stating only that “{t}his item supports the needs to the oil and gas, petrochemical and power industries which are extremely vital to US national security.”).

means that the amount of steel that is needed by the end user requesting the exclusion is not available immediately in the United States to meet its specified business activities.”¹⁵ A product is “immediately available” if it “is currently being produced or could be produced ‘within eight weeks’ in the amount needed in the business activities of the user of steel in the United States described in the exclusion request.”¹⁶

The Department’s definition of “immediately available” lacks clarity and, therefore, should be removed. It is unclear, for example, whether *all* of the requested tonnage, which is an *annual amount*, must be/could be produced within eight weeks, or whether only *some* of the requested tonnage – the more logical requirement – must be/could be produced within eight weeks. Nor is it clear what percentage of the requested amount must be/could be produced within eight weeks if the latter applies.

To the extent that the Department does not remove this requirement, an eight-week window to manufacture a product is unreasonable and too rigid given commercial realities. Production schedules vary widely based on a variety of factors, including market demand, production backlogs, specific customer demands, etc. Imposing an overly stringent requirement for “immediately available” undermines the domestic industry’s ability to ramp up production and develop new products, as the Section 232 program intended.

Whether a product is deemed to be immediately available should vary based on the level of processing and finishing involved (*i.e.*, semi-finished products should have the shortest time period while downstream finished products should have longer time periods, including some periods much longer than 8 weeks) as well as the volume requested (with larger volumes requiring

¹⁵ 15 C.F.R. § 705 at Supplement 1(c)(6)(i).

¹⁶ *Id.*

more time). Thus, if the Department continues to require a specific time period in the objection forms, it should modify its definition of “immediately” to mean “within twelve to sixteen weeks,” which is consistent with normal rolling schedules. It is also consistent with typical import times, as most imports would not be able to meet an eight-week requirement.

To the extent a requestor argues that an exclusion request should be granted because the domestic industry cannot produce and deliver the requested product within the necessary time frame, the Department should require that the requestor provide documentary evidence that the imported product can be produced and delivered within the needed timeframe. The Department should also require that the requestor provide evidence that it will be consuming the requested tonnage “immediately.” This is particularly appropriate given the above concerns regarding requestors seeking unreasonable tonnage volumes (or seeking *annual* volumes in an eight-week time frame).

Definition of Product: The steel products at issue in the Department’s exclusion process are often very highly specialized products that are designed for very specific applications, end uses, and/or end users. As a result, allowing exclusion requests to span multiple HTS codes/dimensions/specifications/etc. is inappropriate in terms of both administrability and enforceability of the exclusions. The Department should, therefore, continue to require that separate exclusion requests be submitted per product type/HTS code/dimension/specification/etc. At a minimum, the products subject to a request should be as specific as what a purchase order requires. This level of specificity is necessary to allow Customs to effectively administer the 232 measures as well as to prevent the circumvention of these measures.

Additional Comments: In addition to the aforementioned comments, Nucor also proposes the following comments for the Department’s consideration:

- Eligibility for Requestors/Objectors: Pursuant to the Department’s regulations, “{o}nly directly affected individuals or organizations located in the United States may submit an exclusion request. An individual or organization is ‘directly affected’ if they are using steel in business activities (*e.g.*, construction, manufacturing, or supplying steel product to users) in the United States.”¹⁷ In terms of objectors, “{a}ny individual or organization that manufactures steel articles in the United States may file objections to steel exclusion requests, but the U.S. Department of Commerce will only consider information directly related to the submitted exclusion request that is the subject of the objection.”¹⁸ The Department should continue to limit requestor eligibility to U.S. individuals and corporations that use steel in business activities. Particularly because each exclusion request should be considered at the requestor-level and not the product-level, only specific steel consumers should remain authorized to file exclusion requests.

The Department should permit trade associations, coalitions, and similar organizations that are composed of individuals or companies that manufacture steel articles in the United States to file objections. The submission of a single set of comments representing the views of a range of steel producing companies in opposition to an exclusion request is a far more efficient way for the Department to receive comments in opposition to an exclusion request. Indeed, for particularly large volume exclusion requests, one domestic steel manufacturer may not have the entire unutilized capacity to meet the needs that form the basis of that exclusion request. However, the domestic industry may very well have capacity in the aggregate to meet such orders. Absent permitting a single combined submission by members of the domestic industry that can provide aggregate data for the Department to review, the Department would need to collect that information from each of the members, expending unnecessary time and resources and increasing the risk that complete information will not be available to consider.

- Duplicate Requests: The Department should not permit requestors to submit duplicate exclusion requests or requests that are virtually identical except for minor, immaterial distinctions.¹⁹ The submission of multiple exclusion requests for virtually the same product is an abuse of the process and creates an unnecessary burden for both the Department and for potential objectors that must carefully review each request.
- Denied Requests: Once a request for a particular product has been denied, the Department should not permit (*i.e.*, reject outright) subsequent requests for the same product – regardless of requestor or import source – for one year from the Department’s decision

¹⁷ 15 C.F.R. § 705 at Supplement 1(c)(1).

¹⁸ *Id.* at Supplement 1(d)(1).

¹⁹ For example, U.S. importer Metal One has filed a number of exclusion requests for the same carbon pipe and tube product – 457.2mm OD × 19.05mm wall (18-inch x 0.750 inch). These exclusion requests appear to be exact duplicates except for minor, non-meaningful variations in product specifications/chemistries. SSAB has similarly submitted multiple exclusion requests for the same product, including for Strenx 100XF. Okaya recently filed duplicate requests to exclude hot-rolled carbon steel bar, and Vallourec has filed duplicate requests to exclude billet. Notably, the submission of duplicate requests is a recurring problem that has been identified in a number of objections.

date. Preventing requestors from submitting multiple requests to exclude a product that the Department has recently found to be available domestically and in sufficient volumes and of a satisfactory quality, and for which there is no national security consideration to warrant an exclusion, would allow the agency to more effectively administer the exclusion process and devote greater resources to exclusion requests that may have more merit.

- Retroactivity: Since the start of the exclusions process, requestors have submitted a number of requests that have been denied on procedural grounds (*e.g.*, an incorrect HTS code or an incorrect chemistry), requiring that they fix the issue and submit a new request in order to obtain an exclusion. We understand that in these circumstances, any tariff relief granted is retroactive to the date of the initial denied request. Where the Department issues a procedural denial, and the requestor then submits a second corrected request, any tariff relief granted should only be retroactive as to the date of the filing of the second corrected request. This modification should result in requestors exercising greater care when preparing and filing exclusion requests, thereby leading to a reduction in refiled requests and ultimately a more efficient product exclusion process.
- Exclusions Requests for Imported Products from Excluded Countries: The Department should reject outright (*i.e.*, not post on the Section 232 Portal) any product exclusion request that requests an exclusion for a product from a country that is excluded from the 232 tariffs and not subject to a quota (currently Canada, Mexico, and Australia). Continuing to process exclusion requests on products that are not subject to 232 tariffs imposes an unnecessary burden on the Department's limited resources. For instance, processing these requests takes resources away from the agency's ability to effectively administer an exclusion process that continues to be inundated by exclusion requests. Doing so also places additional strain on the domestic industry, which must carefully evaluate each request posted in order to determine whether an objection is appropriate. Because the products at issue in these requests are not subject to 232 tariffs, they cannot, by definition, be excluded from the tariffs. As a result, processing these requests is also inconsistent with the Department's stated policy that "incomplete" submissions – *e.g.*, submissions that cannot be properly evaluated and resolved – will not be considered.
- Decisions on Requests With No Objectors: To further expedite the exclusions process to the extent that no party objects to a request, the Department should automatically grant the exclusion request within 30 days after the deadline for filing an objection has passed. The Department should also make clear in its decision memorandum that it is granting the request because no objections have been submitted, not because of any lack of domestic production or supply. Indeed, there are a number of reasons that the domestic industry may chose not to file an objection despite being able to produce the requested product in the volumes required, including commercial considerations.
- Bi-Annual Period for Submitting Exclusions: The Department should establish a 60-day window for submitting exclusion requests on a bi-annual basis. Only product exclusion requests submitted during these bi-annual periods would be considered. As previously

indicated, the Department has processed over 150,000 exclusion requests to date. The number of requests submitted has far exceeded expectations and has presented a number of administrative challenges. Mandating two limited time periods for submitting exclusion requests would help streamline the process, reduce the administrative burden of managing such a large process, and potentially reduce the number of duplicate requests and other abuses of the process.

- Section 232 Portal-Specific Comments: Given the significant volume of exclusion requests posted on the Portal, it is important that all users be able to download both the (a) individual submissions (exclusion requests, objections, rebuttals, and surrebuttals) and (b) the information found in the portal in its entirety. The current format makes it nearly impossible to export any information of value and does not provide information that is vital to the evaluation of product exclusion requests by the domestic industry. Furthermore, the current portal does not provide the ability to identify the presence of, or the ability to download, supporting documentation. The ability to download individual submissions will greatly enhance the speed at which internal company reviews can take place. In addition, the Department's Section 232 Portal should identify the due date for open comment periods. Currently, the Portal only notes how many days are remaining in open periods, but no deadline is provided.

III. CONCLUSION

In sum, Nucor respectfully requests that the Department consider the aforementioned comments in making any adjustments to its Section 232 exclusions process. Again, Nucor emphasizes that any adjustments made to the process should further the purpose of the Section 232 program by helping to stimulate domestic steel production.

Thank you in advance for your consideration of these comments and please do not hesitate to contact the undersigned if you have any questions.

Respectfully submitted,

/s/ 

Alan H. Price, Esq.
Christopher B. Weld, Esq.
Tessa V. Capeloto, Esq.

Counsel to Nucor Corporation



July 10, 2020

VIA REGULATIONS.GOV

The Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: *RIN 0694–XC058: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0012)*

Dear Assistant Secretary Ashooh:

On behalf of the American Line Pipe Producers Association (“ALPPA”), we hereby submit the following comments in response to the Department of Commerce’s (the “Department”) request for comments in its *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (“*Request for Comments*”).¹ ALPPA is a domestic coalition of large diameter welded pipe (“LDWP”) producers, specifically, American Cast Iron Pipe Company, Berg Steel Pipe Corp./Berg Spiral Pipe Corp., Dura-Bond Industries, JSW USA, Stupp Corporation, and Welspun Global Trade LLC. ALPPA is deeply committed to domestic production, domestic workers, and ensuring that U.S. trade laws are effectively administered and enforced.

¹ See *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441 (Bureau of Industry and Security May 26, 2020).

I. INTRODUCTION

At the outset, ALPPA commends the Department for its ongoing efforts to ensure that the Section 232 product exclusion process is as efficient, effective, and transparent as possible. These efforts include issuing determinations on the vast majority of the 150,000 exclusion requests that the Department has received since the start of the process, which is no easy feat given that the volume of requests has significantly exceeded expectations. ALPPA also appreciates that the Department has made modifications to the product exclusion process in response to concerns raised by interested parties, including developing a mechanism for submitting confidential information with product exclusion filings and implementing procedures for increasing the transparency of the process.

ALPPA strongly urges the Department to ensure that any future modifications to the product exclusion process are consistent with the objectives of the Section 232 program – to stimulate domestic steel production and capacity for national security purposes. Maintaining a robust and effective 232 program has become even more important given the dramatic declines in U.S. steel consumption and capacity utilization rates resulting from the current COVID-19 crisis. According to the American Iron and Steel Institute, the domestic industry’s capacity utilization dropped to 55.4% for the week ending June 27, 2020, with production falling by more than 33% as compared to the same time last year.² These capacity utilization and production levels have not been seen since the immediate aftermath of the global financial crisis in May 2009. U.S. demand for and production of LDWP has been hit particularly hard, given the collapse in the oil market. Put simply, the domestic LDWP industry is even more vulnerable today than in prior years to the import surges that would result from any further weakening of the Section 232 program.

² American Iron and Steel Institute, This Week’s Raw Steel Production (June 2020).

In light of this sharply decreasing U.S. demand for line pipe and structural pipe, any further erosion of the 232 measures – including any adjustments to the exclusions process that results in an increase in import volume excluded from tariffs – would render the program completely ineffective. As a result, product exclusions should only be granted in very limited, narrowly prescribed circumstances – *i.e.*, if the product is not produced in the United States in sufficient volumes or of a satisfactory quality, or if there is a compelling and well-documented national security need for an exclusion. Moreover, the requestor must bear the burden of establishing that an exclusion is warranted. Any adjustments to the product exclusion process in response to the Department’s *Request for Comments* should be made with these considerations in mind, as well as those detailed below.

II. COMMENTS ON THE SECTION 232 EXCLUSION PROCESS

Grounds for Product Exclusions Must be Narrow: In the Proclamation establishing Section 232 tariffs on steel, the President authorized the Department to provide relief from the 232 duties for any steel articles determined “not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality and is also authorized to provide such relief based upon specific national security considerations.”³ Consistent with this Proclamation, the Department’s regulations state that exclusions will only be granted if: “an article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations.”⁴ The

³ See Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018) (adjusting imports of steel articles into the United States).

⁴ 15 C.F.R. § 705 at Supplement 1(c)(5); see also *Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum*, 83 Fed. Reg. 12,106, 12,110 (Bureau of Industry and Security Mar. 19, 2018).

Department's regulations also emphasize that "the request should clearly identify, and provide support for, the basis upon which the exclusion is sought."⁵

Therefore, as a threshold matter, the Department should only grant an exclusion if the requestor clearly identifies one or more of the enumerated grounds for an exclusion. Unless an exclusion request provides information regarding domestic availability, domestic quality, and/or national security to justify the exclusion, it should be rejected outright (*i.e.*, not processed by the Department). If a requestor's sole basis for requesting an exclusion is price or an inability (or unwillingness) to qualify as a domestic producer, for example, the Department should not even post the request on its Section 232 Portal. Processing such requests creates an unnecessary strain on the Department's already limited resources and places a significant burden on the domestic industry, which must analyze and respond to these requests.

Furthermore, requestors must also adequately support their request.⁶ To this end, requestors must bear the burden of establishing that an exclusion is warranted based on domestic availability, domestic quality, or national security. Before the Department even considers an exclusion request, requestors should be required to provide compelling and unrebutted evidence demonstrating that one of these limited grounds for an exclusion has been met. Placing the burden on the domestic industry, as requestors often suggest, undermines domestic steel production and capacity, and is contrary to the purpose of the Section 232 program.

Product Exclusions Must be Importer-Specific: The Department should continue to limit exclusion requests to the specific company that requested the exclusion.⁷ The Department has stated that "{t}he company that filed the original exclusion request has exclusive rights" to the

⁵ 15 C.F.R. § 705 at Supplement 1(c)(5).

⁶ *Id.*

⁷ *Id.*

exclusion.⁸ There is no reason for the Department to modify this approach. Indeed, requiring that product exclusions are importer-specific is necessary given that exclusions are frequently granted based on importer-specific circumstances and requirements. Moreover, reversing course by granting exclusions for steel products more broadly, and without regard to specific user needs/supplier capabilities, would essentially cede entire product categories to imports. This would undercut the ability of domestic steel producers to compete and therefore severely undermine the effectiveness of the 232 program. The current importer-specific approach also helps prevent circumvention of the 232 tariffs and quotas.

The Department Should Prohibit Exclusion Requests for Tonnage that Exceeds

Consumption: From March 2018 to March 2020, product exclusion requests were filed for more than 206 million metric tons of steel imports, for an annual average import volume of 103 million metric tons.⁹ By contrast, during the three years immediately preceding the implementation of Section 232 measures (2015-2017), the annual average volume of all U.S. steel imports was only 33.2 million metric tons. This means that, for each year that the process has been in effect, U.S. importers have requested exclusions totaling more than *three times* the total volume of steel imports.

In order to address the many exclusion requests that are being filed for volumes far in excess of historical consumption patterns or an entity's capacity to consume, the Department should require that requestors provide the following information with their exclusion requests: (i) historical consumption data for the product subject to the request (for the previous three years);

⁸ Bureau of Industry and Security, *232 Exclusion Process Frequently Asked Questions (FAQs)* (June 19, 2019) at 18, available at <https://www.bis.doc.gov/index.php/documents/section-232-investigations/2409-section-232-faq/file>.

⁹ See QuantGov, *Section 232 Tariffs* (Apr. 24, 2020), available at <https://www.quantgov.org/tariffs#section-232>.

(ii) the requestor's capacity to consume the product, with its historic product mix for the relevant production facility; and (iii) a certification that the requested quantity does not exceed historical consumption or a requestor's capacity to consume by more than 5%, and a detailed explanation if more than historic levels are requested. These requirements will help to ensure that the tonnage requested in exclusion requests more closely aligns with actual consumption.

Supporting Documentation for Exclusion Requests: In addition to requiring that requestors submit documentation to support their requested tonnage volume, the Department should also require that requestors demonstrate with documentary evidence that they have tried to purchase the requested product domestically at the time they submit their exclusion requests. This evidence should include, for example, email correspondence between the requestor and domestic suppliers demonstrating a legitimate attempt to purchase commercially reasonable volumes.

To the extent that requestors claim an exclusion based on national security grounds, they should be required to submit documentation showing a legitimate national security reason for granting the request. In general, requestors citing national security in support of an exclusion provide no support for their claim beyond stating that the underlying application for the requested product involves national security – *e.g.*, critical infrastructure, defense, etc. For instance, one U.S. importer recently argued that national security considerations support its June 26, 2020 request to exclude seamless cold-drawn tubes from tariffs because the “product is needed for maintenance or replacement for the application product listed above. Available supply of energy is critical to the infrastructure especially when it comes to our Oil & Gas and Power Generations plants.”¹⁰ No specific national security application was identified, nor was any documentary

¹⁰ See U.S. Department of Commerce, Webco Industries, Inc. Exclusion Request (June 24, 2020), *available at* <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/106178>.

evidence provided – only mere assertions. Many other U.S. importers have made similar claims, citing national security as a basis for exclusion simply because the underlying application for the requested product involves infrastructure.¹¹ These assertions should be rejected absent compelling evidence of a national security need for an exclusion.

Specifically, the Department should require that requestors citing national security reasons as a basis for an exclusion request provide precise, articulable and verifiable facts supporting such assertions (*e.g.*, a Department of Defense contract requiring the product or a letter of concurrence from the head of a U.S. government agency or department that national security necessitates that the product be obtained in the quality, quantity and time frame requested). Imposing this requirement will help to ensure that any exclusion granted in whole, or in part, on national security grounds is adequately supported.

Time Frame for “Immediately Available”: According to the Department, the “exclusion review criterion ‘not produced in the United States in a sufficient and reasonably available amount’ means that the amount of steel that is needed by the end user requesting the exclusion is not available immediately in the United States to meet its specified business activities.”¹² A product is “immediately available” if it “is currently being produced or could be produced ‘within eight weeks’ in the amount needed in the business activities of the user of steel in the United States described in the exclusion request.”¹³

¹¹ See *e.g.*, U.S. Department of Commerce, Marubeni-Itochu Tubulars America, Inc. Exclusion Request (June 29, 2020), available at <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/107150> (stating only that “{t}he Subject Product allows for greater overall United States oil and gas production and helps achieve United States energy independence, which is a national security objective.”); U.S. Department of Commerce, Tioga Pipe, Inc. Exclusion Request (June 24, 2020), available at <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/106219> (stating only that “{t}his item supports the needs to the oil and gas, petrochemical and power industries which are extremely vital to US national security.”).

¹² 15 C.F.R. § 705 at Supplement 1(c)(6)(i).

¹³ *Id.*

The Department's definition of "immediately available" lacks clarity and, therefore, should be removed. It is unclear, for example, whether *all* of the requested tonnage, which is an *annual amount*, must be/could be produced within eight weeks, or whether only *some* of the requested tonnage – the more logical requirement – must be/could be produced within eight weeks. Nor is it clear what percentage of the requested amount must be or could be produced within eight weeks if the latter applies.

To the extent that the Department does not remove this requirement, an eight-week window to manufacture a product is unreasonable and too rigid given commercial realities, particularly for LDWP. Large pipeline projects are typically bid six to twelve months in advance, and are produced over a period that is equally lengthy, if not longer. Moreover, customers do not demand all of the pipe at once – they typically stage delivery and receipt of the pipe over this time, in close coordination with the producer. Imposing an overly stringent requirement for "immediately available" undermines the domestic industry's ability to ramp up production and develop new products, as the Section 232 program intended.

Whether a product is deemed to be immediately available should vary based on the level of processing and finishing involved (*i.e.*, semi-finished products should have the shortest time period while downstream finished products should have longer time periods, including some periods much longer than 8 weeks) as well as the volume requested (with larger volumes requiring more time). Thus, if the Department continues to require a specific time period in the objection forms, it should modify its definition of "immediately" to mean at least 16 weeks, as most U.S. imports of LDWP would not be able to meet an eight-week requirement.

To the extent a requestor argues that an exclusion request should be granted because the domestic industry cannot produce and deliver the requested product within the necessary time

frame, the Department should require that the requestor provide documentary evidence that the imported product can be produced and delivered within the needed timeframe. The Department should also require that the requestor provide evidence that it will be consuming the requested tonnage “immediately.” This is particularly appropriate given the above concerns regarding requestors seeking unreasonable tonnage volumes (or seeking *annual* volumes in an eight-week time frame).

Definition of Product: The LDWP products at issue in the Department’s exclusion process are very highly specialized products that are designed for very specific applications, end uses, and/or end users. As a result, allowing exclusion requests to span multiple HTS codes/dimensions/specifications/etc. is inappropriate in terms of both administrability and enforceability of the exclusions. The Department should, therefore, continue to require that separate exclusion requests be submitted per product type/HTS code/dimension/specification/etc. At a minimum, the products subject to a request should be as specific as what a purchase order requires. This level of specificity is necessary to allow Customs to effectively administer the 232 measures as well as to prevent the circumvention of these measures.

Additional Comments: In addition to the aforementioned comments, ALPPA also proposes the following comments for the Department’s consideration:

- **Eligibility for Requestors/Objectors:** Pursuant to the Department’s regulations, “{o}nly directly affected individuals or organizations located in the United States may submit an exclusion request. An individual or organization is ‘directly affected’ if they are using steel in business activities (*e.g.*, construction, manufacturing, or supplying steel product to users) in the United States.”¹⁴ In terms of objectors, “{a}ny individual or organization that manufactures steel articles in the United States may file objections to steel exclusion requests, but the U.S. Department of Commerce will only consider information directly related to the submitted exclusion request that is the subject of the objection.”¹⁵ The Department should continue to limit requestor eligibility to U.S. individuals and

¹⁴ 15 C.F.R. § 705 at Supplement 1(c)(1).

¹⁵ *Id.* at Supplement 1(d)(1).

corporations that use steel in business activities. Particularly because each exclusion request should be considered at the requestor-level and not the product level, only specific steel consumers should remain authorized to file exclusion requests.

The Department should permit trade associations, coalitions, and similar organizations that are composed of individuals or companies that manufacture steel articles in the United States to file objections. The submission of a single set of comments representing the views of a range of steel producing companies in opposition to an exclusion request is a far more efficient way for the Department to receive comments in opposition to an exclusion request. Indeed, for particularly large volume exclusion requests, one domestic steel manufacturer may not have the entire unutilized capacity to meet the needs that form the basis of that exclusion request. However, the domestic industry may very well have capacity in the aggregate to meet such orders. Absent permitting a single combined submission by members of the domestic industry that can provide aggregate data for the Department to review, the Department would need to collect that information from each of the members, expending unnecessary time and resources and increasing the risk that complete information will not be available to consider.

- **Duplicate Requests**: The Department should not permit requestors to submit duplicate exclusion requests or requests that are virtually identical except for minor, immaterial distinctions.¹⁶ The submission of multiple exclusion requests for virtually the same product is an abuse of the process and creates an unnecessary burden for both the Department and for potential objectors that must carefully review each request.
- **Denied Requests**: Once a request for a particular product has been denied, the Department should not permit (*i.e.*, reject outright) subsequent requests for the same product – regardless of requestor or import source – for one year from the Department’s decision date. Preventing requestors from submitting multiple requests to exclude a product that the Department has recently found to be available domestically and in sufficient volumes and of a satisfactory quality, and for which there is no national security consideration to warrant an exclusion, would allow the agency to more effectively administer the exclusion process and devote greater resources to exclusion requests that may have more merit.
- **Retroactivity**: Since the start of the exclusions process, requestors have submitted a number of requests that have been denied on procedural grounds (*e.g.*, an incorrect HTS code or an incorrect chemistry), requiring that they fix the issue and submit a new request in order to obtain an exclusion. We understand that in these circumstances, any tariff relief granted is retroactive to the date of the initial denied request. Where the Department issues a procedural denial, and the requestor then submits a second corrected request, any tariff relief granted should only be retroactive as to the date of the filing of the second corrected

¹⁶ For example, U.S. importer Metal One has filed a number of exclusion requests for the same carbon pipe and tube product – 457.2mm OD × 19.05mm wall (18-inch x 0.750 inch). These exclusion requests appear to be exact duplicates except for minor, non-meaningful variations in product specifications/chemistries. SSAB has similarly submitted multiple exclusion requests for the same product, including for Strenx 100XF. Okaya recently filed duplicate requests to exclude hot-rolled carbon steel bar, and Vallourec has filed duplicate requests to exclude billet. Notably, the submission of duplicate requests is a recurring problem that has been identified in a number of objections.

request. This modification should result in requestors exercising greater care when preparing and filing exclusion requests, thereby leading to a reduction in refiled requests and ultimately a more efficient product exclusion process.

- Exclusions Requests for Imported Products from Excluded Countries: The Department should reject outright (*i.e.*, not post on the Section 232 Portal) any product exclusion request that requests an exclusion for a product from a country that is excluded from the 232 tariffs and not subject to a quota (currently Canada, Mexico, and Australia). Continuing to process exclusion requests on products that are not subject to 232 tariffs imposes an unnecessary burden on the Department's limited resources. For instance, processing these requests takes resources away from the agency's ability to effectively administer an exclusion process that continues to be inundated by exclusion requests. Doing so also places additional strain on the domestic industry, which must carefully evaluate each request posted in order to determine whether an objection is appropriate. Because the products at issue in these requests are not subject to 232 tariffs, they cannot, by definition, be excluded from the tariffs. As a result, processing these requests is also inconsistent with the Department's stated policy that "incomplete" submissions – *e.g.*, submissions that cannot be properly evaluated and resolved – will not be considered.
- Decisions on Requests With No Objectors: To further expedite the exclusions process, to the extent that no party objects to a request, the Department should automatically grant the exclusion request within 30 days after the deadline for filing an objection has passed. The Department should also make clear in its decision memorandum that it is granting the request because no objections have been submitted, not because of any lack of domestic production or supply. Indeed, there are a number of reasons that the domestic industry may chose not to file an objection despite being able to produce the requested product in the volumes required, including commercial considerations.
- Biannual Period for Submitting Exclusions: The Department should establish a 60-day window for submitting exclusion requests on a biannual basis. Only product exclusion requests submitted during these biannual periods would be considered. As previously indicated, the Department has processed more than 150,000 exclusion requests to date. The number of requests submitted has far exceeded expectations and has presented a number of administrative challenges. Mandating two limited time periods for submitting exclusion requests would help streamline the process, reduce the administrative burden of managing such a large process, and potentially reduce the number of duplicate requests and other abuses of the process.
- Section 232 Portal-Specific Comments: Given the significant volume of exclusion requests posted on the portal, it is important that all users be able to download both the (a) individual submissions (exclusion requests, objections, rebuttals, and surrebuttals) and (b) the information found in the portal in its entirety. The current format makes it nearly impossible to export any information of value and does not provide information that is vital to the evaluation of product exclusion requests by the domestic industry. Furthermore, the

current portal does not provide the ability to identify the presence of, or the ability to download, supporting documentation. The ability to download individual submissions will greatly enhance the speed at which internal company reviews can take place. In addition, the Department's Section 232 portal should identify the due date for open comment periods. Currently, the portal only notes how many days are remaining in open periods, but no deadline is provided.

III. CONCLUSION

In sum, ALPPA respectfully requests that the Department consider these comments in making any adjustments to its Section 232 exclusions process. Again, ALPPA emphasizes that any adjustments made to the process should further the purpose of the Section 232 program by helping to stimulate domestic production.

Thank you in advance for your consideration of these comments and please do not hesitate to contact us if you have any questions.

Respectfully submitted,


/s/ Timothy C. Brightbill

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July 10, 2020

BY ELECTRONIC FILING

The Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: *RIN 0694–XC058: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0012)*

Dear Assistant Secretary Ashooh:

On behalf of Commercial Metals Company (“CMC”), we hereby submit the following comments in response to the Department of Commerce’s (the “Department”) request for comments in its *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (“Request for Comments”).¹

CMC is a large U.S. steel producer with headquarters in Irvine, Texas, and operations throughout the United States. CMC has steel producing facilities in Alabama, Arkansas, California, Florida, New Jersey, Oklahoma, South Carolina, Tennessee, and Texas. CMC produces a number of steel products at these U.S. mills, including merchant bar, fence posts, wire rod, and rebar. Over the years, its U.S. operations have expanded significantly, and CMC now employs more than 9,000 workers in the United States.

¹ See *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441 (Bureau of Industry and Security May 26, 2020).

I. INTRODUCTION

At the outset, CMC commends the Department for its ongoing efforts to ensure that the Section 232 product exclusion process is as efficient, effective, and transparent as possible. These efforts include issuing determinations on the vast majority of the 150,000 exclusion requests that the Department has received since the start of the process, which is no easy feat given that the volume of requests has significantly exceeded expectations. CMC also appreciates that the Department has made modifications to the product exclusion process in response to concerns raised by interested parties, including developing a mechanism for submitting confidential information with product exclusion filings and implementing procedures for increasing the transparency of the process.

CMC strongly urges the Department to ensure that any future modifications to the product exclusion process are consistent with the objectives of the Section 232 program – to stimulate domestic steel production and capacity for national security purposes. Maintaining a robust and effective 232 program has become even more important given the dramatic declines in U.S. steel consumption and capacity utilization rates resulting from the current COVID-19 crisis. According to the American Iron and Steel Institute, the domestic industry’s capacity utilization dropped to 55.4% for the week ending June 27, 2020, with production falling by more than 33% as compared to the same time last year.² These capacity utilization and production levels have not been seen since the immediate aftermath of the global financial crisis in May 2009. Put simply, the domestic steel industry is even more vulnerable today than in prior years to the import surges that would result from any further weakening of the Section 232 program.

² American Iron and Steel Institute, This Week’s Raw Steel Production (June 2020).

As it stands, significant volumes of U.S. steel imports are currently entering the U.S. market free from Section 232 tariffs. CMC estimates that less than 10% of all U.S. steel imports were subject to Section 232 tariffs between January and May 2020.³ Approximately 35 percent of imports entered duty-free as a result of tariff exemptions on Canada, Mexico, and Australia. An additional 34% of imports entered duty-free subject to a quota arrangement (*i.e.*, Brazil, South Korea, and Argentina), and roughly 25% of imports entered duty-free pursuant to the product exclusion process.

In light of this limited coverage and the collapsing U.S. demand for steel, any further erosion of the 232 measures – including any adjustments to the exclusions process that results in an increase in import volume excluded from tariffs – would render the program completely ineffective. As a result, product exclusions should only be granted in very limited, narrowly prescribed circumstances – *i.e.*, if the product is not produced in the United States in sufficient volumes or of a satisfactory quality, or if there is a compelling and well-documented national security need for an exclusion. Moreover, the requestor must bear the burden of establishing that an exclusion is warranted. Any adjustments to the product exclusion process in response to the Department’s *Request for Comments* should be made with these considerations in mind, as well as those detailed below.

II. COMMENTS ON THE SECTION 232 EXCLUSION PROCESS FOR STEEL

Grounds for Product Exclusions Must be Narrow: In the Proclamation establishing Section 232 tariffs on steel, the President authorized the Department to provide relief from the 232 duties for any steel articles determined “not to be produced in the United States in a sufficient and

³ This is a decline from 2019, where roughly 28% of U.S. steel imports were subject to Section 232 tariffs.

reasonably available amount or of a satisfactory quality and is also authorized to provide such relief based upon specific national security considerations.”⁴ Consistent with this Proclamation, the Department’s regulations state that exclusions will only be granted if: “an article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations.”⁵ The Department’s regulations also emphasize that “the request should clearly identify, and provide support for, the basis upon which the exclusion is sought.”⁶

Therefore, as a threshold matter, the Department should only grant an exclusion if the requestor clearly identifies one or more of the enumerated grounds for an exclusion. Unless an exclusion request provides information regarding domestic availability, domestic quality, and/or national security to justify the exclusion, it should be rejected outright (*i.e.*, not processed by the Department). If a requestor’s sole basis for requesting an exclusion is price or an inability (or unwillingness) to qualify as a domestic producer, for example, the Department should not even post the request on its Section 232 Portal. Processing such requests creates an unnecessary strain on the Department’s already limited resources and places a significant burden on the domestic industry, which must analyze and respond to these requests.

Furthermore, requestors must also adequately support their request.⁷ To this end, requestors must bear the burden of establishing that an exclusion is warranted based on domestic

⁴ See Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018) (adjusting imports of steel articles into the United States).

⁵ 15 C.F.R. § 705 at Supplement 1(c)(5); *see also Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum*, 83 Fed. Reg. 12,106, 12,110 (Bureau of Industry and Security Mar. 19, 2018).

⁶ 15 C.F.R. § 705 at Supplement 1(c)(5).

⁷ *Id.*

availability, domestic quality, or national security. Before the Department even considers an exclusion request, requestors should be required to provide compelling and un rebutted evidence demonstrating that one of these limited grounds for an exclusion has been met. Placing the burden on the domestic industry, as requestors often suggest, undermines domestic steel production and capacity, and is contrary to the purpose of the Section 232 program.

Product Exclusions Must be Importer-Specific: The Department should continue to limit exclusion requests to the specific company that requested the exclusion.⁸ The Department has stated that “{t}he company that filed the original exclusion request has exclusive rights” to the exclusion.⁹ There is no reason for the Department to modify this approach. Indeed, requiring that product exclusions are importer-specific is necessary given that exclusions are frequently granted based on importer-specific circumstances and requirements. Moreover, reversing course by granting exclusions for steel products more broadly, and without regard to specific user needs/supplier capabilities, would essentially cede entire product categories to imports. This would undercut the ability of domestic steel producers to compete and therefore severely undermine the effectiveness of the 232 program. The current importer-specific approach also helps prevent circumvention of the 232 tariffs and quotas.

The Department Should Prohibit Exclusion Requests for Tonnage that Exceeds Consumption: From March 2018 to March 2020, product exclusion requests were filed for more than 206 million metric tons of steel imports, for an annual average import volume of 103 million

⁸ *Id.*

⁹ Bureau of Industry and Security, *232 Exclusion Process Frequently Asked Questions (FAQs)* (June 19, 2019) at 18, available at <https://www.bis.doc.gov/index.php/documents/section-232-investigations/2409-section-232-faq/file>.

metric tons.¹⁰ By contrast, during the three years immediately preceding the implementation of Section 232 measures (2015-2017), the annual average volume of all U.S. steel imports was only 33.2 million metric tons. This means that, for each year that the process has been in effect, U.S. importers have requested exclusions totaling more than *three times* the total volume of steel imports. Processing such requests creates an unnecessary backlog of exclusion requests. It also places a significant strain on the Department's limited resources and on the domestic steel industry, which must evaluate and object to each request posted.

In order to address the many exclusion requests that are being filed for volumes far in excess of historical consumption patterns or an entity's capacity to consume, the Department should require that requestors provide the following information with their exclusion requests: (i) historical consumption data for the product subject to the request (for the previous three years); (ii) the requestor's capacity to consume the product, with its historic product mix for the relevant production facility; and (iii) a certification that the requested quantity does not exceed historical consumption or a requestor's capacity to consume by more than 5%, and a detailed explanation if more than historic levels are requested. These requirements will help to ensure that the tonnage requested in exclusion requests more closely aligns with actual consumption.

Supporting Documentation for Exclusion Requests: In addition to requiring that requestors submit documentation to support their requested tonnage volume, the Department should also require that requestors demonstrate with documentary evidence that they have tried to purchase the requested product domestically at the time they submit their exclusion requests. This

¹⁰ See QuantGov, *Section 232 Tariffs* (Apr. 24, 2020), available at <https://www.quantgov.org/tariffs#section-232>.

evidence should include, for example, email correspondence between the requestor and domestic suppliers demonstrating a legitimate attempt to purchase commercially reasonable volumes.

To the extent that requestors claim an exclusion based on national security grounds, they should be required to submit documentation showing a legitimate national security reason for granting the request. In general, requestors citing national security in support of an exclusion provide no support for their claim beyond stating that the underlying application for the requested product involves national security – *e.g.*, critical infrastructure, defense, etc. For instance, one U.S. importer recently argued that national security considerations support its June 26, 2020 request to exclude seamless cold-drawn tubes from tariffs because the “product is needed for maintenance or replacement for the application product listed above. Available supply of energy is critical to the infrastructure especially when it comes to our Oil & Gas and Power Generations plants.”¹¹ No specific national security application was identified, nor was any documentary evidence provided – only mere assertions. Many other U.S. importers have made similar claims, citing national security as a basis for exclusion simply because the underlying application for the requested product involves infrastructure.¹² These assertions should be rejected absent compelling evidence of a national security need for an exclusion.

Specifically, the Department should require that requestors citing national security reasons as a basis for an exclusion request provide precise, articulable and verifiable facts supporting such

¹¹ See U.S. Department of Commerce, Webco Industries, Inc. Exclusion Request (June 24, 2020), *available at* <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/106178>.

¹² See *e.g.*, U.S. Department of Commerce, Marubeni-Itochu Tubulars America, Inc. Exclusion Request (June 29, 2020), *available at* <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/107150> (stating only that “{t}he Subject Product allows for greater overall United States oil and gas production and helps achieve United States energy independence, which is a national security objective.”); U.S. Department of Commerce, Tioga Pipe, Inc. Exclusion Request (June 24, 2020), *available at* <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/106219> (stating only that “{t}his item supports the needs to the oil and gas, petrochemical and power industries which are extremely vital to US national security.”).

assertions (*e.g.*, a Department of Defense contract requiring the product or a letter of concurrence from the head of a U.S. government agency or department that national security necessitates that the product be obtained in the quality, quantity and time frame requested). Imposing this requirement will help to ensure that any exclusion granted in whole, or in part, on national security grounds is adequately supported.

Time Frame for “Immediately Available”: According to the Department, the “exclusion review criterion ‘not produced in the United States in a sufficient and reasonably available amount’ means that the amount of steel that is needed by the end user requesting the exclusion is not available immediately in the United States to meet its specified business activities.”¹³ A product is “immediately available” if it “is currently being produced or could be produced ‘within eight weeks’ in the amount needed in the business activities of the user of steel in the United States described in the exclusion request.”¹⁴

The Department’s definition of “immediately available” lacks clarity and, therefore, should be removed. It is unclear, for example, whether *all* of the requested tonnage, which is an *annual amount*, must be/could be produced within eight weeks, or whether only *some* of the requested tonnage – the more logical requirement – must be/could be produced within eight weeks. Nor is it clear what percentage of the requested amount must be or could be produced within eight weeks if the latter applies.

To the extent that the Department does not remove this requirement, an eight-week window to manufacture a product is unreasonable and too rigid given commercial realities. Production schedules vary widely based on a variety of factors, including market demand, production

¹³ 15 C.F.R. § 705 at Supplement 1(c)(6)(i).

¹⁴ *Id.*

backlogs, specific customer demands, etc. Imposing an overly stringent requirement for “immediately available” undermines the domestic industry’s ability to ramp up production and develop new products, as the Section 232 program intended.

Whether a product is deemed to be immediately available should vary based on the level of processing and finishing involved (*i.e.*, semi-finished products should have the shortest time period while downstream finished products should have longer time periods, including some periods much longer than 8 weeks) as well as the volume requested (with larger volumes requiring more time). Thus, if the Department continues to require a specific time period in the objection forms, it should modify its definition of “immediately” to mean “within twelve to sixteen weeks,” which is consistent with normal rolling schedules. It is also consistent with typical import times, as most imports would not be able to meet an eight-week requirement.

To the extent a requestor argues that an exclusion request should be granted because the domestic industry cannot produce and deliver the requested product within the necessary time frame, the Department should require that the requestor provide documentary evidence that the imported product can be produced and delivered within the needed timeframe. The Department should also require that the requestor provide evidence that it will be consuming the requested tonnage “immediately.” This is particularly appropriate given the above concerns regarding requestors seeking unreasonable tonnage volumes (or seeking *annual* volumes in an eight-week time frame).

Definition of Product: The steel products at issue in the Department’s exclusion process are often very highly specialized products that are designed for very specific applications, end uses, and/or end users. As a result, allowing exclusion requests to span multiple HTS codes/dimensions/specifications/etc. is inappropriate in terms of both administrability and

enforceability of the exclusions. The Department should, therefore, continue to require that separate exclusion requests be submitted per product type/HTS code/dimension/specification/etc. At a minimum, the products subject to a request should be as specific as what a purchase order requires. This level of specificity is necessary to allow Customs to effectively administer the 232 measures as well as to prevent the circumvention of these measures.

Additional Comments: In addition to the aforementioned comments, CMC also proposes the following comments for the Department's consideration:

- **Eligibility for Requestors/Objectors:** Pursuant to the Department's regulations, "{o}nly directly affected individuals or organizations located in the United States may submit an exclusion request. An individual or organization is 'directly affected' if they are using steel in business activities (*e.g.*, construction, manufacturing, or supplying steel product to users) in the United States."¹⁵ In terms of objectors, "{a}ny individual or organization that manufactures steel articles in the United States may file objections to steel exclusion requests, but the U.S. Department of Commerce will only consider information directly related to the submitted exclusion request that is the subject of the objection."¹⁶ The Department should continue to limit requestor eligibility to U.S. individuals and corporations that use steel in business activities. Particularly because each exclusion request should be considered at the requestor-level and not the product-level, only specific steel consumers should remain authorized to file exclusion requests.

The Department should permit trade associations, coalitions, and similar organizations that are composed of individuals or companies that manufacture steel articles in the United States to file objections. The submission of a single set of comments representing the views of a range of steel producing companies in opposition to an exclusion request is a far more efficient way for the Department to receive comments in opposition to an exclusion request. Indeed, for particularly large volume exclusion requests, one domestic steel manufacturer may not have the entire unutilized capacity to meet the needs that form the basis of that exclusion request. However, the domestic industry may very well have capacity in the aggregate to meet such orders. Absent permitting a single combined submission by members of the domestic industry that can provide aggregate data for the Department to review, the Department would need to collect that information from each of the members, expending unnecessary time and resources and increasing the risk that complete information will not be available to consider.

¹⁵ 15 C.F.R. § 705 at Supplement 1(c)(1).

¹⁶ *Id.* at Supplement 1(d)(1).

- Duplicate Requests: The Department should not permit requestors to submit duplicate exclusion requests or requests that are virtually identical except for minor, immaterial distinctions. For example, U.S. importer SSAB has submitted multiple requests to exclude virtually the same flat-rolled steel products (*e.g.*, Strenx 110XF) from Section 232 tariffs, which have resulted in inconsistent BIS decisions. The submission of multiple exclusion requests for virtually the same product is an abuse of the process and creates an unnecessary burden for both the Department and for potential objectors that must carefully review each request.
- Denied Requests: Once a request for a particular product has been denied, the Department should not permit (*i.e.*, reject outright) subsequent requests for the same product – regardless of requestor or import source – for one year from the Department’s decision date. Preventing requestors from submitting multiple requests to exclude a product that the Department has recently found to be available domestically and in sufficient volumes and of a satisfactory quality, and for which there is no national security consideration to warrant an exclusion, would allow the agency to more effectively administer the exclusion process and devote greater resources to exclusion requests that may have more merit.
- Retroactivity: Since the start of the exclusions process, requestors have submitted a number of requests that have been denied on procedural grounds (*e.g.*, an incorrect HTS code or an incorrect chemistry), requiring that they fix the issue and submit a new request in order to obtain an exclusion. We understand that in these circumstances, any tariff relief granted is retroactive to the date of the initial denied request. Where the Department issues a procedural denial, and the requestor then submits a second corrected request, any tariff relief granted should only be retroactive as to the date of the filing of the second corrected request. This modification should result in requestors exercising greater care when preparing and filing exclusion requests, thereby leading to a reduction in refiled requests and ultimately a more efficient product exclusion process.
- Exclusions Requests for Imported Products from Excluded Countries: The Department should reject outright (*i.e.*, not post on the Section 232 Portal) any product exclusion request that requests an exclusion for a product from a country that is excluded from the 232 tariffs and not subject to a quota (currently Canada, Mexico, and Australia). Continuing to process exclusion requests on products that are not subject to 232 tariffs imposes an unnecessary burden on the Department’s limited resources. For instance, processing these requests takes resources away from the agency’s ability to effectively administer an exclusion process that continues to be inundated by exclusion requests. Doing so also places additional strain on the domestic industry, which must carefully evaluate each request posted in order to determine whether an objection is appropriate. Because the products at issue in these requests are not subject to 232 tariffs, they cannot, by definition, be excluded from the tariffs. As a result, processing these requests is also inconsistent with the Department’s stated policy that “incomplete” submissions – *e.g.*, submissions that cannot be properly evaluated and resolved – will not be considered.

- Decisions on Requests With No Objectors: To further expedite the exclusions process, to the extent that no party objects to a request, the Department should automatically grant the exclusion request within 30 days after the deadline for filing an objection has passed. The Department should also make clear in its decision memorandum that it is granting the request because no objections have been submitted, not because of any lack of domestic production or supply. Indeed, there are a number of reasons that the domestic industry may chose not to file an objection despite being able to produce the requested product in the volumes required, including commercial considerations.
- Biannual Period for Submitting Exclusions: The Department should establish a 60-day window for submitting exclusion requests on a biannual basis. Only product exclusion requests submitted during these biannual periods would be considered. As previously indicated, the Department has processed over 150,000 exclusion requests to date. The number of requests submitted has far exceeded expectations and has presented a number of administrative challenges. Mandating two limited time periods for submitting exclusion requests would help streamline the process, reduce the administrative burden of managing such a large process, and potentially reduce the number of duplicate requests and other abuses of the process.
- Section 232 Portal-Specific Comments: Given the significant volume of exclusion requests posted on the Portal, it is important that all users be able to download both the (a) individual submissions (exclusion requests, objections, rebuttals, and surrebuttals) and (b) the information found in the portal in its entirety. The current format makes it nearly impossible to export any information of value and does not provide information that is vital to the evaluation of product exclusion requests by the domestic industry. Furthermore, the current portal does not provide the ability to identify the presence of, or the ability to download, supporting documentation. The ability to download individual submissions will greatly enhance the speed at which internal company reviews can take place. In addition, the Department's Section 232 Portal should identify the due date for open comment periods. Currently, the Portal only notes how many days are remaining in open periods, but no deadline is provided.

III. CONCLUSION

In sum, CMC respectfully requests that the Department consider the aforementioned comments in making any adjustments to its Section 232 exclusions process. Again, CMC emphasizes that any adjustments made to the process should further the purpose of the Section 232 program by helping to stimulate domestic steel production.

Thank you in advance for your consideration of these comments and please do not hesitate to contact the undersigned if you have any questions.

Respectfully submitted,

/s/  _____

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July 10, 2020

VIA REGULATIONS.GOV

The Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: *RIN 0694–XC058: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0012)*

Dear Assistant Secretary Ashooh:

On behalf of Gerdau Long Steel North America (“Gerdau”), we hereby submit the following comments in response to the Department of Commerce’s (the “Department”) request for comments in its *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (“*Request for Comments*”).¹

Gerdau’s headquarters is in Tampa, Florida. Over the years, Gerdau has grown to become a leading producer of long steel in the Americas and one of the major suppliers of specialty long steel in the world. Gerdau is a leader in mini-mill steel production and steel recycling in North America, with an annual manufacturing capacity of approximately 7.5 million metric tons of mill-finished steel products. Through a vertically integrated network of mini-mills, scrap recycling facilities and downstream operations, the company serves customers throughout the United States,

¹ See *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441 (Bureau of Industry and Security May 26, 2020).

offering a diverse and balanced mix of structural steel, piling, rebar, merchant bar, and special bar quality products.

I. INTRODUCTION

At the outset, Gerdau commends the Department for its ongoing efforts to ensure that the Section 232 product exclusion process is as efficient, effective, and transparent as possible. These efforts include issuing determinations on the vast majority of the 150,000 exclusion requests that the Department has received since the start of the process, which is no easy feat given that the volume of requests has significantly exceeded expectations. Gerdau also appreciates that the Department has made modifications to the product exclusion process in response to concerns raised by interested parties, including developing a mechanism for submitting confidential information with product exclusion filings and implementing procedures for increasing the transparency of the process.

Gerdau strongly urges the Department to ensure that any future modifications to the product exclusion process are consistent with the objectives of the Section 232 program – to stimulate domestic steel production and capacity for national security purposes. Maintaining a robust and effective 232 program has become even more important given the dramatic declines in U.S. steel consumption and capacity utilization rates resulting from the current COVID-19 crisis. According to the American Iron and Steel Institute, the domestic industry’s capacity utilization dropped to 55.4% for the week ending June 27, 2020, with production falling by more than 33% as compared to the same time last year.² These capacity utilization and production levels have not been seen since the immediate aftermath of the global financial crisis in May 2009. Put simply,

² American Iron and Steel Institute, This Week’s Raw Steel Production (June 2020).

the domestic steel industry is even more vulnerable today than in prior years to the import surges that would result from any further weakening of the Section 232 program.

As it stands, significant volumes of U.S. steel imports are currently entering the U.S. market free from Section 232 tariffs. Gerdau estimates that less than 10% of all U.S. steel imports were subject to Section 232 tariffs between January and May 2020.³ Approximately 35 percent of imports entered duty-free as a result of tariff exemptions on Canada, Mexico, and Australia. An additional 34% of imports entered duty-free subject to a quota arrangement (*i.e.*, Brazil, South Korea, and Argentina), and roughly 25% of imports entered duty free pursuant to the product exclusion process.

In light of this limited coverage and the collapsing U.S. demand for steel, any further erosion of the 232 measures – including any adjustment to the exclusions process that results in an increase in import volume excluded from tariffs – would render the program completely ineffective. As a result, product exclusions should only be granted in very limited, narrowly prescribed circumstances – *i.e.*, if the product is not produced in the United States in sufficient volumes or of a satisfactory quality, or if there is a compelling and well-documented national security need for an exclusion. Moreover, the requestor must bear the burden of establishing that an exclusion is warranted. Any adjustments to the product exclusion process in response to the Department's *Request for Comments* should be made with these considerations in mind, as well as those detailed below.

³ This is a decline from 2019, where roughly 28% of U.S. steel imports were subject to Section 232 tariffs.

II. COMMENTS ON THE SECTION 232 EXCLUSION PROCESS FOR STEEL

Grounds for Product Exclusions Must be Narrow: In the Proclamation establishing Section 232 tariffs on steel, the President authorized the Department to provide relief from the 232 duties for any steel articles determined “not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality and is also authorized to provide such relief based upon specific national security considerations.”⁴ Consistent with this Proclamation, the Department’s regulations state that exclusions will only be granted if: “an article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations.”⁵ The Department’s regulations also emphasize that “the request should clearly identify, and provide support for, the basis upon which the exclusion is sought.”⁶

Therefore, as a threshold matter, the Department should only grant an exclusion if the requestor clearly identifies one or more of the enumerated grounds for an exclusion. Unless an exclusion request provides information regarding domestic availability, domestic quality, and/or national security to justify the exclusion, it should be rejected outright (*i.e.*, not processed by the Department). If a requestor’s sole basis for requesting an exclusion is price or an inability (or unwillingness) to qualify as a domestic producer, for example, the Department should not even post the request on its Section 232 Portal. Processing such requests creates an unnecessary strain

⁴ See Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018) (adjusting imports of steel articles into the United States).

⁵ 15 C.F.R. § 705 at Supplement 1(c)(5); see also *Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum*, 83 Fed. Reg. 12,106, 12,110 (Bureau of Industry and Security Mar. 19, 2018).

⁶ 15 C.F.R. § 705 at Supplement 1 (c)(5).

on the Department's already limited resources and places a significant burden on the domestic industry, which must analyze and respond to these requests.

Furthermore, requestors must also adequately support their request.⁷ To this end, requestors must bear the burden of establishing that an exclusion is warranted based on domestic availability, domestic quality, or national security. Before the Department even considers an exclusion request, requestors should be required to provide compelling and un rebutted evidence demonstrating that one of these limited grounds for an exclusion has been met. Placing the burden on the domestic industry, as requestors often suggest, undermines domestic steel production and capacity, and is contrary to the purpose of the Section 232 program.

Product Exclusions Must be Importer Specific: The Department should continue to limit exclusion requests to the specific company that requested the exclusion.⁸ The Department has stated that “{t}he company that filed the original exclusion request has exclusive rights” to the exclusion.⁹ There is no reason for the Department to modify this approach. Indeed, requiring that product exclusions are importer-specific is necessary given that exclusions are frequently granted based on importer-specific circumstances and requirements. Moreover, reversing course by granting exclusions for steel products more broadly, and without regard to specific user needs/supplier capabilities, would essentially cede entire product categories to imports. This would undercut the ability of domestic steel producers to compete and therefore severely

⁷ *Id.*

⁸ *Id.*

⁹ Bureau of Industry and Security, *232 Exclusion Process Frequently Asked Questions (FAQs)* (June 19, 2019) at 18, available at <https://www.bis.doc.gov/index.php/documents/section-232-investigations/2409-section-232-faq/file>.

undermine the effectiveness of the 232 program. The current importer-specific approach also helps prevent circumvention of the 232 tariffs and quotas.

The Department Should Prohibit Exclusion Requests for Tonnage that Exceeds Consumption: From March 2018 to March 2020, product exclusion requests were filed for more than 206 million metric tons of steel imports, for an annual average import volume of 103 million metric tons.¹⁰ By contrast, during the three years immediately preceding the implementation of Section 232 measures (2015-2017), the annual average volume of all U.S. steel imports was only 33.2 million metric tons. This means that, for each year that the process has been in effect, U.S. importers have requested exclusions totaling more than *three times* the total volume of steel imports. Processing such requests creates an unnecessary backlog of exclusion requests. It also places a significant strain on the Department's limited resources and on the domestic steel industry, which must evaluate and object to each request posted.

In order to address the many exclusion requests that are being filed for volumes far in excess of historical consumption patterns or an entity's capacity to consume, the Department should require that requestors provide the following information with their exclusion requests: (i) historical consumption data for the product subject to the request (for the previous three years); (ii) the requestor's capacity to consume the product, with its historic product mix for the relevant production facility; and (iii) a certification that the requested quantity does not exceed historical consumption or a requestor's capacity to consume by more than 5%, and a detailed explanation if more than historic levels are requested. These requirements will help to ensure that the tonnage requested in exclusion requests more closely aligns with actual consumption.

¹⁰ See QuantGov, *Section 232 Tariffs* (Apr. 24, 2020), available at <https://www.quantgov.org/tariffs#section-232>.

Supporting Documentation for Exclusion Requests: In addition to requiring that requestors submit documentation to support their requested tonnage volume, the Department should also require that requestors demonstrate with documentary evidence that they have tried to purchase the requested product domestically at the time they submit their exclusion requests. This evidence should include, for example, email correspondence between the requestor and domestic suppliers demonstrating a legitimate attempt to purchase commercially reasonable volumes.

To the extent that requestors claim an exclusion based on national security grounds, they should be required to submit documentation showing a legitimate national security reason for granting the request. In general, requestors citing national security in support of an exclusion provide no support for their claim beyond stating that the underlying application for the requested product involves national security – *e.g.*, critical infrastructure, defense, etc. For instance, one U.S. importer recently argued that national security considerations support its June 26, 2020 request to exclude seamless cold-drawn tubes from tariffs because the “product is needed for maintenance or replacement for the application product listed above. Available supply of energy is critical to the infrastructure especially when it comes to our Oil & Gas and Power Generations plants.”¹¹ No specific national security application was identified, nor was any documentary evidence provided – only mere assertions. Many other U.S. importers have made similar claims, citing national security as a basis for exclusion simply because the underlying application for the requested product involves infrastructure.¹² These assertions should be rejected absent compelling evidence of a national security need for an exclusion.

¹¹ See U.S. Department of Commerce, Webco Industries, Inc. Exclusion Request (June 24, 2020), *available at* <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/106178>.

¹² See *e.g.*, U.S. Department of Commerce, Marubeni-Itochu Tubulars America, Inc. Exclusion Request (June 29, 2020), *available at* <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/107150> (stating only that “{t}he Subject Product allows for greater overall United States oil and gas production and helps achieve United

Specifically, the Department should require that requestors citing national security reasons as a basis for an exclusion request provide precise, articulable and verifiable facts supporting such assertions (*e.g.*, a Department of Defense contract requiring the product or a letter of concurrence from the head of a U.S. government agency or department that national security necessitates that the product be obtained in the quality, quantity and time frame requested). Imposing this requirement will help to ensure that any exclusion granted in whole, or in part, on national security grounds is adequately supported.

Time Frame for “Immediately Available”: According to the Department, the “exclusion review criterion ‘not produced in the United States in a sufficient and reasonably available amount’ means that the amount of steel that is needed by the end user requesting the exclusion is not available immediately in the United States to meet its specified business activities.”¹³ A product is “immediately available” if it “is currently being produced or could be produced ‘within eight weeks’ in the amount needed in the business activities of the user of steel in the United States described in the exclusion request.”¹⁴

The Department’s definition of “immediately available” lacks clarity and, therefore, should be removed. It is unclear, for example, whether *all* of the requested tonnage, which is an *annual amount*, must be/could be produced within eight weeks, or whether only *some* of the requested tonnage – the more logical requirement – must be/could be produced within eight weeks. Nor is

States energy independence, which is a national security objective.”); U.S. Department of Commerce, Tioga Pipe, Inc. Exclusion Request (June 24, 2020), *available at* <https://232app.azurewebsites.net/Forms/ExclusionRequestItem/106219> (stating only that “{t}his item supports the needs to the oil and gas, petrochemical and power industries which are extremely vital to US national security.”).

¹³ 15 C.F.R. § 705 at Supplement 1(c)(6)(i).

¹⁴ *Id.*

it clear what percentage of the requested amount must be or could be produced within eight weeks if the latter applies.

To the extent that the Department does not remove this requirement, an eight-week window to manufacture a product is unreasonable and too rigid given commercial realities. Production schedules vary widely based on a variety of factors, including market demand, production backlogs, specific customer demands, etc. Imposing an overly stringent requirement for “immediately available” undermines the domestic industry’s ability to ramp up production and develop new products, as the Section 232 program intended.

Whether a product is deemed to be immediately available should vary based on the level of processing and finishing involved (*i.e.*, semi-finished products should have the shortest time period while downstream finished products should have longer time periods, including some periods much longer than 8 weeks) as well as the volume requested (with larger volumes requiring more time). Thus, if the Department continues to require a specific time period in the objection forms, it should modify its definition of “immediately” to mean “within twelve to sixteen weeks,” which is consistent with normal rolling schedules. It is also consistent with typical import times, as most imports would not be able to meet an eight-week requirement.

To the extent a requestor argues that an exclusion request should be granted because the domestic industry cannot produce and deliver the requested product within the necessary time frame, the Department should require that the requestor provide documentary evidence that the imported product can be produced and delivered within the needed timeframe. The Department should also require that the requestor provide evidence that it will be consuming the requested tonnage “immediately.” This is particularly appropriate given the above concerns regarding

requestors seeking unreasonable tonnage volumes (or seeking *annual* volumes in an eight-week time frame).

Definition of Product: The steel products at issue in the Department's exclusion process are often very highly specialized products that are designed for very specific applications, end uses, and/or end users. As a result, allowing exclusion requests to span multiple HTS codes/dimensions/specifications/etc. is inappropriate in terms of both administrability and enforceability of the exclusions. The Department should, therefore, continue to require that separate exclusion requests be submitted per product type/HTS code/dimension/specification/etc. At a minimum, the products subject to a request should be as specific as what a purchase order requires. This level of specificity is necessary to allow Customs to effectively administer the 232 measures as well as to prevent the circumvention of these measures.

Additional Comments: In addition to the aforementioned comments, Gerdau also proposes the following comments for the Department's consideration:

- **Eligibility for Requestors/Objectors:** Pursuant to the Department's regulations, "{o}nly directly affected individuals or organizations located in the United States may submit an exclusion request. An individual or organization is 'directly affected' if they are using steel in business activities (*e.g.*, construction, manufacturing, or supplying steel product to users) in the United States."¹⁵ In terms of objectors, "{a}ny individual or organization that manufactures steel articles in the United States may file objections to steel exclusion requests, but the U.S. Department of Commerce will only consider information directly related to the submitted exclusion request that is the subject of the objection."¹⁶ The Department should continue to limit requestor eligibility to U.S. individuals and corporations that use steel in business activities. Particularly because each exclusion request should be considered at the requestor-level and not the product level, only specific steel consumers should remain authorized to file exclusion requests.

The Department should permit trade associations, coalitions, and similar organizations that are composed of individuals or companies that manufacture steel articles in the United States to file objections. The submission of a single set of comments representing the views

¹⁵ 15 C.F.R. § 705 at Supplement 1(c)(1).

¹⁶ *Id.* at Supplement 1(d)(1).

of a range of steel producing companies in opposition to an exclusion request is a far more efficient way for the Department to receive comments in opposition to an exclusion request. Indeed, for particularly large volume exclusion requests, one domestic steel manufacturer may not have the entire unutilized capacity to meet the needs that form the basis of that exclusion request. However, the domestic industry may very well have capacity in the aggregate to meet such orders. Absent permitting a single combined submission by members of the domestic industry that can provide aggregate data for the Department to review, the Department would need to collect that information from each of the members, expending unnecessary time and resources and increasing the risk that complete information will not be available to consider.

- Duplicate Requests: The Department should not permit requestors to submit duplicate exclusion requests or requests that are virtually identical except for minor, immaterial distinctions. The submission of multiple exclusion requests for virtually the same product is an abuse of the process and creates an unnecessary burden for both the Department and for potential objectors that must carefully review each request.
- Denied Requests: Once a request for a particular product has been denied, the Department should not permit (*i.e.*, reject outright) subsequent requests for the same product – regardless of requestor or import source – for one year from the Department’s decision date. Preventing requestors from submitting multiple requests to exclude a product that the Department has recently found to be available domestically and in sufficient volumes and of a satisfactory quality, and for which there is no national security consideration to warrant an exclusion, would allow the agency to more effectively administer the exclusion process and devote greater resources to exclusion requests that may have more merit.
- Retroactivity: Since the start of the exclusions process, requestors have submitted a number of requests that have been denied on procedural grounds (*e.g.*, an incorrect HTS code or an incorrect chemistry), requiring that they fix the issue and submit a new request in order to obtain an exclusion. We understand that in these circumstances, any tariff relief granted is retroactive to the date of the initial denied request. Where the Department issues a procedural denial, and the requestor then submits a second corrected request, any tariff relief granted should only be retroactive as to the date of the filing of the second corrected request. This modification should result in requestors exercising greater care when preparing and filing exclusion requests, thereby leading to a reduction in refiled requests and ultimately a more efficient product exclusion process.
- Exclusions Requests for Imported Products from Excluded Countries: The Department should reject outright (*i.e.*, not post on the Section 232 Portal) any product exclusion request that requests an exclusion for a product from a country that is excluded from the 232 tariffs and not subject to a quota (currently Canada, Mexico, and Australia). Continuing to process exclusion requests on products that are not subject to 232 tariffs imposes an unnecessary burden on the Department’s limited resources. For instance, processing these requests takes resources away from the agency’s ability to effectively administer an exclusion process that continues to be inundated by exclusion requests.

Doing so also places additional strain on the domestic industry, which must carefully evaluate each request posted in order to determine whether an objection is appropriate. Because the products at issue in these requests are not subject to 232 tariffs, they cannot, by definition, be excluded from the tariffs. As a result, processing these requests is also inconsistent with the Department's stated policy that "incomplete" submissions – *e.g.*, submissions that cannot be properly evaluated and resolved – will not be considered.

- Decisions on Requests With No Objectors: To further expedite the exclusions process, to the extent that no party objects to a request, the Department should automatically grant the exclusion request within 30 days after the deadline for filing an objection has passed. The Department should also make clear in its decision memorandum that it is granting the request because no objections have been submitted, not because of any lack of domestic production or supply. Indeed, there are a number of reasons that the domestic industry may chose not to file an objection despite being able to produce the requested product in the volumes required, including commercial considerations.
- Biannual Period for Submitting Exclusions: The Department should establish a 60-day window for submitting exclusion requests on a biannual basis. Only product exclusion requests submitted during these biannual periods would be considered. As previously indicated, the Department has processed over 150,000 exclusion requests to date. The number of requests submitted has far exceeded expectations and has presented a number of administrative challenges. Mandating two limited time periods for submitting exclusion requests would help streamline the process, reduce the administrative burden of managing such a large process, and potentially reduce the number of duplicate requests and other abuses of the process.
- Section 232 Portal-Specific Comments: Given the significant volume of exclusion requests posted on the Portal, it is important that all users be able to download both the (a) individual submissions (exclusion requests, objections, rebuttals, and surrebuttals) and (b) the information found in the portal in its entirety. The current format makes it nearly impossible to export any information of value and does not provide information that is vital to the evaluation of product exclusion requests by the domestic industry. Furthermore, the current portal does not provide the ability to identify the presence of, or the ability to download, supporting documentation. The ability to download individual submissions will greatly enhance the speed at which internal company reviews can take place. In addition, the Department's Section 232 Portal should identify the due date for open comment periods. Currently, the Portal only notes how many days are remaining in open periods, but no deadline is provided.

III. CONCLUSION

In sum, Gerdau respectfully requests that the Department consider the aforementioned comments in making any adjustments to its Section 232 exclusions process. Again, Gerdau emphasizes that any adjustments made to the process should further the purpose of the Section 232 program by helping to stimulate domestic steel production.

Thank you in advance for your consideration of these comments and please do not hesitate to contact the undersigned if you have any questions.

Respectfully submitted,

/s/ 

Alan H. Price, Esq.
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COMMERCE SHOULD IMPROVE THE OBJECTION PROCESS FOR THE SECTION 232 TARIFF EXCLUSION REQUESTS

CHRISTINE MCDANIEL

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Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas
Agency: Bureau of Industry and Security
Comment Period Opens: May 26, 2020
Comment Period Closes: July 10, 2020
Comment Submitted: July 10, 2020
Docket No. 200514-0140
RIN: 0694-XC05

I write today in response to the request by the Bureau of Industry and Security of the US Department of Commerce for public comment regarding the exclusion process for Section 232 steel and aluminum import tariffs and quotas.

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

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

PROBLEMS WITH THE OBJECTION PROCESS

The original intent of the tariff exclusion process was to minimize undue impact on downstream industries.¹ Later I explain how the current process for exclusions and objections undermines the Department of Commerce’s ability to meet that that objective. I propose modifying the objection process so that objecting producers have the burden of proof of showing that they can meet the

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

manufacturer's needs in a timely fashion. This modification would help eliminate baseless objections from the process.

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

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

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

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

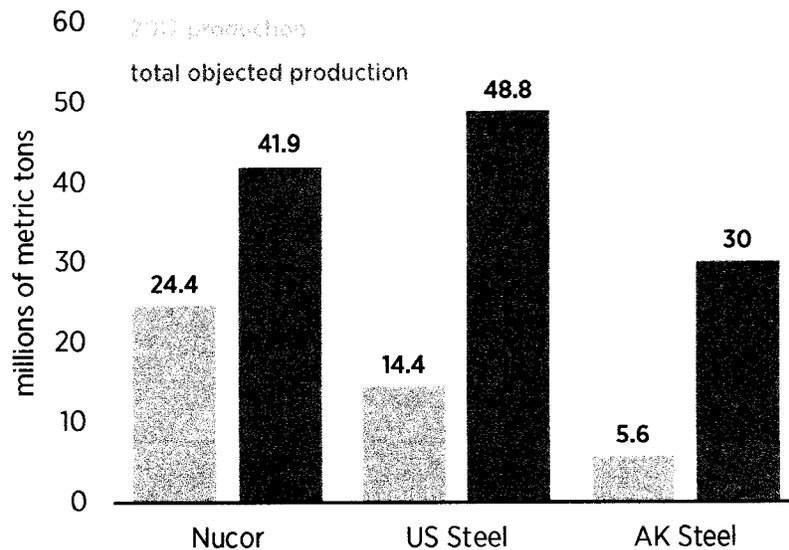
At the same time, objections are consequential. As of March 14, 2020, just 1 percent of steel tariff exclusion requests with an objection have been approved, and less than 1 percent of aluminum tariff exclusion requests with an objection have been approved.³ Further, producers are not required to confirm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

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

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

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

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



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

IMPROVING THE OBJECTIONS PROCESS

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

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

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

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

CONCLUSION

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

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

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

Via electronic filing
Docket BIS-2020-0012
Attn.: Bureau of Industry and Security, Office of Technology Evaluation

July 09, 2020

Honorable Wilbur L. Ross, Jr.,
Secretary of the Department of Commerce
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

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Re: Kopo International, Inc. comment on Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Dear Mr. Secretary,

We ask you to consider Kopo International, Inc. comment on the Section 232 process of exclusion requests' review.

By the way of background, Kopo International Inc. ("Kopo," www.kopointl.com) is an American company located in Red Bank, New Jersey. Kopo exclusively sells on the U.S. market niche steel products of two Slovenian steel mills SIJ Metal Ravne d.o.o and SIJ Acroni d.o.o. which are, like Kopo, part of Slovenian Steel Group d.d. ("SIJ," www.sij.si). Kopo has started its work in 1991 and has a well-established client base across the United States for special steel products.

Kopo imports and sells a great variety of steel products, some of which are not produced in the U.S. and some that cannot be easily purchased from U.S. steel mills. To secure tariff-free import of such unique products, Kopo has submitted many exclusion requests over these two past years, many of which were granted.

There were many issues with the exclusion process, and many procedural issues were already resolved. Most troublesome, in our opinion, remains the weigh the BIS gives to a filed objection.

Our experience shows that any objection, no matter whether the US mill can supply the product at question or not, automatically leads to a very lengthy review process by BIS and ultimately, to the denial of the exclusion. The rebuttals with the evidence of the objector's inability to produce the material, in our experience, are not given any consideration. Kopo has received the objections from the companies that, to Kopo's best knowledge, cannot produce the product to which they submitted the objection. Kopo's clients, in many instances, provided evidence for rebuttals such as letters of support with statements on unavailability of some specific products from U.S. mills. In their statements the clients confirmed they had reached out to an objecting steel producer and that producer was either incapable or unwilling to provide the material.

Another type of meritless objections that Kopo has seen is on the "dumping" prices. The U.S. market prices are higher than Europe's (pre-tariff) and consequently the highest globally. This further shows the notion that tariff is protecting the U.S. economy is incorrect, it is only benefiting to the U.S. steel makers and hurting the U.S. consumers.

The approach by BIS, where the meritless objections automatically lead to an exclusion request being denied, is inefficient and ultimately harms American consumers. Having no domestic production and no chance to obtain a relief on the 25% tariff, the clients end up paying the tariff, either reducing their profits or passing the increase in costs onto their customers, some of which require our unique steel products for critical applications.

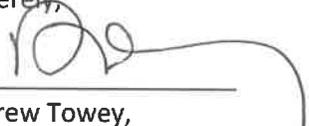
In the specific topics for potential comments, BIS has listed comments on the possibility to require from the objectors to submit factual evidence that they can in fact manufacture the product in the quality and amount and during the time period, to which they attest in the objection.

Kopo supports this proposition.

At the very minimum, the evidence is necessary when the requesting company submits a rebuttal with proof of objector's inability to supply a product at question. Such modified approach, with factual evidence given proper weight, would allow the exclusion process to reach its ultimate goal. The products that are truly unavailable from U.S. producers (either because of their non-comparable quality, quantity or unreasonably lengthy manufacture time) would be excluded from the tariff, avoiding unnecessary and damaging cost increase for U.S. manufacturers.

Thank you for the consideration of this comment. Should you require more information, please contact us.

Sincerely,

By: 

Andrew Towey,
President of Kopo International, Inc.



July 10, 2020

The United States Commerce Department
Bureau of Industry and Security
Section 232 Investigation
Imports of Steel

Magellan Corporation
Comments on Section 232 Exclusion Process
RIN 0694-XC058

I. Background and Introduction

Magellan Corporation. (“Magellan”) is commenting on The Department Commerce (“Commerce Department”), Bureau of Industry and Security’s (“Bureau”) *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (the “Notice”). Per the Bureau’s request, Magellan is commenting on the agency’s national security investigation of steel imports initiated under Section 232 of the Trade Expansion Act of 1962 (“Section 232”). As requested, Magellan’s comments are directed to the criteria listed in the Notice, detailed in Federal Register Vol. 85, No. 101, dated Tuesday, May 26, 2020.

Magellan is a leading independent global distributor of high-quality specialty steel and other metallurgical products. Established in 1985, Magellan is a United States company headquartered in Illinois. Through its long term, close relationships with world class steel mills around the globe, Magellan has facilitated American manufacturing for more than three decades by providing a consistent and stable source of high-quality steel from reliable sources. Magellan is also a major purchaser of American made steel, distributing the supply from domestic manufacturers around the country. Since 2018, Magellan’s customers have been compelled to pay, through the form of higher prices, the tariffs imposed pursuant to Section 232 in connection with its importation of steel manufactured outside the United States.



II. General Comments

Prior to addressing the specific issue posited in the Federal Register notice, Magellan wishes to provide general comments based on its experience with the 232 Process.

- ***The Information Sought in Exclusion Requests, Objections, Rebuttals And Surrebuttals is Not Helpful***

The information sought on the exemption form process is not helpful in all respects. There is no requirement for commercial availability. If a domestic company contends that it can make a product, there is no requirement for substantiating such production. For example, a request could be filed seeking an exclusion for a specialized type of steel subject to a series of specific treatments (e.g. normalizing, quenching, tempering, rolling, cold finishing and the like). The basis for the exclusion is that “[t]here is no U.S. production of the grade, thermal treatment, size and mechanical properties indicated within this exclusion request.”

In their objections, the U.S. mills simply state that they are capable of supplying the product, but would need to do so in conjunction with outside finishers. To put it another way, the U.S. mill is acknowledging that it *does not* actually manufacture this product but could supply substrate to unidentified third parties to have it manufactured into the specific product. The objection provided no support for even that proposition. The procedures should require more than a bare-faced claim of production by a U.S. producer – particularly where, as here, the producer admits that it does not have its own production equipment to produce such product.

In particular, the Department should require that objectors file a surrebuttal, responding in detail with factual support to the responses. If the surrebuttal is not filed, or does not address the issues raised in the response, the objection should be considered to be invalid and the exclusion issued.



- **There Should Be No Changes in The Eligibility Requirements for Requestors**

There should be no changes as to the eligibility of a company to make requests. It is important that the requestors have a direct tie to the U.S. market. With respect to objectors, they should be limited to actual suppliers of the exact product at issue.

- **The New Section 232 Portal is Improved, But Further Changes Are Needed**

The new portal is a significant improvement over the original portal, but should be further improved. While the new portal, through the use of the auto fill-in function, simplifies the preparation of requests, it continues to generate errors. The portal does not provide any method for modifying or correcting a request once filed. Thus even a small error will require the re-submission of an entirely new request. While the “Dashboard” provides an improved method of tracking requests, the new portal does not provide notifications of the status of the requests and key actions such as the posting of the requests.

BIS should also commit to the posting of petitions within a reasonable time (7 days) of the filing, and if BIS decides not to post a petition, it should notify the requestor of this decision and the basis for this decision.

- **The Rebuttal and Sur-rebuttal Process Needs Further Refinement**

The rebuttal and sur-rebuttal process established by the September 2018 rule has improved the process, but has not yet created a fair process. The exclusion and objection process entails requestors stating that a particular product is not (or cannot be) produced domestically in a sufficient and reasonably available amount or of a satisfactory quality, and objectors stating the opposite, with the Commerce Department then choosing the winners (domestic steel producers, by and large) and losers without enumerating any reason or providing consistent responses. As a result, the process is completely arbitrary



and unpredictable: an requestor seeking an exclusion for a product might get a denial one day, while another requestor—or even the same requestor—might obtain an exclusion for the very same product the very next day. And because every variation of every product must be submitted separately by every person seeking an exclusion, the result is thousands of requests, objections, rebuttals and surrebuttals that appear on their fact to be complex, but in fact contain no more than a sentence or two of reasoning. The net result is that the process may provide the appearance of rigor while the reality is quite different.

The reality is that substantive extent of the back and forth, particularly in the case of the objections, amounts to no more than the same, non-substantive yourwordagainstmine that is functionally imposed by the exclusion regime. Further complicating this is a relative lack of denials, and to the extent that any denials are issued, they lack any specificity.

Often the BIS does not issue denials, but rather acts by not acting and leaving requests “open” and “pending”. When the BIS does issue a denial, it is often formulaic. Such decision memorandum are devoid of analytical substance, reciting boilerplate language and product specifications before stating nothing other than the Bureau’s inscrutable conclusion that “the product . . . is produced in the United States in a sufficiently and reasonably available amount and of a satisfactory quality.”

The BIS should, as part of this process, issue more detailed determinations including providing the reason for denial. If the denial is based on domestic producer allegations of production, an analysis should be provided of these allegations.

- **The BIS Should Clarify the Factors Considered in Rendering Decisions on Exclusion Requests**

An important step that should be taken is the disclosure of the criteria used in rendering decisions. The current process is a black box without transparency, ill-defined criteria and is arbitrary and capricious. Objections filed by domestic manufacturers are not required to be in the form of an offer to supply the product nor supported by any evidence of production. Further, some domestic producers object to certain requestors but not others that file the exact same request for an exemption on the exact same product. The purpose



of the 232 exclusion process is to ensure that U.S. end users have access to product which would otherwise be restricted. Whether the product is provided company X or company Y is ultimately irrelevant to the process. The 232 process was not intended to choose winners.

It is important to note that the Department of Commerce’s Office of the Inspector General issued a Management Alert to Secretary Ross on October 28, 2019. This is a clear indication that this process is not transparent and that department officials were not including all discussions, conversations, etc. with domestic industry in the official record. Further, “the BIS changed an internal criterion used to review exclusion requests before posting them online at the request of an objector, creating the perception of undue influence”. The OIG recommended the BIS immediately take action to ensure transparency and implement certain actions:

- (1) regarding all decisions as final once they are posted online, or amending the rules to allow for appeals;
- (2) creating a formal process for modifying internal criteria that is used to review exclusion requests, in order to ensure internal criteria are properly vetted and approved prior to implementation; and
- (3) documenting all discussions with interested parties, and directing all emails concerning specific exclusion requests to BIS’ official organizational email addresses, to ensure that the correspondence becomes part of the official record.

As part of this process, and to help reach the goal of clarity, the BIS should clearly enumerate the criteria used in evaluating these exclusion requests.

- **The Requests Should Cover a Range of Products**

Under the current process, requests are for a very specifically defined product meeting a very tight range of chemical, physical and dimensional specifications. This results in multiple exclusion requests and complicates the process. Further complicating this, in some instances, approvals are granted on some size variations but not others without regard to objections stipulating size dimensions renders the process burdensome on all parties. Variations in chemical, physical and dimensional ranges should be allowed. This



variance should be at least +/- 3 percent. This percentage is standard measure used by many other government agencies when testing for various standards requirements.

- **The Identity of The Requestor Should Not be Publicly Disclosed**

Magellan submits that the exclusion request should not publicly disclose the name of the requestor. The question before the BIS is the availability of the material, and not the name of the supplier. Disclosure of the name of the requestor could result in the domestic producer being able to discriminate between requestors, objecting to those requests for competitors and not objecting to requests by allies. The exclusion process should not be used for commercial competition and by removing the identity of the requestor from the public version of any request, such commercial competition would be reduced.

- **Other Issues**

The current exclusion process is overly complex. Requestors must submit written exclusion requests for individual products, one by one, for any and all slight variations on a product. A single requestor can submit hundreds of exclusion requests for exemption if a single variation in the product is made. For example, 120 submissions would be required to request an exclusion for rods that vary in diameter measurements based on 1/16th of an inch ranging from ½ inch to 8 inch. If several grades of steel are involved, the number of requests further increases. These are essentially the same product but in slightly different sizes. The burden on the filers as well as on the Department of Commerce is onerous and unnecessary.

This is not a process to adjudicate tariff exclusions fairly, but rather one designed to engender meaningless churn, while leaving the adjudicators free to pick winners and losers based on impermissible preferences rather than any coherent set of criteria.

Magellan acquires and distributes products from both domestic and foreign steel producers. Many of these products cannot be adequately produced domestically. Magellan directly, and the end users and ultimately the U.S. consumers indirectly, are being forced to pay 25% duties on those products despite the President's express directive that such



products be excluded from the section 232 duties. Insubstantial objections—or even objections based on false or materially misleading claims—are routinely rubberstamped by unidentified reviewers using undisclosed criteria. The end result is a rigged game, providing a façade of due process behind which favored domestic manufacturers call the shots.

Of particular concern are those petitions being filed on the exact same product by two or more requestors. The domestic manufacturers will not object to requests by one company but will object to contemporaneous requests by another company. This inconsistency thus allows one US entity to get an advantage over another perhaps due to the personal feelings or competitive nature of one provider over another. It also highlights the lack of coordination within the Commerce review system. It appears that the Department does not appear to know when one domestic company objects to one requestor but not to the requests of another.

Further, the system is not coordinated regarding notifications. There is no system that will notify a requestor when its petition is posted; when an objection is posted; when Commerce has advanced its consideration; nor in a timely fashion when a petition has been granted or denied. The system should provide direct notifications to requestors.

III. Response to Specific Questions

- **Should the BIS allow One-Year Blanket Approvals of Exclusions?**

Magellan submits that the BIS should allow one-year blanket approvals of exclusions for product types that have received no objections. Further, this blanket approval should be expanded to include exclusions for product types which have received a less than 10% objection rate. The onus for removing a product from exemption eligibility should be on the domestic industry to demonstrate what it has done over the past twelve months to be able to produce the good in question. That response must indicate any new investments, new products that have come on line, the ability of the new machinery to produce and in what quantities and a demonstration that it is currently producing such product or similar product for at least the past three months and can meet the production requirements in full



for the exemption at issue. Absent any request for removal from an exemption, the exemption should be automatically renewed with notification sent to the petitioner. If a domestic industry files a petition to remove or reverse a current exemption, the petitioner must be allowed to rebut the request for removal. If a determination is made that the product is commercially available in the United States, then the petition should be granted a six month notice of revocation to allow the current orders or goods in transit to clear under the prior exemption.

- **Should The BIS Allow One-Year Blanket Denials of Exclusions?**

Magellan disagrees with establishing an automatic one-year blanket denial of exclusions with a 100% objection rate. Unlike an increase in capacity, which as discussed above would support objections, and which would only occur after a period of time, capacity can suddenly be lost as a result of a pandemic, natural disaster or plant closing. Eliminating the flexibility of the BIS to provide exclusions in such circumstances would simply harm the interests of the U.S. end users while providing no benefit to the national security. Requestors should be allowed to file requests for exclusions of such products and should be allowed to show a change in U.S. availability which would justify the granting of the exclusion.

- **Should the BIS Establish Time-Limited Annual and Semi-Annual Windows?**

Magellan disagrees with the establishment of time limited annual and semi-annual windows for the submission of exclusion requests. The number of exclusion requests filed already places a significant burden on the requestors, the potential objectors, and the BIS. Concentrating these requests in one or two periods of time would magnify the burden. Furthermore, Business is conducted 365 days a year and needs/demands fluctuate during that time period. Businesses will be severely restricted if they are unable to seek exemptions in a timely fashion for products that may be surging in importance and use to manufacture in the United States.



- **Should the BIS Issue an Interim Denial Memo?**

Magellan submits that the issuance of interim denial memoranda is unnecessary. There should be no demand or requirement to purchase domestically available goods. The concept is commercial availability. To be commercially available means the product must meet the exact specifications of the request, must be available within the time period required, and must be in the quantity needed. U.S. end-users have a preference for U.S. produced material. Exclusions are primarily for a secondary source of material and to obtain commercially unavailable product. An interim denial memo would simply add an unnecessary level of complexity to the process – increasing the costs, and decreasing availability of critical materials to U.S. end-users and their consumers without providing any benefit to the U.S. producers.

- **Should the Department Require Requestors Show a Need for the Product**

Magellan submits that requiring a ratified contract, a statement of refusal and similar proof for the quantity requested in an exclusion request is wholly unnecessary. Demands for end-products, and thus the raw materials used to produce these end products, change over periods much shorter than one year. In order to provide the flexibility needed to respond to demand and other changes, requestors will, on occasion, have to estimate as to future demand without a specific order or contract in order to ensure sufficient material is available to meet demands. The amount of material needed can change based on many factors including the economy and natural events such as hurricanes, floods and first. The request for proof to support a request would deprive the end users of this flexibility

Furthermore, the Commerce Department can already research existing data sources to determine which goods are being imported in what quantities to a large extent. In addition, they have access to data that reports on a per company basis through CBP. *Should the Department Require Objectors to Submit Evidence of Production* Magellan submits that the Department should require objectors to submit evidence of the ability to produce



approved material of the type described in the exclusion requests in connection with any such objection. In particular, the objector should be required to address the total quantity and value of objections filed to ensure that such objectors are objecting to exclusion requests far exceeding the total U.S. production capacity. Objectors should also show that they are qualified to supply the product to the end customers, and if they are not qualified, to state the efforts made to qualify as a supplier and the amount of time normally required to qualify as a supplier.

As part of this, Objectors must demonstrate that they are currently making the specific product at issue; that they have made this product for at least two years or demonstrate new investment that has resulted in now being able to manufacture the product; that they can supply sufficient quantities in a timely fashion to meet the petitioners request and that they have excess capacity in the specific product.

- **Should the Department Set Limits on the Total Quantity of Exclusion Requests**

Magellan submits that the Department should not set limits on the total quantity of product issued to a single company based on some purportedly objective standard. The demand for steel from a particular supplier can vary significantly based on demands in the market. The needs and demands for products fluctuate year on year and within a given year. Thus, any supplier cannot determine the needs based on historical precedence. Any artificial limits would limit the flexibility of the BIS and harm the U.S. users of the steel.

- **Should Requestors Citing National Security be Required to Provide Evidence**

Magellan submits that this is unnecessary and would result in multiple definitions of the term “national security”. In imposing these 232 restrictions, the U.S. broadly defined “national security” as anything impacting U.S. economic security. In this request for comment, BIS wishes to define “national security” strictly and in the traditional sense. If



the BIS intends to be consistent, it should also allow evidence of national security concerns on a broad basis.

A second concern is that providing details about the national security in a request, even a confidential request, could itself harm the national security. Only if there is a certifiable business confidential submission process that will protect the information shared by requestor, would requiring such additional documentation be reasonable. However, numerous U.S. government websites and numerous corporate websites have been compromised and economic espionage is prevalent not only with foreign entities but among US competitors. Such information if released or shared could jeopardize not only business, relationships but also potentially domestic national security.

- **Should the BIS Define “Reasonably Available”?**

Magellan submits that the BIS should define “reasonably available”. This is part of the clarity in the standards for consideration of such requests. In defining “reasonably available: the concept of commercially available needs to be applied. This includes a delivery time which is similar to that of imported product, product of appropriate quality and in appropriate quantity. If these criteria cannot be met, then the product is not available in the US and exclusion requests should be approved. If an exclusion is denied because it is determined a domestic supplier can produce the goods in the time frame required and it fails to do so, the requestor should be granted an exclusion on an expedited basis and the domestic supplier should be precluded from objecting to such expedited request.

- **Should Requestors be Required to Show Attempts to Purchase Domestically?**

Magellan submits that requiring requestors to show attempts to purchase domestically would be overly restrictive. Many steel distributors provide materials from a number of suppliers and are thus in direct competition with the mills and operate at the same level of distribution as the mills. The customers of the distributors are the parties that seek supply quotations from both sets of suppliers. To the extent that some attempts to purchase domestically is required, domestic manufacturers should be required to submit an



offer to supply to the petitioner. The offers must meet the commercially available criteria. If legitimate offers to supply are not provided or if the domestic entities fail to respond to request to purchase in a timely fashion it shall be deemed that they cannot supply the product.

IV. Conclusion

In conclusion, Magellan submits that the current 232 procedure is flawed. The BIS should modify this procedure by:

- Providing clear and objective criteria for judging the requests;
- Examining the exclusion requests and objections to ensure that all requests are treated equally and fairly in the process;
- Issuing determinations that clearly set forth the reasoning for any determination;
- Streamlining the process by allowing a single request to cover a range of related products; and
- Reducing the politicization of the process by exempting the names of the requestors of exclusions from any public disclosure. By doing so, this will improve the fairness and legitimacy of the exclusion process.

CROWN Cork & Seal USA, Inc.
770 Township Line Road
Yardley PA, 19067



July 10, 2020

VIA REGULATIONS.GOV

Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Docket No. 200514-0140
RIN 0694-XC058
ID: BIS-2020-0012

Re: CROWN Cork & Seal USA, Inc.’s Comments in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Pursuant to the U.S. Department of Commerce Bureau of Industry and Security’s (“BIS”) Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas in the above-referenced proceeding,¹ CROWN Cork & Seal USA, Inc. (“Crown”) respectfully submits these public comments regarding the process for seeking exclusion from tariffs imposed under Section 232 of the Trade Expansion Act of 1962. These comments are timely submitted in accordance with the BIS’s instructions.²

Crown is a wholly-owned subsidiary of Crown Holdings, Inc. (“Crown Holdings”), a publicly-traded (NYSE: CCK) Pennsylvania-based company founded in 1892. Crown Holdings, through its subsidiaries, manufactures metal packaging and transit packaging in 239 plants and sales and service facilities in 47 countries. The Crown Holdings family of companies has approximately 33,000 employees with revenue of \$11.7 billion in 2019. Crown is responsible for the group’s metal packaging operations in the United States, which includes food cans, beverage cans, food and beverage can closures, jar lids, cookie tins, bottle caps, and aerosol cans. It operates 35 locations in the United States and employs approximately 3,800 people, including in Illinois, Indiana, Minnesota, Mississippi, Nebraska, New York, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington, Wisconsin and Wyoming. Crown also is building a new beverage can plant in Kentucky that should be fully operational in 2021.

To manufacture metal packaging, Crown relies on two key imports from global suppliers: tin mill steel and aluminum beverage can sheet. Crown has created an integrated, global supply chain to increase effectiveness, reduce defects, and minimize its impact on the environment. This model has enabled Crown to improve and expand (most recently in Nicholas, NY and Bowling

¹ *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441 (Dep’t Commerce May 26, 2020) (“BIS Notice”).

² BIS Notice at 31,441.

Green, KY), while protecting the thousands of manufacturing jobs it provides in the United States.

Since the Section 232 tariffs took effect, Crown has requested numerous exclusions for the tin mill steel and aluminum beverage can sheet inputs it requires to produce metal packaging domestically. Our experience has revealed a number of areas for potential improvement over BIS's current exclusion process. Based on this experience, we offer the following seven specific comments on ways to improve the process and make it more efficient and fair for U.S. manufacturers like Crown.

I. BIS Should Grant Categorical Exclusions Where the Exclusion Process Materially Alters the Competitive Landscape Among U.S. Purchasers of Metal Products for Similar Applications.

As detailed in the comments submitted by the Can Manufacturers Institute ("CMI"),³ the Section 232 tariffs and subsequent exclusion process have led to uncertainty and undue hardship in our industry, with U.S. companies diverting important resources and hundreds of hours to navigating the complex and often unpredictable exclusion process. Throughout this process, we have seen inconsistencies in BIS's rulings, both substantively and procedurally. For example, some requests have been granted within 60 days after submittal while others remain pending for more than 18 months.

An unfortunate result of BIS's rulings has been to create winners and losers in the metal packaging industry as certain producers gain access to significantly lower-cost raw material than their direct competitors in the U.S. market. For example, BIS has inadvertently created a huge competitive advantage for one U.S. steel aerosol can producer at the expense of other U.S. steel aerosol can producers. BIS has done this by granting most, if not all, of the one aerosol can producer's requests for the laminated tin-free steel that is the only raw material usable in its production operation and denying virtually all requests for the "standard" tin mill steel that is the only raw material used in the production operations of all the other steel aerosol can manufacturers.

The effect of the structural advantage afforded to this one producer has been immediate and dramatic. Notwithstanding the fact that growth in the steel aerosol can market as a whole is static, this producer has seen a 20% growth in its sales volume and a 15% growth in its staff. Again, since the U.S. market is generally flat, all of its recent growth has come at the expense of its competitors, like Crown, who are faced with the unenviable choice to either absorb the additional tariff costs for "standard" tin mill steel or pass the tariffs through to customers. While this producer has used its competitive advantage to capture market share, other producers have been forced to lay off hundreds of U.S. workers as a result of the higher-cost raw material and imbalances created in the market.

Clearly, favoring one can maker and enabling it to thrive while others struggle was not the intention behind BIS's creation of the exclusion request process, but it has been the result. The marketplace is well aware of this fact, and the uneven impact of BIS's process has now been

³ Can Manufacturers Institute comments in response to the "Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs" at 1-2.

more widely recognized outside the industry by national media, which has reported on the disparate results of the exclusion process in the can industry.⁴

This “winners and losers” problem created by the Section 232 exclusion process has a particular urgency in the metal packaging sector, which, though especially illustrative of the shortcomings of the current process, is not unique. For the metal packaging industry, and other sectors where the competitive landscape has been materially altered by this process, BIS should grant categorical exclusions to level the playing field in the U.S. market and to avoid choosing between market participants. BIS has the power to grant blanket exclusions and has contemplated doing so since the exclusion process was first announced two years ago.⁵

Indeed, the Section 301 exclusions on imports from China are currently administered via this type of blanket exclusion for specific products, rather than the more limited exclusions for specific requesters and importers implemented by BIS for the Section 232 exclusion process.⁶ Adoption of similar categorical exclusions for metal packaging products in this instance would simplify the exclusion process and restore balance to an industry that has been distorted by BIS’s current process, enabling participants to again compete fairly.⁷

II. To Lessen the Burden on Both the BIS and the Requesters, the Section 232 Exclusion Request Portal Should Offer Greater Flexibility in Each Exclusion Request Filing by (A) Allowing Requesters to (i) Identify More Than One Importer of Record, and (ii) Group Like Specifications into a Single Exclusion Request Filing, and (B) Permitting the Entered Chemical Composition for Aluminum Material to Match the Specifications of the Aluminum Association

A. The Portal Should Allow Requesters to Designate Multiple Importers of Record and Size Specifications

The information fields in the Section 232 Portal should be revised to enable requesters to submit a single request that (i) allows requesters to group a reasonable range of like specifications into a single filing and (ii) allows the requester to designate alternate suppliers in more than one country and more than one importer of record (“IOR”). These changes will lessen the number of exclusion requests submitted and thus the burden on the BIS.

In accordance with BIS’s current instructions, Crown must submit a separate exclusion request for each specification and for each IOR. To maintain flexibility in our supply chain and

⁴ See David Lawder, RPT-Why one US can maker avoids Trump's tariffs while rivals pay up, Reuters.com (June 14, 2019), available at <https://af.reuters.com/article/metalsNews/idAFL2N23L04K>.

⁵ *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum*, 83 Fed. Reg. 46,026, 46,035 (Dep’t Commerce Sept. 11, 2018) (“The Secretary does have the discretion to make broader exclusions available to all importers if the Department finds the circumstances warrant, and the Secretary will exercise this discretion as appropriate.”)

⁶ See, e.g., *Notice of Product Exclusions: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 85 Fed. Reg. 35,975 (USTR June 12, 2020).

⁷ If the Department of Commerce is unwilling or unable to grant a categorical exclusion, as noted above, it can produce the same economic result by approving or denying all exclusion requests for the same type of product. Continued rigid application of the narrow evaluation criteria for each individual exclusion request will entirely reorganize the market.

ensure adequate supply to meet our needs, each request must contain our total needs for that specification, but we ultimately may purchase none, some or all of our needs from each of the suppliers designated in the request. In the aggregate, we will purchase no more than the quantity specified in each exclusion request, but having to file each request separately greatly increases the number of submissions to BIS.

If BIS allowed Crown to file one request for separate IORs covering our various suppliers, we would have the business discretion to allocate purchases among suppliers in the most cost-efficient way. Given the lack of consistent decisions for similar products, as detailed in Section I above, filing separate exclusion requests for each IOR compounds the possibility of having a request granted for one supplier and not others, which would create an incentive for us to purchase all of our import needs from that single supplier. Such single sourcing is contrary to Crown's "World-Class Performance" supply chain framework, which is essential to maintaining quality, improving efficiency, and ultimately meeting the needs of our U.S. customers.

Similarly, the current requirement that a separate request be submitted for each size specification creates undue hardship for requesters, who are forced to file multiple requests to ensure the sufficient availability for the year. The narrow specification requirements also lead to inaccuracies in the total quantity requested due to product shifting and natural changes in demand, which in certain cases have led to one granted exclusion exceeding the permissible quantity, while another remains unused. These filing requirements serve no purpose in a market where, as detailed below, supply falls short of demand for the material as a whole, regardless of the size.

If, in its most recent filings, Crown were allowed to file a single request for aluminum can sheet that (i) encompasses a gauge range of 0.0100 – 0.0108 inches, (ii) encompasses a width range of 60-80 inches, and (iii) enables the identification of IORs for material from multiple suppliers, then Crown would have filed only one exclusion request for its 2020 import needs, not five. Expanding the IOR and dimensional limitations in the filing portal would therefore reduce the burden for both Crown in filing these repetitive exclusion requests and for BIS in ruling upon them.

B. For Aluminum Exclusion Requests, the Portal Should Be Modified to Eliminate Requirements in the Chemical Composition Field that Are Inconsistent with the Aluminum Association Specifications

The current Section 232 Exclusion Request portal contains certain limitations for aluminum exclusion requests to be successfully filed and posted by BIS, including that the content of aluminum be specified and that a maximum be designated for each chemical with a minimum content listed. However, these requirements are often inconsistent with the Aluminum Association ("AA") specifications for a particular product, which do not include the aluminum content and frequently list a minimum chemical composition with no corresponding maximum.

For example, AA 3104 lists a minimum content for silicon, iron, zinc, titanium, gallium, and vanadium, but no maximum. It also does not specify a maximum range for aluminum. So, the submission of an exclusion request for AA 3104 material requires the requester to (i) assume a maximum content, which may or may not be consistent with the actual mill certifications, and

(ii) calculate an aluminum content based on the remainder of all chemicals designated in the AA specifications, which again may or may not be consistent with the composition of the material imported.

These arbitrary requirements create an added burden for requesters, potentially delay the exclusion process, and unnecessarily limit the scope of granted exclusions. They also add to the burden of BIS in reviewing and ruling upon exclusions, which are frequently preliminarily rejected for these types of issues before ultimately being posted to the BIS portal for comment, adding an additional layer of administrative action and increasing the time that it takes to receive a ruling on a particular request.

III. Requests Should Be Ruled Upon Within Defined Periods to Increase the Predictability of the Exclusion Process

BIS should implement defined periods to rule upon exclusion requests in certain industries. If the time period for action at BIS expires, the exclusion request should be deemed approved. These time periods could be tailored to the specific dynamics of the relevant metal market and would be more meaningful than BIS's current soft target that the review period "*normally*" will not exceed 106 days.⁸

For example, for tin mill steel, which is sold almost exclusively through 1-year (calendar year) agreements, BIS should provide a decision on exclusion requests within 60 days of the final comment submission window (*i.e.*, the close of the objection or surrebuttal period, as applicable). If this 60-day period lapses without action by BIS, the application should be deemed approved and available for use by the requester upon activation with U.S. Customs and Border Protection ("CBP").

This change will increase the reliability for requesters, which may have certain requests granted in less than 60 days, while others remain pending for over one year. Defined time limits will eliminate this uncertainty and give requesters like Crown greater predictability when making purchasing decisions and negotiating supplier contracts for the upcoming purchasing year.

IV. The Exclusion Quantity Should Be Adjusted Based on the Length of Time the Exclusion Is Pending

Given the wide variance in the amount of time it takes for requests to be granted by BIS, and the corresponding length of any granted exclusion, which is retroactive to the filing date and valid for one year from the signing of the decision memorandum, BIS should adjust the quantity of the exclusion based on its validity period. Specifically, the quantity delineated in the exclusion request should be assumed to be for a one-year period, and BIS should adjust that amount based on the total length of time for the granted exclusion. This would ensure that a granted request covers the full extent of a requester's needs for the period in which that exclusion is valid.

Again, in light of the inconsistencies in the retroactivity periods for granted exclusions, it is impossible for a requester to forecast the quantity it will need for an undefined exclusion

⁸ *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum*, 83 Fed. Reg. 46,038 at 46,060 (Dep't Commerce Sept. 11, 2018) (emphasis added).

period. Adjusting the quantity of the exclusion will ensure that granted exclusions have a reasonable connection to the requester's need for the full exclusion period granted by BIS. It will also reduce the number of requests that must be filed and ruled upon by eliminating the need to refile identical requests when the quantity under a granted exclusion is exceeded before that exclusion expires.

V. Whether a Product is “Available” from a Domestic Producer Should Be Defined on the Basis of “On Time in Full” Delivery

Per the September 11, 2018 notice, in order for a domestic producer to object to an exclusion request, its steel or aluminum product must be available “immediately,” which is defined as “produced or could be produced and delivered ‘*within eight weeks*’ in the amount needed for the business activities described in the exclusion request.”⁹ However, BIS’s definition of availability is based on the wrong metric. In reviewing the availability of a product from domestic producers, BIS should consider the rate of “on time in full” delivery, rather than the quoted lead-time. This is a more accurate measure of domestic availability than lead-time, which can vary drastically from the amount originally quoted.

In Crown’s experience, this problem is particularly acute in the steel industry. The quality and on-time delivery performance of U.S. mills is significantly worse than foreign suppliers. Even if a domestic producer is capable of producing a product, forcing downstream U.S. manufacturers like Crown to rely on lower-quality product and inconsistent on-time delivery severely strains and disrupts operations. The immediate availability standard does not properly account for the frequent quality and delivery issues that make exclusive U.S. sourcing, if it were even possible, an unreliable option for our business.

Product that is delivered by U.S. steel producers often has significant quality problems, which slows the production process, increases unit production costs, and, in some cases, may even require costly modifications to production equipment. Even if product is delivered “immediately” it is unusable and thus “unavailable” if it is not of satisfactory quality.

Also, even when domestic steel producers are able to manufacture suitable product, they repeatedly and increasingly struggle to make on-time deliveries. Again, even if the product is technically “available,” untimely deliveries lead to dramatic adverse effects on our operations, including the idling of production lines and furloughing of workers in the United States. In our experience, domestic steel suppliers typically provide on time in full delivery less than 60 percent of the time.

The combination of high levels of non-conforming product and low on-time delivery from domestic steel producers can mean the difference between success and failure for a company in our industry. These factors are not currently considered by BIS or sufficiently captured by its requirement that product be “immediately” available. We therefore request that

⁹ *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum*, 83 Fed. Reg. 46,038 (Dep’t Commerce Sept. 11, 2018) (emphasis added).

the standard be amended such that availability is considered on the basis of “On Time in Full” delivery, rather than simply lead time.

VI. BIS Should More Carefully Scrutinize Statements in Objections from U.S. Producers Regarding Available Capacity

In reviewing the validity of objections filed by a domestic producer, BIS should broadly consider all its objections submitted and the total quantity of material that the objector claims to be capable of producing across multiple objections to determine whether the comprehensive volume exceeds its maximum production capacity. This is a chronic problem in the tin mill steel sector.

Despite what they say in their objections, U.S. steel mills are incapable of meeting aggregate U.S. tin mill demand and have no plans to increase capacity. Tin mill steel, which represents 1-2% of U.S. steel use, is a small niche category in the overall industry. To make tin mill steel, the manufacturer must allow the material to be processed fully and not divert it for sale as hot-rolled or cold-rolled steel. So, in a way tin mill capacity is limited by production of those other products. Given its small presence in the market, most U.S. producers have shifted investments and available production capacity away from tin mill to higher-margin rolled products. Unfortunately, in the general tin mill market, the two remaining integrated U.S. tin mill suppliers and the two remaining rolling mills do not produce enough tin mill to supply the U.S. market and have no near-term plans to close the gap.

The fundamental reality of this market is that domestic producers cannot or will not make enough quality tin mill steel to supply domestic demand. Yet, these same producers continue to object to U.S. can makers’ exclusion requests for this input, using the format of the objection process to mask the realities of their production capacity. The capacity numbers cited by domestic producers’ in objections are “pie-in-the-sky,” best case calculations. They assume that all capacity *capable* of producing tinplate will be dedicated as such, and that none will be diverted to other, higher-margin hot-rolled and cold-rolled applications, as has been the practical reality for several years. They have never materialized and will not materialize in the future, even with a substantial price increase.

Moreover, U.S. producers claim to be capable of supplying each and every specification that is the subject of their objections by all tin mill consumers. While a producer may be able to provide any *single* specification for any *single* downstream producer, it cannot cover *all* of the specifications required by *all* requestors in our industry. To look at each individual exclusion request independently is to consider the supply situation in a vacuum. It would be more accurate and a better reflection of U.S. producers’ true capacity to look at the comprehensive volume of all requests objected to by a domestic producer and determine whether the objector has the ability to fulfil the full volume it claims.

In short, while US producers can supply all the tin mill customers some of the time, and some of the tin mill customers all the time, they cannot supply all the tin mill customers all the time. At present, when considering objections, BIS does not in any way verify the production capabilities of U.S. producers or their capacity to actually produce the aggregate volumes they claim. At minimum, BIS should more closely analyze objections to multiple exclusion requests

submitted by the same U.S. producers and consider *in total* whether the demand requested exceeds their ability to supply.

VII. BIS Should Consider Granting Longer Exclusions to Match the Length of Supply Contracts in Sectors Where Long-Term Agreements Prevail and Domestic Production Cannot Supply Domestic Demand

In the aluminum beverage can industry, supply contracts for periods in excess of one-year prevail and domestic producers cannot produce enough can sheet to satisfy domestic demand. Contracts with aluminum can sheet suppliers for a three-year period are very common. In order to avoid disrupting the preferred contracting process in an industry where structural supply deficiencies will persist into the foreseeable future, and to promote cost certainty for both suppliers and customers, BIS should consider exclusion periods that match negotiated contract lengths for a particular product. Specifically, BIS should add a field to the Section 232 portal to determine whether the exclusion of material covered by the request is necessary to fulfil existing contractual requirements and, if so, allow requesters to (i) specify the length of the contract and (ii) request an exclusion corresponding to the contract length.

Matching the exclusion period to the contract length will provide greater certainty to U.S. manufacturers like Crown, who rely on imported inputs for downstream production. Longer exclusions will also reduce the number of identical and repetitive submissions to BIS each year in fulfillment of the same contract.

CONCLUSION

We appreciate BIS's consideration of these comments and hope that it will consider these suggested changes to improve the efficiency, functionality, and predictability of the exclusion request process.

Very truly yours,



Carlos Baila CB
Senior Vice President – Global Procurement
Crown Cork & Seal USA, Inc.



Comments of the
Motor & Equipment Manufacturers Association
to
U.S. Department of Commerce, Bureau of Industry and Security
RE: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum
Import Tariffs and Quotas
Docket No. BIS–2020–0012; RIN 0694–XC058
July 10, 2020

The Motor & Equipment Manufacturers Association (MEMA) submits these comments in response to the U.S. Department of Commerce, Bureau of Industry and Security (BIS) notice of inquiry with request for comments published May 26, 2020.¹

MEMA is the nation’s leading trade association representing motor vehicle parts suppliers and represents over 1,000 companies that manufacture components, technologies, and systems for use in passenger vehicles and heavy trucks.² MEMA members provide original equipment (OE) components to new vehicles, as well as aftermarket parts to service, maintain, and repair millions of vehicles on the road today. In total, vehicle parts manufacturers represent the largest sector of manufacturing jobs in the United States, directly employing over 871,000 people in all 50 states and generating 2.4 percent of U.S. GDP. Our members lead the way in developing advanced, transformative technologies that enable safer, smarter, and more efficient vehicles.

The broad negative impact of Sec. 232 and other tariffs cannot be understated. Vehicle parts manufacturers have been squeezed by a cumulative impact of increased material costs, constrained sourcing, and other concurrent tariff actions, which places them at a competitive disadvantage to their global counterparts. Parts suppliers support and rely on a strong domestic steel and aluminum industry to provide a wide range of raw and semi-finished materials to manufacture motor vehicle components and systems in the United States. However, many specialty steel materials used in vehicle components are not available domestically. Often, there are few producers in the world – in some cases only one or two – that can source the grade of specialty materials needed to meet component specifications. These specialty producers operate in small, niche markets of low-volume, high-strength materials manufactured to stringent performance specifications (often for safety-critical, high-durability applications). Additionally, it can take many years for a supplier to test and validate that a material producer’s product will meet the specifications necessary to perform as required for many of these safety-critical parts. Specialty materials and components imported by vehicle suppliers are used by hundreds of parts manufacturers. Continued access to these specialized products is critical to the industry and our national economy. Additionally, many of the motor vehicle parts manufacturers who rely on these

¹ 85 Fed Reg at 31441

² MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA).

specialty materials in turn export the components manufactured in the U.S. using these specialty materials.

Many of our members have participated in the product exclusion application process, which commenced in mid-2018. While MEMA appreciated some of the adjustments that BIS made to the exclusions process³ – such as the addition of rebuttal and surrebuttal submissions – there continues to be prevailing concerns among our members. These concerns are primarily that the process is not sufficiently transparent or managed equitably. Members continue to experience unresponsiveness from the Department and BIS, despite repeated outreach to them. Claims made by objectors are not fully scrutinized and verified. Additionally, the continuous monitoring of rolling submissions/decisions is onerous, creating an ongoing burden on resources and exacerbating uncertainty. To illustrate these concerns, MEMA submits the following anecdotes.

Lack of Transparency, Impartiality, and Responsiveness

One of our members shared the following frustrating scenario. This vehicle parts supplier has a required steel specification – which was developed by the company’s metallurgical engineers and used for over 30 years in global purchases – that provides a range of values for each element within the steel product. That steel specification range of certain elements took the product outside of one classification. However, the actual imported product’s specification kept it within that classification. The HTS classification of any importation depends on the specific value of the elements in that imported product; these values are described on the mill sheets that must come with each import.

Nearly one year after the exclusion request was filed, the application was denied because this classification did not meet the specification classification. Nevertheless, both classifications were, in fact, correct. Commerce and BIS process does not appear to account for this type of scenario. Commerce/BIS did not conduct any further outreach to further examine, understand, and verify this scenario with the applicant. After the denial, the supplier repeatedly called, emailed, directly appealed, and used third-party interventions to no avail. To date, there has been no response from any Commerce Department representatives.

Another member characterized the product exclusion application decision-making process as an arbitrary and inequitable exercise. Some companies further noted that there have been situations in which two or more companies submitted an exclusion seeking to import the identical product and with similar application circumstances. The decisions appeared to be inconsistent, and inevitably created market inequities based on a largely unknown and unknowable rationale. To date, Commerce has not provided a public explanation for its decision-making process. Additionally, it has been observed (as will be exemplified in the cases below) that applications have been denied simply because an objection was submitted and that supporting evidence provided by an applicant during the rebuttal/surrebuttal process does not appear to have been fully examined or considered by Commerce and BIS. Considering the aforementioned situation where a competitor submits an application for the same good but does not receive an objection and is subsequently granted an exclusion – this makes the process inadequate, inequitable, and inconsistent.

³ 83 Fed Reg at 46026

Objector Claims Not Verified

Before continuing with the anecdote, it is worth noting that the vehicle supply chain typically operates at nearly 100 percent capacity utilization and often under tight production schedules. Suppliers have complex processes to develop and manufacture the components in the volumes needed and the production logistics for “just-in-time” final assembly meticulously aligned with vehicle manufacturers’ production. Furthermore, components and systems are often subject to extensive customer specifications and performance standards as well as to safety and environmental regulations that must be extensively validated. Sourcing disruptions can result in displaced capital and add significant risks for the parts manufacturer. Typically, parts manufacturers are subject to crippling penalties owed to their vehicle manufacturer customers if their parts are late.

In one case, an original equipment (OE) parts manufacturer (Company A) purchased substantial quantities of specialty steel from one domestic steel manufacturer (Company Z). Unfortunately, over the course of one year, Company Z was repeatedly late with deliveries to Company A’s parts manufacturing facilities. During that year, the Company A repeatedly tried to work with Company Z to ensure timely deliveries, with little success. In the interim, Company A submitted a product exclusion application. In turn, Company Z submitted an objection to Company A’s application, despite them being unable to supply the current orders to Company A. Accompanying the Company Z’s objection was a vague press release indicating their company’s potential for future new capacity; no further evidence was submitted to support those claims. To the best of Company A’s knowledge, no additional actual capacity materialized from Company Z. In fact, Company A submitted to the Commerce Department detailed order information and paperwork demonstrating Company Z’s continuously late deliveries and insufficient product capacity during that period. Despite this evidence, Commerce denied Company A’s exclusion requests on the grounds that Company A could obtain that steel in the United States in sufficient quantities.

In this next case, the OE parts manufacturer (Company B) utilizes specialty steel for one of their parts. Most U.S. steel producers focus on high-volume, mass-produced materials as opposed to the specialty materials that are more niche, low-volume materials. Specialty materials are typically only made by a limited number of producers – sometimes there are only one or two in the world. As previously noted, these highly specialized materials are typically used for high-durability, safety-critical components and must be at the grade and quantity necessary to meet vehicle industry component specifications and stringent testing. Company B purchases as much domestic U.S. steel as possible, but when it cannot find domestic materials in the quantities or specifications it needs, the company must supplement its domestic purchases with imported material. In this case, Company B sourced the required specialty steel from Japan. In the past, Company B has gone through their qualifications process (which takes between one and two years) with various U.S. steel companies that claim they can produce the specialty steel Company B requires. Unfortunately, over the years, these domestic companies were unable to pass Company B’s qualification tests. In fact, one month before the Sec. 232 steel tariffs were imposed in 2018, one prospective domestic steel manufacturer (Company Y) failed Company B’s qualification tests. Their failure notwithstanding, Company Y still filed an objection to Company B’s product exclusion application stating that it could make that particular product. Company B submitted evidence to the contrary that included copies of Company Y’s failed qualification test results and other documentation showing a lack of domestic capacity for this specialty steel. As in the previous case, despite

Company B's evidence and counterpoints, the application was denied on the grounds that Company B could obtain that steel in the United States in sufficient quantities and necessary quality.

Requests for Volumes Significantly Higher than Historic Data and Exceeds Market Demand

Members of ours that utilize aluminum have observed that some parties try to manipulate the process by requesting volumes of product that are exponentially higher than historical volume and market demand data show. Nevertheless, requests like this have been granted for excessive amounts of product than can be supported by the market. The significant downward pressure on domestic manufacturers puts them at a cost disadvantage. During the application review process, MEMA urges the Commerce Department and BIS to ensure that the requested volumes are sensible in context to the applicant and are in proportion to historical import data as well as to U.S. market demand. In situations where the applicant is making such excessively high-volume requests, the applicant must validate and defend these types of claims, and Commerce should fully analyze all relevant information before making its determination.

Requests for Imports from Countries Subject to Antidumping and Countervailing Duties

As other commenters have noted, MEMA supports recommendations that Commerce automatically deny exclusion requests for imports from countries subject to antidumping and countervailing duties. Commerce and BIS would be well justified not to grant such applications because it would reinforce the AD-CVD determination that their imports harm U.S. industry. Such entities should not be rewarded by receiving exemptions on Section 232 tariffs.

"Rolling" Process Adds to Administrative Burden and Exacerbates Uncertainty

Because the process is structured to submit/receive applications on a rolling basis, it has created an additional administrative burden on companies that must continuously monitor, evaluate, and respond, as necessary, to their applications. While some companies may only have a few submissions, many more have dozens or hundreds of submissions to monitor – all with varying timetables and each with unique information and evidence related to the specific product exclusion request. Whether a few or many – these submissions require significant resources and constant monitoring. Resources are being increasingly constrained – particularly in light of the current economic downturn due to the global pandemic. Therefore, these administrative burdens will take a toll on many companies – many of which are under extreme economic pressure. The rolling application process and variable timelines also create uncertainty and make it difficult for all parties to plan accordingly – the downstream users as well as the steel and aluminum material manufacturers. Therefore, BIS should re-evaluate the efficacy of this type of system and consider establishing schedules for submitting product exclusion applications, submitting objections, rebuttals, and surrebuttals, and issuing determinations in such a way that is equitable, manageable, and practical. Having a clearly defined schedule and structure to the process will be to the benefit of all parties, including the Commerce Department resources that are dedicated to administering the program. Furthermore, having a workable schedule cadence will enable BIS to have more opportunities to evaluate and verify the claims submitted during the objection/rebuttal/surrebuttal period more fully.

In closing, MEMA appreciates Commerce's consideration of these comments and our members' anecdotes about their experiences with the Section 232 product exclusions process. Their stories indicate that there is room for improvement in the process – including, but not limited to, enhancing scrutiny and validation of objectors' claims, increasing communication and responsiveness from staff, and creating a structured schedule that offers more certainty and uniformity to the overall process.

For more information, please contact Leigh Merino, MEMA vice president of regulatory affairs, at lmerino@mema.org.



Comments on the U.S. Department of Commerce's (Commerce) *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*
Docket Numbers: BIS-2020-0012 RIN 0694-XC058
July 10, 2020

These comments are submitted by the Industrial Fasteners Institute (IFI) on the *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*.

Overall, IFI believes that the 232 product exclusion process lacks basic due process and procedural fairness. IFI previously provided comments regarding these concerns in May 2018 and two years later, we only have further evidence that the process lacks basic due process and procedural fairness. These comments are organized based on the questions asked by Commerce in the Federal Register notice but IFI also has the following general comments and observations.

1. **The tariffs themselves should be removed or expanded.** In our view the 232 steel and aluminum tariffs should be removed completely, or failing that, fasteners should be subject to similar protection. If that occurs, there would be no need for an exclusion process at all. We have repeatedly outlined that position to the Administration in several formats and venues. As the Administration's January 2020 action on "derivative products" proved, the tariffs cause harm to downstream users, which outnumber steel and aluminum producers by approximately 6 to 1. When fastener manufacturers have to compete with imported fasteners not subject to tariffs, and are subject to metals pricing higher than anywhere else in the world, they are at a competitive disadvantage. Further, in the case of steel, the Commerce Department's 232 report stated that the goal of the tariffs was to help the U.S. steel industry reach 80% capacity. That capacity number was reached in 2019 and sustained prior to the pandemic, yet there seems to be no end point to the tariffs. Finally, if the global tariffs are to remain, excluding Canada and Mexico from the tariffs remains very important to IFI.
2. **Objections are allowed to stop a request with little or no supporting data.** IFI believes that a clear bias exists when an objection is filed to an exclusion. Domestic producers often file objections based on simple statements to the effect that "we can make that" or "we make a similar product", but they do not have to show facts supporting their objections, nor does the system provide for monitoring in any way to determine if they subsequently supply the requestor with the domestic material needed. Quite often, while waiting for the exclusion request to be processed, the domestic manufacturer requesting the exclusion loses the business to a foreign competitor. We provide specific comments below on this issue but it is a key continuing concern.
3. **The process is too long, difficult to navigate, and contains no appeals process.** IFI members continue to report that getting answers to questions from the 232 Exclusion Team is difficult and cumbersome, requiring constant follow-up, and when answers are finally received, they are often inconsistent from one Team Member to another. In addition, the process can still take 6-9 months before a decision is made, and there is no process to appeal or question that decision. In fact, when an IFI member questioned how to appeal a decision affecting the company's ability to apply GRANTED exclusions appropriately to recover over \$10 million it received the reply "The BIS Section 232 Exclusions Process does not have any form of appeal or hearing process." IFI urges Commerce to provide a more workable solution for U.S. manufacturers trying to stay in business.

Background on the U.S. Fastener Industry and its Role in National Security

IFI has served the fastener manufacturing industry since 1931, bringing together the senior management of fastener manufacturers and our suppliers to share best practices; work together on common problems and opportunities; and address the issues of concern to fastener users, the government and the public at large. IFI

has 124 members, including 68 corporate members (56 subsidiaries) and 56 associate supplier members. Our members' facilities are located all over the United States with concentrations in California for aerospace; Michigan, Indiana, Ohio and Illinois for automotive; and the same plus Pennsylvania, New England and the South for industrial products. IFI represents approximately 85% of fastener production capacity in North America, and there are few if any products used in the pursuit of national security that do not contain fasteners. In the U.S., the fastener industry employs approximately 42,000 people at about 850 different manufacturing facilities. Individual companies range in size from around \$10 million in sales to several companies with more than \$1 billion in sales. Many of these companies are family-owned, small to mid-sized businesses. The industry runs the gamut from basic metalworking manufacturing to highly automated facilities producing products with complex designs and engineering. Many fasteners are proprietary designs covered by one or more patents.

The fastener industry is critical to all segments of our manufacturing industrial base, including the defense industry. Not a single military or commercial aircraft or their power plants can be assembled without geometrically sophisticated fastener components. In the aerospace market, U.S. fasteners are the world standard: it is estimated that over 92% of aerospace fasteners worldwide are produced by IFI member companies. All automotive vehicles require many fasteners in their powertrain, structural assembly, steering, braking and control mechanisms, including electronics. Bridges, buildings, appliances, heavy trucks, off-road vehicles, consumer and military electronics, power generation, electrical grid, water and sewer infrastructure, oil and gas exploration and production, mining, rail, shipbuilding, medical products or almost any other segment you can name – all use fasteners and lots of them.

Fastener manufacturing is a major consumer of metals, including steel and aluminum. Since fasteners can be made anywhere in the world, the U.S. industry is dependent on access to adequate supplies of globally priced raw materials such as steel and aluminum to remain globally competitive. While IFI wholeheartedly supports our domestic steel and aluminum supplier members and needs them to remain healthy, we believe the 232 process is a blunt instrument causing more harm than good to the U.S. manufacturing base. The Administration's January 24, 2020 Proclamation announcing expansion of the 232 tariffs to certain "derivative products" conceded that "the net effect of the increase of imports of these derivatives has been to erode the customer base for U.S. producers of aluminum and steel and undermine the purpose of the proclamations adjusting imports of aluminum and steel articles to remove the threatened impairment of the national security." We could not have said it better ourselves with respect to fasteners.

IFI Comments on Commerce's Topics for Potential Comments Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

IFI has provided specific comments on Commerce's list of topics for comments below:

1. *The information sought on the exclusion request, objection, rebuttal and surrebuttal forms;*

In the new portal (as compared to the prior excel template) certain fields are required to be populated which may not be applicable to every material or specification where exclusions are being requested. The process should be updated to allow for additional commentary on the specifics of specialized materials. Additionally, Commerce review prior to public posting results in false or premature rejections due to "incomplete" information which may not be applicable to that exclusion request. Commerce should review all commentary in addition to the standard request information prior to rejecting a request.

2. *Expanding or restricting eligibility requirements for requestors and objectors;*

IFI members report that they have received some exclusions EXCEPT when an objection was filed. In many cases, IFI members have rebutted the objection with facts on the objectors' claims of availability, and still were denied the exclusion. Objectors have little to no burden of proof other than to say "we can make that." IFI members have received denials of their requests on the basis of "sufficient and reasonably available amount"

even though the requestor provided specific details from the objecting companies proving that they were unable to provide the material in question.

Domestic capacity to make a product is not the same thing as the current ability and willingness to produce a needed product within a viable lead time to meet customer demands. Current contracts for raw materials cannot be changed easily or quickly so U.S. steel and aluminum consumers must have a way to continue to serve their customers in a manner that allows them to remain competitive. Commerce should not reject product exclusion requests based solely on a domestic producer's claim of capacity to make the product. In many objections, a common phrase from domestic producers remains "Although we don't make this product..." and "We have the capacity to make this product..." Commerce should only deny an exclusion request if there is a domestic metals producer that can provide the same product to customer specifications in the timeline needed by the requestor. Further, Commerce should require proof that the product has been delivered on time and to specification.

A manufacturer that uses steel or aluminum to make its product needs it available in the U.S. marketplace within reasonable lead times and to specific specifications to meet customer demands. Because our members supply to the automotive and aerospace industry, the process to change raw material suppliers is closely followed and often approved by our OEM customers. Our members have long-term contracts with their customers based on these approvals and changes to the terms of those contracts are lengthy and time-consuming.

3. *The Section 232 Exclusions Portal;*

The new portal is difficult to use. Requests may not be saved as "draft" and do not allow any editing. If an exclusion request is sent back with questions or for additional information, the requestor must fully recreate a request which is time consuming and overly burdensome to the requestor. In addition, it is difficult to get usable, downloadable information regarding the status of exclusions, quantities, etc. IFI members report that this was much easier in the excel spreadsheet format.

4. *The requirements set forth in [the original Federal Notices on the exclusions process] Federal Register Notices, 83 FR 12106, 83 FR 46026, and 84 FR 26751;*

IFI believes the answers to the other questions provided by Commerce adequately address this point.

5. *The factors considered in rendering decisions on exclusion requests;*

Specific feedback on how a decision was made should be provided to requestors. In general, rejections received have been vague and do not demonstrate a clear fact pattern regarding how a decision was reached, making it difficult to assess the factors considered. Decisions appear to be inconsistent in both the process of approving a request for public comment and in the determination of a final ruling. Because there is no appeals process, there is no way to ask for follow-up information to a denial. In addition, as noted above, IFI members have received denials of their requests on the basis of "sufficient and reasonably available amount" in spite of providing specific information from objecting companies specifying that they were unable to provide the material in question.

Another factor in the decision process must be quality, not just quantity. The Presidential Proclamations specifically note that product exclusions should consider both quantity and quality. U.S. fastener manufacturers must be able to get a product exclusion granted quickly for products that are not made in the U.S. in the quantity or quality needed to remain globally competitive.

Ideally, fastener manufacturers purchase their raw materials as close to the fastener manufacturing operation as possible because metals are heavy, bulky and expensive to ship long distances. That requires a healthy, competitive domestic metal-producing industry, able to provide the necessary raw materials at globally

competitive prices. However, even with a healthy domestic industry, history has shown that fastener manufacturers must sometimes import raw material because the specific types of metals needed are not available in the quantity, quality or form required. (Fasteners are made from round form, not sheet or flat products.) Even if the metals industry were at 80 percent capacity as recommended by Commerce and as attained prior to the pandemic, they cannot, or choose not to serve 100 percent of the U.S. market. As U.S. metals prices rose to reflect the tariffs, customers chose to buy fasteners offshore or to buy imported fasteners that are cheaper than U.S. fastener manufacturers can produce them. Even though metals prices are down from the 2018-2019 high, U.S. metals prices are higher than anywhere else in the world regardless of any tariff action. To remain competitive while the tariffs are in place, U.S. fastener manufacturers need the exclusion process to take quality into account.

6. *The information published with the decisions;*

As noted above, the incompleteness of this information makes it difficult to provide commentary on the factors used in reaching a determination. A clear fact pattern supporting the decision should be included and an appeals process should be established.

7. *The BIS website guidance and training videos;*

IFI has no specific comments.

8. *The definition of “product” governing when separate exclusion requests must be submitted; and*

As IFI noted in our May 2018 filing, the process remains burdensome and creates challenges for IFI members, specifically related to how “product” is defined by the process and the portal. An exclusion should apply to the specific product’s chemistry, and allow grouping of similar products within a certain size range. IFI members report they must submit hundreds or thousands of requests based only on a size difference. Additionally, multiple HTS codes per exemption should be allowed at the outset and should be able to be changed in the future based on new information, as manufacturers are not always the importer of record responsible for maintaining this information. In one specific instance, an IFI member was granted an exclusion for a product only to have the supplier update the HTS code, thus rendering the exclusion invalid and requiring a resubmission and restart of the process.

It is contrary to best manufacturing practices to have to use a supplier that cannot provide you an entire order of all needed sizes of that product in a reasonable time frame. Typical sourcing practices require a metals supplier to be able to supply a full range of products for a book of business that the fastener manufacturer has. The exclusion process requirement of every single size range of the same chemistry requiring a submission allows for a metals producer to object to some size ranges of the same chemistry. Ultimately, IFI believes that steels of a specific chemistry should be able to be submitted under one submission within a reasonable size range.

9. *Incorporation of steel and aluminum derivative products into the product exclusion process.*

IFI does not object to users of the selected steel/aluminum derivative products being allowed to request exclusions. We do object to the fact that fasteners from Asian countries were not included in the January 2020 expansion action. As we have noted in every one of our many communications with Commerce on the 232 steel/aluminum tariffs, it was inevitable that tariffs on a raw material would result in decreased imports of the raw material and increased imports of downstream products. To think that only the limited number of construction materials named in the January 2020 action are the only metal products affected by foreign competition as a result of the tariffs is without basis. There should be a process by which manufacturers of downstream metal products like fasteners can request additions to the “derivative products” list. And there should be a way for exclusions to be granted including opportunities for objections.

IFI's Comments on "potential revisions to the exclusion process" per the Notice of Inquiry:

1. *One-year blanket approvals of exclusion requests for product types that have received no objections as of a baseline date (see Annex 1 and 2);*

As we have noted, the process of submitting and monitoring exclusion requests is burdensome so providing a blanket approval for materials without objection would minimize the time spent monitoring requests and allow expedited recovery and minimized economic harm to the organizations within these categories.

In addition, once an exclusion is granted for a product, it should be available for all U.S. manufacturers using that product similar to the USTR process for the China 301 tariffs.

Finally, Commerce should provide detailed information on the process for extending an exclusion request beyond the initial one year. This process should be simple and should not require the same level of work as the initial request if no circumstances have changed. Commerce should ensure that the process for a successful filer to seek an extension of the original exclusion order is not overly burdensome and should require the domestic producers to provide evidence that the circumstances leading to the grant of the original exclusion order have changed (i.e., they now make the product when before they did not or the quality has improved and they provide proof they can meet technical specifications). If no facts or circumstances regarding the original exclusion request have changed, then a petitioning company should not be required to file a completely new exclusion request simply to retain the benefit of a request that has already been approved.

2. *One-year blanket denials of exclusion requests for product types that have received 100 percent objection rates and never been granted as of a baseline date (see Annex 3 and 4);*

IFI strongly opposes this action. As discussed in our May 2018 comments, lead times, the ability to qualify materials and other factors differ from case-to-case, based on sourcing decisions by an organization and depending on customer requirements. Additionally, the fact that a supplier exhibits capacity now does not guarantee that they will maintain excess capacity or be willing to serve the market for a period of one year. As previously mentioned, IFI members have great concerns that a simple objection from a domestic metal manufacturer is sufficient to deny a request. Domestic capacity to make a product is not the same thing as the current ability or willingness to produce a needed product within a viable lead time to meet customer demands. Current contracts for raw materials cannot be changed easily or quickly so U.S. steel and aluminum consumers must be able to continue to serve their customers in a manner that allows them to remain competitive. Commerce should not reject product exclusion requests based solely on a domestic producer's claim of capacity to make the product.

3. *Time-limited annual or semi-annual windows during which all product-specific exclusion requests and corresponding objections may be submitted and decided;*

Sourcing decisions are made constantly in the fastener industry. Limiting the ability to request exclusions in real time hampers the industry's ability to competitively quote and manufacture new product. Additionally, domestic capacity shortages and sourcing issues could limit availability within the United States. In such circumstances, the ability to file an exclusion request at any time is critical. The approval and review process should include standard processing times throughout the year to ensure requests can be made and quickly disposed of at any time.

4. *Issuing an interim denial memo to requestors who receive a partial approval of their exclusion request until they purchase the domestically available portion of their requested quantity;*

Our supply chain is critical to the manufacturing industry. Such a requirement would potentially impose undue burden and expense on manufacturers in instances where a domestic supplier's monthly capacity fails to meet

the requirements of a domestic manufacturer. Rather, the aggregate purchases over the twelve- month exclusion period should be the approved hurdle rather than short-term hurdles.

5. *Requiring requestors to make a good faith showing of the need for the product in the requested quantity, as well as that the product will in fact be imported in the quality and amount, and during the time period, to which they attest in the exclusion request (e.g., a ratified contract, a statement of refusal to supply the product by a domestic producer);*

See below.

6. *Requiring objectors to submit factual evidence that they can in fact manufacture the product in the quality and amount, and during the time period, to which they attest in the objection;*

This comment is relative to points 5 and 6. IFI sincerely wishes that we did not need to comment on these two points but as we have stated, IFI members have received denials of their requests on the basis of “sufficient and reasonably available amount” regardless of the “factual evidence” they have provided showing that the objecting companies were unable to provide the material in question. It should not need to be stated that both requestors and objectors should submit factual evidence during this process. Unfortunately, exclusion requests are being denied based on objections claiming “capacity” to make the requested product but providing NO evidence of such a fact. In spite of the requestor being able to provide no-quote letters and other evidence that they could not obtain the steel in the required quality and quantity, the exclusion was denied. Each party in the exclusion process should provide appropriate factual evidence in a timely manner so that Commerce can make a timely decision based on facts.

7. *Setting a limit on the total quantity of product that a single company could be granted an exclusion for based on an objective standard, such as a specified percentage increase over a three year average;*

Such a requirement would fundamentally harm businesses that are growing their domestic manufacturing. Additionally, in the instance where there is no viable domestic source such a limitation would fundamentally increase costs and reduce global competitiveness for domestic manufacturers, ultimately harming the United States manufacturing industry. That is the exact opposite of the stated goal of the tariffs. The Commerce Department should not be in the business of deciding appropriate sourcing decisions by U.S. manufacturers.

8. *Requiring that requestors citing national security reasons as a basis for an exclusion request provide specific, articulable and verifiable facts supporting such assertion (e.g., a Department of Defense contract requiring the product; a letter of concurrence from the head of a U.S. government agency or department that national security necessitates that the product be obtained in the quality, quantity and time frame requested);*

Fastener manufacturers providing product to the Department of Defense are usually at least one if not two tiers below the prime contractor and are subject to flow down requirements. The requestor can provide contract information in a confidential manner and NOT for posting on the portal but it will be from their customer who is a Defense Department customer.

9. *Clarifying that the domestic product is “reasonably available” if it can be manufactured and delivered in a time period that is equal to or less than that of the imported product, as provided by requestor in its exclusion request;*

In general, this is a good elaboration, however it is only provable after the fact: steel suppliers may still fail to deliver the product on time, or simply choose not to quote, leaving domestic manufacturers behind schedule or with no raw material. Further, no commentary on the definition of substitutability has been mentioned – in highly engineered products for safety-critical industries, such as automotive, raw material suppliers must be

qualified and are part of the contract. The fact that material CAN be sourced domestically does not mean that our customers WILL allow us to substitute, and even if they are willing to consider a substitution, the costs of testing and qualification of a new supplier are substantial.

10. Requiring that requestors, at the time of submission of their exclusion requests, demonstrate that they have tried to purchase this product domestically;

See below.

11. In the rebuttal/surrebuttal phase, requiring that both requestor and objector demonstrate in their filings that they have attempted to negotiate in good faith an agreement on the said product (i.e., producing legitimate commercial correspondence).

Points 10 and 11 seem similar to points 5 & 6 above. Good faith negotiations via email, letters of intent, etc. should be enough to show that a requestor has tried to buy domestically and that an objector could not deliver on quality or quantity. Denials should not be issued on the basis of "sufficient and reasonably available amount" if the requestor provided specific details from the objecting companies proving they were unable to provide the material in question.

Conclusion

IFI appreciates the opportunity to provide comments on the 232 product exclusion process. While we continue to believe the 232 tariffs should be lifted as soon as possible because of negative effects on downstream users and the entire U.S. manufacturing sector, so long as they remain in place we strongly support a workable product exclusion process. We strongly urge Commerce not to make this process any more burdensome than it already is for requestors. If you have any questions regarding our comments, please feel free to contact me at dwalker@indfast.org or our Washington Representative, Jennifer Baker Reid at jreid@thelaurinbakergroup.com.

Sincerely,



Dan Walker
IFI Managing Director

July 10, 2020

The Honorable Wilbur L. Ross
Secretary of Commerce
Bureau of Industry and Security
1401 Constitution Ave NW
Washington, D.C. 20230

RE: Public Comments in Response to the Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (Docket ID BIS-2020-0012; RIN 0694-XC058)

Dear Secretary Ross:

On behalf of the Alliance for American Manufacturing (AAM), representing both American workers and U.S. producers, we appreciate the opportunity to submit comments in response to the Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (Docket ID BIS-2020-0012; RIN 0694-XC058).

AAM is a non-profit, non-partisan partnership formed in 2007 by some of America's leading manufacturers and the United Steelworkers. Our mission is to strengthen American manufacturing and create new private-sector jobs through smart public policies. We believe that an innovative and growing manufacturing base is vital to America's economic and national security, as well as to providing good jobs for future generations. AAM achieves its mission through research, public education, advocacy, strategic communications, and coalition building around the issues that matter most to America's manufacturers and workers.

AAM supported the Section 232 trade investigation and subsequent action. After the imposition of the Section 232 tariffs on steel, the United States experienced marked improvements in the health of the domestic industry. Import penetration decreased and capacity utilization improved. Employment stabilized and began to recover while steelmakers announced much needed investments to upgrade existing mills and construct new ones. Tariffs on aluminum imports had a similar positive effect. Imports fell, and the sector reversed five straight years of declining output, increasing production in both 2018 and 2019.¹

However, a steady expansion of country exemptions and product exclusions, coupled with slowing growth in the overall manufacturing sector in the second half of 2019, worked to counter the goals set forth by the Department of Commerce in its Section 232 investigation and the subsequent progress measured by jobs and capital investment. The health of the domestic steel and aluminum industries have been severely weakened by the economic fallout caused by the COVID-19 pandemic. For instance, steel mill capacity utilization has approached just 50 percent in recent months with some product lines experiencing an even steeper decline.

¹ U.S. Geological Survey, 2020, Mineral Commodities Summary, Aluminum, accessed July 2 at <https://pubs.usgs.gov/periodicals/mcs2020/mcs2020-aluminum.pdf>

The United States has granted a number of blanket exemptions for countries representing significant shares of steel and aluminum imports since the Section 232 tariffs were put into place. In addition, as of early December 2019, 47,140 steel product exclusion requests had been granted, while only 13,262 had been denied.² For aluminum, 6,500 exclusions have been granted, while only 900 requests were denied.³ The impact of these exemptions and exclusions are reflected in official figures on tariff collection. In the first year of Section 232 tariffs, approximately \$6 billion in duties on steel and aluminum imports were collected. But increasing exclusions and exemptions meant only \$2.8 billion was collected in the second year.⁴ In effect, the reach of the Section 232 action has been cut in half.

While the U.S. steel and aluminum sectors have been battered by the pandemic-induced economic slowdown, China continued to produce more steel and aluminum than it could consume. As COVID-19 cases crested in China from January to March 2020, Chinese steel production grew by 3 million metric tons (MMT) to a 234.34 MMT, a 1.2 percent increase over the same period in 2019. Excess inventories peaked around 100 MMT, more than the entire U.S. industry produces in a year. The China Iron and Steel Association has conceded that “high inventory could become the norm for this year.”⁵ Aluminum production in China also increased from January to April 2020, jumping nearly 2 percent from the same period in 2019.⁶

The product exclusion process should be transparent, allow public comment from domestic producers, workers, and other stakeholders, and primarily focus on the underlying objectives of the Section 232 action – that is, to ensure that U.S. national security is strengthened by ensuring the long-term ability of our steel and aluminum sectors to supply our military, critical infrastructure, and other needs. If a product is excluded based on short-term market limitations, the exclusion should be time-limited, and we should adopt a government-wide effort to develop strategies that encourage domestic suppliers to begin production. Our inability to independently source needed medical supplies and personal protective equipment in response to the coronavirus pandemic has put a spotlight on the need to shore up U.S. manufacturing sectors necessary for catastrophic and emergency situations.

Any exemption or exclusion granted should be viewed in the context of whether it weakens or strengthens our ability to achieve the goal of meeting our critical defense and security needs through safe and assured production capacity.

Thank you for the opportunity to provide these comments. Already, the amount of imports subject to the Section 232 steel and aluminum tariffs have been reduced greatly. Faced with

² U.S. Congressional Research Service. Section 232 Investigations: Overview and Issues for Congress. (R45249; April 7, 2020). Accessed July 6 at <https://fas.org/sqp/crs/misc/R45249.pdf>

³ *ibid*

⁴ *ibid*

⁵ Zhang, Min, Nguen, Mai. (2020, April 24). *China steel inventories extend fall fueled by construction demand, nonferrous stocks ease*. Reuters. Accessed May 26 at <https://www.reuters.com/article/us-china-metals-inventories/china-steel-inventories-extend-fall-fuelled-by-construction-demand-nonferrous-stocks-ease-idUSKCN22615V>

⁶ World Aluminum Primary Aluminum Production Database (June 22, 2020). International Aluminum Institute. Accessed July 6 from <http://www.world-aluminium.org/statistics/#data>

continued, persistent global overcapacity and a severe demand shock, domestic producers of steel and aluminum cannot afford any further weakening of these safeguards.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott N. Paul". The signature is fluid and cursive, with a large, stylized initial "S" and "P".

Scott N. Paul
President
Alliance for American Manufacturing



Robert E. DeFrancesco, III
rdefrancesco@wiley.law
202.719.7473

July 10, 2020

VIA REGULATIONS.GOV

The Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: *RIN 0694-XC058: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS-2020-0012)*

Dear Assistant Secretary Ashooh,

On behalf of Century Aluminum Company (“Century”), we submit the following comments on the Department of Commerce’s notice of inquiry regarding the exclusion process for Section 232 aluminum import tariffs and quotas.

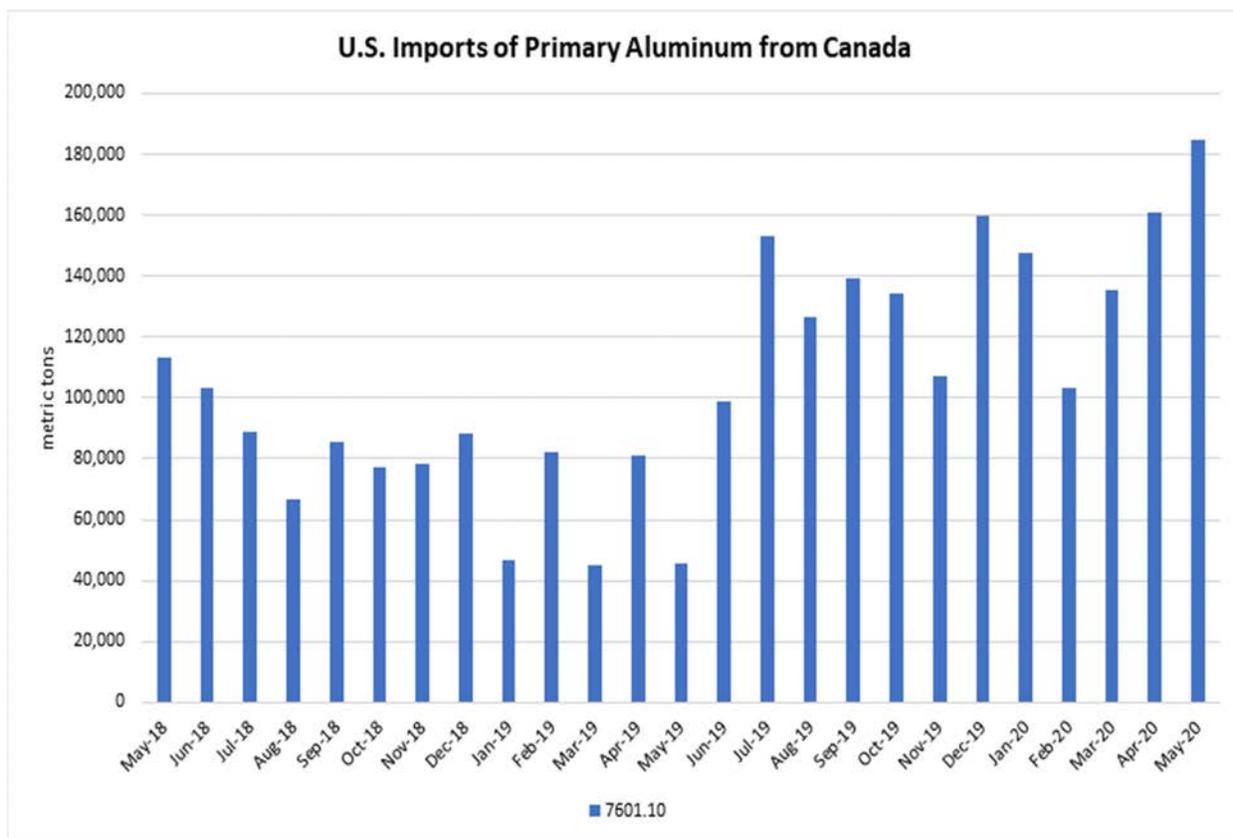
I. INTRODUCTION

Century is the largest producer of primary aluminum in the United States. Century has primary aluminum smelters in Hawesville, Kentucky; Sebree, Kentucky; and Mount Holly, South Carolina. Century is the sole producer of military-grade primary aluminum in commercial quantities in the United States. Century also produces standard-grade primary aluminum for use in military and critical infrastructure applications.

The primary aluminum industry has suffered for more than a decade from global excess capacity. The Organization for Economic Cooperation and Development has recognized the important role that foreign subsidies have played in stimulating and maintaining excess capacity,

which has a depressive effect on the global price of aluminum, whether traded or consumed domestically.¹ The sources of excess capacity are diverse and include Canada, Russia, the Gulf States, and China. As the Department indicates, as part of their exemption from the tariffs, Canada and Mexico agreed to prevent surges of aluminum.²

Two years after implementation of the tariffs, the volume of primary aluminum imports entering duty-free has soared, especially with respect to Canada.



¹ OECD, *Measuring distortions in international markets: the aluminium value chain*, OECD Trade Policy Papers, No. 218, OECD Publishing (Jan. 7, 2019).

² *Aluminum Import Monitoring and Analysis System*, 85 Fed. Reg. 23,748, 23,749 (Dep't Commerce Apr. 29, 2020) (proposed rule and request for public comment).

As a result, the domestic industry is under ongoing threat, with one analyst describing the situation for domestic smelters as “unviable.”³

Century appreciates the Department’s effort to balance the interests of the domestic industry with those of downstream consumers that genuinely cannot source certain products domestically. In Century’s view, appropriate administration of the Section 232 exclusion process is an essential component of fulfilling the President’s goal of permitting the domestic primary aluminum industry to survive and to continue to serve the security interests of the United States. However, if the flow of duty-free imports into the United States continues to surge, the domestic industry will not be sustainable.

For this reason, Century urges the Department to take steps to improve the operation of the Section 232 program, without doing so in a way that increases, on a net basis, the volume of imports that enter duty-free.

II. COMMENTS ON “SPECIFIC TOPICS”

With respect to the specific topics the Department identified in the Notice, Century offers the following comments.

A. Information Sought On The Exclusion Request, Objection, Rebuttal, And Surrebuttal Forms

In the interim rule, implementing the exclusion process, the Department indicated that “the Secretary will consider information about supply in other countries to the extent relevant to determining whether specific national security considerations warrant an exclusion.”⁴ The

³ *Aluminum Special Alert: The “Canadian Problem”, Section 232 and US aluminum premiums*, Harbor Aluminum (May 7, 2020), attached as **Exhibit 1**.

⁴ *Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum*, 83 Fed Reg 12,106, 12,108 (Dep’t Commerce Mar. 19, 2018) (interim final rule).

Department subsequently determined that it would not consider country exemptions when making a determination on an exclusion request.⁵

This approach leads to inconsistent administration of the program and renders it less effective. The price effects of the tariff, which are designed to allow domestic producers to remain competitive in light of global overcapacity, are affected by the volume of duty-free imports allowed into the market. Exclusions that increase the importation of duty-free products undermine the price effects of the tariff. The foregoing is *per se* a national security issue because it affects the viability of the domestic industry. Therefore, for the program to operate correctly, exclusion requests must be evaluated in the context of their availability from existing duty-free sources, rather than the United States alone.

To ensure that the exclusion process avoids unnecessarily increasing the total volume of duty-free imports, exclusion requests should indicate whether the product is available not only in the United States, but in an exempted country.

In addition, many of the exclusion requests for primary aluminum involve a domestic entity seeking to import primary aluminum from a foreign affiliate. Because the companies are affiliated, the requestor has no interest in sourcing from domestic producers, and the requestor therefore claims insufficient domestic production. For purposes of transparency, the exclusion request form should be amended to indicate whether, for each foreign source, that source is affiliated with the requestor or importer.

⁵ *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum*, 83 Fed. Reg. 46,026, 46,047 (Dep't Commerce Sept. 11, 2018) (interim final rule) ("Submission of Exclusion Requests for Steel Aluminum FR Notice").

B. Expanding Or Restricting Eligibility Requirements For Requestors And Objectors

In previous comments submitted to the Department, Century indicated that only those intending to consume the aluminum themselves should be permitted to request exclusions. Century noted that a number of exclusion requests were being filed by U.S. affiliates of foreign producers, and were in effect simply sales offices for the foreign parent. Century recommended that those filing exclusion requests be required to demonstrate an actual need for the product. As noted above, in the case of affiliated companies, the requestor will often justify the request on the basis of insufficient domestic availability, without regard to whether the product is in fact available domestically.

Therefore, Century continues to believe that only those intending to use the product, rather than sell it, should be permitted to request exclusions.

Century also previously noted that because aluminum does not deteriorate, it is, unlike many other metals, easily stored in warehouses. Therefore, exclusion requests should be required to indicate that the quantity requested is not only not produced in the United States, but not otherwise available in the United States.

Finally, Century is concerned about the ability of upstream producers to object, meaningfully, to requests filed with respect to downstream products. Exclusions for downstream items can directly affect demand for the U.S.-produced primary aluminum that goes into the downstream product as well. Yet the objection form does not lend itself to objections by upstream producers, but instead to producers of the product or a substitute. Further, upstream objections do not appear to be taken into account in the final decision-making. Century objected, for example, to exclusion requests for cansheet, for which the principal input is primary aluminum.

However, the Department granted the requests, considering only “applicable” objections.⁶ As a result, the total volume of exclusion requests for cansheet and cansheet bodystock exceeds **8 billion kilograms**. All of the primary aluminum that was used to produce the cansheet that has been allowed to enter duty-free has also, effectively, entered duty-free.

In fact, with respect to exclusion requests covering sheet products generally, the Department has granted exclusion requests that would represent a nearly 500% increase in total sheet imports over historic norms. This has devastating effects on the downstream demand for primary aluminum produced in the United States. In the meantime, the primary aluminum smelter in Ferndale, Washington is slated to be shuttered, the smelter in New Madrid, Missouri is in distress, and the smelter in Warrick, Indiana, is under “strategic review.”

C. The Section 232 Exclusions Portal

Century appreciates the Department’s efforts to improve the process through upgrading the exclusions portal. Century asks that the portal be modified to permit downloading of individual submissions. Century also requests that the portal be modified to permit downloading of draft submissions to facilitate final review before filing.

D. The Requirements In 83 FR 12106, 83 FR 46026, And 84 FR 26751

Century considers the inclusion of the “immediately” available criterion to be unnecessary. The form already requires the objector to indicate manufacturing and delivery times once a purchase order is received. Those provisions suffice to provide relevant information as to the timing of product delivery.

⁶ See, e.g. EXCLUSION GRANTED - Ball Metal Beverage Container Corp - Cansheet Bodystock - HTS 7606123045, Regulations.gov (July 12, 2018), available at <https://www.regulations.gov/document?D=BIS-2018-0002-2596>.

E. The Definition Of “Product” Governing When Separate Exclusion Requests Must Be Submitted

Century considers that the existing requirements provide the Department with appropriate information to render a decision. Through the objection, rebuttal, and surrebuttal processes, the Department can appropriately evaluate domestic availability, including the availability of substitute products. This holistic approach limits the ability of requestors to structure their requests so as to represent lack of sufficient domestic production when indeed domestic production is available.

III. POTENTIAL REVISIONS TO THE PROCESS

The Department also requested comments on potential revisions to the exclusion process. Century offers the following comments.

A. One Year Blanket Approvals Of Exclusion Requests For Product Types That Have Received No Objections As Of A Baseline Date

In the final rule, the Department indicated that it would grant exclusion requests that have received no objections, after assessing the request for national security concerns.⁷ Century believes it is important for the Department to indicate the basis for its national security review. As noted above, Century, as a producer of the principal input for downstream aluminum products, is effectively not able to object to most of the exclusion requests that are filed. Yet the totality of requests filed, and granted, has contributed to the functional erosion of the domestic price effects of the tariffs, undermining the effectiveness of the program and contributing to the ongoing peril the industry confronts. The Department must evaluate whether exclusions requested are consistent with historic norms and still provide for sufficient relief regardless of whether there are objections filed or not. By not taking this into consideration, the Department will see inconsistent results,

⁷ Submission of Exclusion Requests for Steel Aluminum FR Notice at 46,033.

such as those related to aluminum sheet products where domestic producers did not actively object, leading to imports of aluminum sheet representing a 500% increase above historic norms.

Moreover, many of the foreign jurisdictions that are benefiting from the exclusions contribute to the structural problem of global overcapacity in aluminum. Therefore, granting exclusions from countries that provide subsidies to export-oriented producers effectively encourages the very overcapacity the Administration is trying to terminate.

Finally, the primary aluminum industry is under extreme duress because of the limited applicability of the tariff to actual imports. Therefore, companies may quite literally not be able to afford to file objections to exclusion requests at this time. If both the exclusion and exemption processes are reformed to ensure the program operates as intended, then such companies may find themselves in a position to be able to afford to file objections. These companies should not find themselves foreclosed from objecting because they were previously unable to afford to do so, precisely because of the harmful effects of excess capacity that is exported to the United States.

B. Time Limited Annual Or Semi-Annual Windows During Which All Product-Specific Exclusion Requests And Corresponding Objections May Be Submitted And Decided

Century does not support this proposal. The number of exclusion requests filed at any one time can be overwhelming, and condensing the timeframe during which exclusion requests can be filed would exacerbate the problem. Indeed, the Department may want to clarify that it will only post a certain number of exclusion requests within a 30-day period of time, in order to avoid circumstances that have arisen in which one requesting party has filed a batch of nearly 150 requests. While requestors have an indefinite period of time to prepare requests, objectors have a limited period of time to respond. This unnecessary compression has led to administrative burdens and system functionality issues.

C. Issuing An Interim Denial Memo To Requestors Who Receive A Partial Approval Of Their Exclusion Request Until They Purchase The Domestically Available Portion Of Their Requested Quantity

Century supports this proposal, provided domestic industry capacity is indeed fully utilized. Requestors are arguing that there is insufficient domestic availability when in fact U.S. smelters are being forced to shutter due to an excess of imports not subject to the tariff. Thus, if the domestic industry agrees that there is insufficient domestic availability, then this approach is useful in ensuring that such domestic availability is in fact purchased.

D. Requiring Requestors To Make A Good Faith Showing Of The Need For The Product In The Requested Quantity, As Well As That The Product Will In Fact Be Imported In The Quality And Amount, And During The Time Period, To Which They Attest In The Exclusion Request (E.G., A Ratified Contract, A Statement Of Refusal To Supply The Product By A Domestic Producer)

Century supports this requirement. In Century's experience, requestors continue to prefer to source from overseas producers that are located in governments that subsidize production. Therefore, a decision to source based on subsidized cost becomes a request for an exclusion based on an allegation of lack of domestic availability. The entire purpose of the Section 232 program is to address this distorted global price so that domestic producers are able to stay in business.

Many requests seek imports of quantities vastly in excess of their annual requirements. This is particularly a problem for downstream products, where Century effectively has no standing to object under the current program. Century believes these requests should be limited to average quantities used in previous years, which is data already provided on the form. The Department should then verify the amounts reported with the official Customs and Border Protection ("CBP") entry documents to confirm that the requestor's historical reporting is accurate. As such, the requestor will need to specify the importer of record for those entries to allow the Department to confirm the volumes with CBP. To be clear, if an importer chooses to import volumes in excess

of that amount, the importer is not barred from doing so: the importer must simply pay the tariff, which in the case of aluminum is 10%.

Century notes that one of the problems confronting the primary aluminum industry is that so much capacity has been offshored that remaining producers were forced to reduce their product offerings. Producers are, consistent with the goal of the program, now endeavoring to expand these product offerings. In some cases, Century could produce a product today – if it had the correct mold. Century finds itself in a “Catch-22”: Requestors are aware that Century would have to acquire a mold, which itself can take several months, before Century can make the product. Once Century has the mold, it can make the product immediately. However, until Century has the orders for the product, Century cannot justify making the investment in the molds themselves. In Century’s view, whether a requestor is willing to provide to Century with an order that would allow Century to make the commitment to purchasing a mold should be a factor taken into account in whether the requestor is acting in good faith.

Finally, some alloys are subject to intellectual property protection. In Century’s experience, some requestors are refusing to license the intellectual property to domestic companies, and then use that argument to justify importing the product from foreign affiliates. Refusal to license intellectual property should also be taken into account in evaluating whether there is a good faith need for the imports. Again, if the requestor does not want to license the intellectual property, that is a business decision – and the requestor has the option of paying the tariff accordingly.

E. Requiring Objectors To Submit Factual Evidence That They Can In Fact Manufacture The Product In The Quality And Amount, And During The Time Period, To Which They Attest In The Objection

It is not clear what kind of factual evidence would be available to prove the point. As the Department’s records indicate, Century has not objected to requests for products that Century

cannot make, or for which Century cannot make a substitute. Century does not object to attesting that it can make a particular product. When the rebuttal process provides further information on the product, and Century realizes that it cannot make the product, Century withdraws its objection.

Century is concerned that an affirmative obligation to provide factual evidence in response to every exclusion request would introduce a burden that is unwarranted based on the record, and in particular based, on Century's demonstrated good faith participation in the process. As noted above, Century has been obliged to respond to nearly 150 exclusion requests in a limited period of time. The requestor controls the volume of requests, and a requirement for Century to provide evidence that it can make these products – many of which are straightforward commodity products – opens the door for requestors to impose a burden on objectors that may be nearly impossible to meet. Further, to the degree all that is required is purchasing a mold to produce the product, Century can produce the product once the customer agrees to provide Century the order. Therefore, in those instances Century can produce the product once the order is provided, but demonstrating affirmative evidence would require Century to purchase a mold prior to having received the order which is simply not commercially viable. If anything, the requestor should be required to present affirmative evidence as to why it believes Century is incapable of producing the product requested. The burden should not be placed on the U.S. producer to prove a negative.

F. Setting A Limit On The Total Quantity Of A Product That A Single Company Could Be Granted An Exclusion For Based On An Objective Standard, Such As A Specified Percentage Increase Over A Three-Year Average

Many requests seek imports of quantities vastly in excess of the requestors' annual requirements. This poses a particular problem for downstream products, where the Department has effectively not allowed upstream producers to object.

In light of concerns over demand conditions for aluminum given the public health crisis, Century does not support permitting an increase in volume over the historical average, which is currently part of the reporting requirement. There is concern that those countries already subsidizing their aluminum industries will increase those subsidies to preserve their production in the event of sustained decreased demand. It should be noted that these exclusion requests do not authorize the imports themselves; they merely authorize imports that are not subject to the Section 232 duty. As noted above, an importer may always choose to import over that amount, and pay the tariff accordingly.

G. Requiring That Requesters Citing National Security Reasons As A Basis For An Exclusion Request Provide Specific, Articulate And Verifiable Facts Supporting Such Assertion

Century supports this requirement. A determination that a particular product is necessary for national security purposes cannot be made by a private company and therefore should be supported by evidence from a government entity authorized to make such determinations. National security considerations are part of the Department's due diligence in evaluating exclusions, and accompanying evidence is therefore appropriate.

H. Clarifying That The Domestic Product Is "Reasonably Available" If It Can Be Manufactured And Delivered In A Time Period That Is Equal To Or Less Than That Of The Imported Product, As Provided By The Requestor In Its Exclusion Request

Century objects to this clarification. This provision would be ripe for abuse. Requestors could claim that an import can be manufactured and delivered in a time period that is less than the domestic product and thus defeat the regime entirely. Moreover, while contiguous countries are currently exempt from the tariffs, the agreements with those countries permit the President to reimpose the tariffs in the event of a surge. Because they are contiguous, these countries may be physically closer to certain downstream manufacturers in the United States than they are to the

domestic producer of the upstream product. As Century noted in its comments on the import monitoring system, importers are able to store aluminum indefinitely in warehouses, including bonded warehouses and foreign trade zones. They can therefore argue that the product for which an exclusion is sought is available for immediate delivery and may be physically located closer to a customer than the domestic producers are.

The purpose of the program is to provide incentives to source from American producers in light of the national security threat of having the United States lose its entire aluminum value chain, beginning with primary aluminum. The priority must be to encourage sourcing domestically where such sourcing is possible. This clarification would undercut the ability of the program to do so.

Moreover, this allows requestors to game the system as it relates to the need for U.S. producers to order molds for certain products. Normally, once parties reach an agreement on supply, the mold for that product is ordered. It takes time and investment for the mold to be prepared and delivered to the U.S. producer. The Department should not let the time lag for acquiring the necessary mold to count against U.S. producers relative to import sources who may already have the necessary molds. The point of the program is to allow U.S. production to restart. As discussed before, if U.S. producers are not given that opportunity by incentivizing continued duty free imports, the Department will create a "Catch-22" that will undermine the very purpose of the program itself.

I. Requiring That Requestors, At The Time Of Submission Of Their Exclusion Requests, Demonstrate That They Have Tried To Purchase This Product Domestically

Century supports this requirement. Many of the requests to which Century has objected involve a failure by the requestor to attempt to purchase the product domestically. Century is then

forced to spend time and resources objecting to requests for products that it can and does make. Moreover, as noted above, foreign producers have domestic affiliates that are effectively sales offices or downstream producers, and these producers refuse to source from non-affiliates. Some of these foreign producers are filing exclusion requests for products they themselves used to make in the United States until production was offshored due to, for example, aggressive foreign government subsidization.

J. In The Rebuttal/Surrebuttal Phase, Requiring That Both Requestor And Objector Demonstrate In Their Filings That They Have Attempted To Negotiate In Good Faith An Agreement On The Said Product (I.E., Producing Legitimate Commercial Correspondence)

Century does not object to this requirement in principle. Century finds that in many cases, requestors have made no effort to source from Century, despite listing Century as a producer of the product.

However, in Century's experience, some requestors may manipulate the specifics of their requests for the purpose of falling just outside the domestic industry's product ranges. Thus far, Century has been able to address this problem by explaining that it can make a substitutable product. Provided that the Department remains aware of the potential manipulation of criteria, Century believes that documentation of negotiations would be a helpful criterion.

Respectfully submitted,

/s/ Robert E. DeFrancesco, III

Robert E. DeFrancesco, III, Esq.

Counsel to Century Aluminum Company

EXHIBIT 1

ALUMINUM SPECIAL ALERT

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The “Canadian Problem”, Section 232 and US aluminum premiums

May 7, 2020

US MW PREMIUM SPECIAL ANALYSIS. Since the US granted a Section 232 Tariff exemption to Canada, Canadian exports of primary aluminum to the US have increased considerably, both in volume and as a percentage of total US imports. In the process: a) the MW premium and US product upcharges have collapsed amid deep discounting, b) embedded Section 232 Tariffs on primary aluminum prices have evaporated, and c) all US smelters became unprofitable and unviable again. This chain of events is what some US market participants have called the “Canadian problem”.

Q. What is the stated purpose of Section 232 Tariffs?

A. Help US aluminum smelters and US rolling mills restart/expand capacity, by boosting their profitability.

[In more detail.](#)

Section 232 proclamation states that the 10% Tariff aims to “help (US) domestic aluminum industry to revive idled facilities, open closed smelters and (rolling) mills”.

Q. How does Section 232 aim to accomplish its two-fold goal of US smelting and US rolling mill revival?

A. Impose a 10% Tariff on US imports of aluminum products such as primary aluminum, secondary aluminum, extrusions, flat rolled products, and castings but exclude aluminum scrap.

[In more detail.](#)

Section 232 aims to boost net income of US smelters by imposing a 10% Tariff on primary aluminum imports (US smelters sell at the duty-paid price and keep the duty for themselves). The idea behind this is to do this by increasing the US regional price of primary aluminum via the MW premium and product upcharges.

Section 232 aims also to boost net income of US rolling mills by increasing US conversion prices of rolled products with the 10% Tariff on flat rolled products imports and by widening scrap discounts (via the exemption of scrap) which is the most important feedstock cost for US rolling mills.

Q. Were Section 232 Tariffs successful in boosting profitability and production of US smelters and rolling mills?

A. Yes, in both cases.

[In more detail.](#)

US Smelters. The US regional price of primary aluminum did increase by \$238 per mton or 10.6% via higher MW premiums and product upcharges. For example, the MW premium doubled from 8.3 cent/lb in December 2017 to 16.9 cent/lb on May 16, 2019 and the embedded duty in the MW premium increased from zero to 8.2 cent/lb (\$181 per mton). Moreover, the spot upcharge for US billet (6063) increased by 20% or 2.2 cent/lb (\$57 per mton) from 8.3 cent/lb in December 2017 to 10.5 cent/lb on May 16, 2019.

Given the boost that the 10% Tariff had on the MW premium and product upcharges (and thus US smelting profitability), US smelting production jumped by 53%, from 750 kmtpy in December 2017 to 1,150 kmtpy in May 2019. In fact, by May 2019, almost all US smelters were back in operations at full capacity or ramping up toward full capacity .

(continues in next page)

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US Rolling Mills. Scrap discounts such as those for UBCs widened also by 10 cent/lb or \$220 per mton, from 25 cent/lb in December 2017 to 35 cent/lb in May 2019. Common alloy sheet (3003 alloy) conversion prices doubled (also boosted by AD/CV duties) from \$785 per mton in December 2017 toward \$1,465 per mton in May 2019. Indeed, US rolling mill production reached full operating capacity in early 2019 and restarts/new mill expansions were announced and/or confirmed by *Braidley, JW Aluminum, Texarkana, and Granges.*

Q. When was Canada exempted from Section 232 Tariffs and under what conditions?

A. On May 20, 2019, Canada received from the US a full exemption from Section 232 Tariffs under the condition of a “soft quota”, which is a commitment to not increase its primary aluminum exports to the US in a meaningful way or alter its market share in the US market.

In more detail.

President Trump’s proclamation on May 19, 2019 stated: a) “I have decided to exclude Canada ... from the tariff proclaimed...”; b) “The United States has agreed on a range of measures ... to allow imports of aluminum from Canada and Mexico to remain stable at historical levels without meaningful increases”; and c) “The United States will monitor the implementation and effectiveness of these measures in addressing our national security needs, and I may revisit this determination as appropriate.”

A joint statement between the US and Canada about the exemption mentioned that: “In the event that imports of aluminum or steel products surge meaningfully beyond historic volumes of trade over a period of time, with consideration of market share, the importing country may request consultations with the exporting country. After such consultations, the importing party may impose duties of ... 10 percent for aluminum...”.

Q. What is the benefit of an exemption?

A. When exempted, a Canadian producer sells aluminum in the US at a full market duty-paid price and keeps the entire duty for itself (since it is exempted of paying it back to the US government). An exemption represents a notorious economic windfall for the Canadian producer. Alternatively, the exempted producer can share with a customer part of that duty it keeps (via market price discounting) and gain more business and market share (even more so during oversupply conditions).

Q. What happened to Canadian exports of primary aluminum after the Section 232 exemption?

A. Since the exemption was granted, Canadian exports of primary aluminum to the US have surged despite an oversupplied US market, according to government data. Since then, the MW premium and product upcharges have collapsed, eroding almost the entire “benefit” of the 10% Tariff embedded in them. As a result, all US smelters are today underwater and unviable again. Indeed, last week, *Alcoa* announced the first US smelter curtailment since the Section 232 exemption was granted to Canada.

HARBOR’s analysis indicates that absent the evaporation of the 10% Tariff “benefit”, all US smelters would have been cash positive even after the collapse of the LME price that has occurred as a result of the COVID-19 pandemic.

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[In more detail.](#)

Canadian Exports. Since exemptions were granted to Canada last May, Canadian exports of primary aluminum have surged in volume and as a percentage of US total imports despite US oversupplied market conditions. During the ten months prior to the Section 232 exemption, Canada exported to the US around 1.55 million mton of primary aluminum, representing 48% of total US imports. During the ten months after the exemption, Canada exported 2 million mton, or 30% more than in the prior ten months (while all other countries exported 15% less to the US in the same period).

The 30% increase in Canadian exports to the US market is partially explained by the restart of 340,000 mton of idled capacity at ABI, a Canadian smelter with 450,000 mton per year of capacity that had an 18-month long lockout that ended in July of last year, less than two months after the exemption. The ABI smelter had always exported most of its metal to the US. As ABI's production increased, so did exports to the US market.

As a result, Canada's average market share of total US primary aluminum imports increased by twelve percentage points to 60% during the ten months following the exemption. By the end of Q1 2020, Canadian exports represented 70% of total US primary aluminum imports and 81% of total US unalloyed aluminum imports.

During the same period of the Canadian export surge and as a result of discounting from the duty component given oversupplied market conditions, the MW duty-paid premium collapsed from 16.9 cent/lb on May 16, 2019 to 9.5 cent/lb today. The embedded duty in the MW premium fell from 8.2 cent/lb to just 1.7 cent/lb (\$37 per mton). At the same time, and as a result of excess availability of metal, product upcharges such as billet (6063) collapsed from 10.5 cent/lb to 2.5 cent/lb.

In this context of a collapse in US market pricing, *Alcoa* announced (April 22) its decision to shut down the remaining 230 kmtpy of operating capacity at its Intalco primary aluminum smelter in Ferndale, Washington.

Today, there are only six operating primary aluminum smelters left in the US (Mt. Holly, New Madrid, Sebree, Massena West, Hawesville, and Warrick), which according to our estimates are all underwater and unviable at current collapsed MW premium and product upcharge levels.

[Q. In this context, what has been referred to as the “Canadian problem”?](#)

A. Some US market participants have referred to it as the surge in Canadian exports of primary aluminum to the US market that took place after the exemption, and as the subsequent collapse of the US regional price of primary aluminum (MW premium and product upcharges).

[In more detail.](#)

Last week, a US smelter executive was quoted saying that there has been discussions with relevant US authorities regarding the “Canadian problem”.

(see executive chart next)

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This week, the *American Primary Aluminum Association (APAA)* issued a statement which mentioned that an increase in imports of Canadian primary aluminum “has persisted at rates far above demand levels in the United States leading to a collapse in U.S. aluminum prices and putting severe financial pressure on U.S. producers.”

Q. What does HARBOR see ahead?

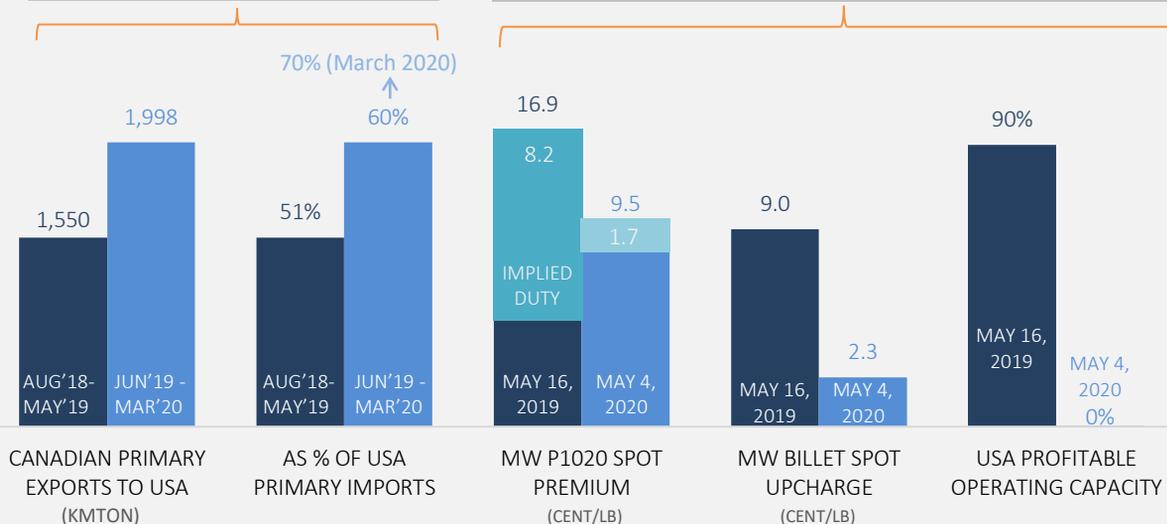
A. Basically the entire “benefit” of Section 232 Tariffs embedded in the MW premium and product upcharges has evaporated in a context of oversupply conditions, a surge in Canadian exports of primary aluminum to the US that followed the exemption, and related deep price discounting. As a result, there is renewed pressure on US authorities to raise Section 232 Tariffs and/or restrict Canadian exports to the US in such a way that in the end, the MW premium and product upcharges increase enough to boost US smelter profitability and guarantee the viability of existing US smelters even during depressed LME prices.

USA IMPORTS FROM CANADA, ALUMINUM PREMIUMS, & US SMELTING PROFITABILITY

BEFORE CANADA'S S.232 EXEMPTION AFTER EXEMPTION

1. Canadian aluminum exports to the US climbed by 30% y/y in the ten months following the exemption, expanding their share of US total primary aluminum imports to 70% by March 2020.

2. Since the exemption was granted, Canadian exports of primary aluminum have increased meaningfully, according to official data. At the same time, the MW premium and product upcharges have collapsed amid price discounting, evaporating the entire “benefit” of the 10% Tariff embedded in them. As a result, US smelters are today underwater and unviable again. Absent the evaporation of the 10% Tariff embedded in the MW premium and product upcharges, all US smelters would have remained cash positive even under current depressed LME prices, according to our estimates.



Source: HARBOR Aluminum and US Census data.

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July 10, 2020

VIA REGULATIONS.GOV

Mr. Cordell Hull
Acting Undersecretary for Industry and Security
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: RIN 0694-XC058
Vallourec USA Corporation's Proposed Recommendations Regarding the
Exclusion Process for Section 232 Steel Import Tariffs and Quotas

Dear Mr. Hull:

Vallourec USA Corporation (“Vallourec”) submits this comment in response to the U.S. Department of Commerce, Bureau of Industry and Security (“BIS”)’s request for comments on the efficiency and transparency of the tariff exclusion process for imports of steel and aluminum products pursuant to Section 232 of the Trade Expansion Act of 1962 (“Section 232”).¹ Vallourec respectfully requests that BIS adopt six proposed changes to the Section 232 exclusion process and related processes that will facilitate use of the product exclusion process, enhance efficiency and transparency for all parties involved in the process, promote the policy objectives of the Section 232 action, and alleviate the unnecessary administrative hurdles and monetary impact that importers experience under the current scheme. Specifically, as detailed in the following sections, Vallourec respectfully requests that BIS:

¹ *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441 (May 26, 2020).

- (1) Implement deadlines to reduce delays in decisions on product exclusions for which objections have been filed;
- (2) Allow Section 232 merchandise to be imported into the U.S. customs territory under Temporary Importation Bonds (“TIBs”) without counting towards Section 232 country-specific quota limitations;
- (3) Permit U.S. importers to use granted product exclusions prior to Section 232 quota limitations being reached;
- (4) Draft exclusion request scopes to encompass situations in which a single excluded product could be covered by more than one HTSUS subheading;
- (5) Require parties to substantiate all claims with reliable evidence; and
- (6) Eliminate ex parte communications between U.S. agencies and interested third parties to promote efficiency and transparency.

I. BIS Should Implement Decision Deadlines to Reduce Delays.

It is imperative that BIS reduce delays in issuing decisions on product exclusion requests for which objections have been filed. According to BIS’s *Federal Register* notice, the exclusion request review period – including filing, posting, objections, rebuttals, and surrebuttals – will not exceed 106 days.² BIS also claims that the exclusion request review process allows it to “efficiently make determinations on exclusion requests” and that “[i]f BIS identifies no national security concerns, it will *expeditiously* post a decision on regulations.gov granting the exclusion request” (emphasis added).³

² *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum*, 83 Fed. Reg. 46,026 (Sept. 11, 2018).

³ *Id.* at 46,033.

However, despite such assurances, decisions on exclusion requests are not being made in an expeditious or efficient manner. Instead, BIS has failed to make decisions on exclusion requests that go through the rebuttal/surrebuttal process for up to 11 months. BIS's delay in issuing exclusion request decisions have caused major financial and logistical problems for many companies. [

]

Therefore, Vallourec recommends that BIS prioritize reviewing and clearing the backlogged Section 232 product exclusion requests to ensure decisions are made within a few months. Vallourec also recommends that BIS consider implementing deadlines for rendering decisions to help the process move quickly. For example, BIS can implement a 30-day deadline from the close of comments to render a decision (with an option for a 30-day extension for more complicated cases). However, BIS should issue all decisions within 60 days. Vallourec believes that implementing deadlines for BIS promotes efficiency and prevents additional backlog of Section 232 exclusion requests, which would further strain BIS resources.

II. Section 232 Merchandise Entered Under Temporary Importation Bonds Should Not Count Toward 232 Country-Specific Quota Limitations.

U.S. manufacturers use the TIB provision to temporarily import products used in U.S. manufacturing that are then exported or destroyed within three years. Under the terms of the bond, the products *must* be exported within three years; products that are not exported are subject to large liquidated damages. TIB entries support U.S. manufacturing and jobs, as they allow importers to utilize duty-free merchandise in the production of subsequently exported goods. Further, they do not compete with domestic goods in the U.S. market since by definition, imports entered under TIB never enter the domestic U.S. market and must be exported or destroyed

within three years. As such, they do not pose the threat to U.S. capacity utilization and national security that the Section 232 quotas are designed to prevent.

However, even though it does not advance the Administration’s goals, U.S. Customs and Border Protection (“CBP”) counts TIB entries towards applicable Section 232 quota volumes based on an internal directive that was formulated over 60 years ago (before the Trade Expansion Act of 1962 was even in effect) to address a wholly separate import type.⁴ This policy limits the ability of U.S. manufacturers to keep up with global demand for U.S. exports, operate their U.S. facilities at full capacity, and provide the maximum number of U.S. manufacturing jobs – all of which undercut the Administration’s goal to increase capacity utilization.

Vallourec therefore proposes that BIS modify the Section 232 action – by Presidential Proclamation or otherwise – to override CBP’s policy and prevent TIB entries from counting against applicable Section 232 quotas. This will enable CBP to easily administer the quotas in a way that is beneficial to U.S. industry and consistent with the Administration’s policy objectives. In the alternative, BIS should modify the action to require that CBP adjust the quota volume after a TIB entry is exported to “zero out” the initial quota decrement. This alternative will provide an accurate representation of quota volumes for a specific country by accounting for entries that are no longer in the United States, though it may be more technically challenging to administer than Vallourec’s primary proposal.

III. Companies Should Be Permitted to Use Granted Section 232 Product Exclusions Prior to Country-Specific Quota Limitations Being Reached.

The requirement that the quota be filled prior to the application of a granted product exclusions results in companies having to schedule imports based on the quota limitations

⁴ See Treasury Decisions 54802(53) and 54802(54) (Feb. 25, 1959) (both implementing Presidential Proclamation 3257, dated Sept. 22, 1958) and CBP Cargo Systems Messaging Service #18-000424 (July 6, 2018).

instead of their business needs. This not only creates costly uncertainty for U.S. companies, but also distorts supply chains in a way that undercuts, rather than furthers, the Administration's policy objectives. Currently, importers are forced to rush entry of non-excluded goods while the quotas are still open to ensure that these goods can enter the United States in a given quarter. Contemporaneously, they postpone entering shipments of excluded goods until the quotas are filled.

In other words, the current scheme perversely incentivizes importers to prioritize entry of the very goods that the Administration has determined to *threaten* U.S. national security while delaying entry of goods that it has determined are needed to *bolster* economic security and preclude shortages. Moreover, because importers must expedite entry of certain goods well before scheduled delivery or even before they have secured a downstream sale, the scheme results in substantial storage fees, significant logistics efforts, and other costs related to supply chain uncertainty – all of which are in addition to those uncertainties and costs associated with the delays described in **Section I**. Therefore, Vallourec recommends that BIS modify the Section 232 action – by Presidential Proclamation or otherwise – to permit U.S. importers to utilize granted Section 232 product exclusions at any time, even if the country-specific quota limitation has not been reached.

IV. The Exclusion Process Should Account for Situations in Which a Single Product is Classified in More Than One HTSUS Subheading.

By requiring importers to separate exclusion requests based on a single classification under the HTSUS, the current Section 232 process ignores the realities of steel and aluminum industry standards. This burdens BIS with unnecessary exclusion requests and robs importers and U.S. manufacturers of potential savings.

Both U.S. manufacturers and U.S. customers of steel and aluminum products rely on industry standards, such as ASTM International (“ASTM”), when making purchasing decisions. For steel products, these industry standards do not always align with the HTSUS classifications. For example, ASTM A106, to which seamless steel pressure pipes are routinely built, permits a chromium content of up to 0.4%. However, a chromium threshold of 0.3% - rather than 0.4% - is often the dividing line between HTSUS provisions.⁵ Therefore, ASTM A106 pipe with a chromium content of between 0.31% will be classified differently than an ASTM A106 pipe with chromium content of 0.29% - even though both have the exact same mechanical properties, commercial identity, end-uses, etc. This is also the case with pipes that conform to a range of other ASTM, International Standards Organization (“ISO”) and American Petroleum Institute (“API”)-based metallurgical standards, as well as pipes that are mechanically and commercially identical but may vary somewhat in outer diameter and wall thickness.

In light of this misalignment, tying product exclusions to a single tariff classification demands increased time and resources from both importers and BIS – and can deprive importers the benefit of their exclusions altogether. Because manufacturers generally do not test for HTSUS standards, but instead for ASTM or other industry standards, importers often receive products that straddle more than one HTSUS provision. It is difficult for U.S. manufacturers to accurately predict what percentage of an imported product will fall under one of two (or more) HTSUS classifications a full year in advance, when Section 232 product exclusion requests are submitted. Exclusion requesters have dealt with this issue in two ways: **(1)** by filing more than one exclusion request for the same product; or **(2)** foregoing the benefit of a granted exclusion for otherwise identical products. The former results in superfluous exclusion requests and

⁵ See Note 1(f) to Chapter 72 of the HTSUS.

additional burdens on BIS as it reviews these requests. The latter results in the loss of cost-savings to importers of products that BIS has determined to merit an exclusion.

Vallourec therefore proposes that BIS expand the scope of exclusions in situations in which otherwise identical products are covered by more than one HTSUS subheading. BIS could do so by including product-specific criteria or references to industry (*e.g.*, ASTM) standards in addition to the applicable HTSUS subheadings at issue in the product exclusion scope. For example, an exclusion could encompass “line pipe [of a certain length] (described in subheadings 7304.19.10XX or 7304.19.50XX).” Crafting exclusions in this way would eliminate the need for importers to file duplicative requests, lessen the burden on BIS, and ensure importers can utilize those exclusions to which they are entitled.

V. Parties Should Be Required To Substantiate Their Claims with Reliable Evidence.

Vallourec recommends that BIS require all parties that file exclusion requests, objections, rebuttals, or surrebuttals to substantiate their claims with reliable evidence to prevent the submission of false, unreasonable, or misleading statements. Such a requirement would allow BIS to point to particular evidence – or lack thereof – when making its determinations. It would also assist parties interested in filing objections, rebuttals, and surrebuttals in determining whether such filings are warranted. Without this requirement, parties are often forced to refute or substantiate vague claims containing little to no support. Additionally, requiring reliable and clear evidence allows interested parties to better evaluate whether a submission impacts their business needs and abilities.

To that end, Vallourec recommends that BIS require the evidence presented with claims to go beyond statements and letters and should definitively establish support for claims filed by parties. For example, BIS should require objectors to present emails, brochures, mill certificates,

or transaction documents such as invoices or purchase orders, to substantiate a claim that it can provide sufficient domestic production to meet the requestor's needs. This will enable BIS to make decisions that could impact U.S. national security and domestic manufacturing based on a more complete and accurate record, and will consequently promote accuracy, transparency, and fairness throughout the Section 232 exclusion process.

Vallourec recognizes that some parties will have concerns with whether this requirement will adequately protect business confidential information. To alleviate those concerns, BIS can build out its current business confidential information submission process. Currently, if a requester has business confidential information that supports an arguments, it must alert BIS that it has such information, and wait for BIS to contact the requester directly regarding the confidential information. Vallourec understands that more often than not, BIS does not contact the requester, and the information is not utilized to evaluate the request. Instead of requiring this additional step, which places the burden on BIS to determine whether such information is necessary to properly evaluate a request, BIS could require that all filings – including objections, rebuttals, and surrebuttals – include both public information and, if applicable, confidential information at the outset. Similar to BIS's current confidential submission process for rebuttals and surrebuttals, BIS should require that filers submit a public summary of confidential information, and email the confidential information to a designated inbox. This would both protect confidential information and promote transparency and accuracy in the 232 exclusion process.

VI. BIS Should Eliminate or Document All Ex Parte Communications with Interested Third Parties.

Finally, BIS should eliminate ex parte communications between the agency and interested third parties to ensure that the Section 232 exclusion request review is efficient and

transparent to all parties involved. The current Section 232 exclusion request review process has raised many concerns regarding the lack of transparency behind the agency’s decision-making process, as noted in the October 28, 2019 memorandum from the Department of Commerce’s Office of Inspector General (“OIG”).⁶

If BIS finds that ex parte communications provide useful information that should be considered for the applicable exclusion request, then Vallourec supports the OIG’s recommendation to properly document all discussions with interested parties. In order to ensure that the Section 232 exclusion request review is efficient and transparent, all parties involved must be privy to communications relevant to the filed exclusion request. As such, one potential solution is for BIS to document all meetings with interested parties and include a record of written correspondence in the official record of the applicable exclusion request. This record can then be uploaded within three to four weeks’ time (or another reasonable timeline) to maintain accuracy and permit redactions of confidential information to protect business interests, while at the same time building transparency and confidence into the process.

* * * * *

For the reasons above, Vallourec respectfully urges BIS to adopt the six proposals presented in this comment. Vallourec understands that the proposed changes could have substantial and longstanding implications for U.S. interests, and is grateful for the opportunity to present these recommendations.

⁶ Memorandum No. OIG-20-003-M, from Carol N. Rice, Assistant Inspector Gen. for Audit and Evaluation, Dept. of Commerce, Office of Inspector Gen. to Wilbur Ross, Sec’y of Commerce (Oct. 28, 2019) (available at: <https://www.oig.doc.gov/OIGPublications/OIG-20-003-M.pdf>); *see also*, Letter from Sen. Elizabeth Warren to the Honorable Peggy E. Gustafson, Inspector General, U.S. Dept. of Commerce (Aug. 29, 2018) (available at: <https://www.warren.senate.gov/imo/media/doc/2018.08.29%20Letter%20to%20Commerce%20Department%20on%20Rusal.pdf>).

Please do not hesitate to contact the undersigned at chris.cunningham@vallourec.com or 713.479.3326 with any questions concerning this submission.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Chris Cunningham". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chris Cunningham
Director, North America Supply Chain
Vallourec USA Corporation

JACKIE WALORSKI
2ND DISTRICT, INDIANA

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON WORKER
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Congress of the United States

House of Representatives

Washington, DC 20515-1402

July 10, 2020

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

RE: BIS-2020-0012; RIN 0694-XC058; Written Comments by Representative Jackie Walorski (IN-02) in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Dear Secretary Ross:

I want to thank you for requesting public comments on the process for excluding products from the Section 232 steel and aluminum tariffs. As you know, I have engaged extensively with you and your staff at the Department of Commerce (“the Department”) on this process since its inception. Throughout our extended dialogue, I have consistently sought explanations for inconsistencies and offered suggestions for improvement. I plan to use this opportunity to highlight important considerations as the Department weighs proposed changes outlined in Federal Register notice 85 FR 31441.

I would like to begin by noting that changes have been made to the process that have improved fairness and due process. The Department now allows refunds of tariffs paid if a request is approved after initially planning no relief. It stood up a rebuttal and surrebuttal process after the first iteration of the process raised grave due process concerns. Finally, the Department’s creation of a 232 Exclusions Portal last year went a long way toward resolving the numerous quality control issues that plagued the process on regulations.gov.

The Department notes that 78,569 of the 114,009 posted decisions (68.9%) are approvals. However, my focus is on the quality of the decisions, rather than the approval rate. In 2019, I highlighted numerous questions surrounding the transparency, fairness, and consistency of the exclusion process in a series of letters sent to you on March 11¹, April 30², and October 17.³ They include examples of decisions that seem to run counter to the facts presented and lack any substantive explanation as to why each decision was made. In other cases, it appears the Department bent or ignored its own regulations. Nearly all such decisions were to the detriment of the requester. The examples leave one with the impression of a finger on the scale favoring objectors – an impression that the Department must change.

¹ https://walorski.house.gov/wp-content/uploads/2019/03/03112019_Letter_Commerce_Exclusion.pdf

² https://walorski.house.gov/wp-content/uploads/2019/04/20190430_Letter_Exclusions_Followup.pdf

³ https://walorski.house.gov/wp-content/uploads/2019/10/20191017_Letter_Commerce_Exclusions.pdf

Below are some of the top concerns that the Department should weigh as it endeavors to improve the process.

1. Apply regulations consistently

There have been numerous instances of the Department bending or ignoring its own regulations. This undermines faith in the fairness and transparency of the process, especially since the majority of these cases are to the detriment of the requester. The Department must hold requesters and objectors to the same standards.

The Department's regulations⁴ define 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 by my office found⁵ that over 6,800 objections did not answer some or all of the questions pertaining to the timeline to manufacture and deliver the product in question, while over 8,600 objections listed a timeframe greater than eight weeks. However, there has not been an explanation as to why objections that omitted the timeline altogether were apparently treated as valid and posted. It is also unclear why the Department viewed timelines greater than eight weeks as satisfactory, or if the Department contacted those listing timelines greater than eight weeks to verify that they could meet the required timeline. Nevertheless, most of the underlying requests were denied.

The Department's regulations⁶ require requesters and objectors submitting confidential business information (CBI) to summarize it "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, an analysis conducted by my office found⁷ that 69.5% of steel and 68.9% of aluminum objections on regulations.gov listed no plant capacity and 69.9% of steel and 68.9% of aluminum objections listed no capacity utilization. This is important information since the stated goal of the steel and aluminum tariffs is to raise capacity utilization.⁸ Additionally, 6.6% of steel and 1.1% of aluminum objections on regulations.gov did not even list a city where the product in question could be produced. These data points are critical for a requester to be able to adequately rebut an objection. Despite there being no apparent effort to summarize the data, as required by the regulations, these objections were apparently treated as valid by the Department and posted. Given that this was such a pervasive trend, it also would seem that objectors were not contacted to remedy these deficiencies. In the meantime, requesters appear to have been held to a much higher standard. For instance, my office heard anecdotally from requesters who were forced by the Department to resubmit their request because the initial submission contained three attachments instead of two.

⁴ <https://www.federalregister.gov/documents/2018/09/11/2018-19662/submissions-of-exclusion-requests-and-objections-to-submitted-requests-for-steel-and-aluminum>

⁵ Question 6 of the October 17, 2019 letter

⁶ <https://www.federalregister.gov/documents/2018/09/11/2018-19662/submissions-of-exclusion-requests-and-objections-to-submitted-requests-for-steel-and-aluminum>

⁷ Question 5 of the October 17, 2019 letter

⁸ <https://www.govinfo.gov/content/pkg/FR-2019-05-21/pdf/2019-10759.pdf>

On September 11, 2018, the Department issued an update to its regulations⁹ that barred trade associations from filing objections, bringing parity and fairness since trade associations could not file requests. The Department also stated, “Only individuals or organizations that have a posted objection to a submitted exclusion request...may submit a surrebuttal.” However, my office identified numerous examples¹⁰ where individual trade association members filed surrebuttals to existing trade association objections even though this went against the clear letter of the regulations as they were not the individual or organization that filed the objection. These surrebuttals introduced new fact patterns that the requester was unable to respond to since the surrebuttal is the last phase in the process. It is still unclear why these surrebuttals were allowed to be posted and how they factored into the decisions on the underlying requests.

The Department’s regulations¹¹ also require objections to be submitted “no later than 30 days after the related exclusion request is posted.” However, my office identified numerous objections¹² that were posted on regulations.gov despite being submitted after the 30-day period had concluded. As with the trade association member surrebuttals, there has not been an explanation as to why these objections were posted and how they factored into the decisions on the underlying requests.

The Department may argue that these issues are one-off or have been fixed by the new 232 Portal, but they speak to the very integrity of the system. It is fundamentally unfair that one side gets a level of scrutiny down to the number of attachments, while the other side is allowed to omit key data on production timeline, plant capacity, and capacity utilization.

2. Conduct more rigorous verification of claims

Throughout the exclusion process, there has always been a clear incentive to file an objection for two reasons. First, an objection slows down a request considerably. An analysis conducted by my office of decisions posted to regulations.gov through July 1, 2020, shows that steel requests with no objections took an average of 87.3 days from the day they were posted to the date of the decision. Steel requests with one or more objections, on the other hand, took an average of 264.3 days. Aluminum requests took 125.0 days and 247.2 days respectively. Second, an objection usually results in a denial. Again, according to data compiled by my office, there are 20,145 decisions posted (17,673 steel and 2,472 aluminum) where the underlying request went through the rebuttal and surrebuttal process and where the Department made a determination as to the domestic availability of the product in question. Of those, 75.4% were denials (13,264 steel and 1,939 aluminum).

Given this incentive, the Department must do more to vet and verify objectors’ claims. My office heard from many requesters who drew an objection, but the objector either did not list the product on their website or even confirmed on the phone they did not make it. Despite this, the

⁹ <https://www.federalregister.gov/documents/2018/09/11/2018-19662/submissions-of-exclusion-requests-and-objections-to-submitted-requests-for-steel-and-aluminum>

¹⁰ Question 5 of the March 11, 2019 letter

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

¹² Question 3 of the October 17, 2019 letter

request still had to go through the rebuttal and surrebuttal process. Such cases waste everyone's precious time and resources, but the Department does not appear to have taken action to prevent such abuse of the system. Additionally, if an objector claimed its product was a substitute, it is still not clear what due diligence the Department undertakes to verify that it is a substitute in the eyes of engineers and government standards agencies and regulators. There are instances where an objector says they *could* make the product in question. These situations occupy a grey area and require something more nuanced than an all-or-nothing decision. I am glad to see the Department is considering ways to improve its response to these situations.

It is also unclear the extent to which the Department verified claims of plant capacity, capacity utilization, and manufacturing and delivery timeline. My office identified cases where an objector cited inconsistent plant capacity and capacity utilization across different objections in a way that could not be easily explained.¹³ As noted earlier, my office also identified objections where plant capacity and capacity utilization were not listed or summarized, and where the manufacturing and delivery timeline was outside the Department's eight-week timeframe.¹⁴ These data points matter. If the Department denies a request for a large-volume order without verifying the plant capacity and utilization, the requester will be left without a completely fulfilled order and will still have to turn to foreign sources. It is similarly inadequate for the Department to deny a request where the objector cited a timeframe of 21 weeks without verifying that the product can, in fact, be delivered in eight weeks, or at least providing some sort of explanation as to why it found the 21-week timeframe satisfactory.

Additionally, the Department should endeavor to verify compliance after a request is approved or denied. My office has heard complaints that some requesters ask for excessive volumes that they never intend to fill. By the same token, my office has heard from requesters who were denied, called the objector to place an order, and were turned away. These are abuses that undermine confidence in the system and should be addressed. I am glad to see the Department is trying to address this by proposing to require requesters to provide a good-faith estimate of need. The Department should also verify that requesters are making full use of the requested volume if approved, though the coronavirus pandemic may make this more difficult. Similarly, requesters should be able to petition the Department for recourse if their request is denied and the objector is unwilling or unable to meet the promised volume, quality, and/or timeline. This should happen through a transparent and predictable process that is equally available to all requesters. Any recourse in such a case should also result in the requester receiving a partial or full refund of tariffs paid back to the date of the original request.

One case study in the lack of verification concerns objections pertaining to Republic Steel's Lorain, Ohio, facility. Question 7 of my October 17, 2019, letter outlined 136 requests that drew one objection, from Republic Steel, which cited that facility as the location where the product in question would be manufactured. However, the facility was still in the process of being reopened, as the company noted in its objections. Yet, the company certified on the objection form that the product in question was being "currently manufactured" and can "immediately be made (within 8 weeks)." Over time, Republic Steel pushed back the timeframe for when the facility would reopen from September 2018 eventually to the 2nd Quarter of 2019. It appears that

¹³ Question 4 of the April 30, 2019 letter

¹⁴ Question 9 of the March 11, 2019 letter and Question 6 of the October 17, 2019 letter

the facility is still not reopened. Nevertheless, 85 of the 136 requests were denied, with the Department finding that there was domestic production “in a sufficient and reasonably available amount and of a satisfactory quality.” This was obviously not true since the only objection was from the closed Republic Steel facility. The Department should explain if it verified that the facility was open and, if it did, why it denied these requests.

3. Have a clear burden of proof

The introduction of a rebuttal and surrebuttal period no doubt improved due process and transparency of the exclusion process. However, there are still lingering questions about where the burden of proof lies. The below table contains data kept by my office of decisions where the underlying request went through the rebuttal and surrebuttal process and where the Department made a determination as to the domestic availability of the product in question.

Approval Rate Based on Presence of Objection, Rebuttal, and Surrebuttal (Steel)				
Type	Approved	Denied	Total	Approval Rate
Objection Only	1356	8256	9614	14.11%
Objection + Rebuttal	2220	2200	4420	50.23%
Objection + Rebuttal + Surrebuttal	831	2808	3639	22.84%

Approval Rate Based on Presence of Objection, Rebuttal, and Surrebuttal (Aluminum)				
Type	Approved	Denied	Total	Approval Rate
Objection Only	138	593	731	18.88%
Objection + Rebuttal	58	100	158	36.71%
Objection + Rebuttal + Surrebuttal	337	1246	1583	21.29%

As it weighs whether or not to approve a request, the Department clearly takes a low view of not filing a rebuttal. However, it does not seem to take a proportionally low view of not filing a surrebuttal. For instance, my April 30, 2019, letter highlighted a case where a requester drew objections on 107 of their requests. The requester diligently filed rebuttals to each objection, while the objectors filed no surrebuttals. In the rebuttals, the requester included correspondence demonstrating that the objector seemed to acknowledge that their product did not meet the requester’s standards. All 107 requests were denied.

4. Evaluating proposed changes

The Department notes potential changes in Federal Register notice 85 FR 31441. One such idea is blanket approvals or denials based off historic objection rates, or lack thereof. The appeal is obvious since it would reduce the workload for the Department, requesters, and objectors alike. However, I have strong concerns given the past incentive to object even if there is no basis and, as shown in the examples above, the fact that many objections appear to have been deficient. An objection rate is also not indicative of demand and availability. Indeed, the Department has granted requests on some of the tariff codes for which it proposes to now issue blanket denials.¹⁵

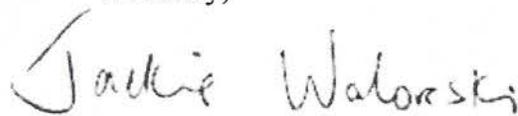
I also urge the Department to add steel and aluminum derivative products into the exclusion process as it proposes. The Presidential Proclamation that announced these tariffs¹⁶ promised an exclusion process. I will further note this has been a pending concern since a March 3, 2020, letter I sent to you¹⁷ inquiring about the exclusion process. However an exclusion process for derivatives comes to be, the Department must provide retroactive relief on tariffs paid if a request is approved back to the date of the imposition of tariffs, given that it has taken so long for this process to be set up.

Finally, I hope that the Department will take into account the feedback it receives from the Government Accountability Office and the Office of Inspector General for the Department of Commerce as they complete their reviews.

5. Conclusion

Thank you for the opportunity to weigh in, and I look forward to continuing to work with you to improve the fairness, transparency, and consistency of the exclusion process.

Sincerely,

A handwritten signature in black ink that reads "Jackie Walorski". The signature is written in a cursive, slightly slanted style.

JACKIE WALORSKI
Member of Congress

¹⁵ For example: <https://www.regulations.gov/document?D=BIS-2018-0006-107150>

¹⁶ <https://www.whitehouse.gov/presidential-actions/proclamation-adjusting-imports-derivative-aluminum-articles-derivative-steel-articles-united-states/>

¹⁷ <https://walorski.house.gov/232-tariff-expansion/>



July 10, 2020

Docket No. BIS-2020-0012
RIN 0694-XC058

VIA WEB PORTAL

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
Attention: Export Administration
Room 2099B
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Re: Comments Regarding Exclusion Process for Section 232 Steel Import Tariffs

Erasteel Inc., a manufacturer and importer of high speed steel products, submits these comments regarding the Department of Commerce's ("the Department") Section 232 steel tariff exclusion request process.¹ These comments address (1) the exclusion process itself, and (2) the online portal for submitting exclusion requests.

Erasteel appreciates the Department staff's efforts to review and grant its exclusion requests over the past two years; however, the process itself remains extremely onerous and subject to delays and abuse. We urge the Department to improve the process as suggested below while the 232 tariffs remain in place.

I. 232 Exclusion Process

• **Review Period**

The Department's regulations state that the review period "normally will not exceed 106 days for requests that receive objections, including adjudication of objections submitted on

¹ See *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441 (Dep't Commerce May 26, 2020) ("*Notice of Inquiry*").

exclusion requests and any rebuttals to objections, and surrebuttals.”² In practice, that time period stretches anywhere from four months (120 days) to over ten months (300 days). This is unsustainable for a number of reasons:

First, with a potential tariff of 25 percent, companies cannot reliably conduct business while requests are pending, as the rate of approval for requests with objections is quite low. A review period lasting several months exacerbates those problems and costs for all parties, even if the underlying request is ultimately successful.

Second, the delay incentivizes abuse of the process by domestic producers who can create significant uncertainty for their competitors simply by filing an objection with minimal information—whether or not those producers can produce the product in question or fulfill the requested quantity. The fact that the exclusion process can be used as an obstacle to sales from competitors of products not available from U.S. producers not only increases the cost of this process for importers and their customers, but also wastes limited Department resources as agency officials review objections that are without merit.

Third, extended and uncertain review periods mean that time-sensitive requests, *e.g.*, renewals of previous exclusions or requests covering future orders, may not be resolved until well after the relevant date, *i.e.*, the expiration of the original exclusion or the arrival of the affected imports—even when those requests are filed several months ahead of those dates. The risk that such requests may be belatedly denied has forced Erasteel to file duplicate requests to hedge against this possibility. This, again, taxes both company and Department resources.

Erasteel provides additional suggestions for mitigating abuse of the process below. However, with respect to review period itself, the Department should offer more certainty and transparency to parties with the following actions:

- Publish monthly updates regarding the Department’s progress in reviewing and resolving exclusion requests, including statistics regarding review periods for unopposed requests, requests that receive objections, requests that receive objections and rebuttals, and requests that receive objections, rebuttals, and surrebuttals.
- Clarify the manner in which the Department prioritizes requests for review.
- **Insufficient U.S. Production Criteria**

The Department’s standard for insufficient U.S. production remains extremely vague, and it is unclear whether the Department is accounting for total product volumes or limiting its review to the quantities at issue in each exclusion request and objection. In addition, although information may become available that an objecting company is unable or unwilling to supply U.S. customers with the product under consideration, that information is often proprietary and, in

² 15 C.F.R. pt. 705, supp. no. 1, para. (h)(3)(i).

any event, does not prevent the domestic producer from filing objections that can significantly impede the exclusion process, regardless of their merit.

The Department should make the following changes to clarify its own practice and prevent abuse by domestic producers:

- Clarify the criteria used for evaluating whether there is insufficient U.S. production and, in particular, clarify whether the Department considers the extent to which an objector's capacity is commensurate with the total exclusion quantities to which the company is objecting.
- Clarify whether and how the Department considers evidence of an objector's inability or unwillingness to supply U.S. customers whenever that company files an objection, even if the underlying request itself did not include such evidence.
- Require objecting companies to state whether they have turned down requests for quotations for the product at issue and, if so, explain why.
- If the Department receives evidence that an objector is unable or unwilling to supply customers, the Department should expedite its review of the exclusion request and all others to which the company objected.

- **Blanket Approvals and Denials**

Erasteel supports granting a one-year blanket approval to product types that have received no objections as of a baseline date. This approach will save Department resources and provide valuable certainty for companies as they conduct business. In the event that a domestic producer develops an interest in supplying such a product, that producer remains free to file objections after the one-year expiration. However, to the extent that there is no demonstrated interest in the existing market for that product, there is no compelling reason to force importers and customers to undergo the lengthy and onerous process of filing individual exclusion requests if they can be addressed more efficiently.

Erasteel does not support a one-year blanket denial of requests for requests with 100 percent objection rates and denials as of a baseline date. The Department's procedures allow parties to refile requests after a denial if new information becomes available, *e.g.*, evidence that a U.S. producer cannot or will not supply the requested product. However, this process can take several additional months between the time of resubmission and a decision by the Department. A one-year blanket denial creates a clear incentive for domestic producers to file objections whether or not they can or intend to supply the product in the necessary quantities while leaving customers subject to an unavoidable 25 percent tariff.

- **Proof of Procurement Attempt**

Erasteel does not support a requirement that requestors demonstrate that they have tried to purchase a product domestically as part of their exclusion request for that product. While this

requirement appears to be relevant to purchasers, manufacturers should not be required to purchase or attempt to purchase product from their competitors. Moreover, such a requirement would be both difficult to enforce and an ineffective means of filtering out frivolous requests while significantly increasing the burden of submitting a request.

Specifically, requiring requestors to provide evidence of an attempt to purchase each product is extremely onerous given the Department's product-specificity requirements for each request, and it is not clear that providing such information at the outset of the application process would actually mitigate further objections, rebuttals, and surrebuttals. Indeed, the Department has now seen numerous examples of domestic producers objecting to requests despite evidence that they have refused or failed to respond to a customer's inquiry. And, in the absence of standards for what time periods and efforts are considered sufficient for such attempts, this requirement would ultimately provide another opportunity for domestic producers to abuse the process by indicating a willingness to supply a product without ever following through. The objection and surrebuttal process already allows companies who are interested in supplying a requested product to demonstrate their willingness and ability to do so, and the Department should not add further requirements to the initial application.

- **Decision Memoranda**

Decision memoranda are often not available until one to three weeks after their signature date. Although importers can request refunds of tariffs paid during that delay, the refund process itself takes time and imposes significant and unnecessary liquidity constraints. The Department should ensure that all decision memoranda are available within no later than one week after signature.

- **Public Versions of Documents**

Under the Department's regulations, parties are required to submit a public version of any proprietary submission. This requirement is not enforced. For example, an objector has referred to confidential information emailed to the Department without including a public attachment in the objection. This is prejudicial to requesting parties who are attempting to rebut such information. The Department should reject submissions that do not include public versions of confidential information.

- **Tariff Level**

The current 25 percent tariff is so high that it ensures that customers and foreign producers will file for tariff exclusions even if the chance of receiving one is low. At the same time, it is not clear that this tariff has had the desired effect of spurring long-term investment in domestic steel production, raising steel prices to a profitable level for domestic steel producers, or creating sustainable demand for domestic steel producers. The result is a tariff exclusion process that has placed significant resource constraints on both the Department and companies.

Erasteel understands that this tariff rate was established as part of the Presidential Proclamation that put these tariffs into place. However, to the extent that the Administration

contends that Section 232 tariffs remain necessary, Erasteel suggests lowering this rate such that companies will not have the same incentive to obtain exemptions. Doing so could conceivably allow steel prices to rise in a way that would enhance domestic operations while creating less uncertainty and bureaucratic delay.

II. 232 Exclusions Portal

- **Portal Data Extract**

The Excel file provided by the Department for searching the full Portal database is inaccessible and unusable. Erasteel has previously contacted the Department regarding its difficulty in accessing and opening this file, which was so large that the system often timed out before the download is complete. Now, as of the date of this filing, the file size stands at nearly 2.1GB—a size too large for Excel to process. Even commercially available JavaScript Object Notation (“json”) parsing tools have difficulty with this file and require customization in order to read these data.

If the Department does not make the other search capability changes proposed in this filing, Erasteel suggests eliminating the embedded json definitions and separating the data file into separate flat json files for (1) initial requests, (2) objections, (3) rebuttals, and (4) surrebuttals. The Department should also create filters for date ranges, tariff code, status, and company name for those filing requests, objections, rebuttals, and surrebuttals when creating a data file.

- **Search Functionality**

Although the interface of the Portal is more straightforward than regulations.gov, it is far more difficult to track activity following a party’s initial request. Specifically, the old system returned results for all submissions (*i.e.*, requests, objections, rebuttals, surrebuttals, and decision memoranda) based on searches for company or point-of-contact names. This capability allowed requesting parties to monitor objector activity, including the qualitative and quantitative bases for their objections. This, in turn, highlighted instances of abuse or bad faith by domestic producers who use the objection process to block and delay legitimate exclusion requests regardless of their actual ability to produce the product in question in the needed quantities.

The current interface limits in-Portal searches to information from the initial request and does not permit direct searches for objections. As discussed above, the Excel file that would permit such global searches is not useable. This effectively eliminates companies’ ability to monitor trends with respect to their own and similar exclusion requests, which, in turn, conceals abuse of the process by domestic parties, resulting in significant waste of limited Department resources.

Accordingly, Erasteel suggests that the Department restore an ability to conduct searches for all submissions, including objections and surrebuttals, within the Portal rather than restricting search fields to the initial request.

- **Request Status**

The Portal interface displays an exclusion request's current status. However, there is no indication from either the public interface or the private user dashboard as to whether a request received objections or surrebuttals. At best, the portal indicates that a relevant period is open or closed, but it does not indicate whether there were any submissions during that period, and it is impossible to identify such submissions from the main page once the request status changes to granted or denied.

This limitation requires parties to access the bottom of the "Details" page for each individual request to identify any such submissions, which, as with the limitations on broader search capabilities, severely restricts parties' ability to monitor objection and surrebuttal activity. The Excel file that the Department has made available contains the same information; however, as noted above, that file remains inaccessible and unusable.

The Annexes to the Department's *Notice of Inquiry* make clear that the agency is able to track objection activity on an aggregate basis, and both requesting parties and members of Congress have urged the Department to improve transparency with respect to these statistics. Accordingly, Erasteel urges the Department to update both the main Portal interface and user dashboard to include information about post-request submissions.

- **"Details" Page**

The "Details" link on the main Portal interface and user dashboard allows parties to view specific requests and access related submissions. By default, however, clicking this link opens that page in the same tab, thereby erasing any search parameters that led the user to that link. The Department should change this link functionality to open the "Details" page in a new tab so that the user's search parameters remain in place.

- **Submission and Posting Dates**

The main Portal interface and user dashboard currently display the date on which a request is posted by the Department. However, the "Details" of a request only displays the date on which the request was submitted. The Department should display both dates in the request "Details." The Department should also allow parties to search requests by the date of submission within their own dashboard.

- **"Days Remaining" Column**

The column listing the days remaining in a given comment period is confusing. Pursuant to the Department's regulations, parties have a comment period of 30 days from the date of posting, or, in the case of rebuttals and surrebuttals, seven days from the date of posting.³ However, the number listed in the "Days Remaining" column starts at 29 or six, respectively, on

³ 15 C.F.R. pt. 705, supp. no. 1, paras. (d)(3), (f)(4), and (g)(4).

the day that the window opens. On thirtieth or seventh day, the column is blank but the status continues to read “window open”.

Erasteel suggests that the Department list the date on which the relevant comment period will close. This will eliminate any ambiguity as to the deadline and is consistent with the manner in which the agency usually identifies deadlines.⁴

- **Notice of Action**

Requesting parties are required to monitor their own requests and do not currently receive any notice of objections, surrebuttals, or decisions. Because objections may post to the Portal near the close of business or over weekends and holidays, parties often lose between one and three days of the comment period in which to respond, depending on the time at which they check the Portal for activity.

The Department should therefore create a notification system within the Portal to alert users when submissions are posted and/or when a request’s status changes. Such systems are standard within other portals, including regulations.gov and ACCESS, which is operated by the Department’s own Enforcement and Compliance bureau. The Department already requires parties submitting a request to provide point of contact information, including email addresses. The Department should therefore have the capacity to implement this change based on its existing webforms.

Thank you for your consideration of these comments.

Sincerely,

/s/ Christophe Lemaire

Christophe Lemaire
President
Erasteel Inc.

⁴ See, e.g., *Notice of Inquiry*, 85 Fed. Reg. at 31,441 (“Comments must be received by BIS no later than July 10, 2020”).

July 10th, 2020

Department of Commerce
Bureau of Industry and Security
1401 Constitution Ave. NW
Washington, DC 20230

Re: RIN 0694-XC058

Mauser Packaging Solutions is submitting the following information and recommendations in response to the request by the U.S. Department of Commerce for public comment on the Section 232 exclusion process for imported steel and aluminum products. As detailed below, our concerns focus on the need for the Commerce Department to (1) verify tinplate steel availability in making exclusion determinations, and (2) consider market impact in addition to product availability when making such determinations.

Our company – formerly known as BWAY Corporation – is one of the largest manufacturers of rigid metal, plastic and hybrid containers in the United States. Using tinplate steel, Mauser makes a wide variety of aerosol cans, paint cans, pails and other containers. Headquartered in Chicago and with corporate offices in Atlanta, Mauser employs more than 5,800 U.S workers at over 70 facilities across the country.

The senior leadership of our company has engaged extensively with the U.S. Government since April 2017, when the Department of Commerce initiated an investigation to determine the effect of imported steel on national security under Section 232 of the Trade Expansion Act of 1962. Our overarching objective, along with that of others in our industry sector, has been to seek an exclusion from tariffs for imports of tinplate steel (USHTS Code 7210120000) because this product is not manufactured in the United States in a sufficient and reasonably available amount that would allow us to remain competitive in an increasingly global marketplace.

This objective fully aligns with all Federal guidance since Section 232 tariffs against foreign steel products were announced. Of note:

Presidential Proclamation 9705, Adjusting Imports of Steel into the United States (March 8, 2018), states that "The Secretary [of Commerce]... is hereby authorized to provide relief from the additional duties set forth in clause 2 of this proclamation for any steel article determined not to be produced in the United States in a sufficient and reasonably available amount."



U.S. Commerce Department Regulation 15 CFR Part 705 (March 19, 2018), states that "An exclusion will only be granted if an article is not produced in the United States in a sufficient and reasonably available amount."

Throughout this process, we have sought to alert U.S. Government officials to the realities confronting both our industry sector overall and our company in particular. Broadly, and as documented by the Can Manufacturers Institute, in recent years the annual domestic demand for tinsplate steel has been approximately 2.1 million tons, compared to U.S. production of only 1.2 million tons – thus requiring container manufacturers that rely on tinsplate steel to import in order to meet customer demand and sustain the employment of more than 22,000 American workers.

Improving Assessments of Tinsplate Steel Availability

With regard to Mauser's specific requirements, repeated efforts to place new orders with U.S. tinsplate manufacturers since the imposition of tariffs have been met with responses by those companies that additional tinsplate products are not available in the quantity and within the timeframe required by our company.

Mauser presented this and other relevant information in multiple exclusion requests to the Department of Commerce, including specific correspondence with U.S. tinsplate steel manufacturers indicating that they have repeatedly reduced, delayed or cancelled orders that are essential for Mauser to meet our customers' requirements.

Despite these documented facts, U.S. tinsplate manufacturers filed objections asserting that they possess the capability and capacity to produce tinsplate steel – but not that they actually produce the items required by Mauser in a sufficient and reasonably available amount, the precise criteria by which Presidential Proclamation 9705 states that exclusions may be granted.

Having demonstrated that many of the products Mauser requires clearly met the criteria for exclusion from tariffs, we were surprised to receive – months later – determinations from the Commerce Department that these products are produced in the United States in a sufficient and reasonably available amount and of a satisfactory quality. Based on our own, documented interactions with U.S. steel manufacturers, this determination was not consistent with established facts.

In light of the above, Mauser strongly recommends that the Department of Commerce make Section 232 exclusion determinations on the basis of:

- the Presidentially-directed criteria, i.e. whether an item is being produced in the United States in a sufficient and reasonably available amount, and not whether a U.S. manufacturer merely has the capability or capacity to produce tinsplate steel; and,

- data that is directly relevant to these criteria and that has been thoroughly documented by the submitter, and not unverified assertions that lack substantive documentation.

These actions will help ensure that those submitting objections cannot impede the granting of exclusion requests simply by asserting an ability to manufacture a product or countering information provided by requesters without substantiated data.

Assessing Market Impact

Mauser also requests that the Commerce Department not simply consider product availability when evaluating Section 232 exclusion requests, but also assess market impact. The circumstances pertaining to the U.S. aerosol can market demonstrate that failing to do this has undermined the intent of Presidential Proclamation 9705.

Unlike Mauser and other U.S.-owned steel container manufacturers, DS Containers – a subsidiary of Daiwa Can Company of Japan – produces aerosol cans using laminated tin-free steel (LTFS, USHTS Code 7210500000). In contrast to the denial of exclusion requests for tinsplate steel to produce these products, the Department of Commerce has consistently approved exclusion requests for LTFS.

This has created an unfair competitive disadvantage for Mauser and other U.S.-owned companies. DS Containers itself states that it seeks to grow its business and capture additional market share, and will do this through the use of tariff-free, non-U.S. steel supplies in its production process. Meanwhile, Mauser and other U.S.-owned container manufacturers are compelled to pay higher prices for domestic tinsplate steel coils or the 25 percent tariff on imported steel.

The market distortion caused by the granting of exclusions to DS Containers is evident. As the company itself states in exclusion process submissions, it seeks additional exclusions due to “the success of its products, and continued growth.” Its exclusion requests also note that it “plans to add a sixth production line and hire additional workers.” None of these activities will help the U.S. steel industry revive idled facilities, open closed mills, preserve necessary skills by hiring new steel workers, or maintain or increase production – the outcomes sought by Presidential Proclamation 9705.

In fact, DS Containers’ activities will have the opposite effect if allowed to continue via its exclusion from tariffs. As noted above, its capture of market share is taking place at the expense of U.S. container manufacturers that use tinsplate steel in their production processes. With less market share, these manufacturers will order less steel from domestic producers, which – if not addressed by the Department of Commerce in some manner – will result in lower



production levels and job losses in both the container and steel manufacturing sectors. Some of these losses are already being seen in our industry.

In summary, unless the market impact noted above is added to the criteria by which exclusion requests are assessed, the granting of additional exclusion requests for LTFS – combined with the denial of requests for tinplate steel – will further damage U.S. industry. Specifically, it will:

- Allow certain companies to benefit from tariff-free imports of LTFS, and take market share away from others that will continue to pay inflated prices for tinplate steel;
- Result in lower production levels and cuts in employees/facilities among U.S. tinplate container manufacturers;
- Permanently reduce demand for U.S.-made tinplate and increase demand for foreign-made LTFS, further weakening the American steel and aerosol container industries; and
- Undermine U.S. Government objectives, as stated in Presidential Proclamation 9705, to “help our domestic steel industry... maintain or increase production” and “reduce our nation’s need to rely on foreign producers for steel.”

Mauser appreciates the Commerce Department’s consideration of these recommendations as it assesses possible improvements to the Section 232 exclusion process.



Mark J. Vrablec
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July 10, 2020

The Honorable Richard Ashooh
Assistant Secretary for Export Administration
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

RE: RIN 0694-XC058 - Comments on improving the exclusion process for Section 232 import tariffs and quotas.

Dear Assistant Secretary Ashooh:

Arconic welcomes the opportunity to provide comments regarding the Section 232 exclusion process for aluminum import tariffs and quotas.

Arconic Corporation, headquartered in Pittsburgh, Pennsylvania, is a leading provider of aluminum sheet, plate and extrusions, as well as innovative architectural products, that advance the ground transportation, aerospace, industrial, packaging, and building and construction markets. Arconic employs over 7,000 employees in the United States.

We are pleased that the Department is accepting comments about making the Section 232 process fairer and more effective. Arconic has utilized this system, both as a requestor and objector, and is thoroughly knowledgeable of its attributes and challenges. We respectfully submit the following comments. We look forward to working with you and the Department to improve this system.

The Section 232 Exclusion Process Should Mirror the Section 301 Exclusion Process

Set a Deadline Window for Exclusion Requests, Objections, and Decisions

We strongly recommend that the Department change the Section 232 exclusion process to mirror the Section 301 process. The Section 301 process sets one deadline for submitting all requests, followed up with a deadline to submit objections and then the process is closed. Granted exclusion requests last one year and then the requestor must refile its request and go through the entire process again if it wishes to keep it.

This change would eliminate multiple, identical filings that are continuously filed throughout the year. Under the current system, a requestor can submit a request and, if denied, immediately resubmit the exact same request for consideration. This ongoing flood puts stress on U.S. companies, as they must expend resources to continuously monitor, object, and file surrebuttals for these duplicate requests. It is also duplicative for the Department, as it must now consider multiple requests for the same product in cases where it already denied or partially denied the request. Changing to a Section 301-style process would resolve this. Requests would be submitted at the same time and the Department would review and render decisions on all of them, rather than individually throughout the year.

If there are timely windows for requests, objections, and determinations, this rule change will allow U.S. companies to more accurately forecast and respond to product demand. We recommend a deadline for filing exclusions in Q1, objections, rebuttals, and surrebuttals to be completed in Q2, and a decision in Q3 that would be in effect the following calendar year. While ambitious, this process will be streamlined and will allow requestors, objectors, and the Department to focus on specific tasks at designated times.

Allow Associations to File Objections

We also recommend that the Department mirror the Section 301 process by allowing industry groups and trade associations the ability to object to exclusion requests. While trade associations don't have manufacturing capability to meet the request, they do have an interest in protecting the domestic market from products originating from non-market economies. Additionally, trade associations can be helpful to the Department by highlighting requests that are patently unreasonable compared to the requestor's previous import levels and/or the overall demand in the marketplace.

Protect the Sovereignty of the Industry

Shift the Burden of Proof for Requestors that are not Producers

Brokers, distributors, and downstream manufacturers are submitting unrealistically large exclusion requests. Earlier this year, one broker submitted more than 120 exclusion requests, representing more than 525,250 MT of common alloy products. To put this in perspective, these requests by one broker represent more than 50% of the total common alloy imports in 2019, are 25% of the total common alloy demand in the U.S. and are more than 10 times the actual volume imported by this broker. Unlike U.S. producers, brokers add no value to the product. They simply resell it. Brokers make these large requests in the hope that a portion are granted. However, granting even a portion of these requests threatens the U.S. industry and jobs because it gives brokers an unfair price advantage over U.S. producers.

We strongly recommend that non-producers, like brokers, be required to provide detailed and credible justification for exclusion requests. If a requestor does not utilize capital or add value to the product, they should be held to a different standard than producers. The Department should require that non-producers demonstrate why they need to import aluminum, both in individual applications and in aggregate, that are above historical import volumes. As a benchmark, we recommend that Commerce use historical levels such as the full-year prior to the implementation of Section 232 or a three-year average. This approach is consistent with the Administration's derivative products proclamation, where it found a need to address imports of derivative products that have increased by more than 4-5% over the

broader trend of steel and aluminum imports generally. Non-producers should also be required to prove and certify that the aluminum will not be stored or used to manipulate prices in the future.

Compare Exclusion Requests to Historical Volume and Market Demand

Unfortunately, the example with the broker is one of many where importers are trying to game the system by requesting amounts that far exceed U.S. historical volumes and market demand. In this year alone, the Department granted exclusion requests for five billion pounds of aluminum can sheet. To put this in perspective, five billion pounds is larger than the U.S. market demand. Further, five billion pounds is larger than the total volume of U.S. imports for over a decade. Despite this, these exclusion requests were granted and continue to be granted in amounts that exceed what the market can support. Domestic manufacturers, who are already struggling to recover from diminished demand caused by the COVID-19 pandemic, continue to be put at a price disadvantage because of these granted exclusions. To address this, the Department should compare all exclusion requests made by a company and their subsidiaries to historical volume and market demand. Requests that exceed either should be denied. The Department should also strictly scrutinize an importer's exclusion requests if the requests exceed what the company actually imported in prior years.

Deny Requests from Non-Market Economies and State-Owned Enterprises

Companies that are state-owned or based in non-market economies already have an unfair advantage on U.S. producers. These companies should not be able to compound this advantage by receiving tariff exclusions. We strongly recommend that the Department deny all exclusions requests from companies that are state-owned or based in non-market economies. Should the Department not agree with this recommendation, we recommend that the Department allow U.S. companies to object to exclusion requests on the basis that the company is state-owned or is based in a non-market economy.

Automatically Deny Requests for Imports from Countries Subject to Antidumping and Countervailing Duties

Arconic strongly recommends that the Department automatically deny exclusion requests for imports from countries subject to antidumping and countervailing duties. Antidumping and countervailing duties are imposed on a country after the United States International Trade Commission and the Commerce Department investigate and determine that the U.S. industry is harmed by cheap and subsidized imports from that country. Countries who are known to harm the U.S. industry through unfair imports should not be rewarded by receiving exemptions on Section 232 tariffs. We recommend that the Department be consistent and deny exclusion requests on imports from any country subject to antidumping and countervailing duties.

The Department Should Focus on Capability, not Capacity as the Basis for Objections

The Section 232 exclusion process was designed to protect the U.S. industry from unfair foreign imports. In 2018, the domestic industry increased demand by announcing \$700 million in investments, including \$100 million by Arconic to increase capacity to meet the needs of the market. Because of

these investments, we estimate that U.S. supply could grow to 71% by 2021. However, this supply is harmed by exclusions that are granted on the basis of the U.S. capacity rather than capability.

From the beginning of the Section 232 process, we have strongly believed that all requests should be evaluated on the domestic market's capability of supplying the product, not capacity. The aluminum market is dynamic, and producers quickly make changes to meet the needs of the market. If there is a demand for a product and a U.S. producer has the capability to produce it, it will do so. The market changes faster than it takes for the Department to render a decision. Granting an exclusion request for products that are capable of being produced in the U.S. gives foreign imports a cost advantage and undermines the purpose of the tariff.

Require a More Defined Product Description at the Time of Request

We recommend that the Department require requestors to provide a more accurate and detailed product definition when the request is filed. Currently, the exclusion request form asks for the HTS Code, the Association code, and a few other characteristics of the product. Often, there is not enough information to clearly define the product. Without more information, U.S. producers are often unable to accurately determine if they have the capability to produce this product and must resort to filing an objection in order to obtain more information. As a result, they often won't find out this information until a rebuttal is posted, which could be months later. The lack of a more defined product description requires the requestor, objector, and the Department to utilize resources that they likely wouldn't have had to expend if the product was better defined at the start of the process.

Arconic strongly recommends that the Department require requestors to use the scope characteristics required to file an International Trade Commission Case. Requestors should provide the alloy, casting method, nominal width, gauge, temper, whether it's coil or not coil, has a mechanical surface finish, a non-mechanical surface treatment, and whether it's clad or not clad. The requestor should also provide the product or end user specifications. If the requestor doesn't supply this information in their exclusion request, the request should be automatically denied by the Department. The requestor knows this information and can easily supply it as opposed to the objector who doesn't and won't find out until the rebuttal is posted.

Require a Six-Month Time Limit for the Department to Render a Decision

Our final recommendation is to require the Department to render a decision within six months after an exclusion request is filed. Under the current system, some requests have taken one year or longer for a decision to be made. The aluminum market is constantly changing. Market realities that were present when the exclusion request was filed are not likely to be the same when these decisions are made, especially after six months.

Conclusion

Section 232 tariffs were designed to protect national security. However, weaknesses in the Section 232 process have been exploited by foreign competitors and have put U.S. companies at an unfair disadvantage. Fortunately, many of weaknesses can be addressed by improving the way the system is administered.

Arconic strongly recommends that the Department:

- Reform the Section 232 exclusion process to mirror the Section 301 exclusion process, including setting an annual deadline window for requests, objections, and decisions, while also allowing trade associations the opportunity to object;
- Protect the sovereignty of the industry by shifting the burden of proof for requestors that are not producers, comparing requests to historical volume and market demand, denying requests from companies that are state-owned or based in a non-market economy and denying requests on imports from any country that is subject to antidumping and countervailing duties;
- Focus on an objector's capability, not capacity when considering objections;
- Require requestors to provide a more accurate and defined product description at the time of request;
- Require a decision to be made within six months.

We appreciate your consideration of these comments and look forward to working with the Department to make the Section 232 exclusion process fair and effective. Please do not hesitate to let me know if you have any questions.

Sincerely,



Mark Vrabec
Executive Vice President and Chief Commercial Officer
Arconic Corporation



July 10, 2020

The Honorable Wilbur L. Ross, Jr.
Department of Commerce
Bureau of Industry and Security
1401 Constitution Ave. NW
Washington, DC 20230

Re: Written Comments by New Castle Stainless Plate, LLC in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (RIN 0694-XC058; BIS-2020-0012)

Dear Secretary Ross:

On behalf of New Castle Stainless Plate, LLC (“NCSP”), I submit the following in response to the Department of Commerce, Bureau of Industry and Security (“BIS”) Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas, 85 Fed. Reg. 31441 (May 26, 2020). NCSP appreciates the opportunity to provide comments on the exclusion process.

New Castle Stainless Plate is an American-owned steel manufacturer based in New Castle, Indiana. NCSP employs approximately 100 people who work in our Indiana facility producing stainless steel plate. NCSP specializes in wider, thicker, longer, lighter, and stronger stainless steel plate, which goes into critical industries such as nuclear, oil and gas, energy, rail, supporting U.S. energy independence and national security.

NCSP appreciates the time and effort that BIS invested in incorporating industry feedback when developing the new 232 portal. Since the exclusion process began in 2018, NCSP has found BIS personnel responsive and increasingly efficient at processing exclusion requests.

NCSP respectfully requests that BIS restrict eligibility for filing exclusion requests to exclude distributors from filing requests. Many distributors filing exclusion requests on the 232 portal are U.S. footholds for foreign steel manufacturers, using the exclusion process to import millions of tons of steel each year tariff free. Distributors regularly claim that products in their exclusion requests are not manufactured domestically or are available in insufficient quantity. But, these distributors serve as importers for foreign steel companies and do not attempt to source domestically. NCSP regularly receives feedback from customers citing the low prices of such distributors for the same products NCSP produces. Restricting eligibility to file exclusion requests to steel manufacturers and end users would help prevent foreign steel manufacturers

Department of Commerce
Bureau of Industry and Security
July 10, 2020

from flooding the domestic market with foreign steel imported tariff free through their U.S.-based distributors.

Preventing distributors from filing exclusion requests would not harm distributors' domestic customers who have a legitimate need for an imported product that is not produced domestically because those steel users could file an exclusion request for the specific amount of product they require. Aside from flooding the domestic market with low priced foreign steel, the vast volumes requested by distributors do not encourage domestic end users to shift supply chains and purchase from domestic steel manufacturers as the section 232 remedy intended. If BIS determines that distributors should be allowed to continue submitting exclusion requests, NCSP encourages BIS to limit the exclusion request volume to a reasonable quantity increase over the average past three years' usage.

Domestic steel manufacturers currently face record low demand due to COVID-19. Many have been forced to make difficult decisions to cut shifts, close for days, or take other remedial measures to cope with decreased demand while supporting their employees. Permitting distributors to file exclusion requests and import foreign steel tariff free directly contravenes the intent of the section 232 remedy, wastes taxpayer money as BIS processes tens of thousands of distributor requests, and costs the domestic industry time and money it can ill afford in the face of the pandemic to monitor the portal and file objections to these exclusion requests.

NCSP would be pleased to discuss the comments offered herein and any other aspects of the exclusion process generally.

Best regards,
New Castle Stainless Plate, LLC

A handwritten signature in black ink, appearing to read "Michael J. Stateczny", followed by a long horizontal line extending to the right.

Michael J. Stateczny
President & CEO



575 State Fair Blvd.
Solvay, New York 13209
(315) 487-4111

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
Bureau of Industry and Security
Office of Technology Evaluation
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

July 10, 2020

Re: BIS-2020-0012; RIN 0694-XC058: Written Comments of Electralloy in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas. (85 Fed. Reg 31,441)

Dear Secretary Ross:

These comments are filed on behalf of Crucible Industries in response to the May 26, 2020 *Federal Register* notice entitled *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*. See 85 Fed. Reg. 31,441 (May 26, 2020). Crucible traces our roots back to our start in 1876 in Syracuse NY, and more specifically to the formation of Crucible Steel in 1900 with the merger of 13 mills. We currently employ 200 people with 2 melt shops various hot working and finishing areas. We produce many grades that include stainless, tool steel, high speed, CPM products of powdered metals. These are in bar sizes from 0.390” through 24.000” round, flat bars and all forms of semi finished (Loose Powder, ingots, billet, slab). We are an integrated domestic producer essential in supply the United States government with many critical components for use in many national security applications.

Crucible is a strong supporter of the Section 232 remedy and has been an active participant with over 40,000 exclusions reviewed, 6,000 objections and over 2,000 sur-rebuttals on the new portal. Crucible is the smallest integrated producer and we are troubled with abuses by overseas entities to the detriment of our critical industry, specialty steelmaking. We have pointed out these situations with Commerce, BIS and the Sect 232 groups and understand the daunting task of managing this process. Our (Crucible) name plate capacity is over 30,000 metric ton with Crucible producing this as recently as 2008. We are currently running at around 25% of our capacity as stated in many of our objection requests.

There are a number of issues that Crucible has identified through the participation in the exclusion process that if addressed could streamline the process for all parties, domestic specialty steelmakers, requesting organizations and the government bodies regulating this process.

1. Requesting organizations hiding behind tradenames and proprietary grades that have no discernible difference from standard products with only de minimis variations in other properties
2. Requesting organizations overstating the volume of import with no market detail and volumes greatly exaggerated to the market size.
3. Requesting organizations that are owned, managed or have interests only to that specific overseas producer with no commercial ability without the support of the overseas entity.
4. Requesting organizations that state no domestic capacity when it was Crucible that invented both the process and the grade.
5. Requesting organizations stating overseas specifications that have no impact on the commercial domestic products.
6. Requesting organizations getting a denial and just slightly adjusting the request and filing again with the same information.
7. Requesting organizations having incomplete, erroneous classifications and descriptions that seem to be an orchestrated process with collusion with overseas entities.

Crucible would encourage more discussion and open dialogue with all interested parties to offer better options to manage this process with transparency.

Respectfully submitted,

John Shiesley
President



575 State Fair Blvd Solway NY 13209 USA
Producer of CPM, Stainless, Tool and High Speed Steels



Tri Star Metals

Delivering Stainless, Aluminum & Nickel Solutions

Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Constitution Avenue NW
Washington, DC 20230

July 10, 2020

Re: Comments on Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Dear Assistant Secretary Ashooh:

Tri Star Metals, LLC (“Tri Star”) has been in business since 1985 as a distributor of stainless-steel bar, rod and wire providing crucial semi-finished products to over 3,000 customers across the United States. Tri Star employs over 140 people in our manufacturing operations. Tri Star had been experiencing healthy growth since the 2008 financial crisis and purchased a stainless-steel mill in 2010. Since purchasing that facility, Tri Star has invested over \$20 million. Tri Star’s Illinois facility is now the most technologically advanced stainless-steel and nickel redraw facility in the United States. Tri Star’s customer base is focused in the aerospace market and Tri Star has invested significant resources in attaining the relevant quality certifications to serve that market.

When the 232 tariffs were imposed Tri Star encountered significant difficulties in maintaining the investments made. Raw materials drastically increased in price and domestic supply of these inputs was extremely constrained. Tri Star struggled to find domestic supply that would meet quantity and quality needs. For certain items, Tri Star’s European supplier used a specific melt method that is crucial to meeting Tri Star’s ultimate customers’ specifications, but the duties made it uncompetitive to source from them.

Tri Star has been able to engage in the exclusion process and secure exclusions for certain key raw materials. The investment related to complying with this process has been significant from a time and resources perspective. Additionally, the latency and uncertain nature of the process make it incredibly difficult to make any long-term plans or to make the type of strategic investments that will grow Tri Star’s operations.

Tri Star is a member of the Industrial Fasteners Institute and supports the comments filed by that organization. Additionally, Tri Star writes on the issues below in response to the Department of Commerce’s request for comment.¹

¹ Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas, 85 Fed. Reg. 31,441 (Bureau of Indus. and Sec. May 26, 2020).

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Tri Star Metals

Delivering Stainless, Aluminum & Nickel Solutions

1. The delay between exclusion request submission and date of approval.
2. The arbitrary nature of the rebuttal process.
3. The inability to amend requests.
4. The Customs process.

These issues are addressed in detail below:

1. The delay between exclusion request submission and date of approval.

Tri Star has submitted exclusion requests for both steel and aluminum items. To date, Tri Star has filed 147 exclusion requests for steel in the new portal. Around 30 percent received no objection and were approved with an average wait time of 43 days from filing ranging from 32 days to 65 days. Another 44 percent received objections and have not yet received a decision from BIS. The average wait time for those items has been 72 days ranging from 55 days to 83 days. The remainder are currently in an open period. This is a drastic improvement over the latency of the regulations.gov system but still reflects significant delay and more importantly uncertainty.

Tri Star's aluminum requests have fared worse. To date, Tri Star has filed 80 exclusion requests for aluminum on the new portal. Around 70 percent were approved with an average wait time of 68 days ranging from 50 days to 275 days. Another 26 percent received an objection and await a decision with an average wait time of 278 days ranging from 145 days to 319 days. The remainder were rejected after an objection.

Tri Star's experience generally tracks with public analysis of the process. The Mercatus Center has found that objections are the most consequential element of the process and strongly indicate whether an exclusion will be approved or denied.² Additionally, an objection can significantly delay consideration of a request.

Fundamentally, a firm engaged in this process must plan for between 2 and 4 months of uncertainty with respect to its supply chain and accept the risk that the period could be significantly more. This period of uncertainty will recur every year as long as these tariffs are in place and a firm cannot know from year to year whether a given request will be approved or denied. This makes long-term projections of costs incredibly difficult with the attendant impact on a firm's ability to make strategic investments and provide consistent pricing to its customers. Shortening the approval process or at a minimum providing firm deadlines for BIS's decision would alleviate these problems.

² Section 232 Steel and Aluminum Tariff Exclusion Requests Continue Apace, MERCATUS CENTER (Jan. 21, 2020), available at <https://www.mercatus.org/bridge/commentary/section-232-steel-and-aluminum-tariff-exclusion-requests-continue-apace>.



Tri Star Metals

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2. The arbitrary nature of the objection and rebuttal process.

As noted above, a significant portion of Tri Star's exclusion requests have received objections. At a substantive level, these objections have lacked detail, in certain instances failed to include crucial information and omitted past commercial interactions. The appearance is that objections are subject to a lower standard of review than those seeking exclusions. Given the importance of objections to the fortunes of a given exclusion request BIS must develop a process for substantiating the information in those filings and applying a consistent framework for rejecting or accepting the underlying exclusion request.

In a poignant example, Carpenter Technologies objected to one of Tri Star's requests that a steel input be excluded on the basis that "Carpenter is fully capable of producing the product identified and has the mill capacity to support production at the volumes identified in the objection."³ This assertion was, however, fundamentally inconsistent with information provided to Tri Star by Carpenter in an earlier tender in which they demonstrated an inability to meet the specification.⁴ Tri Star specifically noted this fact in the underlying exclusion request, stating "the material supplied by {Carpenter Technologies} does not meet the mechanical requirements that Valbruna will agree to listed on this exclusion request. They only supply to standard AMS 5737 spec."⁵ This specific request remains pending and has been for 55 days.

Tri Star has every confidence that the facts will ultimately result in the granting of this exclusion, but this dynamic shows that filing a thinly supported objection can result in significant delays to an exclusion that the requestor ultimately deserves.

With respect to aluminum, Kaiser filed an objection to one of Tri Star's requests in which it completely omitted any data related to its production capacity or how much remains available.⁶ These figures are the fundamental basis for this entire process.⁷ Where exclusion requests may be rejected for minor errors and include various required fields there are no such controls on objections. Despite lacking crucial data this objection has resulted in a latency of 299 days and Kaiser did not file a surrebuttal.

Aside from the delay engendered by unsubstantiated or incomplete objections, the substantive outcome is arbitrary. The table below shows certain attributes of two nearly identical exclusion requests that received identical objections. One was approved and one denied.

³ Objection No. 27937.

⁴ Rebuttal No. 15604 at Attachment.

⁵ Exclusion No. 89256.

⁶ Objection No. 5655.

⁷ See U.S. DEP'T OF COMMERCE, Bureau of Indus. & Sec., The Effect of Imports of Steel on the National Security at 59 (Jan. 11, 2018) (seeking to boost average capacity utilization to 80 percent).

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Exclusion Req.	Exclusion HTSUS	Exclusion Alloy	Exclusion Diameter	Objection Reason	Outcome
61387	7604293060	6061-T651	1.25"	Available through distributors	Approve
61805	7604293060	6061-T651	1.35"	Available through distributors	Deny

It is totally unclear what factor lead to this disparity. The memo accompanying the denial states only that “ITA recommends finding, based on all of the evidence presented, that the product referenced in the above-captioned exclusion request is produced in the United States in a sufficient and reasonably available amount and of a satisfactory quality, and recommends denying the request for an exclusion.” The approval states that “ITA recommends finding, based on the all of the evidence presented, that the product referenced in the above-captioned exclusion request is not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, and recommends granting the request for an exclusion.”

There is fundamentally no difference in the supply conditions between these two items. There is no way to know what factors the International Trade Administration or BIS relied in reaching this conclusion. The disparate outcomes are the definition of arbitrary.

The notice announcing the objection and rebuttal process states that, “{an} exclusion will only be granted if an article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for a specific national security consideration.” Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum, 83 Fed. Reg. 12,106, 12,110 (Bureau of Indus. and Sec. Mar. 19, 2018). There is no enunciation of what a reasonably available amount is, what production quality is deemed satisfactory or what constitutes as a “specific national security consideration.”

Even though there are fields in the objection form that could enlighten such an inquiry they are not required, and some objections are still posted despite omitting the relevant information. Without additional clarity regarding the criteria for approval or denial and additional controls related to the substance of objections the objection and rebuttal process will continue to simply act as a drag on timely rulings.

3. The inability to amend requests.

Currently, exclusion requestors are required to refile, *en toto*, any exclusion request that is rejected. These rejections often come days or weeks after the initial filing. This results in an unnecessary burden on exclusion requestors. This is especially true where BIS cites non-required fields as the basis for rejection. Developing a mechanism for rejected filings to be amended will be a significant improvement to the process.

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4. The Customs process.

Capturing refunds due and getting Customs and Border Protection (“CBP”) to allow excluded entries is incredibly cumbersome. The primary issue is registering granted exclusions with CBP. The current process is for importer to email traderemedy@cbp.dhs.gov with certain information in order to “register” a granted exclusion with CBP.⁸ The relevant message states that “CBP activates approved product exclusion numbers in ACE on a weekly basis. CBP, in most circumstances, will activate by close of business Thursday of every week any product exclusion numbers with corresponding importer information submitted by close of business Monday to Traderemedy@cbp.dhs.gov.”

In Tri Star’s experience this rarely happens in the stated manner. Frequent follow up emails to CBP are required inserting further delay into an already attenuated process. Tri Star suggests that the collaboration with CBP that allows the new portal to automatically vet the appropriate HTSUS code could be extended to this area of Section 232 compliance. Granted exclusion requests could be automatically registered with CBP upon granting, this would have numerous benefits. It would relieve CBP from dealing with the email burden, speed the ability of importers to utilize exclusions and as a result reduce the number of post summary corrections and protests flowing from this process.

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

Sincerely

Nick Pigott

Vice President – Stainless & Nickel Alloys
Tri Star Metals, LLC

⁸ CSMS No. 18-000663 (Nov. 8, 2018).

July 10, 2020

The Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

RE: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (RIN 0694-XC05)

Dear Assistant Secretary Ashooh:

The Aluminum Association welcomes the opportunity to submit comments in response to the Notice of Inquiry regarding the exclusion process for Section 232 aluminum tariffs. The current process is being abused, creating a market dynamic that gives foreign competitors – particularly those Chinese producers already benefiting from a number of subsidy regimes inside China – a further unfair advantage over domestic producers. The Association has previously noted the problems with the Section 232 duty as a remedy for this fundamental challenge to the U.S. aluminum industry, particularly as it has been applied to Chinese imports, and called for reforms to the aluminum Section 232 tariff exclusion system. Most recently, the Association sent a [letter](#) in April that proposed a series of changes to the program. We appreciate that the Commerce Department is taking steps to ensure the program better addresses the key challenge facing our members and customers by soliciting industry input on reforms.

The Aluminum Association is the voice of the aluminum industry in the United States, representing aluminum producers and workers that span the entire aluminum value chain from primary production to value-added products to recycling. Association member companies make 70 percent of the aluminum and aluminum products shipped in North America, and together these companies have announced or completed U.S. plant expansion investments totaling more than \$3 billion since 2013.

Executive Summary

Under current rules set by the Department, any U.S. person can request an exclusion from paying the 10 percent Section 232 tariff on specific aluminum products entering the United States. The exclusion process as administered is incentivizing imports of aluminum products – specifically by brokers and distributors that do not consume the imported aluminum product themselves but rather seek to re-sell it and profit from the price differential that the exclusion confers. These incentives are leading such intermediary parties to flood the exclusion process with requests, creating a significant administrative burden on domestic producers. In some

cases, granted exclusions are incentivizing manufacturing customers to cut back on their domestic aluminum purchases in order to increase their imports, or are being used for leverage in negotiations over purchases from domestic manufacturers of aluminum products.

The President issued an [Executive Order](#) in January expanding Section 232 tariffs to certain metal-intensive derivative products, recognizing recent shifts in trade flows as foreign manufacturers export to the United States more metal-intensive manufactured goods. The current exclusion process incentivizes the import of semi-fabricated aluminum products, undermining domestic producers of flat-rolled products and driving down demand for primary aluminum in the United States. While overall aluminum demand in North America dipped in 2019, and producer net shipments of semi-fabricated products declined nearly 3 percent year-over-year in 2019, imports of those same products increased more than 11 percent. If U.S. manufacturers of aluminum sheet, plate, foil, wire, extrusions and other products continue to lose out in the North American market to overseas competitors, they will naturally have to scale back purchases of primary aluminum. A ripple effect of demand destruction will do more to undermine primary producers in the United States than direct imports of primary aluminum from trading partners, and these outcomes undermine the market within the United States for domestically manufactured aluminum products. Surely, this runs counter to the intent of the Section 232 remedy.

To address these challenges, we strongly urge the Commerce Department to revise current regulations and practices to:

- Presume denial for imports from non-market economies like China, with exclusions only granted in extraordinary circumstances.
- Ensure that volumes in aggregate, for the importer and the product category, are 1) proportional to historical U.S. import volumes, and 2) proportional to market demand.
- Eliminate eligibility for, or presume denial for requests from, importers that are not manufacturing, processing or transforming the imported aluminum.
- Require a verified alloy designation, reported as the Aluminum Association alloy code or alloy-code series.
- Set a deadline of six months for the Department to issue a decision.

Detailed below are the Aluminum Association's recommendations for changes to the exclusion process, in response to the factors outlined in the Notice of Inquiry.

Appropriateness of Factors Considered

Presume Denial for Imports from Designated Non-Market Economies

The Commerce Department's 2018 [report](#) that followed the Section 232 investigation on aluminum imports cited China as "a major cause of the recent decline in the U.S. aluminum industry is the rapid increase in production" and acknowledged that China's overcapacity "suppressed global aluminum prices and flooded into world markets." Targeted trade remedy and enforcement actions – like antidumping and countervailing duty (AD/CVD) cases that address unfairly traded U.S. imports of aluminum foil and common alloy sheet from China – are working as a tool to combat unfair trade and incentivize investment by domestic producers. The Association applauds the efforts taken by the Administration to vigorously enforce AD/CVD

orders against Chinese imports and bolster enforcement efforts to help identify and eliminate schemes to circumvent these orders.

Unfortunately, the Section 232 remedy in its current form has not impacted the fundamental structural challenge facing the U.S. aluminum industry: China's persistent unfair trade practices and the negative effects of unfairly subsidized overcapacity on U.S. producers of aluminum and aluminum products. Even as AD/CVD orders have led to a sharp decline in unfairly traded imports from China of certain aluminum products to the United States, global exports of semi-fabricated aluminum products from China have recently hit record levels. Chinese aluminum producers are increasingly reliant on exports of semi-fabricated aluminum products – reaching a near-record 5.14 million metric tons in 2019 – to maximize the use of their existing capacity and to justify additional subsidized capacity expansions that will ultimately displace U.S. (and all market-economy) producers and give China a monopoly status on aluminum production. Exclusions from tariffs on imports of aluminum and aluminum products from China significantly diminish the incentives for the Government of China to take action to address overcapacity in its aluminum industry.

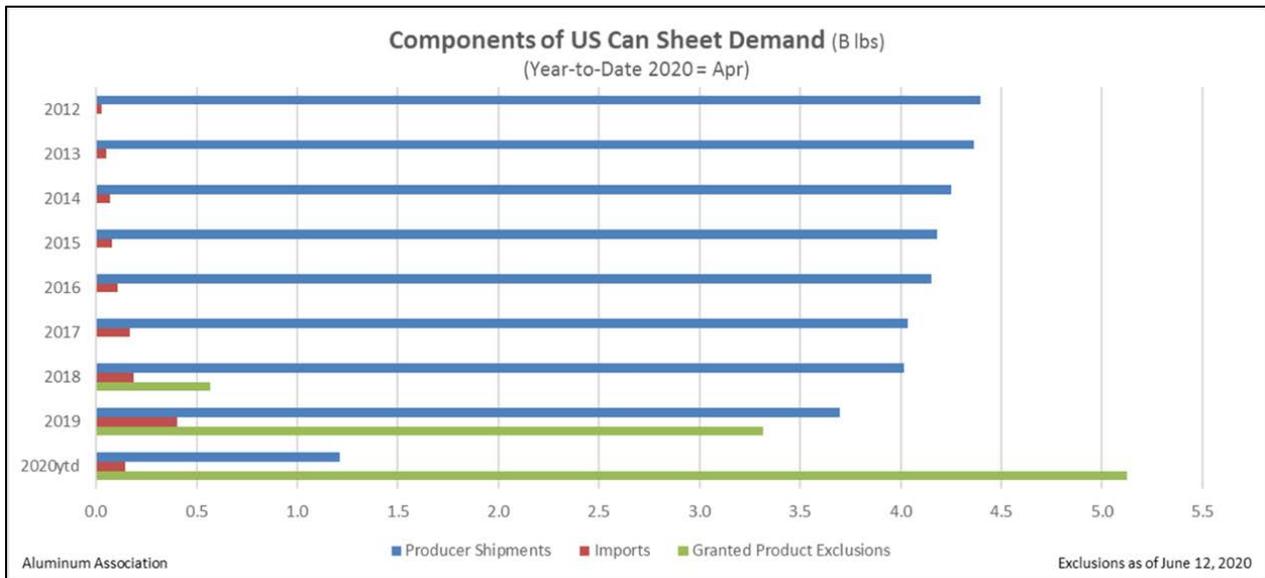
Recommendation:

- Adopt a policy that presumes denial for exclusion requests from non-market economies like China, with exclusions only granted in extraordinary circumstances. If the Department does not presume denial for non-market economies, the Department should allow stakeholders to oppose requests on the basis that the product originates from a designated non-market economy or is the likely result of transshipped non-market production.

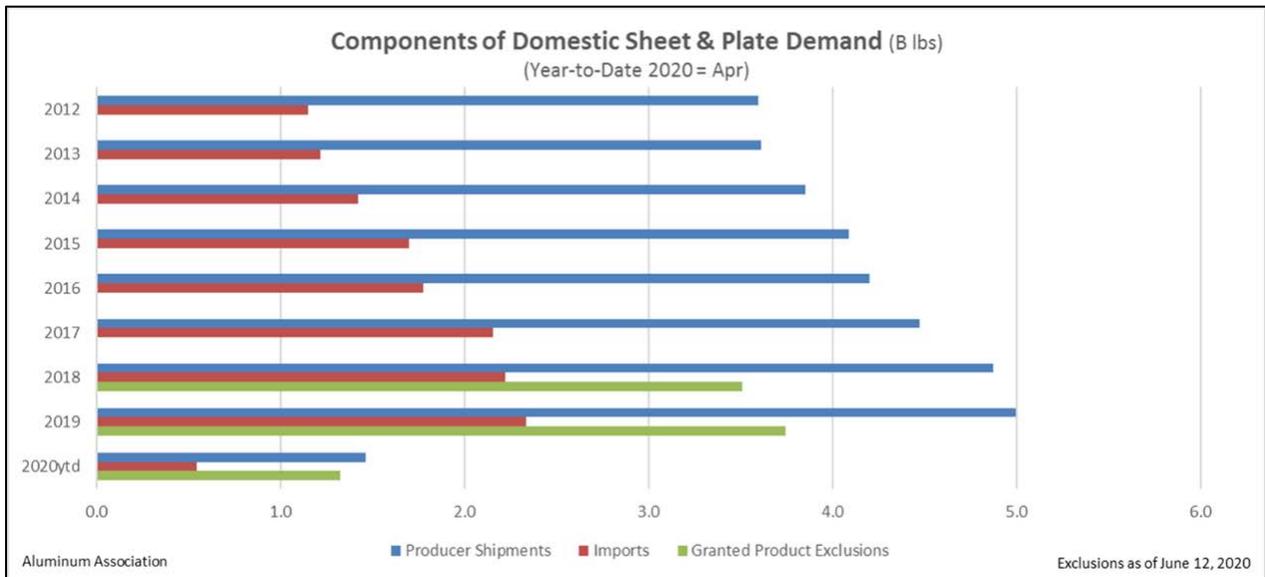
Limit Volume of Exclusions

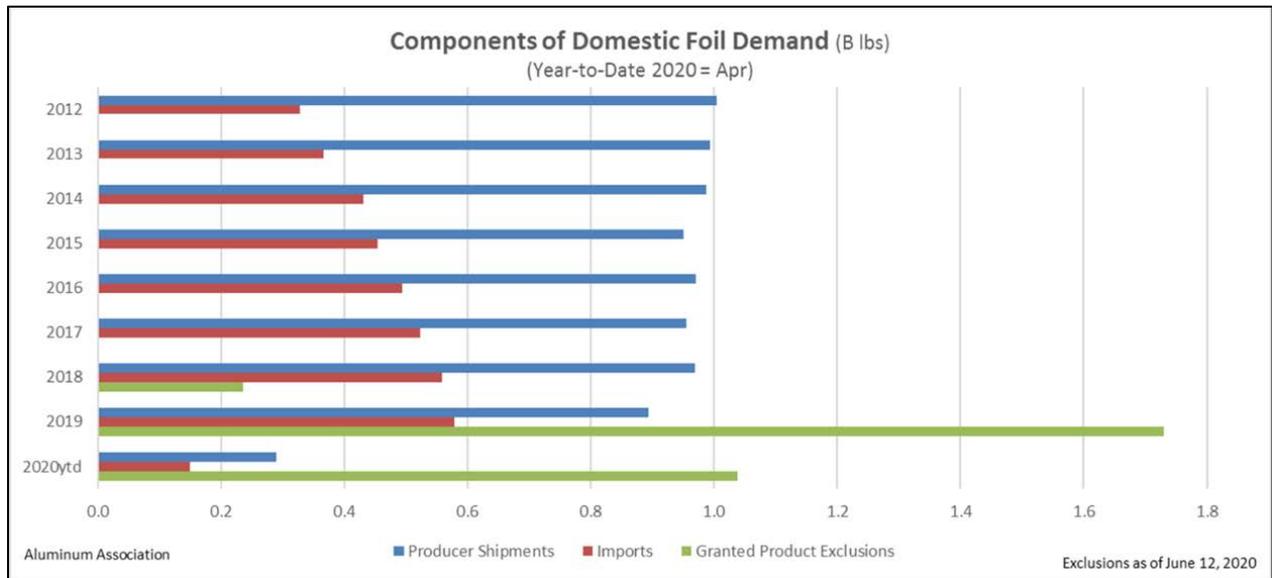
The Association is deeply concerned that the Commerce Department has granted tariff exclusions for huge volumes of aluminum flat-rolled products like can stock, plate, sheet and foil that far exceed historical import volumes and U.S. market demand (see below). The abuse of the exclusion process has created a market dynamic with an inherent disadvantage for domestic aluminum manufacturers. Through June 12, 2020, exclusion requests for 7.6 billion pounds of aluminum have already been granted this year.

Granted exclusions just so far in 2020 exclude from Section 232 tariffs more than 5 billion pounds of aluminum can sheet – much of it unfairly subsidized production from China. Those exclusions requests granted by the Department cover more aluminum can sheet than the entire U.S. market consumes in a year (and dwarf historical import trends for that segment). Put another way, the volume of can sheet exclusions granted by the Department in just the first half of 2020 is greater than the volume of U.S. imports over more than a decade in total. It is hard to overstate how huge those volumes are, or the negative effects they are having in the market.



In addition to can sheet, exclusions have been granted this year for significant volumes of other flat-rolled product (including foil and common alloy sheet) – and there have been a number of exclusions for flat-rolled products granted this year despite domestic producer objections. The U.S. market will face years of future distortions and disruption if importers follow through to import aluminum products in the volumes granted by the Department.





Under the current system, there is no accountability for requests. Recently, a broker submitted over 120 individual requests for common alloy products – more than 1.15 billion pounds in total. This excessive quantity represents more than 50 percent of the total common alloy imports in 2019 and is more than 10 times the actual volume historically imported by this broker. Inflated requests, before they are granted or even if they are never used, give customers purchasing leverage in negotiations with domestic suppliers.

The Association recognizes, though, that a dynamic market with potential growth for aluminum may impact future production realities in the United States. We know that imports can play a constructive and necessary role in the U.S. market, and we believe those necessary imports should come unimpeded from market economy producers (while subsidized, non-market production is met with appropriate duty restrictions). In administering an effective Section 232 exclusion process, the Commerce Department must be prepared to work closely with aluminum industry stakeholders and adapt to changes in the market.

Recommendation:

- The Commerce Department should review all Section 232 exclusion requests involving aluminum products to ensure that volumes identified in each request are proportional to historical U.S. import volumes (with an appropriate allowance for increases in market demand), compared to aggregate annual volumes for an individual applicant and its parent company as well as product category, and proportional to U.S. market demand.
- Any importer that is not an aluminum producer or manufacturer should be required to provide a detailed and credible justification for exclusion requests – and particularly for exclusions that involve imports in excess of historical levels, using the full-year prior to the implementation of the Section 232 tariffs as the benchmark. If the Department does grant an exclusion to an importer who is not a manufacturer, that importer should certify that the aluminum is not being used solely to hedge or arbitrage the price.
- If requests from non-manufacturers are above historical import volumes, the Department should shift the burden onto the requestor and require it to demonstrate why it needs to import the aluminum at that volume (in individual applications and in aggregate). Further, there should be a strong presumption of denial where a domestic producer objects to an

exclusion request for an aluminum product, based on that producer's ability to produce in the United States the product for which an exclusion is requested.

Efficiency of Process Employed

Restrict Eligibility of Exclusion Requestors, Expand Ability to File Objections:

The current system has opened up an opportunity for gamesmanship. In practice, the exclusion system incentivizes desktop traders to stock up on lower-priced imports – even if those goods aren't immediately needed. The Department should ensure that brokers who are buying and selling aluminum without taking possession of the imported product are not exploiting the exclusion process to gain profit from the sudden price advantage.

Current Department of Commerce regulations allow any individuals or organizations "using aluminum articles" identified by the Section 232 Executive Orders and "engaged in business activities in the United States" to submit exclusion requests. On the other hand, the Department requires that an objection include information about 1) the products that the objector manufactures in the United States, 2) the production capabilities at aluminum manufacturing facilities that the objector operates in the United States; and 3) the availability and delivery time of the products that the objector manufactures relative to the specific product that is subject to an exclusion request. Because the Department is reliant on objectives to flag a request for further review, excessive requests create an administrative and cost burden on domestic producers that have to object to a large number of requests in order to preserve a level playing field.

Further, there is no downside for requestors to inflate their exclusions requests to a volume that a single domestic manufacture cannot supply individually. The Department often grants such requests, in whole or in part, due to lack of domestic capacity. This practice incentivizes brokers and traders to wildly inflate volume requests and often results in a "reduced" exclusion approval that far exceeds domestic market demand.

Recommendation:

- The Department should eliminate eligibility for exclusion requests, or presume denial for requests, from importers who are not manufacturers or processing the metal in some way. Only importers who are transforming, processing or manufacturing the aluminum should be eligible for an exclusion. MSCI's [definition](#) for a "service center" or the Aluminum Association's [definition](#) for a "producer" could be helpful in drawing objective parameters that cover aluminum production, processing and finishing or companies that operate metals service centers (facilities that provide first-stage fabrication services like cut-to-length, slitting, etc.).
- The Department currently limits the basis for objections to the domestic manufacturing capability and capacity of the filer. The Department should allow trade associations that represent domestic aluminum producers with the ability to produce the requested products to submit objections for products that originate from non-market economy countries or notably exceed the requestor's previous import levels (as indicated in the exclusion request) even if the trade association itself does not manufacture the product identified in the exclusion request. The exclusion process for Section 301 tariffs on imports from China allows for industry groups (like trade associations) to file and object

to exclusion requests, and industry groups should have the same ability to participate in the Section 232 exclusion process.

- The Department should require the exclusion request to demonstrate that the aluminum is filling a direct need and used in the volume requested.

Modify Forms to Streamline, Require Information in Exclusion Requests

Currently, the Section 232 exclusion request form reads: “Identify the Association code for the product that is the subject of this Exclusion Request.” This should be the [alloy](#) designation of the aluminum product, which is the recognizable short-hand of its chemical composition – the key indicator for the application(s) in which the product will be used. The Aluminum Association manages the U.S. alloy designation/registration system and is the major standard-setting organization for the global aluminum industry. There are currently more than 530 registered active compositions, and that number continues to grow.

We would expect any legitimate importer, and certainly any manufacturer, would know the alloy of the product they are purchasing given that this is such a foundational piece of information. Alloys are also a key factor in trade remedy cases, and certain alloys of aluminum products are subject to anti-dumping and countervailing duty (AD/CVD) orders. The alloy, though, is not always provided in the exclusion requests even though the field is on the form. Without that information, it is difficult for a domestic producer to fully evaluate the exclusion request – and, particularly, to determine whether they have the capability to manufacture the product. Aluminum producers often promote their products by touting specific alloys – the information, by practice, is not confidential.

Under the current system, many of the most important product details aren’t disclosed until the rebuttal stage of the request. Such foundational information should be provided by a requestor at the outset of the exclusion process in order to allow U.S. producers to determine if they have the ability to manufacture the product.

Recommendation:

- The current exclusion request form asks for the “Association code.” We recommend that the form be modified to clarify that this is the alloy designation, reported as the Aluminum Association Alloy Code or Alloy-Code Series. The Department should verify that an alloy designation is included in the request before further reviewing the request, and requests that do not identify an alloy should be rejected.
 - If the importer has a “proprietary” alloy code, they should provide the series indicator (5xxx, for example). The Association can arrange a briefing or tutorial on alloys for any Department staff or contractors on the alloy designation system and key indicators.
 - Because a foreign producer may use a foreign alloy code, DOC should provide an option to provide a comment box or similar field to provide the appropriate foreign code.
- The Department should consider the scope of existing aluminum AD/CVD orders and modify the exclusion request form to capture critical points: casting method, nominal width, gauge (nominal thickness), mechanical surface finish, temper, etc. Requiring such information would provide an important means for ensuring that the product identified within an exclusion request is within the capabilities of the foreign producer(s) identified in the exclusion request – and will aid enforcement efforts for AD/CVD orders.

Set Timeline for Exclusion Request Decisions:

The administrative burden resulting from the need to monitor the Section 232 portal constantly, evaluating exclusion requests and responding as needed is taxing on domestic aluminum producers. Nonetheless, dynamic market conditions mean that production lines can – and do – shift. Accordingly, procurement and sourcing demands may shift as well and require new kinds of input materials.

Recommendation:

- The Department should set a deadline of six months from the time an exclusion request is filed to issue a decision. Some requests have taken a year or longer for the Department to decide. The market is constantly changing, and the market realities at the time of the request may not be the same when it is eventually decided. The Department should adopt a policy of denying any request that is not resolved after six months.
- The Department should coordinate with U.S. Customs and Border Protection (CBP) to guarantee swift action on refunds due to importers – within a calendar year of approval for an exclusion request.

Conclusion

The challenges facing our industry are complex and global in scale, without easy solutions, but the Association is dedicated to ensuring the long-term viability of the U.S. aluminum industry. U.S. aluminum companies have competed in a globally integrated market for decades and built constructive relationships with overseas producers that support the ability of domestic aluminum operations to meet growing demand in the United States. As one example, the Aluminum Association has supported country exemptions from the Section 232 tariffs for trading partners that operate as market economies – particularly for close partners like Canada and Mexico. The U.S. aluminum industry deserves to compete on a level playing field within North American and in the global market.

The recommendations outlined above are specific to the aluminum remedy and exclusion process. Given the foundational differences in steel and aluminum operations and markets, the administration of the Section 232 aluminum remedy can rationally diverge from the steel remedy – and there should be industry expertise on both sectors within the Department.

We appreciate your consideration of these comments and would be pleased to work with you and your colleagues as you evaluate and implement changes to the Section 232 exclusion process. Without these necessary changes, the use of the Section 232 exclusion process by some stakeholders will threaten the competitiveness of domestic aluminum manufacturers.

Respectfully submitted,



Lauren Wilk
Vice President, Policy & International Trade
The Aluminum Association

ANNEX: Comments on Potential Revisions Outlined in NOI

In general, the Association believes that the “blanket” rules outlined in the Notice of Inquiry are problematic given the breadth of the products covered by the Section 232 tariffs. The recommendations above are intended to advance efficiencies that are sought by the blanket proposals in the Notice of Inquiry. More specifically:

(1) One-year blanket approvals of exclusion requests for product types that have received no objections as of a baseline date (see Annex 1 and 2); and

(2) One-year blanket denials of exclusion requests for product types that have received 100 percent objection rates and never been granted as of a baseline date (see Annex 3 and 4);

The Commerce Department would need to define the meaning of “product types.” For instance, a product type may correspond to the product description of an HTSUS code at 10 digits. U.S. producers may not have the capability of manufacturing all products classifiable at a 10-digit level, but that does not mean that a blanket exclusion should be granted for all products that are classifiable under the 10-digit subheading. If the Department pursues this idea, it should consider allowing for a minimal deviation if there are requests with perhaps one or two requests without objections. In any case, the objection rates should be determined for each product type on a one-year period.

(3) time-limited annual or semi-annual windows during which all product-specific exclusion requests and corresponding objections may be submitted and decided;

Addressed in comments, above.

(4) issuing an interim denial memo to requesters who receive a partial approval of their exclusion request until they purchase the domestically available portion of their requested quantity;

In practice, we believe this proposal will be difficult to track and enforce.

(5) requiring requestors to make a good faith showing of the need for the product in the requested quantity, as well as that the product will in fact be imported in the quality and amount, and during the time period, to which they attest in the exclusion request (e.g., a ratified contract, a statement of refusal to supply the product by a domestic producer);

Addressed in comments, above.

(6) requiring objectors to submit factual evidence that they can in fact manufacture the product in the quality and amount, and during the time period, to which they attest in the objection;

As addressed above, we encourage the Department to rely less on objections in reviewing exclusion requests. Instead, the Department should adopt a policy or practice of reviewing requests based on historical volumes, market demand and origin country. If the Department adopts a policy related to capability, it should identify the means by which an objector would demonstrate the capability to manufacture the product in question. For some

products (e.g., 3003 or 5052), this will be easy. For other products (e.g., proprietary alloys, etc.), this could be more complicated.

(7) setting a limit on the total quantity of product that a single company could be granted an exclusion for based on an objective standard, such as a specified percentage increase over a three-year average;

As addressed in the comments above, we believe a limit on volumes would help mitigate the abuse of the exclusion system. The Association would be glad to provide input to the Department on how best to determine or apply such a limit.

(8) requiring that requesters citing national security reasons as a basis for an exclusion request provide specific, articulable and verifiable facts supporting such assertion (e.g., a Department of Defense contract requiring the product; a letter of concurrence from the head of a U.S. government agency or department that national security necessitates that the product be obtained in the quality, quantity and time frame requested);

This justification seems to be rare, in reviewing the docket, and the Association has no recommendation on this front.

(9) clarifying that the domestic product is “reasonably available” if it can be manufactured and delivered in a time period that is equal to or less than that of the imported product, as provided by requestor in its exclusion request;

It should not be less than the current 8-week period.

(10) requiring that requestors, at the time of submission of their exclusion requests, demonstrate that they have tried to purchase this product domestically;

We believe this would be too complicated to administer, both for industry stakeholders and the Department. Requestors should at least be able to validate – in a business confidential format if necessary – their need for the imported product.

(11) in the rebuttal/surrebuttal phase, requiring that both requestor and objector demonstrate in their filings that they have attempted to negotiate in good faith an agreement on the said product (i.e., producing legitimate commercial correspondence).

We believe this would be too complicated to administer, both for industry stakeholders and the Department.

PUBLIC SUBMISSION

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Docket: BIS-2020-0012

Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Comment On: BIS-2020-0012-0001

85 FR 31441 232 Exclusion Process FRN 5-26-20

Document: BIS-2020-0012-0070

Public comment 68 on 232 NOI. Aleris. P McCabe. 7-10-20

Submitter Information

Name: Patrick McCabe

General Comment

Aleris fully supports the Aluminum Association in calling for urgent reforms to the Commerce Department's Section 232 aluminum tariff exclusion system. Aleris has been detrimentally affected by low priced imports and deficiencies in the current exclusion system.

Aleris has spent significant resources on monitoring the current exclusion system that could have better provided value to our customers in the transportation, construction, defense, infra-structure and other critical industries.

Aleris has experienced difficulty filling mill capacity as well as lower prices due to extremely aggressive pricing from overseas. In 2019, Aleris's production and capacity utilization dropped below 2017 levels and current pre-pandemic pricing is 15-30% lower in our key markets in the last year.

Additionally, we should emphasize the lack of data available regarding the alloys and volumes for which exclusions have been granted. Visibility of this data to all of the US mills will allow an understanding of the full scope of exclusions being granted, thus allowing the mills to adjust strategies going forward and ensure more aluminum is produced within the US.

In short, Aleris favors a greatly streamlined process with a policy of "presumptive denial" to alleviate the burden put on our resources and increase competitiveness.



Aleris Comments Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Aleris Lewisport is a leader in the manufacture and sale of aluminum rolled products, based in Lewisport, Kentucky. We serve a variety of end-use industries, including automotive, building and construction, transportation, and consumer goods.

Aleris fully supports the Aluminum Association in calling for urgent reforms to the Commerce Department's Section 232 aluminum tariff exclusion system. Aleris has been detrimentally affected by low priced imports and deficiencies in the current exclusion system.

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In short, Aleris favors a greatly streamlined process with a policy of "presumptive denial" to alleviate the burden put on our resources and increase competitiveness.



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July 10, 2020

The Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

RE: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (RIN 0694-XC05)

Dear Assistant Secretary Ashooh:

United Aluminum is pleased to submit comments in response to the Notice of Inquiry regarding the exclusion process for Section 232 aluminum tariffs. Thank you for your interest in improving the protocol.

We appreciate your support for U.S. manufacturing from unfair competition that has adverse implications for jobs and national defense readiness.

Below are our recommendations for improvement of the Section 232 Exclusion System:

1. Limit the Pounds of Aluminum Import Exclusions relative to Market Size:

- a. Exclusions Proportional to Demand: Review all Section 232 exclusion requests involving aluminum products to ensure that volumes identified in each request and aggregate are proportional to historical U.S. import volumes.
 - i. For example, the Aluminum Association produces Apparent Demand for various products which could be a basis for 232 Exclusion requests.
 - ii. We suggest that the aggregate should be for no more than 150% of the highest level of any one of the past 3 calendar years, per product.
- b. Exclusions Proportional to Individual Requester's Past Product Usage: Review all Section 232 exclusion requests involving aluminum products to ensure that volumes identified in each request and aggregate, compared to aggregate annual volumes for an individual applicant and its parent company as well as product category do not exceed 150% of the highest level of any one of the past 3 calendar years, per product.

- (3) for which a customer can provide reasonable proof that there are not more than one U.S. producer quoting such item.
- a. Adopt a policy that presumes denial for exclusion requests from non-market economies (NME) like China, with exclusions only granted in extraordinary circumstances.
 - b. If the Department does not presume denial for NME countries, the Department should allow stakeholders to oppose requests on the basis that the product originates from a non-market economy country.
 - c. Any importer that is not an aluminum producer should be required to provide certification for exclusion requests, a detailed and credible justification, and particularly for exclusions that involve imports in excess of historical levels. The Department should shift the burden of proof onto non-aluminum producer requestors and require them to demonstrate why they need to import aluminum (in individual applications and in aggregate) above historical import volumes.
5. Producer Objections: Producers submitting objections to exclusion requests should be required to certify that they have, during the objection period and prior to submitting the objection, quoted the company requesting the exclusion for the same product and quantity described in the exclusion request, at current lead times, at a competitive price. This is difficult to ascertain; but price clearing quotations are not uncommon in the industry.
- a. Many large companies are filing objections to all requests, whether warranted or not. That adds more time to the process and more work for the company filing the exclusion request.
 - b. In summary, objections should be vetted to avoid unwarranted delays in the marketplace, eliminating time consuming and unnecessary time to file and adjudicate rebuttals. BIS should investigate the certification to determine the legitimacy of objections before requestor has to respond. This would eliminate the requirement to post Section 232 duties for pending exclusion requests, an unfair burden on the requestor.
6. Enforce the Section 232 Derivative Product Executive Order to Preserve Jobs:
- a. Enforce the President's [Executive Order](#) in January expanding Section 232 tariffs to certain metal-intensive derivative products, demonstrating that recent shifts in trade flows – in many instances, a result to of the Section 232 tariffs and the current exclusion process – are undermining domestic producers as foreign manufacturers export to the United States more downstream, metal-intensive products.
7. Section 232 Administrative Process Recommendations:
- a. The 232 exclusion request process is a lengthy one. Even without objections it takes months from start to finish.
 - i. BIS handles the initial exclusion request, then it is posted on line for 30 days whereby other companies may file objections. There is a period

for rebuttal and sur rebuttal, all adding more time to the process. If requestor gets past this, it must wait an additional 30+ days for CBP to approve.

- ii. Then CBP needs to get the information into the Automated Commercial Environment (ACE), the system the U.S. Government uses to process imports and exports. It is up to the requestor to make sure the baton is passed from BIS to CBP. There is no automatic handoff between agencies.
 - iii. This is a very tedious process for the requester, and the delay should be shortened.
 - iv. Currently, the Section 232 exclusion request form reads: "Identify the Association code for the product that is the subject of this Exclusion Request." This should be the "*alloy designation*" of the aluminum product, which is the recognizable short-hand of its chemical composition – the key indicator for the application(s) in which the product will be used. The Aluminum Association manages the U.S. alloy designation/registration system and is the major standard-setting organization for the global aluminum industry. There are currently more than 530 registered active compositions, and that number continues to grow.
 - v. DoC should allow requestors to cover wider ranges of physical characteristic specifications (i.e. gauge) in a single exclusion request within a single HTSUS code in order to discourage requestors from filing multiple exclusion requests which may overlap. This would help mitigate the opportunity for requestors to overload DoC and domestic producers with requests.
 - vi. The Department should consider the scope of existing aluminum AD/CVD orders and modify the exclusion request form to capture critical points: casting method, nominal width, gauge (nominal thickness), mechanical surface finish, temper, coil vs. not coil. Requiring such information would provide an important means for ensuring that the product identified within an exclusion request is within the capabilities of the foreign producer(s) identified in the exclusion request – and will aid enforcement efforts for AD/CVD orders.
- b. It is difficult to access "a live person" when requestor has questions. It is also difficult to get help or a response from email requests. People responding to the requests are often not knowledgeable about the product, just the administrative side of the requests. Ideally each requestor should be given one point of contact for follow-up and questions.
 - c. Too much of the decision process is automated by algorithms, and some algorithms are incorrect. Our exclusion requests were delayed for many months because algorithms did not account for text comments which explained the chemistries. It took us months to get in touch with someone who finally acted on our input and got the process going again.

- d. Overall, the process is out of the control of the exclusion requestor who is limited by strict deadlines at each step of the process. Even when requestor makes it past the 30-day objection period unopposed, the requestor has no idea how long it will take to receive the Decision Memo. BIS and CBP should be required to adhere to published time limits or at least provide regular status updates to keep the requestor informed through push email notifications.
 - i. DoC should push emails to requestors at key intervals to minimize the administrative burden of requestors to monitor constantly the DoC website.
- e. DoC should set a deadline of six months from the time an exclusion request is filed to issue a decision. Some requests have taken a year or longer for the Department to decide. The market is constantly changing and the market realities at the time of the request are not the same as when it is eventually decided.
- f. DoC should coordinate with U.S. Customs and Border Protection (CBP) to guarantee swift action on any refunds due to importers, within 3 months of approval for an exclusion request.
- g. Renewals of Exclusions Previously Granted: The Renewal process should be streamlined by the requestor certifying that the original circumstances for the previously granted exclusion have not changed.

We hope that our input has provided value and we appreciate your consideration of our recommended modifications to the Section 232 exclusion process.

Respectfully submitted,



John Lapidés
President



July 10, 2020

Bureau of Industry and Security
Department of Commerce
1400 Constitution Ave NW
Washington, D.C. 20230

Docket No. 200514-0140
RIN 0694-XC058
Regulations.gov ID: BIS-2020-0012

RE: Conagra Brands, Inc. comments in response to the “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs”

Conagra Brands, Inc. respectfully submits comments in response to the “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas,” in Docket No. 200514-0140. Conagra Brands, Inc., headquartered in Chicago, is one of North America's leading branded food companies. In addition to iconic brands like Birds Eye®, Duncan Hines®, Healthy Choice®, Orville Redenbacher®, Marie Callender's®, Reddi-wip®, and Slim Jim®, we are also one of America's largest canned food makers, with a brand portfolio that includes Hunt's®, Chef Boyardee®, Rotel®, Manwich® and many other well-loved brands.

Conagra Brands is a major end user of tinplate steel, the primary input used in the making of food cans. Despite the intent of Section 232 to increase domestic steel supply for national security purposes, since tariff implementation two years ago there has not been a significant increase in domestic tinplate production capacity. Rather, the percentage of the overall domestic steel market dedicated to tinplate steel has remained at pre-tariff levels of approximately 3%. Due to insufficient domestic supply and ongoing quality issues, U.S. can suppliers are still forced to import approximately 40% of the tinmill products needed to meet domestic demand. The lack of sufficient investment in growing the domestic tinplate market has resulted in the Section 232 tariffs being nothing more than

an added cost to Conagra, benefiting the U.S. steel industry at the expense of domestic food makers and consumers.

At a time of unprecedented demand and need for shelf-stable food products around the world, we urge the Department to provide a categorical exclusion from the Section 232 tariffs for tinplate steel used in food packaging. Since there is no national security use for tinplate steel, no evidence of U.S. jobs being created in the tinplate steel industry as a result of the tariffs, and no growth in domestic tinplate production, granting an exclusion would not undermine the national security intent of Section 232. It would, however, provide a consistent playing field for all tinplate steel users by eliminating the need for similarly situated companies to apply for exclusions separately, saving valuable company resources and allowing us to get products to market as efficiently as possible.

Conagra Brands appreciates the Department's consideration of our comments and believes an evaluation of the tinplate steel market will support the granting of the categorical exclusion for tinplate we are requesting.

Sincerely,

A handwritten signature in blue ink that reads "Megan L. Garcia". The signature is written in a cursive, flowing style.

Megan L. Garcia
Senior Director, Government Affairs
Conagra Brands, Inc.

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July 10, 2020

The Honorable Wilbur L. Ross
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: **BIS-2020-0012: Comments on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (RIN 0694-XC058)**

Dear Secretary Ross:

On behalf of Tata Steel Europe including its U.S. subsidiaries Tata Steel International Americas Inc., Thomas Steel Strip Corp., and Apollo Metals (collectively referred to as “TSE”), we hereby provide comments on the exclusion process for Section 232 steel and aluminum import tariffs and quotas, in response to the Federal Register notice published on May 26, 2020, RIN 0694-XC058.¹ TSE appreciates the opportunity to provide feedback on this process.

In the Federal Register notice, the Department of Commerce (“the Department” or “Commerce”) requested feedback on a number of areas including (1) the information sought on the exclusion request, objection, rebuttal and surrebuttal forms; (2) expanding or restricting eligibility requirements for requestors and objectors; (3) the Section 232 Exclusions Portal; (4) the requirements set forth in Federal Register Notices, 83 FR 12106, 83 FR 46026, and 84 FR 26751; (5) the factors considered in rendering decisions on exclusion requests; (6) the information published with the decisions; (7) the BIS website guidance and training videos; (8) the definition of “product” governing when separate exclusion requests must be submitted; and (9) incorporation of steel and aluminum derivative products into the product exclusion process. In addition, the Department sought comments on modifications to the process, and listed a

¹ Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas, 85 Fed. Reg. 31441 (Dep’t of Commerce May 26, 2020).

number of possible modifications to the process it was considering. TSE has addressed each of these issues in these comments.

I. Information Sought on the Exclusion Request, Objection, Rebuttal and Surrebuttal Forms

A. The Exclusion Request Form Should Not Require HTS Codes

HTS codes should not be required as a mandatory element on the exclusion request form. Requiring an HTS code provides little of the administrative benefits that the Department desires. The Department has made clear that U.S. Customs and Border Protection's ("Customs") approval is not a prerequisite for an exclusion request.² And yet, the inadvertent misidentification of the HTS code on the form can act as a barrier to efficiently obtaining an exclusion and, worse, it can be a bar to using an exclusion that was granted. To the extent that the Department views the inclusion of an HTS code as assisting Customs in their efforts, its inclusion should be based on the same criteria that Commerce uses in requiring HTS codes in antidumping proceedings, *i.e.*, it is for convenience only and not controlling or limiting.

It was essential for Commerce at the outset to identify the HTS codes covered by the Section 232 duties so that Customs could easily identify which imports are subject to the scope of the measures. But, it is unclear why coordination with CBP "is an important component in ensuring the approved exclusion request can be properly implemented – meaning the HTSUS statistical reporting number provided by the requester is in fact correct." 83 Fed. Reg. 46026, 46053 (September 11, 2018). The Department has stated "ensuring that an individual or organization that submitted an exclusion request used the correct HTSUS statistical reporting number will ensure an approved exclusion is implementable." 83 Fed. Reg. 46045, 46039 (September 11, 2018). For Customs to administer the exclusions, however, they can and do consult the specific exclusion numbers assigned to each request in determining whether a specific imported product is excluded from the tariffs. Customs is expert at evaluating imports for tariff purposes, especially in steel, where it has a great deal of experience with antidumping and countervailing duty orders. In fact, for AD/CVD purposes, HTS codes are expressly provided for convenience only and are not controlling. If Customs can execute its mission in the AD/CVD arena without having definitive HTS codes up front, then it should be able to do so in the Section 232 context. Specifically, there does not appear to be a benefit that Customs derives from having the HTS number on the exclusion form and have it used in such a way that it has become a mandatory prerequisite to obtaining relief. The skill with which Customs administers the AD/CVD orders belies the statement that the government requires an HTS code in the exclusion request because "the items included in an approved exclusion must be able to be

² "Commenters were confused whether...CBP's approval was an additional criterion that needed to be met for an exclusion request to be approved. It is not." Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum, 83 Fed. Reg. 46026, 46053 (September 11, 2018). In addition, the Department stated that "this coordination {with CBP} is not part of the review criteria used by the Department to determine whether to approve an exclusion request." Id.

adequately identified by CBP to ensure importers are not exceeding the scope of approvals.” 83 Fed. Reg. 46026, 46047 (September 11, 2018). Customs can adequately monitor the exclusion requests without imposing this administrative burden on filers. If it has difficulty identifying the products subject to the exclusion request, the burden at that time will be on the requestor, especially if no HTS number were provided in the request.

The downside to requiring the correct HTS number on the form is apparent in efficiency losses, at a minimum, and in the inability of an exclusion requestor to use a granted exclusion if the wrong HTS code is listed on the form. If the importer lists an incorrect HTS code on the form, Customs sometimes identifies that it is an incorrect HTS code at the outset, and the Department then rejects the exclusion request. This added step also imposes an increased burden on the Department who must coordinate with Customs prior to being able to post and/or issue a decision, and who then are faced with multiple repeat filings if there is any issue with the HTS code. Requiring Customs to try to verify the HTS code in every single exclusion request prior to the issuance of the exclusion has led to Customs essentially making unofficial CROSS rulings without the safeguards of that process. This additional process also causes a delay in the adjudication process. When it comes to exclusions, time is money. Every import that enters the United States without being covered by an exclusion must pay substantial tariffs. Any delay can be costly.

If the HTS code that the requestor lists on the form is incorrect but Customs does not identify the error at the outset, then the importer may not discover the error until after the exclusion is granted. Then, the importer is barred from using the exclusion even though there is no substantive reason for the exclusion to be denied. The HTS code was not relevant to the Department’s determination about the merits of the exclusion request, so simply misstating the HTS code on the exclusion request form should not pose a barrier to using the otherwise properly granted exclusion.³ The Department has itself implicitly acknowledged the issues with the HTS code requirement by allowing that certain exclusions to be tied back to earlier exclusions with incorrect HTS numbers.⁴ However, due to the length of time the process is taking, the financial burden remains.

If the Department continues to require HTS codes, it should allow a requestor to submit it at the 6-digit level, thereby working at a higher level of generality. This will decrease the chance of having any conflict over what the precisely correct 10-digit HTS number is. At a minimum, even if the Department continues to require HTS codes, a company should be able to resubmit an exclusion request with an incorrect HTS code and have the final decision tied back to the original submission date, even if it did not receive a denied decision memo due to an incorrect HTS code.

³ For example, exclusion numbers 727213, 71900, 70957, 70172, 70148, and 5475 all were approved but the requestor cannot use them because they list an incorrect HTS code.

⁴ See 232 Exclusion Process Frequently Asked Questions, at 26 (June 19, 2019).

While this does not completely rectify the disruption to the supply chain, at least it provides a means to rectify the unjust consequence of having to needlessly refile the exclusion.

B. The Department Should Allow the Foreign Importer of Record to Use a Foreign Address

Currently, the fields for the address of a foreign importer of record must be filled in with the address of the entity that holds the power of attorney for the importer. This is confusing and causes requestors to incorrectly fill in this field, along with its related fields. For example, the exclusion requestor in exclusion numbers 3583, 3567, 3572, and 3562 filled in the name of the broker (who holds the power of attorney) in the field for the organization's name because it was using the address of the broker in the next field. To make it clearer, the field for the address for the foreign importer of record should be filled in with the address for the importer of record and a new field should be created for the name and address for the entity holding the power of attorney. This is a simple fix which will provide the Department with all the relevant information it needs.

II. Expansion of the Eligibility for Objectors

The Department should not expand which U.S. entities can object. In addition, the Department should enforce the current standards in place limiting objections to organizations that manufacture steel articles.

The Department has said that “any individual or organization that manufactures steel articles in the United States may file objections to steel exclusion requests.” 83 Fed. Reg. 46026, 46058 (September 11, 2018). The Department should enforce this rule and reject objections without posting them from entities that do not meet this definition. For example, the Department has accepted objections from manufacturers of cans, who are downstream users of steel articles. See Exclusion numbers 79482, 83822, 83799, 83962, 84096, and 8449. As the Department has explained, “{t}he Department agrees that an objector must be able to make the same steel or aluminum product or one that is equivalent, meaning ‘substitutable for,’ the one identified in the exclusion request that is the subject of the objection.” 83 Fed. Reg. 46026, 46043 (September 11, 2018). Downstream users do not fit this criterion and cannot file objections. Exclusion requestors should not need to waste resources rebutting objections that are so obviously outside the parameter of the rules.

III. The Section 232 Exclusion Portal

The exclusion portal improves on the old Regulations.gov system in many ways. Yet, there were some useful features in Regulations.gov that are not part of the new portal. The Department should modify the portal to include those features.

First, users of the system should be able to download information directly from the portal. Currently, to download documents from the portal, users must employ a complex procedure

involving Excel. A much more user friendly and efficient system should be developed so users can download information directly from the portal.

Second, the Department should program the system to send email notification when new documents are posted on the system. Currently, a user must proactively go into the system to check if new documents have been posted for exclusions they are following. When a user is following many exclusions because of the requirement that every dimension of a product requires a separate filing, the task of monitoring exclusions is excessively burdensome without an email notice of new document postings from Commerce.

The difficulties with monitoring exclusions when there is no notice of new postings from Commerce is compounded by the fact that the system is organized around exclusion requests. To access any objection, rebuttal, surrebuttal, or decision memo for an exclusion, a user must look up the exclusion and then click through the various documents to reach each of these documents. Instead, a home screen listing all the documents available under an exclusion should be available.

Finally, the AutoFill feature has a small glitch that should be fixed, if possible. The “add” feature does not work properly. If there is more than one entry (*i.e.*, more than one port), the first entry will AutoFill but any additional entries will not and must be entered manually.

IV. Requirements Set Forth in the Applicable Federal Register Notices

A. The Department Should Reconsider How It Treats Product Ranges

The Department should allow requestors to submit a single request covering a range of sizes for the same product type. Currently, small ranges are permitted but only when they are in “the minimum and maximum range that is specified in the tariff provision.” 83 Fed. Reg. 46026, 46029 (Sept. 11, 2018). It is inefficient for both the requestors and the Department for exclusion requestors to submit a different request for every dimension of a single product. As the Department has discovered, the burden on the system that this requirement causes is enormous, as many more exclusion requests have been filed than otherwise would be required if this rule were relaxed. Requiring unique exclusions for each dimension has led the Department to have to review tens of thousands of exclusion requests, many of which are essentially duplicative other than the slight differences in dimensions. Similarly, the Department now permits ranges “if the manufacturing process permits small tolerances.” 83 Fed. Reg. 46026, 46049 (Sept. 11, 2018). But, this limitation should be relaxed and requestors should have the ability to submit ranges for all product characteristics.

Permitting broader ranges in a single exclusion request would not inhibit the domestic industry’s ability to object to an exclusion request. They, too, would benefit from having to review and monitor fewer requests. And, if a U.S. producer believes and can demonstrate that it can make the product at a certain point within the range, it can file an objection covering the products that it feels are within its capabilities. The rebuttal and surrebuttal process will then

focus on those products that are the subject of dispute. Now that the Department has more experience with the exclusion process and has been inundated with requests it did not expect, it should reconsider its position regarding allowing ranges of products in a single exclusion request, which would benefit all participants in the exclusion system.

Further, as discussed above in Section I.A., no HTS code should be required to be identified in the exclusion request at all. But, if such a requirement remains, then the requestor should be permitted to use its tolerance as its range without regard to the tariff provision. Product tolerances exist independent of the HTS provisions and, because of this reality, Customs allows nominal measurements to guide classification. The Department should recognize the practical reality associated with importing steel products and likewise allow ranges that cross HTS codes in a single submission. If the Department nonetheless views the inclusion of HTS codes in the request as essential, then it can simply require the requestor to include both HTS codes covered by the range on the form. Making these changes will allow the exclusion process to be more in line with how the steel industry actually operates, easing the burden on U.S. manufacturing companies, the Department, and the domestic steel industry as well.

V. Factors Considered in Rendering Decisions on Exclusion Requests

As the Department has noted, “[t]he guiding principle {for exclusions} is that, if the US domestic industry does not or will not produce a given steel... product of the quality needed by users in the United States, companies that rely on those products will not pay duties on them.” 83 Fed. Reg. 46026, 46039 (September 11, 2018). “An exclusion will only be granted if an article is not produced in the United States in a sufficient and reasonable amount, is not produced in the United States in a sufficient quality, or for a specific national security consideration.” 83 Fed. Reg. 12106, 12110 (March 19, 2018). In theory, these factors are a good and reasonable basis for determining whether an exclusion should be granted. In practice, applying these factors has posed some challenges, and the Department should consider making some changes to its current practices.

A. The Department Must Verify that U.S. Producers Can Make a Product that Matches in Quality

A US producer’s unchecked claims that it can produce a product that it, in fact, cannot produce, causes unnecessary delay in the system at best and may result in unwarranted denials. Merely being able to produce a particular type of steel product in the dimensions in the exclusion request is insufficient to support a claim that the US industry can produce the product. US producers must also be able to make the product in a quality that is needed by the customer. The Department expressly built the exclusion review process to “adequately take... into account the quality needs of customers.” 83 Fed. Reg. 46026, 46039 (September 11, 2018). Yet, the Department does not seem to have a process for adequately assessing the quality claims in practical terms. It should expressly evaluate those claims in an open and transparent manner that provides its express reasoning for making its quality determination.

The standards put in place by the Department already require such a showing by objectors. The Department has said, “the objection should clearly identify, and provide support for, its opposition to the proposed exclusion, with references to the specific basis identified in, and the support provided for, the exclusion request. 83 Fed. Reg. 46026, 46058 (September 11, 2018) (emphasis added). The required support is essential for a fair adjudication of the requested exclusion. The Department should enforce this standard.

When an exclusion request contains evidence that the product is subject to a demanding specification by the customer, particularly if there is a qualification process, the Department should faithfully adhere to its position that “{i}f a US supplier objects to an exclusion request, the burden is on that supplier to demonstrate that the exclusion should be denied because of failure to meet the specified criteria.” 83 Fed. Reg. 46026, 46029 (September 11, 2018). When an exclusion contains reference to a product specification required by a customer, it should be granted unless the US industry can show that it can sell the requestor a product that meets its specifications in a reasonable time frame. Even if the US industry claims it can meet the specification, it must demonstrate its ability to do so during a trial process. Exclusions should not be denied when the US industry claims to meet a product specification but has yet to demonstrate that it can. When the US producer is not already qualified to sell a product under specification to the exclusion requestor, the Department’s standard should not easily be met. It would be extremely difficult for the US industry to make a claim that it could supply material in accordance with the specification in a reasonable period of time if it is not already qualified to make the product according to the specification. Qualification periods easily last over a year. Even when the US industry claims to have a product that meets the requestor’s exact specifications, it is highly unlikely that the requestor can use that product imminently, and the exclusion should be granted while the US producer is undergoing the qualification process. This will guarantee that the US manufacturing customer using the product will not be required to pay a tariff on a product that it cannot otherwise obtain from the US industry.

Objectors face no consequences for claiming they can make a product, even if they have no empirical evidence to support that claim. Even when the objectors are not acting in bad faith because they do believe they can make the product, this can still nonetheless derail the exclusion process. There is often a wide gap between theoretically thinking one can manufacture a specific product, and actually manufacturing the product to the standard needed. The Department cannot reject exclusions, risking US manufacturing supply chains, based on a theoretical exercise by objectors. Objectors should be required to produce some factual evidence to support their claims that they can, in fact, make a product. This requirement should include, not only that they have the technical capability to make the product, but also the available capacity to do so. Without this requirement, objectors can freely object based on mere speculation, and the entire exclusion process gets even more bogged down.

When denials of exclusion requests are premised on US industry claims that they can make a product that ultimately do not bear fruit, the requestor should be made whole. Currently, the Department merely has said that, “if the Department denies an exclusion request based on a representation made by an objector which later is determined to be inaccurate... the requestor

may submit a new exclusion request that refers back to the original denied exclusion request and explains that the objector was not able to supply the steel. The US Department of Commerce would take that into account in reviewing a subsequent exclusion request.” 83 Fed. Reg. 46026, 46058 (September 11, 2018). The Department should do much more to right the financial harm inflicted on the requestor. The later granted exclusion for the same product should be retroactive to the original filing date, and it should apply to the full amount requested in the original exclusion filing, plus whatever additional amounts were applied for in the subsequent filing.

Finally, there should be some procedure for holding the US producer accountable for an unfounded assertion. The claims of the US industry that turn out to be unsupported not only harm the requestor and the US manufacturers relying on the steel product, but also waste precious Department resources. The Department has made clear that if exclusion requestors provide false information, this “may result in other import or export clearance related penalties from the US government.” 83 Fed. Reg. 46026, 46044 (September 11, 2018). False information from the US industry should also be publicly condemned by the US government. While such unfounded statements may not be sufficient to invoke the criminal perjury statute, they should nonetheless not be allowed to go unchecked.

B. The Department Needs Set Standards for Evaluating Alleged Substitutable Products

Implementation challenges also are arising when evaluating US industry claims that they can make a product that is substitutable with the product requested in an exclusion. The Department has not publicly defined the metrics for evaluating substitutability. It should. And, it should stringently apply the few standards that it has articulated. For example, it has said that a US product is a substitute for an imported product of the same quality when it “meets internal company quality controls” of the requestor. 83 Fed. Reg. 46026, 46058 (September 11, 2018). Yet, as far as the public can see, the Department does no substantial analysis of contrasting quality claims before deciding exclusion requests even when the record contains evidence that the US producers do not meet the quality standards of the requestor. When US manufacturing companies are then forced to use lower quality products, if they can use them at all, it becomes extremely costly because of the significant increase in the end use product rejects. Similarly, the Department should confirm that a US product which will result in significant efficiency losses over the imported material is not a substitute for the imported material. For example, narrow drawn and ironed steel (“D&I”) is not a substitute for wide tin plate, although the Department has denied exclusions for the wide material, based on objectors claiming that it is. See, e.g., Exclusion Nos. 13634 and 13611. The additional costs of using such narrower material should be used as a factor in the Department’s substitutability determination and lead to these types of exclusion requests being granted.

The Department should also make clear that a product which competes with the downstream product made from the imported material is not substitutable with the imported material. For example, a plate product offered in the US market is not substitutable with

imported hot rolled coil simply because one product can be transformed into another. See, e.g., Exclusion Nos. 82035, 82020, 82019, 78501.

Likewise, the Department should make clear that an intermediate product offered by a US producer is not substitutable with an imported finished product. For example, laminated tin free steel is not substitutable by an unlaminated product.⁵ Moreover, simply because a US producer may be able to find someone in the United States to finish its semifinished offering does not mean that the US producer would be supplying the requestor with a substitutable product, or that that product would satisfy the customer's requirements and certification process. Moreover, for the Department to consider them substitutable would completely discount the value that a single integrated producer brings to the supply chain. Such supply chains are carefully set up and heavily relied upon by US manufacturers, and allowing products to be considered substitutable with semifinished products destroys those efforts. "Substitute" products must be at the same level in the supply chain.

Furthermore, for products that require customer approval and certification, no other product is truly a substitute until that approval and certification is obtained. Even if another product is quite close, until the customer approves it, it is effectively useless as a substitute. When the US industry claims it can offer a product that is substitutable with the imported material but the domestic product does not match the customer's specification, the Department should apply a rebuttable presumption that the US offering is not substitutable with the imported material. The consumer of steel products created the specification to exactly match its requirements for an end use application. It should not be the prerogative of the US steel industry to claim that the specification is not necessary to meet the needs of the consumer. If the US industry believes that it has a product that can meet the needs of the consumer without meeting the specification, it should be required to demonstrate to the satisfaction of the customer that its steel has all the same performance characteristics as called for in the specification. Until such time as the objector can satisfy the steel consumer that its product is perfectly substitutable with the imported steel that matches the existing specification, the requested exclusion should be granted.

C. The Time Period for Products that Require Qualification Must Be Adjusted

When an exclusion requestor demonstrates that the product is subject to an extended qualification process and that the US industry is not qualified, an exclusion should be granted for the time the qualification process runs, without other time limitations. This would save the Department much time and effort in reviewing exclusion requests where the domestic industry cannot produce the requested product. Once the domestic industry becomes qualified, it can

⁵ For example, US Steel claims that its unlaminated material is substitutable with laminated material in exclusion numbers 79482, 83822, 83799, 83962, 84096, and 84449. At the time of this writing, the Department had not yet rendered a decision on these requests. Nonetheless, these objections are unsubstantiated. The Department should make clear that these types of objections will not bear fruit in order to discourage unsupported assertions in the future.

petition the Department to lift the exclusion and the parties can continue through the normal exclusion process from that point forward. It is inefficient and unnecessary for an exclusion requestor to be required to file exclusions every year for a product for which the US is trying unsuccessfully to qualify. In many instances, given the difficulty of making the product, even if the US producer would run through the trial perfectly, without any setbacks, it would take over a year to get qualified for a particular product. In most cases, there are setbacks because products with qualifications are by their very nature not easy to make. So, having to monitor and go through the exercise of the exclusion process while the trials are ongoing is inefficient and costly and serves no obvious purpose.

The Department has acknowledged that in certain circumstances it will grant an exclusion for longer than a year.⁶ It should utilize this flexibility with regard to exclusion requests that have to undergo lengthy qualification process.

VI. Additional Information Published with the Decisions

Internal Trade Administrative (“ITA”) internal memos contain the substantive decision about whether a product is produced in sufficient quantity or sufficient quality in the United States. The Department should make these memos public because they reveal the analysis on which its decision is based. As a matter of good government, the Department should want to be open and public about its decision-making principles because otherwise it is difficult for the public to have confidence that the process is administered in a fair and transparent matter. Currently, all decision memos reflect identical language and give no further insight as to why certain requests are denied versus others that are granted. This may cause the industry to consider the process to be arbitrary, even if the Department has a reasoned decision, as the public has no insight into the decision-making process.

Additionally, Commerce should make the ITA memos public because exclusions are an iterative process. An unsuccessful exclusion requestor can resubmit an exclusion request, and it would be helpful to know the basis for denial of the request before submitting a new request. It also would allow requestors to understand if re-filing would be useful.

Without seeing the ITA memo, a requestor will need to guess the basis as to why an exclusion was denied. Being aware of the Department’s rationale for rejecting the request would allow requestors to limit their refilings to requests where it makes sense to do so, cutting down on the number of requests the Department and the U.S. objectors need to review. It would be much more efficient and effective if the Department revealed, in specific detail, the basis for the denial so that the requestor can make a more informed request about refiling.

⁶ 83 Fed. Reg. 46026, 46030 (September 11, 2018).

VII. The Definition of “Product” Governing when Separate Exclusion Requests Must Be Submitted

As explained in Section I.A and IV.A, a product in any dimension and regardless of the HTS designation should be a single product for purposes of filing a single exclusion.

VIII. Incorporation of Steel and Aluminum Derivative Products into the Product Exclusion Process

With regard to the Department’s question regarding whether steel and aluminum derivative products be incorporated into the product exclusion process, TSE has no comment. TSE’s only concern is that to the extent derivative products are incorporated in the exclusion process, the burden on the Department will increase drastically. As a result, it would be imperative for the Department to incorporate the suggested changes in these comments as it would lower the number of exclusions that would need to be reviewed.

IX. TSE’s Comments on the Proposed Modifications by the Department

The Department lists a number of proposed modifications in the Federal Register. TSE has responded to each of the modifications with which it either agrees or disagrees. To the extent TSE has no comment, it has not addressed the proposed modification below.

A. Should the Department grant one-year blanket approvals of exclusion requests for product types that have received no objections as of a baseline date?

Yes. The process for reviewing exclusions currently employed by the Department is to grant exclusions where there have been no objections, provided that there are no overriding national security considerations. Because of this default towards granting an exclusion in the absence of an objection, then it seems prudent to streamline the process and avoid unnecessary paperwork by providing for a blanket exclusion, when no objections have been received.⁷

B. Should the Department provide for one-year blanket denials of exclusion requests for product types that have received 100 percent objection rates and never been granted as of a baseline date?

No. Unlike the situation where exclusions are granted by default, exclusions that are denied involve a process where two parties with opposing interests exchange views. An exclusion may be denied because the Department did not receive adequate information from the exclusion requestor to overcome the information provided by the US industry. In other words, it may not be that the US industry can make the product in sufficient quantity or quality, but it may

⁷ Presumably, the Department has already decided that the steel articles listed in Annex 1 have no national security implications.

simply have been that the requestor did not provide sufficient evidence that the US industry does not. Moreover, the Department has made clear that, simply because one exclusion requestor's exclusion was denied does not preclude a different requestor from being granted an exclusion for the same product if the new requestor makes a sufficient showing.

The dynamics for denying an exclusion are entirely different than when an exclusion is granted and therefore it is not necessary to give one blanket treatment simply because the other is treated that way. If the Department nonetheless issues blanket denials as described, then, at a minimum, it should also similarly provide blanket exclusions for products for which previous exclusions have been granted over domestic industry objection.

C. Should the Department use a time-limited annual or semi-annual window during which all product-specific exclusion requests and corresponding objections may be submitted and decided?

No. Stacking all exclusion requests into a single filing period will inundate the agency with applications all at once. Assuming that the Department does not hire additional staff to handle the surge of applications, it will have a large backlog of applications. Under the current system, the time required to decide applications is already too long. Taking action that risks further prolonging the time to decision should be avoided.

Businesses need certainty. Yet, often, it is taking many months, and in some cases a year or longer, before a requestor knows if the material being imported for which it has requested an exclusion will be subject to a significant tariff. Even when there is no objection filed, the process is delayed administratively, as in many cases it has taken many weeks from the date the exclusion request was filed until the request was posted. Strict timelines are imposed on the parties, and the Department should hold itself to a similarly tight schedule. But, at a minimum, the Department should not impose any new requirements that will make the time lag between exclusion request and decision even longer. By having a rolling application period, the Department spreads the work out more evenly across the year, which flattens out the workload for its strained staff, and theoretically increases the speed at which they can handle individual requests.

D. Should the Department require requestors to make a good faith showing of the need for the product in the requested quantity, as well as that the product will in fact be imported in the quality and amount, and during the time period, to which they attest in the exclusion request (e.g., a ratified contract, a statement of refusal to supply the product by a domestic producer)?

No. A requestor makes a request for an exclusion because it perceives either a current or future need for the product. The steel market is dynamic and purchasers must have flexibility to offer quality, high-end products to new customers. As steel tries to compete with other products, such as aluminum, companies must offer better and more developed products on a continuous basis. Businesses need to operate free from government intervention and restriction in the

market in order to adapt and adjust to changes in demand and supply so that the continued viability of steel as an industry is assured. Limiting exclusions only to products for which a producer has a guarantee would stifle the innovation that is vital to the very existence of the steel industry as a whole.

If the requestor ultimately does not use the amount in the exclusion request, it has had no impact on the US market. Exclusions are extremely limited – only granted for steel products that are not available from a domestic supply source. By design, therefore, exclusions are granted only for unique products that the US industry either cannot make or has chosen not to make. While there may be special circumstances that dictate otherwise, it is not the norm that businesses would import these types of unique steel products if there is not a perceived need for the material. There is thus no need for the government to add to the administrative burden of an already burdensome exclusion process by policing supply and demand considerations in the manner proposed.

Currently, the process to decide exclusions can take well over a year, and the requested amount must not only cover a prospective year from whenever the exclusion is granted, but also cover any retroactive amounts that are incurred on entries while the exclusion is pending. The uncertainty as to the length of period any exclusion must cover makes it very difficult for a requestor to calculate precisely the amount that should be requested.

E. Should objectors be required to submit factual evidence that they can in fact manufacture the product in the quality and amount, and during the time period, to which they attest in the objection?

TSE has addressed this issue above in Section V.

F. Should the Department set a limit on the total quantity of product that a single company could be granted an exclusion for based on an objective standard, such as a specified percentage increase over a three-year average?

No. By definition, an exclusion is only granted for a product that the US producers cannot make. Thus, there should be no limit on the quantity of a product granted an exclusion. If a quantity limit is nonetheless imposed, it should not be backward looking. The steel market is fluid. Purchasers anticipate their needs and request exclusions based on their future predictions. If a US business (the only entities eligible to request exclusions) is managing its business well, then it is continuously expanding and growing. When there is no US supply of the necessary material available, putting a backward-looking limit on the exclusion volumes hinders the future ambitions of these US businesses.

G. Should the Department consider that the domestic product is “reasonably available” if it can be manufactured and delivered in a time period that is equal to or less than that of the imported product, as provided by requestor in its exclusion request?

If the US industry can demonstrate that it can and will manufacture and deliver in the same time period as the imported material, then it is acceptable to revise the standard from deliverable in 8 weeks to one that simply allows matching the deliverability of the imported material. The US industry often does not provide niche products quickly to customers and matching delivery times still leaves imports free to fill this gap.

Having said that, if the Department intends to move to a standard of reasonable availability that compares US availability of material to the availability of the imported material, it must amend the data it collects from importers to capture the availability of just in time inventory – not just the amount of time it takes to move product to the United States from abroad. For example, TSE has longstanding relationships with its customers and, in many cases, it has supply agreements. Based on a pattern of procurement, TSE anticipates the upcoming needs of its customers and stages material in the US to supply the just in time operations of the customers. To claim that its products are “reasonably available” under the new standard, domestic producers would need to match this type of just in time delivery.

H. Should the Department require that requestors, at the time of submission of their exclusion requests, demonstrate that they have tried to purchase this product domestically?

No. TSE appreciates the Department’s optimism that requestors may find approaching the US industry to be “well worth their effort” because they “may find that steel not available in the US market before may now or soon be available.” 83 Fed. Reg. 46026, 46038 (September 11, 2018). However, US businesses will reach this conclusion on their own, especially as they navigate the exclusion process, and should not be faced with a government mandate to conduct this outreach. The steel market, with the overlay of the 232 exclusion process, will encourage this type of activity, where appropriate, and the government should not impose an additional layer of bureaucracy into the exclusion process by requiring it.

In addition to adding extra layers of unnecessary administrative burden, this requirement would be difficult to satisfy as a practical matter. To whom would the requestor have to send a purchase order? Would approaching only one US producer satisfy this requirement? Would it be incumbent upon the requestor to approach every US producer? It is impossible to predict which US companies will make claims that they can make a product, especially when the requestor believes that no US company can make the product in a satisfactory quality and in a reasonable period of time. If a company has to wait to file an exclusion until it collects evidence when, based on its history in the market, it knows there is no U.S. supplier of a particular product the delay will cause unnecessary tariff penalties, which cannot be refunded during that process. This is an unnecessary burden on the U.S. supply chain for products that are not made in the U.S.

A U.S. producer merely responding to a request for quotation stating they can make a product is very different from having to provide evidence that it can fulfill the technical requirements of a product. It is much better to let the ebb and flow of market principles dictate to whom a requestor makes an approach before filing an exclusion, and for the exclusion process to allow domestic producers who believe they can manufacture certain products to come forward. U.S. producers have shown themselves to be more than capable of monitoring the Section 232 docket and filing objections to protect their interests.

Finally, by including this requirement at the outset, the Department is effectively making the US industry the gatekeeper for exclusion filings. If the requestor approaches a US producer and the producer either does not respond to the request or responds by saying that it can make the product but then does nothing to further the process along, will the requestor be entitled to file an exclusion request? As the Department has noted, this process can be adversarial. 83 Fed. Reg. 46026, 46050 (September 11, 2018). Access to a government process should not be dictated by the vagaries of one's opponent in the process.

I. Should the Department, in the rebuttal/surrebuttal phase require that both requestor and objector demonstrate in their filings that they have attempted to negotiate in good faith an agreement on the said product?

No. With only 7 days to file rebuttals and surrebuttals, respectively, there is insufficient time in the process to reach out to the US industry, let alone get a response. As a practical matter, the US industry is taking much too long to respond to inquiries for new products. In some instances, it has taken months to simply inform requestors whether a US producer thinks it can produce material, let alone actually put orders through a trial. While in concept there is no harm in requiring parties to have commercial exchanges, in practice, it will be difficult to give effect to this requirement without causing significant delay to the administrative process.

Moreover, if such good faith negotiations are required, they must not be used to dictate the outcome of the exclusion. If the parties cannot agree about whether the US industry can provide the necessary product in sufficient quality and quantity in a reasonable period of time, the Department must make an independent decision on the merits.

X. Additional Modifications Proposed by TSE

In addition to the comments above, TSE also believes that the Department should implement the following changes to the process.

A. Quantities Imported while the Exclusion Request Is Pending Should Not Count against the Quantitative Limit

Currently, the requestor is compelled to state the quantity of material that will be consumed in a year. Customs is using that number as a hard limit on the volume of material allowed to be imported under an exclusion. An exclusion is valid for one year from the date the

exclusion is granted. Yet, material imported while the exclusion is pending currently counts toward the hard volume cap. Although the Department had originally stated that the length of time it takes for an exclusion to be decided would be only 106 days if any objections are received, in practice, the exclusion process can take far longer. Even if the 106-day timeframe were met, it would mean that almost a third of a year's demand would have been imported before the beginning of the one-year period of the exclusion. As a result, the retroactive quantities that need to be accounted for in the amount requested are highly uncertain.

Therefore, the quantitative limit stated for material imported in the course of a year is being applied to material imported over a period longer than a year – in many cases, much longer than a year. There should be no volume limits on an exclusion. But, if the volume cap is retained, then the volumes of excluded material imported while the request is pending should not count toward the hard, quantitative limit.

B. Granted Exclusions Should Be Automatically Renewed

Exclusions should be automatically renewed unless the domestic industry requests that they be rescinded. An exclusion is granted only when it has been shown that the US industry cannot supply the product. Once the unavailability of U.S. supply has been established, it is a waste of resources for the requestor to have to file a new request every year, forcing the US industry to have to review all the repeat filings, and forcing the government to have to review and re-issue decisions for these products for which inadequate US supply has been firmly established. The Department should automatically renew a granted exclusion, with the US industry able to request that an exclusion be rescinded during the annual anniversary of the exclusion being granted. The US industry can then devote resources to working with exclusion requestors to develop products it does not currently provide instead of spending time and energy combing through the exclusion portal weeding out requests for products that it already knows it cannot make. And, if a customer refuses the approaches of the US industry to trial the product, this, too, can be grounds for the US industry to move to rescind the exclusion. An exclusion, once granted, should remain in effect until the US industry demonstrates that conditions have changed and a review of the exclusion is warranted.

C. The Department Should Adhere to the Projected Timeframe in the Regulations

The Department's regulations state that “[t]he review period normally will not exceed 106 days for requests that receive objections, including adjudication of objections submitted on exclusion requests and any rebuttals to objections, and surrebuttals.” 83 Fed. Reg. 46026, 46060. (September 11, 2018). Currently, if an exclusion request receives an objection and it goes through the rebuttal and surrebuttal phase, the timing can often last over a year. In addition, if a requestor asks the Department to make any of the permissible changes to an exclusion, such as a tie-back to an earlier exclusion due to an incorrect HTS code, or to add an importer of record, such changes can take a number of additional months. This delay can lead to issues with collecting refunds due to the statutory liquidation period of entries. Although Customs has

recently allowed importers to request the extension of liquidation for entries which would be subject to pending exclusion requests, Commerce should also try to cut down the time necessary in making exclusion decisions, to avoid imposing this administrative burden on importers and Customs.

TSE understands that the Department is currently overwhelmed with the number of requests and the delay has been necessary for it to make informed decisions. This is why it is especially important that the comments TSE has put forward are implemented. These changes, such as allowing exclusions to be automatically renewed and expanding each exclusion to cover a range of dimensions, should greatly ease the Department's burden and allow the Department to conduct the review process within the original timeframe set forth in the regulations.

TSE greatly appreciates the opportunity to provide input into the product exclusion process. TSE understands that this is a complicated process, but for it to function in a way that does not unnecessarily punish U.S. manufacturers, nor unduly burden the Department, it is incumbent upon the Department to incorporate these comments.

Thank you again for the opportunity to comment. If you have any questions, please contact the undersigned.

Respectfully submitted,



Joel D. Kaufman
Thomas J. Trendl
Stephanie W. Wang
Counsel to Tata Steel Europe



WRITTEN SUBMISSION OF THE NATIONAL FOREIGN TRADE COUNCIL

Comments Regarding the Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas

**Docket No. 200514–0140
(RIN 0694-XC058)**

July 10, 2020

Introduction

These comments are submitted by the National Foreign Trade Council (“NFTC”) in response to the *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (the “Notice”), published in the Federal Register on May 26, 2020. Pursuant to the Notice, the Commerce Department Bureau of Industry and Security (“BIS”) is seeking public comment on the appropriateness of the factors considered in the Section 232 exclusion process, and the efficiency and transparency of the process employed, in rendering decisions on requests for exclusions from the tariffs and quotas imposed on imports of steel and aluminum articles. Interested persons have been asked to submit comments in connection with the exclusions process.

NFTC is dedicated to making America more competitive in the global economy by ensuring the adoption of forward-looking tax and trade policies, by strengthening global rules and by opening foreign markets to U.S. products and services. Our strong support for these objectives,

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and our belief that their fulfillment is essential to our members' success in a globalized economy, have been unwavering for decades. We therefore believe that it is critical to provide policymakers in the Administration with our clear views about the role trade and tax policies play with respect to U.S. competitiveness in the global economy.

NFTC represents more than 200 companies and our membership spans the breadth of the national economy. Our membership includes sectors such as energy products, capital goods, transportation, consumer goods, technology, healthcare products, services, e-commerce and retailing. Our companies account for more than \$3 trillion in total sales worldwide, employ over five million Americans and produce a huge share of our nation's total exports. Our stake in ensuring a healthy national economy and promoting our global leadership is enormous.

Analysis

In the Notice, BIS has asked for public comment on the appropriateness of the factors considered in the Section 232 exclusion process, and the efficiency and transparency of the process employed, in rendering decisions on requests for exclusion. We provide the following comments based on the experience of our member companies in seeking these exclusions:

- Companies continue to experience significant delays in receiving a final determination to their exclusion requests. The amount of time that it takes to get a final determination varies but some companies report delays of as long as 4 to 8 months from the initial submission of their request to the final determination.
- Companies report that there are a number of instances where an exclusion request for the same product from two different companies receives a different outcome, i.e., one

exclusion request will be granted and another will be denied with no clear basis for the disparate outcomes. BIS should consider changing the exclusion process to be product-based rather than company-based which would remove this type of inequitable outcome. Alternatively, BIS should ensure an additional level of review for final determinations so that decisions made by individual analysts are subject to an additional layer of review to ensure consistent decision-making by product type.

- BIS should allow trade associations to file for an exclusion request for an entire category of product that could be applicable across an entire industry rather than making the process company specific. As BIS is aware, USTR has adopted a similar process in connection with the 301 exclusion requests and this process have provided a level of consistency across requesting parties in that exclusion process.
- If a party filing an objection to an exclusion request is a foreign subsidiary, that information should be disclosed, i.e., the objecting company should be required to state the name of the parent company and where that parent company is headquartered. This information is relevant to determining who is ultimately controlling the U.S. activities of the objecting company and this information should be made public when the final determination is issued.
- BIS should require that any party filing an objection must disclose information regarding recent investments that company has made to modernize its U.S. plants or equipment and how such investment will increase the efficiency of the steel or aluminum production capacity. This disclosure would be consistent with the overall goal of the

Section 232 tariffs which is to create an incentive for the domestic industry to modernize its plants and equipment by means of new investment. Failure to provide information about such investment should be construed to mean that the objecting party has not made any such investments.

- BIS should require companies filing an objection to certify not only that they can in fact manufacture the product in the quality and amount requested within a reasonable time frame but also that they will in fact undertake to perform such manufacturing. Companies report that this is necessary because of cases where requesting parties have received an objection and, upon following up with the objecting party about the manufacturing statement made in the objection, are then told by the objecting party that they will simply not undertake the manufacturing necessary to produce the product domestically. If BIS does not monitor this situation, objecting parties can make statements about future manufacture that they have no intention of fulfilling with no penalty for making such false statements.
- BIS should not issue blanket interim denial memos to requesting companies who receive a partial approval of their exclusion request. Each application should be evaluated individually and on its merits.
- BIS should not attempt to set a limit on the total quantity of product that a single company can receive under an exclusion determination.

- Companies have reported that they do not support BIS creating time-limited annual or semi-annual windows during which all product-specific requests and corresponding objections may be submitted and decided.

Thank you for the opportunity to present our comments. If you have any questions regarding our comments, please contact Vanessa Sciarra, Vice President for Legal Affairs and Trade and Investment Policy of the NFTC, at vsciarra@nftc.org or at (305) 342-7729.



July 10, 2020

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
Bureau of Industry and Security
Office of Technology Evaluation
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Re: BIS-2020-0012; RIN 0694-XC058: Written Comments of Electralloy in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas. (85 Fed. Reg 31,441)

Dear Secretary Ross:

These comments are filed on behalf of Electralloy in response to the May 26, 2020 *Federal Register* notice entitled *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*. See 85 Fed. Reg. 31,441 (May 26, 2020). Located in the heart of Pennsylvania steel country, Electralloy has been a United States producer of specialty metals – including stainless steels – for more than 50 years. With over 200 employees working in a state of the art manufacturing facility, Electralloy is capable of producing stainless steel long products in a wide range of chemistries, grades, and sizes. These products include, but are not limited to, stainless steel bars, billets, ingots, and wire. Since its acquisition by G.O. Carlson in 1991, Electralloy has also been engaged in the production of flat products such as stainless steel plates, shapes, and slabs.

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As a domestic producer of high quality stainless steel products, Electralloy plays an essential role in supplying the United States government with critical components for use in national security applications. The products manufactured by Electralloy can be found in military aircraft, as well as in nuclear submarines and other naval vessels. In 2013, Electralloy began a public-private partnership with the United States Army at Watervliet Arsenal to produce both nickel alloys and stainless steels. In 2015, the American Bureau of Shipping certified this endeavor to produce stainless steel components for naval vessels, and the Department of Defense renewed the endeavor for an additional 20 years. Given its existing ties to the defense community, Electralloy recognizes the crucial role that a strong domestic steel manufacturing base plays in ensuring the national security of the United States.

Electralloy is a strong proponent of the Section 232 remedy that was imposed in March 2018. In an effort to protect its employees and business interests, Electralloy has actively participated in the Section 232 exclusion process since the inception of the program. Electralloy has closely monitored the submission of stainless steel-related exclusion requests, and has opposed more than one thousand exclusion requests involving products that it has both the capacity and the technical capability to manufacture. Specifically, Electralloy has filed 1,679 – or roughly 21 percent – of the 8,033 objections that have been submitted in opposition to stainless steel-related exclusion requests thus far. In total, the stainless steel-related exclusion requests opposed by Electralloy account for more than 350,000 metric tons of imports.

Electralloy recognizes and appreciates the efforts of both the Bureau of Industry and Security (“BIS”) and the International Trade Administration (“ITA”) in managing the exclusion process. The exclusion process, however, was designed to provide relief for requesting

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organizations only in the rare cases that there existed legitimate concerns regarding the domestic availability of certain steel products. Unfortunately, the process has not functioned as intended. Tens of thousands of exclusion requests have been granted for standard products that are available within the United States. In this regard, a remedy that was designed to promote the domestic steel industry now threatens the very producers that it was intended to protect.

The experiences of Electralloy are telling. Electralloy – one of the smallest domestic producers of stainless steel – has been forced to devote inordinate time and resources objecting to requests submitted by organizations that have no prior history of commercial activity; requests that overstate domestic consumption and seek volumes well in excess of market demand; and requests that make incorrect claims regarding domestic production capacity. Electralloy has also objected to requests that cite to unique trade names or “proprietary” grades that are indistinguishable from existing domestic products. Although Electralloy has attempted to oppose all of the exclusion requests involving products that it has the capacity and the technical capability to manufacture, this has proven to be an impossible task given the volume of requests filed. Even in those instances where Electralloy submits an objection, doing so has resulted in threats of retaliation from the requesting organizations, some of which are present or former customers.

Detailed below are the major substantive issues that Electralloy has identified through its participation in the exclusion process. As requested in the Federal Register Notice, Electralloy has provided specific examples that relate to its experiences. Electralloy hopes that BIS and ITA will resolve these issues by modifying the policies and procedures that they use to evaluate the

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legitimacy of exclusion requests, particularly those requests that bear no relationship to market demand or are within the capability of domestic producers to manufacture.

I. **REQUESTING ORGANIZATIONS HIDE BEHIND PROPRIETARY GRADES THAT DIFFER FROM STANDARD PRODUCTS WITH ONLY DE MINIMIS VARIATIONS IN PHYSICAL PROPERTIES**

End users, importers, and purchasers have attempted to evade the domestic unavailability requirements by citing proprietary grades and trade names in their exclusion requests. These entities maintain that domestic producers do not have the ability to manufacture the subject products, and claim that no domestic mill has been certified with respect to the grades in question. In reality, however, there usually exist only *de minimis* differences between the physical properties associated with these grades, and the physical properties associated with standard products that are widely available domestically.

Furthermore, requesting organizations often cite unique fabrication processes and manufacturing techniques in their exclusion requests, despite the fact that domestic producers almost always have the ability to meet their specifications. In general, it is not the process or technique that matters, but rather the end product. To prevent inadvertent approvals of exclusion requests for products that can be manufactured domestically, BIS and ITA should rely primarily on bona fide information regarding chemical compositions, performance data, and coatings in their evaluations of domestic availability. Unavailability claims based on proprietary grades or trade names must be subject to greater scrutiny.

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II. REQUESTING ORGANIZATIONS WITH NO HISTORY OF COMMERCIAL ACTIVITY HAVE DECIDED TO ENTER THE MARKET AND FILE EXCLUSION REQUESTS

Many requesting organizations have taken advantage of the exclusion process by submitting exclusion requests for products for which they have no history of consumption or distribution. Undoubtedly, it is extremely lucrative to serve as the sole importer of a foreign manufactured product that is exempt from the 25 percent duty imposed under the Section 232 remedy. Requesting organizations that have successfully submitted exclusion requests can sell their products at artificially low prices and undercut domestic producers with ease. In this sense, the exclusion process has actually facilitated the disruption of existing markets with unfairly traded imports.

One distributor for instance, has submitted more than 400 exclusion requests for stainless steel round bar in grades UNS 41000, 41425, 41426, 41427, and 42000. In total, these exclusion requests account for 46,790 metric tons of imports. A closer examination of these exclusion requests, however, reveals that this company reported a three-year average annual consumption volume of zero metric tons with respect to all of the aforementioned products. Similarly, another trader of stainless steel products has submitted more than 100 exclusion requests for stainless steel flat bar in grades 303, 304, and 316. These are standard AISI grades. Yet, this company also reported a three-year average annual consumption volume of zero metric tons in these exclusion requests. To address this issue, BIS and ITA should not post exclusion requests that do not provide information regarding historical consumption volumes. Doing so will ensure that exclusion requests are granted only when there exists a genuine need for the product in question.

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III. REQUESTING ORGANIZATIONS OVERSTATE REQUEST VOLUMES AND CONSUMPTION VOLUMES RELATIVE TO THE SIZE OF THE DOMESTIC MARKET

In many cases, the exclusion volume requested for a specific product bears no rational relationship to the size of the domestic market for that product. Consider the fact that – since June 13, 2019 – the total exclusion volume requested for stainless steel semifinished products amounts to 407,377 metric tons of imports. Similarly, the total exclusion volumes requested for stainless steel flat products and stainless steel long products amount to 1,911,942 metric tons and 622,423 metric tons, respectively. Given the small size of the domestic market for stainless steel relative to the domestic market for carbon steel and the domestic market for alloy steel, these request volumes appear particularly absurd. The world of stainless steel is one of small quantities and large values, and one in which sales are typically made by the pound rather than by the ton. As such, these massive volumes demonstrate that requesting organizations are abusing the exclusion process by submitting an enormous number of large volume exclusion requests.

It is evident that requesting organizations are submitting an excessive number of exclusion requests in an attempt to overwhelm domestic producers. Given the staggering number of exclusion requests that are submitted on a daily basis, it is virtually impossible for domestic producers to identify and oppose all of those pertaining to products that they can supply. Over the past two years, Electralloy has been forced to review tens of thousands of exclusion requests, only a fraction of which were relevant. Moreover, while Electralloy has filed more than one thousand objections to date, it has undoubtedly let some relevant exclusion requests fall through the cracks. Most domestic producers simply do not have the manpower or

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the resources to adequately identify, evaluate, and respond to exclusion requests in the current commercial environment. BIS should not only ensure that exclusion volumes and consumption volumes reconcile with information regarding market sizes, but it should also implement a system to limit the number of exclusion requests in general.

IV. REQUESTING ORGANIZATIONS THAT ARE OWNED BY FOREIGN ENTITIES HAVE MADE INACCURATE CLAIMS REGARDING UNITED STATES PRODUCTION CAPACITY

An overwhelming number of exclusion requests have been submitted by service centers that exist solely to import and distribute the steel products manufactured by their foreign parent companies. In many cases, these requesting organizations fail to meet the definition of an “interested party” set forth under the regulations governing the exclusion process. These service centers have no interest in domestic investment, production, or substantial transformation. Instead, they are established to provide a means for foreign manufacturers to enter the United States market and take business from domestic producers. Moreover, the exclusion requests submitted by these service centers consistently misrepresent the capacity of the domestic industry with respect to stainless steel-related products.

One requesting organization, for instance, has filed numerous exclusion requests for both stainless steel plate and stainless steel bar. However, further research indicates that this company is a distribution entity that operates out of a site under construction in Pennsylvania. It is likely that this company is acting solely as an importer of record for its foreign parent, and therefore it has no interest in domestic utilization of the subject products. Similarly, another requesting organization has submitted more than 50 exclusion requests for stainless steel round bar from China. The website information provided by this company in its exclusion requests incorporates

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a Chinese domain name. Moreover, all of these exclusion requests list a single Chinese producer as the manufacturer, and therefore it appears that this company is acting only as a distributor for a foreign entity. BIS and ITA should not post requests from entities that have no domestic interest.

Respectfully submitted,

/Tracy Rudolph/

Tracy Rudolph
President and Chief Operating Officer
Electralloy



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Phone 202.737.2337
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BeerInstitute.org

July 10, 2020

The Honorable Richard E. Ashooh
U.S. Assistant Secretary for Export Administration
Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Re: Docket RIN 0694-XC058

Dear Assistant Secretary Ashooh,

I am writing on behalf of the Beer Institute (BI), the American trade association representing brewers, beer importers, and industry suppliers regarding the Department's notice of inquiry regarding the exclusion process for Section 232 steel and aluminum import tariffs and quotas.

The United States beer industry uses a substantial amount of aluminum. Better than 60 percent of all beer manufactured and sold in this country comes in aluminum cans and bottles. For some individual brewers, that percentage is closer to 100 percent.

We support changes to the exclusion process for Section 232 aluminum import tariffs and quotas, albeit in a slightly different form from the system described in the Department's notice.

The beer industry's experience with purchases of aluminum cans (body, end, and tab) since the implementation of the Section 232 tariff may be instructive as the Department considers setting up a monitoring system. First, with the implementation of tariffs, available supplies of scrap aluminum increased. Although increased use of lower-cost, tariff-exempt scrap would ordinarily lower the price of cansheet, the beer industry saw the opposite marketplace response with the tariff. The price of all aluminum cansheet, both imported and domestic, and premiums associated with the purchase of cansheet increased. Prices have fallen since then, but because of slow demand for an expanding global glut of metal.

Second, with the implementation of tariffs, the beer industry, and all U.S. end-users of aluminum, have paid a tariff on all aluminum purchases. The tariff is applied as part of a premium attached to the all-in price of aluminum, the Midwest Premium Duty-Paid price (MWP-DP price). End-users pay the MWP-DP price regardless of whether a tariff attaches to the metal. If a tariff actually applies, they pay the tariffs as a surcharge

in addition to the MWP-DP price. Further, even when the product purchased includes a heavy domestic scrap component, which is exempt from 232 tariffs, the MWP-DP price attaches to the whole purchase. Then the seller adds a tariff surcharge for any imported primary aluminum content. Since March 2018, when Section 232 tariffs went into effect, the U.S. beverage industry bought 3.06 million mton of cansheet, the content of which was at least 70 percent tariff-exempt scrap. The U.S. beverage industry paid \$582 million in tariffs on this cansheet, mostly factored as a part of the MWP-DP price. The U.S. Government received only \$81 million in actual tariff payments on these cansheet purchases. In other words, 86 percent of the Section 232 tariffs built into the MWP-DP price went to private parties, not the U.S. Government. Of the \$582 million in Section 232 charges, \$541 million, or 86 percent, were for non-tariffed metal, including scrap, domestic primary aluminum, or primary aluminum from Canada and other countries exempt from Section 232 tariffs. As shown by the attached correspondence by and between Representatives Grothman and Rice and U.S. Customs and Border Protection (CBP), the situation is serious enough to warrant inquiry by CBP's Inspector General.

Third, cansheet manufacturers shifted their production from the United States to other countries. The beer industry prefers buying domestically, but American rolling mills saw better opportunities in making automotive sheet. These changes have a direct impact on the U.S. beer industry as domestic supply gives way to imported supply. Further to this point, although some importers of cansheet sought and received exclusions from Section 232 tariffs, end-users like brewers still paid the MWP-DP price and saw no meaningful benefit from those exclusions.

Fourth, the COVID-19 pandemic has had a noticeable impact on demand for beer, seltzer, and other beverage alcohol products packaged in aluminum. Demand for cans currently outpaces supply for the entire industry. Other countries have cansheet supplies. However, since cansheet demand is so immediate and the Department's exclusion process is so lengthy, pursuing an exclusion is not feasible.

With that background, BI has the following recommendations which will improve the Section 232 exclusion process for aluminum imports for affected end-users:

1. BI recommends allowing trade associations to submit exclusion requests on behalf of their member companies, which will enable smaller companies to benefit from the exclusion process because through their industry association they can share costs with other similarly situated companies. It will also allow for fewer exclusion requests overall.
2. BI recommends against limiting exclusion requests to aluminum manufacturers. Limiting requests to aluminum manufacturers penalizes

end-users who may prefer to import directly what is not available domestically.

3. BI recommends shortening the application form and product descriptions. The process takes too long now. Shortening the application will streamline both applications and their review.
4. The Bureau of Industry and Security (BIS) should require objectors to certify not only that they can, in fact, manufacture the product in the quality and amount requested, and during the time to which they attest in the objection, but that they will, in fact, do so. If any objector is a trade association, they should make that representation on behalf of their member companies. BIS should reject any objection that fails to include this representation.
5. BI recommends requiring a sworn declaration that requestors will pass on the full benefit of any exclusion to down-stream purchasers, and that sellers will not add any duty, either directly or indirectly.
6. BI recommends requiring objectors to disclose their actual U.S. investments since March 2018 to increase the production of the specific product that is the subject of the exclusion request.
7. BI recommends requiring objectors to disclose if they have halted or decreased production of the specific product that is the subject of the exclusion at any time since March 2018.
8. BI recommends eliminating the surrebuttal phase of the exclusion request process. Surrebuttals only serve to delay decision making.
9. BI does not support a cap on the quantity of excluded products allowed to a single requestor.
10. BI does not support BIS's suggestion for time-limited annual or semi-annual windows for submission of and decision on all product-specific requests and corresponding objections. We live in a rapidly changing manufacturing environment. Limited time or only semi-annual windows for submission offer no flexibility to real world end-user demands for aluminum.
11. BI believes BIS should evaluate each exclusion request on its own merits and not simply disallow a new request because the party was previously denied an exclusion or only granted a partial exclusion.

12. BIS should not require any additional certification from applicants requiring applicants to demonstrate further they have tried to purchase the relevant product domestically. This requirement is redundant and represents an unnecessary and burdensome addition.
13. We sincerely appreciate the opportunity to submit these suggestions for improving the Section 232 exclusion process. We appreciate BIS's openness to further comments addressing any arguments presented during this Notice and Comment period. We do, however, ask for the opportunity to reply to any arguments presented in opposition to the suggestions made herein.

The Beer Institute, its staff, and members stand ready to answer any questions from BIS.

Respectfully submitted,



Jim McGreevy
President and CEO

Congress of the United States
Washington, DC 20515

June 2, 2020

Dr. Joseph V. Cuffari
Inspector General
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528

Dear Dr. Cuffari:

We are writing to call your attention to recently released data on the collection of aluminum tariffs and to request an investigation by your office into why revenue from President Trump's section 232 tariff on imported aluminum has not been remitted to the United States Treasury.

As you know, U.S. Customs and Border Protection (CBP) is charged with collecting revenue owed to the U.S. Government resulting from the importation of goods to the United States, including revenue generated by the President's section 232 tariffs on imported aluminum. For aluminum end users in the U.S, including beverage companies, these tariffs are reflected in the Midwest Premium (MWP), a reference price reported by S&P Global Platts that is intended to account for storage and transportation costs.

Following the President's announcement of a ten percent tariff on imported aluminum in March 2018, the MWP increased 140 percent, more than doubling to over 20 cents per pound. There is little correlation between the increase in the MWP and the actual logistical cost of sourcing metal from the around the world. Not only have storage and delivery costs remained relatively stable in recent years, only 30 percent of a domestic beverage can is made from imported aluminum. The remaining 70 percent is comprised of recycled content and runaround scrap generated in the can conversion process. The inflated MWP indicates that producers and rolling mills are charging end users as though 100 percent of every can were made of imported metal.

Beverage end users have tried to address this issue by requesting a "Midwest Premium duty unpaid (MWP DUP)" price, which would not apply the tariff to the 70 percent of aluminum cansheet that is either sourced from a tariff-exempt country or is made from recycled content or domestic primary aluminum. Upstream aluminum stakeholders have uniformly refused this request and continue to offer only a "Midwest Premium duty paid (MWP DP)" price.

We are concerned not only that a tariff is being applied to metal that is either exempt or is sourced here in the United States, but that the revenue generated from that "duty paid" price is not being remitted to the U.S. Treasury. According to a recent analysis by Harbor Aluminum,

between March 2018 and December 2019, the U.S. beverage industry paid a total of \$582 million in section 232 tariffs on aluminum, but the federal government collected only \$81 million of that total. It appears that upstream aluminum producers and rolling mills are pocketing this windfall for themselves at the expense of end users, beer and soft drink consumers, and taxpayers.

We urge you to open an investigation into this issue. If you have any questions, please contact Patrick Konrath (patrick.konrath@mail.house.gov) or Liz Amster (liz.amster@mail.house.gov). We look forward to your prompt reply.

Sincerely,



Glenn Grothman
Member of Congress



Kathleen Rice
Member of Congress



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

June 24, 2020

The Honorable Glenn Grothman
United States House of Representatives
1427 Longworth House Office Building
Washington, D.C. 20515

The Honorable Kathleen Rice
United States House of Representatives
2435 Rayburn House Office Building
Washington, D.C. 20515

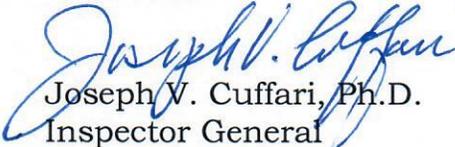
Dear Representatives Grothman and Rice:

Thank you for your June 2, 2020 letter requesting an investigation into why revenue from a tariff on imported aluminum may not have been remitted to the United States Treasury.

We have reviewed your request and plan to initiate an audit that we believe will address your concerns. The objective of our audit is to determine to what extent the establishment of Customs and Border Protection's Centers of Excellence & Expertise has improved the assessment, collection, and protection of revenue. We intend to include the Center of Excellence responsible for the collection of metal tariffs in our work.

Should you have any questions, please contact me, or your staff may contact Erica Paulson, Assistant Inspector General for External Affairs, at (202) 981-6000.

Sincerely,


Joseph V. Cuffari, Ph.D.
Inspector General

PUBLIC



July 10, 2020

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
Bureau of Industry and Security
Office of Technology Evaluation
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Re: BIS-2020-0012; RIN 0694-XC058: Written Comments of the Specialty Steel Industry of North America in Response to Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas. (85 Fed. Reg 31,441)

Dear Secretary Ross:

These comments are filed on behalf of the Specialty Steel Industry of North America (“SSINA”)¹ in response to the May 26, 2020 *Federal Register* notice entitled *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*. See 85 Fed. Reg. 31,441 (May 26, 2020). Established in 1963, SSINA is a voluntary trade association that consists of domestic producers of high-performance specialty metals such as nickel alloys, titanium alloys, stainless steels, and tool steels. Due to the unique chemical, mechanical, and physical characteristics of these products, SSINA’s members play an essential role in the United States national security apparatus. Specialty metals (including steel) products

¹ The individual producer members of the Specialty Steel Industry of North America are: Allegheny Technologies Incorporated, Carpenter Technology Corporation, Crucible Industries, Electralloy, Universal Stainless and Alloy Products, and Valbruna Slater Stainless, Inc.

manufactured by the members of SSINA are critical components in a wide variety of national defense and other strategic applications, including the production of military aircraft, helicopters, land based vehicles, military-grade weapons, and navy vessels.

On May 24, 2017, SSINA Chairman Dennis Oates and SSINA Vice Chairman Terence Hartford – of Universal Stainless and Alloy Products and Allegheny Technologies Incorporated, respectively – testified in support of the Section 232 National Security Investigation on Imports of Steel. See *The Effect of Imports of Steel on The National Security* (Jan. 11, 2018) at Appendix F, 43-53. On May 31, 2017, SSINA affirmed its support for the Section 232 investigation in written comments to the Bureau of Industry and Security (“BIS”). See *Written Submission of the Specialty Steel Industry of North America in Connection with Section 232 National Security Investigation on Imports of Steel* (May 31, 2017). SSINA supported the eventual determination by the Secretary of Commerce that specialty steel products were imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States. SSINA welcomed the imposition of a remedy to address that threat.

As implementation of the Section 232 program went into effect, SSINA recognized the need to establish an exclusion process to address situations where there existed legitimate issues of domestic availability. U.S. specialty steel producers are capable of manufacturing virtually every product necessary to meet the national security needs addressed in the Section 232 finding. Nevertheless, in those unique circumstances where such products are unavailable, SSINA members supported narrow waivers of the Section 232 tariffs to meet those needs, subject to a thorough review of unavailability claims by a U.S. importer.

Broadly speaking, SSINA supports the current structure of the exclusion process, whereby individual entities must submit exclusion requests for specific products in discrete volumes. Each exclusion request should also be limited to one-year. SSINA opposes any expansion of the exclusion process that would allow for overarching exemptions that would serve multiple user needs. Such an expansion would have a significant adverse impact on domestic steel producers, and would defeat the purpose of the Section 232 remedy. SSINA also believes that product exclusions must remain requestor-specific, and that each request, if approved, should be limited for use only by the U.S. entity that requested it.

SSINA recognizes that the exclusion process has been plagued by myriad procedural and technical issues. Of particular concern is the fact that the exclusion process has been overwhelmed by the unanticipated filings of tens of thousands of exclusion requests, many of which bear no rational relationship to availability or market needs. These requests threaten the fabric of the Section 232 remedy and are hugely burdensome for SSINA's members to identify, review, and – where appropriate circumstances exist – address in objections.

The Department of Commerce, and specifically BIS, has taken positive steps to address many of the technical issues that existed during the first year of the exclusion process through the creation of its new exclusion portal. The introduction of an automatic population functionality for chemical compositions, dimensions, and other product characteristics has reduced the workload of the domestic industry in filing objections and surrebuttals. Additionally, the implementation of the user dashboard has eased the burdens associated with tracking and responding to rebuttals submitted in opposition to objections. Nevertheless, the decision making process for addressing exclusion requests remains flawed, and in the current challenging

business environment, the exclusion grants, and the volume and nature of those grants, are threatening the effectiveness of the Section 232 remedy.

SSINA welcomes the opportunity to comment on these issues. Our members have objected to thousands of exclusion requests, some of which have originated from companies with no significant presence in the marketplace. More importantly, many of these requests seek exclusion volumes that bear no rational relationship to the size of the market. Yet, the exclusion process, given the number of requests filed and the unrealistic volumes encompassed by those requests, is shifting the burden on domestic manufacturers to prove that they can supply the commodities in question at volumes that have no relationship to the size of the U.S. market. That burden of proof must remain with the importer.

The number of Section 232 exclusion requests granted to date, as they apply to stainless steels, even where there have been no objections, put this issue in perspective. BIS has issued blanket approvals of exclusion requests that do not receive an objection from the domestic industry. In fact, among the 13,059 decided stainless steel-related exclusion requests² that have not received an objection, roughly 12,355 of those requests have been granted. See Exh. 1. This reflects an approval rate of 94.6 percent. See id. These approvals involve requests of over 972,735 metric tons of imported products, an amount that exceeds both total import volumes and total apparent domestic consumption of stainless steel products reported by requestors. See id.

² Throughout this letter, the phrase “stainless steel exclusion requests” is defined to encompass all exclusion requests for stainless steel mill products that list a ten-digit HTSUS code that falls under HTSUS headings 7219, 7220, 7221, 7222, or 7223. Stainless steel semifinished products classified under HTSUS heading 7218 have been excluded from the analysis.

Although SSINA has been unable to participate directly in the exclusion process due to the inability of trade associations to participate in the Section 232 exclusion process, SSINA's individual members have provided input on their experiences thus far. Enumerated below are the major substantive issues that the individual members of SSINA have identified over the two-year lifespan of the Section 232 exclusion process. Specific references to requests that have exemplified these issues are provided. SSINA is hopeful that BIS will address these concerns in the near future.

I. IMPORTERS WITH NO HISTORY OF CONSUMPTION OR COMMERCIAL ACTIVITY HAVE SUCCESSFULLY SUBMITTED A LARGE NUMBER OF EXCLUSION REQUESTS INVOLVING SUBSTANTIAL QUANTITIES OF IMPORTED PRODUCTS

The Department's regulations for the Section 232 exclusion process stipulate that only directly affected individuals or organizations may submit an exclusion request. See 15 C.F.R. § 705 Supplement No. 1(c)(1). BIS has clearly defined a directly affected individual or organization as one that uses the subject steel products in business activities such as construction, manufacturing, or sales to end users. See id. However, entities that have no history of consumption or commercial activity have submitted a significant number of exclusion requests, many of which have been granted. Since the implementation of the new exclusion process portal on June 13, 2019, BIS has granted 6,930 stainless steel-related exclusion requests. See Exh. 2. In aggregate, these granted exclusion requests account for 675,489 metric tons of product. See id. Notably, 681 of these granted exclusion requests were submitted by entities that failed to provide any information regarding their three-year average annual consumption of the subject

steel products – presumably because they had not previously imported stainless steel products or had imported insignificant quantities of such products. See id.

Even among entities that have provided information on their three-year average annual consumption, there are questions regarding the extent of their commercial activities. Indeed, in some instances, these requestors appear to have been established to serve as importing agents of the foreign producers. One importer, for instance, has filed exclusion requests for over 5,000 metric tons of stainless steel plate and stainless steel bar, despite the fact that it was first incorporated in September 2019.³ Likewise, another importer has filed exclusion requests for over 4,000 metric tons of stainless steel bar, although it is a trading company that specializes in mechanical tubing and oil country tubular goods.⁴ In filing their exclusion requests, these entities maintain that they are unable to source the subject stainless steel products domestically, either for lack of quantity or lack of quality. It is unlikely, however, that an entity with no history of consumption or commercial activity with respect to a given steel product has expended a good faith effort to acquire the relevant product from a domestic producer. Such exclusion requests should be subject to additional scrutiny by BIS at the posting stage – and the burden should be on the requestor to substantiate claims that it has attempted (but been unable) to source the product at issue from a domestic manufacturer.

³ See e.g. exclusion requests E-59631, E-69135, E-70211, E-85261, and E-88286.

⁴ See e.g. exclusion requests E-88917, E-93179, E-93903, E-94183, and E-94308.

II. BIS HAS GRANTED EXCLUSION REQUESTS FOR VOLUMES THAT VASTLY EXCEED THE CORRESPONDING THREE-YEAR AVERAGE ANNUAL CONSUMPTION VOLUMES

When an end user, importer, or purchaser submits an exclusion request, it is required to report its average annual consumption between 2015 and 2017 of the subject steel product, a period before the Section 232 tariffs went into effect. In theory, this consumption volume should serve as a benchmark against which BIS can assess the validity of the corresponding exclusion volume. If the exclusion volume is significantly larger than the requestor's historical consumption volume, it is likely that the requesting organization has overstated its need for the subject steel product. In these circumstances, the Department of Commerce should deny the exclusion request outright unless the requesting organization is able to provide adequate justification for the discrepancy in volumes. Artificially inflating the exclusion volume constitutes a misrepresentation on the part of the requesting organization, and therefore calls into question all of the information provided in the exclusion request.

Unfortunately, entities that overstate their requested exclusion volumes relative to their consumption volumes have not been held accountable by the Department, at least to the extent that these requests have been accepted for review. In aggregate, the exclusion volume requested for all stainless steel products since June 13, 2019 amounts to nearly 2,534,365 metric tons, while the corresponding U.S. consumption volume amounts to only 1,208,222 metric tons. See Exh. 2. The total exclusion volume is therefore 109.8 percent higher than the total U.S. consumption volume, as requesting organizations have massively overstated their import requirements by roughly 1.3 million metric tons. See id.

The volume of granted exclusion requests is similarly troubling. The exclusion volume granted for all stainless steel products amounts to 675,489 metric tons, while the corresponding historical consumption volume reported by requestors amounted to 555,293 metric tons, for a difference of 120,196 metric tons (or 21.6 percent). See id. On average, the exclusion volume requested and the exclusion volume granted exceed the requestor's historical consumption volume by 93 metric tons and 17 metric tons, respectively. See id. Such differentials are especially significant given the fact that specialty steels are the highest value products in the overall steel industry. Many of these products are, in fact, sold by the pound, and not by the ton. The review process must better take into account the vast discrepancies between exclusion volumes and consumption volumes.

III. BIS HAS GRANTED EXCLUSION REQUESTS FOR VOLUMES THAT VASTLY EXCEED HISTORICAL IMPORT VOLUMES AND THE VOLUME OF APPARENT DOMESTIC CONSUMPTION

As discussed above in Section II, domestic ends users, importers, and purchasers have submitted requests identifying exclusion volumes that greatly exceed their self-reported historical consumption volumes. Even more concerning, however, is the fact that in many cases these requested exclusion volumes exceed the total historical volume of U.S. imports, as well as total historical volume of apparent domestic consumption for these products. BIS typically reviews each exclusion request *de novo*, and uses only the information contained within said exclusion request – as well as any corresponding objections, rebuttals, and surrebuttals – in evaluating its validity. However, in order to effectively assess the accuracy of the information submitted in an exclusion request, BIS should also consider aggregate data on total exclusion volumes, total import volumes, and total apparent domestic consumption volumes for major

product groups. Doing so will reveal that many requesting organizations are abusing the exclusion process by exaggerating their exclusion volumes beyond an amount that could be accurate and reasonable.

Since June 13, 2019, one trading company has submitted over 1,300 exclusion requests for stainless steel plate from Slovenia, accounting for 1,452,638 metric tons of product.⁵ However, according to official import statistics published by the Census Bureau and proprietary shipment data collected by SSINA, U.S. imports of stainless steel plate in 2019 amounted to only 62,953 metric tons. See Exh. 3. Moreover, apparent domestic consumption in that same year amounted to just over [] metric tons. See id. The exclusion volume requested by the trading company therefore accounts for more than 2000 percent of total U.S. imports and is more than [] percent greater than total annual apparent domestic consumption. See id.

Similarly, another importer has submitted over 700 exclusion requests for stainless steel bar from Germany, Spain, Sweden, and the United Kingdom – in total, these exclusion requests account for 68,070 metric tons of product.⁶ This figure represents over 50 percent of total U.S. imports of stainless steel bar in 2019, and over [] percent of apparent domestic consumption in that same year. See Exh. 3.

These examples illustrate that many entities are submitting exclusion requests with implausible exclusion volumes that far exceed both the volume of total U.S. imports and apparent domestic consumption. BIS should counter these misrepresentations by evaluating all exclusion requests in light of market statistics, which are readily available to the Department of

⁵ See e.g. exclusion requests E-1550, E-12322, E-39023, E-75530, and E-103220.

⁶ See e.g. exclusion requests E-51392, E-59071, E-63797, E-89139, and E-104200.

Commerce. While SSINA, as a trade association, is not permitted to comment on specific requests, it does collect domestic consumption data, which it could provide to BIS in the course of its pre-posting reviews, and if necessary, during the review process.

IV. DENIED EXCLUSION REQUESTS CAN BE RESUBMITTED AN INFINITE NUMBER OF TIMES

Since the initiation of the exclusion process, BIS has consistently denied exclusion requests without prejudice. Nominally, this means that an exclusion request can be resubmitted and reconsidered should new factual information that affects the criteria regarding domestic unavailability come to light. In practice, however, a denial without prejudice gives end users, importers, and purchasers a green light to resubmit continuously denied exclusion requests with minor modifications. These modifications may involve insignificant changes to fields involving chemical compositions, dimensions, or other product characteristics. Domestic producers have a limited capacity to review and object to these unwarranted resubmissions.

One importer, for instance, submitted 152 exclusion requests for stainless steel billet between December 2018 and June 2019.⁷ Only 26 of these exclusion requests were granted, as domestic producers recognized that they could produce the subject merchandise, and therefore submitted more than 135 objections in opposition to the requests. Over the course of the next year, however, the importer went on to submit 79 additional exclusion requests for the same product.⁸ The dimensions, detailed product descriptions, and foreign manufacturers listed on

⁷ See e.g. exclusion requests BIS-2018-0006-92197, BIS-2018-0006-92224, BIS-2018-0006-115426, BIS-2018-0006-153874, and BIS-2018-0006-155145.

⁸ See e.g. exclusion requests E-14122, E-16984, E-46087, E-83436, and E-100599.

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these new exclusion requests matched the information listed on the original exclusion requests exactly.

Moreover, the exclusion volume requested by the importer totaled nearly 200,000 metric tons, an amount that vastly exceeds the volume of United States imports of stainless steel billet. Although there was no change of circumstances within the United States that warranted reconsideration of the denied exclusion requests, the importer hoped to avoid scrutiny by overwhelming domestic producers with a slew of filings. In order to limit such practices, BIS should implement a system by which newly submitted exclusion requests are automatically compared to denied exclusion requests at the posting stage. This system must ensure that any modifications are substantive rather than inconsequential.

V. DOMESTIC UNAVAILABILITY CLAIMS BASED ON PROPRIETARY DESIGNATIONS OR TRADE NAMES SHOULD BE REVIEWED BY BIS TO ENSURE SUCH CLAIMS ARE VALID

The Department's regulations provide that there are only three acceptable justifications for granting an exclusion request: (1) the product is not produced in the United States in a sufficient and reasonably available amount; (2) the product is not produced in the United States in a satisfactory quality; or (3) the product must be imported due to specific national security considerations. See 15 C.F.R. § 705 Supplement No. 1(c)(5).

Over the past two years, SSINA members have objected to certain exclusion requests where the requesting organization has cited to an intellectual property claim, trade name, or company designation, to support a finding that a domestic product is unavailable, or there is no domestic product of comparable quality. Indeed, the request might involve a standard product that is only distinguishable on the basis of its name or a generally applied standard.

One importer, for example, has filed numerous exclusion requests that list variations of the European standard NORSOK, while another importer has filed exclusion requests that list a new UNS designation known as S31010.⁹ Although both entities claim that domestic producers are unable to comply with the specified standards and designations, a cursory examination of the exclusion requests (and, specifically, the chemistries) indicates that the goods in question are, in fact, standard AISI grade products that are widely manufactured in the United States.

Whenever the party requesting an exclusion provides sound evidence of the existence of intellectual property or trade names that distinguishes a product and underscores the unavailability of that product, there are legitimate grounds to grant the exclusion request. BIS, however, should exercise vigilance to ensure that such claims are valid, and that the distinguishing features represented by the intellectual property or other trade name or designation are, in fact, representative of factors that underscore the unavailability of the product. A distinct trade name or other designation should not be utilized to mask what is a generally available product.

VI. DELAYS IN DECIDING EXCLUSION REQUESTS NEGATIVELY IMPACT THE DOMESTIC INDUSTRY BY LENGTHENING THE EFFECTIVE LIFESPAN OF GRANTED EXEMPTIONS

In almost all cases, a granted exclusion request is valid for one year from the date of signature on the corresponding decision memorandum. See 15 C.F.R. § 705 Supplement No. 1(h)(2)(iv). However, the steel products covered by a granted exclusion request are also eligible for a duty refund retroactive to the date that the exclusion request was first submitted. See

⁹ See e.g. exclusion requests E-25076, E-85895, E-86141, E-86450, and E-86543; and exclusion requests E-58988 and E-59051.

Proclamation No. 9777, 83 Fed. Reg. 45,025 (Sep. 4, 2018). Practically speaking, the combined effect of these policies lengthens the lifespan of a granted exclusion request. Consider, for example, a hypothetical exclusion request that is submitted on March 15, 2019 and granted on March 15, 2020, circumstances that are not unusual given the volume of requests that have been filed. Clearly, this exclusion request will be active for the one-year period between March 15, 2020 and March 14, 2021. However, due to the retroactive refund clause, the exclusion request could be applied to any imports that enter the United States between March 15, 2019 and March 15, 2021. This means that an exclusion request that should be active for only one year is, in reality, active for twice as long. With the volumes requested so greatly exceeding the volumes necessary to meet the purported domestic unavailability need, the extended time frame exacerbates the negative impact of the exclusion grant on the domestic producers.

Of the 14,190 stainless steel exclusion requests that have been submitted on the new exclusion process portal, only 8,028 – or 56.6 percent – have been decided. See Exh. 2. The 6,162 pending exclusion requests account for 1,580,895 metric tons of product. See id. Among the 4,458 exclusion requests to which a domestic producer has filed an objection, only 1,430 requests – or 32.1 percent – have been decided. See id. The 3,028 pending exclusion requests account for 1,084,938 metric tons of stainless steel products. See id. These statistics demonstrate the lengthy period of time taken by BIS in adjudicating exclusion requests – and, in particular, exclusion requests that have received opposition – on the new exclusion process portal. In fact, BIS has yet to post decision memoranda on exclusion requests submitted as early as August 2, 2019 on the new portal, and as early as May 11, 2018 on the old portal. See e.g. Exclusion requests E-6518 and BIS-2018-0006-2738. By delaying its decisions, BIS is

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inadvertently harming a domestic industry struggling under today's unprecedented business challenges.

VII. STRINGENT SUBMISSION REQUIREMENTS FORCE ENTITIES TO FILE SEPARATE EXCLUSION REQUESTS FOR PRODUCTS WITH MINOR DIFFERENCES IN PHYSICAL CHARACTERISTICS – THEREBY INCREASING THE BURDEN ON DOMESTIC PRODUCERS IN OBJECTING TO NUMEROUS EXCLUSION REQUESTS INVOLVING SIMILAR PRODUCTS

The Department's regulations mandate that requesting organizations submit separate exclusion requests for products covered by multiple ten-digit HTSUS codes. See 15 C.F.R. § 705 Supplement No. 1(c)(2). Furthermore, the regulations mandate that requesting organizations submit separate exclusion requests for products covered by the same ten-digit HTSUS code if these products differ in chemical composition, dimension, metallurgical properties, or surface quality. See id. Although requesting organizations are allowed to provide both minimum values and maximum values for these physical characteristics, the regulations state that "ranges are acceptable if the manufacturing process permits small tolerances." See id. In fact, BIS has repeatedly refused to consider exclusion requests that list wide ranges with respect to these physical characteristics, arguing that exclusion requests with large differentials should be disaggregated into multiple exclusion request filings.

These stringent submission requirements are well intentioned. They prevent requesting organizations from filing overly broad exclusion requests, and they facilitate enforcement by narrowing the scope of granted exclusions. Unfortunately, they also have the ancillary effect of vastly increasing the number of exclusion requests that must be opposed by domestic producers and reviewed and adjudicated by BIS. Consider, for instance, a requesting organization that imports standard issue Grade 316 stainless steel round bar in 1.0, 1.5, and 2.0-inch diameters

with 2.0, 3.0, and 4.0 foot lengths. Under the current system, the requesting organization must submit at least nine separate exclusion requests for the aforementioned product – that is, one exclusion request for each diameter and length combination.

Were BIS to modify the restrictions on ranges, these nine exclusion requests could be merged into one, as they pertain to an identical product that is widely manufactured throughout the industry utilizing the same production processes and facilities. Any domestic producer that manufactures one diameter and length combination could manufacture all nine diameter and length combinations, so objecting organizations do not benefit from the current policy. Indeed, forcing end users, importers, and purchasers to file multiple exclusion requests for such minor differences in dimensions increases the burden placed on requesting organizations, objecting organizations, and BIS itself.

Moreover, the restrictions artificially inflate the number of exclusion requests that are submitted, as well as the corresponding exclusion volumes that are requested. For instance, one group of importers with an Austrian parent company has filed 2,073 stainless steel-related exclusion requests on the new portal, including 1,105 exclusion requests for vacuum arc remelted stainless steel bar.¹⁰ The corresponding exclusion volumes are small (generally less than 10 metric tons per exclusion request), and thus the overwhelming number of filings is directly attributable to the existing restrictions on dimensional ranges. To increase the efficiency and expediency of the exclusion process, BIS should consider accepting wider ranges for certain physical characteristics.

¹⁰ See e.g. Exclusion requests E-18663, E-18790, E-18796, E-70170, and E-78483; Exclusion requests E-8456, E-19802, E-50037, E-75189, and E-99449; and Exclusion requests E-2036, E-46467, E-60123, E-88337, and E-97830.

VIII. CONCLUSION

By addressing the issues enumerated above, BIS can ensure that the Section 232 exclusion process remains efficient, fair, and impartial moving forward. Between the time that an exclusion request is submitted and posted for public comment, BIS should conduct a comprehensive review of the information in the request to ensure that it reconciles with existing knowledge regarding classification, historical import volumes and apparent domestic consumption volumes. BIS should also ensure that new requests are not repeat filings of earlier denials. Filings that fall into any of these categories should be scrutinized before they are posted.

Over the course of this process, SSINA members have experienced numerous instances of exclusion requests identifying incorrect HTS numbers, meaning that unless SSINA members review the description of the product for which an exclusion is requested (rather than simply the HTS classification identified in the request), a domestic producer would fail to identify a request involving a product that it is capable of manufacturing.

Furthermore, BIS should subject exclusion requests submitted by entities with no history of consumption or commercial activity to additional scrutiny. BIS should also closely examine those exclusion requests for which the exclusion volume and the three-year average annual consumption volume differ, as well as those exclusion requests that use proprietary standards and designations to justify domestic unavailability. Moreover, BIS should modify its system to allow larger size ranges with respect to products with identical physical characteristics, and to identify the resubmission of denied exclusion requests. Implementing these changes will improve outcomes for ends users, importers, and purchasers – as well as for the domestic industry – and

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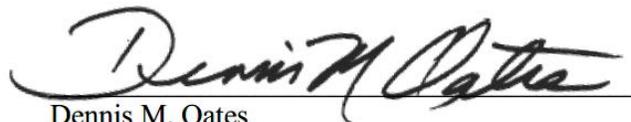
Specialty Steel Industry of North America

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will help move toward a Section 232 exclusion process that is more consistent with the objectives underlying the program.

SSINA appreciates the opportunity to address these issues. The Department has been struggling with an immense challenge in dealing with the volume of requests it has received since the program went into effect. SSINA would be pleased to provide any information that would assist the Department to understand the unique products that comprise this segment of the industry and the markets in which these products are consumed.

Respectfully submitted,

A handwritten signature in black ink, reading "Dennis M. Oates", written over a horizontal line.

Dennis M. Oates
*Chairman, Specialty Steel Industry
of North America
Chairman, President and Chief Executive Office
Universal Stainless & Alloy Products, Inc.*

EXHIBIT 1

Section 232 Exclusion Requests for Stainless Steel Mill Products - Decision Status versus Objection Status

March 2018 - June 2020
(Quantity in Metric Tons)

	Number of Exclusion Requests		Percent of Exclusion Requests with Corresponding Objection Status		Exclusion Volume Requested	
	Granted	Denied	Granted	Denied	Granted	Denied
Objection	722	2,286	24.0%	76.0%	86,280	418,754
No Objection	12,355	704	94.6%	5.4%	972,735	36,043
Total	13,077	2,990	81.4%	18.6%	1,059,015	454,797

Source: U.S. Department of Commerce Bureau of Industry and Security

EXHIBIT 2

Section 232 Exclusion Requests for Stainless Steel Mill Products - Outcomes

June 2019 - June 2020

(Quantity in Metric Tons)

	Number of Exclusion Requests		Number of Exclusion Requests Providing no Three-Year Average Annual Consumption Volume	Exclusion Volume Requested		Three-Year Average Annual Consumption Volume	Average Difference Between Exclusion Volume Requested and Three-Year Average Annual Consumption Volume
	Total	With Objection		Total	With Objection		
Granted	6,930	332	681	675,489	36,910	555,293	17
Denied	1,098	1,098	103	277,981	277,981	72,597	187
Pending	6,162	3,028	1,151	1,580,895	1,084,938	580,331	162
Total	14,190	4,458	1,935	2,534,365	1,399,830	1,208,222	93

Source: U.S. Department of Commerce Bureau of Industry and Security

EXHIBIT 3

U.S. Imports and Apparent Domestic Consumption of Certain Stainless Steel Mill Products

2019 (Quantity in Metric Tons)		
	U.S. Imports	U.S. Apparent Domestic Consumption
Stainless Steel Bar	125,064	[]
Stainless Steel Plate	62,953	[]

Source: Official import statistics and proprietary shipment data collected by the SSINA

Now Plastics, Inc.

443 Shaker Road
East Longmeadow, MA 01028

July 10, 2020

U.S. Commerce Department
Bureau of Industry and Security
Section 232 Investigation
Imports of Aluminum

**Re: Comments on Section 232 Exclusion Process by Now Plastics, Inc;
RIN 0694-XC058**

This submission is made on behalf of Now Plastics, Inc “Now Plastics” in response to the May 26, 2020 *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 *Fed. Reg.* 31,441 (May 26, 2020) notice seeking comments on the Section 232 procedures and changes that can be made to improve the process. Now Plastics is a supplier of raw materials used to produced packaging materials and supplies these to a broad range of flexible packaging producers. One of the products supplied is ultra-thin and thin foil –critical raw materials used in making such packaging.

In addition to addressing the express questions found at page 31442 of the notice, Now Plastics wishes to make a few observations based on Now Plastic’s experience both in the industry and with the 232 process.

I. General Observations

- 1. Section 232 should not trace the Country of Origin back further than the Melt and Cast Stage*

The base raw material for many aluminum products is scrap/recycled aluminum and not primary aluminum made using the Hall–Hérault process. The source of the primary aluminum made from scrap/recycled aluminum is not readily ascertainable as scrap is collected from multiple sources and scrap from multiple

sources is often co-mingled. Thus, in the case of many aluminum products, it is not possible to ascertain the origin of the underlying aluminum material.

In the case of most foil, due to the very tight tolerances needed to meet the specifications, the underlying aluminum is not scrap, but rather is primary aluminum. Such Aluminum is normally produced by the producer of the foil at the location where the foil is produced. As such, changing the 232 rules to require tracing to a further level makes no sense. In the case of many aluminum products, such tracing is not possible, and in the case of foil, it is unnecessary as the primary aluminum is produced at the same place as the foil.

2. The 232 Process Should Take into Account the Total Volume of Objections

The 232 process should take into account the total volume of objections in comparison to the production capacity of the U.S. industry. The 232 process should not consider each exclusion request independently. This is illustrated, as shown on the chart attached to this submission, by request for ultra-thin foil filed by Now Plastics and several other parties. All of these requests were objected to by J.W. Aluminum (“JW”), the only U.S. producer, notwithstanding that J.W.’s total capacity would be unable to satisfy only a few of these requests. J.W.’s argument is that each request should be examined on a granular level and that, taken individually, it could satisfy each request and that total demand and production need not be taken into account. This is tantamount to arguing that since a small neighborhood candy store can satisfy any small individual order, it can meet total U.S. demand. The 232 rules should be revised to require objectors to list the quantity of objections made during the 2 months prior to the filing of the objection and state the percentage of capacity, both total and available, represented by these objections. This information should then be used to evaluate whether the objector actually has the capacity to produce the articles to which they are objecting.

If the Department determines that objections are valid, rather than denying the exclusion requests on a wholesale basis, the Department should apportion the objection among all requests filed for such film. For example, if the objector has an available capacity of 5 million pounds, and requests have been filed for 50 million pounds, the Department should grant all of the exclusion requests but reduce the quantity by 10% to reflect the fact that the domestic industry has capacity to fill 10% of the requests.

3. The 232 Process Should be Simplified by Allowing Requests to Cover a Range of Products.

The current 232 exemption process requires a separate request for each individual product and does not provide for requests for a range of products. In the case of foil, this results in the filing of an excessive number of filings. For example, a 25-micron film might be sold in widths of 31 inches, 31.25 inches, 31.5 inches and 32-inch width or a film might be sold in thicknesses of 6.5, 7, 7.2, and 7.5 microns. These differences are not significant for determining whether an exclusion should be granted, but the multiple requests slow down the process. Now Plastics submits, at least in the case of foil, a range should be allowed for width and thickness. An appropriate range for width should be 10-inch increments and thickness should be subdivided into foil less than 10 microns in thickness with remaining ranges of 5 microns.

4. The Exclusion Requests Should Not Tie a Specific Country and Mill

The current exclusion process requires that both the country and the mill be designated in the request and the granted exclusion provides specific quantities for the country and the mill. As any exclusion granted remains in effect for one year, limiting the granted exclusion to a particular mill or country results limits the availability of the needed product to the end users and may result in requests that

may be greater than the total foil needed. For example, if a requestor knows that it needs X KG of a particular type of foil and such foil is produced by two non-U.S. mills, the request will not necessarily be for X KG split evenly between the two mills, but rather, because the specific availability of the mills is not known for the full year, the total requested is often X + 20% split between the two mills or countries. If the request is simply for the specific type of foil, and not required to be allocated by mill and country, the requests will be fewer and for smaller quantities. This, in turn, will promote efficiency and provide a better overview of the actual needs for exclusions.

5. The Exclusions Should Automatically Renew

Under the current 232 exemption process, a new exclusion request must be filed each year for the same product. This creates significant additional paperwork, creates uncertainty, and ties up resources of both the government and the requestors. The process should be modified such that a granted exclusion will automatically be extended for periods of one year if no objection is received from the domestic producer 60 days before the expiration of the current exclusion period.

6. The Exclusion Process Should be Streamlined

The current exclusion process is cumbersome and should be streamlined. Streamlining this process would reduce the number of exclusions filed with the BIS, reduce the burden on the requestors, objectors and the BIS, would provide greater certainty to the end users, and otherwise provide a more reliable and efficient process to determine appropriate exclusions. The specific changes are as enumerated above.

7. The Name of the Requestor Should be Confidential

The exclusion request should not publicly disclose the name of the objector. The question before the BIS is the availability of the material, and not the name of the supplier. Disclosure of the name of the supplier could result in the domestic

suppliers being able to discriminate between requestors, objecting to those requests for competitors and not objecting to requests by allies. The exclusion process should not be used for commercial competition.

II. Response to Specific Questions

1. Should the BIS allow One-Year Blanket Approvals of Exclusions

Now Plastics agrees that the BIS should allow one-year blanket approvals of exclusions for product types that have received no objections as of the baseline date. The BIS should expand this blanket approval to also include exclusions for product types that have received a less than 10% objection rate as of the baseline date.

2. Should the BIS allow One-Year Blanket Denials of Exclusions

Now Plastics disagrees with establishing an automatic one-year blanket denial of exclusions with a 100% objection rate. Unlike an increase in capacity, which would potentially justify objections, and which would only occur after a period of time, capacity can suddenly be lost because of a pandemic, natural disaster, or plant closing. Eliminating the flexibility of the BIS to provide exclusions in such circumstances would simply harm the interests of the U.S. end users while providing no benefit to the national security.

3. Should the BIS establish time-limited annual and semi-annual windows?

Now Plastics disagrees with the establishment of time limited annual and semi-annual windows for the submission of exclusion requests. The number of exclusion requests filed already places a significant burden on the requestors, the potential objectors, and the BIS. Concentrating these requests in one or two periods of time would magnify the burden.

4. Should the BIS Issue an Interim Denial Memo?

Now Plastics submits that the issuance of interim denial memoranda is unnecessary. U.S. end-users do not consider origin in their purchase decisions. They primarily consider the quality of the product and whether it meets their technical requirements. Once a particular supplier is found to have consistently high quality, the other critical issue is that of available supply and the ability to reliably deliver the foil in a timely basis. In such cases, if the U.S. producers are able to satisfy the quality requirements, they are in a superior position to deliver in a timely fashion. Accordingly, exclusions are primarily for a secondary source of material and to fill out for unavailable product. An interim denial memo would simply add an unnecessary level of complexity to the process – increasing the costs to U.S. end-users and their consumers without providing any benefit to the U.S. producers.

5. Should the Department Require Requestors Show a Need for the Product

Now Plastics submits that requiring a ratified contract, a statement of refusal and similar proof for the quantity requested in an exclusion request is wholly unnecessary. Demands for end-products, and thus the raw materials used to produce these end products, change over periods much shorter than one year. In order to provide the flexibility needed to respond to demand and other changes, requestors will, on occasion, have to estimate as to future demand without a specific order or contract. In the foil business in particular, U.S. producers of flexible packing material often compete with non-U.S. producers of flexible packing material and with other types of packing material (glass, frozen, canned etc.). The amount of material needed can also change based on the harvest and the changing demands of consumers. The request for proof to support a request would deprive the U.S.

producers of flexible packaging of this flexibility and will ultimately result in harm to the critical U.S. flexible packaging industry.

6. Should the Department Require Objectors to Submit Evidence of Production

Now Plastics submits that the Department should require objectors to submit evidence of the ability to produce approved material of the type described in the exclusion requests in connection with any such objection. In particular, the objector should be required to address the total quantity and value of objections filed to ensure that such objectors are objecting to exclusion requests far exceeding the total U.S. production capacity. Objectors should also show that they are qualified to supply the product to the end customers, and if they are not qualified, to state the efforts made to qualify as a supplier and the amount of time normally required to qualify as a supplier.

7. Should the Department set Limits on the Total Quantity of Exclusion Requests

Now Plastics submits that the Department should not set limits on the total quantity of product issued to a single company based on some objective standard. In the case of foil and the flexible packaging industry, the demand for packaging material from a particular supplier can vary greatly depending upon demand and similar changes. Any artificial limits would limit the flexibility of the BIS and place unnecessary strain on the U.S. Flexible packaging industry.

8. Should Requestors Citing National Security be Required to Provide Support?

Now Plastics submits that this is unnecessary and would result in multiple definitions of the term “national security”. In imposing these 232 restrictions, the U.S. broadly defined “national security” as anything impacting U.S. economic security. In this request for comment, BIS wishes to define “national security” strictly and in the traditional sense. If the BIS intends to be consistent, it should also allow evidence of national security concerns on a broad basis.

9. Should the BIS Define “Reasonably Available”?

Now Plastics agrees with the BIS’s proposal that reasonably available should be based on a time which is similar to that for the delivery time for the imported product. In determining whether U.S. product is reasonably available, the available capacity of the U.S. producer should be taken into account.

10. Should Requestors be Required to Show Attempts to Purchase Domestically?

Now Plastics submits that requiring requestors to show attempts to purchase domestically would be overly restrictive. Many of the suppliers of raw materials to the U.S. flexible packaging industry are in direct competition with the mills and operate at the same level of distribution. The customers of the suppliers of the raw materials are the parties that seek supply quotations from both the U.S. suppliers and the suppliers such as Now Plastics.

11. Should the Requestor and Objector be Required to Negotiate

Now Plastics submits that the proposal that requestor and objector be required to negotiate an agreement on the product subject to objection does not take into account the actual commercial conditions. As discussed in 10 above, the requestor is often a competitor to the U.S. supplier at the same level of trade. Requiring a “negotiation” would render the exclusion process with respect to such products a nullity.

III. Conclusion

In conclusion, Now Plastics submits that the 232 exclusion process needs to be streamlined and that burdens to legitimate exclusion requests need to be lightened. The 232 exclusion process should be changed such that:

- The name of the requestor should be confidential and not disclosed to the public. Such information is irrelevant to the availability of domestic product;
- The requests should be for a range of product, rather than a single specific product. This would significantly reduce the number of requests and otherwise greatly simplify the process;
- The requests should not tie to a specific mill or country, but rather should tie to a specific type of product. The source of the product is not ultimately relevant to any decision of U.S. availability; and
- Exclusions, once issued, should renew automatically absent a supported objection from the domestic industry.

Thank you for your consideration of these comments.

Ardagh Metal Packaging USA Inc
8770 W. Bryn Mawr Avenue
Chicago, IL 60631

July 10, 2020

U.S. Department of Commerce
Bureau of Industry and Security
Docket No. 200514-0140
RIN 0694-XC058
Regulations.gov ID: BIS-2020-0012

RE: Ardagh comments on Exclusion Process for Section 232 Tariffs

Ardagh Metal Beverage USA (“Ardagh”) respectfully submits comments in response to the “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas,” in Docket No. 200514-0140. Ardagh produces a wide range of beverage cans in many shapes and sizes to high-volume segments of the drinks market including beers, flavored alcoholic beverages, wine, soft drinks, energy drinks, and tea. While metal packaging is a model of sustainability, aluminum cansheet must be imported from foreign suppliers because domestic aluminum manufacturers have not been able to provide the required volumes and quality levels.

General concerns

The 232 tariffs and the exclusion process have created undue hardship and uncertainty for our industry. Enormous numbers of hours have been spent applying for exclusions. Some requests have been granted quickly, but others have remained pending eighteen months or more after submittal. Paradoxically, due to the tariffs, domestically produced canned products became more expensive than imports, including finished food products from China, which are not subject to the Section 232 tariffs.

Our industry also finds itself the subject of a disproportionate percentage of objections from the domestic aluminum industry. Despite a clear and continuing shortfall in domestic cansheet production levels, forty-seven percent (47%) of cansheet product exclusion requests received objections from the aluminum industry, while only seventeen percent (17%) of other aluminum exclusion applications were subject to objections. Furthermore, cansheet requests that received objections were denied at a higher rate (83% versus 70%) than other aluminum requests on which objections were filed. This exclusion denial rate is problematic, given the continuing shortfall in domestic cansheet production. The domestic industry’s claims about capacity and production levels were disingenuous when made at the outset of the Section 232 action and have proven inaccurate over the last two years. We are disappointed in the Department’s unwillingness to look past untrue assertions and ascertain the facts regarding the cansheet market.

Specific comments and suggestions regarding the exclusion process

Below are specific comments regarding the Section 232 exclusion process based on Ardagh’s experience filing applications over the course of the last two years.

- 1) Shorten the application form: The technical detail required by the current application regarding product specification is unnecessary and cumbersome. Less detailed applications may allow for the Department to review and rule on applications in a quicker manner, to the benefit of all interested parties and the agency alike.

- 2) Grant categorical exclusions: The Department has considered categorical exclusions for certain products during the past 18 months, as contemplated by the implementing regulations. The Department should formally adopt a categorical exclusion process, and should actually utilize it on behalf of products like aluminum cansheet that the domestic industry does not and cannot produce in sufficient volumes.
- 3) Allow requests for multiple products: Companies should be able to apply for groups of similar products on a single application, such as for different sizes of the same specification. Like other proposed changes, this would save the Department and industry considerable time.
- 4) Impose real deadlines for decisions: To provide predictability to applicants, adopt a rule under which requests must be resolved within 60 days of the final comment submission. If the 60-day period lapses without action by the Department, the application should be deemed to have been approved. This change would make the system far more reliable than the Department's current soft target of 90 to 106 days from initial submission, which has not been meaningful.
- 5) Remove surrebuttals from the exclusion process: Objectors from the domestic industry are allowed more than sufficient opportunity to rebut an applicant's assertions in their initial objections. Most surrebuttals merely repeat claims advanced in the original objections. A three-round approach of request, objection, and rebuttal should provide the Department with all required information and enable it to make informed determinations.
- 6) Allow and grant multi-year exclusions: One-year exclusion grants create market and price distortions by creating sudden demand for large volumes of product, which leads to related transportation and inventory issues. Extending exclusions over a longer time period would help avoid or reduce such distortions. Additionally, most manufacturing companies work on a calendar year procurement cycle. The sporadic granting or denial of applications disrupts these procurement processes. Allowing longer exclusion grants that are coordinated with an applicant's procurement cycles would allow for more productive and efficient manufacturing processes.
- 7) Aluminum portal should eliminate requirements in the chemical composition field inconsistent with Aluminum Association specifications: The current Section 232 Exclusion Request portal contains certain limitations for aluminum exclusion requests to be posted by BIS, including that the aluminum content be specified and that a maximum and minimum composition be designated for each chemical component. However, these requirements are often inconsistent with Aluminum Association ("AA") specifications for a particular product, which do not include aluminum content and frequently list a minimum chemical composition with no corresponding maximum. For example, AA 3104 lists a minimum content for silicon, iron, zinc, titanium, gallium, and vanadium. Because there is no maximum range for those six chemicals, and no range at all for aluminum, the submission of an exclusion request for AA 3104 material requires the applicant to (i) assume a maximum content, which may or may not be consistent with the actual mill certifications, and (ii) calculate an aluminum content based on the remainder of all chemicals designated in the AA specifications, which again may or may not be consistent with the composition of the material imported. These arbitrary requirements create an added burden for requesters, add no relevant information to the application, often delay the exclusion process, and unnecessarily limit the scope of any granted exclusions.
- 8) Improve Post Summary Correction Process: The Department should work with Customs to make the refund process more efficient and effective.
- 9) Ensure that linked resubmissions are fully effective: Ardagh has waited months for decisions on requests to link a granted resubmission back to the date of the original denied request. The delays have been so extended that certain entries may no longer be eligible for protest or other actions to claim refunds. The Department should work with Customs to ensure that decisions to link resubmissions are fully effective and provide real relief to applicants.
- 10) Identify submission deadlines clearly: Unlike the original system, the 232 Portal does not specify the date and time on which the system will no longer accept submissions. The "days remaining" countdown indicator is ambiguous and inconsistent. The resulting uncertainty is entirely unnecessary and can be avoided by simply including a specific deadline including date and time.

- 11) Allow draft requests to be saved: The 232 Portal should allow account holders to create and save draft requests, rather than requiring them to start over each time a browser window is closed.
- 12) Disclose BIS decision dates: When a new decision is issued by the Department, it would be helpful to include in the 232 Portal – as well as in the JSON file – the date on which the decision was added to the system and the date of signature.
- 13) Allow tracking of specific requests: The 232 Portal should allow account holders to identify and track a subset of specific requests of interest, rather than requiring new searches each time.
- 14) Improve search functionality: As was the case with the prior Regulations.gov system, general word searches should be enabled in the 232 Portal, among other search improvements.

Ardagh hopes that the Department will seriously consider these comments and specific suggestions to improve the Section 232 exclusion process, which thus far has not operated in the equitable, predictable, and reliable manner that all interested companies would prefer.

Please let us know if you have any questions or would like to receive any additional information.

Ardagh Metal – North America

Ardagh Metal Packaging USA Inc
8770 W. Bryn Mawr Avenue
Chicago, IL 60631

July 10, 2020

U.S. Department of Commerce
Bureau of Industry and Security
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- 6) Allow and grant multi-year exclusions: One-year exclusion grants create market and price distortions by creating sudden demand for large volumes of product, which leads to related transportation and inventory issues. Extending exclusions over a longer time period would help avoid or reduce such distortions. Additionally, most manufacturing companies work on a calendar year procurement cycle. The sporadic granting or denial of applications disrupts these procurement processes. Allowing longer exclusion grants that are coordinated with an applicant's procurement cycles would allow for more productive and efficient manufacturing processes.
- 7) Aluminum portal should eliminate requirements in the chemical composition field inconsistent with Aluminum Association specifications: The current Section 232 Exclusion Request portal contains certain limitations for aluminum exclusion requests to be posted by BIS, including that the aluminum content be specified and that a maximum and minimum composition be designated for each chemical component. However, these requirements are often inconsistent with Aluminum Association ("AA") specifications for a particular product, which do not include aluminum content and frequently list a minimum chemical composition with no corresponding maximum. For example, AA 3104 lists a minimum content for silicon, iron, zinc, titanium, gallium, and vanadium. Because there is no maximum range for those six chemicals, and no range at all for aluminum, the submission of an exclusion request for AA 3104 material requires the applicant to (i) assume a maximum content, which may or may not be consistent with the actual mill certifications, and (ii) calculate an aluminum content based on the remainder of all chemicals designated in the AA specifications, which again may or may not be consistent with the composition of the material imported. These arbitrary requirements create an added burden for requesters, add no relevant information to the application, often delay the exclusion process, and unnecessarily limit the scope of any granted exclusions.
- 8) Improve Post Summary Correction Process: The Department should work with Customs to make the refund process more efficient and effective.
- 9) Ensure that linked resubmissions are fully effective: Ardagh has waited months for decisions on requests to link a granted resubmission back to the date of the original denied request. The delays have been so extended that certain entries may no longer be eligible for protest or other actions to claim refunds. The Department should work with Customs to ensure that decisions to link resubmissions are fully effective and provide real relief to applicants.
- 10) Identify submission deadlines clearly: Unlike the original system, the 232 Portal does not specify the date and time on which the system will no longer accept submissions. The "days remaining" countdown indicator is ambiguous and inconsistent. The resulting uncertainty is entirely unnecessary and can be avoided by simply including a specific deadline including date and time.

- 11) Allow draft requests to be saved: The 232 Portal should allow account holders to create and save draft requests, rather than requiring them to start over each time a browser window is closed.
- 12) Disclose BIS decision dates: When a new decision is issued by the Department, it would be helpful to include in the 232 Portal – as well as in the JSON file – the date on which the decision was added to the system and the date of signature.
- 13) Allow tracking of specific requests: The 232 Portal should allow account holders to identify and track a subset of specific requests of interest, rather than requiring new searches each time.
- 14) Improve search functionality: As was the case with the prior Regulations.gov system, general word searches should be enabled in the 232 Portal, among other search improvements.

Ardagh hopes that the Department will seriously consider these comments and specific suggestions to improve the Section 232 exclusion process, which thus far has not operated in the equitable, predictable, and reliable manner that all interested companies would prefer.

Please let us know if you have any questions or would like to receive any additional information.

Ardagh Metal – North America



Bureau of Industry and Security
Department of Commerce
1400 Constitution Ave NW
Washington, D.C. 20230

Docket No. 200514-0140
RIN 0694-XC058
Regulations.gov ID: BIS-2020-0012

RE: Can Manufacturers Institute comments in response to the “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs”

The Can Manufacturers Institute (CMI) respectfully submits comments in response to the “Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas,” in Docket No. 200514-0140. CMI is the national trade association of the metal can industry and its suppliers. Our members annually produce more than 120 billion steel and aluminum cans for the food, beverage, aerosol, and general packaging markets. While metal cans are a model of sustainability and circularity, aluminum cansheet and steel tinmill products need to be imported from foreign suppliers because domestic aluminum and steel manufacturers have not been able to meet our members’ needs in terms of available volumes and quality levels.

General CMI concerns

The 232 tariffs and the exclusion process have created undue hardship and uncertainty for our industry. Enormous numbers of hours have been spent by can industry personnel applying for exclusions. Some requests have been granted quickly, but others have remained pending eighteen months or more after submittal. Paradoxically, due to the tariffs, domestically produced canned products became more expensive than imports, including finished food products from China, which are not subject to the Section 232 tariffs. And American food producers lost business in foreign markets as they were outbid by competitors from countries in Asia due to the higher tariff-induced costs for metal in the United States.

Our industry also finds itself the subject of a disproportionate percentage of objections from the domestic steel industry. CMI testified in 2018 that domestic tinplate manufacturing capacity can supply only fifty-eight percent (58%) of our industry’s needs. Forty-two percent (42%) of our supply must be imported. Despite this clear and continuing shortfall in domestic production levels, sixty-two percent (62%) of tinmill product exclusion requests received objections from the steel industry, while only twenty-four percent (24%) of other steel

exclusion applications were subject to objections. Furthermore, tinmill requests that received objections were denied at a higher rate (84% versus 74%) than other steel requests on which objections were filed. CMI finds the behavior of the domestic steel industry puzzling, given the fact that tinmill products make up only two percent (2%) of total steel consumption in the United States. We also find the exclusion denial rate problematic. The domestic steel industry's repeated assertions that they could supply one hundred percent (100%) of our needs in a quality acceptable to the industry and in a timely manner are completely false. These claims were disingenuous when made at the outset of the Section 232 action and have proven inaccurate over the last two years. We are disappointed in the Department's unwillingness to look past untrue assertions and ascertain the facts regarding the tinmill market.

Specific CMI comments and suggestions regarding the exclusion process

Below are specific comments regarding the Section 232 exclusion process based on the experiences of our member companies, which have submitted hundreds of applications over the course of the last two years.

- 1) Shorten the application form: The technical detail required by the current application regarding product specification is unnecessary and cumbersome. Less detailed applications may allow for the Department to review and rule on applications in a quicker manner, to the benefit of all interested parties and the agency alike.
- 2) Allow similarly situated companies to apply for exclusions as a group: In other tariff exclusion procedures, companies sourcing generally similar materials were allowed to submit group applications, and the same process should be embraced today for Section 232 exclusions. Allowing group applications saves the applicants' valuable resources, and would also save staff time at the Department.
- 3) Grant categorical exclusions: The Department has considered categorical exclusions for tinmill products during the past 18 months, as contemplated by the implementing regulations. The Department should formally adopt a categorical exclusion process, and should actually utilize it on behalf of products like tinmill steel that the domestic industry does not and cannot produce in sufficient volumes.
- 4) Allow requests for multiple products: Companies should be able to apply for groups of similar products on a single application, such as for different sizes of the same specification. Like other proposed changes, this would save the Department and industry considerable time.
- 5) Impose real deadlines for decisions: To provide predictability to applicants, adopt a rule under which requests must be resolved within 60 days of the final comment submission. If the 60-day period lapses without action by the Department, the application should be deemed to have been approved. This change would make the system far more reliable than the Department's current soft target of 90 to 106 days from initial submission, which has not been meaningful.

- 6) Remove surrebuttals from the exclusion process: Objectors from the domestic industry are allowed more than sufficient opportunity to rebut an applicant's assertions in their initial objections. Most surrebuttals merely repeat claims advanced in the original objections. A three-round approach of request, objection, and rebuttal should provide the Department with all required information and enable it to make informed determinations.
- 7) Allow and grant multi-year exclusions: One-year exclusion grants create market and price distortions by creating sudden demand for large volumes of product, which leads to related transportation and inventory issues. Extending exclusions over a longer time period would help avoid or reduce such distortions. Additionally, most manufacturing companies work on a calendar year procurement cycle. The sporadic granting or denial of applications disrupts these procurement processes. Allowing longer exclusion grants that are coordinated with an applicant's procurement cycles would allow for more productive and efficient manufacturing processes.
- 8) Aluminum portal should eliminate requirements in the chemical composition field inconsistent with Aluminum Association specifications: The current Section 232 Exclusion Request portal contains certain limitations for aluminum exclusion requests to be posted by BIS, including that the aluminum content be specified and that a maximum and minimum composition be designated for each chemical component. However, these requirements are often inconsistent with Aluminum Association ("AA") specifications for a particular product, which do not include aluminum content and frequently list a minimum chemical composition with no corresponding maximum. For example, AA 3104 lists a minimum content for silicon, iron, zinc, titanium, gallium, and vanadium. Because there is no maximum range for those six chemicals, and no range at all for aluminum, the submission of an exclusion request for AA 3104 material requires the applicant to (i) assume a maximum content, which may or may not be consistent with the actual mill certifications, and (ii) calculate an aluminum content based on the remainder of all chemicals designated in the AA specifications, which again may or may not be consistent with the composition of the material imported. These arbitrary requirements create an added burden for requesters, add no relevant information to the application, often delay the exclusion process, and unnecessarily limit the scope of granted exclusions.
- 9) Improve Post Summary Correction Process: One CMI member said the process is "painful and costly," as it continues to await refunds of tariffs for exclusions on imports in May 2019, more than a year ago. The Department should work with Customs to make the refund process more efficient and effective.
- 10) Ensure that linked resubmissions are fully effective: Certain CMI members have waited months for decisions on requests to link a granted resubmission back to the date of the original denied request. The delays have been so extended that certain entries are no longer eligible for protest or other actions to claim refunds. The Department should work with Customs to ensure that decisions to link resubmissions are fully effective and provide real relief to applicants.

- 11) Identify submission deadlines clearly: Unlike the original system, the 232 Portal does not specify the date and time on which the system will no longer accept submissions. The “days remaining” countdown indicator is ambiguous and inconsistent. The resulting uncertainty is entirely unnecessary and can be avoided by simply including a specific deadline including date and time.
- 12) Allow draft requests to be saved: The 232 Portal should allow account holders to create and save draft requests, rather than requiring them to start over each time a browser window is closed.
- 13) Disclose BIS decision dates: When a new decision is issued by the Department, it would be helpful to include in the 232 Portal – as well as in the JSON file – the date on which the decision was added to the system and the date of signature.
- 14) Allow tracking of specific requests: The 232 Portal should allow account holders to identify and track a subset of specific requests of interest, rather than requiring new searches each time.
- 15) Improve search functionality: As was the case with the prior Regulations.gov system, general word searches should be enabled in the 232 Portal, among other search improvements.

CMI members hope that the Department will seriously consider these comments and specific suggestions to improve the Section 232 exclusion process, which thus far has not operated in the equitable, predictable, and reliable manner that all interested companies would prefer.

Please let us know if you have any questions about these comments.

Sincerely,

A handwritten signature in black ink that reads "Robert R. Budway". The signature is written in a cursive, slightly slanted style.

Robert Budway



July 10, 2020

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
U.S. Department of Commerce
14th Street & Constitution Avenue, NW
Washington, DC 20230

Re: The Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (RIN 0694-XC058)

Dear Secretary Ross:

Central National Gottesman (“CNG”) hereby provides its comments for the consideration of the U.S. Department of Commerce, Bureau of Industry and Security (“BIS”), in response to its May 26, 2020 request for public comments on the exclusion process for Section 232 steel and aluminum import tariffs and quotas.¹

1. Introduction and Summary

Central National Gottesman Inc. (“CNG”) is a 134-year-old, U.S. family-owned company offering a broad range of sales, marketing, finance, logistics and management services to our customers and suppliers across the United States and around the world. CNG employs more than 3,000 people in 29 countries around the world, including approximately 1,900 employees at 48 facilities located across the United States. CNG trades in paper, wood and metal products, including aluminum sheet and foil.

¹ See *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441 (May 26, 2020).

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CNG appreciates that the Department is soliciting public comments on the appropriateness of the factors considered, and the efficiency and transparency of the process employed, in rendering decisions on requests for exclusions from the tariffs and quotas imposed on imports of steel and aluminum articles. Since the Department determined to impose section 232 tariffs on steel and aluminum products and began the subsequent exclusion process, CNG's metal business has been unfairly threatened by an unlevel playing field for common alloy aluminum sheet products and aluminum foil products. This threat can be remedied by fair and consistent application of the Section 232 exclusion process. Moreover, CNG urges the Department to adopt the revision set forth in its Federal Register Notice requiring objectors to submit factual evidence that they can in fact manufacture the product in the quality (and exact technical specifications) and amount, and during the time period, to which they attest in the objection. As explained in further detail below, in light of CNG's experience with the Section 232 exclusion process, exclusion requests seem to be denied outright if a U.S. entity files an objection with little to no factual evidence to support blanket assertions that they can manufacture the requested product in the specified quality and amount in a given period of time.

CNG urges the Commerce Department to fairly and consistently apply its section 232 exclusion process for steel and aluminum tariffs. We also strongly encourage the Department to either require factual evidence to support objections or, if not required and no factual evidence is provided in support of blanket assertions, to afford little credibility to such objections when considering whether to grant or deny an exclusion request.

2. BIS Should Ensure that its Exclusion Process is Fairly and Consistently Applied

A critical flaw in the Department's exclusion process is the arbitrary and capricious manner in which exclusions are granted and denied. Numerous Section 232 exclusions have been granted to CNG's competitors, when CNG's own request for identical product have been denied. This discriminatory treatment has placed CNG's business at risk by allowing competitors to undercut its prices.

In many cases, the Department has granted exclusions to foreign owned trading companies that compete directly with CNG, a family owned American business. In addition, the exclusion process allows U.S. producers to game the system by applying for -- and receiving -- their own exclusions, while making unfounded objection to exclusions sought by CNG and other importers. The Department's policy of making contradictory decisions with regard to identical products has created a process that is open for abuse. To avoid such abuse, the Department should revise its policy to ensure that once it grants an exclusion for a particular product, all importers benefit from that exclusion. Such a system would mirror that applied by the U.S. Trade Representative in the China Section 301 exclusion process.

The current arbitrary decision-making process for exclusions is inconsistent with the Bureau of Industry and Security's ("BIS") announced policy for the exclusion, inconsistent with the presidential Proclamation calling for an exclusion process, and inconsistent with U.S. tariff policy. When announcing the exclusion process BIS indicated that it would "take into account" that prior requests have been granted, indicating that BIS has already found that requested

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product is not produced in a “sufficient and reasonably available amount” in the United States. In CNG’s experience, BIS has granted multiple exclusions for the products it sells, yet BIS has denied CNG’s requests without explanation. In some cases, such contradictory decisions have been made within days of each other.

Furthermore, in the Proclamation announcing the Section 232 tariffs, the President directed the creation of an exclusion process and specified that the process “provide relief from additional duties...for any aluminum article determined not to be produced in the United States in sufficient and reasonably available amount or of satisfactory quality.”² The proclamation further directed the Department to publish determinations regarding tariff relief in the Federal Register and notify Customs and Border Protection (“CBP”) of the articles excluded from the Section 232 duties. The current exclusion process which provides inconsistent treatment of identical products imported by different companies is inconsistent with the Presidential proclamation.

Finally, U.S. trade policy has long recognized that tariffs should be applied in a uniform manner to all importers. Indeed, this principal is enshrined in the U.S. constitution, which requires that “all duties, imposts and excises shall be uniform throughout the United States.”³ The Uniformity Clause prevents tariffs from being applied in a manner that picks winners and

² See *Proclamation 9704 of March 8, 2018 Adjusting Imports of Aluminum into the United States*, 83 Fed. Reg. 11,619 (Mar. 15, 2018).

³ Constitution of the United States, Art. I, Section 8.

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losers among competitors. The lack of uniformity in Commerce's Section 232 exclusion process does the opposite.

3. BIS Should Require Objectors to Submit Factual Evidence That They Can in Fact Manufacture the Product in the Quality, Technical Specifications, and Amount, and During the Time Period, to Which They Attest in the Objection

As far as CNG can tell, its own exclusion requests have been denied because they were met with objection from other entities. This has been the case even when objectors have failed to provide any factual evidence to support their assertions that they can manufacture the product subject to CNG's request in the quality and quantity specified. And even when CNG has filed a rebuttal with supporting factual evidence that makes clear the objector does not have the technical capability to produce the requested product nor is it reasonable to believe, based on available evidence, that the objector could manufacture the product in the quantity requested, CNG's requests have been denied. Indeed, it appears to be BIS's policy to deny -- or delay decision for so long it is a constructive denial -- exclusion requests that have any objection. BIS's decision documents provide no evidence that it has evaluated objector's claims for accuracy or relevance to the exclusion at issue. Indeed, a recent analysis of exclusion requests made on BIS's new portal found:

{W}ith the new portal, none of the steel or aluminum exclusion requests with an objection have been approved and all remain pending. Specifically, for steel, producers have filed objections against 6,371 steel tariff exclusion requests, and of those, none have been approved and all remain pending. Of the steel tariff exclusion requests with no objection (24,765), 16,595 were approved, 1 was denied, and 8,169 remain pending.

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For aluminum, producers filed objections against 709 aluminum tariff exclusion requests, and of those, **none have been approved and all remain pending. Of the aluminum tariff exclusion requests with no objections (2,566), 1,465 were approved, 0 were denied, and 1,101 remain pending.** In other words, the updated data indicate that objections still matter.⁴

CNG appreciates the sheer number of exclusion requests the Department is dealing with, but all objections are not created equal and it cannot (or should not) be the case that *any* objection at all leads to a denied request regardless of the contents of the objection. In objections filed against CNG's requests (and others) objectors fail to provide any factual evidence that they actually have the production capabilities claimed and sufficient available capacity. In nearly all cases, no production data is provided, no proof of technical capabilities, nor capacity utilization data, despite fields provided in the BIS form for production and capacity information. In the case of aluminum sheet products, such claims of great excess capacity are belied by recent analysis from the U.S. International Trade Commission, which found that U.S. demand outstrips U.S. supply, thus indicating a lack of excess capacity among U.S. manufacturers of aluminum sheet.⁵ BIS does not appear to have made any effort to consider objective information when evaluating requests.

⁴ See Christine McDaniel & Joe Brunk, *Section 232 Steel and Aluminum Tariff Exclusion Requests Continue Apace*, Mercatus The Bridge (Jan. 21, 2020) (emphasis added) available at <https://www.mercatus.org/bridge/commentary/section-232-steel-and-aluminum-tariff-exclusion-requests-continue-apace>

⁵ *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Taiwan, and Turkey*, Inv Nos. 701-TA-639-642 and 731-TA-1475-1492 (Prelim), USITC Pub. No. 5049 (Apr. 2020) at C-6, Table C-1 (available at https://www.usitc.gov/publications/701_731/pub5049.pdf).

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The Department should modify the exclusion process to require objectors to submit factual evidence -- and provide legally binding certifications of accuracy regarding such information. Objectors should be required to document that they can in fact manufacture the product in the quality, technical specifications and amount, and during the time period, to which they attest in the objection. If objectors fail to provide such information, BIS should afford little weight to objections based on speculation and without evidentiary support. CNG strongly encourages a change from the status quo where vague, unsubstantiated objections are sufficient to quash exclusion requests. This continued occurrence is harming hard-working U.S. companies like CNG at the advantage of large, multi-national corporations.

We appreciate the Department's consideration of these comments. Please do not hesitate to contact us should you have any questions or require any further information.

Respectfully submitted,

/s/ Howard Herman
Howard Herman
Senior Vice President and General Counsel



Stephen E. Comstock
Vice President
API
Corporate Policy
200 Massachusetts Avenue, NW
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July 10, 2020

Richard E. Ashoosh
Assistant Secretary for Export Administration
Bureau of Industry and Security
Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

Subject: API Comments on Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas; Docket No. BIS-2020-0012; RIN 0694-XC058

Dear Assistant Secretary Ashoosh,

On behalf of its members, the American Petroleum Institute (API) welcomes the opportunity to respond to the Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas. API is the only national trade association that represents all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and nearly 8 percent of the U.S. economy. API's more than 600 members include large integrated companies, as well as, exploration and production, refining, marketing, pipeline and marine businesses, and service and supply firms.

API has consistently stated that trade remedies designed to address national security must be used in a prudent and targeted fashion to mitigate unintended impacts on policies or broader trade flows. Further, we believe that implementation of such remedies should be transparent and efficiently administered to account for real time business transactions and allow for appropriate exclusions.

With respect to the Section 232 tariffs imposed on steel and aluminum imports, a wide range of covered products are used in the domestic energy industry. Accordingly, API member companies have filed hundreds of exclusion petitions since the tariffs were implemented. Much of the equipment subject to the tariffs is deployed to support the ongoing resurgence of domestic oil and natural gas production, while the remainder is exported to the global oil and natural gas market. The operating environment for this equipment demands reliability, and the industry holds itself to exacting product specifications and standards, many of which are subsequently referenced in regulation and/or incorporated into contract agreements.



Based on this importance of these products to our members, API does not support any alteration of the exclusion process that would make it more arduous for importers to navigate. Making the process more complicated could in reality hurt energy growth and negatively impact jobs and investments. Specifically, we have four main areas of comment with respect to the Notice of Inquiry as follows:

A. Fact-Based Analysis

The Department of Commerce should process exclusions based on fact-based evidence supported by the requestor's exclusion petitions and through validation of any objectors' claims. It cannot be enough for objectors to file objections with unsubstantiated statements about the ability to produce the product that is the subject of the exclusion request. Blanket denials of an exclusion request without any substantive analysis of the objectors' capacity or ability to produce the same or similar products unfairly penalizes U.S. companies that require products developed to project specific standards. Without further analysis of specific objectors' capacity and ability to produce the same or substantially similar products (i.e., to the point that substitution would be appropriate), the exclusion process should not be allowed to create universal roadblocks for all potential requesters.

While objectors can often claim to produce a product similar to the subject of the exclusion request, the excluded product required is highly specialized to a specific operating standard. The process must allow for a fair evaluation of whether the objector has the capacity or current equipment to produce the product to the same exact standard required by an operator, not merely a "similar" standard.

Furthermore, API believes that steel manufacturers that file objections on the basis that future capacity will materialize within one year should be required to submit a detailed timeline and supporting material to support their assertion, including a guarantee that the domestically "reasonably available product" can be manufactured to the exact same standards and that the product can be delivered in equal or less time than the imported product. At a minimum the supporting material should include: 1) current and future forecasted plant capacity; 2) detailed outline of regulatory approvals, including local permitting requirements and estimated approval times, necessary to expand the existing facility or construct a new facility; and 3) projected construction schedule.

B. Lengthen the Exclusion Period

Product exclusions are currently approved for one year, which does not reflect the reality



of business planning, particularly where long-term, large-scale investments and purchasing contracts are involved, such as are typical in the oil and natural gas industry. Projects for which U.S. companies must rely on imported steel due to lack of U.S.-based supply in adequate quantities or of required quality tend to be multi-year projects. Providing exclusions for only one year at a time does not accord with the commercial realities that guide purchasing decisions and gives rise to a great deal of uncertainty. One year is too short given the needs of the U.S. consumers that will rely on these exclusions, combined with uncertainty created by the time required to process exclusion requests and obtain final decisions.

API members believe that product exclusions should be granted for a length of five years. Five years is required in order to accommodate project planning and to reflect the reality of the long lead time from purchase order to delivery of products. Five years is necessary for large-scale capital projects. Purchase orders for large procurement are often made years before products are delivered. Unexpected delays can further extend the timeline from purchase order to product delivery.

C. Burden of Proof

API believes that altering the exclusion process to force the burden of proof onto requestors instead of the objector also creates an onerous burden that runs counter to the broader intent of the section 232 tariffs to boost U.S. manufacturing. Requestors should not be required to demonstrate that they have contacted domestic producers nor that they have recently tried to purchase the product domestically. This alteration could restrict well-developed supply chains around the world to source products to the highest quality needed in the oil and gas industry. Further, forcing requestors to produce domestically available products when producers claim they can manufacture a similar product is baseless. The oil and gas industry relies in part on products from specialty steel producers around the world—products which cannot be produced in the United States to the specifications necessary.

D. No Total Quantity Limits

The section 232 exclusion process is intended to recognize and accommodate U.S. consumer needs for products that are not produced domestically in sufficient quantities or qualities. Although it is possible that certain products might eventually be produced domestically in sufficient quantities or qualities, other products may never be. For this reason, API does not support setting limits on total quantities of a product that can be excluded by a requester over time. If at some point in the future, a product is in fact available domestically, exclusions may no longer be granted. For products that remain



unavailable domestically, to the extent section 232 tariffs remain in place, exclusions are necessary to avoid placing undue burdens on U.S. consumers. Total quantity limits, therefore, are unnecessary and counter-productive.

As the Department of Commerce assesses the input provided from this notice, API recommends that the Department obtain additional public input through a notice and comment process to share a summary of comments from this notice and any proposed changes to the Exclusion Process for Section 232 tariffs and quotas. API welcomes the opportunity to engage with the Department of Commerce on this issue and help devise a mutually beneficial outcome. Again, we encourage caution – accounting for prohibitive cost burdens for API members and working with other organizations like API – in developing sensible policy positions to promote America’s energy interests.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Comstock".

Stephen Comstock
Vice President, Corporate Policy