RECORD OF PUBLIC COMMENTS

INTERIM FINAL RULE:
Section 232 Steel and Aluminum Tariff Exclusions Process

Publication in *Federal Register*: December 14, 2020 (85 FR 81060)
Comments due February 12, 2021

	SOURCE[1]	SIGNER(S) OF COMMENT	DATE
1.	Avure Technologies	Anthony Wong	12/23/20
2.	Trinidad Benham Corporation	Jeff Bornmann	1/15/21
3.	ARC Automotive Inc.	Lisa Milsom	2/8/21
4.	Zurn Industries LLC	Clint Rees	2/9/21
5.	Korea Iron & Steel Association	Anonymous	2/10/21
6.	TriSeal Opco LLC	David Andrulonis	2/10/21
7.	Parker Steel Company	Paul Fudacz	2/11/21
8.	Wire Rod Producers Coalition	Paul Rosenthal	2/11/21
9.	Now Plastics Inc.	David Craven	2/11/21
10.	The Japan Iron and Steel Federation	Shigeru Hagiuda	2/11/21
11.	Schagrin Associates	Roger Schagrin	2/12/21
12.	Cleveland-Cliffs Inc.	Stephen Vaughn	2/12/21
13.	Aluminum Extruders Council	Jeffrey Henderson	2/12/21
14.	Miller & Chevalier Chartered	Richard Mojica	2/12/21
15.	Specialty Steel Industry of North America	Laurence Lasoff	2/12/21
16.	United States Steel Corporation	Kaitlin Wojnar	2/12/21
17.	North American Stainless*	Cristobal Fuentes	2/12/21
18.	Southwire Company, LLC	Anonymous	2/12/21
19.	Davis Wire Corporation	Joe Barrett	2/12/21
20.	Volkswagen Group of America Chattanooga Operations, LLC	John Critchfield	2/12/21
21.	Steel Manufacturers Association (SMA)	Philip K. Bell	2/12/21
22.	Marubeni Itochu Tubulars America Inc	Carrie Starr	2/12/21
23.	American Iron and Steel Institute	Kevin M. Dempsey	2/12/21
24.	Commercial Metals Company*	Alan H. Price	2/12/21
25.	Steel Dynamics, Inc.*	Alan H. Price	2/12/21
26.	American Line Pipe Producers Association	Timothy C. Brightbill	2/12/21
27.	Magellan Corporation	Frank Paolillo	2/12/21
28	Century Aluminum	Robert E. DeFrancesco, III	2/12/21

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

29.	Gerdau Long Steel North America*	Alan H. Price	2/12/21
30.	Nucor Corporation*	Alan H. Price	2/12/21
31.	The Aluminum Association	Lauren Wilk	2/12/21
32.	Kibar Americas, Inc.	Scott M. Croft	2/12/21
33.	Vallourec USA Corporation*	Chris Cunningham	2/12/21
34.	Alliance for American Manufacturing	Scott N. Paul	2/12/21
35.	Mexican Steel Industry (CANACERO)	Salvador Quesada Salinas	2/12/21

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 705

[Docket No. 201203–0323]

RIN 0694–AH55

Section 232 Steel and Aluminum Tariff Exclusions Process

AGENCY: Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Interim final rule.

SUMMARY: This interim final rule revises aspects of the process for requesting exclusions from the duties and quantitative limitations on imports of aluminum and steel discussed in three previous Department of Commerce (''Commerce'') interim final rules implementing the exclusion process authorized by the President under Section 232 of the Trade Expansion Act of 1962, as amended (''232''). These changes are also informed by a notice of inquiry with request for comments on the 232 exclusions process that was published by Commerce on May 26, 2020. Based on public comments on the current process for submissions to Commerce, Commerce is publishing this interim final rule to make additional revisions to the 232 exclusion process, including to the 232 Exclusions Portal.

DATES:

Effective date: This interim final rule is effective December 14, 2020, except for amendatory instructions 3 and 5 that are effective December 29, 2020.

Comments: Comments on this interim final rule must be received by BIS no later than February 12, 2021.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for information on submitting exclusion requests, objections thereto, rebuttals, and surrebuttals. You may submit comments, identified by docket number BIS–2020–0022 or RIN 0694–AH55, through the *Federal eRulemaking website: http://www.regulations.gov.* No other submission methods are being used for submitting comments on this interim final rule. Follow the instructions for submitting comments.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. 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 version of the submission.

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 corresponding non-confidential version of those comments 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. Any submissions with file names that do not begin with a ''BC'' or ''P'' will be assumed to be public and will be made publicly available through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions regarding this interim final rule, contact Erika Maynard at 202–482–5572 or via email *Erika.Maynard@bis.doc.gov,* or email *Steel232@bis.doc.gov* regarding provisions in this rule specific to steel exclusion requests and *Aluminum232@bis.doc.gov* regarding provisions in this rule specific to aluminum exclusion requests.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2018, President Trump issued Proclamations 9704 and 9705, imposing duties on imports of aluminum and steel. The Proclamations also authorized the Secretary of Commerce to grant exclusions from the duties if the Secretary determines the steel or aluminum article for which the exclusion is requested is not ''produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality'' or should be excluded ''based upon specific national security considerations,'' and provided authority for the Secretary to issue procedures for exclusion requests. On April 30, 2018, Proclamations 9739 and 9740, and on May 31, 2018, Proclamations 9758 and 9759, set quantitative limitations on the import of steel and aluminum from certain countries in lieu of the duties. On August 29, 2018, in Proclamations 9776 and 9777, President Trump also authorized the Secretary to grant exclusions from quantitative limitations based on the same standards applicable to exclusions from the tariffs.

Implementing and Improving the 232 Exclusions Process

On March 19, 2018, Commerce first issued an 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) (the ''March 19 rule''), laying out procedures for the 232 exclusions process, including one supplement for the procedures for steel and a second supplement for the procedures for aluminum.

On September 11, 2018, Commerce issued a second interim final rule, *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum* (83 FR 46026) (the ''September 11 rule''), that revised the two supplements added by the March 19 rule with improvements designed to ensure a transparent, fair, and efficient exclusion and objection process.

On June 10, 2019, Commerce issued a third interim final rule, *Implementation of New Commerce Section 232 Exclusions Portal* (84 FR 26751) (the ''June 10 rule''), that revised the two supplements added by the March 19 and September 11 rules to grant the public the ability to submit new exclusion requests through the 232 Exclusions Portal while still allowing the opportunity for public comment on the portal.

On May 26, 2020, Commerce issued a notice of inquiry with request for comment, *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (85 FR 31441) (the ''May 26 notice''), that sought 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.

Why is Commerce publishing this interim final rule?

Commerce is publishing this interim final rule to implement additional changes the Department has determined will further improve the 232 exclusions process. Commerce believes these changes will make important improvements, but is also requesting public comments to evaluate how effective these changes will be in further improving the 232 exclusions process. This process is consistent with the Department's approach since the

beginning of implementing the 232 exclusion process. The public has supported this approach.

What are some of the key changes included in this interim final rule?

This interim final rule is being published at this time, in particular, to make the following three key changes to the 232 exclusions process.

First, it addresses the need to create a more efficient method for approving exclusions where objections have not been received in the past for certain steel or aluminum articles. Commerce has determined creating general approved exclusions that may be used by any importing entity is warranted. This has been noted by commenters who submit exclusion requests, and by trade associations that represent those companies, as one of the most important changes that could be made to improve the efficiency of the 232 exclusion process. As described in much greater detail below, this interim final rule addresses this issue with the adoption of General Approved Exclusions (GAEs). This change will result in an estimated immediate decrease of 5,000 exclusion requests annually, resulting in a significant improvement in efficiency, with the possibility of more in the future. Unlike exclusion requests, GAEs do not include quantity limits.

Second, it addresses a trend identified by commenters and validated in data reviewed by Commerce—that certain exclusion requesters may have requested more volume than they may have needed for their own business purposes compared to past usage. Submitting large numbers of unneeded exclusion requests decreases the efficiency of the 232 exclusions process for potential objectors and Commerce. It also creates issues for potential objectors. As described in greater detail below, this issue is addressed by adding a new certification requirement for volumes requested. Along the same lines, the rule also adds a note to remind all parties submitting 232 submissions of the prohibition against making false statements to the U.S. Government and the consequences that may occur for such false statements.

Third, the rule addresses an objector concern they were being held to a higher standard than foreign suppliers because of the interpretation that ''immediately'' meant the objector needed to be able to provide the steel or aluminum articles within 8 weeks, even though a foreign supplier may not be able to provide the same steel or aluminum article until much longer than 8 weeks. With this rule the term ''immediately,'' is retained but language has been modified to apply the same time standard to U.S. objectors and foreign suppliers for when the steel or aluminum articles need to be provided to the exclusion requester.

What changes are not being addressed in this interim final rule?

While this rule addresses the remaining comments from the September 11 rule, it also addresses some of the comments received on the 232 Exclusions Portal from the June 10 rule. However, comments requesting changes requiring software modification or involving additional cost and time to implement are still under consideration and not addressed here. Some examples of comments still under consideration include the following. There is a comment to allow confidential business information (CBI) submissions in the 232 Exclusions Portal which would require software changes and additional certifications. Another commenter requested two separate portals for the steel and aluminum exclusion processes. There are also several comments regarding the usability and search functionality of the 232 Exclusions Portal including adding a filter for steel and aluminum on the main portal page; adding product classes to the main portal screen with a filtering function; improving search functionality by adding a simple ''find all'' type of search capability; adding the capability to be able to download individual submissions and all data; making it easier to extract data for queried databases; adding the ability to cross search with multiple criteria; providing an easier way to identify exclusion requests by HTSUS classification and other criteria; including the actual due date for filing submissions, not just days remaining; adding a withdraw feature to the dashboard; adding a notification feature when objections are posted; and adding the ability to refresh without resetting the filters. Commerce is continuing to evaluate these comments and may implement additional changes to further improve the 232 Exclusions Portal at a later date.

This interim final rule does not summarize or respond to the comments included in the May 26 notice. Commerce will address these comments in the next rule. However, as noted below, there is significant overlap in the comments received on the September 11 and June 10 rules, so some of the comments received on the May 26 notice are also being addressed in this interim final rule. For example, the three key changes to the 232 exclusions process described above being made in this interim final rule will also be responsive to comments received on the May 26 notice.

The following are some examples of comments from the May 26 notice that are still being reviewed. Additional changes to the 232 Exclusions Portal were requested by some commenters based on their additional experience, *e.g.,* the portal being programmed to flag for special attention those exclusion requests that have been waiting a certain number of days/months for a determination. Some comments addressed the role of objections in the 232 exclusions process and whether objections have an outsized influence on the process, in particular on how long the Commerce decision-making process takes and whether an exclusion will be granted. Some comments requested creating a process to give preferential treatment for products further manufactured or substantially transformed in the United States, because such producers are an essential part of the U.S. steel and aluminum industry. Other commenters requested a 60-day window for submitting exclusion requests on a bi-annual basis and only product exclusion requests submitted during these bi-annual periods would be considered.

Additional Improvements to the 232 Exclusions Process

As noted above, the interim final rule being published today addresses the remaining comments from the September 11 rule and highlights what comments have been addressed from the June 10 rule. There is some significant overlap among those comments and comments received in response to the May 26 notice, so the revisions to the 232 exclusions process described below will also be responsive to some of the same comments received in response to the May 26 notice. Commerce intends to publish at least one subsequent interim final rule that will describe the unaddressed comments received on the May 26 notice and any additional revisions Commerce will make to the 232 exclusions process as a result of those comments. The comments on the May 26 notice also included various comments on the 232 Exclusions Portal, certain of which are addressed below. Other comments will be summarized and addressed with the remaining comments on the June 10 rule that are not included in today's rule. Because of the programming cost and time involved with making changes to the 232 Exclusions Portal, Commerce requires more time to review and respond to those comments, in particular for comments where Commerce agrees that

changes to the 232 Exclusions Portal may be warranted.

Commerce is focused on improving the 232 exclusions process as quickly as possible. As additional revisions are ready to be made, such as those being made in this rule, Commerce will publish those changes as quickly as possible to improve the 232 exclusions process. This approach of publishing a series of interim final rules has allowed Commerce to improve the 232 exclusions process on an ongoing basis, allowing the public to submit additional comments on whether the most recently made changes have helped to improve the process.

This rule makes various edits to supplement no. 1 to part 705 to improve the 232 exclusions process. This rule also removes the provisions from supplement no. 2 to part 705 and consolidates those into supplement no. 1. This rule also adds new supplements no. 2 and no. 3 for identifying General Approved Exclusions (GAEs) for steel and aluminum articles under the 232 exclusions process and the first approved tranches of GAEs for steel and aluminum articles. GAEs address a long-standing request from public comments of exclusion requesters to create a more efficient process to approve certain exclusions for use by all importers where Commerce has determined that no objections will be received and where it is warranted to approve an exclusion for all importers to use. This rule also removes Annex 1 to supplements no. 1 and 2, since this guidance is no longer needed with this rule's removal of references to *www.regulations.gov* from the 232 exclusions process. Finally, this rule makes some non-substantive edits to supplement no. 1 to part 705 to improve readability of the supplement.

Public Comments and BIS Responses

The public comment period on the May 26 notice closed on July 10, 2020. BIS received eighty-two public comments on the notice of inquiry. Many commenters referenced the imposition of duties and quantitative limitations, questioning whether or not such regulations were beneficial. Those comments are outside the scope of the May 26 notice that solicited comments on the 232 exclusions process; thus Commerce is generally not summarizing or providing responses to those general comments on the duties and quantitative limitations. Certain comments described and addressed below are those received in response to the September 11 and June 10 rules. However, some of the comments in responses below address issues that also were raised in some of the comments received in response to the May 26 notice. As a result, the responses below are responsive in part to comments on the May 26 notice, and also are responsive to comments on the September 11 and June 10 rules.

Improving Tracking and Transparency

Comment (a)(1): Develop an adequate tracking system that supplies relevant information (more than is available now) for 232 submissions. Commenters requested that Commerce provide stakeholders a way to more easily review the Harmonized Tariff Schedule of the United States (HTSUS) code and product information, country of origin, volume, and alloys of posted exclusions—preferably, in a searchable database. Commenters indicated that having to open each file to identify this information places a burden on potential objectors, which the commenters suggested could be addressed with a searchable database.

BIS response: Commerce has made changes to allow for easier tracking and searching of information in the 232 Exclusions Portal, as described in greater detail below for the improvements that have been made to the 232 Exclusions Portal (*see* BIS response to Comment (g)(2) below).

Comment (a)(2): Exclusion rejection for incomplete submissions should be more transparent. A commenter noted that, while they do not expect Commerce to customize each individual response, the commenter believes that additional steps can be taken to help U.S. businesses understand the reason for a rejection. This commenter requested that Commerce should include on the rejection form that is posted online a list of common reasons for rejection. The commenter believes this would provide invaluable guidance to the countless small businesses attempting to navigate this difficult process. This commenter believes the current rejection form leaves manufacturers guessing as to why the government rejected their applications, especially when that business for years used the identical HTSUS code accepted by U.S. Customs and Border Protection (CBP) to import that product.

BIS response: Commerce agrees that greater transparency benefits all applicants to the 232 exclusions process. Commerce moved its HTSUS administrability review to the start of the process in early 2019, reducing sharply the number of exclusion denials due to incomplete submissions identified later in the review process. Incomplete submissions now receive a rejection notification that includes the specific reasons for a rejection. Commerce does plan to update the rejection form used in the 232 Exclusions Portal to include a list of common reasons for rejection. Commerce agrees that providing this additional information will make the process more efficient, because those receiving rejections will more easily understand what was wrong with their exclusion request that resulted in a rejection. This may reduce the overall number of 232 exclusion submissions submitted.

Confidential Business Information (CBI)

Comment (b)(1): Supportive of the new CBI provisions. A commenter asserted that one of the most significant changes is the BIS decision to allow companies to submit CBI during the rebuttal and surrebuttal process. This same commenter also believes that further changes can improve the process beyond what BIS has already proposed.

BIS response: Commerce agrees that adding the CBI process has helped to improve the 232 exclusions process. As described below, Commerce is open to improving the CBI process, but that must be done in accordance with the larger purpose of allowing CBI in the 232 exclusion process, as well as the current technical limitations in the 232 Exclusions Portal.

Comment (b)(2): Allow CBI to also be submitted for exclusions and objections. Commenters urged Commerce to expand the CBI provision by allowing companies to submit CBI within their original exclusion request. These commenters asserted that, given the amount of detail required to complete the exclusion request form, companies may be hesitant to submit exclusion requests for fear of sharing CBI with their competitors.

BIS response: Commerce does not agree. The information required on the exclusion request form does not require revealing CBI in order to adequately complete the form, so allowing CBI in support of the initial exclusion request is not needed. Moreover, exclusion requesters can indicate they have CBI, allowing Commerce reviewers to request that CBI if needed for their review of the request and objections.

Comment (b)(3): Allowing CBI in exclusions and objections would alleviate some concerns over short seven-day rebuttal and surrebuttal periods. One commenter asserted that, given the short seven-day window of the rebuttal process, allowing companies to submit CBI at the time of the application would relieve the unnecessary burdens placed on filers by the short rebuttal window.

BIS response: Commerce acknowledges the shortness of the seven-day rebuttal and surrebuttal period, but does not agree with the commenter that allowing CBI in the exclusion request or in objections would alleviate the burden on exclusion requesters or objectors during the rebuttal and surrebuttal period. The most appropriate time in the 232 exclusion review process for CBI is during the rebuttal and surrebuttal phase when information that goes beyond what is included in the exclusion and objection forms may be needed to properly evaluate an exclusion request. Allowing CBI in exclusion requests and objections would slow the Commerce review process without adding any real benefit to the review process. As noted above, exclusion requesters and objectors can indicate they have CBI and Commerce reviewers can request that information if needed for review.

Comment (b)(4): Process to submit CBI needs to be further clarified. A commenter believes the current CBI process is confusing because parties must submit the exclusion request form with a vague, yet somewhat detailed summary of the CBI and then supplement the form by sending a separate email to BIS with the actual confidential information. This same commenter was also concerned that parties risk the possibility that Commerce will reject their exclusion request for being an incomplete submission before Commerce has even received their confidential information.

BIS response: Commerce understands the point being made by the commenter but does not agree that this requirement is unreasonable. Because the 232 Exclusion Process is a public process, there needs to be transparency to allow the other public parties involved in the process (objector(s) and exclusion requesters) to have an idea of the scope and type of CBI information that is being provided to supplement a rebuttal or a surrebuttal.

Comment (b)(5): Section 301 exclusion request process uses a clear and simple method by which parties can submit CBI—Commerce should adopt same process to allow submission of public and private version. A commenter encouraged Commerce to implement a method similar to that of the Section 301 exclusion process for the Section 232 exclusion request process, allowing parties to submit both public and confidential versions of the exclusion request form.

BIS response: Commerce sees the benefit of adopting the same type of approach as used under the Section 301 process. However, the security needed to protect such information in the 232 Exclusions Portal would require additional programming and certifications. Therefore, at the current time Commerce will not be making these changes. If the 232 Exclusions Portal can accommodate CBI at a future date, Commerce will revisit this issue.

Exclusion Requests

Comment (c)(1): Standard Commerce applies to exclusion requests remains unclear—need to specify whether in aggregate or for a specific requester. A commenter was concerned that it is unclear whether a specific requester's lack of availability and quality of material is the relevant consideration, or whether analysis of material quantities in the aggregate U.S. market provides a better metric. The commenter believes the proper standard should be the availability of material to the requesting company in the needed quality and quantity because this is largely in the control of the objecting supplier.

BIS response: Commerce confirms here that exclusion requests are being reviewed based on the availability of material to the requesting company in the needed quality and quantity by U.S. suppliers. This rule clarifies that the standard applied to the review of an exclusion request is a case-by-case review to determine whether the requester has shown that the article is not produced in the United States in a sufficiently and reasonably available amount or of a satisfactory quality, or that there are specific national security considerations to grant the exclusion. In general, if no U.S. supplier submits an objection, absent a national security concern, Commerce approves such exclusion requests because a determination can be made that a U.S. supplier is not available to supply to the exclusion requester the needed quality and quantity of steel or aluminum described in the exclusion request.

Comment (c)(2): Inconsistencies in the posted exclusion requests make it difficult for objectors to adequately review and respond. Commenters in this area are concerned whether exclusion requesters are consistently filling out the forms, and whether Commerce is adequately ensuring that the exclusion forms being posted meet the required standards of the form. For example, one commenter noted that hundreds of exclusion requests include no alloy designation (Question 4.b), but instead reference the HTSUS code or simply leave that field blank. This commenter asserted that an alloy designation is an important identifier for assessing the validity of an exclusion request, so its omission in many exclusion requests makes it difficult for potential objectors. Another commenter noted that many exclusion requests—including those that have already been approved—fail to indicate a volume associated with the included countries of origin.

BIS response: Commerce acknowledges that, in certain cases, there has been some variability in how exclusion requesters or objectors have filled out the respective forms. Commerce has revised its standard operating procedures (SOPs) and conducted training for those reviewing 232 submissions at Commerce to emphasize the importance of ensuring that the exclusion and objection forms are being completed in accordance with the information required on the forms. As a result of this comment, Commerce has highlighted these issues to the Commerce reviewers of the 232 submissions to ensure consistency and warns that submissions that do not meet the standards of the information required on the forms will be rejected.

Comment (c)(3): ''Size ranges'' clarification was helpful in the September 11 rule, but additional clarification needed. A commenter noted that the September 11 rule offers some additional information on acceptable ranges but could be improved. The BIS response to Comment (g)(3) in the September 11 rule states that the exclusion request form allows for a product that may be within a specific range but not for products across a wide range. A permissible range must be within the minimum and maximum range that is specified in the tariff provision and applicable legal notes for the provision. This commenter believes that this suggests that products identical in all aspects, with the exception of a dimensional characteristic, and classified within the same HTSUS statistical reporting number, could be included within a single request. However, the commenter was concerned that the regulatory text under paragraph (c)(2) suggests that separate exclusion requests must be submitted for steel products with ''distinct critical dimensions'' covered by a common HTSUS statistical reporting number, and examples provided in the rule are for specific sizes of products, which does not appear inconsistent with Comment (g)(3) from the September 11 rule.

BIS response: Commerce agrees a clarification to paragraph (c)(2) is warranted. This interim final rule, as described below in the regulatory changes, removes the word ''distinct'' before ''critical'' in the example

provided under paragraph (c)(2). This change is made to avoid any potential confusion on the scope of ranges that are permissible under an exclusion request. Commerce clarifies that products identical in all aspects, with the exception of a dimensional characteristic, and that are classified within the same HTSUS statistical reporting number, may be included within a single request. However, objections that indicate the ability to produce one or more products within the range, even if not the entire range, will be considered to be valid objections to an exclusion request.

Comment (c)(4): Concerned that Commerce is not adequately reviewing exclusion requests. A commenter requested that Commerce fully evaluate all exclusion requests—including those for which no objections are filed—to ensure that the volumes requested are proportional to the U.S. market. This commenter was concerned that, generally, it seems Commerce is not evaluating whether there is actually demand in the market for these large volumes, and has granted requests based simply on the absence of any objections.

BIS response: Commerce recognizes that there are exclusion requests for volumes that exceed prior years' consumption but that often receive no objections. Commerce also recognizes that there are objections that, in total, exceed the objectors' total capacity. Commerce is reviewing this issue to determine whether there is an approach to factor volumes requested and objected to in an objective, transparent, and efficient way. As an initial step to address this issue, this interim final rule makes regulatory changes to the 232 exclusions process, as described below under the 232 exclusion request volume certification heading to require a certification from exclusion requesters for volume requested and, when applicable, a certification for volume requested but unfulfilled due to legitimate circumstances when submitting exclusion requests in the 232 Exclusions Portal.

Comment (c)(5): Does not believe Commerce has implemented an expedited approval process for exclusions that receive no objections—contrary to what was stated in the September 11 rule and in statements by Commerce in other venues that Commerce would adopt such an expedited process. One commenter noted that Commerce does not yet appear to be adjudicating requests faster as a result of the updated exclusion process with some exclusion requests.

BIS response: Commerce believes this comment was likely made as Commerce was working to address the initial backlog of exclusion requests that did receive objections and does not reflect the current status. At this time, the expedited review process for exclusions that do not receive objections is functioning well, with an average response time, as of July 20, 2020, of approximately 60 days, less than half the average processing time for exclusions that receive objections and a significant decrease in overall response times compared to earlier in the process.

Comment (c)(6): Product descriptions in exclusion requests and approval decisions need to be more specific to ensure CBP can determine what is approved. A commenter noted that Commerce has granted a number of exclusion requests where the ''product description'' on both the request and Commerce's decision document is only the name for a general category of products and any detail regarding the size, chemistry, and other characteristics that may indicate that particular product at issue is not available from domestic sources are not carried over from the application. This commenter noted that greater specificity was needed in the approved exclusions.

BIS response: Commerce works closely with CBP. Additional information is provided to CBP to ensure that CBP is able to effectively implement approved exclusions. CBP consults as needed with Commerce if any questions arise regarding the scope of a specific approved exclusion request.

Comment (c)(7): Need to specify when the validity of an approved exclusion request begins. A commenter noted that there has been a number of exclusions granted where shipments were entered after the posting of the request but before the decision. The commenter asked for clarification if the one-year timeframe begins once the decision is made or if some other point is used to start the one-year timeframe.

BIS response: Commerce clarifies that, as specified in paragraph (h)(2)(iii)(A) (*Effective date for approved exclusions*), an approved exclusion will be effective five business days after publication of the Commerce response granting an exclusion in the 232 Exclusions Portal. If granted, exclusions are generally effective for one year from the date of signature on the Decision Memo. Companies may also file Post-Summary Corrections with CBP on unliquidated entries to recoup any tariffs paid on products that made entry between the submission date and the date of signature. Companies are able to receive retroactive relief on granted requests dating back to the date of the request's submission on unliquidated entries. However, requesters should note that where retroactive relief is granted, the quantities granted retroactive relief are still counted against the total quantity granted in the exclusion. The exclusion request expires when either the quantity granted has been exhausted or the exclusion reaches the end of the effective period specified in the decision memo (generally one year from the date of the decision), whichever comes first, and no pro-rata additional quantity is provided for retroactive relief. Given that duties do not apply for countries with quotas, retroactive relief is not applicable for exclusions from quotas.

Once the exclusion becomes effective, the steel or aluminum articles specified in the approved decision memo in entries that have not been liquidated by CBP are those eligible for tariff refunds or tariff exclusions.

Comment (c)(8): Product exclusions should be permanent not temporary (and on a universal basis). A commenter noted that temporary exclusions inject significant uncertainty into the business planning of companies and therefore recommended permanent exclusions.

BIS response: Commerce does not agree that all product exclusions should be permanent and issued on a universal basis because that would defeat the purpose of the duties. Commerce does agree that for certain steel and aluminum articles, a more efficient approval mechanism is warranted and that the approval should be universal. Specifically, for certain steel and aluminum articles, Commerce has created General Approved Exclusions (GAEs) under the new supplements no. 2 and 3 to part 705 being added to this rule, which will be available to all importers.

Comment (c)(9): Create streamlined process to allow one company seeking an exclusion for the same product already approved to a second company to quickly obtain an approved exclusion. A commenter requested that Commerce provide a streamlined process whereby a second company seeking to use an exclusion already granted to a U.S. company can quickly obtain the right to use the same product exclusion.

BIS response: Commerce does not agree. The exclusion process is intended to be specific to each requester and each request must be reviewed on its own merits, allowing for potential objections and permitting rebuttal and surrebuttal process to play out as needed. As referenced in the previous comment, the GAEs are also responsive to some of what this commenter is requesting in

terms of creating a more efficient approval process where Commerce determines that relief is warranted in a particular circumstance for all importers.

Comment (c)(10): Commerce should use its discretion to make exclusions available to all importers. A commenter requested that if a product is not made in the United States or is not made in sufficient quantity or quality, Commerce must grant a broader product exclusion (not just on a company-by-company, product-by-product basis). Another commenter noted that the Secretary and others at Commerce have repeatedly denied associations the ability to submit exclusion requests on behalf of their industries for widely used goods, because Commerce sought to identify those products receiving the most requests. However, the Secretary has yet to exercise this authority to grant general exclusions despite the same HTSUS codes receiving multiple requests.

BIS response: As noted above, in this rule, Commerce is creating GAEs with the additions of supplement no. 2 and 3 to part 705. The creation of GAEs addresses this comment and will create a more efficient 232 exclusion process and reduce the burdens on exclusion requesters.

Comment (c)(11): Explain circumstances under which BIS will approve broader product exclusions and how U.S. companies may request such an exclusion. A commenter noted that Commerce continues to state that it is considering approving broader exclusion requests, which can apply to multiple importers. However, no additional guidance has been provided as to how groups of companies can ask for such a broader exclusion.

BIS response: This rule explains the circumstances when Commerce will approve broader product exclusions. These provisions are described in the new supplements no. 2 and 3 to part 705 with the addition of GAEs. The introductory text of the new supplements explain the process of how Commerce will approve these GAEs. As previously noted, these determinations for what steel or aluminum articles warrant being included in a GAE will be made by Commerce, in consultation with the other agencies referenced in the new supplements. The public will not be involved in requesting new or revised GAEs, but Commerce will use the information provided in exclusion requests to inform its review process for what additional GAE should be added or what revisions should be made to existing GAEs.

Comment (c)(12): Process for making changes to an approved exclusion request. A commenter requested guidance be provided for how to make a correction to an application for exclusion after the exclusion has been approved.

BIS response: This is a feature under consideration, but until that revision can be implemented, a new exclusion request will need to be submitted in the event of such circumstances. Commerce does clarify that BIS will make, when warranted in the 232 Exclusions Portal, technical corrections and a few other forms of ''non-substantive changes'' including: Importer of record (IOR) changes; supplier/manufacturer changes; corrections to match product descriptions with product specifications; and corrections to organization information (*i.e.,* accidental transposition of fields).

Objections

Comment (d)(1): Concerned that Commerce has too much leeway to interpret the criteria ''not produced in the United States in a sufficient and reasonably available amount'' and ''not produced in the United States in a satisfactory quality.'' A commenter was concerned that this broad interpretation by Commerce could lead to the negation of exclusion requests in situations where one company files an objection that claims that it in theory could make that product in sufficient quantity or quality. The commenter noted that rebuttals to these claims are difficult to make without more detailed information from objectors on how they could make products in sufficient quantity or quality.

BIS response: The criteria comes from the underlying Proclamations that authorize the creation of the 232 exclusions process. Therefore, Commerce does not have the discretion to change the criteria. Commerce added the rebuttal process, as well as the surrebuttal process, to allow requesters and objectors to further address the representations made in objections and rebuttals. Ultimately, if an exclusion request is not approved because of an objection, the exclusion requester will be able to determine definitively whether an objector is in fact able to provide the steel or aluminum article in question by attempting to obtain the product from the objector. Should all objectors be unable to produce a requested product as they represented in their objections, the requester may submit a new request with documentation evidencing this refusal. Commerce understands that time is vital to an exclusion requester and seeks to ensure that objectors provide sufficient information for a thorough evaluation of the request and objection. Moreover, objectors must certify their ability to manufacture the products described within their objections.

Comment (d)(2): Objections should be reviewed cumulatively. A commenter is concerned that Commerce is not considering the cumulative impact of objections to exclusions. This commenter noted that U.S. producers that are filing objections to exclusion requests are routinely stating that the objector can and would fill the demand for the subject product. This commenter noted that while it may be true that the objector could reasonably expect to fill the needs of an individual company making an exclusion request, it is possible (or likely) that the objector could not fill the full demand for that product from all companies requesting an exclusion let alone all of the demand from other customers in the U.S.

BIS response: Commerce is aware of this concern and has evaluated statistics on the 232 exclusions process, determining that, although there may be some anecdotal examples of where this occurred, as a general trend, the statistics do not support that this is a significant issue with objections in the 232 exclusions process. In the past year, BIS has received objections to exclusion requests for approximately 19 million metric tons of steel products, or roughly 16% of total U.S. steel production capacity. None of the companies with publicly available capacity figures objected to more than their total capacity. When factoring in that multiple companies often object to the same exclusion request, volume objected to as a percentage of total capacity was significantly lower. Exclusion requesters are encouraged to provide documentation in their requests or rebuttal filings that objectors are unable to supply the products being requested because of insufficient capacity.

Comment (d)(3): Exclusion process guidelines are unclear about the obligations that come with filing an objection. A commenter asked for clarification from Commerce about whether producers should be submitting objections if they have the capability to make a product, but not the immediate capacity, or if they can only produce a fraction of the requested volume for a specific manufacturer. For example, the commenter noted that aluminum producers have expressed a concern that filing an objection will obligate that producer to offer for sale the full scope and volume of imports included in a request—which, if importers are

requesting massive volumes, might be impossible.

BIS response: Commerce agrees this should be clarified in the regulations and makes changes to paragraph (c)(6)(i), as described below, to address this issue. Commerce has the ability to deny a part of an exclusion request when an objector demonstrates sufficiently in the objection and any potential surrebuttal that they are able to produce a portion of the requested quantity of a steel or aluminum article within the required time needed by the importer. Therefore, objectors should not be deterred from submitting objections when they may not be able to fulfill 100% of the requested exclusion. Over time, as more of their domestic capacity comes back online or is added, these same objectors may be able to fulfill larger percentages of the exclusion requests, which would help to better achieve the stated purposes of the duties in helping to support the domestic production capabilities and capacity that are critical to protecting U.S. national security. Commerce is reviewing this issue to determine whether there is an objective, transparent, and efficient approach to take into consideration volumes requested and objected to under the 232 exclusions process.

Comment (d)(4): Modify the objection form (and the rebuttal and surrebuttal form) to clarify whether companies can object on the ostensible grounds that they have the capability to make a product. A commenter requested guidance on how Commerce will consider objections from producers that have the capability to make a product but do not have immediately available capacity to meet the importer's stated needs.

BIS response: Commerce does not agree that the objection form, or the rebuttal or surrebuttal form need to be updated to address this commenter's concern. The information required on rebuttal and surrebuttal forms, as well as the objection criteria specified in paragraph (d), provides a clear standard that Commerce may apply. After reviewing an objection, rebutters may also inform the Commerce review process by evaluating and commenting on whether an objector will be able to provide the needed steel or aluminum article in the quantity and quality and to make that ''immediately available'' from an exclusion requester's perspective. As described below, this rule makes additional changes for what constitutes being ''immediately available,'' and these changes will further clarify the application of this criteria to make sure that U.S. producers are being held to the same standard as potential foreign competitors in meeting the time required for delivery of the steel or aluminum article for which they are requesting an exclusion.

Comment (d)(5): Objecting parties should be required to fill orders. A commenter noted that this would prevent the objection process from becoming a lever for business competition with domestic parties objecting to an exclusion request and then refusing to fill orders or only filling orders at inflated prices. This commenter also asked that companies that were denied an exclusion requested on the basis of an objection be permitted to show evidence of an inability to secure material and gain an exception if the objecting party cannot fill orders.

BIS response: Commerce understands the reasoning behind this comment but is also mindful that it is not the role of Commerce to dictate whether an objector must sell the steel or aluminum article, or whether the exclusion requester must purchase the steel or aluminum article from the objector. For example, as the commenter noted, the objector may be able to provide the steel or aluminum but at a price that is not tenable for the exclusion requester or at a price that does not justify the exclusion requester switching suppliers of the steel or aluminum article. Commerce believes that these types of business decisions should be left to the two companies involved so as to not unduly influence the functioning of the market. As for the request to allow an exclusion requester to subsequently reference in a new exclusion request that an objector was not able to provide the steel or aluminum in a previous exclusion request, the current process already addresses that sufficiently. First, the exclusion requester may submit a new exclusion request. The earlier objector may choose not to object to the new exclusion request based on their past experience of not being able to provide the steel or aluminum article. Assuming no other objector comes forward, the exclusion request will be reviewed under the expedited process. If the same objector objects to the new exclusion request, the rebuttal process allows the exclusion requester to document in the rebuttal the past activity with that objector.

Comment (d)(6): Objections should also be rejected for incompleteness. If Commerce is rejecting requests based on incompleteness, we believe it should extend the same scrutiny to objections.

BIS response: Commerce agrees and does reject objections for incompleteness when warranted. BIS does review objections (and rebuttals/surrebuttals) for completeness, but a rejection is rare for these filings in the 232 Exclusions Portal. The Portal has mandatory fields that ensure most filings are complete. However, there is a different standard of what is necessary for a complete submission of an exclusion request versus an objection. The former generally must meet more specific review criteria. At this time, objectors may list capacity, utilization, manufacturing, or delivery time data as CBI on the objection form. Commerce's International Trade Administration (ITA), on behalf of BIS and Commerce, will then request this information if needed.

Comment (d)(7): Delivery times are getting much longer because of the tariffs and U.S. producers are approaching maximum capacity utilization rates. A commenter noted that prior to the imposition of tariffs for non-specialty metals, many steel users reported roughly six-week to eight-week lead times. Since the steel tariffs took effect, those same members report the doubling of delivery times, creating significant delays and interruptions in the manufacturing supply chain that could lead Original Equipment Manufacturers (OEMs) to source their inputs from non-U.S. sources that experience less volatility due to government interference.

BIS response: To the extent there has been an increase in delivery times related to the tariffs, importers seeking exclusions can always import the article and pay the tariffs while their exclusion requests are pending. In addition, an objector must have the article ''immediately available'' in the needed quantity and quality. As referenced below in the clarifications being made to ''immediately available,'' the previous criteria were holding U.S. producers in many cases to shorter delivery times than foreign competitors, a discrepancy that is being addressed in this rule. Commerce believes that the ''immediately available'' criterion, which is being refined in this rule, provides a reasonable standard that should not result in a lengthening of the time period for delivery of steel and aluminum articles for U.S. users.

Comment (d)(8): Producers should be held accountable. A commenter requested that Commerce hold organizations that file objections to the highest of standards. Commerce should require specificity before considering the objection and should question and verify the assertions made by the objectors or claims made in surrebuttals.

BIS response: Commerce agrees that all parties, both objectors and requesters, should be held to the

standards set forth in the regulations. Accordingly, parties making submissions to Commerce with regard to an exclusion request are required to legally certify the veracity of the submission. These standards are specified on the objection and surrebuttal forms, in the criteria specified in paragraphs (d) and (g), on the exclusion request and rebuttal forms, and in the criteria specified in paragraphs (c) and (f) of supplement no. 1 to part 705.

Comment (d)(9): U.S. steel producers are approaching maximum capacity utilization rates. A commenter noted that one objector reported its facility is currently operating at an 89% capacity utilization rate, well above the 80% target set by Commerce and at levels not seen since prior to the Great Recession. This commenter also noted that the American Iron and Steel Institute reported that for the week ending November 10, 2018, domestic raw steel production saw a capacity utilization rate of 81.7%, also above the 80% threshold.

BIS response: As stated in the 232 report, the 80 percent figure is an ''average'' rate for financial viability of the industry which is ''necessary to sustain adequate profitability and continued capital investment, research, and development, and workforce enhancement in the steel sector.'' The U.S. steel industry's capacity utilization rates have not been sustained. That said, making changes to the duties being imposed and/or quotas implemented are outside the scope of this rule.

Criteria Defining What Is Meant by Available ''immediately''

Comment (e)(1): September 11 rule defining what was meant by available ''immediately'' was a positive step that improved the 232 process. A commenter noted that setting a clear definition of ''available immediately'' at eight weeks is a reasonable timeline and helps provide stability to steel and aluminum-using manufacturers.

BIS response: Commerce agrees that providing a definition of ''immediately available'' was a positive step in providing greater transparency and consistency for the 232 exclusion process. However, defining ''immediately available'' as eight weeks meant that, in certain cases, U.S. producers could be held to a shorter delivery time than foreign competitors and was more restrictive than the timeframe needed by the importer for their business needs. As described below, to address this fairness issue and to create equal treatment, this interim final rule revises the criteria for available ''immediately'' and specifies that if an objector is asserting that it is not currently producing the steel or aluminum identified in an exclusion request but can produce the steel or aluminum, the objector must be able to make it available in accordance with the commercial needs of the U.S. user of the steel or aluminum, as described in the exclusion request. Under this revised criteria in paragraph (d)(4), the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the date that a named foreign supplier can deliver the entire quantity of the requested product. It is incumbent on both the exclusion requester and the objecting producers to provide supplemental evidence supporting their claimed delivery times.

Comment (e)(2): Objections that do not clearly meet the ''immediately'' standard should be rejected. A commenter noted that objections to exclusion requests available on the 232 Exclusions Portal reveal numerous vague assertions that clearly do not meet the available ''immediately'' threshold set forth by Commerce. This commenter recommends that Commerce reject these objections outright.

BIS response: Commerce holds objectors to the standard specified in the regulations under paragraph (d) and requires objectors to complete the objection form, and the surrebuttal form as applicable, fully and accurately. If an objector is not able to meet the available ''immediately'' criteria, Commerce will not deny such an exclusion request. Requesters can provide additional information on the rebuttal form. In reviewing the exclusion request to make a final determination, Commerce takes into account information provided in the rebuttal to evaluate whether the objector can produce the article in sufficient quantity and quality, and within the time specified in the criteria in paragraph (d) of supplement no. 1 to part 705.

Comment (e)(3): Defining eight weeks as ''immediate delivery'' is unrealistic and it would be better to make the standard based on the nature of the product. A commenter noted that it is unrealistic to require domestic producers to supply a requested product in the volume requested within eight weeks as a prerequisite to filing a valid objection and that this requirement appears to reflect a misunderstanding of how both the steel industry and international shipping work. This commenter also noted that in determining that eight weeks is the appropriate timeframe, Commerce regrettably rejected a suggestion that the time frame should depend on the nature of the product—with simpler products subject to a shorter timeframe than more sophisticated products—and in any case, should be no shorter than 12 to 16 weeks.

BIS response: As described above, Commerce agrees that clarification is warranted for use of eight weeks under the available ''immediately'' criteria. The changes this rule makes will also be responsive to this commenter's concerns.

Comment (e)(4): Allowing foreign suppliers one year to supply the steel or aluminum for approved exclusions, but only allowing eight weeks for domestic suppliers creates an unfair playing field. A commenter noted that granted exclusions are valid for one year and will presumably be supplied by foreign producers over the course of that year, not all at once. This commenter noted that requiring a U.S. producer to supply the consumer within eight weeks makes little sense and runs counter to the rationale underlying the adjustments to imports ordered by the President.

BIS response: Commerce agrees and is making changes in the rule for how ''immediately'' is defined to create equal treatment for U.S. and foreign producers.

Comment (e)(5): ''Immediately'' should mean being able to provide the steel or aluminum as quickly as a foreign supplier. A commenter noted that the minimum standard that Commerce should establish for objections is 12 weeks (84 days), which they consider a reasonable and representative time for a foreign producer to make a simple steel item and ship it to the United States. This commenter recommended that Commerce should only determine that the domestic product is not ''immediately'' available when a domestic source cannot provide material before offshore suppliers.

BIS response: Commerce has retained eight weeks as part of the available ''immediately'' criteria under paragraph (d)(4) but, as described elsewhere in this rule, is also making changes to the criteria that are responsive to this commenter's concerns.

Comment (e)(6): Need to specify the quantity that needs to be supplied within the ''immediate delivery'' timeframe. A commenter noted that there is no indication in the current version of the regulations of the quantity that must be supplied within the ''immediate delivery'' timeframe. The commenter noted that the current regulations specify that if an objector is not currently producing the product at

issue, then ''the objector must identify how it will be able to produce the article within eight weeks,'' detailing in writing the timeline to start production. This commenter recommends clarifying whether this means the production must merely start, shipments of commercial quantities must begin, or the total quantity must be delivered within the specified time.

BIS response: Commerce agrees this should be clarified. As described below, this rule revises paragraph (d)(4) of supplement no. 1 to specify the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the date that a named foreign supplier can deliver the entire quantity of the requested product. The addition of the phrase ''and deliver'' after the term ''produce'' will address the concern raised by this commenter.

Comment (e)(7): Production capacity for steel and aluminum producers must be considered during objection and rebuttal process. As Commerce considers objections filed by steel and aluminum companies, Commerce must ask the steel and aluminum producers several probing questions to truly determine the capabilities of suppliers to meet the consuming industries' needs and consider these answers surrounding domestic capacity when making exclusion decisions. The commenter noted that these questions should include at a minimum: ''Do the steel or aluminum companies currently manufacture and supply the product in the United States? If so, have their deliveries to their customers been timely, and is so, for how long? What is the steel or aluminum companies' current manufacturing capacity and timeframe for ramping up if they currently do not have the capacity?''

BIS response: Commerce believes the information required on the objection form, surrebuttal form as applicable, and the criteria in paragraph (d) to supplement no. 1 that is used by Commerce, is sufficiently informative to determine the production capabilities of objectors. This information is also supplemented by the evidence provided through rebuttals and surrebuttals, and through CBI submitted in support of rebuttals and surrebuttals. Commerce does not believe additional questions are required to be added to the objection or surrebuttal forms in order to make determinations on the production capabilities of objectors.

Rebuttals and Surrebuttals

Comment (f)(1): Seven days is not enough time for rebuttals and surrebuttals. A commenter does not agree that allowing only seven days for such comments is appropriate. This commenter noted that considering the volumes of new information being submitted in some rebuttals, one week is not enough time for a domestic producer to analyze the information and offer a meaningful surrebuttal.

BIS response: Commerce does not agree. The length of time for decisions under the 232 exclusions process is a concern for many entities, including Commerce. The inclusion of the rebuttal and surrebuttal comment periods helps to better inform the 232 exclusion process for Commerce, but Commerce is also mindful not to allow these additional comment periods to add any more time to the review process than is needed. Commerce believes that those parties involved in a 232 submission that receives an objection or a rebuttal should place a priority on reviewing the objection or rebuttal in a timely fashion, submitting any warranted rebuttal or surrebuttal. Commerce believes a one-week period is sufficient for the review of an objection or rebuttal, and allows for the party to conduct any needed follow up conversations and to prepare and submit a rebuttal or surrebuttal as applicable.

Comment (f)(2): Allowing unlimited number of refilings of exclusions undermines the usefulness of objections, and the rebuttal/surrebuttal process. A commenter questioned whether rebuttals and surrebuttals are a worthwhile use of resources if requesters remain free to submit unlimited numbers of exemption requests. This commenter noted that a requester could, in lieu of a rebuttal, file a revised request addressing whatever deficiencies were identified in the objection. This commenter noted that this would alleviate some of the unfairness of requiring domestic producers to respond to untold volumes of new information in just a few days and would aid Commerce's analysis by promoting thoughtful and complete original application requests instead of reviews of hurried rebuttal and surrebuttal comments.

BIS response: As a general matter, Commerce believes that it is important to allow an unlimited number of exclusion requests to be submitted. As described above, the ability to submit a successive exclusion request is a key way that the 232 exclusion process addresses cases where an objection may have resulted in the denial of an exclusion request, but then subsequently no objector was able to deliver the steel or aluminum in the quantity and quality needed ''immediately.'' Therefore, Commerce does not agree that a restriction should be added to restrict the number of exclusion requests that may be submitted.

Comment (f)(3): Allowing unlimited refilings of exclusions allows for the potential to overwhelm potential objectors. A commenter noted that if Commerce continues the rebuttal and surrebuttal process, it should consider limiting a party's ability to file multiple exclusion requests for the same product. This commenter noted that the current system provides an incentive for entities seeking exclusions to submit them over and over again with only minor modifications in an attempt to overwhelm domestic producers so that domestic interests fail to file objections because there are simply too many requests or they believe an objection to have already been filed.

BIS response: As noted above, Commerce is reviewing the issue of the volume of articles subject to exclusion requests and objections and will address this issue in a subsequent IFR.

232 Exclusions Portal

Since the launch of the 232 Exclusions Portal, Commerce has implemented a number of enhancements that address some of the key comments received in response to the June 10 and May 26 rule. Commerce has highlighted the changes made to the 232 Exclusions Portal, which are responsive to these comments received in response to the June 10 rule, as well as some of the comments received on the May 26 notice. There are additional requested changes to the 232 Exclusions Portal in response to the June 10 rule and the May 26 notice that Commerce is still reviewing. Commerce will summarize and address those comments in at least one subsequent rule, although enhancements in the functionality of the 232 Exclusions Portal, similar to the enhancements described below, will likely be implemented on an ongoing basis as they are ready to be implemented.

Comment (g)(1): Ability to import previously-filed submissions. A commenter noted that allowing the ability to import previously-filed submissions would be extremely beneficial for exclusion requesters and objectors, reducing the time burdens on repeat users of the 232 Exclusions Portal. Another commenter noted that the nature of manual entry in the new 232 Exclusions Portal is likely to create

significant opportunity for errors and requires significantly more time and resource allocation than under the previous system. The ability to reuse information included in previously submitted 232 submission forms would be very beneficial. A commenter acknowledged that the user guide for the 232 Exclusions Portal provides information on creating a profile within web-browsers, but a simplified system for importing previously-filed submissions by users through their dashboard would be immensely beneficial for all users of the system.

BIS response: Commerce clarifies here that the AutoFill Feature of the 232 Exclusions Portal addresses these comments. The AutoFill Feature that launched with the 232 Exclusions Portal addresses several of the comments submitted in response to the June 10 rule. AutoFill enables users to effectively *import previous filings* by allowing them to fill out a filing once and then save that template for reuse in future filings. It also allows users to *save their in-progress filings* as templates. A native save/share feature is still under discussion.

Comment (g)(2): Increasing the search functionality in the 232 Exclusions Portal. Commerce received a number of comments requesting improvements to various aspects of the search functionality in the 232 Exclusions Portal. A commenter requested that product class should be a searchable field, and that product class should be added to the main portal screen with a filtering function. Another commenter noted that the search functionality needs to be improved by adding a simple ''find all'' type of search capability in the 232 Exclusions Portal. One commenter noted that the search functionality is not as good as it is in *www.regulations.gov.* Another commenter requested a change be made to allow the download of individual submissions and all data in the new portal. Specifically, this commenter noted that it is extremely important that all users can download both individual submissions (exclusion requests, objections, rebuttal, and surrebuttal filings) and the information found in the portal in its entirety, as can be done currently in *www.regulations.gov.* Another commenter noted that it is difficult to extract data for queried databases, particularly from the volume and origin fields. Another commenter requested allowing users to refresh the portal without resetting the filters.

BIS response: Commerce had addressed a number of these concerns with the 232 Exclusions Portal by improving the Public Data Extract functionality of the portal. The Public Data Extract tool allows users to *download a filterable and searchable set of all filed data* in the 232 Exclusions Portal, effectively functioning as an *advanced search feature.* Commerce will continue to consider additional measures to improve the Public Data Extract tool.

Comment (g)(3): Improving Dashboard functionality. A commenter requested that the dashboard allow organizations to allow others in their organizations to view submissions made by others in the same organization.

BIS response: Commerce has made changes under the Dashboard Limit to address these types of requests for additional Dashboard functionality. Commerce expanded the Dashboard View in the 232 Exclusions Portal in 2020, improving dashboard functionality by allowing users to see all of their filings in one location on the front page of their Dashboard.

Comment (g)(4): Allow extensions of time when 232 Exclusions Portal is not accessible. A commenter expressed concern about technical issues with accessing the new 232 Exclusions Portal. This commenter requested that if documented information technology issues with the portal occur, Commerce should be able to extend the time for companies to file exclusion requests or objections.

BIS response: Commerce has taken steps to address technical extensions for timelines for 232 submission. Specifically, BIS works with users on a case-by-case basis to address any technical issues encountered and take necessary corrective action. Occasionally these corrective measures may include reopening filing windows during periods in which they were inaccessible.

Changes Made in This Interim Final Rule To Improve the 232 Exclusions Process

Simplification of the Text

As described further below, this rule makes three changes to simplify the text for the 232 exclusions process by removing one of the supplements, and making conforming changes to add references to aluminum in the steel supplement; removing references to *www.regulations.gov*; and, as a conforming change, removing the Annex that provided steps for using *www.regulations.gov*.

When Commerce added supplements nos. 1 and 2 to part 705, the objective was to create two parallel supplements with one specific to the 232 exclusion process for steel under supplement no. 1, and a second one specific to the 232 exclusion process for aluminum under supplement no. 2. Commerce has reevaluated whether this parallel structure is needed because the vast majority of the text is identical between the two supplements and, when making updates to improve the regulatory provisions, it creates the potential for unintended differences between the two supplements and makes updating the two supplements more burdensome than necessary. For these reasons, in this rule Commerce is removing supplement no. 2 to part 705 and is making conforming changes to supplement no. 1 where information that is specific to aluminum needs to be added because of the removal of supplement no. 2.

This interim final rule updates and simplifies the text in supplement no. 1 by removing various references to *www.regulations.gov* and all text that was previously needed in supplement no. 1 to describe the previous process of using *www.regulations.gov* for submitting 232 submissions. At this time, there are no longer any more pending 232 exclusion requests in *www.regulations.gov*. Therefore, Commerce is removing those references to *www.regulations.gov* from supplement no. 1 in this rule, thus simplifying and shortening the text in supplement no. 1 considerably.

As an additional conforming change related to the removal of references to *www.regulations.gov,* this rule removes Annex 1 to Supplements No. 1 and 2 to Part 705—Steps for Using *Regulations.gov* to File Rebuttals and Surrebuttals. The additional guidance included in this Annex is no longer needed because *www.regulations.gov* is no longer being used for the 232 exclusions process. The 232 Exclusions Portal does not require guidance on the steps to be included in the regulations.

Adding Reminder Regarding Consequences for False Statements or Representations

This interim final rule adds a new Note 2 to Paragraph (b) to remind all parties submitting 232 submissions under supplement no. 1 to part 705 that it is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction [18 U.S.C. 1001(2018)]. As a conforming change, this interim final rule redesignates the existing Note to Paragraph (b) as Note 1 to Paragraph (b).

Improving the Fairness and Efficiency of the Review Process

In order to improve the efficiency of the review process, this interim final rule reduces the page limit for exclusion requests, objections to submitted exclusion requests, rebuttals, and surrebuttals. In paragraph (e), this rule removes the 25-page limit for exclusions and objections to submitted exclusions requests, and replaces that with a 5,000-word limit. In paragraph (f)(2), this rule removes the ten-page limit for rebuttals and replaces that with a 2,500-word limit. In paragraph (g)(2), this rule removes the ten-page limit for surrebuttals and replaces that with a 2,500-word limit.

232 Exclusion Request Volume Certification

This interim final rule makes changes to ensure that the volume request in exclusion requests is consistent with the past use of steel or aluminum by an exclusion requester. This interim final rule revises paragraph (c)(5) (*Substance of exclusion requests*) by redesignating the existing text of paragraph (c)(5) as a new paragraph (c)(5)(i). This interim final rule adds a new paragraph (c)(5)(ii) (*Certification for volume requested).*

New paragraph (c)(5)(i) specifies that in order to ensure that the volume requested in an exclusion request is consistent with legitimate business needs for the same steel or aluminum articles obtained (*i.e.,* imported from abroad either directly by the requester or indirectly by purchasing from distributors) by the entity requesting an exclusion, a certification needs to be made in the 232 Exclusions Portal when completing the submission of a 232 exclusion request. The 232 Exclusions Portal will include the text specified in paragraphs (c)(5)(ii)(A)–(E), and this exclusion request certification for volume requested must be signed in the 232 Exclusions Portal by an organization official specifically authorized to certify the document as being accurate and complete to the best of his/her knowledge.

The person signing the certification under paragraph (c)(5)(ii)(A) must attest that the exclusion requester intends to manufacture, process, or otherwise transform the imported product for which they have filed an exclusion request, or has a purchase order or orders for such products.

Under paragraph (c)(5)(ii)(B), the exclusion requester must certify that they do not intend to use the requested exclusion, if granted, solely to hedge or arbitrage the price.

Under paragraph (c)(5)(ii)(C), the exclusion requester must certify that they expect to consume, sell, or otherwise use the total volume of product across all their active exclusions and pending exclusion requests in the course of their organization's business activities within the next calendar year.

Under new paragraph (c)(5)(ii)(D), the exclusion requester is submitting an exclusion request for a product for which they previously received an exclusion, they must certify that they either imported the full amount of their approved exclusion(s) last year, or intended to import the full amount but could not due to one of the reasons specified in new paragraphs (c)(5)(ii)(D)(*1*)–(*3*). The criteria included in new paragraphs (c)(5)(ii)(D)(*1*)–(*3*) that must be attested to, if applicable, are intended to ensure that, if a requester did not import the full amount, there were legitimate business reasons justifying that outcome. These legitimate business reasons are loss of contract(s); business downturns; or other factors that were beyond the organization's control that directly resulted in less need for steel or aluminum articles.

Under new paragraph (c)(5)(ii)(E), the exclusion requester certifies that the exclusion amount requested this year is in line with what their organization expects to import based on their current business outlook. Lastly, paragraph (c)(5)(ii)(E) requires the exclusion requester to certify that, if contacted by Commerce, their organization will provide documentation that justifies the assertions in the certification regarding past imports of steel or aluminum articles and projections for the current year, as it relates to past and current calendar year exclusion requests.

This interim final rule adds a new Note 2 to paragraphs (c)(5)(i) and (ii) to make the public aware that an exclusion request that does not include a certification made in accordance with (c)(5)(i) and (ii) will be treated as an incomplete submission and will therefore be rejected.

Clarification of Eight Weeks and Available ''Immediately''

This rule makes changes to clarify when an objector would be required to be able to provide the steel or aluminum in the quantity and quality to which they were objecting on the basis that they could provide that steel or aluminum ''immediately.''

In the introductory text of paragraph (c)(6), this rule revises the criteria to clarify that an objector must be able to provide the steel or aluminum ''by a date earlier than the time required for the requester to obtain the entire quantity of the product from the requester's foreign supplier,'' instead of being strictly limited to producing it within eight weeks.

In paragraph (c)(6)(i), this rule retains the term ''immediately,'' but clarifies that the aluminum or steel does not need to be produced within eight weeks in certain cases. This interim final rule clarifies that ''immediately'' now means produced and delivered within eight weeks or, if not possible, then produced and delivered within a time frame that is equal to or earlier than that needed by the requester as demonstrated by the time required to obtain the product from the requester's foreign supplier. This change is made to create a more equal playing field between U.S. objectors and foreign producers, and to ensure that U.S. producers are not given less time to be able to meet the steel or aluminum demand being requested in an exclusion request. For example, if a requester can obtain foreign-produced steel described in an exclusion request in 12 weeks, there is no reason to arbitrarily limit the U.S. producer to having to produce the steel within eight weeks. The change this interim final rule makes to the term ''immediately'' addresses this issue.

This interim final rule also revises paragraph (c)(6)(i) to address the scenario where an objector can produce and deliver a portion of the steel or aluminum that is being requested in the exclusion request. This new sentence clarifies that, consistent with current practice, Commerce may partially approve an exclusion request when an objector can produce and deliver a portion, which is less than 100 percent but 10 percent or more, of the amount of steel or aluminum being requested in the exclusion request. In such cases, Commerce may partially approve a requested exclusion for that percentage of imported steel or aluminum that the objector has demonstrated it can produce and deliver.

This interim final rule revises paragraph (d)(4) to clarify that, if an objector is not currently producing the steel or aluminum but can produce the aluminum or steel and make it available ''immediately,'' the objector still has ground to object to the exclusion request. This rule defines the term ''immediately'' to mean that the objector must be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date earlier than the time required for the requester to obtain the entire quantity of the product from the requester's foreign supplier. It is incumbent upon both the exclusion requester and objecting producers to

provide supplemental evidence supporting their claimed delivery times.

General Approved Exclusions (GAEs)

This rule adds a new Supplement No. 2 to Part 705—General Approved Exclusions (GAEs) for Steel Articles Under the 232 Exclusions Process, and a new Supplement No. 3 to Part 705—General Approved Exclusions (GAEs) for Aluminum Articles under the 232 Exclusions Process. These two supplements identify the steel and aluminum articles that have been approved for import under a GAE. This rule adds 108 GAEs for steel articles under supplement no. 2 part 705 and 15 GAEs for aluminum articles under supplement no. 3 to part 705. Each GAE is identified under the GAE identifier column, *e.g.,* GAE.1.S: 7304592030 (for the first approved GAE for steel) or GAE.1.A: 7609000000 (for the first approved GAE for aluminum).

The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, makes these determinations that certain aluminum and steel articles may be authorized under a GAE consistent with the objectives of the 232 exclusions process as outlined in supplement no. 1 to this part. The GAEs described in these supplements may be used by any importer. The two new supplements specify that, in order to use a GAE, the importer must reference the GAE identifier in the Automated Commercial Environment (ACE) system that corresponds to the steel or aluminum articles being imported. GAEs do not include quantity limits. The effective date for each GAE will be fifteen calendar days after the date of publication of a **Federal Register** notice either adding or revising a specific GAE identifier in supplement no. 1 to this part. There will be no retroactive relief for GAEs. This interim final rule also specifies that relief is only available to steel or aluminum articles that are entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date of a GAE included in supplement no. 1 to this part. These GAEs are indefinite in length, but Commerce may at any time issue a **Federal Register** notice removing, revising, or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process as described in supplement no. 1 to this part. Commerce may periodically publish notices of inquiry in the **Federal Register** soliciting public comments on potential removals, revisions, or additions to this supplement.

Other Changes and Clarifications to the 232 Exclusions Process

In paragraph (b)(5)(iii), this interim final rule adds a new paragraph (b)(5)(iii)(A) and redesignates existing paragraphs (b)(5)(iii)(A)–(C) as paragraphs (B) to (D). New paragraph (b)(5)(iii)(A) clarifies the process for handling CBI related to exclusion requests or objections by directing exclusion requesters and objectors to check the appropriate box in the 232 Exclusions Portal to indicate that the filer has relevant CBI for consideration when applicable. This new paragraph also clarifies the existing practice that if Commerce determines after review that the CBI is needed, Commerce will directly request the CBI.

In paragraph (c)(2) (*Identification of exclusion requests*), this rule removes the word ''distinct'' in the phrase ''distinct critical dimensions.'' This change is being made to avoid any potential confusion on the scope of ranges that are permissible under an exclusion request. This change will make clear that, provided the range being requested in an exclusion request is within the minimum and maximum range that is specified in the HTSUS statistical reporting number and applicable notes for the provision, a single exclusion request may be requested for that steel or aluminum article. Objections that indicate the ability to produce one or more products within the range, even if not the entire range, will be considered to be valid objections to an exclusion request.

Also in paragraph (c)(2), this rule removes the Note to paragraph (c)(2) because it is no longer needed. The exclusions form on the 232 Exclusions Portal does not include that block for countries subject to a quantitative limitation, so the instructions in the Note to paragraph (c)(2) are no longer needed.

In paragraph (c)(6) (*Criteria used to review exclusion requests*) introductory text, this interim final rule adds one sentence at the end for clarification and to alert the public that items for which a broader determination has been made will be identified in supplements no. 2 or 3 to part 705.

In paragraph (d)(3) (*Time limit for submitting objections to submitted exclusions requests*), this interim final rule makes revisions to specify that the 30-day clock starts at 11:59 p.m. Eastern Time on the calendar day an exclusion request is posted in the 232 Exclusions Portal.

In paragraph (h)(1)(i), this interim final rule adds the term ''rejected'' before the phrase ''or denied'' to clarify that exclusion requests that do not satisfy the requirements specified in paragraphs (b) and (c) of this supplement may be rejected or denied.

In paragraph (h)(2)(iv) (*Validity period for exclusion requests*), this interim final rule makes revisions to add the phrase ''from the date of the signature on the decision memo'' to clarify that exclusions will generally be approved for one year from the date of the signature on the decision memo.

Types of Comments Commerce Is Requesting on This Rule

Commerce is not seeking comments regarding the duties or quantitative limitations themselves or the exclusion and objection process overall. Rather, Commerce seeks comments on whether the specific changes included in this fourth interim final rule have addressed earlier concerns with the 232 exclusions process. Specifically, Commerce encourages comments on these 232 exclusions process changes and on which features are an improvement and comments highlighting any areas of concern or suggestions for improvement.

Commerce will continue to make improvements to the 232 exclusions process, including improvements based on comments received on this rule, and parties will be notified of any additional changes to the 232 exclusions process and of any new features to the 232 Exclusions Portal.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Pursuant to Proclamations 9704 and 9705 of March 8, 2018, and Proclamations 9776 and 9777 of August 29, 2018, the establishment of procedures for an exclusions process under each Proclamation shall be published in the

Federal Register and are exempt from Executive Order 13771.

2. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

This final regulation involves four collections currently approved by OMB with the following control numbers

- Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum (control number 0694–0139).
- Objections from the Section 232 National Security Adjustments of Imports of Steel and Aluminum (control number 0694–0138).
- Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions from and Objections to the Section 232 Adjustments for Steel and Aluminum (OMB control number 0694–0141).
- Procedures for Submitting Requests for Expedited Relief from Quantitative Limits—Existing Contract: Section 232 National Security Investigations of Steel Imports (OMB control number 0694–0140).

This rule is expected to reduce the burden hours for one of the collections associated with this rule, OMB control number 0694–0139. This reduction is expected because of the addition of 108 GAEs for steel and 15 GAEs for aluminum, which is expected to result in a decrease of 5,000 exclusion request per year. This is expected to be a reduction in 5,000 burden hours for a total savings of 740,000 dollars to the public. This is also expected to be a reduction in 30,000 burden hours for a total savings of 1,170,000 dollars to the U.S. Government. The steel and aluminum articles that have been identified as being eligible for GAEs have typically not received any objections, so the addition of these new GAEs is not estimated to result in a decrease in the number of objections, rebuttals, or surrebuttals received by BIS. This rule is not expected to increase the burden hours for two of the collections associated with this rule, OMB control numbers 0694–0138, 0694–0141 as minimal changes are anticipated. BIS is making a change to the collection for OMB control number 0694–0140 to account for certification that needs to be made in the 232 Exclusions Portal under paragraph (c)(5)(ii). Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to *https://www.reginfo.gov/public/do/PRAMain*.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). As explained in the reports submitted by the Secretary to the President, steel and aluminum are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security of the United States, and therefore the President is implementing these remedial actions (as described Proclamations 9704 and 9705 of March 8, 2018) to protect U.S. national security interests. That implementation includes the creation of an effective process by which affected domestic parties can obtain exclusion requests ''based upon specific national security considerations.'' Commerce started this process with the publication of the March 19 rule and refined the process with the publication of the September 11 and June 10 rules and is continuing this process with the publication of today's interim final rule. The revisions to the exclusion request process are informed by the comments received in response to the March 19 rule and Commerce's experience with managing the 232 exclusions process. Commenters on the past rules (March 19, September 11 and June 10 rules) were generally supportive and welcomed the idea of creating an exclusion process, but most of the commenters believe the exclusion process, although improving over time, still could be significantly improved in order for it to achieve the intended purpose. The commenters identified a number of areas where transparency, effectiveness, and fairness of the process could be improved. Commerce understands the importance of having a transparent, fair, and efficient product exclusion request process, consistent with the directive provided by the President to create this type of process to mitigate any unintended consequences of imposing the tariffs on steel and aluminum in order to protect critical U.S. national security interests. The publication of today's rule should make further improvements in all three respects, but because of the scope of this new process, BIS is publishing today's rule as an interim final rule with a request for comments.

In addition, Commerce finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment, and that there is good cause under 5 U.S.C. 553(d)(3) to waive the delay in effective date, because such delays would be either impracticable or contrary to the public interest. In order to ensure that the actions taken to adjust imports do not undermine users of steel or aluminum that are subject to the remedial actions instituted by the Proclamations and that are critical to protecting the national security of the United States, the Presidential Proclamations authorized the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, to grant exclusions for the import of goods not currently available in the United States in a sufficient quantity or satisfactory quality, or for other specific national security reasons. The Presidential Proclamations further directed the Secretary to, within ten days, issue procedures for submitting and granting these requests for exclusions—this interim final rule fulfills that direction. As described above, the Secretary complied with the direction from the President with the publication of the March 19 rule, as well as in the improvements made in the September 11 and June 10 rules, and is taking the next step in improving the 232 exclusions process by making needed changes with the publication of today's rule. The immediate implementation of an effective exclusion request process, consistent with the intent of the Presidential Proclamations, also required creating a process to allow any individual or organization in the United States to submit objections to submitted exclusion requests. The objection process was created with the publication of the March 19 rule, and the rebuttal and surrebuttal process was added in the publication of the September 11 rule to further improve the 232 exclusions process. The publication of today's rule makes needed changes in the 232 exclusions process to create the type of fair, transparent, and efficient process that

was intended in the March 19, September 11 and June 10 rules, but was still found lacking by commenters in several key respects. Today's rule makes critical changes to ensure a fair, transparent, and efficient exclusion process.

If this interim final rule were to be delayed to allow for public comment or to provide for a thirty day delay in the date of effectiveness, companies in the United States would be unable to immediately benefit from the improvements made in the exclusion, objection, rebuttal, and surrebuttal process and could face significant economic hardship, which could potentially create a detrimental effect on the general U.S. economy. Whether they were supportive of tariffs or against tariffs, the comments received on the March 19, September 11 and June 10 rules were clear that an efficient exclusion request, objection, rebuttal, and surrebuttal process was needed, that the March 19 rule had not sufficiently created such a process, and that, although substantial improvements were made with the publications of the September 11 and June 10 rules, additional improvements were needed. Commenters noted that, if specific improvements are not made, significant economic consequences could occur. Commenters also thought the inefficiencies of the process could undermine other critical U.S. national security interests. Likewise, our national security could be impacted if Commerce lacked adequate information to make a fair, transparent and efficient determination for all parties involved and to ensure the critical national security considerations are being protected.

Because a notice of proposed rulemaking and an opportunity for prior public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 705

Administrative practice and procedure, Business and industry, Classified information, Confidential business information, Imports, Investigations, National security.

For the reasons set forth in the preamble, part 705 of subchapter A of 15 CFR chapter VII is amended as follows:

PART 705—EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

■ 1. The authority citation for part 705 continues to read as follows:

Authority: Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) and Reorg. Plan No. 3 of 1979 (44 FR 69273, December 3, 1979).

■ 2. Supplement No. 1 to part 705 is revised to read as follows:

Supplement No. 1 to Part 705—Requirements for Submissions Requesting Exclusions From the Adjustment of Imports of Aluminum and Steel Imposed Pursuant to Section 232 of the Trade Expansion Act of 1962, as Amended

On March 8, 2018, the President issued Proclamations 9704 and 9705 concurring with the findings of the January 11, 2018 reports of the Secretary of Commerce on the effects of imports of aluminum and steel mill articles (steel articles) on the national security and determining that adjusting aluminum and steel imports through the imposition of duties is necessary so that their imports will no longer threaten to impair the national security. Clause 3 of Proclamations 9704 and 9705 also authorized the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, to grant exclusions from the duties at the request of directly affected parties located in the United States if the requested steel or aluminum article is determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or based upon specific national security considerations. On August 29, 2018, the President issued Proclamation 9776. Clause 1 of Proclamation 9776, authorizes the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the United States Trade Representative, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and such other senior Executive Branch officials as the Secretary deems appropriate, to provide relief from the applicable quantitative limitations set forth in Proclamation 9740 and Proclamation 9759 for steel articles and as set forth in Proclamation 9739 and 9758 for aluminum articles and their accompanying annexes, as amended, at the request of a directly affected party located in the United States for any steel or aluminum article determined by the Secretary to not be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality. The Secretary is also authorized to provide such relief based upon specific national security considerations.

(a) *Scope.* This supplement specifies the requirements and process for how directly affected parties located in the United States may submit requests for exclusions from the duties and quantitative limitations imposed by the President. This supplement also specifies the requirements and process for how parties in the United States may submit objections to submitted exclusion requests for relief from the duties or quantitative limitations imposed by the President and the process for rebuttals to submitted objections and surrebuttals (collectively, ''232 submissions''). This supplement identifies the time periods for such submissions, the methods of submission, and the information that must be included in such submissions.

(b) *Required forms.* The 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*) includes four web-based forms that are to be used for submitting exclusion requests, objections to exclusion requests, rebuttals, and surrebuttals described in this supplement. On the 232 Exclusions Portal, each web-based form is available on the portal at the bottom of the preceding filing. For example, a party submitting an objection will access the objection form by scrolling to the bottom of the exclusion request, a rebuttal filer will access the rebuttal form by scrolling to the bottom of the objection form, and a surrebuttal filer would access the surrebuttal form by scrolling to the bottom of the rebuttal form. The U.S. Department of Commerce requires requesters and objectors to use the appropriate form as specified under paragraphs (b)(1) and (2) of this supplement for submitting exclusion requests and objections to submitted exclusion requests and the forms specified under paragraphs (b)(3) and (4) of this supplement for submitting rebuttals and surrebuttals. In addition, submitters of exclusion requests, objections to submitted exclusion requests, rebuttals, and surrebuttals to the 232 Exclusions Portal will be required to complete a web-based registration on the 232 Exclusions Portal prior to submitting any

documents. In order to register, submitters will be required to provide an email and establish a password for the account. After completing the registration, submitters will be able to login to an account on the 232 Exclusions Portal and submit exclusion requests, objections, rebuttals, and surrebuttal documents.

(1) *Form required for submitting exclusion requests.* The full name of the form used for submitting steel exclusion requests is *Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports.* The full name of the form used for submitting aluminum exclusion requests is *Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports.* The Title of the web-based fillable form for both steel and aluminum in the 232 Exclusions Portal is *Exclusion Request.*

(2) *Form required for submitting objections to submitted exclusion requests.* The name of the form used for submitting objections to submitted steel exclusion requests is *Objection Filing to Posted Section 232 Exclusion Request: Steel.* The name of the form used for submitting objections to submitted aluminum exclusion requests is *Objection Filing to Posted Section 232 Exclusion Request: Aluminum.* The Title of the web-based fillable form for both steel and aluminum in the 232 Exclusions Portal is *Objection.*

(3) *Form required for submitting rebuttals.* The name of the form used for submitting rebuttals to steel objections is *Rebuttal to Objection Received for Section* 232 *Exclusion Request: Steel.* The name of the form used for submitting rebuttals to aluminum objections is *Rebuttal to Objection Received for Section* 232 *Exclusion Request: Aluminum.* The Title of the web-based fillable form for both steel and aluminum in the 232 Exclusions Portal is *Rebuttal.*

(4) *Form required for submitting surrebuttals.* The name of the form used for submitting surrebuttals to steel objections is *Surrebuttal to Rebuttal Received on Section 232 Objection: Steel.* The name of the form used for submitting surrebuttals to aluminum objections is *Surrebuttal to Rebuttal Received on Section 232 Objection: Aluminum.* The Title of the web-based fillable form for both steel and aluminum in the 232 Exclusions Portal is *Surrebuttal.*

Note to Paragraphs (b)(1) Through (4): On the 232 Exclusions Portal, each exclusion request is assigned a distinct ID #, which is also used with its associated 232 submissions, but preceded with an acronym indicating the file type: Exclusion Requests (ER ID #), Objection (OF ID #), Rebuttals (RB ID #) and Surrebuttals (SR ID #). For an example of the four possible types of 232 submissions associated with a single exclusion request, you could have ER ID 237, OF ID 237, RB ID 237 and SR ID 237. The 232 Exclusions Portal will automatically assign the two letter designator depending on the type of web-based form being submitted in the portal and will assign an ID number to the original exclusion request and that ID number will be common to any objection, rebuttal, or surrebuttal submitted pertaining to the same exclusion request.

(5) *Public disclosure and information protected from public disclosure.* (i) Information submitted in 232 submissions will be subject to public review and made available for public inspection and copying, except for the information described in paragraph (b)(5)(iii) of this supplement. Individuals and organizations must fully complete the relevant forms.

(ii) *Information not subject to public disclosure should not be submitted.* Personally identifiable information, including social security numbers and employer identification numbers, should not be provided. Information that is subject to government-imposed access and dissemination or other specific national security controls, *e.g.,* classified information or information that has U.S. Government restrictions on dissemination to non-U.S. citizens or other categories of persons that would prohibit public disclosure of the information, may not be included in 232 submissions. Individuals and organizations that have confidential business information (''CBI'') that they believe relevant to the Secretary's consideration of the 232 submission should so indicate in the appropriate field of the relevant form, or on the rebuttal or surrebuttal submission, following the procedures in paragraph (b)(5)(iii) of this supplement.

(iii) *Procedures for identifying, but not disclosing confidential or proprietary business information (CBI) in the public version, and procedures for submitting CBI.* For persons seeking to submit confidential or proprietary business information (CBI), the 232 submission available to the public must contain a summary of the CBI in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within ten percent of the actual figure. If an individual portion of the numerical data is voluminous (*e.g.,* five pages of numerical data), at least one percent of the numerical data, representative of that portion, must be summarized. In order to submit CBI that is not for public release as a separate email submission to the U.S. Department of Commerce, you must follow the procedures in paragraphs (b)(3)(iii)(A)–(D) of this supplement to assist the U.S. Department of Commerce in identifying these submissions and associating these submissions with the respective 232 submission in the 232 Exclusions Portal. Submitters with classified information should contact the U.S. Department of Commerce for instructions on the appropriate methods to send this type of information.

(A) For CBI related to exclusion requests or objections, check the appropriate box in the 232 Exclusions Portal indicating that the filer has relevant CBI for consideration. If Commerce determines after review that the CBI is needed, Commerce will directly request the CBI from the exclusion requester or objector as warranted.

(B) For CBI related to rebuttals or surrebuttals, on the same day that you submit your 232 submission in the 232 Exclusions Portal, submit the CBI via email to the U.S. Department of Commerce. The email address used is different depending on the type of submission the emailed CBI is for, as follows: CBI for rebuttals use *232rebuttals@doc.gov;* and CBI for surrebuttals use *232surrebuttals@doc.gov.*

(C) For rebuttals and surrebuttals pertaining to 232 submissions for exclusion requests the email subject line must only include the original 232 Exclusions Portal Exclusion Request (ER) ID # and the body of the email must include the 232 Exclusions Portal Rebuttal (RB) ID #, or Surrebuttal (SR) ID # you received from the 232 Exclusions Portal when you successfully submitted your rebuttal or surrebuttal. These naming conventions used in the 232 Exclusions Portal, respectively, will assist the U.S. Department of Commerce to associate the CBI that will not be posted in the 232 Exclusions Portal with the information included in the public submission.

(D) Submit the CBI as an attachment to that email. The CBI is limited to a maximum of five pages per rebuttal or surrebuttal. The email is to be limited to sending your CBI. All other information for the public submission, and public versions of the CBI, where appropriate, for a 232 submission in the 232

Exclusions Portal following the procedures identified in this supplement, as appropriate.

Note 1 to Paragraph (b) for Submissions of Supporting Documents (Attachments): Supporting attachments must be emailed as PDF documents.

Note 2 to Paragraph (b): It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction [18 U.S.C. 1001(2018)].

(c) *Exclusion requests.* (1) *Who may submit an exclusion request?* Only 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.

(2) *Identification of exclusion requests.* Separate exclusion requests must be submitted for steel products with chemistry by percentage breakdown by weight, metallurgical properties, surface quality (*e.g.,* galvanized, coated), and critical dimensions covered by a common HTSUS statistical reporting number. Separate exclusion requests must be submitted for aluminum products with critical dimensions covered by a common HTSUS statistical reporting number. The exclusion request forms allow for minimum and maximum dimensions. A permissible range must be within the minimum and maximum range that is specified in the HTSUS statistical reporting number and applicable notes. Separate exclusion requests must also be submitted for products falling in more than one ten-digit HTSUS statistical reporting number. The U.S. Department of Commerce will approve exclusions on a product basis, and the approvals will be limited to the individual or organization that submitted the specific exclusion request, unless Commerce approves a broader application of the product-based exclusion request to apply to additional importers. Other directly-affected individuals or organizations located in the United States that wish to submit an exclusion request for a steel or aluminum product that has already been the subject of an approved exclusion request may submit an exclusion request under this supplement. These additional exclusion requests by other directly-affected individuals or organizations in the United States are not required to reference the previously approved exclusion but are advised to do so, if they want Commerce to take that exclusion into account when reviewing a subsequent exclusion request. Directly affected individuals and organizations in the United States will not be precluded from submitting a request for exclusion of a product even though an exclusion request submitted for that product by another requester or that requester was denied or is no longer valid.

(3) *Where to submit exclusion requests?* All exclusion requests must be submitted directly on the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(4) *No time limit for submitting exclusion requests.* Exclusion requests may be submitted at any time.

(5)(i) *Substance of exclusion requests.* An exclusion request must specify the business activities in the United States within which the requester is engaged that qualify the individual or organization to be directly affected and thus eligible to submit an exclusion request. The request should clearly identify, and provide support for, the basis upon which the exclusion is sought. An exclusion will only be granted if an article is not produced in the United States in a sufficient, reasonably available amount, and of a satisfactory quality, or for specific national security considerations.

(ii) *Certification for volume requested.* In order to ensure that the volume requested in an exclusion request is consistent with legitimate business needs for the same steel or aluminum articles obtained (*i.e.,* imported from abroad either directly by the requester or indirectly by purchasing from distributors) by the entity requesting an exclusion, the following certification in paragraphs (c)(5)(ii)(A)–(E) must be acknowledged in the 232 Exclusions Portal when completing the submission of a 232 exclusion request. The exclusion request certification for volume requested must be signed by an organization official specifically authorized to certify the document (the certification being made in the 232 Exclusions Portal) as being accurate and complete. The undersigned certifies in the 232 Exclusions Portal that the information herein supplied in response to this paragraph is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

(A) My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request or I have a purchase order or orders for such products;

(B) My organization does not intend to use the exclusion for which I have filed an exclusion request, if granted, solely to hedge or arbitrage the price;

(C) My organization expects to consume, sell, or otherwise use the total volume of product across all my active exclusions and pending exclusion requests in the course of my organization's business activities within the next calendar year;

(D) If my organization is submitting an exclusion request for a product for which we previously received an exclusion, I certify that my organization either imported the full amount of our approved exclusion(s) last year or intended to import the full amount but could not due to one of the following reasons:

(1) Loss of contract(s);

(2) Unanticipated business downturns; or

(3) Other factors that were beyond my organization's control that directly resulted in less need for steel or aluminum articles; and

(E) I certify that the exclusion amount requested this year is in line with what my organization expects to import based on our current business outlook. If requested by the Department of Commerce, my organization shall provide documentation that justifies its assertions in this certification regarding its past imports of steel or aluminum articles and its projections for the current year, as it relates to past and current calendar year exclusion requests.

Note to Paragraphs (c)(5)(i) and (ii): Any exclusion request that does not include a certification made in accordance with (c)(5)(ii) will be treated as an incomplete submission and will therefore be rejected.

(6) *Criteria used to review exclusion requests.* The U.S. Department of Commerce will review each exclusion request to determine whether an article described in an exclusion request meets any of the following three criteria: The article is not produced in the United States in an amount which can be delivered in a time period equal to or less than the time needed for the requester to obtain the product from their foreign supplier, is not produced in the United States in a satisfactory quality, or for specific national security considerations. The reviews will be made on a case-by-case basis to determine whether the requester has shown that the article is not produced in the United States in sufficient and reasonably available amount or of a satisfactory quality, or that there are specific national security considerations to grant the exclusion. To provide

additional context on the meaning and application of the criteria, paragraphs (c)(6)(i)–(iii) of this supplement define keys terms used in the review criteria and provide illustrative application examples. The U.S. Department of Commerce will use the same criteria identified in paragraphs (c)(6)(i)–(iii) of this supplement when determining whether it is warranted to approve broader product-based exclusions based on trends the Department may see over time with 232 submissions. The public is not permitted to request broader product-based exclusions that would apply to all importers, because the Department makes these determinations over time by evaluating the macro trends in 232 submissions. Items for which a broader determination has been made will be identified in supplements no. 2 or 3 to part 705.

(i) *Not produced in the United States in a sufficient and reasonably available amount.* The exclusion review criterion ''Not produced in the United States in a sufficient and reasonably available amount'' means that the amount that is needed by the end user requesting the exclusion is not available immediately in the United States to meet its specified business activities. Available ''immediately'' means that a product (whether it is currently being produced in the United States, or could be produced in the United States) can be delivered by a U.S. producer ''within eight weeks'', or, if that is not possible, by a date earlier than the time required for the requester to obtain the entire quantity of the product from the requester's foreign supplier. Furthermore, to the extent that an objector can produce and deliver a portion, which is less than 100 percent, but ten percent or more, of the amount of steel or aluminum needed in the business activities of the user in the United States described in the exclusion request, the Department of Commerce may deny a requested exclusion for that percentage of imported steel or aluminum. It is incumbent upon both the exclusion requester, and objecting producers, to provide supplemental evidence supporting their claimed delivery times.

(ii) *Not produced in the United States in a satisfactory quality.* The exclusion review criterion ''not produced in the United States in a satisfactory quality'' does not mean the steel or aluminum needs to be identical, but it does need to be equivalent as a substitute product. ''Substitute product'' for purposes of this review criterion means that the steel or aluminum being produced by an objector can meet ''immediately'' (*see* paragraph (c)(6)(i) of this supplement) the quality (*e.g.,* industry specs or internal company quality controls or standards), regulatory, or testing standards, in order for the U.S.-produced steel to be used in that business activity in the United States by that end user.

(A) *Steel application examples.* For a steel example, if a U.S. business activity requires that steel plates to be provided must meet certain military testing and military specification standards in order to be used in military combat vehicles, that requirement would be taken into account when reviewing the exclusion request and any objections, rebuttals, and surrebuttals submitted. As another steel example, if a U.S. business activity requires that steel tubing to be provided must meet certain Food and Drug Administration (FDA) approvals to be used in medical devices, that requirement would be taken into account when reviewing the exclusion request and any objections, rebuttals, and surrebuttals submitted. Another steel example would be a food manufacturer that requires tin-plate approval from the U.S. Department of Agriculture (USDA) to make any changes in the tin-plate it uses to make cans for fruit juices. An objector would not have to make steel for use in making the cans that was identical, but it would have to be a ''substitute product,'' meaning it could meet the USDA certification standards.

(B) *Aluminum application examples.* For an aluminum example, if a U.S. business activity requires that aluminum to be provided must meet certain military testing and military specification standards in order to be used in military aircraft, that requirement would be taken into account when reviewing the exclusion request and any objections, rebuttals, and surrebuttals submitted. Another aluminum example would be a U.S. pharmaceutical manufacturer that requires approval from the Food and Drug Administration (FDA) to make any changes in its aluminum product pill bottle covers. An objector would not have to make aluminum for use in making the product covers that was identical, but it would have to be a ''substitute product,'' meaning it could meet the FDA certification standards.

(iii) *For specific national security considerations.* The exclusion review criterion ''or for specific national security considerations'' is intended to allow the U.S. Department of Commerce, in consultation with other parts of the U.S. Government as warranted, to make determinations whether a particular exclusion request should be approved based on specific national security considerations.

(A) *Steel application examples.* For example, if the steel included in an exclusion request is needed by a U.S. defense contractor for making critical items for use in a military weapons platform for the U.S. Department of Defense, and the duty or quantitative limitation will prevent the military weapons platform from being produced, the exclusion will likely be granted. The U.S. Department of Commerce, in consultation with the other parts of the U.S. Government as warranted, can consider other impacts to U.S. national security that may result from not approving an exclusion, *e.g.,* the unintended impacts that may occur in other downstream industries using steel, but in such cases the demonstrated concern with U.S. national security would need to be tangible and clearly explained and ultimately determined by the U.S. Government.

(B) *Aluminum application examples.* For example, if the aluminum included in an exclusion request is needed by a U.S. defense contractor for making critical items for use in a military weapons platform for the U.S. Department of Defense, and the duty or quantitative limitation will prevent the military weapons platform from being produced, the exclusion will likely be granted. The U.S. Department of Commerce, in consultation with the other parts of the U.S. Government as warranted, can consider other impacts to U.S. national security that may result from not approving an exclusion, *e.g.,* the unintended impacts that may occur in other downstream industries using aluminum, but in such cases the demonstrated concern with U.S. national security would need to be tangible and clearly explained and ultimately determined by the U.S. Government.

(d) *Objections to submitted exclusion requests.* (1) *Who may submit an objection to a submitted exclusion request*? Any individual or organization that manufactures steel or aluminum 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.

(2) *Identification of objections to submitted exclusion requests.* When submitting an objection to a submitted exclusion request, the objector must locate the exclusion request and submit the objection in response to the request directly in the 232 Exclusions Portal. Once the relevant exclusion request has

been located, an individual or organization that would like to submit an objection will access the objection form by scrolling to the bottom of the exclusion request form and then fill out the web-based form for submitting their objection to the exclusion request in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(3) *Time limit for submitting objections to submitted exclusions requests.* All objections to submitted exclusion requests must be submitted directly on the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*) no later than 30 days after the related exclusion request is posted, with the 30-day clock starting at 11:59 p.m. Eastern Time on the calendar day an exclusion request is posted.

(4) *Substance of objections to submitted exclusion requests.* The objection should clearly identify, and provide support for, its opposition to the proposed exclusion, with reference to the specific basis identified in, and the support provided for, the submitted exclusion request. If the objector is asserting that it is not currently producing the steel or aluminum identified in an exclusion request but can produce the steel or aluminum and make that steel or aluminum available ''immediately'' in accordance with the time required for the user of steel or aluminum in the United States to obtain the product from its foreign suppliers, the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the named foreign supplier would deliver the entire quantity of the requested product. It is incumbent on both the exclusion requester, and objecting producers, to provide supplemental evidence supporting their claimed delivery times. This requirement includes specifying in writing to Department of Commerce as part of the objection, the timeline the objector anticipates in order to start or restart production of the steel included in the exclusion request to which it is objecting. For example, a summary timeline that specifies the steps that will occur over the weeks needed to produce that steel or aluminum would be helpful to include, not only for the Department of Commerce review of the objection, but also for the requester of the exclusion and its determination whether to file a rebuttal to the objection. The U.S. Department of Commerce understands that, in certain cases, regulatory approvals, such as from the Environmental Protection Agency (EPA) or some approvals at the state or local level, may be required to start or restart production and that some of these types of approvals may be outside the control of an objector.

(e) *Limitations on the size of submissions.* Each exclusion request and each objection to a submitted exclusion request is to be limited to a maximum of 5,000 words, inclusive of all exhibits and attachments, but exclusive of the respective forms and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(f) *Rebuttal process.* Only individuals or organizations that have submitted an exclusion request pursuant to this supplement may submit a rebuttal to any objection(s) posted in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*). The objections to submitted exclusion requests process identified under paragraph (d) of this supplement already establish a formal response process for steel and aluminum manufacturers in the United States.

(1) *Identification of rebuttals.* When submitting a rebuttal, the individual or organization that submitted the exclusion request will access the rebuttal form by scrolling to the bottom of the objection form and then filling out the web-based form for submitting their rebuttal to the objection in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(2) *Format and size limitations for rebuttals.* Similar to the exclusions process identified under paragraph (c) of this supplement and the objection process identified under paragraph (d) of this supplement, the rebuttal process requires the submission of a government form as specified in paragraph (b)(3) of this supplement. Each rebuttal is to be limited to a maximum of 2,500 words, inclusive of all exhibits and attachments, but exclusive of the rebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(3) *Substance of rebuttals.* Rebuttals must address an objection to the exclusion request made by the requester. If multiple objections were received on a particular exclusion, the requester may submit a rebuttal to each objector. The most effective rebuttals will be those that aim to correct factual errors or misunderstandings in the objection(s).

(4) *Time limit for submitting rebuttals.* The rebuttal period begins on the date the Department opens the rebuttal period after the posting of the last objection in the 232 Exclusions Portal. The rebuttal period ends seven days after the rebuttal comment period is opened. This seven-day rebuttal period allows for the individual or organization that submitted an exclusion request pursuant to this supplement to submit any written rebuttals that it believes are warranted.

(g) *Surrebuttal process.* Only individuals or organizations that have a posted objection to a submitted exclusion request pursuant to this supplement may submit a surrebuttal to a rebuttal (*see* paragraph (f) of this supplement) posted to their objection to an exclusion request in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(1) *Identification of surrebuttals.* When submitting a surrebuttal, the individual or organization that submitted the objection will access the surrebuttal form by scrolling to the bottom of the rebuttal form and then filling out the web-based form for submitting their surrebuttal to the rebuttal in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(2) *Format and size limitations for surrebuttals.* Similar to the exclusions process identified under paragraph (c) of this supplement, the objection process identified under paragraph (d) of this supplement, and the rebuttal process identified under paragraph (f) of this supplement, the surrebuttal process requires the submission of a government form as specified in paragraph (b)(4) of this supplement. The surrebuttal must be submitted in the 232 Exclusions Portal. Each surrebuttal is to be limited to a maximum of 2,500 words, inclusive of all exhibits and attachments, but exclusive of the surrebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(3) *Substance of surrebuttals.* Surrebuttals must address a rebuttal to an objection to the exclusion request made by the requester. The most effective surrebuttals will be those that aim to correct factual errors or misunderstandings in the rebuttal to an objection.

(4) *Time limit for submitting surrebuttals.* The surrebuttal period begins on the date the Department opens the surrebuttal comment period after the posting of the last rebuttal to an objection to an exclusion request in

the 232 Exclusions Portal. The surrebuttal period ends seven days after the surrebuttal comment period is opened. This seven-day surrebuttal period allows for the individual or organization that submitted an objection to a submitted exclusion request pursuant to this supplement to submit any written surrebuttals that it believes are warranted to respond to a rebuttal.

(h) *Disposition of 232 submissions*—(1) *Disposition of incomplete submissions.* (i) Exclusion requests that do *not* satisfy the requirements specified in paragraphs (b) and (c) of this supplement will be rejected.

(ii) Objection filings that do not satisfy the requirements specified in paragraphs (b) and (d) will not be considered.

(iii) Rebuttal filings that do not satisfy the requirements specified in paragraphs (b) and (f) will not be considered.

(iv) Surrebuttal filings that do not satisfy the requirements specified in paragraphs (b) and (g) will not be considered.

(2) *Disposition of complete submissions*—(i) *Posting of responses in the 232 Exclusions Portal.* The U.S. Department of Commerce will post responses (decision memos) in the 232 Exclusions Portal to each exclusion request. The U.S. Department of Commerce response to an exclusion request will also be responsive to any of the objection(s), rebuttal(s) and surrebuttal(s) for that submitted exclusion request submitted through the 232 Exclusions Portal.

(ii) *Streamlined review process for ''No Objection'' requests.* The U.S. Department of Commerce will grant properly filed exclusion requests which meet the requisite criteria, receive no objections, and present no national security concerns. If an exclusion request's 30-day comment period in the 232 Exclusions Portal has expired and no objections have been submitted, BIS will immediately assess the request for any national security concerns. If BIS identifies no national security concerns, it will post a decision granting the exclusion request in the 232 Exclusions Portal.

(iii) *Effective date for approved exclusions and date used for calculating duty refunds*—(A) *Effective date for approved exclusions.* Approved exclusions will be effective five business days after publication of the U.S. Department of Commerce response granting an exclusion in the 232 Exclusions Portal. Starting on that date, the requester will be able to rely upon the approved exclusion request in calculating the duties owed on the product imported in accordance with the terms listed in the approved exclusion request. Companies are able to receive retroactive relief on granted requests dating back to the date of the request's submission on unliquidated entries.

(B) *Contact for obtaining duty refunds.* The U.S. Department of Commerce does not provide refunds on tariffs. Any questions on the refund of duties should be directed to CBP.

(iv) *Validity period for exclusion requests.* Exclusions will generally be approved for one year from the date of the signature on the decision memo, but may be valid for shorter or longer than one year depending on the specifics of the exclusion request; any objections filed; and analysis by the U.S. Department of Commerce and other parts of the U.S. Government, as warranted, of the current supply and demand in the United States, including any limitations or other factors that the Department determines should be considered in order to achieve the national security objectives of the duties and quantitative limitations.

(A) *Examples of what fact patterns may warrant a longer exclusion validity period.* Individuals or organizations submitting exclusion requests or objections may, and are encouraged to specify how long they believe an exclusion may be warranted and specify the rationale for that recommended time period. For example, an individual or organization submitting an exclusion request may request a longer validity period if there are factors outside of their control that may make it warranted to grant a longer period. These factors may include regulatory requirements that make a longer validity period justified, *e.g.,* for an aircraft manufacturer that would require a certain number of years to make a change to an FAA-approved type certificate or for a manufacturer of medical items to obtain FDA approval. Business considerations, such as the need for a multi-year contract for steel with strict delivery schedules in order to complete a significant U.S. project by an established deadline, *e.g.,* a large scale oil and gas exploration project, is another illustrative example of the types of considerations that a person submitting an exclusion request may reference.

(B) *Examples of what criteria may warrant a shorter exclusion validity period.* Objectors are encouraged to provide their suggestions for how long they believe an appropriate validity period should be for an exclusion request. In certain cases, this may be an objector indicating it has committed to adding new capacity that will be coming online within six months, so a shorter six-month period is warranted. Conversely, if an objector knows it will take two years to obtain appropriate regulatory approvals, financing and/or completing construction to add new capacity, the objector may, in responding to an exclusion that requests a longer validity period, *e.g.,* three years, indicate that although they agree a longer validity period than one year may be warranted in this case, that two years is sufficient.

(C) None of the illustrative fact patterns identified in paragraphs (h)(2)(iv)(A) or (B) of this supplement will be determinative in and of themselves for establishing the appropriate validity period, but this type of information is helpful for the U.S. Department of Commerce to receive, when warranted, to help determine the appropriate validity period if a period other than one year is requested.

(3) *Review period and implementation of any needed conforming changes*—(i) *Review period.* The 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. The estimated 106-day period begins on the day the exclusion request is posted in the 232 Exclusions Portal, and ends once a decision to grant or deny is made on the exclusion request.

(ii) *Coordination with other agencies on approval and implementation.* Other agencies of the U.S. Government, such as CBP, will take any additional steps needed to implement an approved exclusion request. These additional steps needed to implement an approved exclusion request are not part of the review criteria used by the U.S. Department of Commerce to determine whether to approve an exclusion request, but are an important component in ensuring the approved exclusion request can be properly implemented. The U.S. Department of Commerce will provide CBP with information that will identify each approved exclusion request pursuant to this supplement. Individuals or organizations whose exclusion requests are approved must report information concerning any applicable exclusion in such form as CBP may require. These exclusion identifiers will be used by importers in the data collected by CBP in order for CBP to determine whether an import is within the scope of an approved exclusion request.

(i) *For further information.* If you have questions on this supplement, you may contact the Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, at (202) 482–5642 or *Steel232@bis.doc.gov* regarding steel exclusion requests, or at (202) 482–4757 or *Aluminum232@bis.doc.gov* regarding aluminum exclusion requests. The U.S. Department of Commerce website includes FAQs, best practices other companies have used for submitting exclusion requests and objections, and helpful checklists. The U.S. Department of Commerce has also included a manual providing instruction on the 232 Exclusions Portal for exclusion requests submitted on or after June 13, 2019, titled 232 Exclusions Portal Comprehensive Guide (''232 Exclusions Guide'') and posted online at (*https://www.commerce.gov/page/section-232-investigations*) to assist your understanding when making 232 submissions in the 232 Exclusions Portal.

■ 3. Effective December 29, 2020 Supplement No. 2 to part 705 is revised to read as follows:

Supplement No. 2 to Part 705—General Approved Exclusions (GAEs) for Steel Articles Under the 232 Exclusions Process

This supplement identifies steel articles that have been approved for import under a General Approved Exclusion (GAE). The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, makes these determinations that certain steel articles may be authorized under a GAE consistent with the objectives of the 232 Exclusions Process as outlined in supplement no. 1 to this part. The GAEs described in this supplement may be used by any importer. GAEs do not include quantity limits. Each GAE identifier will be effective fifteen calendar days after publication of a **Federal Register** notice either adding or revising a specific GAE identifier. There is no retroactive relief for GAEs. Relief is only available to steel articles that are entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date of a GAE included in supplement no. 2 to this part. In order to use a GAE, the importer must include the GAE identifier in the Automated Commercial Environment (ACE) system that corresponds to the steel articles being imported. These GAEs are indefinite in length, but the Department of Commerce on behalf of the Secretary of Commerce may at any time issue a **Federal Register** notice removing, revising or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process as described in supplement no. 1 to this part. The Department of Commerce on behalf of the Secretary of Commerce may periodically publish notices of inquiry in the **Federal Register** soliciting public comments on potential removals, revisions or additions to this supplement.

GAE identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.1.S: 7304592030	7304592030. TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, NOT COLD-TRTD, SUITABLE FOR BOILERS ETC, HEAT-RESISTING STL.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.2.S: 7304592080	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.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.3.S: 7220900060	7220900060. OTHER FLAT-ROLLED STAINLESS STL, WDTH <600MM, FURTH WRKD THAN COLD-RLD, </=0.5% OR >/=24% NICKEL, <15% CHROMIUM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.4.S: 7222406000	7222406000. ANGLES SHAPES AND SECTIONS STAINLESS STEEL, OTHER THAN HOT ROLLED, NOT DRILLED, NOT PUNCHED, AND NOT OTHERWISE ADVANCED.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.5.S: 7306901000	7306901000. OTH TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, RIVETED/SIMILARLY CLOSED (NOT WELDED).		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.6.S: 7212600000	7212600000. FLAT-ROLLED IRON/NONALLOY STL, WDTH <600MM, CLAD.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.7.S: 7227901060	7227901060. BARS/RODS TOOL STL (NOT HIGH-SPEED), HOT-RLD, IRR COILS, NOT TEMPRD/TREATD/PARTLY MFTD, NOT BALL BEARING STEEL.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.8.S: 7220207060	7220207060. FLAT-ROLLED STAINLESS STL, WDTH <300MM, COLD-RLD, THICKNESS >0.25MM BUT </=1.25MM, </=0.5% NICKEL, <15% CHROMIUM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.9.S: 7223005000	7223005000. FLAT WIRE OF STAINLESS STEEL		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.10.S: 7220208000	7220208000. FLAT-ROLLED STAINLESS STL, WDTH <300MM, COLD-RLD, THK </=0.25MM, RAZOR BLADE STL.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.11.S: 7217108060	7217108060. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >0.6% CARBON, NOT HEAT-TREATED, DIAM <1.0MM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.12.S: 7226923060	7226923060. FLAT-ROLLED OTH ALLOY STL, WDTH <300MM, COLD-RLD, TOOL STEEL OTH THAN HIGH-SPEED, OTHER THAN BALL-BEARING STEEL.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.13.S: 7229905016	7229905016. ROUND WIRE OTHER ALLOY STL, DIAM <1.0MM		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.14.S: 7215500018	7215500018. OTHER BARS/RODS IRON/NONALLOY STL, COLD-FORMED/FINISHED, NOT COILS, <0.25% CARBON, DIAMETER OR CROSS-SECTN >/=76MM BUT <228MM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.15.S: 7304598060	7304598060. TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, NOT CLD-TRTD, OS DIAMETER >285.8MM BUT <406.4MM, WALL THK<12.7MM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].

GAE identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.16.S: 7228501040	7228501040. OTHER BARS/RODS TOOL STL (NOT HIGH-SPEED), COLD-FRMD/FNSHD, MAX CS <18MM, OTHER THAN OF ROUND OR RECTANGULAR CROSS SECTION WITH SURFACES GROUND, MILLED, OR POLISHED.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.17.S: 7304246030	7304246030. TUBING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, OUTSIDE DIAM </=114.3MM, WALL THK >9.5 MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.18.S: 7229905031	7229905031. ROUND WIRE OTHER ALLOY STL, WITH DIAMETER >/=1.0MM BUT <1.5MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.19.S: 7304598010	7304598010. TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL, SEAMLESS, CIRC CS, NOT COLD-TREATED, NOT HEAT-RESISTANT, OUTSIDE DIAM <38.1MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.20.S: 7219310010	7219310010. FLAT-ROLLED STAINLESS STL, WDTH >/=600MM, COLD-RLD, THK >/=4.75MM, COILS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.21.S: 7304598045	7304598045. TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, NOT CLD-TRTD, NOT HEAT-RESISTANT, OS DIAMETER >190.5MM BUT <285.8MM, WALL THK<12.7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.22.S: 7306401090	7306401090. OTH TUBES/PIPES/HOLLOW PRFLS STAINLESS STL, WELDED, CIRC CS, WALL THK <1.65MM, </=0.5% NICKEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.23.S: 7220206010	7220206010. FLAT-ROLLED STAINLESS STL, WDTH <300MM, COLD-RLD, THK >1.25MM, >0.5% NICKEL, >1.5% BUT <5% BY WEIGHT OF MOLYBDENUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.24.S: 7211296080	7211296080. FLAT-ROLLED IRON/NONALLOY STL, WIDTH >300MM BUT <600MM, NOT CLAD/PLATED/COATED, COLD-RLD, >/=0.25% CRBN, THK </=1.25MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.25.S: 7217201500	7217201500. FLAT WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.26.S: 7219120026	7219120026. FLAT-ROLLED STAINLESS STL, WDTH >1575MM, HOT-RLD, COILS, THK >6.8MM BUT <10MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.27.S: 7219320020	7219320020. FLAT-ROLLED STAINLESS STL, WDTH >/=1370MM, COLD-RLD, THICKNESS >3MM BUT <4.75MM, COILS, >0.5% NICKEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.28.S: 7304243010	7304243010. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, THREADED/COUPLED, OUTSIDE DIAM <215.9MM, WALL THK <12.7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.29.S: 7219220035	7219220035. FLAT-ROLLED STAINLESS STL, THICKNESS >/=4.75MM BUT <10MM, WIDTH >/=600MM BUT <1575MM, HOT-RLD, NOT COILS, THK 4.75-10MM, >0.5% NICKEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.30.S: 7222403085	7222403085. SHAPES/SECTIONS STAINLESS STL, HOT-RLD, NOT DRILLED/PUNCHED/ADVANCED, MAX CROSS SECTION <80MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.31.S: 7222403045	7222403045. SHAPES/SECTIONS STAINLESS STL, HOT-RLD, NOT DRILLED/PUNCHED/ADVANCED, MAX CS >/=80MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.32.S: 7219110060	7219110060. FLAT-ROLLED STAINLESS STL, WDTH >1575MM, HOT-RLD, COILS, THK >10MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.33.S: 7304515005	7304515005. TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL, SEAMLESS, CIRC CS, COLD-DRWN/RLD, HIGH-NICKEL ALLOY STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.34.S: 7219330025	7219330025. FLAT-ROLLED STAINLESS STL, WDTH >/=1370MM, COLD-RLD, THICKNESS >1MM BUT <3MM, COILS, </=0.5% NICKEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.35.S: 7217901000	7217901000. WIRE, IRON OR NONALLOY STEEL, COATED WITH PLASTICS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.36.S: 7219110030	7219110030. FLAT-ROLLED STAINLESS STL, WIDTH >/=600MM BUT <1575MM, HOT-RLD, COILS, THK >10MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.37.S: 7217108030	7217108030. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >0.6% CARBON, HEAT-TREATED, DIAMETER >/=1.0MM BUT <1.5MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.38.S: 7212200000	7212200000. FLAT-ROLLED IRON/NONALLOY STL, WDTH <600MM, ELECTROLYTICALLY PLATED/COATED WITH ZINC.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.39.S: 7217204560	7217204560. ROUND WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC, DIAMETER >/=1.0MM BUT <1.5MM, >/=0.6% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.40.S: 7220206060	7220206060. FLAT-ROLLED STAINLESS STL, WDTH <300MM, COLD-RLD, THK >1.25MM, </=0.5% NICKEL, <15% CHROMIUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.41.S: 7217108025	7217108025. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >0.6% CARBON, HEAT-TREATED, DIAM <1.0MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.42.S: 7220121000	7220121000. FLAT-ROLLED STAINLESS STL, WIDTH >/=300MM BUT <600MM, HOT-RLD, THK <4.75MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.43.S: 7209900000	7209900000. FLAT-ROLLED IRON/NONALLOY STL, WDTH >/=600MM, COLD-RLD, NOT CLAD/PLATED/COATED, WHETHER OR NOT IN COILS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.44.S: 7213913020	7213913020. BARS/RODS IRON/NA STL, IRR COILS, HOT-RLD, CIRC CS<14MM DIAM, NOT TEMPRD/TREATD/PARTLY MFTD, WELDING QUALITY WIRE ROD.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.45.S: 7306617060	7306617060. OTH TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL (NOT STAINLESS), WELDED, SQ/RECT CS, WALL THK <4MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.46.S: 7216330090	7216330090. H SECTIONS IRON/NONALLOY STL, HOT-RLD/DRWN/EXTRD, HEIGHT >/=80MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].

GAE identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.47.S: 7217905030	7217905030. WIRE IRON/NONALLOY STL, NOT PLATED/COATED WITH BASE METALS OR PLASTICS, <0.25% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.48.S: 7226923030	7226923030. FLAT-ROLLED OTH ALLOY STL, WDTH <300MM, COLD-RLD, TOOL STEEL OTH THAN HIGH-SPEED, BALL-BEARING STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.49.S: 7219120051	7219120051. FLAT-ROLLED STAINLESS STL, WIDTH >/=1370MM BUT <1575MM, HOT-RLD, COILS, THICKNESS >/=4.75MM BUT <6.8MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.50.S: 7227906020	7227906020. BARS/RODS OTHER ALLOY STL, IRR COILS, HOT-RLD, NOT TOOL STL, WELDING QUALITY WIRE RODS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.51.S: 7217905090	7217905090. WIRE IRON/NONALLOY STL, NOT PLATED/COATED WITH BASE METALS OR PLASTICS, >/=0.6% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.52.S: 7219220040	7219220040. FLAT-ROLLED STAINLESS STL, HOT-RLD, NOT COILS, THK >/=4.75 MM BUT <10MM, NOT HIGH-NICKEL ALLOY, >0.5% NICKEL, </=1.5% OR >/=5% MOLYBDENUM, WIDTH >1575MM BUT <1880MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.53.S: 7219320038	7219320038. FLAT-ROLLED STAINLESS STL, COLD-RLD, THICKNESS >/=3MM BUT <4.75MM, COILS, WIDTH >600MM BUT <1370MM, NOT HIGH-NICKEL ALLOY, >0.5% NICKEL, </=1.5% OR >/=5% MOLYBDENUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.54.S: 7219320045	7219320045. FLAT-ROLLED STAINLESS STL, WDTH >/=1370MM, COLD-RLD, THICKNESS >/=3MM BUT <4.75MM, NOT COILS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.55.S: 7219350005	7219350005. FLAT-ROLLED STAINLESS STL, WDTH >/=600MM, COLD-RLD, THK <0.5MM, COILS, >0.5% BUT <24% NICKEL, >1.5% BUT <5% MOLYBDENUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.56.S: 7219320036	7219320036. FLAT-ROLLED STAINLESS STL, COLD-RLD, THICKNESS >/=3MM BUT <4.75MM, COILS, WIDTH >600MM BUT <1370MM, NOT HIGH-NICKEL ALLOY, >0.5% NICKEL, >1.5% BUT <5% MOLYBDENUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.57.S: 7304901000	7304901000. TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, SEAMLESS, NONCIRCULAR CROSS SECTION, WALL THK >/=4MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.58.S: 7304390002	7304390002. TUBES/PIPES/HLLW PRFLS IRON/NA STL, SMLESS, CIRC CS, NOT COLD-TRTD, SUITABLE FOR BOILERS ETC, OS DIAM <38.1MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.59.S: 7219120071	7219120071. FLAT-ROLLED STAINLESS STL, WDTH >600MM BUT <1370MM, HOT-RLD, COILS, THICKNESS >/=4.75MM BUT <10MM, NOT HIGH-NICKEL ALLOY, >0.5% NICKEL, </=1.5% OR >/=5% MOLYBDENUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.60.S: 7225501110	7225501110. FLAT-ROLLED OTH ALLOY STL, WDTH >/=600MM, COLD-RLD, TOOL STEEL, HIGH-SPEED STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.61.S: 7217905060	7217905060. WIRE IRON/NONALLOY STL, PLATED/COATED, >0.25% BUT <0.6% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.62.S: 7220125000	7220125000. FLAT-ROLLED STAINLESS STL, WDTH <300MM, HOT-RLD, THK <4.75MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.63.S: 7226928005	7226928005. FLAT-ROLLED OTH ALLOY STL, WDTH <300MM, COLD-RLD, NOT TOOL STL, THK >0.25MM, HIGH-NICKEL ALLOY STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.64.S: 7217106000	7217106000. OTHER WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.65.S: 7219120021	7219120021. FLAT-ROLLED STAINLESS STL, WIDTH >/=1370MM BUT </=1575MM, HOT-RLD, COILS, THICKNESS >6.8MM BUT </=10MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.66.S: 7304390016	7304390016. TUBES/PIPES/HOLLOW PROFILES IRON/NA STL, SEAMLESS, CIRC CS, NOT COLD-TRTD, GALVANIZED, OS DIAM </=114.3MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.67.S: 7304244040	7304244040. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, NOT THREADED/COUPLED, OS DIAMETER >/=215.9MM BUT </=285.8MM, WALL THK >/=12.7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.68.S: 7302101015	7302101015. OTHER RAILS IRON/NONALLOY STL, NEW, NOT HEAT TREATED, >30KG/M.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.69.S: 7304413005	7304413005. TUBES/PIPES/HOLLOW PRFLS STAINLESS STL, SEAMLESS, CIRC CS, COLD-DRWN/RLD, EXT DIAM <19MM, HIGH-NICKEL ALLOY STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.70.S: 7215500090	7215500090. OTHER BARS/RODS IRON/NONALLOY STL, COLD-FORMED/FINISHED, NOT COILS, >/=0.6% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.71.S: 7217304541	7217304541. ROUND WIRE IRON/NONALLOY STL, PLATED/COATED W/OTH BASE METALS, DIAMETER >/=1.0MM BUT <1.5MM, <0.25% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.72.S: 7227200030	7227200030. BARS/RODS SILICO-MANGANESE STL, IRR COILS, HOT-RLD, WELDING QUALITY WIRE RODS, STAT NOTE 6.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.73.S: 7306697060	7306697060. OTH TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL (NOT STAINLESS), WELDED, OTH NONCIRCULAR CS, WALL THK <4MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.74.S: 7302101045	7302101045. OTHER RAILS IRON/NONALLOY STL, NEW, HEAT TREATED, >30KG/M.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.75.S: 7219210005	7219210005. FLAT-ROLLED STAINLESS STL, WDTH >/=600MM, HOT-RLD, NOT COILS, THK >10MM, HIGH-NICKEL ALLOY STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.76.S: 7304293160	7304293160. CASING (OIL/GAS DRILLING) OTH ALLOY STL, SEAMLESS, THREADED/COUPLED, OS DIAMETER >285.8MM BUT </=406.4MM, WALL THK >/=12.7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].

GAE identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.77.S: 7305316090	7305316090. OTHER TUBES/PIPES ALLOY STL, CIRC CS, EXT DIAM >406.4MM, NOT LINE PIPE OR CASING (OIL/GAS), LONGITUDINALLY WELDED, NOT TAPERED PIPES/TUBES, NON-STAINLESS ALLOY STEEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.78.S: 7216400010	7216400010. L SECTIONS IRON/NONALLOY STL, HOT-ROLLED/DRAWN/EXTRUDED, HEIGHT >/=80MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.79.S: 7226990110	7226990110. FLAT-ROLLED OTH ALLOY STL, WDTH <600MM, ELECTROLYTICALLY PLATD/COATD W/ZINC, NOT GRAIN ORIENTED, NOT OF HIGH-SPEED STEEL, FURTHER WORKED THAN HOT-ROLLED OR COLD-ROLLED.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.80.S: 7225506000	7225506000. FLAT-ROLLED OTH ALLOY STL, WDTH >/=600MM, COLD-RLD, THK >/=4.75MM, NOT OF TOOL STEEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.81.S: 7304905000	7304905000. TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, SEAMLESS, NOT CIRCULAR CS, WALL THK <4MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.82.S: 7219220005	7219220005. FLAT-ROLLED STAINLESS STL, WDTH >/=600MM, HOT-RLD, NOT COILS, THICKNESS >/=4.75MM BUT </=10MM, HIGH-NICKEL ALLOY STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.83.S: 7217104045	7217104045. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON, DIAM <1.5MM, HEAT-TREATED, IN COILS WEIGHING >2 KG.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.84.S: 7209270000	7209270000. FLAT-ROLLED IRON/NONALLOY STL, WDTH >/=600MM, COLD-RLD, NOT CLAD/PLATED/COATED, NOT COILS, THK 0.5–1MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.85.S: 7219900060	7219900060. OTHER FLAT-ROLLED STAINLESS STL, WDTH >/=600MM, FURTHER WORKED THAN COLD-RLD, </=0.5% NICKEL, <15% CHROMIUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.86.S: 7219120081	7219120081. FLAT-ROLLED STAINLESS STL, WIDTH >/=600MM BUT <1370MM, HOT-RLD, COILS, NOT HIGH-NICKEL ALLOY, THICKNESS >/=4.75MM BUT </=10MM, </=0.5% NICKEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.87.S: 7304293180	7304293180. CASING (OIL/GAS DRILLING) OTH ALLOY STL, SEAMLESS, THREADED/COUPLED, OUTSIDE DIAM >406.4MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.88.S: 7224100005	7224100005. INGOTS AND OTHER PRIMARY FORMS OF HIGH-NICKEL ALLOY STEEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.89.S: 7213200080	7213200080. BARS/RODS IRON/NONALLOY STL, HOT-RLD, IRR COILS, FREE-CUTTING STL, <0.1% LEAD.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.90.S: 7216100010	7216100010. U SECTIONS IRON/NONALLOY STL, HOT-ROLLED/DRAWN/EXTRUDED, HEIGHT <80MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.91.S: 7306695000	7306695000. OTH TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, WELDED, OTH NONCIRCULAR CS, WALL THK <4MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.92.S: 7208390015	7208390015. FLAT-ROLLED IRON/NA STL, WDTH >/=600MM, HOT-RLD, NOT CLAD/PLATED/COATED, COILS, THK <3MM, HIGH-STRENGTH STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.93.S: 7208380015	7208380015. FLAT-ROLLED IRON/NA STL, WDTH >/=600MM, HOT-RLD, NOT CLAD/PLATED/COATED, COILS, THICKNESS >/=3MM BUT <4.75MM, HIGH-STRENGTH STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.94.S: 7217104090	7217104090. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON, DIAM <1.5MM, NOT HEAT-TREATED.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.95.S: 7302105020	7302105020. RAILS OF ALLOY STEEL, NEW	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.96.S: 7210706030	7210706030. FLAT-ROLLED IRON/NA STL, WDTH >/=600MM, PAINTD/VARNSHD/COATD W/PLASTICS, ELECTROLYTICALLY PLATD/COATD W/ZINC.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.97.S: 7304244060	7304244060. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, NOT THREADED/COUPLED, OS DIAMETER >285.8MM BUT </=406.4MM, WALL THK>/=12.7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.98.S: 7229200015	7229200015. ROUND WIRE SI-MN STL, DIAM </=1.6MM, <0.20%C, >0.9% MN, >0.6% SI, FOR ELEC ARC WELDING, NOT PLATD/COATD W/COPPER.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.99.S: 7304243040	7304243040. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, THREADED/COUPLED, OUTSIDE DIAMETER >/=215.9MM BUT </=285.8MM, WALL THK>/=12.7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.100.S: 7304243020 ..	7304243020. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, THREADED/COUPLED, OUTSIDE DIAM <215.9MM, WALL THK >/=12.7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.101.S: 7219130081 ..	7219130081. FLAT-ROLLED STAINLESS STL, WIDTH >/=600MM BUT <1370MM, HOT-RLD, COILS, THICKNESS >/=3MM BUT <4.75MM, </=0.5% OR >/=24% NICKEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.102.S: 7211140090 ..	7211140090. FLAT-ROLLED IRON/NONALLOY STL, WDTH <600MM, NOT CLAD/PLATED/COATED, HOT-RLD, THK >/=4.75MM, COILS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.103.S: 7218910030 ..	7218910030. SEMIFINISHED STAINLESS STL, RECTANGULAR CROSS SECTION, WDTH <4X THK, CS AREA >/=232 CM2.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.104.S: 7306213000 ..	7306213000. CASING (OIL/GAS DRILLING) STAINLESS STL, WELDED, THREADED/COUPLED.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.105.S: 7211234500 ..	7211234500. FLAT-ROLLED IRON/NONALLOY STL, WDTH <300MM, NOT CLAD/PLATED/COATED, COLD-RLD, <0.25% CRBN, THK </=0.25MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].

GAE identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.106.S: 7220206080 ..	7220206080. FLAT-ROLLED STAINLESS STL, WDTH <300MM, COLD-RLD, THK >1.25MM, NOT HIGH-NICKEL ALLOY, </=0.5% NICKEL, >/=15% CHROMIUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.107.S: 7305391000 ..	7305391000. OTHER TUBES/PIPES IRON/NONALLOY STL, CIRC CS, EXT DIAM >406.4MM, WELDED, OTHER THAN LONGITUDALLY WELDED.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.108.S: 7217204550 ..	7217204550. ROUND WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC, DIAMETER >/=1.0MM BUT <1.5MM, >/=0.25% BUT <0.6% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].

Annex 1 to Supplements No. 1 and 2 to part 705 [Removed]

■ 4. Annex 1 to Supplements No. 1 and 2 to part 705 is removed.

■ 5. Effective December 29, 2020. add Supplement No. 3 to part 705 to read as follows:

Supplement No. 3 to Part 705—General Approved Exclusions (GAEs) for Aluminum Articles Under the 232 Exclusions Process

This supplement identifies aluminum articles that have been approved for import under a General Approved Exclusion (GAE). The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, makes these determinations that certain aluminum articles may be authorized under a GAE consistent with the objectives of the 232 exclusions process as outlined in supplement no. 1 to this part. The GAEs described in this supplement may be used by any importer. GAEs do not include quantity limits. Each GAE identifier will be effective fifteen calendar days after publication of a **Federal Register** notice either adding or revising a specific GAE identifier. There is no retroactive relief for GAEs. Relief is only available to aluminum articles that are entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date of a GAE included in supplement no. 2 to this part. In order to use a GAE, the importer must reference the GAE identifier in the Automated Commercial Environment (ACE) system that corresponds to the aluminum articles being imported. These GAEs are indefinite in length, but the Department of Commerce on behalf of the Secretary of Commerce may at any time issue a **Federal Register** notice removing, revising or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process as described in supplement no. 1 to this part. The Department of Commerce on behalf of the Secretary of Commerce may periodically publish notices of inquiry in the **Federal Register** soliciting public comments on potential removals, revisions or additions to this supplement.

GAE identifier	Description of aluminum that may be imported (at 10-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.1.A: 7609000000	7609000000. ALUMINUM TUBE OR PIPE FITTINGS (COUPLINGS, ELBOWS, SLEEVES).	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.2.A: 7607205000	7607205000. ALUMINUM FOIL OF THICKNESS	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.3.A: 7607196000	7607196000. ALUMINUM FOIL OF THICKNESS	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.4.A: 7604210010	7604210010. ALUMINUM ALLOY HOLLOW PROFILES OF HEAT-TREATABLE INDUSTRIAL ALLOYS OF A KIND DESCRIBED IN NOTE 6 TO THIS CHAPTER.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.5.A: 7604291010	7604291010. ALUMINUM ALLOY PROFILES OTHER THAN HOLLOW PROFILES OF HEAT-TREATABLE INDUSTRIAL ALLOYS OF A KIND DESCRIBED IN NOTE 6 TO THIS CHAPTER.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.6.A: 7607191000	7607191000. ALUMINUM FOIL OF THICKNESS	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.7.A: 7606116000	7606116000. ALUMINUM PLATES, SHEETS AND STRIP, THICKNESS >0.2MM, RECTANGULAR (INCLUDING SQUARE), NOT ALLOYED, CLAD.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.8.A: 7605290000	7605290000. ALUMINUM WIRE ALLOY, MAXIMUM CROSS-SECTIONAL DIMENSION </=7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.9.A: 7601209080	7601209080. UNWROUGHT ALUMINUM ALLOY, SHEET INGOT (SLAB) OF A KIND DESCRIBED IN STATISTICAL NOTE 3 TO THIS CHAPTER.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.10.A: 7607116010	7607116010. ALUMINUM FOIL OF THICKNESS >0.01 MM AND </=0.15 MM, ROLLED, NOT BACKED, BOXED & WEIGHING </=11.3 KG.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.11.A: 7616995170	7616995170. ALUMINUM FORGINGS	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.12.A: 7607201000	7607201000. ALUMINUM FOIL OF THICKNESS </=0.2 MM, BACKED, COVERED OR DECORATED WITH A CHARACTER, DESIGN, FANCY EFFECT OR PATTERN.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.13.A: 7604295090	7604295090. ALUMINUM ALLOY BARS AND RODS, OTHER THAN ROUND CROSS SECTION, OTHER THAN HEAT-TREATABLE INDUSTRIAL ALLOYS OF A KIND DESCRIBED IN NOTES 5 & 6 OF THIS CHAPTER.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].

GAE identifier	Description of aluminum that may be imported (at 10-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.14.A: 7601209095	7601209095. UNWROUGHT ALUMINUM ALLOY, OTHER THAN COILS OF UNIFORM CROSS-SECTION </=9.5 MM, CONTAINING <25% SILICON, OTHER THAN ALLUMINUM VANADIUM MASTER ALLOY, OTHER THAN REMELT SCRAP INGOT, OTHER THAN SHEET INGOT, OTHER THAN FOUNDRY INGOT.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.15.A:7616995160	7616995160. ALUMINUM CASTINGS	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–27110 Filed 12–10–20; 8:45 am]

BILLING CODE 3510–33–P

PUBLIC SUBMISSION

As of: 2/3/21 10:38 AM
Received: December 23, 2020
Status: Pending_Post
Tracking No. 1k4-9kt6-b4hs
Comments Due: February 12, 2021
Submission Type: Web

Docket: BIS-2020-0022
Section 232 Steel and Aluminum Tariff Exclusions Process

Comment On: BIS-2020-0022-0001
Steel and Aluminum Tariff Exclusions Process; Revision

Document: BIS-2020-0022-DRAFT-0001
Public comment 1 on 232 4th IFR. Avure Technologies. A Wong. 12-23-20

Submitter Information

Name: Anthony Wong
Address:
2601 S Verity Pkwy
Middletown, OH, 45044
Email: anthony.wong@jbtc.com
Phone: 513-320-9562

General Comment

Avure Technologies Steel Tariff Exclusion request December 23, 2020 on 7217107000. We have contacted many U.S. steel manufacturers and distributors for the steel wires we need but unsuccessful. There's no manufacturer in the U.S. who can produce our requested steel wire in volumes and to meet with our quality and specifications requirements. See attached our steel tariff exclusion application with supporting documents. Thank you!

Attachments

Avure Techologies application for tariff exclusion for flat steel wire import 23DEC2020

Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports

Exclusion Request Requirements: Only individuals or organizations operating in the United States that use steel products (e.g. flat, long, semi-finished, pipe and tube, and stainless) in business activities (e.g., construction, manufacturing, supplying steel product to users) in the United States may submit an Exclusion Request. For an Exclusion Request to be considered, the Exclusion Requester must provide factual information on 1) the single type of steel product it requires using a 10-digit HTSUS code, including its specific dimension; 2) the quantity of product required (stated in kilograms) under a one-year exclusion; 3) a full description of the properties of the steel product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data. Exclusion Requests must be submitted using this Excel-based document. Paper submissions will not be accepted.

A separate Exclusion Request must be submitted on each distinct type and dimension of steel product to be imported. All applicable question blocks in the form must be completed for the Exclusion Request to be accepted. Exclusion Requests will be denied if the applicant: 1) does not sufficiently address the specified reporting requirements; 2) cites the improper HTSUS code, or 3) provides incorrect product descriptions.

Organizations electing to attach supporting documents must provide these documents in PDF format and it must not exceed 25 pages. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.

Organizations should upload their completed Exclusion Request pertaining to a steel product to www.regulations.gov under Docket Number BIS-2018-0006. An Exclusion Request may be submitted at any time. Processing of an Exclusion Request will take approximately 90 business days. Notification of granted Exclusions will be posted on www.regulations.gov. For questions related directly to completing this form, contact BIS via email (steel232@bis.doc.gov) or telephone (202-482-5642).

1.a	Identify the class of steel product for which the Exclusion is sought:	Carbon and Alloy Flat	10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single steel product covered by this request: (See https://www.usitc.gov/)	7217107000

1.b

Requesting Organization Information		Importer of Record for Organization Requesting an Exclusion	
Full Organization Legal Name	Avure Technologies, Inc	Full Organization Legal Name	Avure Technologies, Inc
Street Address	2601 S. Verity Parkway	Street Address	2601 S Verity Parkway
City	Middletown	City	Middletown
State	Ohio	State	Ohio
Zip Code	45044	Zip Code	45044
Headquarters Country	United States	Headquarters Country	United States
Point of Contact Name	Anthony Wong	Point of Contact - Representative Name	Anthony Wong
Phone Number	513-320-9562	Phone Number	513-320-9562
E-mail Address	anthony.wong@jbtc.com	E-mail Address	anthony.wong@jbtc.com
Web Site Address	www.avure-hpp-foods.com	Web Site Address	www.avure-hpp-foods.com
Parent Company of Requesting Organization		**Requester's Authorized Representative/Agent (If applicable)**	
Full Organization Legal Name	JBT Corporation	Requester Point of Contact Name	
Street Address	1830 Airport Exchange Blvd, Suite 160	Point-of-Contact Organization	
City	Erlanger	Country Location	
State/Province	Kentucky	Phone Number	
Zip Code/Postal Code	41018	E-mail Address	
Headquarters Country	United States	Web Site Address	
Web Site Address	www.avure-hpp-foods.com	Other Information	

1.c	Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as a: Steel Manufacturer; Steel Distributor; Steel Exporter or, Steel Importer? If "Yes" identify the activity.	Not Applicable	If "Yes" - Identify the organization		Identify the country where the organization is headquartered	
	Comments:					

1.d	Identify the primary type of steel activity of the Exclusion Requester:	Manufacturer	Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	498,952 kg

Comments:	There is no US company who can produce this material in volumes to meet with our quality and specification requirements.

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports -*Continued*

2.a	Average annual consumption for years 2015-2017 of the steel product that is subject of this Exclusion Request - Kilograms	425,476 kg
2.b	Explain why your organization requires an Exclusion using 1) the drop-down box to the right and 2) by providing written comments in the space provided below.	No U.S. production
	Comments:	
2.c	Identify the percentage of total steel product covered under this Exclusion Request not available from steel manufacturers in the United States:	100%
2.d	Estimate the number of days required to take delivery of the steel product covered by this Exclusion Request, from the time the purchase order is issued by your organization:	140
2.e	Estimate the number of days required to manufacture the steel product covered by this Exclusion Request, from the time a binding purchase order is executed:	98
2.f.	Estimate the number of days required to ship the steel product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock:	42
2.g	Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the steel product subject to this Exclusion Request:	24

2.h Identify the U.S. Destination Port(s) of Entry through which the steel product subject to this Exclusion Request would be transported:

Port 1	Port 2	Port 3	Port 4	Port 5	Port 6	Port 7
New York (USNYC)						

2.i

Is the organization making this Exclusion Request doing so on behalf of a non-U.S. steel producer that does not manufacture steel products in the United States?			No
If "Yes" identify the non-U.S. steel producer		Identify the country where the organization is headquartered	
Comments:			

2.j

Exclusion Request Product Information

For this single Exclusion Request, provide a full, complete description of the product in the space provided below. * See explanation below.
The product for which an Exclusion is being requested is defined as follows:

High tensile strength cold rolled flat spring wire, natural edges, oiled, tested according to ASTM A 905-93 Class 1. Eddy current testing and test certificate according to ASME SA905, Avure Technologies Technical Specifications and ASME B&PC code section VIII Div. 3 Edition 2017.

* With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., "hot-rolled," "seamless pipe," "suitable for use in boilers," "longitudinally submerged arc welded," etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., "cross-sectional diameter of 5.50 mm") or measurements (e.g., "yield strength of 300 MPa," "carbon content 0.08%," etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., "cross-sectional diameter falling within the range 5.35 mm and 5.65 mm," "yield strength greater than or equal to 300 MPa," "carbon content less than or equal to 0.15%, by weight," etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.

Comments:

2.k Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation		Organization	Designation		Organization	Designation
1	ASTM	A 905-93	3			5		
2			4			6		
Other (specify)			Other (specify)			Other (specify)		

2.l

General Steel Product Description

Identify the classification and properties of the steel product covered under this Exclusion Request. Other classification or properties may be described in the Comment box below. (Select all that apply)

Slab	Blooms	Billets	Ingots	Flat	Long	Beams	Semi -Finished	Pipe	Tube	Stainless	Wire	Hot Rolled	Cold Rolled
											Yes		Yes

Annealed	Plated	Electro-Plated	Galvanized	Electro-Galvanized	Zinc Plated	Aluminum Plated	Lead Plated	Tin Plated	Painted	Varnished	Plasticized	Pickled	Other (Use Comment Box)
													Yes

Comment: Cold reduced by drawing and rolling of round wire to final flat profile, dimensions and properties.

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports -*Continued*

3.a Identify the chemical composition of the specific steel product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored.

Chemical Composition

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Manganese	Molybdenum	Nickel
Minimum %					0.80000%						0.30000%		
Maximum %					0.95000%						0.60000%		
	Niobium	Nitrogen	Phosphorous	Selenium	Silicon	Sulfur	Tellurium	Titanium	Tungsten	Vanadium	Zirconium	[Other - List Below]	[Other - List Below]
Minimum %					0.10000%								
Maximum %			0.02000%		0.30000%	0.02000%							

Comments:

3.b Provide the following information on the single steel product that is the subject of this Exclusion Request: 1) dimensional information for the single steel product and a single size -- not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.) A separate Exclusion Request must be submitted for each steel product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature. Numbers may appear rounded, but full values will be stored.

	Steel Product Specifications (Millimeters)						Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other (specify type in comment box)
										Temperature (°C)			
Minimum	1.47mm				5.94mm		1900MPa	1650MPa		Joules			
Maximum	1.53mm				6.06mm					% Shear			

Comments: High internal requirement regarding wedge and crown (Flatness of wire).

3.c Provide the following information on the single steel product that is the subject of this Exclusion Request: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness. Numbers may appear rounded, but full values will be stored.

	Global Ductility		Local Ductility (If Applicable)		Magnetic Permeability (If Applicable)			Surface Finish (If Applicable)	Coating Type and Composition (If Applicable)				
	Elongation %	Reduction -in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness [millimeter]	Magnetic Permeability [Epstein Test]	Magnetic Permeability [Greer Lab Method]	Stacked Wide Sheet [ASTM A804/ A804M-04 (2015)]	Profilometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys)	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]
Minimum													
Maximum													
Select any additional processing methods used:											Other (specify)		

Comments:

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports -*Continued*

4.a List the Commercial Name(s) of the single steel product that is the subject of this Exclusion Request.

Steel Wire, Pressure Vessel Winding		

Comments:

4.b State the 1) application for the steel product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar steel products manufactured in the United States, if available, are not suitable.

High Pressure Vessel

4.c If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single steel product in the space below:

4.d Identify the source countries for the single steel product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the steel product. If this steel product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin.

NOTE: Steel products encompassing more than one 10-digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)
1	Sweden	Sweden	498,952 kg	Suzuki Garphyttan A.B.	Suzuki Garphyttan A.B.
2					
3					
4					
5					

Product Availability Information

4.e Does the Requester possess knowledge of any domestic U.S. parties that <u>currently</u> manufacture the described steel product in the United States? No

Comment:

4.f Does the Requester possess knowledge of any parties that <u>currently</u> manufacture the described steel product in a country exempted from this tariff? If yes, identify the country or countries below. No

Comment:

4.g Is the Requester aware of any manufacturers <u>capable of producing</u> a substitute for the steel product in the United States? If "Yes" provide supporting information (name and address) in the space below? No

Comment:

4.h Has the Exclusion Requester attempted to <u>qualify any steel manufacturer in the United States</u> as a supplier of the steel product that is the subject of this Exclusion Request in the past two years? If "Yes" provide supporting information in the space below. Supporting documents must be submitted as a consolidated PDF file and may not exceed 25 pages. No

1		5	
2		6	
3		7	
4		8	

Comment:

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports -*Continued*

5.a	Has the Exclusion Requester attempted to purchase the described steel product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If "Yes" identify the manufacturers, addresses, and your points of contact at the U.S. steel manufacturing organizations in the space below.	Yes
	Comment: Yes. Please see attached list of US manufacturers with their addresses, points of contact and their responses to our requests.	
5.b	Has the Exclusion Requester had supply contracts, or does it have current contracts, with steel producers that manufacture in the United States the steel product identified in the Exclusion Request? If "Yes" identify the U.S. steel manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the space below.	No
5.c	Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent steel product that would meet qualification requirements? If "Yes" identify in the space below the testing standards/procedures employed to make that determination (e.g., magnetic core loss, etc).	Yes
	Comment: See supporting documents for 5.a	
5.d	In the last two years, has the Requester purchased a substitute steel product manufactured in the United States in place of the steel product described in the Exclusion Request? If "Yes" provide supporting information in the space below.	No
	Comment:	
5.e	Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the steel product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.	
	The import documents will show HTS code, dimensions and ASTM A-905 specifications.	

Submission of Exclusion Requests: All Exclusion Requests must be fully completed and submitted to www.regulations.gov under Docket Number BIS-2018-0006 using this Microsoft Excel electronic form. All information submitted will be subject to public disclosure, regardless of any statements by the Requester that some information should be treated otherwise. Any further information required as a part of this Exclusion Request will be determined and requested solely by the U.S. Department of Commerce.

Submission of Supporting Documents (Attachments): Supporting attachments should be submitted to www.regulations.gov as PDF documents and must be posted to www.regulations.gov under Docket Number BIS-2018-0006. Total supporting submissions may not exceed 25 pages.

Other Comments:					
This request is for a product from a country subject to quantitative limitations:		I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission:			

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete.

CERTIFICATION

The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. **It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.** [18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name:	Avure Technologies, Inc		
Name of Authorizing Official:	Dan Rack	Title of Authorizing Official:	Director of Operatiopns
Phone Number: 513.433.2514	Email of Authorizing Official:	Dan.Rack@jbtc.com	
If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.			
Point-of-Contact Name:	Anthony Wong	Title	Logisitics & Compliance Specialist
E-mail Address:	Anthony.Wong@jbtc.com	Phone Number	513-320-9562

Paperwork Reduction Act Notice

Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0139. Commerce may not collect this information, and you are not required to respond; unless this OMB number is displayed.

	Date	Supplier	Product Requested	Response (Avure comments in BOLD)	Contact	Title	Address
1	8/31/2018	**Amtek Specialty Metal Products**	SA905 with additional requirements according Avure specification AT01013 Rev 6. Avure needs ≈1,100,000 lbs/year	Do not offer this material	**Sharon Famiglietti**	Customer Service Coordinator	210 Toelles Road Wallinford, CT 06492 Unites States
2	9/29/2018	**Charter Wire LLC**	SA905 with additional requirements according Avure specification AT01013 Rev 6. Avure needs ≈1,100,000 lbs/year	Unfortunately it does not appear that this will be a good fit for Charter Wire's manufacturing process mainly due to the chemical requirements listed in SA-905. The high carbon content significantly increases the likelihood of material cracking as we cold form the shaped wire.	**Jeff Groppe**	Sales Specialist	3700 W. Milwaukee Road Milwaukee, WI 53208-4251 United States
3	9/28/2018	**Hcross Company**	SA905 with additional requirements according Avure specification AT01013 Rev 6. Avure needs ≈1,100,000 lbs/year	I have no luck finding a domestic source for rod to make this wire	**Edward McClary**	President	150 W Commercial Ave Moonachie, NJ 07074 United States
4	9/6/2018	**Precision Wire Shapes**	SA905 with additional requirements according Avure specification AT01013 Rev 6. Avure needs ≈1,100,000 lbs/year	Unfortunately, I will not be able to quote your project. We are a small shop and could not meet some of your specifications.	**Cheryl Woodman**	Chief Operating Officer	11 Long Hill Road West Brookfield, MA 01585 United States
5	9/7/2018	**Stainless Steel Products**	SA905 with additional requirements according Avure specification AT01013 Rev 6. Avure needs ≈1,100,000 lbs/year	No quote despite reminders	**Jorge Mendoza Vera**	-	561-T Acorn Street Deer Park, NY 11729 United States
6	10/16/2018	**United Wire Co.**	SA905 with additional requirements according Avure specification AT01013 Rev 6. Avure needs ≈1,100,000 lbs/year	Cannot deliver the quantity Avure needs, maximum 500,000 lbs./year Needs to rebuild existing production line Needs to invest in EC-testing equipment **This company is NOT yet qualified - based on experience a qualification process takes approximately 1-2 years!**	**Bob Swanson**	President	50 McDermott Rd. North Haven, CT 06473 United States
7	5/3/2016	**Bekaert**	SA905 with additional requirements according Avure specification AT01013 Rev 6. Avure needs ≈1,100,000 lbs/year	Cannot meet Avure requirements on "Wedge" and "Crown" with their existing rolling mill. **(Avure started to work with Bekaert in March 2014 in an attempt to qualify them as a domestic supplier)**	**Mark Abel**	Regional Sales Manager	510 Collins Blvd. Orrville, Ohio 44667 United States

Summary

This Technical Provision specifies the requirements for SA-905 steel wire that must be fulfilled to build a pressure vessel according to the ASME standard.

This Technical Provision is valid for ASME SA-905 steel wire, purchased according to: ASME Boiler and Pressure Vessel Code, Section VIII, Division 3, 2017 Edition.

In this document, the following abbreviations are used:

CMTR	Certified Material Test Report
EC	Eddy Current Testing
B&PV	Boiler and Pressure Vessel Code

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

Table of Contents

1 General 4
2 Additional Requirements 4
2.1 Manufacturing 4
2.2 Chemical Composition 4
2.3 Dimensions 4
2.4 Mechanical Properties 4
2.5 Non-Destructive Examination Requirements 4
2.6 Non-Conformity 4
3 Ordering Information 5
4 Manufacturers Responsibility 5
4.1 Confidentiality 5
4.2 Marking 5
4.3 Certification and Reports 6
4.4 Delivery form 7
4.5 Rust Protection 7
4.6 Delivery 7
4.7 Pallets 7
5 Contacts at Avure Technologies, Inc. 7
6 Revisions 8
Appendix A. Additional Requirements on Dimensions and Tolerances 9
A.1 General 9
A.2 Dimensions 9
A.3 Parallelism 9
A.3.1 Wedge shape 9
A.3.2 Crown 10
A.4 Straightness 10
A.5 Area 10
Appendix B. Eddy Current Examination (EC) 11
B.1 Applicable Standards 11
B.2 Written Procedure 11
B.3 Personnel 11
B.4 Time of Examination of Wire 11
B.5 Equipment and Calibration 11
B.6 Referenced standard 11
B.7 Reportable Indications 12
B.8 EC-Report 12

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

References

The wire must comply with the requirements given in the following documents:

- SA-905 ASME Section II
- SA-370 ASME Section II
- E309 ASTM standard
- AT01013 (this document)

Failure to comply with the requirements of these documents must result in non-conformity.

All ASME code referenced documents must be according the same Edition as stated in this document. ASTM referenced documents shall have the latest available version or the same date of issue as written in this document.

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

1 General

This Technical Provision specifies the requirements for SA-905 steel wire that shall be fulfilled to build a pressure vessel according to ASME standard.

2 Additional Requirements

2.1 Manufacturing

The manufacturing process shall be documented. The process must not be changed unless agreed on between the supplier and Avure Technologies, Inc.

If the wire rod is going to be supplied by a new supplier, Avure Technologies, Inc. has to approve the new supplier before the wire rod can be used.

2.2 Chemical Composition

According to SA-905.

2.3 Dimensions

Wire width and thickness is given in Appendix A.

2.4 Mechanical Properties

According to SA-905.

One tensile test sample shall be taken from each end of every spool.

Tensile testing must be done according SA-370.

The used length, L for the elongation shall be according SA-905 and the area used for evaluating yield and tensile strength shall be the wire area A_w, see Appendix A.

2.5 Non-Destructive Examination Requirements

Eddy Current examination shall be performed on 100% of the wire, see Appendix B.

2.6 Non-Conformity

All non-conformities shall be documented in non-conformity reports and sent to Avure Technologies, Inc. (see section 5) for approval or rejection as soon as they occur.

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

3 Ordering Information

The following information shall be provided to the manufacturer:

Quantity	see purchase order
Name of material	SA-905
Class	1
Dimensions	see purchase order (6x1.5 mm)
Specific requirements	ASME B&PV Code, Section VIII, Division 3 ASTM A905 AT01013 (this document)

If any information in this document or in purchase order is in conflict, Avure Technologies, Inc. must be contacted immediately (see section 5).

4 Manufacturers Responsibility

4.1 Confidentiality

With reference to our Non-Disclosure Agreement the drawings used in the production process are not allowed to reference directly to Avure Technologies, Inc.

4.2 Marking

Each spool shall have a unique marking. The marking must be placed on a tag that is properly attached to the spool.

The marking shall include the following data:	*Example on marking:*
ASTM designation, date of issue and Class	*ASTM A905-93 Class 1*
Avure Technologies Purchase Order No.	*301543*
Avure Technologies Specification No., Revision	*AT01013 Rev5*
Wire dimension	*6x1.5*
Charge No	*14562*
Spool ID No	*NAD*
Manufacturer Name, ID-No. or stamp, if any.	*Wire Inc.*

Each of the above-mentioned marking segments shall be accompanied with a “1D” and “GS1” barcode.

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

4.3 Certification and Reports

Certification requirements according to SA-905, shall be documented in an EN10204 3.1 Certified Material Test Report.

The CMTR shall at least include the following:

- References to:
  Avure Technologies, Inc. Purchase Order No.
  Manufacturing process specification, including revision No. or date
  AT01013 (this document), including Revision No.
  Drawing No, Revision No.
  Charge No.
  Spool ID No.
  Manufacturer Name, ID-No. or stamp, if any
- Copies of any non-conformity reports
- Material, ASTM designation and date of issue, Class
- Chemical analyses
- Mechanical and geometrical properties (both requirements and test results).

Tensile Strength	MPa
Yield Strength	MPa
Elongation, L mm (L according to SA-905)	%
Dimensions, Width (at each end of the spool)	mm
Dimensions, Thickness (at each end of the spool)	mm
Parallelism, Wedge shape (at each end of the spool)	µm
Parallelism, Crown (at each end of the spool)	µm
Straightness (fulfillment of criteria i.e. no value needed)	
Wire weight of each spool	kg

- Non-destructive examination
  EC examination, see Appendix B
- A declaration <u>certifying</u> that the wire fulfills all requirements of
  ASME Boiler and Pressure Vessel Code Section VIII, Division 3, 2017 Edition for material ASME SA-905 Class 1.

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

4.4 Delivery form

The wire shall be delivered on spools if nothing else has been agreed on with Avure Technologies, Inc. Type of spool to be agreed on with Avure Technologies, Inc.

The amount of wire on each spool is given in Table 1 below.

Table 1. Wire weight per spool

Wire Dimension		6x1.5 mm
Minimum, average per delivery	[kg]	550
Minimum per spool	[kg]	280
Maximum per spool	[kg]	700

Welding joints are never permitted and only one continuous wire per spool is accepted.

4.5 Rust Protection

The SA-905 steel wire shall have a thin layer of rolling oil for rust protection.

The wire spools shall be prepared for oversea transportation and packed with VCI-bags (Volatile Corrosion Inhibitors). Bags need to be carefully sealed in order to prevent corrosion under transportation and during a 6-months storage under indoor conditions i.e. dry and room temperature. Under no circumstances will corroded wire be accepted and used.

The VCI bags shall be properly sealed and at least one of the tapes used must, with black text on white back ground, state "ASME SA-905 Class 1".

Individual VCI-bags for each spool is preferred but one VCI-bag for two spools is also acceptable.

4.6 Delivery

Before shipping, the corresponding CMTR must be approved by Avure Technologies, Inc. Document to be sent by email in a pdf format (see section 5).

4.7 Pallets

Pallets used for transport of spools must be rigid enough to allow maximum wire weight and to be handled with a forklift truck without the risk of breaking apart. Each pallet shall carry two spools and the spools must be separated at least 100 mm.

The spools must be securely strapped to avoid side way movements.

5 Contacts at Avure Technologies, Inc.

All non-conformities, CMTR's, revised EC-procedures, technical related questions etc. shall be sent to Avure Technologies, Inc. by email.

The email address is qc.mid@jbtc.com. All emails must be sent with a copy to the applicable Purchaser at Avure Technologies, Inc. see the actual purchase order.

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

6 Revisions

Issue Date	Rev	Revised By	Description
May 30th, 2014	0	M. Malmberg	
July 27th, 2015	1	M. Malmberg	
Dec 15th, 2015	2	L. Zhang	
Jan 4th, 2016	3	L. Zhang	
June 6th, 2016	4	M. Malmberg	
Mar 3rd, 2017	5	M. Malmberg	
Dec 18th, 2017	6	M. Malmberg	

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

Appendix A. Additional Requirements on Dimensions and Tolerances

A.1 General

The requirements on dimensions and tolerances of SA-905 steel wire are controlled by two documents:

1. SA-905, Specification for steel wire, pressure vessel winding
2. AT01013 (this document)

A.2 Dimensions

Allowable tolerances for width and thickness are given in SA-905, Table 2 and Table 3 below.

Table 2. Permissible variations in thickness

Wire Thickness [mm]	Permissible Variation [mm]
1.5	

Table 3. Permissible variations in width

Wire Width [mm]	Permissible Variation [mm]
6	

If the wire is within ASME wire width requirements, Avure will accept up to 1% of the total wire length on a spool to be outside the above given (± mm) width criteria.

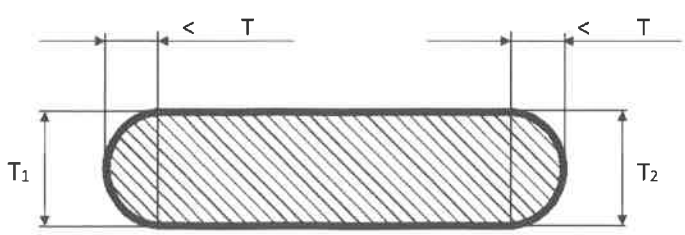
A.3 Parallelism

The pictures below show the requirements regarding parallelism of the wire. The parallelism can be seen as two parts, namely wedge-shape and crown.

The measurement of wedge-shape and crown shall be measured at each end of each wire spool.

A.3.1 Wedge shape

The maximum allowable wedge shape is μm measured at a distance no more than ·T from the edges of the wire. T is the nominal wire thickness.

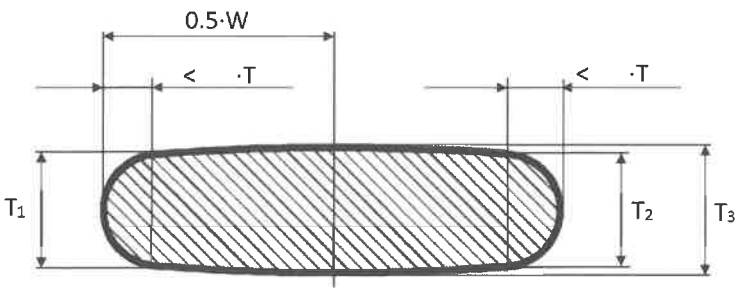


$$ABS(T_1 - T_2) \leq \quad \mu m$$

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

A.3.2 Crown

The maximum allowable crown of the wire shall not be more than μm. The measurement shall be done at not less than 3 points over the cross section. The maximum wire thickness (normally in the center of the wire cross section) minus the average value of T_1 and T_2 is to be considered as defining the crown. T_1 and T_2 shall be measured at a distance no more than ·T from the edges of the wire cross section.

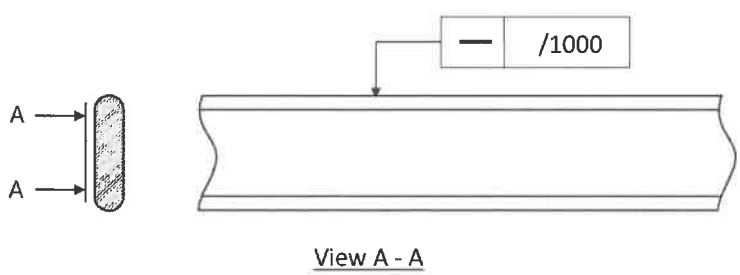


$$T_3 - \frac{T_1+T_2}{2} \leq \quad \mu m$$

W and T are the nominal wire dimensions (Width and Thickness).

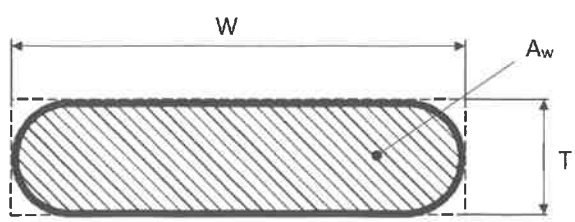
A.4 Straightness

The picture below shows the requirements regarding straightness



A.5 Area

The picture below shows the area that shall be assumed and used at mechanical testing. W and T are the nominal dimensions (Width and Thickness).



$$A_w \geq \quad W \cdot T$$

Appendix B. Eddy Current Examination (EC)

B.1 Applicable Standards

The requirements on the eddy current examination of SA-905 steel wire are given in the document below.

1. ASTM Standard E309

B.2 Written Procedure

All EC examination shall be performed in accordance with detailed written procedures, written by the examining party according E309. When a written procedure is new or has been revised, copies of the revised procedure and the certificate of the writer of the written procedure shall be sent to Avure Technologies, Inc. (see section 5).

B.3 Personnel

All examination and written procedures shall be done by personnel qualified in accordance with SNT-TC-1A, according E309.

A national or international central certification program may be alternatively used, if approved by Avure Technologies, Inc.

B.4 Time of Examination of Wire

The EC examination shall be done at finished condition before the wire is put on to spools.

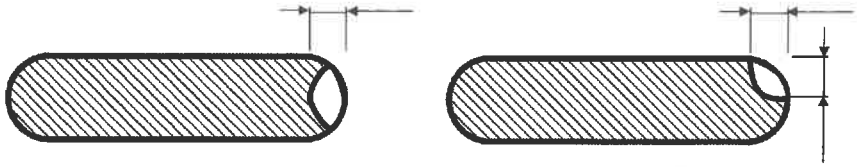
B.5 Equipment and Calibration

Calibration/standardization of the equipment shall be done for every run or at least once every week.

B.6 Referenced standard

For reference standard use a wire of the same dimension and same manufacturing process as the actual wire.

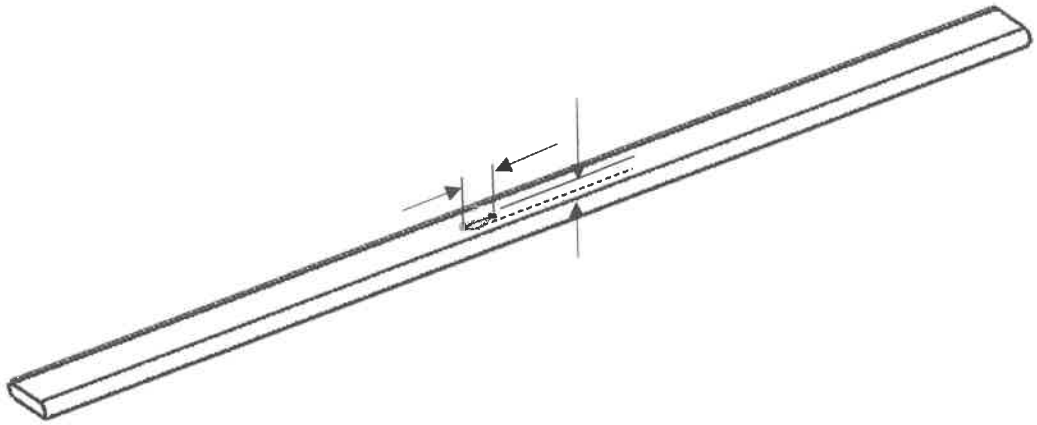
The equipment is to be set and calibrated that surface defects with a depth of ≥ µm (according reference standard A-C) are detected.



Standard A Standard B

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

The reference standard C shows the maximum allowable crack size in wire longitudinal direction.



Standard C

B.7 Reportable Indications

In case of indications, equal to or larger than the reference standard the wire shall be scrapped.

B.8 EC-Report

The EC-report shall be part of the CMTR for the wire, see section 4.3 in this document.

This document contains confidential and proprietary information that cannot be reproduced or divulged, in whole or in part, without written authorization from Avure Technologies Inc.

SPECTION
ERTIFICATE

10204 3.1

Product GARBAFLEX 85

Size nominal 6,000 1,500

Item No 637N01060001500

Certificate No 201841136

Page No 1(1)

Productdescription Cold rolled flatwire with natural edges

ification AT01013 Rev.6 2017-12-18
Order No 587638

ice No 313131
ice Date 2018-10-16
ntity 16.632,0
ber of coils 28

Customer's Item No AT01027 (REV. 0)
Customer's Order No P000012273
Customer AVURE TECHNOLOGIES INC.
Ref: Accounts Payable
2601 South Verity Pkwy, Bldg.13
MIDDLETOWN, OH 45044
USA

ysis		C %	Si %	Mn %	P %	S %	Cr %	Ni %	Mo %	Cu %	V %	W %	Al %	O ppm	Ti ppm	Inclusion Size/Number of > 5-10	> 10-15	> 15 µm
uirements	Min	0,800	0,10	0,30														
	Max	0,950	0,30	0,60	0,025	0,020												
eat No / Melting Date / Weight / Wire rod Source																		
80160 / 2018-06-13 / 16.632,0 [redacted]		0,866	0,20	0,46	0,005	0,004												

The wire fulfills all requirements of ASME B&PV CodeVIII div 3 Ed 2017 for material ASME SA-905 Cl 1(ASTM A905-93Cl-1)

ed by computer.

requirements stipulated are satisfied.

Date
2018-10-16

Quality & Development
Malin Hallberg
Quality Manager

d Garphyttan AB
80 Garphyttan
en

Phone
Int +46 19 29 51 00
Nat 019 - 29 51 00

Telefax
Int +46 19 29 51 01
Nat 019 - 29 51 01

NSPECTION ERTIFICATE

N 10204 3.1

Product GARBAFLEX 85

Size nominal 6,000 1,500

Item No 637N01060001500

Certificate No 201841136

Page No 01(04)

Product description Cold rolled flatwire with natural edges

ecification AT01013 Rev.6 2017-12-18

r Order No 587638

Customer's Item No AT01027 (REV. 0)

Customer's order No P000012273

Customer AVURE TECHNOLOGIES INC.

Heat No	Coil No	Tolerance Size Width mm	Tolerance Size Thickn. mm	Tensile Strength Rm N/mm2	Yield Strength Rp 0,2 N/mm2	Hardness	Reduction of Area Z %	Elongation l= 34 %	Twist Degrees	Wedge shape ⊠m	Decarburization Comp µm	Decarburization Part µm	EC %	Stra-ight mm	Crown ⊠m	Coil weight kg
quirements	Min	XXXXXX	1,470	1900	1650			4,0					100			
	Max	XXXXXX	1,530					XXXX						XXX	XXXX	
80160	RF0	5,994	1,503	1982	1795			5,2		0,0			OK		8,0	
		6,003	1,501	1938	1686			4,7		0,0				1,0	10,0	633,0
80160	RF1	5,994	1,503	1982	1795			5,2		0,0			OK		8,0	
		6,003	1,501	1938	1686			4,7		0,0				1,0	10,0	361,0
80160	RF2	5,994	1,503	1982	1795			5,2		0,0			OK		8,0	
		6,003	1,501	1938	1686			4,7		0,0				1,0	10,0	695,0
80160	RF3	6,012	1,497	1943	1784			5,5		1,0			OK		10,0	
		6,009	1,499	1947	1754			4,4		0,0				1,0	9,0	633,0
80160	RF4	6,012	1,497	1943	1784			5,5		1,0			OK		10,0	
		6,009	1,499	1947	1754			4,4		0,0				1,0	9,0	636,0
80160	RF5	6,012	1,497	1943	1784			5,5		1,0			OK		10,0	
		6,009	1,499	1947	1754			4,4		0,0				1,0	9,0	482,0
80160	RF6	6,007	1,503	1910	1684			4,1		0,0			OK		10,0	
		5,999	1,502	1950	1771			4,1		0,0				1,0	10,0	628,0
80160	RF7	6,007	1,503	1910	1684			4,1		0,0			OK		10,0	
		5,999	1,502	1950	1771			4,1		0,0				1,0	10,0	629,0

anufacturing acc. SWP-C 004 Rev.03.
C-test acc. to PRO.KON.310. Rev.06. No defects detected on the coil.

uki Garphyttan AB
19 80 Garphyttan
eden

Phone
Int +46 19 29 51 00
Nat 019 - 29 51 00

Telefax
Int +46 19 29 51 01
Nat 019 - 29 51 01

Trinidad
Benham Corporation

Denver, Colorado
Corporate Offices

3650 S. Yosemite Street, Suite 300
P.O. Box 378007
Denver, Colorado 80237
(303) 220-1400 FAX (303) 220-1490

January 15, 2021

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
U.S. Department of Commerce
Attn: Bureau of Industry and Security
1401 Constitution Avenue, NW
Washington, DC 20230

VIA REGULATIONS.GOV

RE: Comments on Section 232 Interim Final Rule (Docket No. BIS-2020-0022)

On behalf of Trinidad Benham Corporation ("Trinidad") we write to urge the Department to revoke or modify the General Approved Exclusion ("GAE") provided for packages of boxed aluminum foil in its December 14, 2020 Notice of Interim Final Rule.[1]

Trinidad is a 100-year-old, 100% employee-owned, American company that produces and sells retail packages of household aluminum foil, among other products.[2] Trinidad has more than 900 employee-owners and facilities in 7 states, including 256 employee-owners at its Georgia facility producing aluminum foil products. The GAE in question -- GAE 10.A -- covers the broad category of imports of all boxed aluminum foil of a thickness not exceeding 0.15 mm (but exceeding 0.01 mm) and weighing less than 11.3 kg (25 lbs) entered under ten-digit U.S. Harmonized Tariff Schedule ("HTS") code 7607116010, which went into effect in January 2019. Trinidad has previously objected to, and the Department has denied, Section 232 exclusion requests for boxed household aluminum foil covered by this broad GAE. These requests and objections were made under the old HTS code 7607116000, which applied to boxed aluminum foil prior to a January 2019 modification to the HTS code. Such products compete directly with Trinidad's U.S. production. Unless revoked or modified to remove boxed household foil, the GAE will jeopardize Trinidad's competitive position.

---

[1] *Section 232 Steel and Aluminum Tariff Exclusions Process: Interim Final Rule*, 85 Fed. Reg. 81,060, 81,804 (Dec. 14, 2020) ("*Interim Final Rule*").

[2] For more information about Trinidad and its U.S. business, please see **Exhibit 1**.

The Department should revoke or modify GAE 10.A to keep boxed household foil subject to the Section 232 tariffs for the following reasons:

1. **The Department has already recognized that exclusions for boxed household foil are inappropriate:** The Department previously has denied multiple exclusion requests for boxed household foil for importers Berk Enterprises Inc., The Ocala Group, LLC, and Fasho International, LLC. In denying each of these requests, the Department investigated and found that boxed household foil is "produced in the United States in a sufficient and reasonably available amount and of a satisfactory quality."[3] The denied exclusion requests for boxed household foil, to which Trinidad objected, were entered prior to the change in HTS code, and were classified under the old HTS 7607116000. Despite the change in HTS code, nothing has changed since the Department made these findings. Trinidad and other U.S. producers remain capable of supplying the U.S. market with boxed household foil in sufficient quantities and quality. As the Department itself recognized in denying these prior requests, boxed household foil is, indeed, available from U.S. producers and is, therefore, not eligible for exclusion under the Department's criteria. If these imports are ineligible for individual requests, it is equally inappropriate for them to be subject to a GAE.

2. **The Department previously received multiple objections for prior exclusion requests covering boxed household foil.** The Department's December 14 Interim Final Rule states that it was granting GAEs where it "has determined that no objections will be received."[4] However, Trinidad and other U.S. producers objected to the prior exclusion requests for boxed household foil under the old HTS 7607116000, which the Department rejected, as discussed above.[5] In its objections, Trinidad explained that it was fully capable of meeting U.S. consumers' needs for boxed household foil products. Trinidad also explained that these importers do not engage in any manufacturing or production in the United States, unlike Trinidad's 256 employee-owners who produce boxed household aluminum foil at its facility in LaGrange, Georgia. Moreover, Trinidad noted that the request would circumvent the existing antidumping and countervailing duty orders on aluminum foil from China. Finally, Trinidad explained that these requests, if granted, would threaten U.S. manufacturing jobs.

   These market conditions have not changed. Indeed, if Berk, Ocala, Fasho, or any other importer, were to file additional exclusion requests, Trinidad confirms that it would object to those requests on the same grounds as previously stated.

---

[3] Trinidad has included these exclusion requests and the accompanying Department decision memoranda denying the requests, in **Exhibit 2**.

[4] *Interim Final Rule*, 85 Fed. Reg. at 81,062.

[5] Trinidad has included for reference its objections to certain boxed household foil requests entered under the old HTS code 7607116000 in **Exhibit 3**.

Therefore, Trinidad respectfully submits that the Department's premise for granting this broad GAE (i.e., that no party would object to future requests), is incorrect, and not a valid basis for applying GAE 10.A to cover boxed household foil.

3. **The small volume of specialized products for which the Department has granted exclusions under HTS 7607116010 are not appropriate grounds to exclude the broad category of products in that HTS code.** As discussed above, it appears that the Department's decision to grant GAE10.A for HTS 7607116010 may have been caused by the fact that the prior HTS of 7606116000 was revised effective January 2019 to create separate statistical subheadings for "jumbo rolls" of aluminum foil weighing over 11.3 kg (HTS 7607116090) and smaller, boxed aluminum foil weighing under 11.3 kg.[6] Despite the change in HTS code, nothing in the U.S. market for boxed household foil products has changed that would warrant the Department reversing its prior position that imports of boxed household foil are not eligible for exclusion from Section 232 measures.

   Since the tariff schedule was revised to create HTS 7607116010, the Department has considered, and granted, a small number of exclusions for specialized cosmetology products used in hair coloring applications submitted by Russell A. Farrow Inc. on behalf of cosmetology products supplier Framar International. Trinidad did not object to these requests because Trinidad does not make the specialized cosmetology products covered by these requests.[7] As reflected in **Exhibit 7**, these specialized cosmetology products have virtually nothing in common with the products that Trinidad produces at its LaGrange facility. Put simply, the fact that Trinidad did not object to a small volume exclusion for highly specialized products is not grounds for the Department to provide a broad GAE for all small rolls of foil products.

   The only other exclusion requests granted for HTS 7606116010 were requests by All Foils, Inc.[8] These requests appear to have been intended for jumbo rolls of foil that would be further processed by All Foils to produce food service lamination foil products. It appears that the All Foils requests used the incorrect HTS code. Specifically, if taken at face value, the request appears to have been for a product that is a boxed aluminum foil that is 24 inches wide, with a 6 inch core, which weighs less than 25 lbs (11.3 kg). To Trinidad's knowledge, this product does not exist. The inside diameter described in the exclusion request is

---

[6] *Compare* Harmonized Tariff Schedule of the United States (2019 Basic Edition) at Subheading 760711 (containing statistical subheading 7607116010 applicable to box household foil weighing under 11.3 kg) *with* Harmonized Tariff Schedule of the United States (2018 Rev. 14) at Subheading 760711 (containing no separate breakouts for household foil).

[7] Trinidad has included copies of the submitted by its customs broker Russel A. Farrow Inc. on behalf of Framar International in **Exhibit 4.**

[8] Trinidad has included copies of All Foils' requests at **Exhibit 5**.

for a 6-inch core, which is far too large to be boxed foil. Rather, this inner diameter is consistent with the cores of jumbo rolls classifiable under HTS 7607116090. The exclusion request itself stated that All Foils "is a convertor of aluminum foil" that purchases "jumbo coils from mills all over the world and slit, sheet, coat and anneal."[9] We further note that All Foils submitted subsequent requests for what appears to be the same products under the correct HTS code of 7607116090. The Department's decision to grant this exclusion request -- which received no objections -- provides no basis for excluding all imports properly classified under HTS 7607116010.

Finally, the total volume of 830,000 kg for these specialized product exclusions over the course of multiple years is truly small (roughly 2%) when compared to the total volume of 39,583,469 kg for the year of 2019 imported under HTS 7607116010.[10] The lack of objections for these specialized products simply does not merit excluding the broad range of other boxed foil products, including boxed household aluminum foil, which, as discussed above, the Department already has found to be ineligible for company-specific exclusions.

4. **Including boxed household foil in GAE 10.A would harm American jobs.** Trinidad supports the Department's mission to protect American workers and business from unfair trade practices. At the heart of the Section 232 actions and other trade restrictions imposed on aluminum is an effort to protect American jobs and manufacturing from allegedly unfairly traded imports. Excluding finished downstream products like boxed household aluminum foil through this broad GAE -- while continuing to impose duties on the jumbo rolls that Trinidad must import to supply its manufacturing facility -- would be counter to the Administration's goal of protecting American jobs and manufacturing. The exclusion will directly harm Trinidad, a U.S. manufacturer of directly competing aluminum foil products. Retaining this broad GAE could displace Trinidad's production and could result in significant loss of U.S. jobs and paradoxically could drive such jobs to other countries, such as China.

   While Trinidad purchases foil from U.S. rollers, it must also rely on imports of household aluminum foil to provide raw material for its Georgia production facility. As such, Trinidad imports jumbo coils of household aluminum foil to manufacture retail packages of household aluminum foil. The AD/CVD orders (containing triple-digit duties) imposed on Chinese aluminum foil in 2017 has been very harmful to Trinidad.[11] The AD/CVD orders forced Trinidad to source

---

[9] *See* All Foils requests at field 1.d, provided in **Exhibit 5.**

[10] The total quantity for all exclusions was calculated based on the amounts listed on the BIS decisions memoranda for the All Foils and Russell A. Farrow (on behalf of Framar) requests provided at **Exhibits 4 and 5**, as compared to the 2019 import statistics from the U.S. International Trade Commission's Dataweb service at **Exhibit 6**.

[11] The Department currently is conducting AD/CVD investigations on imports of aluminum foil from Armenia, Brazil, Oman, Russia, and Turkey, which further jeopardizes Trinidad's ability to secure

outside of China for its household foil supply. However, small rolls of foil from China and other aluminum foil products that compete directly with Trinidad's production were specifically excluded from the AD/CVD cases. The unintended, but widely anticipated, consequence of that exclusion is that Chinese foil producers have moved up the value chain to produce the same products that Trinidad makes in the United States. Granting the broad GAE contemplated in the Interim Final Rule would further exacerbate the situation created by the AD/CVD orders, by imposing tariffs on Trinidad's inputs, but no tariffs on imports of foil products that directly compete with Trinidad's U.S. production. Indeed, imports of boxed household aluminum foil from China have increased substantially. According to official import statistics, the total quantity of imports of boxed aluminum foil from China in 2019 was 9,783,914 kg. In 2020, that total was eclipsed by October, with import statistics reflecting 9,877,208 kg of imports as of October 2020 (the most recent month for which import statistics are available).[12] Including these products in GAE 10.A would only exacerbate these trends.

In light of these considerations, Trinidad urges the Department to revoke the broad GAE covering all products entered under HTS 7607116010. Alternatively, the Department should narrow the GAE to include only the specialized cosmetology products discussed above.[13]

Thank you for your consideration of this matter. Please do not hesitate to contact us should you have any questions.

/s/ Jeff Bornmann
Jeff Bornmann
Chief Operating Officer
Trinidad Benham Corporation

---

adequate supply of necessary raw materials. The scope of the ongoing investigations is substantively identical to the China AD/CVD orders.

[12] These statistics are compiled from the U.S. International Trade Commission's Dataweb service, and provided as **Exhibit 8** to this submission**.**

[13] *Interim Final Rule*, 85 Fed. Reg. at 81,083 (stating that Commerce may grant GAEs for products "more narrowly defined" than the 10-digit HTS level).

List of Exhibits

Exhibit No.	Description
1	About Trinidad Benham Corporation
2	Denied Exclusion Requests for Boxed Household Foil
3	Trinidad Objections to Boxed Household Foil Requests
4	Russell A. Farrow/Framar International Hair Foil Exclusion Requests
5	All Foil Food Service Lamination Exclusion Requests
6	USITC Dataweb Import Statistics for 7607116010 (worldwide imports 2019)
7	Difference Between Hair Foil and Trinidad's Household Foil Products
8	USITC Dataweb Import Statistics for 7607116010 (China imports 2019 and Jan.-Oct 2020)

Exhibit 1

TRINIDAD BENHAM CORPORATION

ABOUT

Trinidad is a U.S. company that produces and sells aluminum foil containers and retail packages of household aluminum foil. Trinidad also packages, trades, and distributes American grown agricultural products. Founded in Colorado in 1917, Trinidad became an employee stock ownership plan (ESOP) company in 1984, achieving 100 percent employee ownership by 2006. Today, Trinidad has 930 employee-owners across the country. More than 250 of its employees work at its LaGrange, Georgia facility, producing aluminum foil containers and retail packages of household aluminum foil. The company's household foil and container products account for approximately 50 percent of its business.

Trinidad is the largest provider of private-label or store-branded aluminum products in the United States. You will never see Trinidad's name on a box, but its quality products account for approximately 40 percent of the foil American consumers purchase in their local grocery stores or warehouse clubs. Seventy percent of all store-branded purchases of aluminum foil and a large portion of all aluminum containers sold in the U.S. are products made by Trinidad's employee-owners in LaGrange, Georgia.

TRINIDAD'S FOOTPRINT

- *930 employee-owners across the U.S.*
- *Headquartered in Denver, CO, Trinidad has facilities in seven other states (CA, GA, ID, NE, ND, TN, TX).*
- *Originally purchased in 2000, Trinidad has since expanded its state-of-the-art LaGrange, GA aluminum products facility investing millions of dollars.*

CURRENT MARKET SITUATION/IMPACT TO TRINIDAD

The Department's General Approved Exclusion (GAE) 10.A listed in its December 14 Federal Register notice would apply to imports of the same finished product that Trinidad manufactures in Georgia. Importers of boxed household foil have previously applied for exclusions for these products. Trinidad objected to those prior exclusion requests, and the Department denied them.

Trinidad's employee-owners at the LaGrange facility produce Trinidad's packaged household foil from large "jumbo coils" sourced from third parties. While Trinidad purchases jumbo coils of household foil from U.S. rollers, it must also rely on imports to provide raw material for its Georgia production facility. These jumbo coils continue to be subject to Section 232 duties and are also subject to very high AD/CVD duties. Excluding finished downstream products like boxed household aluminum foil through a GAE while continuing to impose duties on the jumbo coils that Trinidad must import to supply its manufacturing facility would be counter to the Administration's goal of protecting American jobs and manufacturing. The exclusion will directly harm Trinidad, a U.S. manufacturer of directly competing aluminum foil products. Retaining this broad GAE could displace Trinidad's production and could result in significant loss of U.S. jobs and paradoxically could drive such jobs to other countries, such as China.

Exhibit 2

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports

Exclusion Request Requirements: Only individuals or organizations operating in the United States that use aluminum products (e.g. slab, billets, ingots, extrusions, rod and bar, sheet and plate, foil, pipe and tube, castings and forgings, etc.) in business activities (e.g., construction, manufacturing, supplying aluminum product to users) in the United States may submit an Exclusion Request. For an Exclusion Request to be considered, the Exclusion Requester must provide factual information on 1) the single type of aluminum product they require using a 10-digit HTSUS code, including its specific dimension; 2) the quantity of product required (stated in kilograms) under a one-year exclusion; 3) a full description of the properties of the aluminum product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data. Exclusion Requests must be submitted using this Excel-based document. Paper submissions will not be accepted.

A separate Exclusion Request must be submitted on each distinct type and dimension of aluminum product to be imported. All applicable question blocks in the form must be completed for the Exclusion Request to be accepted. Exclusion Requests will be denied if the applicant: 1) does not sufficiently address the specified reporting requirements; 2) cites the improper HTSUS code, or 3) provides incorrect product descriptions.

Organizations electing to attach supporting documents must provide these documents in PDF format and it must not exceed 25 pages. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.

Organizations should upload their completed Exclusion Request pertaining to an aluminum product to www.regulations.gov under Docket Number BIS-2018-0002. An Exclusion Request may be submitted at any time. Processing of an Exclusion Request will take approximately 90 business days. Notification of granted Exclusions will be posted on www.regulations.gov. For questions related directly to completing this form, contact BIS via email (Aluminum232@bis.doc.gov) or telephone (202-482-4757).

1.a	Identify the class of Aluminum product for which the Exclusion is sought:	Foil	10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single aluminum product covered by this request: (See https://www.usitc.gov/publications/docs/tata/hts/bychapter/0900c72_0.pdf)	7607116000

1.b

Requesting Organization Information		Importer of Record for Organization Requesting an Exclusion	
Full Organization Legal Name	Fasho International, LLC	Full Organization Legal Name	Fasho International, LLC
Street Address	1981 Marcus Ave. Ste 221	Street Address	1981 Marcus Ave. Ste 221
City	New Hyde Park	City	New Hyde Park
State	New York	State	New York
Zip Code	11042	Zip Code	11042
Headquarters Country	United States	Headquarters Country	United States
Point of Contact Name	Mark Muller	Point of Contact - Representative Name	Mark Muller
Phone Number	516-233-2750	Phone Number	516-233-2750
E-mail Address	mark@theocalagroup.com	E-mail Address	mark@theocalagroup.com
Web Site Address	www.theocalagroup.com	Web Site Address	www.theocalagroup.com
Parent Company of Requesting Organization		**Requester's Authorized Representative/Agent (If applicable)**	
Full Organization Legal Name	Fasho International, LLC	Requester Point of Contact Name	
Street Address	1981 Marcus Ave. Ste 221	Point-of-Contact Organization	
City	New Hyde Park	Country Location	
State/Province	New York	Phone Number	
Zip Code/Postal Code	11042	E-mail Address	
Headquarters Country	United States	Web Site Address	
Web Site Address	www.theocalagroup.com	Other Information	

1.c	Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as an: Aluminum Manufacturer; Aluminum Distributor; Aluminum Exporter or, Aluminum Importer? If "Yes" identify the activity.	Aluminum Importer	If "Yes" - Identify the organization	THE OCALA GROUP, LLC	Identify the country where the organization is headquartered	UNITED STATES
	Comments:					

1.d	Identify the primary type of aluminum activity of the Exclusion Requester:	Other (Explain in Comment Box)	Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	2,650,000 kg
	Comments:	Exclusion requester is an importer of product manufactured abroad. Upon entry the product is delivered directly to the requester's customers who sells and distributes the product to end users.		

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

2.a	Average annual consumption for years 2015-2017 of the aluminum product that is subject of this Exclusion Request - Kilograms	441,000 kg
2.b	Explain why your organization requires an Exclusion using 1) the drop-down box and 2) by providing written comments in the space provided below.	Insufficient U.S. availability
	Comments:	Similar product, which is made from US produced Aluminum foil is not available in sufficient quantities. US companies are converting imported foil into consumer packaging, but made in USA aluminum for foodservice use not sufficient. US produced foil is not being used for this application, instead US Foil is used by the auto insdusty, HVAC insulation, flexible packaging, pharmaceuticals, and by electricians.
2.c	Identify the percentage of total aluminum product covered under this Exclusion Request not available from aluminum manufacturers in the United States:	100%
2.d	Estimate the number of days required to take delivery of the aluminum product covered by this Exclusion Request, from the time the purchase order is issued by your organization:	90
2.e	Estimate the number of days required to manufacture the aluminum product covered by this Exclusion Request, from the time a binding purchase order is executed:	45
2.f.	Estimate the number of days required to ship the aluminum product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock:	30
2.g	Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the aluminum product subject to this Exclusion Request:	50

2.h Identify the U.S. Destination Port(s) of Entry through which the aluminum product subject to this Exclusion Request would be transported:

Port 1	Port 2	Port 3	Port 4	Port 5	Port 6	Port 7
New York	Los Angeles					

2.i	Is the organization making this Exclusion Request doing so on behalf of a non-U.S. aluminum producer that does not manufacture aluminum products in the United States?			No
	If "Yes" identify the non-U.S. aluminum producer		Identify the country where the organization is headquartered	
	Comments:			

2.j **Exclusion Request Product Information**

For this single Exclusion Request, provide a full, complete description of the product in the space provided below. * See explanation below.
The product for which an Exclusion is being requested is defined as follows:

Aluminum Foil (Whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm: Not backed: Rolled but not further worked: of a thickness exceeding 0.01mm. Aluminum ingots cast from molten billet, which is then rolled into sheet using the continuous casting method. The sheet is slit to widths ranging from 300mm to 457mm and rolled back into jumbo rolls for shipping. The jumbo rolls of slit aluminum foil are then converted by rerolling into shorter rolls ranging from 30m to 450m. The smaller rolls are packaged for end use into boxes which contain an affixed steel cutting device on the edge, allowing the end user to cut the foil into useful sizes for foodservice applications.

* With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., “hot-rolled,” “seamless pipe,” “suitable for use in boilers,” “longitudinally submerged arc welded,” etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., “cross-sectional diameter of 5.50 mm”) or measurements (e.g., “yield strength of 300 MPa,” “carbon content 0.08%,” etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., “cross-sectional diameter falling within the range 5.35 mm and 5.65 mm,” “yield strength greater than or equal to 300 MPa,” “carbon content less than or equal to 0.15%, by weight,” etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.

Comments:

2.k Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation		Organization	Designation		Organization	Designation
1	ASTM	B209	3			5		
2			4			6		
Other (specify)			Other (specify)			Other (specify)		

2.l **General Aluminum Product Description**

Identify the classification and properties of the aluminum product covered under this Exclusion Request. Other classification or properties may be described in the Comment box below. (Select all that apply)

Slab	Blooms	Billets	Ingots	Fittings	Flat	Long	Beams	Semi-Finished	Pipe	Tube	Stainless	Hot Rolled	Cold Rolled
No	No	No	No	No	No	No	No	No	No	No	No	No	Yes

Annealed	Plated	Electro-Plated	Galvanized	Electro-Galvanized	Zinc Plated	Aluminum Plated	Lead Plated	Tin Plated	Painted	Varnished	Plasticized	Pickled	Other (Use Comment Box)
Yes	No	No	No	No	No	No	No	No	No	No	No	No	No

Comment:

Continued on Next Page

3.a State the chemical composition of the specific aluminum product for which your organization seeks an Exclusion.

Chemical Composition

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Magnesium	Manganese	Nickel
Minimum %	98.53%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Maximum %	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%	0.79%	0.00%	0.01%	0.01%	0.01%
	Niobium	Nitrogen	Phosphorous	Selenium	Silicon	Sulfur	Tin	Titanium	Tungsten	Vanadium	Zinc	[Other - List Below]	[Other - List Below]
Minimum %	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Maximum %	0.00%	0.00%	0.00%	0.00%	0.60%	0.00%	0.02%	0.00%	0.00%	0.00%	0.01%	0.01%	0.00%

Comments:

3.b Provide information on the single aluminum product that is the subject of this Exclusion Request: 1) dimensional information for the single aluminum product and a single size - not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.) A separate Exclusion Request must be submitted for each aluminum product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature.

	Aluminum Product Specifications (Millimeters)						Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other (specify type in comment box)
									Brinnell	Temperature (°C)			
Minimum	0 mm	N/A	N/A	120 mm	304 mm	N/A	176 MPa	140 Mpa	40	Joules			
Maximum	0 mm	N/A	N/A	523 mm	457 mm	N/A	178 MPa	145 Mpa	46	% Shear			

Comments:

3.c Provide the following information on the single aluminum product that is the subject of this Exclusion Request: 1) performance data for ductility and surface finish; and 2) metal coating process, material type, weight, and thickness.

	Global Ductility		Local Ductility (If Applicable)			Surface Finish (If Applicable)	Coating Type and Composition (If Applicable)				
	Elongation %	Reduction -in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness [millimeter]		Profilometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys)	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]
Minimum	0%										
Maximum	7%										

Select any additional processing methods used:					Other (specify)	

Comments:

Continued on Next Page

4.a	List the Commercial Name(s) of the single aluminum product that is the subject of this Exclusion Request.		
	Foodservice Aluminum Foil Roll	Foodservice Foil	Food Packaging Aluminum Foil
	Aluminum Food Wrap	Household Aluminum Foil Roll	
	Comments:		

4.b	Identify the Aluminum Association code for the aluminum product that is the subject of this Exclusion Request:	8011	State below: 1) the application for the aluminum product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar aluminum products manufactured in the United States, if available, are not suitable.
	1) For use in the Foodservice industry. 2) All products are packaged in private branded labels, made exclusively for the end users. US manufacturers do not produce the product in this label.		

4.c	If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single aluminum product:
	N/A

4.d

Identify the source countries for the single aluminum product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the aluminum product. If this aluminum product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin.

NOTE: Aluminum products encompassing more than one 10-digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)
1	China	China	190,000 kg	Able Packaging Jiangsu Co., Ltd.	
2					
3					
4					
5					

Product Availability Information

4.e	Does the requester possess knowledge of any domestic U.S. parties that currently manufacture the described aluminum product in the United States?	No
	Comment:	No. Aluminum foil packaged and intended for the same application as mentioned in above section 4.b is not produced by American manufacturers. To the best of my knowledge, the U.S. companies that supply aluminum foil for this same application, are merely converting the product which they are purchasing from foreign manufacturers.

4.f	Does the requester possess knowledge of any parties that currently manufacture the described aluminum product a country exempted from this tariff? If yes, identify the country or countries below.	Yes
	Comment:	Yes. Canada.

4.g	Is the requester aware of any manufacturers capable of producing a substitute for the aluminum product in the United States? If "Yes" provide supporting information (name and address) in the space below?	Yes
	Comment:	Yes. Pactiv, LLC. 1900 W. Field Court, Lake Forest, IL 60045

4.h

Has the Exclusion requester attempted to qualify any aluminum manufacturer in the United States as a supplier of the aluminum product for that is the subject of this Exclusion Request in the past two years? If "Yes" provide supporting information in the space below. Supporting documents must be submitted as a consolidated PDF file and may not exceed 25 pages. **No**

1	No	5	
2		6	
3		7	
4		8	
Comment:			

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

5.a	Has the Exclusion Requester attempted to purchase the described aluminum product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If "Yes" identify the manufacturers, addresses, and your points of contact at the U.S. aluminum manufacturing organizations in the space below.	No
	Comment: No	
5.b	Has the Exclusion Requester had supply contracts, or have current contracts, with aluminum producers that manufacture in the United States the aluminum product identified in the Exclusion Request? If "Yes" identify the U.S. aluminum manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the space below.	No
	No	
5.c	Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent aluminum product that would meet qualification requirements? If "Yes" identify in the space below the testing standards/procedures employed to make that determination.	No
	Comment: No	
5.d	In the last two years, has the requester purchased a substitute aluminum product manufactured in the United States in place of the aluminum product described in the Exclusion Request? If "Yes" provide supporting information in the space below.	No
	Comment: No	
5.e	Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the aluminum product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.	
	Commercial invoices submitted will include a product description clearly defining the intended use of the product. "Foodservice and Household Aluminum Foil Rolls, not exceeding thickness of 0.03mm and each roll weighing less than 9kg. Importation of this product is not a threat to National Security. Supply, solely by US manufacturers, is not readily available in the quanitities required for consumption.	

Submission of Exclusion Requests: All Exclusion Requests must be fully completed and submitted to www.regulations.gov under Docket Number BIS-2018-0002 using this Microsoft Excel electronic form. All information submitted will be subject to public disclosure, regardless of any statements by the requester that some information should be treated otherwise. Any further information required as a part of this Exclusion Request will be determined and requested solely by the U.S. Department of Commerce.

Submission of Supporting Documents (Attachments): Supporting attachments should be submitted to www.regulations.gov as PDF documents and must be posted to www.regulations.gov under Docket Number BIS-2018-0006. Total supporting submissions may not exceed 25 pages.

Other Comments:	

I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission:	No	

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete.

CERTIFICATION

The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. **It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.** [18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name:	The Ocala Group, LLC.		
Name of Authorizing Official:	Mark Muller	Title of Authorizing Official	Vice President
Phone Number: 516-233-8183	Email of Authorizing Offical:	mark@theocalagroup.com	
If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.			
Point-of-Contact Name:	Mark Muller	Title	Vice President
E-Mail Address:	mark@theocalagroup.com	Phone Number	516-233-8183

Paperwork Reduction Act Notice

Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0139. Commerce may not collect this information, and you are not required to respond; unless this OMB number is displayed.

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: BIS-2018-0002-0166

Summary:

- Requester: Fasho International, LLC
- Product description: Aluminum Foil (Whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm: Not backed: Rolled but not further worked: of a thickness exceeding 0.01mm. Aluminum ingots cast from molten billet, which is then rolled into sheet using the continuous casting method. The sheet is slit to widths ranging from 300mm to 457mm and rolled back into jumbo rolls for shipping. The jumbo rolls of slit aluminum foil are then converted by rerolling into shorter rolls ranging from 30m to 450m. The smaller rolls are packaged for end use into boxes which contain an affixed steel cutting device on the edge, allowing the end user to cut the foil into useful sizes for foodservice applications.
- HTSUS: 7607116000

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or 2) based upon specific national security considerations.

BIS finds that the above-captioned request for relief ("exclusion request") has not met the requirements for consideration as a "complete submission" under paragraph (h) of Supplement No. 1 to 15 CFR Part 705. Customs and Border Protection (CBP) has advised BIS that the product description is inconsistent with the claimed classification under the Harmonized Tariff Schedule of the United States, providing the following guidance: The thickness listed in your request is inconsistent with the tariff provision claimed. See Chapter 76 of the Harmonized Tariff Schedule of the United States (HTSUS) at https://hts.usitc.gov/current For questions or assistance on which Harmonized Tariff Schedule (HTS) provisions apply to your goods, you may request a ruling pursuant to Part 177, Code of Federal Regulations by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York, NY 10014, attn: Binding Ruling Request or you may

submit your request electronically at https://erulings.cbp.gov/home. You may also contact section232assistance@cbp.dhs.gov for questions about the classification of your goods under the Harmonized Tariff Schedule of the United States.

Additionally, 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 aluminum 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.

BIS accepts ITA's recommended findings as to the domestic availability of the product, and finds that no overriding national security concerns require that this exclusion request be granted notwithstanding the domestic availability. As noted above, CBP has also advised BIS that the product description is inconsistent with the claimed classification under the Harmonized Tariff Schedule of the United States.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be denied. This denial is without prejudice and the requester may file a new exclusion request for this product if, for example, new or different facts or circumstances exist which meet the criteria for approving an exclusion request.

For questions or assistance on which Harmonized Tariff Schedule (HTS) provisions apply to your goods, you may request a ruling pursuant to Part 177, Code of Federal Regulations by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York, NY 10014, attn: Binding Ruling Request or you may submit your request electronically at https://erulings.cbp.gov/home. You may also contact section232assistance@cbp.dhs.gov for questions about the classification of your goods under the Harmonized Tariff Schedule of the United States.

DECISION ON EXCLUSION REQUEST # BIS-2018-0002-0166

X I approve denying this exclusion request.

_____ I do not approve denying this exclusion request.

_____ I would like to discuss.

Matthew S. Borman

Deputy Assistant Secretary of Export Administration

April 19, 2019

Date

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports

Exclusion Request Requirements: Only individuals or organizations operating in the United States that use aluminum products (e.g. slab, billets, ingots, extrusions, rod and bar, sheet and plate, foil, pipe and tube, castings and forgings, etc.) in business activities (e.g., construction, manufacturing, supplying aluminum product to users) in the United States may submit an Exclusion Request. For an Exclusion Request to be considered, the Exclusion Requester must provide factual information on 1) the single type of aluminum product they require using a 10-digit HTSUS code, including its specific dimension; 2) the quantity of product required (stated in kilograms) under a one-year exclusion; 3) a full description of the properties of the aluminum product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data. Exclusion Requests must be submitted using this Excel-based document. Paper submissions will not be accepted.

A separate Exclusion Request must be submitted on each distinct type and dimension of aluminum product to be imported. All applicable question blocks in the form must be completed for the Exclusion Request to be accepted. Exclusion Requests will be denied if the applicant: 1) does not sufficiently address the specified reporting requirements; 2) cites the improper HTSUS code, or 3) provides incorrect product descriptions.

Organizations electing to attach supporting documents must provide these documents in PDF format and it must not exceed 25 pages. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.

Organizations should upload their completed Exclusion Request pertaining to an aluminum product to www.regulations.gov under Docket Number BIS-2018-0002. An Exclusion Request may be submitted at any time. Processing of an Exclusion Request will take approximately 90 business days. Notification of granted Exclusions will be posted on www.regulations.gov. For questions related directly to completing this form, contact BIS via email (Aluminum232@bis.doc.gov) or telephone (202-482-4757).

1.a	Identify the class of Aluminum product for which the Exclusion is sought:	Foil	10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single aluminum product covered by this request: (See https://www.usitc.gov/publications/docs/tata/hts/bychapter/0900c72_0.pdf)	7607116000

1.b

Requesting Organization Information		Importer of Record for Organization Requesting an Exclusion	
Full Organization Legal Name	The Ocala Group, LLC.	Full Organization Legal Name	The Ocala Group, LLC.
Street Address	1981 Marcus Ave. Ste 221	Street Address	1981 Marcus Ave. Ste 221
City	New Hyde Park	City	New Hyde Park
State	New York	State	New York
Zip Code	11042	Zip Code	11042
Headquarters Country	United States	Headquarters Country	United States
Point of Contact Name	Mark Muller	Point of Contact - Representative Name	Mark Muller
Phone Number	516-233-2750	Phone Number	516-233-2750
E-mail Address	mark@theocalagroup.com	E-mail Address	mark@theocalagroup.com
Web Site Address	www.theocalagroup.com	Web Site Address	www.theocalagroup.com
Parent Company of Requesting Organization		**Requester's Authorized Representative/Agent (If applicable)**	
Full Organization Legal Name	The Ocala Group, LLC.	Requester Point of Contact Name	
Street Address	1981 Marcus Ave. Ste 221	Point-of-Contact Organization	
City	New Hyde Park	Country Location	
State/Province	New York	Phone Number	
Zip Code/Postal Code	11042	E-mail Address	
Headquarters Country	United States	Web Site Address	
Web Site Address	www.theocalagroup.com	Other Information	

1.c	Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as an: Aluminum Manufacturer; Aluminum Distributor; Aluminum Exporter or, Aluminum Importer? If "Yes" identify the activity.	Aluminum Importer	If "Yes" - Identify the organization	THE OCALA GROUP, LLC	Identify the country where the organization is headquartered	UNITED STATES
	Comments:					

1.d	Identify the primary type of aluminum activity of the Exclusion Requester:	Other (Explain in Comment Box)	Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	700,000 kg
	Comments:	Exclusion requester is an importer of product manufactured abroad. Upon entry the product is delivered directly to the requester's customers who sells and distributes the product to end users.		

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

2.a	Average annual consumption for years 2015-2017 of the aluminum product that is subject of this Exclusion Request - Kilograms	696,201 kg
2.b	Explain why your organization requires an Exclusion using 1) the drop-down box and 2) by providing written comments in the space provided below.	Insufficient U.S. availability
	Comments:	Similar product, which is made from US produced Aluminum foil is not available in sufficient quantities. US companies are converting imported foil into consumer packaging, but made in USA aluminum for foodservice use not sufficient. US produced foil is not being used for this application, instead US Foil is used by the auto insdusty, HVAC insulation, flexible packaging, pharmaceuticals, and by electricians.
2.c	Identify the percentage of total aluminum product covered under this Exclusion Request not available from aluminum manufacturers in the United States:	100%
2.d	Estimate the number of days required to take delivery of the aluminum product covered by this Exclusion Request, from the time the purchase order is issued by your organization:	90
2.e	Estimate the number of days required to manufacture the aluminum product covered by this Exclusion Request, from the time a binding purchase order is executed:	45
2.f.	Estimate the number of days required to ship the aluminum product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock:	30
2.g	Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the aluminum product subject to this Exclusion Request:	145

2.h Identify the U.S. Destination Port(s) of Entry through which the aluminum product subject to this Exclusion Request would be transported:

Port 1	Port 2	Port 3	Port 4	Port 5	Port 6	Port 7
New York	Boston	Los Angeles	Savannah			

2.i	Is the organization making this Exclusion Request doing so on behalf of a non-U.S. aluminum producer that does not manufacture aluminum products in the United States?			No
	If "Yes" identify the non-U.S. aluminum producer		Identify the country where the organization is headquartered	
	Comments:			

Exclusion Request Product Information

For this single Exclusion Request, provide a full, complete description of the product in the space provided below. * See explanation below.
The product for which an Exclusion is being requested is defined as follows:

2.j

Aluminum Foil (Whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm: Not backed: Rolled but not further worked: of a thickness exceeding 0.01mm. Aluminum ingots cast from molten billet, which is then rolled into sheet using the continuous casting method. The sheet is slit to widths ranging from 300mm to 457mm and rolled back into jumbo rolls for shipping. The jumbo rolls of slit aluminum foil are then converted by rerolling into shorter rolls ranging from 30m to 450m. The smaller rolls are packaged for end use into boxes which contain an affixed steel cutting device on the edge, allowing the end user to cut the foil into useful sizes for foodservice applications.

* With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., “hot-rolled,” “seamless pipe,” “suitable for use in boilers,” “longitudinally submerged arc welded,” etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., “cross-sectional diameter of 5.50 mm”) or measurements (e.g., “yield strength of 300 MPa,” “carbon content 0.08%,” etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., “cross-sectional diameter falling within the range 5.35 mm and 5.65 mm,” “yield strength greater than or equal to 300 MPa,” “carbon content less than or equal to 0.15%, by weight,” etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.

Comments:

2.k Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation		Organization	Designation		Organization	Designation
1	ASTM	B209	3			5		
2			4			6		
Other (specify)			Other (specify)			Other (specify)		

General Aluminum Product Description

Identify the classification and properties of the aluminum product covered under this Exclusion Request. Other classification or properties may be described in the Comment box below. (Select all that apply)

2.l

Slab	Blooms	Billets	Ingots	Fittings	Flat	Long	Beams	Semi-Finished	Pipe	Tube	Stainless	Hot Rolled	Cold Rolled
No	No	No	No	No	No	No	No	No	No	No	No	No	Yes
Annealed	**Plated**	**Electro-Plated**	**Galvanized**	**Electro-Galvanized**	**Zinc Plated**	**Aluminum Plated**	**Lead Plated**	**Tin Plated**	**Painted**	**Varnished**	**Plasticized**	**Pickled**	**Other (Use Comment Box)**
Yes	No	No	No	No	No	No	No	No	No	No	No	No	No

Comment:

Continued on Next Page

3.a State the chemical composition of the specific aluminum product for which your organization seeks an Exclusion.

Chemical Composition

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Magnesium	Manganese	Nickel
Minimum %	98.53%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Maximum %	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%	0.79%	0.00%	0.01%	0.01%	0.01%
	Niobium	Nitrogen	Phosphorous	Selenium	Silicon	Sulfur	Tin	Titanium	Tungsten	Vanadium	Zinc	[Other - List Below]	[Other - List Below]
Minimum %	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Maximum %	0.00%	0.00%	0.00%	0.00%	0.60%	0.00%	0.02%	0.00%	0.00%	0.00%	0.01%	0.01%	0.00%

Comments:

3.b Provide information on the single aluminum product that is the subject of this Exclusion Request: 1) dimensional information for the single aluminum product and a single size - not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.) A separate Exclusion Request must be submitted for each aluminum product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature.

	Aluminum Product Specifications (Millimeters)						Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other (specify type in comment box)
									Brinnell	Temperature (°C)			
Minimum	0 mm	N/A	N/A	120 mm	304 mm	N/A	176 MPa	140 Mpa	40	Joules			
Maximum	0 mm	N/A	N/A	523 mm	457 mm	N/A	178 MPa	145 Mpa	46	% Shear			

Comments:

3.c Provide the following information on the single aluminum product that is the subject of this Exclusion Request: 1) performance data for ductility and surface finish; and 2) metal coating process, material type, weight, and thickness.

	Global Ductility		Local Ductility (If Applicable)			Surface Finish (If Applicable)	Coating Type and Composition (If Applicable)				
	Elongation %	Reduction -in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness [millimeter]		Profilometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys)	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]
Minimum	0%										
Maximum	7%										

Select any additional processing methods used:					Other (specify)	

Comments:

Continued on Next Page

4.a	List the Commercial Name(s) of the single aluminum product that is the subject of this Exclusion Request.		
	Foodservice Aluminum Foil Roll	Foodservice Foil	Food Packaging Aluminum Foil
	Aluminum Food Wrap	Household Aluminum Foil Roll	
	Comments:		

4.b	Identify the Aluminum Association code for the aluminum product that is the subject of this Exclusion Request:	8011	State below: 1) the application for the aluminum product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar aluminum products manufactured in the United States, if available, are not suitable.
	1) For use in the Foodservice industry. 2) All products are packaged in private branded labels, made exclusively for the end users. US manufacturers do not produce the product in this label.		

4.c	If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single aluminum product:
	N/A

4.d

Identify the source countries for the single aluminum product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the aluminum product. If this aluminum product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin.

NOTE: Aluminum products encompassing more than one 10-digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)
1	China	China	190,000 kg	Able Packaging Jiangsu Co., Ltd.	
2					
3					
4					
5					

Product Availability Information

4.e	Does the requester possess knowledge of any domestic U.S. parties that currently manufacture the described aluminum product in the United States?	No
	Comment:	No. Aluminum foil packaged and intended for the same application as mentioned in above section 4.b is not produced by American manufacturers. To the best of my knowledge, the U.S. companies that supply aluminum foil for this same application, are merely converting the product which they are purchasing from foreign manufacturers.

4.f	Does the requester possess knowledge of any parties that currently manufacture the described aluminum product a country exempted from this tariff? If yes, identify the country or countries below.	Yes
	Comment:	Yes. Canada.

4.g	Is the requester aware of any manufacturers capable of producing a substitute for the aluminum product in the United States? If "Yes" provide supporting information (name and address) in the space below?	Yes
	Comment:	Yes. Pactiv, LLC. 1900 W. Field Court, Lake Forest, IL 60045

4.h

Has the Exclusion requester attempted to qualify any aluminum manufacturer in the United States as a supplier of the aluminum product for that is the subject of this Exclusion Request in the past two years? If "Yes" provide supporting information in the space below. Supporting documents must be submitted as a consolidated PDF file and may not exceed 25 pages. **No**

1	No	5	
2		6	
3		7	
4		8	
Comment:			

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

5.a	Has the Exclusion Requester attempted to purchase the described aluminum product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If "Yes" identify the manufacturers, addresses, and your points of contact at the U.S. aluminum manufacturing organizations in the space below.	No
	Comment: No	
5.b	Has the Exclusion Requester had supply contracts, or have current contracts, with aluminum producers that manufacture in the United States the aluminum product identified in the Exclusion Request? If "Yes" identify the U.S. aluminum manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the space below.	No
	No	
5.c	Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent aluminum product that would meet qualification requirements? If "Yes" identify in the space below the testing standards/procedures employed to make that determination.	No
	Comment: No	
5.d	In the last two years, has the requester purchased a substitute aluminum product manufactured in the United States in place of the aluminum product described in the Exclusion Request? If "Yes" provide supporting information in the space below.	No
	Comment: No	
5.e	Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the aluminum product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.	
	Commercial invoices submitted will include a product description clearly defining the intended use of the product. "Foodservice and Household Aluminum Foil Rolls, not exceeding thickness of 0.03mm and each roll weighing less than 9kg. Importation of this product is not a threat to National Security. Supply, solely by US manufacturers, is not readily available in the quanitities required for consumption.	

Submission of Exclusion Requests: All Exclusion Requests must be fully completed and submitted to www.regulations.gov under Docket Number BIS-2018-0002 using this Microsoft Excel electronic form. All information submitted will be subject to public disclosure, regardless of any statements by the requester that some information should be treated otherwise. Any further information required as a part of this Exclusion Request will be determined and requested solely by the U.S. Department of Commerce.

Submission of Supporting Documents (Attachments): Supporting attachments should be submitted to www.regulations.gov as PDF documents and must be posted to www.regulations.gov under Docket Number BIS-2018-0006. Total supporting submissions may not exceed 25 pages.

Other Comments:	

I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission:	No	

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete.

CERTIFICATION

The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. **It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.** [18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name:	The Ocala Group, LLC.		
Name of Authorizing Official:	Mark Muller	Title of Authorizing Official	Vice President
Phone Number: 516-233-8183	Email of Authorizing Offical:	mark@theocalagroup.com	
If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.			
Point-of-Contact Name:	Mark Muller	Title	Vice President
E-Mail Address:	mark@theocalagroup.com	Phone Number	516-233-8183

Paperwork Reduction Act Notice

Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0139. Commerce may not collect this information, and you are not required to respond; unless this OMB number is displayed.

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: BIS-2018-0002-0169

Summary:

- Requester: The Ocala Group, LLC.
- Product description: Aluminum Foil (Whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm: Not backed: Rolled but not further worked: of a thickness exceeding 0.01mm. Aluminum ingots cast from molten billet, which is then rolled into sheet using the continuous casting method. The sheet is slit to widths ranging from 300mm to 457mm and rolled back into jumbo rolls for shipping. The jumbo rolls of slit aluminum foil are then converted by rerolling into shorter rolls ranging from 30m to 450m. The smaller rolls are packaged for end use into boxes which contain an affixed steel cutting device on the edge, allowing the end user to cut the foil into useful sizes for foodservice applications.
- HTSUS: 7607116000

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or 2) based upon specific national security considerations.

BIS finds that the above-captioned request for relief ("exclusion request") has not met the requirements for consideration as a "complete submission" under paragraph (h) of Supplement No. 1 to 15 CFR Part 705. Customs and Border Protection (CBP) has advised BIS that the product description is inconsistent with the claimed classification under the Harmonized Tariff Schedule of the United States, providing the following guidance: The thickness listed in your request is inconsistent with the tariff provision claimed. See Chapter 76 of the Harmonized Tariff Schedule of the United States (HTSUS) at https://hts.usitc.gov/current For questions or assistance on which Harmonized Tariff Schedule (HTS) provisions apply to your goods, you may request a ruling pursuant to Part 177, Code of Federal Regulations by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York, NY 10014, attn: Binding Ruling Request or you may

submit your request electronically at https://erulings.cbp.gov/home. You may also contact section232assistance@cbp.dhs.gov for questions about the classification of your goods under the Harmonized Tariff Schedule of the United States.

Additionally, 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 aluminum 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.

BIS accepts ITA's recommended findings as to the domestic availability of the product, and finds that no overriding national security concerns require that this exclusion request be granted notwithstanding the domestic availability. As noted above, CBP has also advised BIS that the product description is inconsistent with the claimed classification under the Harmonized Tariff Schedule of the United States.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be denied. This denial is without prejudice and the requester may file a new exclusion request for this product if, for example, new or different facts or circumstances exist which meet the criteria for approving an exclusion request.

For questions or assistance on which Harmonized Tariff Schedule (HTS) provisions apply to your goods, you may request a ruling pursuant to Part 177, Code of Federal Regulations by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York, NY 10014, attn: Binding Ruling Request or you may submit your request electronically at https://erulings.cbp.gov/home. You may also contact section232assistance@cbp.dhs.gov for questions about the classification of your goods under the Harmonized Tariff Schedule of the United States.

DECISION ON EXCLUSION REQUEST # BIS-2018-0002-0169

X I approve denying this exclusion request.

_____ I do not approve denying this exclusion request.

_____ I would like to discuss.

Matthew S. Borman

Deputy Assistant Secretary of Export Administration

April 19, 2019

Date

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports

Exclusion Request Requirements: Only individuals or organizations operating in the United States that use aluminum products (e.g. slab, billets, ingots, extrusions, rod and bar, sheet and plate, foil, pipe and tube, castings and forgings, etc.) in business activities (e.g., construction, manufacturing, supplying aluminum product to users) in the United States may submit an Exclusion Request. For an Exclusion Request to be considered, the Exclusion Requester must provide factual information on 1) the single type of aluminum product they require using a 10-digit HTSUS code, including its specific dimension; 2) the quantity of product required (stated in kilograms) under a one-year exclusion; 3) a full description of the properties of the aluminum product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data. Exclusion Requests must be submitted using this Excel-based document. Paper submissions will not be accepted.

A separate Exclusion Request must be submitted on each distinct type and dimension of aluminum product to be imported. All applicable question blocks in the form must be completed for the Exclusion Request to be accepted. Exclusion Requests will be denied if the applicant: 1) does not sufficiently address the specified reporting requirements; 2) cites the improper HTSUS code, or 3) provides incorrect product descriptions.

Organizations electing to attach supporting documents must provide these documents in PDF format and it must not exceed 25 pages. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.

Organizations should upload their completed Exclusion Request pertaining to an aluminum product to www.regulations.gov under Docket Number BIS-2018-0002. An Exclusion Request may be submitted at any time. Processing of an Exclusion Request will take approximately 90 business days. Notification of granted Exclusions will be posted on www.regulations.gov. For questions related directly to completing this form, contact BIS via email (Aluminum232@bis.doc.gov) or telephone (202-482-4757).

1.a	Identify the class of Aluminum product for which the Exclusion is sought:	Foil	10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single aluminum product covered by this request: (See https://www.usitc.gov/publications/docs/tata/hts/bychapter/0900c72_0.pdf)	7607116000

1.b

Requesting Organization Information		Importer of Record for Organization Requesting an Exclusion	
Full Organization Legal Name	BERK ENTERPRISES INC.	Full Organization Legal Name	BERK ENTERPRISES INC.
Street Address	1554 THOMAS ROAD S. E.	Street Address	1554 THOMAS ROAD S. E.
City	WARREN	City	WARREN
State	OHIO	State	OHIO
Zip Code	44484	Zip Code	44484
Headquarters Country	United States	Headquarters Country	United States
Point of Contact Name	Michael A. Ricci	Point of Contact - Representative Name	Michael A. Ricci
Phone Number	330-369-1192	Phone Number	330-369-1192
E-mail Address	Michael.Ricci@Berkbrands.com	E-mail Address	Michael.Ricci@Berkbrands.com
Web Site Address	www.berkbrands.com	Web Site Address	www.berkbrands.com
Parent Company of Requesting Organization		**Requester's Authorized Representative/Agent (If applicable)**	
Full Organization Legal Name		Requester Point of Contact Name	
Street Address		Point-of-Contact Organization	
City		Country Location	
State/Province		Phone Number	
Zip Code/Postal Code		E-mail Address	
Headquarters Country		Web Site Address	
Web Site Address		Other Information	

1.c	Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as an: Aluminum Manufacturer; Aluminum Distributor; Aluminum Exporter or, Aluminum Importer? If "Yes" identify the activity.	Aluminum Importer	If "Yes" - Identify the organization	BERK ENTERPRISES	Identify the country where the organization is headquartered	United States
	Comments:					

1.d	Identify the primary type of aluminum activity of the Exclusion Requester:	U.S.-Distributor	Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	80,000 kg

Comments:

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

2.a	Average annual consumption for years 2015-2017 of the aluminum product that is subject of this Exclusion Request - Kilograms	38,089 kg
2.b	Explain why your organization requires an Exclusion using 1) the drop-down box and 2) by providing written comments in the space provided below.	Other (explain below)
	Comments:	High risk of lost sales, customers and employees.
2.c	Identify the percentage of total aluminum product covered under this Exclusion Request not available from aluminum manufacturers in the United States:	100%
2.d	Estimate the number of days required to take delivery of the aluminum product covered by this Exclusion Request, from the time the purchase order is issued by your organization:	110
2.e	Estimate the number of days required to manufacture the aluminum product covered by this Exclusion Request, from the time a binding purchase order is executed:	49
2.f.	Estimate the number of days required to ship the aluminum product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock:	61
2.g	Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the aluminum product subject to this Exclusion Request:	25

2.h Identify the U.S. Destination Port(s) of Entry through which the aluminum product subject to this Exclusion Request would be transported:

Port 1	Port 2	Port 3	Port 4	Port 5	Port 6	Port 7
LOS ANGELES, CA	LONG BEACH, CA	TACOMA, WA	PORT ELIZABETH, NJ	NORFOLK, VA	HOUSTON, TX	JACKSONVILLE, FL

2.i	Is the organization making this Exclusion Request doing so on behalf of a non-U.S. aluminum producer that does not manufacture aluminum products in the United States?			No
	If "Yes" identify the non-U.S. aluminum producer		Identify the country where the organization is headquartered	
	Comments:			

Exclusion Request Product Information

2.j For this single Exclusion Request, provide a full, complete description of the product in the space provided below. * See explanation below.
The product for which an Exclusion is being requested is defined as follows:

Disposable - Aluminum Foil Rolls

* With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., "hot-rolled," "seamless pipe," "suitable for use in boilers," "longitudinally submerged arc welded," etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., "cross-sectional diameter of 5.50 mm") or measurements (e.g., "yield strength of 300 MPa," "carbon content 0.08%," etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., "cross-sectional diameter falling within the range 5.35 mm and 5.65 mm," "yield strength greater than or equal to 300 MPa," "carbon content less than or equal to 0.15%, by weight," etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.

Comments: Disposable - Aluminum Foil Rolls with a minimal thickness of .05mm and a maximum thickness of .1mm.

2.k Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation		Organization	Designation		Organization	Designation
1	GB (China)		3			5		
2			4			6		
Other (specify)			Other (specify)			Other (specify)		

General Aluminum Product Description

2.l Identify the classification and properties of the aluminum product covered under this Exclusion Request. Other classification or properties may be described in the Comment box below. (Select all that apply)

Slab	Blooms	Billets	Ingots	Fittings	Flat	Long	Beams	Semi-Finished	Pipe	Tube	Stainless	Hot Rolled	Cold Rolled

Annealed	Plated	Electro-Plated	Galvanized	Electro-Galvanized	Zinc Plated	Aluminum Plated	Lead Plated	Tin Plated	Painted	Varnished	Plasticized	Pickled	Other (Use Comment Box)
													Yes

Comment: Finished Product - Aluminum Foil Rolls

Continued on Next Page

3.a State the chemical composition of the specific aluminum product for which your organization seeks an Exclusion.

Chemical Composition

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Magnesium	Manganese	Nickel
Minimum %	98.70%							0.00%	0.68%		0.00%	0.02%	0.00%
Maximum %													
	Niobium	Nitrogen	Phosphorous	Selenium	Silicon	Sulfur	Tin	Titanium	Tungsten	Vanadium	Zinc	[Other - List Below]	[Other - List Below]
Minimum %	0.03%				0.50%			0.06%			0.01%		
Maximum %													
Comments:													

3.b Provide information on the single aluminum product that is the subject of this Exclusion Request: 1) dimensional information for the single aluminum product and a single size - not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.) A separate Exclusion Request must be submitted for each aluminum product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature.

	Aluminum Product Specifications (Millimeters)						Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other (specify type in comment box)
										Temperature (°C)			
Minimum	.05MM	76MM	660MM	2500000 mm			115MPA	110MPA		Joules	0.02		
Maximum	.1MM	76MM	660MM	2500000 mm			125MPA	125MPA		% Shear			
Comments:													

3.c Provide the following information on the single aluminum product that is the subject of this Exclusion Request: 1) performance data for ductility and surface finish; and 2) metal coating process, material type, weight, and thickness.

	Global Ductility		Local Ductility (If Applicable)			Surface Finish (If Applicable)	Coating Type and Composition (If Applicable)				
	Elongation %	Reduction -in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness [millimeter]		Profilometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys)	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]
Minimum											
Maximum											
Select any additional processing methods used:									Other (specify)		
Comments:											

Continued on Next Page

4.a List the Commercial Name(s) of the single aluminum product that is the subject of this Exclusion Request.

BERKLEY SQUARE STANDARD ALUMINUM FOIL - 18" X 500'	BERKLEY SQUARE STANDARD ALUMINUM FOIL - 18" X 1,000'	BERKLEY SQUARE STANDARD ALUMINUM FOIL - 12" X 500'
BERKLEY SQUARE HEAVY DUTY ALUMINUM FOIL - 18" X 500'	BERKLEY SQUARE STANDARD ALUMINUM FOIL - 12" X 1,000'	BERKLEY SQUARE HEAVY DUTY ALUMINUM FOIL - 24" X 1,000'
BERKLEY SQUARE HEAVY DUTY ALUMINUM FOIL - 12" X 500'	BERKLEY SQUARE HEAVY DUTY ALUMINUM FOIL - 18" X 1,000'	

Comments:

4.b Identify the Aluminum Association code for the aluminum product that is the subject of this Exclusion Request: 8011 ALLOY

State below: 1) the application for the aluminum product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar aluminum products manufactured in the United States, if available, are not suitable.

1.) Disposable Foodservice Aluminum Foil Rolls 2.) US market pricing is prohibitive.

4.c If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single aluminum product:

N/A

4.d Identify the source countries for the single aluminum product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the aluminum product. If this aluminum product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin.

NOTE: Aluminum products encompassing more than one 10-digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)
1	China	China	60,000 kg	JINHUA MAJESTIC	
2	China	China	20,000 kg	ORIENT	
3					
4					
5					

Product Availability Information

4.e Does the requester possess knowledge of any domestic U.S. parties that currently manufacture the described aluminum product in the United States? Yes

Comment: Western Plastics Foil

4.f Does the requester possess knowledge of any parties that currently manufacture the described aluminum product a country exempted from this tariff? If yes, identify the country or countries below. Yes

Comment: Indonesia

4.g Is the requester aware of any manufacturers capable of producing a substitute for the aluminum product in the United States? If "Yes" provide supporting information (name and address) in the space below? Yes

Comment: Western Plastic - PO Box 1636 2399 US Highway 41 SW Calhoun, GA 30703 - Tom Cunningham

4.h Has the Exclusion requester attempted to qualify any aluminum manufacturer in the United States as a supplier of the aluminum product for that is the subject of this Exclusion Request in the past two years? If "Yes" provide supporting information in the space below. Supporting documents must be submitted as a consolidated PDF file and may not exceed 25 pages. Yes

1	WESTERN PLASTICS FOIL	5	
2		6	
3		7	
4		8	

Comment:

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

5.a	Has the Exclusion Requester attempted to purchase the described aluminum product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If "Yes" identify the manufacturers, addresses, and your points of contact at the U.S. aluminum manufacturing organizations in the space below.	Yes
	Comment: Western Plastic - PO Box 1636 2399 US Highway 41 SW Calhoun, GA 30703 - Tom Cunningham	
5.b	Has the Exclusion Requester had supply contracts, or have current contracts, with aluminum producers that manufacture in the United States the aluminum product identified in the Exclusion Request? If "Yes" identify the U.S. aluminum manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the space below.	No
5.c	Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent aluminum product that would meet qualification requirements? If "Yes" identify in the space below the testing standards/procedures employed to make that determination.	No
	Comment:	
5.d	In the last two years, has the requester purchased a substitute aluminum product manufactured in the United States in place of the aluminum product described in the Exclusion Request? If "Yes" provide supporting information in the space below.	Yes
	Comment: WESTERN PLASTICS FOIL	
5.e	Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the aluminum product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.	
	ITEMS WILL BE DESIGNATED ON THE COMMERCIAL INVOICE BY NAMED ITEM	

Submission of Exclusion Requests: All Exclusion Requests must be fully completed and submitted to www.regulations.gov under Docket Number BIS-2018-0002 using this Microsoft Excel electronic form. All information submitted will be subject to public disclosure, regardless of any statements by the requester that some information should be treated otherwise. Any further information required as a part of this Exclusion Request will be determined and requested solely by the U.S. Department of Commerce.

Submission of Supporting Documents (Attachments): Supporting attachments should be submitted to www.regulations.gov as PDF documents and must be posted to www.regulations.gov under Docket Number BIS-2018-0006. Total supporting submissions may not exceed 25 pages.

Other Comments:

I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission:

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete.

CERTIFICATION

The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. **It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.** [18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name:	BERK ENTERPRISES INC.		
Name of Authorizing Official:	FRANK VALLEY	Title of Authorizing Official	CFO
Phone Number: 330-369-1192	Email of Authorizing Offical:	FRANK.VALLEY@BERKBRANDS.COM	

If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.

Point-of-Contact Name:	MICHAEL RICCI	Title	SENIOR FINANCIAL ANALYST
E-Mail Address:	MICHAEL.RICCI@BERKBRANDS.COM	Phone Number	330-369-1192

Paperwork Reduction Act Notice

Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0139. Commerce may not collect this information, and you are not required to respond; unless this OMB number is displayed.

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: BIS-2018-0002-0269

Summary:

- Requester: BERK ENTERPRISES INC.
- Product description: Disposable - Aluminum Foil Rolls
- HTSUS: 7607116000

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or 2) based upon specific national security considerations.

The above-captioned request for relief ("exclusion request") has met the requirements for consideration as a "complete submission" under Supplement No. 2 to 15 CFR Part 705.

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 17, 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 aluminum 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.

BIS accepts ITA's recommended findings as to the domestic availability of the product, and finds that no overriding national security concerns require that this exclusion request be granted notwithstanding the domestic availability.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be denied. This denial is without prejudice and the requester may file a new exclusion request for this product if, for example, new or different facts or circumstances exist which meet the criteria for approving an exclusion request.

DECISION ON EXCLUSION REQUEST # BIS-2018-0002-0269

X	I approve denying this exclusion request.
	I do not approve denying this exclusion request.
	I would like to discuss.

Matthew S. Borman
Deputy Assistant Secretary of Export Administration

March 23, 2020
Date

Exhibit 3

Objection Filing to Posted Section 232 Exclusion Request: Aluminum

Objection Filing Requirements: Any individual or organization in the United Statesmay file an Objection to an Exclusion Request. Where relevant, organizations must provide factual information on 1) the aluminum products that they manufacture in the United States, 2) the production capabilities at aluminum manufacturing facilities that they operate in the United States; and 3) the availability and delivery time of the products that they manufacture relative to the specific aluminum product that is subject to an Exclusion Request. For an Objection Filing to be considered, it must be submitted as an electronic document using this Excel-based template. Paper submissions will not be accepted.

Organizations submitting an Objection Filing on an Exclusion Request should provide specific information, as relevant, on the product that their company can provide that is comparable to the aluminum product that is the subject of the Exclusion Request. This information should include 1) discussion on the suitability of its product for the application identified by the Exclusion Requestor, and 2) a full technical description of the properties of the product it manufactures relative to specifications provided in the Exclusion Request posted on regulations.gov, including information on dimensions, strength, toughness, ductility, surface finish, coatings, and other relevant data.

A separate Objection Filing must be submitted on each Exclusion Request, citing the specific aluminum product and dimension covered in the request posted on regulations.gov. All applicable question blocks in this form must be completed for the Objection Filing to be accepted for consideration. Organizations electing to attach supporting documents must provide a single submission only in PDF format that must not exceed 25 pages in total. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.

Organizations should upload their Objection Filing covering a single aluminum Exclusion Request to the corresponding Exclusion Request onhttps://www.regulations.gov/ under Docket Number BIS-2018-0002. An Objection Filing must be submitted to regulations.gov no later than 30 days from the date the Exclusion Request is posted in regulations.gov. Processing of the Exclusion Request, including consideration of Objection Filings, will take approximately 90 business days. When Exclusion Requests are approved, notification will made on regulations.gov. For questions related directly to completing this form, contact BIS via email (aluminum232@bis.doc.gov) or telephone (202-482-4757).

Instruction: State the name, address, and related contact information for the organization submitting the Objection Filing. Provide the same information for the Exclusion Requestor that is the subject of this Objection Filing, relying on information in the request notice posted on regulations.gov. Also provide the regulations.gov identification number issued for the submitter of the Exclusion Request, the HTSUS code for the aluminum product, and annual quantity of imported aluminum product at issue. This information is found in the Exclusion Request document posted on regulations.gov

1.a

Organization Filing Objection to Requested Exclusion				Organization Requesting Exclusion	
Full Organization Legal Name	Trinidad Benham Corp			Full Organization Legal Name	The Ocala Group, LLC.
Street Address	3650 S. Yosemite St, Suite 300			Street Address	1981 Marcus Ave. Ste 221
City	Denver			City	New Hyde Park
State	Colorado			State	New York
Zip Code	80237			Zip Code	11042
Headquarters Country	United States				
Point of Contact Name	Donna Walters				
Phone Number	303-220-1400				
E-mail Address	dwalters@trinidadbenham.com				
Web Site Address	www.trinidadbenham.com				
regulations.gov Identification #	BIS-2018-0002-0169	10-Digit HTSUS Code	7607116000	Annual Exclusion Quantity Requested (Kilograms)	700,000 kg

Identify the reasons your organization objects to an Exclusion Request being granted to the applicant cited above. Written comments may be submitted (not required) to supplement information that your organization has provided in the Objection Filing form on the Exclusion Request, but total attachments may not exceed 25 pages. Organizations making an Objections Filing should identify factual problems that they encounter in the Exclusion Request (e.g., product description).

1.b

Indicate what type of order the Exclusion Request that is the subject of the Objection Filing would pertain to:	Standard Product
Comments	

1.c

Is the aluminum product type identified in the Exclusion Request currently manufactured by your organization in the United States , or can it immediately be made (within 8 weeks) by your organization, in a company-owned plant in the United States? If "Yes" identify the location(s) of your aluminum production facilities in the United States.	-Yes/No-	City	State	Current Annual Plant Production Capacity (mt)	% Plant Utilization Current
	Yes	LaGrange	Georgia		

1.d

This organization does not currently manufacture the identified aluminum product, but can produce the product identified in the Exclusion Request within the following time period at the following facilities:	Days	City	State	Current Annual Plant Production Capacity (mt)	% Plant Utilization Current
Comments	The information on annual capacity and plant utilization is business proprietary. We can provide it confidentially.				

1.e

Does this organization currently manufacture, or can immediately manufacture (within 8 weeks), in a company-owned plant located in the United States a substitute product for the identified aluminum product that has similar form, fit, function, and performance? If "Yes" identify the location(s) of your aluminum production facilities in the United States, current plant capacity and utilization	-Yes/No-	City	State	Current Annual Plant Production Capacity (mt)	% Plant Utilization Current

1.f

This organization does not currently manufacture the identified aluminum product, but can make a substitute product that has similar form, fit, function, and performance within the following time period at the following facilities:	Days	City	State	Current Annual Plant Production Capacity (mt)	% Plant Utilization Current
Comments					

Continued On Next Page

Objection Filing to Posted Section 232 Exclusion Request: Aluminum - Continued

2.a	Select "Yes" for any assertions identified in the Exclusion Request that your organization is challenging:	No Production Capacity		Product Quality		Shipping Time	
		Insufficient Volume	Yes	Unique aluminum Product		Other (specify here)	

2.b Discuss 1) the suitability of your organization's aluminum product compared to that identified by the Exclusion Requestor, and 2) provide a full technical description of the properties of the product it manufactures relative to specifications cited in the Exclusion Request posted in regulations.gov. This description must include information on dimensions, plus performance factors such as strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data.

1) Trinidad produces all the small rolls as described in Fasho's exclusion requests in Section 2j. 2) Jumbo coils of household alumnum foil of thickness not exceeding 0.02mm, not backed. Slit to widths from 300mm to 457mm. Jumbo coils are rerolled into shorter rolls ranging from 30m to 450m. Smaller rolls are packaged for end use into boxes, which contain an affixed steel cutting edge for cutting foil to desired sizes by the end user for foodservice application. The commercial names of the end product includes all of the following: Foodservice Aluminum Foil Roll, Aluminum Food Wrap, Foodservice Foil, Household Aluminum Foil Roll, Food Packaging Aluminum Foil.

2.c State the chemical composition of the specific aluminum product that your organization can manufacture at a company-owned production facility located in the United States.

Chemical Composition

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Magnesium	Manganese	Molybdenum
Minimum %	98.53%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Maximum %	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%	0.79%	0.00%	0.01%	0.01%	0.00%

Chemical	Nickel	Niobium	Phosphorous	Selenium	Silicon	Sulfur	Tin	Titanium	Tungsten	Vanadium	Zinc	[Other - List Below]	[Other - List Below]
Minimum %	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Maximum %	0.01%	0.00%	0.00%	0.00%	0.60%	0.00%	0.02%	0.00%	0.00%	0.00%	0.01%	0.01%	0.00%

Comments:

2.d Provide the following information on the single aluminum product that is the subject of this Objection Filing: 1) dimensional information covering the single aluminum product subject to the Exclusion Request; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature.

	Aluminum Product Specifications (Millimeters)						Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other (specify type in comment box)
										Temperature (°C)			
Minimum	0 mm			120 mm	304 mm		176 MPa	140 MPa	40	Joules			
Maximum	0 mm			523 mm	457 mm		178 MPa	145 MPa	46	% Shear			

Comments:

2.e Provide the following information on the single aluminum product that is the subject of this Objection Filing: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness.

	Global Ductility		Local Ductility (If Applicable)			Surface Finish (If Applicable)	Coating Type and Composition (If Applicable)				
	Elongation %	Reduction -in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness [millimeter]		Profilometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]
Minimum	0%										
Maximum	7%										
Select any additional processing methods used:								Other (specify)			

Comments:

Continued On Next Page

Objection Filing to Posted Section 232 Exclusion Request: Aluminum - Continued

3.a	What percentage of the total aluminum product tonnage requirement covered under the Exclusion Request that is the subject of this Objection Filing can your organization manufacture at its U.S. plants on a timely basis?	100%
3.b	State the number of days required by your organization to ship from its U.S. manufacturing plant the aluminum product covered by this Exclusion Request from the time the purchase order is received:	7
3.c	State the number of days required to manufacture the aluminum product covered by this Exclusion Request from the time a binding purchase order is received:	1
3.d	State the delivery time in days for the aluminum product covered under this Exclusion Request from the time it is shipped from your manufacturing plant to the Exclusion Requestor's loading dock:	3
	Comments:	Trinidad regularly ships throughout the United States. If preferred, customers may pickup from our loading dock.
3.e	Identify the reasons your organization objects to an Exclusion Request being granted to the applicant. Written comments may be submitted (not required) for each of the reasons your organization has cited in the Objection Filing form. Organizations filing Objections should identify factual problems in the Exclusion Request (e.g., product description).	
	Comments:	While the raw material of jumbo coils of household aluminum foil is not available in sufficient quantities in the U.S., our 100% employee-owned American company produces identical products to those requested in the exclusion request. Trinidad produces approximately 70% of private label/store brand household aluminum foil products sold in the U.S. see supporting document).
3.f	Has the organization making the Exclusion Request asserted that there is no capability in the United States to manufacture this type of aluminum product it requires? If "Yes" provide comments in the space below.	No
	Has the Exclusion Requestor supported its assertion of product uniqueness with engineering and scientific data, or independent laboratory tests results?	No
	Does your organization have technical data to disprove the assertions of the Exclusion Requestor? If "Yes" provide comments in the space below, or in attachments.	Yes
	Comments:	Trinidad currently sells the same products listed in the exclusion request (See Exhibit 1). Trinidad produces over 50 private label brands and is capable of producing any label that is requested by a customer.
3.g	Has the organization making this Objection Filing within the last two years attempted to sell, or successfully sold, the aluminum product described in the Exclusion Request to the exclusion requestor previously?	No
	Does your organization manufacture a aluminum product similar to that cited in the Exclusion Request for which it has asked to Exclusion Requestor, within two years of the filing of the Exclusion Request, to perform a formal technical qualification to determine equivalency in form, fit, function and performance?	No
	Did the Exclusion Requestor accept or reject the request to perform a formal technical qualification?	Not Applicable
	Comments:	The requestor is an importer and distributor of finished products of boxed aluminum foil and pop-up interfolded sheets. They directly compete with our American made product sold to private label retailers. These finished producst are excluded from AD/CVD orders.
I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission:		No

Instruction: This Objection Filing must be submitted by an organization official authorized to certify the document as being accurate and complete.

CERTIFICATION

The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. **It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.** [18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name:	Trinidad/Benham Corp.		
Name of Authorizing Official:	Jeff Bornmann	Title of Authorizing Official	President
Phone Number:	303-220-1400	Email of Authorizing Official:	jbornmann@trinidadbenham.com
If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.			
Point-of-Contact Name:	Donna Walters	Title	Director of Aluminum Risk
E-mail Address:	dwalters@trinidadbenham.com	Phone Number	303-220-1400

Paperwork Reduction Act Notice

Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0138. Commerce may not collect this information, and you are not required to respond; unless this OMB number is displayed.

Trinidad Benham Corporation Objection to the Section 232 Aluminum Product Exclusion Request of The Ocala Group, LLC
BIS-2018-0002-0168, 0169
Posted: May 7, 2018

OCALA'S EXCLUSION REQUESTS FOR ALUMINUM FOIL SHOULD BE REJECTED

The Ocala Group, LLC ("Ocala") has filed four requests for exclusions for aluminum foil, in finished products of boxed aluminum foil and pop-up interfolded sheets. The Department of Commerce should reject these requests, for the following reasons:

1. **The request is for products already produced in the United States.** Trinidad Benham Corporation is a 100-year-old, 100% employee-owned, American company that produces and sells retail packages of household aluminum foil, pop-up interfold foil sheets, and disposable aluminum containers. Trinidad produces the exact products for which Ocala is requesting an exclusion at its manufacturing plant in LaGrange, Georgia.

   The aluminum foil products that Ocala seeks to import are finished products packaged for eventual sale to, and use by consumers. The foil is either: 1) wound on cardboard cores, cut to appropriate lengths for consumer sale, and packaged into a boxed that is printed with the trade dress and labeling information required by the customer or 2) cut into single use sheets, interfolded and packaged into a pop-up box that is printed with the trade dress and labeling information required by the customer. Trinidad performs all of these production operations at its manufacturing plant in Georgia. The customers are retailers, such as grocery stores and warehouse stores as well as food service supply companies that serve restaurants and other food service establishments.

   Both Trinidad and Ocala sell private label foil products. Private label products include store brands and so-called generic label products that compete alongside branded products. Trinidad produces approximately 70 percent of the private label foil products sold in the United States. Trinidad's name will never appear on a box of foil; all of its foil products are labeled with its customer's private label branding. Ocala's imported products compete directly with Trinidad's U.S. produced products for those private label customers. Ocala's claim that U.S. producers "do not produce the product in this label" is misleading. Trinidad is capable of producing any label that is requested by a customer. Examples of Trinidad's products that compete directly with Ocala's products are provided at Exhibit 1.

2. **Ocala does not engage in any manufacturing or production in the United States.** Ocala is an importer and reseller of product manufactured in China. Its U.S. office appears to employ only four people. Ocala has not provided any information indicating that its customers in the United States support its exclusion request. Nor has it provided any evidence that its customers will be unable to secure supply of boxed aluminum foil products from U.S. sources, such as Trinidad.

   Ocala's request notes that "US companies are converting imported foil into consumer packaging," which is true. While Trinidad purchases foil from U.S. rollers, it must also rely on imports of household aluminum foil to provide raw material for its Georgia production facility. As such, Trinidad imports jumbo coils of household aluminum foil to manufacture retail packages of household aluminum foil and packages of pop-up

interfolded sheets of aluminum foil. However, in contrast to Ocala, Trinidad's engages in significant U.S. production activity. Trinidad's production of foil products occurs at its manufacturing plant in Georgia. Trinidad has 300 employee owners working at its aluminum facility in Georgia.

Ocala, however, is importing the same finished product that Trinidad manufactures in Georgia. Ocala has no aluminum manufacturing jobs in the United States. As long as Trinidad has access to adequate foil supply, it will continue to employ American workers producing boxed aluminum foil and foil sheets -- the very products for which Ocala seeks an exclusion due to an alleged lack of U.S. supply.

3. **The Ocala request will circumvent the antidumping and countervailing duty orders on aluminum foil from China.** The AD/CVD order (containing triple-digit duties) imposed on Chinese aluminum foil in 2017 has been very harmful to Trinidad. The AD/CVD orders forced Trinidad to source outside of China for its household foil supply. However, small rolls of foil from China and other aluminum foil products that compete directly with Trinidad's production were specifically excluded from the AD/CVD cases. The unintended, but widely anticipated consequence of that exclusion is that, Chinese foil producers have moved up the value chain to produce the same products that Trinidad makes in the United States.

   Ocala now seeks further advantage for those products by seeking exclusion from the Section 232 tariffs. Excluding such products from the Section 232 tariffs would further exacerbate the situation created by the AD/CVD orders, by imposing tariffs on Trinidad's inputs, but no tariffs on imports of foil products that directly compete with Trinidad's U.S. production (See Exhibit 2).

4. **The request, if granted, threatens American jobs.** We support the Administration's desire to protect American workers and businesses from unfair trade practices. At the heart of the Section 232 actions and other trade restrictions imposed on aluminum is an effort to protect American jobs and manufacturing from allegedly unfairly traded imports of aluminum from China.

   Excluding finished downstream products would be counter to the Administration's goal of protecting American jobs and manufacturing. The exclusion would not create or protect a single American manufacturer or American manufacturing job. The exclusion would not assist U.S. aluminum rollers. The exclusion will directly harm Trinidad, a U.S. manufacturer of directly competing aluminum foil products. Letters from the Senate and House requesting 232 exclusions for Trinidad's raw material imports of household foil to protect American jobs are shown in Exhibit 3 and 4. Granting Ocala's exclusion request for finished product imports could displace Trinidad's production and could result in significant loss of U.S. jobs and paradoxically could drive such jobs to China.

Exhibit 1: Sample Trinidad Aluminum Foil Products

Exhibit 2: Select Chinese Small Roll Manufactures with US Distribution

Company	Products	
Qingdao Wohler Household Products Co., Ltd.	Jumbo Roll Foil, Small Roll Foil, Pop-Up Foil, Aluminium Foil Container	Website Excerpts Shown
Zhengzhou Xinlilai Aluminium Foil Co., Ltd.	Jumbo Roll Foil, Small Roll Foil, Pop-Up Foil, Aluminium Foil Container	Website Excerpts Shown
Suzhou SPK Aluminium Foil Co., Ltd.	Household Aluminum Foil, Aluminum Foil Container, Hair Dressing Aluminum Foil	
Xiamen Jinfengyuan Packaging Industry Co., Ltd.	Ziplock Bag, PE Cling Film, Aluminum Foil, Baking Paper, Oven Bag	
U2 Supply	Food Storage Bags, Trash Bags, Shopping Bags, Aluminum Foils and Other Household Products	

Qingdao Wohler Household Products Co., Ltd.

Company Description and Overview

"In 2015, Qingdao Wohler Household Products Co., Ltd. was established in Qingdao, which is a coastal city in China. … Another factory is located in Thailand."

"Wohler Group not only produces aluminum foil products such as foil rolls and foil containers, but <u>also manufactures aluminum jumbo rolls.</u> Wohler Group will keep being sophisticated, providing excellent services and supplying environmental-friendly products for our global customers. Our goal is to create a leading global brand of aluminum foil products."

"Wohler Group has introduced advanced production line including jumbo roll rewinding machine, annealing furnace etc., for the raw material processing." - Source: http://en.wohler.com.cn/

Sample of Products:

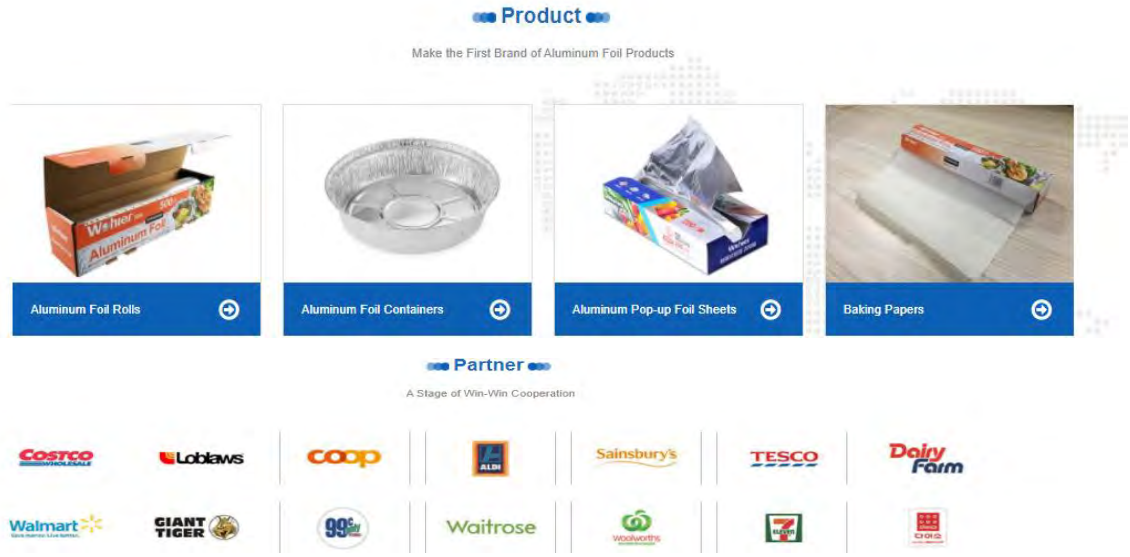


Exhibit 2: Select Chinese Small Roll Manufactures with US Distribution (cont.)

Zhengzhou Xinlilai Aluminium Foil Co., Ltd.

Company Description and Overview

" Zhengzhou Xinlilai Aluminium Foil Co., Ltd. is a professional manufacturer in the field of Aluminium foils. The company is located in Zhengzhou... sales amount of 2013 is more than 80,000,000USD. Our qualified product is advanced in the industry which is widely used in aluminium foil manufacturers, lithium battery foil, electronic foil, cigarette foil, beer foil, tape foil, medical foil and food foil. We are focusing on marketing aluminium raw material, casting roll, household aluminium foil roll, aluminium container and lithium battery aluminium foil etc."

"Branch company: Zhengzhou Xinlilai Aluminium Foil Co., Ltd, also located in Zhengzhou city, Erqi Zone, mainly product is household aluminium foil small rolls for food packaging. Our products are widely used in electronic, pharmaceutical packaging, food packaging, pencil aluminum hoop, etc. The company's products are exported to Europe, United States, Japan, Middle East, Australia, Africa, India, Hong Kong, Macao, Taiwan and other countries and regions." -Source: http://www.goldenfoil.cn/

Sample of Products:

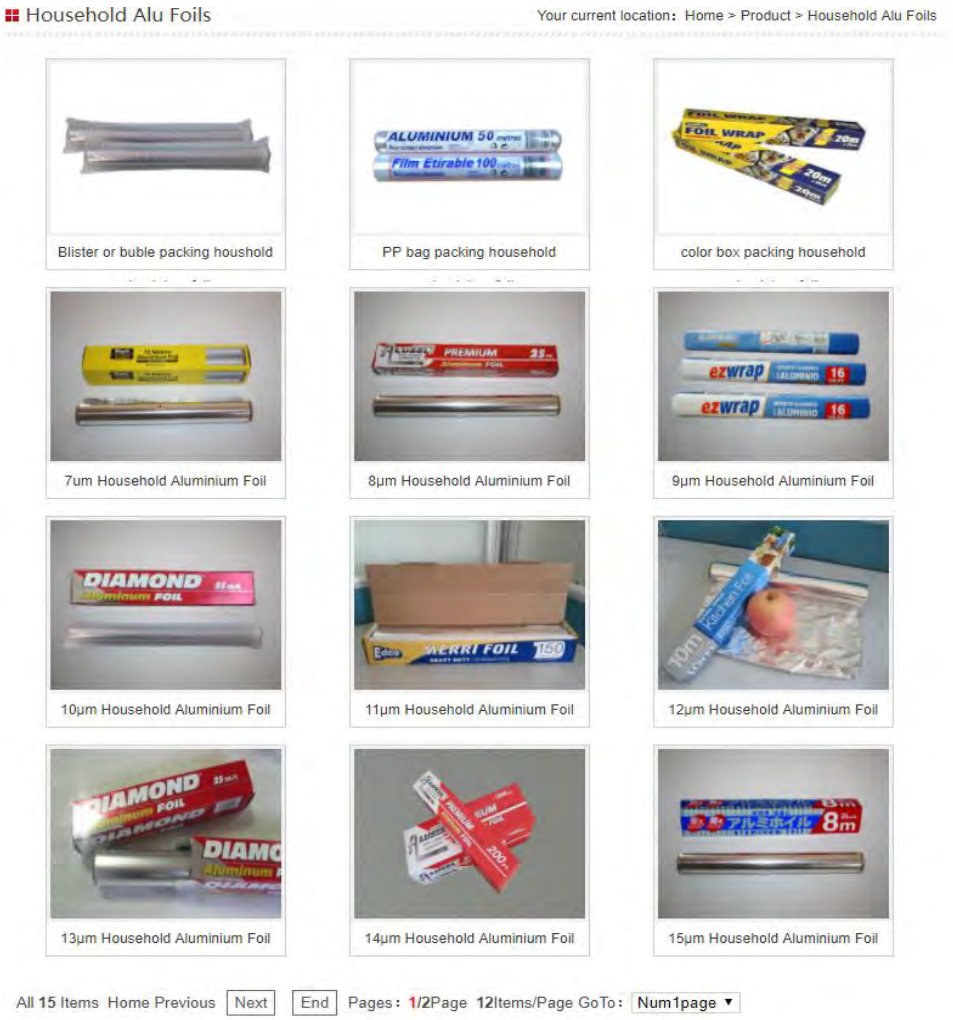


Exhibit 2: Select Chinese Small Roll Manufactures with US Distribution (cont.)

Industrial Jumbo Rolls

8011/1145 aluminum foil

1235/6811 heat exchanger foil

1100/8001/3003 decoration foil/board

8011-1030B air-container foil

Industrial aluminum six

Exhibit 3: Senate Members Section 232 Letter to Secretary Ross

United States Senate
WASHINGTON, DC 20510

June 23, 2017

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

Dear Secretary Ross:

We write to request that you exempt consumer aluminum foil and aluminum container stock from the Section 232 investigation prompted by the Presidential Memorandum for the Secretary of Commerce dated April 27, 2017. Without this exemption, our states face hundreds of potential job losses and Americans throughout the country could face an immediate increase in consumer prices. Additionally, we do not believe our national security is at immediate risk due to the importation of these consumer products.

Congress provided the Secretary of Commerce the ability to launch investigations, known as "Section 232 investigations," to determine whether importing certain foreign products negatively affects our national security. The Secretary of Commerce rarely conducts Section 232 investigations—the Commerce Department last conducted such an investigation in 2001—but this action should be narrowly tailored to include only imports closely associated with our national security. We do not believe household aluminum foil or aluminum container stock meet this criteria, and we are concerned that domestic foil rolling mills may not increase supply for these products if they continue to focus instead on higher-value market segments, such as the automotive and aerospace industries.

If the Department of Commerce has concerns regarding unfair trade practices, weak trade enforcement, or other related issues in any industry, Congress has provided the appropriate tools to address those issues. In any of your decisions, however, we urge you to weigh heavily the negative impacts on domestic jobs and businesses that could result from such actions.

Thank you for your consideration. Please do not hesitate to contact our offices if you or your staff have questions regarding this matter.

Sincerely,

Cory Gardner
United States Senator

Michael F. Bennet
United States Senator

Exhibit 3: Senate Members Section 232 Letter to Secretary Ross (cont.)

Johnny Isakson
United States Senator

David Perdue
United States Senator

John Hoeven
United States Senator

Heidi Heitkamp
United States Senator

James E. Risch
United States Senator

Exhibit 4: House Members Section 232 Letter to Secretary Ross

Congress of the United States
Washington, DC 20515

June 23, 2017

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

Dear Secretary Ross:

We write to request that you carefully weigh exempting consumer aluminum foil and aluminum container stock (USHTS codes 7607.11.6000 and 7607.11.9090) in the Section 232 investigation prompted by the Presidential Memorandum for the Secretary of Commerce dated April 27, 2017 related to aluminum imports. Without an exemption, there is the potential for significant job losses, and Americans throughout the country could face an immediate increase in consumer prices.

Congress provided the Secretary of Commerce the ability to launch investigations, known as "Section 232 investigations," to determine whether importing certain foreign products negatively affects national security. The Section 232 process was designed to be, and has historically been, tailored to specific products based on clear national security concerns. Additionally the Secretary of Commerce rarely conducts Section 232 investigations and last conducted such an investigation in 2001. We believe that this action should be narrowly tailored to include only imports closely associated with our national security. We do not believe household aluminum foil or aluminum container stock meet this criteria.

If the Department of Commerce has concerns regarding unfair trade practices, weak trade enforcement, or other related issues in any industry, Congress has provided the appropriate tools to address those issues. In any recommendation for action made as a result of this investigation, we urge you to closely weigh the negative impacts on domestic jobs and businesses that could result from such actions.

Thank you for your consideration. Please do not hesitate to contact our offices if you or your staff have questions regarding this matter.

Sincerely,

A. Drew Ferguson IV DMD
Member of Congress

Diana DeGette
Member of Congress

PRINTED ON RECYCLED PAPER

Exhibit 4: House Members Section 232 Letter to Secretary Ross (cont.)

Rick W. Allen
Member of Congress

Doug Collins
Member of Congress

Tom Graves
Member of Congress

Ken Buck
Member of Congress

Mike Coffman
Member of Congress

Doug Lamborn
Member of Congress

Ed Perlmutter
Member of Congress

Jared Polis
Member of Congress

Scott R. Tipton
Member of Congress

Kevin Cramer
Member of Congress

Objection Filing to Posted Section 232 Exclusion Request: Aluminum

Objection Filing Requirements: Any individual or organization in the United Statesmay file an Objection to an Exclusion Request. Where relevant, organizations must provide factual information on 1) the aluminum products that they manufacture in the United States, 2) the production capabilities at aluminum manufacturing facilities that they operate in the United States; and 3) the availability and delivery time of the products that they manufacture relative to the specific aluminum product that is subject to an Exclusion Request. For an Objection Filing to be considered, it must be submitted as an electronic document using this Excel-based template. Paper submissions will not be accepted.

Organizations submitting an Objection Filing on an Exclusion Request should provide specific information, as relevant, on the product that their company can provide that is comparable to the aluminum product that is the subject of the Exclusion Request. This information should include 1) discussion on the suitability of its product for the application identified by the Exclusion Requestor, and 2) a full technical description of the properties of the product it manufactures relative to specifications provided in the Exclusion Request posted on regulations.gov, including information on dimensions, strength, toughness, ductility, surface finish, coatings, and other relevant data.

A separate Objection Filing must be submitted on each Exclusion Request, citing the specific aluminum product and dimension covered in the request posted on regulations.gov. All applicable question blocks in this form must be completed for the Objection Filing to be accepted for consideration. Organizations electing to attach supporting documents must provide a single submission only in PDF format that must not exceed 25 pages in total. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.

Organizations should upload their Objection Filing covering a single aluminum Exclusion Request to the corresponding Exclusion Request onhttps://www.regulations.gov/ under Docket Number BIS-2018-0002. An Objection Filing must be submitted to regulations.gov no later than 30 days from the date the Exclusion Request is posted in regulations.gov. Processing of the Exclusion Request, including consideration of Objection Filings, will take approximately 90 business days. When Exclusion Requests are approved, notification will made on regulations.gov. For questions related directly to completing this form, contact BIS via email (aluminum232@bis.doc.gov) or telephone (202-482-4757).

Instruction: State the name, address, and related contact information for the organization submitting the Objection Filing. Provide the same information for the Exclusion Requestor that is the subject of this Objection Filing, relying on information in the request notice posted on regulations.gov. Also provide the regulations.gov identification number issued for the submitter of the Exclusion Request, the HTSUS code for the aluminum product, and annual quantity of imported aluminum product at issue. This information is found in the Exclusion Request document posted on regulations.gov

1.a

Organization Filing Objection to Requested Exclusion				Organization Requesting Exclusion	
Full Organization Legal Name	Trinidad Benham Corp			Full Organization Legal Name	Fasho International, LLC
Street Address	3650 S. Yosemite St, Suite 300			Street Address	1981 Marcus Ave. Ste 221
City	Denver			City	New Hyde Park
State	Colorado			State	New York
Zip Code	80237			Zip Code	11042
Headquarters Country	United States				
Point of Contact Name	Donna Walters				
Phone Number	303-220-1400				
E-mail Address	dwalters@trinidadbenham.com				
Web Site Address	www.trinidadbenham.com				
regulations.gov Identification #	BIS-2018-0002-0166	10-Digit HTSUS Code	7607116000	Annual Exclusion Quantity Requested (Kilograms)	2,650,000 kg

Identify the reasons your organization objects to an Exclusion Request being granted to the applicant cited above. Written comments may be submitted (not required) to supplement information that your organization has provided in the Objection Filing form on the Exclusion Request, but total attachments may not exceed 25 pages. Organizations making an Objections Filing should identify factual problems that they encounter in the Exclusion Request (e.g., product description).

1.b

Indicate what type of order the Exclusion Request that is the subject of the Objection Filing would pertain to:	Standard Product
Comments	

1.c

Is the aluminum product type identified in the Exclusion Request currently manufactured by your organization in the United States , or can it immediately be made (within 8 weeks) by your organization, in a company-owned plant in the United States? If "Yes" identify the location(s) of your aluminum production facilities in the United States.	-Yes/No-	City	State	Current Annual Plant Production Capacity (mt)	% Plant Utilization Current
	Yes	LaGrange	Georgia		

1.d

This organization does not currently manufacture the identified aluminum product, but can produce the product identified in the Exclusion Request within the following time period at the following facilities:	Days	City	State	Current Annual Plant Production Capacity (mt)	% Plant Utilization Current
Comments					

1.e

Does this organization currently manufacture, or can immediately manufacture (within 8 weeks), in a company-owned plant located in the United States a substitute product for the identified aluminum product that has similar form, fit, function, and performance? If "Yes" identify the location(s) of your aluminum production facilities in the United States, current plant capacity and utilization	-Yes/No-	City	State	Current Annual Plant Production Capacity (mt)	% Plant Utilization Current

1.f

This organization does not currently manufacture the identified aluminum product, but can make a substitute product that has similar form, fit, function, and performance within the following time period at the following facilities:	Days	City	State	Current Annual Plant Production Capacity (mt)	% Plant Utilization Current
Comments					

Continued On Next Page

Objection Filing to Posted Section 232 Exclusion Request: Aluminum - Continued

2.a	Select "Yes" for any assertions identified in the Exclusion Request that your organization is challenging:	No Production Capacity		Product Quality		Shipping Time	
		Insufficient Volume	Yes	Unique aluminum Product		Other (specify here)	

2.b Discuss 1) the suitability of your organization's aluminum product compared to that identified by the Exclusion Requestor, and 2) provide a full technical description of the properties of the product it manufactures relative to specifications cited in the Exclusion Request posted in regulations.gov. This description must include information on dimensions, plus performance factors such as strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data.

1) Trinidad produces all the small rolls as described in Fasho's exclusion requests in Section 2j. 2) Jumbo coils of household alumnum foil of thickness not exceeding 0.02mm, not backed. Slit to widths from 300mm to 457mm. Jumbo coils are rerolled into shorter rolls ranging from 30m to 450m. Smaller rolls are packaged for end use into boxes, which contain an affixed steel cutting edge for cutting foil to desired sizes by the end user for foodservice application. The commercial names of the end product includes all of the following: Foodservice Aluminum Foil Roll, Aluminum Food Wrap, Foodservice Foil, Household Aluminum Foil Roll, Food Packaging Aluminum Foil.

2.c State the chemical composition of the specific aluminum product that your organization can manufacture at a company-owned production facility located in the United States.

Chemical Composition

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Magnesium	Manganese	Molybdenum
Minimum %	98.53%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Maximum %	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%	0.79%	0.00%	0.01%	0.01%	0.00%

Chemical	Nickel	Niobium	Phosphorous	Selenium	Silicon	Sulfur	Tin	Titanium	Tungsten	Vanadium	Zinc	[Other - List Below]	[Other - List Below]
Minimum %	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Maximum %	0.01%	0.00%	0.00%	0.00%	0.60%	0.00%	0.02%	0.00%	0.00%	0.00%	0.01%	0.01%	0.00%

Comments:

2.d Provide the following information on the single aluminum product that is the subject of this Objection Filing: 1) dimensional information covering the single aluminum product subject to the Exclusion Request; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature.

	Aluminum Product Specifications (Millimeters)						Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other (specify type in comment box)
										Temperature (°C)			
Minimum	0 mm			120 mm	304 mm		176 MPa	140 MPa	40	Joules			
Maximum	0 mm			523 mm	457 mm		178 MPa	145 MPa	46	% Shear			

Comments:

2.e Provide the following information on the single aluminum product that is the subject of this Objection Filing: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness.

	Global Ductility		Local Ductility (If Applicable)			Surface Finish (If Applicable)	Coating Type and Composition (If Applicable)				
	Elongation %	Reduction -in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness [millimeter]		Profilometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]
Minimum	0%										
Maximum	7%										
Select any additional processing methods used:								Other (specify)			

Comments:

Continued On Next Page

Objection Filing to Posted Section 232 Exclusion Request: Aluminum - Continued

3.a	What percentage of the total aluminum product tonnage requirement covered under the Exclusion Request that is the subject of this Objection Filing can your organization manufacture at its U.S. plants on a timely basis?	100%
3.b	State the number of days required by your organization to ship from its U.S. manufacturing plant the aluminum product covered by this Exclusion Request from the time the purchase order is received:	7
3.c	State the number of days required to manufacture the aluminum product covered by this Exclusion Request from the time a binding purchase order is received:	1
3.d	State the delivery time in days for the aluminum product covered under this Exclusion Request from the time it is shipped from your manufacturing plant to the Exclusion Requestor's loading dock:	3
	Comments:	Trinidad regularly ships throughout the United States. If preferred, customers may pickup from our loading dock.
3.e	Identify the reasons your organization objects to an Exclusion Request being granted to the applicant. Written comments may be submitted (not required) for each of the reasons your organization has cited in the Objection Filing form. Organizations filing Objections should identify factual problems in the Exclusion Request (e.g., product description).	
	Comments:	While the raw material of jumbo coils of household aluminum foil is not available in sufficient quantities in the U.S., our 100% employee-owned American company produces identical products to those requested in the exclusion request. Trinidad produces approximately 70% of private label/store brand household aluminum foil products sold in the U.S. see supporting document).
3.f	Has the organization making the Exclusion Request asserted that there is no capability in the United States to manufacture this type of aluminum product it requires? If "Yes" provide comments in the space below.	No
	Has the Exclusion Requestor supported its assertion of product uniqueness with engineering and scientific data, or independent laboratory tests results?	No
	Does your organization have technical data to disprove the assertions of the Exclusion Requestor? If "Yes" provide comments in the space below, or in attachments.	Yes
	Comments:	Trinidad currently sells the same products listed in the exclusion request (See Exhibit 1). Trinidad produces over 50 private label brands and is capable of producing any label that is requested by a customer.
3.g	Has the organization making this Objection Filing within the last two years attempted to sell, or successfully sold, the aluminum product described in the Exclusion Request to the exclusion requestor previously?	No
	Does your organization manufacture a aluminum product similar to that cited in the Exclusion Request for which it has asked to Exclusion Requestor, within two years of the filing of the Exclusion Request, to perform a formal technical qualification to determine equivalency in form, fit, function and performance?	No
	Did the Exclusion Requestor accept or reject the request to perform a formal technical qualification?	Not Applicable
	Comments:	The requestor is an importer and distributor of finished products of boxed aluminum foil and pop-up interfolded sheets. They directly compete with our American made product sold to private label retailers. These finished producst are excluded from AD/CVD orders.
I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission:		No

Instruction: This Objection Filing must be submitted by an organization official authorized to certify the document as being accurate and complete.

CERTIFICATION

The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. **It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.** [18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name:	Trinidad/Benham Corp.		
Name of Authorizing Official:	Jeff Bornmann	Title of Authorizing Official	President
Phone Number:	303-220-1400	Email of Authorizing Official:	jbornmann@trinidadbenham.com
If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.			
Point-of-Contact Name:	Donna Walters	Title	Director of Aluminum Risk
E-mail Address:	dwalters@trinidadbenham.com	Phone Number	303-220-1400

Paperwork Reduction Act Notice

Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0138. Commerce may not collect this information, and you are not required to respond; unless this OMB number is displayed.

Trinidad Benham Corporation Objection to the Section 232 Aluminum Product Exclusion Request of Fasho International, LLC
BIS-2018-0002-0166, and 0167
Posted: May 7, 2018

FASHO'S EXCLUSION REQUESTS FOR ALUMINUM FOIL SHOULD BE REJECTED

Fasho International, LLC ("Fasho") has filed four requests for exclusions for aluminum foil, in finished products of boxed aluminum foil and pop-up interfolded sheets. The Department of Commerce should reject these requests, for the following reasons:

1. **The request is for products already produced in the United States.** Trinidad Benham Corporation is a 100-year-old, 100% employee-owned, American company that produces and sells retail packages of household aluminum foil, pop-up interfold foil sheets, and disposable aluminum containers. Trinidad produces the exact products for which Fasho is requesting an exclusion at its manufacturing plant in LaGrange, Georgia.

   The aluminum foil products that Fasho seeks to import are finished products packaged for eventual sale to, and use by consumers. The foil is either: 1) wound on cardboard cores, cut to appropriate lengths for consumer sale, and packaged into a boxed that is printed with the trade dress and labeling information required by the customer or 2) cut into single use sheets, interfolded and packaged into a pop-up box that is printed with the trade dress and labeling information required by the customer. Trinidad performs all of these production operations at its manufacturing plant in Georgia. The customers are retailers, such as grocery stores and warehouse stores as well as food service supply companies that serve restaurants and other food service establishments.

   Both Trinidad and Fasho sell private label foil products. Private label products include store brands and so-called generic label products that compete alongside branded products. Trinidad produces approximately 70 percent of the private label foil products sold in the United States. Trinidad's name will never appear on a box of foil; all of its foil products are labeled with its customer's private label branding. Fasho's imported products compete directly with Trinidad's U.S. produced products for those private label customers. Fasho's claim that U.S. producers "do not produce the product in this label" is misleading. Trinidad is capable of producing any label that is requested by a customer. Examples of Trinidad's products that compete directly with Fasho's products are provided at Exhibit 1.

2. **Fasho does not engage in any manufacturing or production in the United States.** Fasho is an importer and reseller of product manufactured in China. Its U.S. office appears to employ only four people. Fasho has not provided any information indicating that its customers in the United States support its exclusion request. Nor has it provided any evidence that its customers will be unable to secure supply of boxed aluminum foil products from U.S. sources, such as Trinidad.

   Fasho's request notes that "US companies are converting imported foil into consumer packaging," which is true. While Trinidad purchases foil from U.S. rollers, it must also rely on imports of household aluminum foil to provide raw material for its Georgia production facility. As such, Trinidad imports jumbo coils of household aluminum foil to manufacture retail packages of household aluminum foil and packages of pop-up

interfolded sheets of aluminum foil. However, in contrast to Fasho, Trinidad's engages in significant U.S. production activity. Trinidad's production of foil products occurs at its manufacturing plant in Georgia. Trinidad has 300 employee owners working at its aluminum facility in Georgia.

Fasho, however, is importing the same finished product that Trinidad manufactures in Georgia. Fasho has no aluminum manufacturing jobs in the United States. As long as Trinidad has access to adequate foil supply, it will continue to employ American workers producing boxed aluminum foil and foil sheets -- the very products for which Fasho seeks an exclusion due to an alleged lack of U.S. supply.

3. **The Fasho request will circumvent the antidumping and countervailing duty orders on aluminum foil from China.** The AD/CVD order (containing triple-digit duties) imposed on Chinese aluminum foil in 2017 has been very harmful to Trinidad. The AD/CVD orders forced Trinidad to source outside of China for its household foil supply. However, small rolls of foil from China and other aluminum foil products that compete directly with Trinidad's production were specifically excluded from the AD/CVD cases. The unintended, but widely anticipated consequence of that exclusion is that, Chinese foil producers have moved up the value chain to produce the same products that Trinidad makes in the United States.

   Fasho now seeks further advantage for those products by seeking exclusion from the Section 232 tariffs. Excluding such products from the Section 232 tariffs would further exacerbate the situation created by the AD/CVD orders, by imposing tariffs on Trinidad's inputs, but no tariffs on imports of foil products that directly compete with Trinidad's U.S. production (See Exhibit 2).

4. **The request, if granted, threatens American jobs.** We support the Administration's desire to protect American workers and businesses from unfair trade practices. At the heart of the Section 232 actions and other trade restrictions imposed on aluminum is an effort to protect American jobs and manufacturing from allegedly unfairly traded imports of aluminum from China.

   Excluding finished downstream products would be counter to the Administration's goal of protecting American jobs and manufacturing. The exclusion would not create or protect a single American manufacturer or American manufacturing job. The exclusion would not assist U.S. aluminum rollers. The exclusion will directly harm Trinidad, a U.S. manufacturer of directly competing aluminum foil products. Letters from the Senate and House requesting 232 exclusions for Trinidad's raw material imports of household foil to protect American jobs are shown in Exhibit 3 and 4. Granting Fasho's exclusion request for finished product imports could displace Trinidad's production and could result in significant loss of U.S. jobs and paradoxically could drive such jobs to China.

Exhibit 1: Sample Trinidad Aluminum Foil Products

Exhibit 2: Select Chinese Small Roll Manufactures with US Distribution

Company	Products	
Qingdao Wohler Household Products Co., Ltd.	Jumbo Roll Foil, Small Roll Foil, Pop-Up Foil, Aluminium Foil Container	Website Excerpts Shown
Zhengzhou Xinlilai Aluminium Foil Co., Ltd.	Jumbo Roll Foil, Small Roll Foil, Pop-Up Foil, Aluminium Foil Container	Website Excerpts Shown
Suzhou SPK Aluminium Foil Co., Ltd.	Household Aluminum Foil, Aluminum Foil Container, Hair Dressing Aluminum Foil	
Xiamen Jinfengyuan Packaging Industry Co., Ltd.	Ziplock Bag, PE Cling Film, Aluminum Foil, Baking Paper, Oven Bag	
U2 Supply	Food Storage Bags, Trash Bags, Shopping Bags, Aluminum Foils and Other Household Products	

Qingdao Wohler Household Products Co., Ltd.

Company Description and Overview

"In 2015, Qingdao Wohler Household Products Co., Ltd. was established in Qingdao, which is a coastal city in China. … Another factory is located in Thailand."

"Wohler Group not only produces aluminum foil products such as foil rolls and foil containers, but <u>also manufactures aluminum jumbo rolls.</u> Wohler Group will keep being sophisticated, providing excellent services and supplying environmental-friendly products for our global customers. Our goal is to create a leading global brand of aluminum foil products."

"Wohler Group has introduced advanced production line including jumbo roll rewinding machine, annealing furnace etc., for the raw material processing." - Source: http://en.wohler.com.cn/

Sample of Products:

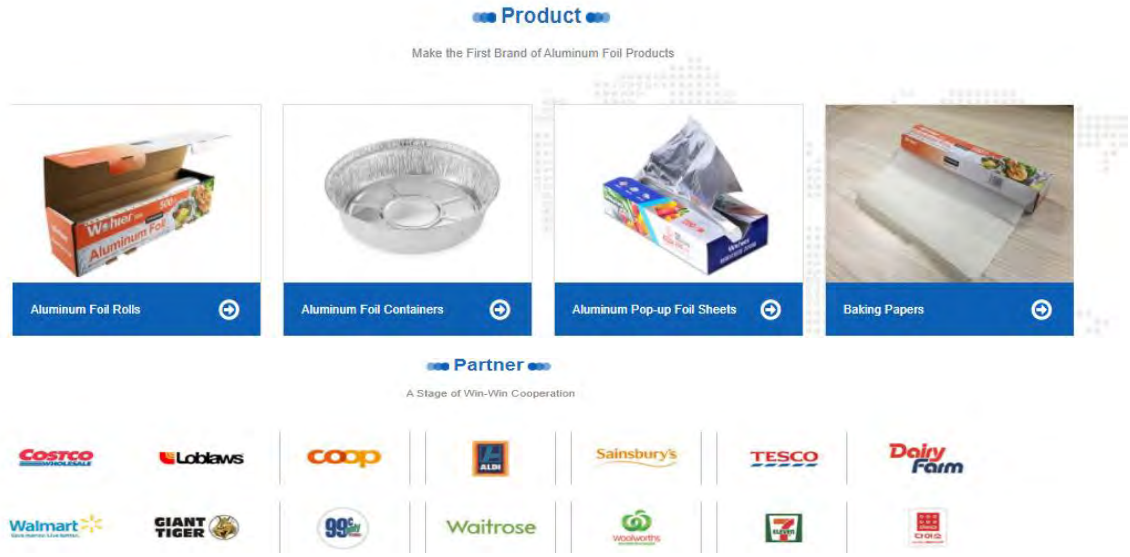


Exhibit 2: Select Chinese Small Roll Manufactures with US Distribution (cont.)

Zhengzhou Xinlilai Aluminium Foil Co., Ltd.

Company Description and Overview

" Zhengzhou Xinlilai Aluminium Foil Co., Ltd. is a professional manufacturer in the field of Aluminium foils. The company is located in Zhengzhou... sales amount of 2013 is more than 80,000,000USD. Our qualified product is advanced in the industry which is widely used in aluminium foil manufacturers, lithium battery foil, electronic foil, cigarette foil, beer foil, tape foil, medical foil and food foil. We are focusing on marketing aluminium raw material, casting roll, household aluminium foil roll, aluminium container and lithium battery aluminium foil etc."

"Branch company: Zhengzhou Xinlilai Aluminium Foil Co., Ltd, also located in Zhengzhou city, Erqi Zone, mainly product is household aluminium foil small rolls for food packaging. Our products are widely used in electronic, pharmaceutical packaging, food packaging, pencil aluminum hoop, etc. The company's products are exported to Europe, United States, Japan, Middle East, Australia, Africa, India, Hong Kong, Macao, Taiwan and other countries and regions." -Source: http://www.goldenfoil.cn/

Sample of Products:

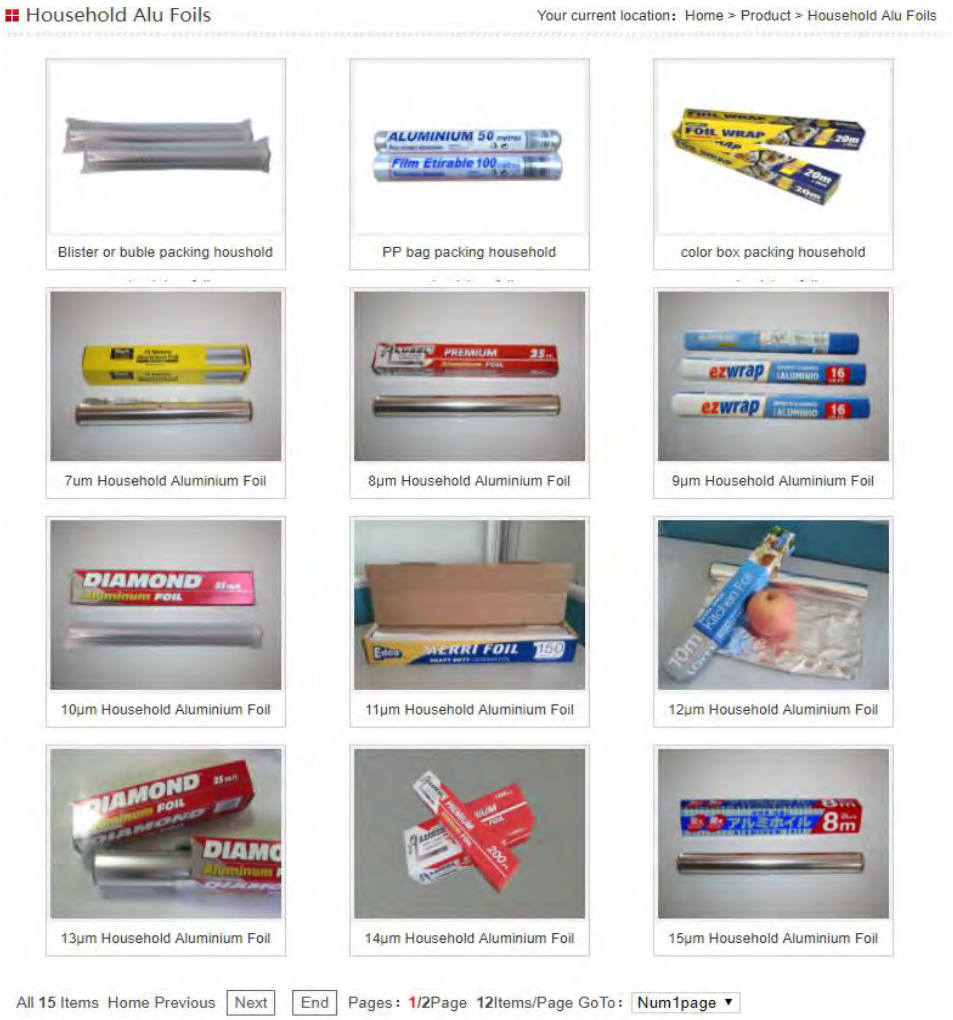


Exhibit 2: Select Chinese Small Roll Manufactures with US Distribution (cont.)

Industrial Jumbo Rolls

8011/1145 aluminum foil

1235/6811 heat exchanger foil

1100/8001/3003 decoration foil/board

8011-1030B air-container foil

Industrial aluminum six

Exhibit 3: Senate Members Section 232 Letter to Secretary Ross

United States Senate
WASHINGTON, DC 20510

June 23, 2017

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

Dear Secretary Ross:

We write to request that you exempt consumer aluminum foil and aluminum container stock from the Section 232 investigation prompted by the Presidential Memorandum for the Secretary of Commerce dated April 27, 2017. Without this exemption, our states face hundreds of potential job losses and Americans throughout the country could face an immediate increase in consumer prices. Additionally, we do not believe our national security is at immediate risk due to the importation of these consumer products.

Congress provided the Secretary of Commerce the ability to launch investigations, known as "Section 232 investigations," to determine whether importing certain foreign products negatively affects our national security. The Secretary of Commerce rarely conducts Section 232 investigations—the Commerce Department last conducted such an investigation in 2001—but this action should be narrowly tailored to include only imports closely associated with our national security. We do not believe household aluminum foil or aluminum container stock meet this criteria, and we are concerned that domestic foil rolling mills may not increase supply for these products if they continue to focus instead on higher-value market segments, such as the automotive and aerospace industries.

If the Department of Commerce has concerns regarding unfair trade practices, weak trade enforcement, or other related issues in any industry, Congress has provided the appropriate tools to address those issues. In any of your decisions, however, we urge you to weigh heavily the negative impacts on domestic jobs and businesses that could result from such actions.

Thank you for your consideration. Please do not hesitate to contact our offices if you or your staff have questions regarding this matter.

Sincerely,

Cory Gardner
United States Senator

Michael F. Bennet
United States Senator

Exhibit 3: Senate Members Section 232 Letter to Secretary Ross (cont.)

Johnny Isakson
United States Senator

David Perdue
United States Senator

John Hoeven
United States Senator

Heidi Heitkamp
United States Senator

James E. Risch
United States Senator

Exhibit 4: House Members Section 232 Letter to Secretary Ross

Congress of the United States
Washington, DC 20515

June 23, 2017

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

Dear Secretary Ross:

We write to request that you carefully weigh exempting consumer aluminum foil and aluminum container stock (USHTS codes 7607.11.6000 and 7607.11.9090) in the Section 232 investigation prompted by the Presidential Memorandum for the Secretary of Commerce dated April 27, 2017 related to aluminum imports. Without an exemption, there is the potential for significant job losses, and Americans throughout the country could face an immediate increase in consumer prices.

Congress provided the Secretary of Commerce the ability to launch investigations, known as "Section 232 investigations," to determine whether importing certain foreign products negatively affects national security. The Section 232 process was designed to be, and has historically been, tailored to specific products based on clear national security concerns. Additionally the Secretary of Commerce rarely conducts Section 232 investigations and last conducted such an investigation in 2001. We believe that this action should be narrowly tailored to include only imports closely associated with our national security. We do not believe household aluminum foil or aluminum container stock meet this criteria.

If the Department of Commerce has concerns regarding unfair trade practices, weak trade enforcement, or other related issues in any industry, Congress has provided the appropriate tools to address those issues. In any recommendation for action made as a result of this investigation, we urge you to closely weigh the negative impacts on domestic jobs and businesses that could result from such actions.

Thank you for your consideration. Please do not hesitate to contact our offices if you or your staff have questions regarding this matter.

Sincerely,

A. Drew Ferguson IV DMD
Member of Congress

Diana DeGette
Member of Congress

PRINTED ON RECYCLED PAPER

Exhibit 4: House Members Section 232 Letter to Secretary Ross (cont.)

Rick W. Allen
Member of Congress

Doug Collins
Member of Congress

Tom Graves
Member of Congress

Ken Buck
Member of Congress

Mike Coffman
Member of Congress

Doug Lamborn
Member of Congress

Ed Perlmutter
Member of Congress

Jared Polis
Member of Congress

Scott R. Tipton
Member of Congress

Kevin Cramer
Member of Congress

Exhibit 4

U.S. Department of Commerce

Section 232 Steel and Aluminum

Product Information

Submission Date: 10/11/2019

Public Status: Granted

Please select product type: Aluminum

Identify the class of product for which the Exclusion is sought: Foil

10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single product covered by this request: 7607116010

If this is a renewal of a previously granted exclusion request, please provide the ID number of the previously granted exclusion request:

Requesting Organization Information

Full Organization Legal Name: Russell A. Farrow Inc

Street Address: 14555 Jib St.

City: Plymouth

State: Michigan

Zip Code: 48170

Headquarters Country: United States

Point of Contact Name: Will Carson

Phone Number: 734 955 7799

E-mail Address: Will.Carson@farrow.com

Web Site Address: http://www.farrow.com

Parent Company of Requesting Organization

Full Organization Legal Name: Framar International

Street Address: 7000 Kinsmen Ct

City: Niagara Falls

Headquarters Country: Canada

State/Province: Ontario

Zip Code:

Web Site Address: http://www.framar.com

Importer of Record for Organization Requesting an Exclusion

Full Organization Legal Name: Russell A. Farrow Inc

Street Address: 14555 Jib St.

City: Plymouth

State: Michigan

Zip Code: 48170

Headquarters Country: United States

Point of Contact Name: Will Carson

Phone Number: 734 955 7799

E-mail Address: Will.Carson@farrow.com

Web Site Address: http://www.farrow.com

Requester's Authorized Representative/Agent (if applicable)

Requestor Point of Contact Name: Giovanni Gallo

Point-of-Contact Organization: Framar

Country Location: Canada

Phone Number: 905-374-0133

E-Mail Address: ggallo@framar.com

Web Site Address: http://www.framar.com

Other Information:

Exclusion Request Details

Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as a: Manufacturer; Distributor; Exporter or, Importer?

Yes

Identify the activity

Other

Identify the organization

Framar

Identify the country where the organization is headquartered

Canada

Comments

We currently produce the product in China. It is our own brand. In our industry, we're considered a manufacturer, however, we are importing this product into Canada and then shipping into the USA to our American distributors. So, unsure as to how you'd properly classify it, but wanted to explain.

Identify the primary type of activity of the Exclusion Requester

Other

Comments

As mentioned above, we purchase the products from a factory in China. However, it is under our own brand. In our industry, we'd be considered a manufacturer, however, because we're covering all of the importing into the US, we may be considered an importer or a non-US distributor. Wanted to explain to help clarify the proper classification.

Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	35000	Kilograms
Average annual consumption for years 2015-2017 of the product that is subject of this Exclusion Request (Kilograms)	20000	Kilograms

Explain why your organization requires an Exclusion

Other

Please provide comments

I would classify this as both insufficient US availability and no US production. There is no 'one stop shop' to manufacturer this product in the USA. These hair foils are extremely unique, the ink that is placed on them allows for bleach and hair color to touch the foil, without damaging the hair, something that does not exist here. Many companies have tried to make

Identify the percentage of total product covered under this Exclusion Request not available from manufacturers in the United States	100	%
Estimate the number of days required to take delivery of the product covered by this Exclusion Request, from the time the purchase order is issued by your organization	75	days
Estimate the number of days required to manufacture the product covered by this Exclusion Request, from the time a binding purchase order is executed	35	days
Estimate the number of days required to ship the product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock	40	days
Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the product subject to this Exclusion Request	250	shipments

Identify the U.S. Destination Port(s) of Entry through which the product subject to this Exclusion Request would be transported

Port 1 Lewiston Port of Entry

Port 1 Lewiston Port of Entry

Port 2 Buffalo, New York - 0901

Port 3 Blaine, Washington - 3004

Is the organization making this Exclusion Request doing so on behalf of a non-U.S. producer that does not manufacture products in the United States?

Yes

Identify the non-U.S. producer

Framar International

Identify the country where the organization is headquartered

Canada

Comments

Exclusion Request Product Information

For this single Exclusion Request, provide a full, complete description of the product in the space provided below.See explanation below.
The product for which an Exclusion is being requested is defined as follows: *

This product is an embossed roll of foil. Our products are used in highlighting/coloring hair. However, they are specific in nature, texture, alloy, color and temper to any other hair foil the world has to offer. We currently produce these rolls sheets

*With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., “hot-rolled,” “seamless pipe,” “suitable for use in boilers,” “longitudinally submerged arc welded,” etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., “cross-sectional diameter of 5.50 mm”) or measurements (e.g., “yield strength of 300 MPa,” “carbon content 0.08%,” etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., “cross-sectional diameter falling within the range 5.35 mm and 5.65 mm,” “yield strength greater than or equal to 300 MPa,” “carbon content less than or equal to 0.15%, by weight,” etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.
Comments

Our foil is cold rolled, soft temper(O), thickness range 13 micron (0.013mm) to 17 micron(0.017). Tensile strength range is 60-8-Mpa. Elongation is 2-2.5%. 1145 alloy. Coating weight:2-3grams psq. Coating thickness: 1-2 micrometer. Coating

Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation
1	ISO	9001:2015
2	ISO	14001:2015

Identify the classification and properties of the product covered under this Exclusion Request. Other classification or properties may be described in the textboxes below. (Select all that apply)

may be described in the textboxes below. (Select all that apply)

Slab ☐	Blooms ☐	Billets ☐	Ingots ☐	Flat ☐	Long ☐
Beams ☐	Semi-Finished ☐	Pipe ☐	Tube ☐	Stainless ☐	Wire ☐
Hot Rolled ☐	Cold Rolled ☑	Annealed ☑	Plated ☐	Electro-Plated ☐	Galvanized ☐
Electro-Galvanized ☐	Zinc Plated ☐	Aluminum Plated ☐	Lead Plated ☐	Tin Plated ☐	Painted ☐
Varnished ☐	Plasticized ☐	Pickled ☐	Fittings ☐		

Use the text boxes on the right if property is not listed above.

Comments

Identify the chemical composition of the specific product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored. Format should starts with 0(example: 0.975)

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon
Minimum %	99.35	0	0	0	0
Maximum %	99.45	0	0	0	0
	Chromium	Cobalt	Copper	Iron	Lead
Minimum %	0	0	0.04	0.6	0
Maximum %	0	0	0.05	0.65	0
	Magnesium	Manganese	Molybdenum	Nickel	Niobium
Minimum %	0.04	0.04	0	0	0
Maximum %	0.05	0.05	0	0	0
	Nitrogen	Phosphorus	Selenium	Silicon	Sulfur
Minimum	0	0	0	0.6	0

%					

Maximum %	0	0	0	0.65	0
	Tellurium	Tin	Titanium	Tungsten	Vanadium
Minimum %	0	0	0	0	0
Maximum %	0	0	0	0	0
	Zinc	Zirconium	Other Chemical		
Minimum %	0.1	0	0		
Maximum %	0.2	0	0		

Comments

Provide the following information on the single product that is the subject of this Exclusion Request: 1) dimensional information for the single product and a single size -- not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.). A separate Exclusion Request must be submitted for each product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature.

Product Specifications (Millimeters)

	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height
Minimum	0.013	25	65	6858	127	102
Maximum	0.013	25	65	8890	127	102

Strength

	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method - Brinnell, Rockwell, Vickers, etc.) Please Provide Method
Minimum	60	0	0
Maximum	80	0	0

Toughness (If Applicable)

Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other Provide Test Method
Temperature			
Joules			
% Shear			

Provide the following information on the single product that is the subject of this Exclusion Request: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness.

	Global Ductility		Local Ductility	
	Elongation %	Reduction in Area %	Hole Expansion %	Bendability (mm)
Minimum	1 %	0 %	0 %	0 mm
Maximum	2 %	0 %	0 %	0 mm

	Magnetic Permeability			Surface Finish
	Epstein Test	Greer Lab Method	Stacked Wide Sheet	Profilometer - [SAE J911]
Minimum	0	0	0	0
Maximum	0	0	0	0

Coating Type and Composition		
Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg)

Coating Weight and Thickness		
	Coating Weight	Coating Thickness
Minimum	0 grams psq	0 micrometers
Maximum	0 grams psq	0 micrometers

Specify any Additional Methods Used

Comments

Product Commercial Names

List the Commercial Name(s) of the single product that is the subject of this exclusion

Small Roll

Comments

Identify the Association code for the product that is the subject of this Exclusion Request

1145

State the 1) application for the product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar products manufactured in the United States, if available, are not suitable: *

1)Application is for the hair/beauty industry used for highlighting hair. 2)Unfortunately, similar products to ours are not made in the US. Truthfully, similar products to ours aren't made anywhere in the world. The factory we work with in China is a 'one stop shop'. They convert, print, emboss, cut and package. You cannot find this anywhere else. Their printing capabilities do not exist at any other factory as we worked for two years with them to develop it. While hair foil can be

If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single product:

Source Countries

Identify the source countries for the single product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the product. If this product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin. NOTE: Products encompassing more than one 10 - digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)	

1	China	Canada	250		Framar International	

Product Availability Information

Does the Requester possess knowledge of any domestic U.S. parties that currently manufacture the described product in the United States?

No

Comments

This product currently cannot be manufactured in the USA to the specifications that we require. There is no 'one stop shop' in the USA. Our company use to purchase this foil from the USA many years ago, and would love to again, but no

Does the Requester possess knowledge of any parties that currently manufacture the described product in a country exempted from this tariff? If yes, identify the country or countries below.

No

Comments

Unfortunately not, this is something we also researched extensively before applying. There is a company in Costa Rica called Alunasa, however, they refuse to purchase the machines to make the foil the way we'd need it and refuse to work on

Is the Requester aware of any manufacturers capable of producing a substitute for the product in the United States? If “Yes” provide supporting information (name and address) in the space below?

No

Comments

Unfortunately not.

Has the Exclusion Requester attempted to qualify any manufacturer in the United States as a supplier of the product that is the subject of this Exclusion Request in the past two years? If “Yes” provide supporting information in the space below.

Yes

Please provide names of the manufacturers.

Manufacturers

1 JW Aluminum

2 Commodity Foil

3 Norandal U.S.A.

4 ITW Laminations (Alubec)

5 New England Foil

6 Alufoil

Comments

Has the Exclusion Requester attempted to purchase the described product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If “Yes” identify the manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the comments below.

Yes

Comments

JW Aluminum Company
John Mucci 1800.367-6607

Has the Exclusion Requester had supply contracts, or does it have current contracts, with producers that manufacture in the United States the product identified in the Exclusion Request? If “Yes” identify the U.S. manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the comments below.

No

Comments

We do purchase aluminum coils from the US, however, the companies that we work with cannot/will not produce this foil.

Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent product that would meet qualification requirements? If “Yes” identify in the space below the testing standards/procedures employed to make that determination (e.g., magnetic core loss, etc).

Yes

Comments

For our foil, the biggest issue isn't the testing standards, it's the lack of capabilities to produce. There is no company in the US that is a 'one stop shop'. From producing coils, all the way to packaging the boxes and everything in between. If the

In the last two years, has the Requester purchased a substitute product manufactured in the United States in place of the product described in the Exclusion Request? If “Yes” provide supporting information in the comments below.

No

Comments

Not available to do so.

Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.

On all entry's the line item will specifically say 'Small Rolls'. We'd be more than willing to give it a code should that work best for CBP. Our goal is not to create more work. We simply want to be able to sell a product that we worked hard to

Certification

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete. The undersigned certifies that the information herein supplied in response to this questionnaire is

complete and correct to the best of his/her knowledge.

Effective for all exclusion requests submitted on or after December 14, 2020, the undersigned certifies in the 232 Exclusions Portal that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

A. My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request or I have a purchase order or orders for such products;
B. My organization does not intend to use the exclusion for which I have filed an exclusion request, if granted, solely to hedge or arbitrage the price;
C. My organization expects to consume, sell, or otherwise use the total volume of product across all my active exclusions and pending exclusion requests in the course of my organization's business activities within the next calendar year;
D. If my organization is submitting an exclusion request for a product for which we previously received an exclusion, I certify that my organization either imported the full amount of our approved exclusion(s) last year or intended to import the full amount but could not due to one of the following reasons:
    1. loss of contract(s);
    2. unanticipated business downturns; or
    3. other factors that were beyond my organizations' control that directly resulted in less need for steel or aluminum articles; and
E. I certify that the exclusion amount requested this year is in line with what my organization expects to import based on our current business outlook. If requested by the Department of Commerce, my organization shall provide documentation that justifies its assertions in this certification regarding its past imports of steel or aluminum articles and its projections for the current year, as it relates to past and current calendar year exclusion requests.

It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.[18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name

Framar International

Name of Authorizing Official

Giovanni Gallo

Title of Authorizing Official

Vice President

Phone Number

905-374-0133

Email of Authorizing Official

ggallo@framar.com

If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.

Point-of-Contact Name

Title

E-mail Address

Phone Number

Do you have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission?

No

Attachment

There are no attachments for this exclusion request

There are no attachments for this exclusion request

Published Objection Filings

Company	Product	Posted Date	Details
No data available in table			

BIS Decision Memo

View attachment file

Back

For questions about the exclusion process, please email or call:
Aluminum232@bis.doc.gov or 202-482-4757 for aluminum-related inquiries, and Steel232@bis.doc.gov or 202-482-5642 for steel-related inquiries.

U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: 29053

Summary:

- Requester: Russell A. Farrow Inc
- Product description: This product is an embossed roll of foil. Our products are used in highlighting/coloring hair. However, they are specific in nature, texture, alloy, color and temper to any other hair foil the world has to offer. We currently produce these rolls sheets all in 5 inch wide specs, 13 micron(0.013) - 17 micron(0.017). Our foil is cold rolled, soft temper(O). Tensile strength range is 60-8-Mpa. Elongation is 2-2.5%. Unique in nature - the way the foil is pushed out of it's production machine does not exist in America. Texture- Our embossing is not something that currently exists here. We worked on creating a cylinder that almost looks like an orange peel. This specific texture grabs the hair, creating an unmatched hold when working on highlights. Alloy - We use the most hard to get alloy for our foil, 1145. In America right now, nobody is willing to work with 1145 due to the scarcity of it, but more importantly, the costs. 1145 is the utmost ideal foil for hair as it's softer in nature, and more pliable to work with for highlights. Color- The ink that we use is called 'solvent based ink'. No company in the US current makes this ink for hairdressing foil. If the ammonia and peroxide from the hair color mixes with ink that's improperly coated, the results are catastrophic to the hair(turns it into mush). We can provide images if need be. When the printing cylinder transfers the ink onto the foil, it must enter a heating tunnel of at least 360 degrees Fahrenheit. If the process is not done 100% correctly, the ink will not stay on the foil once bleach is applied, thus creating SEVERE damage to the hair. Furthermore, the patterns created on our foils have never been made by anyone else in the world for hair foil, other than the factory that we work with. We spent two years developing a new ombre printing technique for this specific foil. No other factory in the world has been able to replicate it. Temper - Our temper which is O soft, is not common practice combined with 1145 for hair foil. We used this for our hair foil as it performs best. Without this, the foil is brittle and does not hold in place. Our company depends on creating unique foil, not simply foil that is your generic 8011 and put into a box that says 'hair foil'. We take pride in creating foil that is only for our brand, so that it performs better and continues to bring colorists back to using it time and time again.
- HTSUS: 7607116010
- Total Requested Annual Exclusion Quantity in Kilograms: 35000
- Date Submitted: 10/11/2019

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as

amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive branch agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality; or 2) based upon specific national security considerations. Any aluminum article for which relief is granted from quantitative limitations under Clause 1 of Proclamation 9777 is also not subject to the additional rate of duty set forth in Proclamation 9704.

The above-captioned request for relief ("exclusion request") has met the requirements for consideration as a "complete submission" under Supplement No. 1 to 15 CFR Part 705.

BIS has considered the evidence provided, including in the exclusion request and in BIS's report to the President of January 11, 2018, and has assessed other interagency comments as applicable. No objections have been filed to this exclusion request that meet the requirements laid out in Supplement No. 1 to 15 CFR Part 705, and therefore none have been considered.

Based on BIS's review of the evidence presented, and the absence of objectors, BIS finds 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.

BIS also finds that no overriding national security concerns require that this exclusion request be denied notwithstanding the lack of sufficient domestic availability.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be granted for one year.

This approval of your exclusion request does not constitute a ruling under Title 19 Part 177, Code of Federal Regulations (19 CFR 177.1(d)(1)), or official confirmation of the correct provision under the Harmonized Tariff Schedule of the United States for your goods. To be certain of the correct tariff provision, you may request a ruling by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York NY 10014, attn: Binding Ruling Request or you may submit your request electronically at https://erulings.cbp.gov/home.

DECISION ON EXCLUSION REQUEST # 29053

_____**X**_____ I approve granting this exclusion request. The granted exclusion number is 29053. This exclusion is granted for the merchandise described in the exclusion request and classified in the 10-digit provision of the Harmonized Tariff Schedule of the United States (HTSUS) claimed in the exclusion request. This exclusion is granted only in the quantities requested from each identified supplier and country of origin, as specified in the original exclusion request form. This exclusion is granted for one year from the date of signature below. The requester may consult CSMS #39-633923 for further instructions on using the exclusion number and receiving retroactive relief.

_____ I do not approve granting this exclusion request.

_____ I would like to discuss.

Matthew S. Borman

Deputy Assistant Secretary of Export Administration

November 21, 2019

Date

U.S. Department of Commerce

Section 232 Steel and Aluminum

Product Information

Submission Date: 10/11/2019

Public Status: Granted

Please select product type: Aluminum

Identify the class of product for which the Exclusion is sought: Foil

10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single product covered by this request: 7607116010

If this is a renewal of a previously granted exclusion request, please provide the ID number of the previously granted exclusion request:

Requesting Organization Information

Full Organization Legal Name: Russell A. Farrow Inc

Street Address: 14555 Jib St.

City: Plymouth

State: Michigan

Zip Code: 48170

Headquarters Country: United States

Point of Contact Name: Will Carson

Phone Number: 734 955 7799

E-mail Address: Will.Carson@farrow.com

Web Site Address: http://www.farrow.com

Parent Company of Requesting Organization

Full Organization Legal Name: Framar International

Street Address: 7000 Kinsmen Ct

City: Niagara Falls

Headquarters Country: Canada

State/Province: Ontario

Zip Code:

Web Site Address: http://www.framar.com

Importer of Record for Organization Requesting an Exclusion

Full Organization Legal Name: Russell A. Farrow Inc

Street Address: 14555 Jib St.

City: Plymouth

State: Michigan

Zip Code: 48170

Headquarters Country: United States

Point of Contact Name: Will Carson

Phone Number: 734 955 7799

E-mail Address: Will.Carson@farrow.com

Web Site Address: http://www.farrow.com

Requester's Authorized Representative/Agent (if applicable)

Requestor Point of Contact Name: Giovanni Gallo

Point-of-Contact Organization: Framar

Country Location: Canada

Phone Number: 905-374-0133

E-Mail Address: ggallo@framar.com

Web Site Address: http://www.framar.com

Other Information:

Exclusion Request Details

Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as a: Manufacturer; Distributor; Exporter or, Importer?

Yes

Identify the activity

Other

Identify the organization

Framar

Identify the country where the organization is headquartered

Canada

Comments

We currently produce the product in China. It is our own brand. In our industry, we're considered a manufacturer, however, we are importing this product into Canada and then shipping into the USA to our American distributors. So, unsure as to how you'd properly classify it, but wanted to explain.

Identify the primary type of activity of the Exclusion Requester

Other

Comments

As mentioned above, we purchase the products from a factory in China. However, it is under our own brand. In our industry, we'd be considered a manufacturer, however, because we're covering all of the importing into the US, we may be considered an importer or a non-US distributor. Wanted to explain to help clarify the proper classification.

Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	200000	Kilograms
Average annual consumption for years 2015-2017 of the product that is subject of this Exclusion Request (Kilograms)	180000	Kilograms

Explain why your organization requires an Exclusion

Other

Please provide comments

I would classify this as both insufficient US availability and no US production. There is no 'one stop shop' to manufacturer this product in the USA. These hair foils are extremely unique, the ink that is placed on them allows for bleach and hair color to touch the foil, without damaging the hair, something that does not exist here. Many companies have tried to make

Identify the percentage of total product covered under this Exclusion Request not available from manufacturers in the United States	100	%
Estimate the number of days required to take delivery of the product covered by this Exclusion Request, from the time the purchase order is issued by your organization	75	days
Estimate the number of days required to manufacture the product covered by this Exclusion Request, from the time a binding purchase order is executed	35	days
Estimate the number of days required to ship the product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock	45	days
Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the product subject to this Exclusion Request	250	shipments

Identify the U.S. Destination Port(s) of Entry through which the product subject to this Exclusion Request would be transported

Port 1 Lewiston Port of Entry

Port 1 Lewiston Port of Entry

Port 2 Buffalo, New York - 0901

Port 3 Blaine, Washington - 3004

Is the organization making this Exclusion Request doing so on behalf of a non-U.S. producer that does not manufacture products in the United States?

Yes

Identify the non-U.S. producer

Framar International

Identify the country where the organization is headquartered

Canada

Comments

Exclusion Request Product Information

For this single Exclusion Request, provide a full, complete description of the product in the space provided below.See explanation below.
The product for which an Exclusion is being requested is defined as follows: *

This product is an embossed roll of foil. Our products are used in highlighting/coloring hair. However, they are specific in nature, texture, alloy, color and temper to any other hair foil the world has to offer. We currently produce these rolls sheets

*With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., “hot-rolled,” “seamless pipe,” “suitable for use in boilers,” “longitudinally submerged arc welded,” etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., “cross-sectional diameter of 5.50 mm”) or measurements (e.g., “yield strength of 300 MPa,” “carbon content 0.08%,” etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., “cross-sectional diameter falling within the range 5.35 mm and 5.65 mm,” “yield strength greater than or equal to 300 MPa,” “carbon content less than or equal to 0.15%, by weight,” etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.
Comments

Our foil is cold rolled, soft temper(O), thickness range 13 micron (0.013mm) to 17 micron(0.017). Tensile strength range is 60-8-Mpa. Elongation is 2-2.5%. 1145 alloy. Coating weight:2-3grams psq. Coating thickness: 1-2 micrometer. Coating

Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation
1	ISO	9001:2015

Identify the classification and properties of the product covered under this Exclusion Request. Other classification or properties may be described in the textboxes below. (Select all that apply)

may be described in the textboxes below. (Select all that apply)

Slab ☐	Blooms ☐	Billets ☐	Ingots ☐	Flat ☐	Long ☐
Beams ☐	Semi-Finished ☐	Pipe ☐	Tube ☐	Stainless ☐	Wire ☐
Hot Rolled ☐	Cold Rolled ☑	Annealed ☑	Plated ☐	Electro-Plated ☐	Galvanized ☐
Electro-Galvanized ☐	Zinc Plated ☐	Aluminum Plated ☐	Lead Plated ☐	Tin Plated ☐	Painted ☐
Varnished ☐	Plasticized ☐	Pickled ☐	Fittings ☐		

Use the text boxes on the right if property is not listed above.

Comments

Identify the chemical composition of the specific product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored. Format should starts with 0(example: 0.975)

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon
Minimum %	99.35	0	0	0	0
Maximum %	99.45	0	0	0	0
	Chromium	Cobalt	Copper	Iron	Lead
Minimum %	0	0	0.04	0.6	0
Maximum %	0	0	0.05	0.65	0
	Magnesium	Manganese	Molybdenum	Nickel	Niobium
Minimum %	0.04	0.04	0	0	0
Maximum %	0.05	0.05	0	0	0
	Nitrogen	Phosphorus	Selenium	Silicon	Sulfur
Minimum	0	0	0	0.6	0

%					

Maximum %	0	0	0	0.65	0
	Tellurium	Tin	Titanium	Tungsten	Vanadium
Minimum %	0	0	0.05	0	0
Maximum %	0	0	0.06	0	0
	Zinc	Zirconium	Other Chemical		
Minimum %	0.1	0	0		
Maximum %	0.2	0	0		

Comments

Provide the following information on the single product that is the subject of this Exclusion Request: 1) dimensional information for the single product and a single size -- not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.). A separate Exclusion Request must be submitted for each product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature.

Product Specifications (Millimeters)

	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height
Minimum	0.013	25	102	40640	127	102
Maximum	0.017	25	102	35560	127	102

Strength

	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method - Brinnell, Rockwell, Vickers, etc.) Please Provide Method
Minimum	60	0	0
Maximum	80	0	0

Toughness (If Applicable)

Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other Provide Test Method
Temperature			
Joules			
% Shear			

Provide the following information on the single product that is the subject of this Exclusion Request: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness.

	Global Ductility		Local Ductility	
	Elongation %	Reduction in Area %	Hole Expansion %	Bendability (mm)
Minimum	1 %	0 %	0 %	0 mm
Maximum	2 %	0 %	0 %	0 mm

	Magnetic Permeability			Surface Finish
	Epstein Test	Greer Lab Method	Stacked Wide Sheet	Profilometer - [SAE J911]
Minimum	0	0	0	0
Maximum	0	0	0	0

Coating Type and Composition		
Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg)

Coating Weight and Thickness		
	Coating Weight	Coating Thickness
Minimum	0 grams psq	0 micrometers
Maximum	0 grams psq	0 micrometers

Specify any Additional Methods Used

Comments

Product Commercial Names

List the Commercial Name(s) of the single product that is the subject of this exclusion

Large Roll

Comments

Identify the Association code for the product that is the subject of this Exclusion Request

State the 1) application for the product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar products manufactured in the United States, if available, are not suitable: *

1)Application is for the hair/beauty industry used for highlighting hair. 2)Unfortunately, similar products to ours are not made in the US. Truthfully, similar products to ours aren't made anywhere in the world. The factory we work with in China is a 'one stop shop'. They convert, print, emboss, cut and package. You cannot find this anywhere else. Their printing capabilities do not exist at any other factory as we worked for two years with them to develop it. While hair foil can be

If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single product:

Source Countries

Identify the source countries for the single product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the product. If this product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin. NOTE: Products encompassing more than one 10 - digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)	

1	China	Canada	250		Framar International	

Product Availability Information

Does the Requester possess knowledge of any domestic U.S. parties that currently manufacture the described product in the United States?

No

Comments

This product currently cannot be manufactured in the USA to the specifications that we require. There is no 'one stop shop' in the USA. Our company use to purchase this foil from the USA many years ago, and would love to again, but no

Does the Requester possess knowledge of any parties that currently manufacture the described product in a country exempted from this tariff? If yes, identify the country or countries below.

No

Comments

Unfortunately not, this is something we also researched extensively before applying. There is a company in Costa Rica called Alunasa, however, they refuse to purchase the machines to make the foil the way we'd need it and refuse to work on

Is the Requester aware of any manufacturers capable of producing a substitute for the product in the United States? If “Yes” provide supporting information (name and address) in the space below?

No

Comments

Unfortunately not.

Has the Exclusion Requester attempted to qualify any manufacturer in the United States as a supplier of the product that is the subject of this Exclusion Request in the past two years? If “Yes” provide supporting information in the space below.

Yes

Please provide names of the manufacturers.

Manufacturers

1 JW Aluminum

2 Commodity Foil

3 Norandal U.S.A.

4 ITW Laminations (Alubec)

5 New England Foil

6 Alufoil

Comments

Has the Exclusion Requester attempted to purchase the described product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If “Yes” identify the manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the comments below.

Yes

Comments

JW Aluminum Company
John Mucci 1800.367-6607

Has the Exclusion Requester had supply contracts, or does it have current contracts, with producers that manufacture in the United States the product identified in the Exclusion Request? If “Yes” identify the U.S. manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the comments below.

No

Comments

We do purchase aluminum coils from the US, however, the companies that we work with cannot/will not produce this foil.

Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent product that would meet qualification requirements? If “Yes” identify in the space below the testing standards/procedures employed to make that determination (e.g., magnetic core loss, etc).

Yes

Comments

For our foil, the biggest issue isn't the testing standards, it's the lack of capabilities to produce. There is no company in the US that is a 'one stop shop'. From producing coils, all the way to packaging the boxes and everything in between. If the

In the last two years, has the Requester purchased a substitute product manufactured in the United States in place of the product described in the Exclusion Request? If “Yes” provide supporting information in the comments below.

No

Comments

Not available to do so.

Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.

On all entry's the line item will specifically say 'Large Rolls'. We'd be more than willing to give it a code should that work best for CBP. Our goal is not to create more work. We simply want to be able to sell a product that we worked hard to

Certification

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete. The undersigned certifies that the information herein supplied in response to this questionnaire is

complete and correct to the best of his/her knowledge.

Effective for all exclusion requests submitted on or after December 14, 2020, the undersigned certifies in the 232 Exclusions Portal that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

A. My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request or I have a purchase order or orders for such products;
B. My organization does not intend to use the exclusion for which I have filed an exclusion request, if granted, solely to hedge or arbitrage the price;
C. My organization expects to consume, sell, or otherwise use the total volume of product across all my active exclusions and pending exclusion requests in the course of my organization's business activities within the next calendar year;
D. If my organization is submitting an exclusion request for a product for which we previously received an exclusion, I certify that my organization either imported the full amount of our approved exclusion(s) last year or intended to import the full amount but could not due to one of the following reasons:
    1. loss of contract(s);
    2. unanticipated business downturns; or
    3. other factors that were beyond my organizations' control that directly resulted in less need for steel or aluminum articles; and
E. I certify that the exclusion amount requested this year is in line with what my organization expects to import based on our current business outlook. If requested by the Department of Commerce, my organization shall provide documentation that justifies its assertions in this certification regarding its past imports of steel or aluminum articles and its projections for the current year, as it relates to past and current calendar year exclusion requests.

It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.[18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name

Framar International

Name of Authorizing Official

Giovanni Gallo

Title of Authorizing Official

Vice President

Phone Number

905-374-0133

Email of Authorizing Official

ggallo@framar.com

If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.

Point-of-Contact Name

Title

E-mail Address

Phone Number

Do you have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission?

No

Attachment

There are no attachments for this exclusion request

There are no attachments for this exclusion request

Published Objection Filings

Company	Product	Posted Date	Details
No data available in table			

BIS Decision Memo

View attachment file

Back

For questions about the exclusion process, please email or call:
Aluminum232@bis.doc.gov or 202-482-4757 for aluminum-related inquiries, and Steel232@bis.doc.gov or 202-482-5642 for steel-related inquiries.

U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: 29237

Summary:

- Requester: Russell A. Farrow Inc
- Product description: This product is an embossed roll of foil. Our products are used in highlighting/coloring hair. However, they are specific in nature, texture, alloy, color and temper to any other hair foil the world has to offer. We currently produce these rolls sheets all in 5 inch wide specs, 13 micron(0.013) - 17 micron(0.017). Our foil is cold rolled, soft temper(O). Tensile strength range is 60-8-Mpa. Elongation is 2-2.5%. Unique in nature - the way the foil is pushed out of it's production machine does not exist in America. Texture- Our embossing is not something that currently exists here. We worked on creating a cylinder that almost looks like an orange peel. This specific texture grabs the hair, creating an unmatched hold when working on highlights. Alloy - We use the most hard to get alloy for our foil, 1145. In America right now, nobody is willing to work with 1145 due to the scarcity of it, but more importantly, the costs. 1145 is the utmost ideal foil for hair as it's softer in nature, and more pliable to work with for highlights. Color- The ink that we use is called 'solvent based ink'. No company in the US current makes this ink for hairdressing foil. If the ammonia and peroxide from the hair color mixes with ink that's improperly coated, the results are catastrophic to the hair(turns it into mush). We can provide images if need be. When the printing cylinder transfers the ink onto the foil, it must enter a heating tunnel of at least 360 degrees Fahrenheit. If the process is not done 100% correctly, the ink will not stay on the foil once bleach is applied, thus creating SEVERE damage to the hair. Furthermore, the patterns created on our foils have never been made by anyone else in the world for hair foil, other than the factory that we work with. We spent two years developing a new ombre printing technique for this specific foil. No other factory in the world has been able to replicate it. Temper - Our temper which is O soft, is not common practice combined with 1145 for hair foil. We used this for our hair foil as it performs best. Without this, the foil is brittle and does not hold in place. Our company depends on creating unique foil, not simply foil that is your generic 8011 and put into a box that says 'hair foil'. We take pride in creating foil that is only for our brand, so that it performs better and continues to bring colorists back to using it time and time again.
- HTSUS: 7607116010
- Total Requested Annual Exclusion Quantity in Kilograms: 200000
- Date Submitted: 10/11/2019

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as

amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive branch agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality; or 2) based upon specific national security considerations. Any aluminum article for which relief is granted from quantitative limitations under Clause 1 of Proclamation 9777 is also not subject to the additional rate of duty set forth in Proclamation 9704.

The above-captioned request for relief ("exclusion request") has met the requirements for consideration as a "complete submission" under Supplement No. 1 to 15 CFR Part 705.

BIS has considered the evidence provided, including in the exclusion request and in BIS's report to the President of January 11, 2018, and has assessed other interagency comments as applicable. No objections have been filed to this exclusion request that meet the requirements laid out in Supplement No. 1 to 15 CFR Part 705, and therefore none have been considered.

Based on BIS's review of the evidence presented, and the absence of objectors, BIS finds 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.

BIS also finds that no overriding national security concerns require that this exclusion request be denied notwithstanding the lack of sufficient domestic availability.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be granted for one year.

This approval of your exclusion request does not constitute a ruling under Title 19 Part 177, Code of Federal Regulations (19 CFR 177.1(d)(1)), or official confirmation of the correct provision under the Harmonized Tariff Schedule of the United States for your goods. To be certain of the correct tariff provision, you may request a ruling by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York NY 10014, attn: Binding Ruling Request or you may submit your request electronically at https://erulings.cbp.gov/home.

DECISION ON EXCLUSION REQUEST # 29237

_____**X**_____ I approve granting this exclusion request. The granted exclusion number is 29237. This exclusion is granted for the merchandise described in the exclusion request and classified in the 10-digit provision of the Harmonized Tariff Schedule of the United States (HTSUS) claimed in the exclusion request. This exclusion is granted only in the quantities requested from each identified supplier and country of origin, as specified in the original exclusion request form. This exclusion is granted for one year from the date of signature below. The requester may consult CSMS #39-633923 for further instructions on using the exclusion number and receiving retroactive relief.

_____ I do not approve granting this exclusion request.

_____ I would like to discuss.

Matthew S. Borman

Deputy Assistant Secretary of Export Administration

November 18, 2019

Date

U.S. Department of Commerce

Section 232 Steel and Aluminum

Product Information

Submission Date: 11/21/2019

Public Status: Granted

Please select product type: Aluminum

Identify the class of product for which the Exclusion is sought: Foil

10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single product covered by this request: 7607116010

If this is a renewal of a previously granted exclusion request, please provide the ID number of the previously granted exclusion request:

Requesting Organization Information

Full Organization Legal Name: Russell A. Farrow Inc

Street Address: 14555 Jib St.

City: Plymouth

State: Michigan

Zip Code: 48170

Headquarters Country: United States

Point of Contact Name: Will Carson

Phone Number: 734 955 7799

E-mail Address: Will.Carson@farrow.com

Web Site Address: http://www.farrow.com

Parent Company of Requesting Organization

Full Organization Legal Name: Framar International

Street Address: 7000 Kinsmen Ct

City: Niagara Falls

Headquarters Country: Canada

State/Province: Ontario

Zip Code:

Web Site Address: http://www.framar.com

Importer of Record for Organization Requesting an Exclusion

Full Organization Legal Name: Russell A. Farrow Inc

Street Address: 14555 Jib St.

City: Plymouth

State: Michigan

Zip Code: 48170

Headquarters Country: United States

Point of Contact Name: Will Carson

Phone Number: 734 955 7799

E-mail Address: Will.Carson@farrow.com

Web Site Address: http://www.farrow.com

Requester's Authorized Representative/Agent (if applicable)

Requestor Point of Contact Name: Giovanni Gallo

Point-of-Contact Organization: Framar

Country Location: Canada

Phone Number: 905-374-0133

E-Mail Address: ggallo@framar.com

Web Site Address: http://www.framar.com

Other Information:

Exclusion Request Details

Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as a: Manufacturer; Distributor; Exporter or, Importer?

Yes

Identify the activity

Other

Identify the organization

Framar

Identify the country where the organization is headquartered

Canada

Comments

We currently produce the product in China. It is our own brand. In our industry, we're considered a manufacturer, however, we are importing this product into Canada and then shipping into the USA to our American distributors. So, unsure as to how you'd properly classify it, but wanted to explain.

Identify the primary type of activity of the Exclusion Requester

Other

Comments

As mentioned above, we purchase the products from a factory in China. However, it is under our own brand. In our industry, we'd be considered a manufacturer, however, because we're covering all of the importing into the US, we may be considered an importer or a non-US distributor. Wanted to explain to help clarify the proper classification.

Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	200000	Kilograms
Average annual consumption for years 2015-2017 of the product that is subject of this Exclusion Request (Kilograms)	150000	Kilograms

Explain why your organization requires an Exclusion

Other

Please provide comments

I would classify this as both insufficient US availability and no US production. There is no 'one stop shop' to manufacturer this product in the USA. These hair foils are extremely unique, the ink that is placed on them allows for bleach and hair color to touch the foil, without damaging the hair, something that does not exist here. Many companies have tried to make

Identify the percentage of total product covered under this Exclusion Request not available from manufacturers in the United States	100	%
Estimate the number of days required to take delivery of the product covered by this Exclusion Request, from the time the purchase order is issued by your organization	75	days
Estimate the number of days required to manufacture the product covered by this Exclusion Request, from the time a binding purchase order is executed	35	days
Estimate the number of days required to ship the product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock	40	days
Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the product subject to this Exclusion Request	250	shipments

Identify the U.S. Destination Port(s) of Entry through which the product subject to this Exclusion Request would be transported

Port 1 Lewiston Port of Entry

Port 1 Lewiston Port of Entry

Port 2 Buffalo, New York - 0901

Port 3 Blaine, Washington - 3004

Is the organization making this Exclusion Request doing so on behalf of a non-U.S. producer that does not manufacture products in the United States?

Yes

Identify the non-U.S. producer

Framar International

Identify the country where the organization is headquartered

Canada

Comments

Exclusion Request Product Information

For this single Exclusion Request, provide a full, complete description of the product in the space provided below.See explanation below.
The product for which an Exclusion is being requested is defined as follows: *

This product is a roll of foil. Our products are used in highlighting/coloring hair. However, they are specific in nature, texture, alloy, color and temper to any other hair foil the world has to offer. We currently produce these rolls sheets all in 5

*With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., “hot-rolled,” “seamless pipe,” “suitable for use in boilers,” “longitudinally submerged arc welded,” etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., “cross-sectional diameter of 5.50 mm”) or measurements (e.g., “yield strength of 300 MPa,” “carbon content 0.08%,” etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., “cross-sectional diameter falling within the range 5.35 mm and 5.65 mm,” “yield strength greater than or equal to 300 MPa,” “carbon content less than or equal to 0.15%, by weight,” etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.
Comments

Our foil is cold rolled, soft temper(O), thickness range 13 micron (0.013mm) to 17 micron(0.017). Tensile strength range is 60-8-Mpa. Elongation is 2-2.5%. 1145 alloy. Coating weight:2-3grams psq. Coating thickness: 1-2 micrometer. Coating

Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation
1	ISO	9001:2015
2	ISO	14001:2015

Identify the classification and properties of the product covered under this Exclusion Request. Other classification or properties may be described in the textboxes below. (Select all that apply)

may be described in the textboxes below. (Select all that apply)

Slab ☐	Blooms ☐	Billets ☐	Ingots ☐	Flat ☐	Long ☐
Beams ☐	Semi-Finished ☐	Pipe ☐	Tube ☐	Stainless ☐	Wire ☐
Hot Rolled ☐	Cold Rolled ☑	Annealed ☑	Plated ☐	Electro-Plated ☐	Galvanized ☐
Electro-Galvanized ☐	Zinc Plated ☐	Aluminum Plated ☐	Lead Plated ☐	Tin Plated ☐	Painted ☐
Varnished ☐	Plasticized ☐	Pickled ☐	Fittings ☐		

Use the text boxes on the right if property is not listed above.

Comments

Identify the chemical composition of the specific product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored. Format should starts with 0(example: 0.975)

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon
Minimum %	99.35	0	0	0	0
Maximum %	99.45	0	0	0	0
	Chromium	Cobalt	Copper	Iron	Lead
Minimum %	0	0	0.04	0.6	0
Maximum %	0	0	0.05	0.65	0
	Magnesium	Manganese	Molybdenum	Nickel	Niobium
Minimum %	0.04	0.04	0	0	0
Maximum %	0.05	0.05	0	0	0
	Nitrogen	Phosphorus	Selenium	Silicon	Sulfur
Minimum	0	0	0	0	0

%					

Maximum %	0	0	0	0	0
	Tellurium	Tin	Titanium	Tungsten	Vanadium
Minimum %	0	0	0	0	0
Maximum %	0	0	0	0	0
	Zinc	Zirconium	Other Chemical		
Minimum %	0.1	0	0		
Maximum %	0.2	0	0		

Comments

Provide the following information on the single product that is the subject of this Exclusion Request: 1) dimensional information for the single product and a single size -- not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.). A separate Exclusion Request must be submitted for each product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature.

Product Specifications (Millimeters)

	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height
Minimum	0.013	25	65	457200	127	102
Maximum	0.017	25	65	518160	127	102

Strength

	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method - Brinnell, Rockwell, Vickers, etc.) Please Provide Method
Minimum	60	0	0
Maximum	80	0	0

Toughness (If Applicable)

Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other Provide Test Method
Temperature			
Joules			
% Shear			

Provide the following information on the single product that is the subject of this Exclusion Request: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness.

	Global Ductility		Local Ductility	
	Elongation %	Reduction in Area %	Hole Expansion %	Bendability (mm)
Minimum	1 %	0 %	0 %	0 mm
Maximum	2 %	0 %	0 %	0 mm

	Magnetic Permeability			Surface Finish
	Epstein Test	Greer Lab Method	Stacked Wide Sheet	Profilometer - [SAE J911]
Minimum	0	0	0	0
Maximum	0	0	0	0

Coating Type and Composition		
Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg)

Coating Weight and Thickness		
	Coating Weight	Coating Thickness
Minimum	0 grams psq	0 micrometers
Maximum	0 grams psq	0 micrometers

Specify any Additional Methods Used

Comments

Product Commercial Names

List the Commercial Name(s) of the single product that is the subject of this exclusion

Large Roll

Comments

Identify the Association code for the product that is the subject of this Exclusion Request

1145

State the 1) application for the product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar products manufactured in the United States, if available, are not suitable: *

1)Application is for the hair/beauty industry used for highlighting hair. 2)Unfortunately, similar products to ours are not made in the US. Truthfully, similar products to ours aren't made anywhere in the world. The factory we work with in China is a 'one stop shop'. They convert, print, emboss, cut and package. You cannot find this anywhere else. Their printing capabilities do not exist at any other factory as we worked for two years with them to develop it. While hair foil can be

If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single product:

Source Countries

Identify the source countries for the single product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the product. If this product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin. NOTE: Products encompassing more than one 10 - digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)	

1	China	Canada	250		Framar International	

Product Availability Information

Does the Requester possess knowledge of any domestic U.S. parties that currently manufacture the described product in the United States?

No

Comments

This product currently cannot be manufactured in the USA to the specifications that we require. There is no 'one stop shop' in the USA. Our company use to purchase this foil from the USA many years ago, and would love to again, but no

Does the Requester possess knowledge of any parties that currently manufacture the described product in a country exempted from this tariff? If yes, identify the country or countries below.

No

Comments

Unfortunately not, this is something we also researched extensively before applying. There is a company in Costa Rica called Alunasa, however, they refuse to purchase the machines to make the foil the way we'd need it and refuse to work on

Is the Requester aware of any manufacturers capable of producing a substitute for the product in the United States? If “Yes” provide supporting information (name and address) in the space below?

No

Comments

Unfortunately not.

Has the Exclusion Requester attempted to qualify any manufacturer in the United States as a supplier of the product that is the subject of this Exclusion Request in the past two years? If “Yes” provide supporting information in the space below.

Yes

Please provide names of the manufacturers.

Manufacturers

1 JW Aluminum

2 Commodity Foil

3 Norandal U.S.A.

4 ITW Laminations (Alubec)

5 New England Foil

6 Alufoil

Comments

Has the Exclusion Requester attempted to purchase the described product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If “Yes” identify the manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the comments below.

Yes

Comments

JW Aluminum Company
John Mucci 1800.367-6607

Has the Exclusion Requester had supply contracts, or does it have current contracts, with producers that manufacture in the United States the product identified in the Exclusion Request? If “Yes” identify the U.S. manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the comments below.

No

Comments

We do purchase aluminum coils from the US, however, the companies that we work with cannot/will not produce this foil.

Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent product that would meet qualification requirements? If “Yes” identify in the space below the testing standards/procedures employed to make that determination (e.g., magnetic core loss, etc).

Yes

Comments

For our foil, the biggest issue isn't the testing standards, it's the lack of capabilities to produce. There is no company in the US that is a 'one stop shop'. From producing coils, all the way to packaging the boxes and everything in between. If the

In the last two years, has the Requester purchased a substitute product manufactured in the United States in place of the product described in the Exclusion Request? If “Yes” provide supporting information in the comments below.

No

Comments

Not available to do so.

Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.

On all entry's the line item will specifically say 'Large Rolls'. We'd be more than willing to give it a code should that work best for CBP. Our goal is not to create more work. We simply want to be able to sell a product that we worked hard to

Certification

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete. The undersigned certifies that the information herein supplied in response to this questionnaire is

complete and correct to the best of his/her knowledge.

Effective for all exclusion requests submitted on or after December 14, 2020, the undersigned certifies in the 232 Exclusions Portal that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

A. My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request or I have a purchase order or orders for such products;
B. My organization does not intend to use the exclusion for which I have filed an exclusion request, if granted, solely to hedge or arbitrage the price;
C. My organization expects to consume, sell, or otherwise use the total volume of product across all my active exclusions and pending exclusion requests in the course of my organization's business activities within the next calendar year;
D. If my organization is submitting an exclusion request for a product for which we previously received an exclusion, I certify that my organization either imported the full amount of our approved exclusion(s) last year or intended to import the full amount but could not due to one of the following reasons:
    1. loss of contract(s);
    2. unanticipated business downturns; or
    3. other factors that were beyond my organizations' control that directly resulted in less need for steel or aluminum articles; and
E. I certify that the exclusion amount requested this year is in line with what my organization expects to import based on our current business outlook. If requested by the Department of Commerce, my organization shall provide documentation that justifies its assertions in this certification regarding its past imports of steel or aluminum articles and its projections for the current year, as it relates to past and current calendar year exclusion requests.

It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.[18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name

Framar International

Name of Authorizing Official

Giovanni Gallo

Title of Authorizing Official

Vice President

Phone Number

905-374-0133

Email of Authorizing Official

ggallo@framar.com

If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.

Point-of-Contact Name

Title

E-mail Address

Phone Number

Do you have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission?

No

Attachment

There are no attachments for this exclusion request

There are no attachments for this exclusion request

Published Objection Filings

Company	Product	Posted Date	Details
No data available in table			

BIS Decision Memo

View attachment file

Back

For questions about the exclusion process, please email or call:
Aluminum232@bis.doc.gov or 202-482-4757 for aluminum-related inquiries, and Steel232@bis.doc.gov or 202-482-5642 for steel-related inquiries.

U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: 41408

Summary:

- Requester: Russell A. Farrow Inc
- Product description: This product is a roll of foil. Our products are used in highlighting/coloring hair. However, they are specific in nature, texture, alloy, color and temper to any other hair foil the world has to offer. We currently produce these rolls sheets all in 5 inch wide specs, 13 micron(0.013) - 17 micron(0.017). Our foil is cold rolled, soft temper(O). Tensile strength range is 60-8-Mpa. Elongation is 2-2.5%. Unique in nature - the way the foil is pushed out of it's production machine does not exist in America.Texture- Our rolls are not something that currently exists here. We worked on creating unique cylinder textures that no company is willing to produce in America. This specific texture grabs the hair, creating an unmatched hold when working on highlights.Alloy - We use the most hard to get alloy for our foil, 1145. In America right now, nobody is willing to work with 1145 due to the scarcity of it, but more importantly, the costs. 1145 is the utmost ideal foil for hair as it's softer in nature, and morepliable to work with for highlights. Color- The ink that we use is called 'solvent based ink'. No company in the US current makes this ink for hairdressing foil. If the ammonia and peroxide from the hair color mixes with ink that's improperly coated, theresults are catastrophic to the hair(turns it into mush). We can provide images if need be. When the printing cylinder transfers the ink onto the foil, it must enter a heating tunnel of at least 360 degrees Fahrenheit. If the process is not done 100% correctly, the ink will not stay on the foil once bleach is applied, thus creating SEVERE damage to the hair. Furthermore, the patterns created on our foils have never been made by anyone else in the world for hair foil, other than the factory that we work with. We spent two years developing a new ombre printing technique for this specific foil. No other factory in the world has been able to replicate it. Temper - Our temper which is O soft, is not common practice combined with 1145 for hair foil. We used this for our hair foil as it performs best. Without this, the foil is brittle and does not hold in place. Our company depends on creating unique foil, not simply foil that is your generic 8011 and put into a box that says 'hair foil'. We take pride in creating foil that is only for our brand, so that it performs better and continues to bring colorists back to using it time and time again.
- HTSUS: 7607116010
- Total Requested Annual Exclusion Quantity in Kilograms: 200000
- Date Submitted: 11/21/2019

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as

amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive branch agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality; or 2) based upon specific national security considerations. Any aluminum article for which relief is granted from quantitative limitations under Clause 1 of Proclamation 9777 is also not subject to the additional rate of duty set forth in Proclamation 9704.

The above-captioned request for relief ("exclusion request") has met the requirements for consideration as a "complete submission" under Supplement No. 1 to 15 CFR Part 705.

BIS has considered the evidence provided, including in the exclusion request and in BIS's report to the President of January 11, 2018, and has assessed other interagency comments as applicable. No objections have been filed to this exclusion request that meet the requirements laid out in Supplement No. 1 to 15 CFR Part 705, and therefore none have been considered.

Based on BIS's review of the evidence presented, and the absence of objectors, BIS finds 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.

BIS also finds that no overriding national security concerns require that this exclusion request be denied notwithstanding the lack of sufficient domestic availability.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be granted for one year.

This approval of your exclusion request does not constitute a ruling under Title 19 Part 177, Code of Federal Regulations (19 CFR 177.1(d)(1)), or official confirmation of the correct provision under the Harmonized Tariff Schedule of the United States for your goods. To be certain of the correct tariff provision, you may request a ruling by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York NY 10014, attn: Binding Ruling Request or you may submit your request electronically at https://erulings.cbp.gov/home.

DECISION ON EXCLUSION REQUEST #41408

_____**X**_____ I approve granting this exclusion request. The granted exclusion number is 41408. This exclusion is granted for the merchandise described in the exclusion request and classified in the 10-digit provision of the Harmonized Tariff Schedule of the United States (HTSUS) claimed in the exclusion request. This exclusion is granted only in the quantities requested from each identified supplier and country of origin, as specified in the original exclusion request form. This exclusion is granted for one year from the date of signature below. The requester may consult CSMS #39-633923 for further instructions on using the exclusion number and receiving retroactive relief.

_____ I do not approve granting this exclusion request.

_____ I would like to discuss.

Matthew S. Borman

Deputy Assistant Secretary of Export Administration

December 30, 2019

Date

U.S. Department of Commerce

Section 232 Steel and Aluminum

Product Information

Submission Date: 1/22/2020

Public Status: Granted

Please select product type: Aluminum

Identify the class of product for which the Exclusion is sought: Foil

10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single product covered by this request: 7607116010

If this is a renewal of a previously granted exclusion request, please provide the ID number of the previously granted exclusion request:

Requesting Organization Information

Full Organization Legal Name: Russell A. Farrow Inc

Street Address: 14555 Jib St.

City: Plymouth

State: Michigan

Zip Code: 48170

Headquarters Country: United States

Point of Contact Name: Will Carson

Phone Number: 734 955 7799

E-mail Address: Will.Carson@farrow.com

Web Site Address: http://www.farrow.com

Parent Company of Requesting Organization

Full Organization Legal Name: Framar International

Street Address: 7000 Kinsmen Ct

City: Niagara Falls

Headquarters Country: Canada

State/Province: Ontario

Zip Code:

Web Site Address: http://www.framar.com

Importer of Record for Organization Requesting an Exclusion

Full Organization Legal Name: Russell A. Farrow Inc

Street Address: 14555 Jib St.

City: Plymouth

State: Michigan

Zip Code: 48170

Headquarters Country: United States

Point of Contact Name: Will Carson

Phone Number: 734 955 7799

E-mail Address: Will.Carson@farrow.com

Web Site Address: http://www.farrow.com

Requester's Authorized Representative/Agent (if applicable)

Requestor Point of Contact Name: Giovanni Gallo

Point-of-Contact Organization: Framar

Country Location: Canada

Phone Number: 905-374-0133

E-Mail Address: ggallo@framar.com

Web Site Address: http://www.framar.com

Other Information:

Exclusion Request Details

Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as a: Manufacturer; Distributor; Exporter or, Importer?

Yes

Identify the activity

Other

Identify the organization

Framar

Identify the country where the organization is headquartered

Canada

Comments

We currently produce the product in China. It is our own brand. In our industry, we're considered a manufacturer, however, we are importing this product into Canada and then shipping into the USA to our American distributors. So, unsure as to how you'd properly classify it, but wanted to explain.

Identify the primary type of activity of the Exclusion Requester

Other

Comments

As mentioned above, we purchase the products from a factory in China. However, it is under our own brand. In our industry, we'd be considered a manufacturer, however, because we're covering all of the importing into the US, we may be considered an importer or a non-US distributor. Wanted to explain to help clarify the proper classification.

Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)

15000 Kilograms

Average annual consumption for years 2015-2017 of the product that is subject of this Exclusion Request (Kilograms)

12000 Kilograms

Explain why your organization requires an Exclusion

Other

Please provide comments

I would classify this as both insufficient US availability and no US production. There is no 'one stop shop' to manufacturer this product in the USA. These hair foils are extremely unique, the ink that is placed on them allows for bleach and hair color to touch the foil, without damaging the hair, something that does not exist here. Many companies have tried to make

Identify the percentage of total product covered under this Exclusion Request not available from manufacturers in the United States

100 %

Estimate the number of days required to take delivery of the product covered by this Exclusion Request, from the time the purchase order is issued by your organization

75 days

Estimate the number of days required to manufacture the product covered by this Exclusion Request, from the time a binding purchase order is executed

35 days

Estimate the number of days required to ship the product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock

40 days

Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the product subject to this Exclusion Request

250 shipments

Identify the U.S. Destination Port(s) of Entry through which the product subject to this Exclusion Request would be transported

Port 1 Lewiston Port of Entry

Port 1 Lewiston Port of Entry

Port 2 Buffalo, New York - 0901

Port 3 Blaine, Washington - 3004

Is the organization making this Exclusion Request doing so on behalf of a non-U.S. producer that does not manufacture products in the United States?

Yes

Identify the non-U.S. producer

Framar International

Identify the country where the organization is headquartered

Canada

Comments

Exclusion Request Product Information

For this single Exclusion Request, provide a full, complete description of the product in the space provided below.See explanation below.
The product for which an Exclusion is being requested is defined as follows: *

This product is a roll of foil. Our products are used in highlighting/coloring hair. However, they are specific in nature, texture, alloy, color and temper to any other hair foil the world has to offer. We currently produce these rolls sheets all in 5

*With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., “hot-rolled,” “seamless pipe,” “suitable for use in boilers,” “longitudinally submerged arc welded,” etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., “cross-sectional diameter of 5.50 mm”) or measurements (e.g., “yield strength of 300 MPa,” “carbon content 0.08%,” etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., “cross-sectional diameter falling within the range 5.35 mm and 5.65 mm,” “yield strength greater than or equal to 300 MPa,” “carbon content less than or equal to 0.15%, by weight,” etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.
Comments

Our foil is cold rolled, soft temper(O), thickness range 13 micron (0.013mm) to 17 micron(0.017). Tensile strength range is 60-8-Mpa. Elongation is 2-2.5%. 1145 alloy. Coating weight:2-3grams psq. Coating thickness: 1-2 micrometer. Coating

Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation
1	ISO	9001:2015

Identify the classification and properties of the product covered under this Exclusion Request. Other classification or properties may be described in the textboxes below. (Select all that apply)

may be described in the textboxes below. (Select all that apply)

Slab ☐	Blooms ☐	Billets ☐	Ingots ☐	Flat ☐	Long ☐
Beams ☐	Semi-Finished ☐	Pipe ☐	Tube ☐	Stainless ☐	Wire ☐
Hot Rolled ☐	Cold Rolled ☑	Annealed ☑	Plated ☐	Electro-Plated ☐	Galvanized ☐
Electro-Galvanized ☐	Zinc Plated ☐	Aluminum Plated ☐	Lead Plated ☐	Tin Plated ☐	Painted ☐
Varnished ☐	Plasticized ☐	Pickled ☐	Fittings ☐		

Use the text boxes on the right if property is not listed above.

Comments

Identify the chemical composition of the specific product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored. Format should starts with 0(example: 0.975)

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon
Minimum %	99.35	0	0	0	0
Maximum %	99.45	0	0	0	0
	Chromium	Cobalt	Copper	Iron	Lead
Minimum %	0	0	0.04	0.6	0
Maximum %	0	0	0.05	0.65	0
	Magnesium	Manganese	Molybdenum	Nickel	Niobium
Minimum %	0.04	0.04	0	0	0
Maximum %	0.05	0.05	0	0	0
	Nitrogen	Phosphorus	Selenium	Silicon	Sulfur
Minimum	0	0	0	0	0

%					

Maximum %	0	0	0	0	0
	Tellurium	Tin	Titanium	Tungsten	Vanadium
Minimum %	0	0	0	0	0
Maximum %	0	0	0	0	0
	Zinc	Zirconium	Other Chemical		
Minimum %	0.1	0	0		
Maximum %	0.2	0	0		

Comments

Provide the following information on the single product that is the subject of this Exclusion Request: 1) dimensional information for the single product and a single size -- not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.). A separate Exclusion Request must be submitted for each product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature.

Product Specifications (Millimeters)

	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height
Minimum	0.013	31	55	97000	127	55
Maximum	0.017	31	55	98000	127	55

Strength

	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method - Brinnell, Rockwell, Vickers, etc.) Please Provide Method
Minimum	60	0	0
Maximum	80	0	0

Toughness (If Applicable)

Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other Provide Test Method
Temperature			
Joules			
% Shear			

Provide the following information on the single product that is the subject of this Exclusion Request: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness.

	Global Ductility		Local Ductility	
	Elongation %	Reduction in Area %	Hole Expansion %	Bendability (mm)
Minimum	1 %	0 %	0 %	0 mm
Maximum	2 %	0 %	0 %	0 mm

	Magnetic Permeability			Surface Finish
	Epstein Test	Greer Lab Method	Stacked Wide Sheet	Profilometer - [SAE J911]
Minimum	0	0	0	0
Maximum	0	0	0	0

Coating Type and Composition		
Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg)

Coating Weight and Thickness		
	Coating Weight	Coating Thickness
Minimum	0 grams psq	0 micrometers
Maximum	0 grams psq	0 micrometers

Specify any Additional Methods Used

Comments

Product Commercial Names

List the Commercial Name(s) of the single product that is the subject of this exclusion

Small Roll

Comments

Identify the Association code for the product that is the subject of this Exclusion Request

1145

State the 1) application for the product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar products manufactured in the United States, if available, are not suitable: *

1)Application is for the hair/beauty industry used for highlighting hair. 2)Unfortunately, similar products to ours are not made in the US. Truthfully, similar products to ours aren't made anywhere in the world. The factory we work with in China is a 'one stop shop'. They convert, print, emboss, cut and package. You cannot find this anywhere else. Their printing capabilities do not exist at any other factory as we worked for two years with them to develop it. While hair foil can be

If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single product:

Source Countries

Identify the source countries for the single product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the product. If this product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin. NOTE: Products encompassing more than one 10 - digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)	

1	China	Canada	250		Framar International	

Product Availability Information

Does the Requester possess knowledge of any domestic U.S. parties that currently manufacture the described product in the United States?

No

Comments

This product currently cannot be manufactured in the USA to the specifications that we require. There is no 'one stop shop' in the USA. Our company use to purchase this foil from the USA many years ago, and would love to again, but no

Does the Requester possess knowledge of any parties that currently manufacture the described product in a country exempted from this tariff? If yes, identify the country or countries below.

No

Comments

Unfortunately not, this is something we also researched extensively before applying. There is a company in Costa Rica called Alunasa, however, they refuse to purchase the machines to make the foil the way we'd need it and refuse to work on

Is the Requester aware of any manufacturers capable of producing a substitute for the product in the United States? If “Yes” provide supporting information (name and address) in the space below?

No

Comments

Unfortunately not.

Has the Exclusion Requester attempted to qualify any manufacturer in the United States as a supplier of the product that is the subject of this Exclusion Request in the past two years? If “Yes” provide supporting information in the space below.

Yes

Please provide names of the manufacturers.

Manufacturers

1 JW Aluminum

2 Commodity Foil

3 Norandal U.S.A.

4 ITW Laminations (Alubec)

5 New England Foil

6 Alufoil

Comments

Has the Exclusion Requester attempted to purchase the described product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If “Yes” identify the manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the comments below.

Yes

Comments

JW Aluminum Company
John Mucci 1800.367-6607

Has the Exclusion Requester had supply contracts, or does it have current contracts, with producers that manufacture in the United States the product identified in the Exclusion Request? If “Yes” identify the U.S. manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the comments below.

No

Comments

We do purchase aluminum coils from the US, however, the companies that we work with cannot/will not produce this foil.

Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent product that would meet qualification requirements? If “Yes” identify in the space below the testing standards/procedures employed to make that determination (e.g., magnetic core loss, etc).

Yes

Comments

For our foil, the biggest issue isn't the testing standards, it's the lack of capabilities to produce. There is no company in the US that is a 'one stop shop'. From producing coils, all the way to packaging the boxes and everything in between. If the

In the last two years, has the Requester purchased a substitute product manufactured in the United States in place of the product described in the Exclusion Request? If “Yes” provide supporting information in the comments below.

No

Comments

Not available to do so.

Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.

On all entry's the line item will specifically say 'Small Roll'. We'd be more than willing to give it a code should that work best for CBP. Our goal is not to create more work. We simply want to be able to sell a product that we worked hard to

Certification

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete. The undersigned certifies that the information herein supplied in response to this questionnaire is

complete and correct to the best of his/her knowledge.

Effective for all exclusion requests submitted on or after December 14, 2020, the undersigned certifies in the 232 Exclusions Portal that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

A. My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request or I have a purchase order or orders for such products;
B. My organization does not intend to use the exclusion for which I have filed an exclusion request, if granted, solely to hedge or arbitrage the price;
C. My organization expects to consume, sell, or otherwise use the total volume of product across all my active exclusions and pending exclusion requests in the course of my organization's business activities within the next calendar year;
D. If my organization is submitting an exclusion request for a product for which we previously received an exclusion, I certify that my organization either imported the full amount of our approved exclusion(s) last year or intended to import the full amount but could not due to one of the following reasons:
    1. loss of contract(s);
    2. unanticipated business downturns; or
    3. other factors that were beyond my organizations' control that directly resulted in less need for steel or aluminum articles; and
E. I certify that the exclusion amount requested this year is in line with what my organization expects to import based on our current business outlook. If requested by the Department of Commerce, my organization shall provide documentation that justifies its assertions in this certification regarding its past imports of steel or aluminum articles and its projections for the current year, as it relates to past and current calendar year exclusion requests.

It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.[18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name

Framar International

Name of Authorizing Official

Giovanni Gallo

Title of Authorizing Official

Vice President

Phone Number

905-374-0133

Email of Authorizing Official

ggallo@framar.com

If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.

Point-of-Contact Name

Title

E-mail Address

Phone Number

Do you have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission?

No

Attachment

There are no attachments for this exclusion request

There are no attachments for this exclusion request

Published Objection Filings

Company	Product	Posted Date	Details
No data available in table			

BIS Decision Memo

View attachment file

Back

For questions about the exclusion process, please email or call:
Aluminum232@bis.doc.gov or 202-482-4757 for aluminum-related inquiries, and Steel232@bis.doc.gov or 202-482-5642 for steel-related inquiries.

U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: 54282

Summary:

- Requester: Russell A. Farrow Inc
- Product description: This product is a roll of foil. Our products are used in highlighting/coloring hair. However, they are specific in nature, texture, alloy, color and temper to any other hair foil the world has to offer. We currently produce these rolls sheets all in 5 inch wide specs, 13 micron(0.013) - 17 micron(0.017). Our foil is cold rolled, soft temper(O). Tensile strength range is 60-8-Mpa. Elongation is 2-2.5%.
-
- Unique in nature - the way the foil is pushed out of it's production machine does not exist in America. Texture- Our rolls are not something that currently exists here. We worked on creating unique cylinder textures that no company is willing to produce in America. This specific texture grabs the hair, creating an unmatched hold when working on highlights. Alloy - We use the most hard to get alloy for our foil, 1145. In America right now, nobody is willing to work with 1145 due to the scarcity of it, but more importantly, the costs. 1145 is the utmost ideal foil for hair as it's softer in nature, and more pliable to work with for highlights. Color- The ink that we use is called 'solvent based ink'. No company in the US currently makes this ink for hairdressing foil. If the ammonia and peroxide from the hair color mixes with ink that's improperly coated, the results are catastrophic to the hair(turns it into mush). We can provide images if need be. When the printing cylinder transfers the ink onto the foil, it must enter a heating tunnel of at least 360 degrees Fahrenheit. If the process is not done 100% correctly, the ink will not stay on the foil once bleach is applied, thus creating SEVERE damage to the hair. Furthermore, the patterns created on our foils have never been made by anyone else in the world for hair foil, other than the factory that we work with. We spent two years developing a new ombre printing technique for our foil. No other factory in the world has been able to replicate it. Temper - Our temper which is O soft, is not common practice combined with 1145 for hair foil. We used this for our hair foil as it performs best. Without this, the foil is brittle and does not hold in place. Our company depends on creating unique foil, not simply foil that is your generic 8011 and put into a box that says 'hair foil'. We take pride in creating foil that is only for our brand, so that it performs better and continues to bring colorists back to using it time and time again.
-
- HTSUS: 7607116010
- Total Requested Annual Exclusion Quantity in Kilograms: 15000
- Date Submitted: 1/22/2020

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive branch agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality; or 2) based upon specific national security considerations. Any aluminum article for which relief is granted from quantitative limitations under Clause 1 of Proclamation 9777 is also not subject to the additional rate of duty set forth in Proclamation 9704.

The above-captioned request for relief ("exclusion request") has met the requirements for consideration as a "complete submission" under Supplement No. 1 to 15 CFR Part 705.

BIS has considered the evidence provided, including in the exclusion request and in BIS's report to the President of January 11, 2018, and has assessed other interagency comments as applicable. No objections have been filed to this exclusion request that meet the requirements laid out in Supplement No. 1 to 15 CFR Part 705, and therefore none have been considered.

Based on BIS's review of the evidence presented, and the absence of objectors, BIS finds 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.

BIS also finds that no overriding national security concerns require that this exclusion request be denied notwithstanding the lack of sufficient domestic availability.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be granted for one year.

This approval of your exclusion request does not constitute a ruling under Title 19 Part 177, Code of Federal Regulations (19 CFR 177.1(d)(1)), or official confirmation of the correct provision under the Harmonized Tariff Schedule of the United States for your goods. To be certain of the correct tariff provision, you may request a ruling by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York NY 10014, attn: Binding Ruling Request or you may submit your request electronically at https://erulings.cbp.gov/home.

DECISION ON EXCLUSION REQUEST # 54282

_____**X**_____ I approve granting this exclusion request. The granted exclusion number is 54282. This exclusion is granted for the merchandise described in the exclusion request and classified in the 10-digit provision of the Harmonized Tariff Schedule of the United States (HTSUS) claimed in the exclusion request. This exclusion is granted only in the quantities requested from each identified supplier and country of origin, as specified in the original exclusion request form. This exclusion is granted for one year from the date of signature below. The requester may consult CSMS #39-633923 for further instructions on using the exclusion number and receiving retroactive relief.

_____ I do not approve granting this exclusion request.

_____ I would like to discuss.

Matthew S. Borman

Deputy Assistant Secretary of Export Administration

March 18, 2020

Date

U.S. Department of Commerce

Section 232 Steel and Aluminum

Product Information

Submission Date: 1/22/2020

Public Status: Granted

Please select product type: Aluminum

Identify the class of product for which the Exclusion is sought: Foil

10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single product covered by this request: 7607116010

If this is a renewal of a previously granted exclusion request, please provide the ID number of the previously granted exclusion request:

Requesting Organization Information

Full Organization Legal Name: Russell A. Farrow Inc

Street Address: 14555 Jib St.

City: Plymouth

State: Michigan

Zip Code: 48170

Headquarters Country: United States

Point of Contact Name: Will Carson

Phone Number: 734 955 7799

E-mail Address: Will.Carson@farrow.com

Web Site Address: http://www.farrow.com

Parent Company of Requesting Organization

Full Organization Legal Name: Framar International

Street Address: 7000 Kinsmen Ct

City: Niagara Falls

Headquarters Country: Canada

State/Province: Ontario

Zip Code:

Web Site Address: http://www.framar.com

Importer of Record for Organization Requesting an Exclusion

Full Organization Legal Name: Russell A. Farrow Inc

Street Address: 14555 Jib St.

City: Plymouth

State: Michigan

Zip Code: 48170

Headquarters Country: United States

Point of Contact Name: Will Carson

Phone Number: 734 955 7799

E-mail Address: Will.Carson@farrow.com

Web Site Address: http://www.farrow.com

Requester's Authorized Representative/Agent (if applicable)

Requestor Point of Contact Name: Giovanni Gallo

Point-of-Contact Organization: Framar

Country Location: Canada

Phone Number: 905-374-0133

E-Mail Address: ggallo@framar.com

Web Site Address: http://www.framar.com

Other Information:

Exclusion Request Details

Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as a: Manufacturer; Distributor; Exporter or, Importer?

Yes

Identify the activity

Other

Identify the organization

Framar

Identify the country where the organization is headquartered

Canada

Comments

We currently produce the product in China. It is our own brand. In our industry, we're considered a manufacturer, however, we are importing this product into Canada and then shipping into the USA to our American distributors. So, unsure as to how you'd properly classify it, but wanted to explain.

Identify the primary type of activity of the Exclusion Requester

Other

Comments

As mentioned above, we purchase the products from a factory in China. However, it is under our own brand. In our industry, we'd be considered a manufacturer, however, because we're covering all of the importing into the US, we may be considered an importer or a non-US distributor. Wanted to explain to help clarify the proper classification.

Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	200000	Kilograms
Average annual consumption for years 2015-2017 of the product that is subject of this Exclusion Request (Kilograms)	17000	Kilograms

Explain why your organization requires an Exclusion

Other

Please provide comments

I would classify this as both insufficient US availability and no US production. There is no 'one stop shop' to manufacturer this product in the USA. These hair foils are extremely unique, the ink that is placed on them allows for bleach and hair color to touch the foil, without damaging the hair, something that does not exist here. Many companies have tried to make

Identify the percentage of total product covered under this Exclusion Request not available from manufacturers in the United States	100	%
Estimate the number of days required to take delivery of the product covered by this Exclusion Request, from the time the purchase order is issued by your organization	75	days
Estimate the number of days required to manufacture the product covered by this Exclusion Request, from the time a binding purchase order is executed	35	days
Estimate the number of days required to ship the product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock	40	days
Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the product subject to this Exclusion Request	250	shipments

Identify the U.S. Destination Port(s) of Entry through which the product subject to this Exclusion Request would be transported

Port 1 Lewiston Port of Entry

Port 1 Lewiston Port of Entry

Port 2 Buffalo, New York - 0901

Port 3 Blaine, Washington - 3004

Is the organization making this Exclusion Request doing so on behalf of a non-U.S. producer that does not manufacture products in the United States?

Yes

Identify the non-U.S. producer

Framar International

Identify the country where the organization is headquartered

Canada

Comments

Exclusion Request Product Information

For this single Exclusion Request, provide a full, complete description of the product in the space provided below.See explanation below.
The product for which an Exclusion is being requested is defined as follows: *

This product is an embossed roll of foil. Our products are used in highlighting/coloring hair. However, they are specific in nature, texture, alloy, color and temper to any other hair foil the world has to offer. We currently produce these rolls sheets

*With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., “hot-rolled,” “seamless pipe,” “suitable for use in boilers,” “longitudinally submerged arc welded,” etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., “cross-sectional diameter of 5.50 mm”) or measurements (e.g., “yield strength of 300 MPa,” “carbon content 0.08%,” etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., “cross-sectional diameter falling within the range 5.35 mm and 5.65 mm,” “yield strength greater than or equal to 300 MPa,” “carbon content less than or equal to 0.15%, by weight,” etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.
Comments

Our foil is cold rolled, soft temper(O), thickness range 13 micron (0.013mm) to 17 micron(0.017). Tensile strength range is 60-8-Mpa. Elongation is 2-2.5%. 1145 alloy. Coating weight:2-3grams psq. Coating thickness: 1-2 micrometer. Coating

Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation
1	ISO	9001:2015
2	ISO	14001:2015

Identify the classification and properties of the product covered under this Exclusion Request. Other classification or properties may be described in the textboxes below. (Select all that apply)

may be described in the textboxes below. (Select all that apply)

Slab ☐	Blooms ☐	Billets ☐	Ingots ☐	Flat ☐	Long ☐
Beams ☐	Semi-Finished ☐	Pipe ☐	Tube ☐	Stainless ☐	Wire ☐
Hot Rolled ☐	Cold Rolled ☑	Annealed ☑	Plated ☐	Electro-Plated ☐	Galvanized ☐
Electro-Galvanized ☐	Zinc Plated ☐	Aluminum Plated ☐	Lead Plated ☐	Tin Plated ☐	Painted ☐
Varnished ☐	Plasticized ☐	Pickled ☐	Fittings ☐		

Use the text boxes on the right if property is not listed above.

Comments

Identify the chemical composition of the specific product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored. Format should starts with 0(example: 0.975)

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon
Minimum %	99.35	0	0	0	0
Maximum %	99.45	0	0	0	0
	Chromium	Cobalt	Copper	Iron	Lead
Minimum %	0	0	0.04	0.6	0
Maximum %	0	0	0.05	0.65	0
	Magnesium	Manganese	Molybdenum	Nickel	Niobium
Minimum %	0.04	0.04	0	0	0
Maximum %	0.05	0.05	0	0	0
	Nitrogen	Phosphorus	Selenium	Silicon	Sulfur
Minimum	0	0	0	0	0

%					

Maximum %	0	0	0	0	0
	Tellurium	Tin	Titanium	Tungsten	Vanadium
Minimum %	0	0	0	0	0
Maximum %	0	0	0	0	0
	Zinc	Zirconium	Other Chemical		
Minimum %	0.1	0	0		
Maximum %	0.2	0	0		

Comments

Provide the following information on the single product that is the subject of this Exclusion Request: 1) dimensional information for the single product and a single size -- not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.). A separate Exclusion Request must be submitted for each product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature.

Product Specifications (Millimeters)

	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height
Minimum	0.013	25	101	457200	127	101
Maximum	0.017	25	102	518160	127	102

Strength

	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method - Brinnell, Rockwell, Vickers, etc.) Please Provide Method
Minimum	60	0	0
Maximum	80	0	0

Toughness (If Applicable)

Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other Provide Test Method
Temperature			
Joules			
% Shear			

Provide the following information on the single product that is the subject of this Exclusion Request: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness.

	Global Ductility		Local Ductility	
	Elongation %	Reduction in Area %	Hole Expansion %	Bendability (mm)
Minimum	1 %	0 %	0 %	0 mm
Maximum	2 %	0 %	0 %	0 mm

	Magnetic Permeability			Surface Finish
	Epstein Test	Greer Lab Method	Stacked Wide Sheet	Profilometer - [SAE J911]
Minimum	0	0	0	0
Maximum	0	0	0	0

Coating Type and Composition		
Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg)

Coating Weight and Thickness		
	Coating Weight	Coating Thickness
Minimum	0 grams psq	0 micrometers
Maximum	0 grams psq	0 micrometers

Specify any Additional Methods Used

Comments

Product Commercial Names

List the Commercial Name(s) of the single product that is the subject of this exclusion

Embossed Roll

Comments

Identify the Association code for the product that is the subject of this Exclusion Request

1145

State the 1) application for the product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar products manufactured in the United States, if available, are not suitable: *

1)Application is for the hair/beauty industry used for highlighting hair. 2)Unfortunately, similar products to ours are not made in the US. Truthfully, similar products to ours aren't made anywhere in the world. The factory we work with in China is a 'one stop shop'. They convert, print, emboss, cut and package. You cannot find this anywhere else. Their printing capabilities do not exist at any other factory as we worked for two years with them to develop it. While hair foil can be

If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single product:

Source Countries

Identify the source countries for the single product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the product. If this product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin. NOTE: Products encompassing more than one 10 - digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)	

1	China	Canada	250		Framar International	

Product Availability Information

Does the Requester possess knowledge of any domestic U.S. parties that currently manufacture the described product in the United States?

No

Comments

This product currently cannot be manufactured in the USA to the specifications that we require. There is no 'one stop shop' in the USA. Our company use to purchase this foil from the USA many years ago, and would love to again, but no

Does the Requester possess knowledge of any parties that currently manufacture the described product in a country exempted from this tariff? If yes, identify the country or countries below.

No

Comments

Unfortunately not, this is something we also researched extensively before applying. There is a company in Costa Rica called Alunasa, however, they refuse to purchase the machines to make the foil the way we'd need it and refuse to work on

Is the Requester aware of any manufacturers capable of producing a substitute for the product in the United States? If “Yes” provide supporting information (name and address) in the space below?

No

Comments

Unfortunately not.

Has the Exclusion Requester attempted to qualify any manufacturer in the United States as a supplier of the product that is the subject of this Exclusion Request in the past two years? If “Yes” provide supporting information in the space below.

Yes

Please provide names of the manufacturers.

Manufacturers

1 JW Aluminum

2 Commodity Foil

3 Norandal U.S.A.

4 ITW Laminations (Alubec)

5 New England Foil

6 Alufoil

Comments

Has the Exclusion Requester attempted to purchase the described product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If “Yes” identify the manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the comments below.

Yes

Comments

JW Aluminum Company
John Mucci 1800.367-6607

Has the Exclusion Requester had supply contracts, or does it have current contracts, with producers that manufacture in the United States the product identified in the Exclusion Request? If “Yes” identify the U.S. manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the comments below.

No

Comments

We do purchase aluminum coils from the US, however, the companies that we work with cannot/will not produce this foil.

Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent product that would meet qualification requirements? If “Yes” identify in the space below the testing standards/procedures employed to make that determination (e.g., magnetic core loss, etc).

Yes

Comments

For our foil, the biggest issue isn't the testing standards, it's the lack of capabilities to produce. There is no company in the US that is a 'one stop shop'. From producing coils, all the way to packaging the boxes and everything in between. If the

In the last two years, has the Requester purchased a substitute product manufactured in the United States in place of the product described in the Exclusion Request? If “Yes” provide supporting information in the comments below.

No

Comments

Not available to do so.

Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.

On all entry's the line item will specifically say 'Embossed Rolls'. We'd be more than willing to give it a code should that work best for CBP. Our goal is not to create more work. We simply want to be able to sell a product that we worked hard to

Certification

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete. The undersigned certifies that the information herein supplied in response to this questionnaire is

complete and correct to the best of his/her knowledge.

Effective for all exclusion requests submitted on or after December 14, 2020, the undersigned certifies in the 232 Exclusions Portal that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

A. My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request or I have a purchase order or orders for such products;
B. My organization does not intend to use the exclusion for which I have filed an exclusion request, if granted, solely to hedge or arbitrage the price;
C. My organization expects to consume, sell, or otherwise use the total volume of product across all my active exclusions and pending exclusion requests in the course of my organization's business activities within the next calendar year;
D. If my organization is submitting an exclusion request for a product for which we previously received an exclusion, I certify that my organization either imported the full amount of our approved exclusion(s) last year or intended to import the full amount but could not due to one of the following reasons:
    1. loss of contract(s);
    2. unanticipated business downturns; or
    3. other factors that were beyond my organizations' control that directly resulted in less need for steel or aluminum articles; and
E. I certify that the exclusion amount requested this year is in line with what my organization expects to import based on our current business outlook. If requested by the Department of Commerce, my organization shall provide documentation that justifies its assertions in this certification regarding its past imports of steel or aluminum articles and its projections for the current year, as it relates to past and current calendar year exclusion requests.

It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.[18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name

Framar International

Name of Authorizing Official

Giovanni Gallo

Title of Authorizing Official

Vice President

Phone Number

905-374-0133

Email of Authorizing Official

ggallo@framar.com

If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.

Point-of-Contact Name

Title

E-mail Address

Phone Number

Do you have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission?

No

Attachment

There are no attachments for this exclusion request

There are no attachments for this exclusion request

Published Objection Filings

Company	Product	Posted Date	Details
No data available in table			

BIS Decision Memo

View attachment file

Back

For questions about the exclusion process, please email or call:
Aluminum232@bis.doc.gov or 202-482-4757 for aluminum-related inquiries, and Steel232@bis.doc.gov or 202-482-5642 for steel-related inquiries.

U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: 54297

Summary:

- Requester: Russell A. Farrow Inc
- Product description: This product is an embossed roll of foil. Our products are used in highlighting/coloring hair. However, they are specific in nature, texture, alloy, color and temper to any other hair foil the world has to offer. We currently produce these rolls sheets all in 5 inch wide specs, 13 micron(0.013) - 17 micron(0.017). Our foil is cold rolled, soft temper(O). Tensile strength range is 60-8-Mpa. Elongation is 2-2.5%.
-
- Unique in nature - the way the foil is pushed out of it's production machine does not exist in America. Texture- Our rolls are not something that currently exists here. We worked on creating unique cylinder textures that no company is willing to produce in America. This specific texture grabs the hair, creating an unmatched hold when working on highlights. Alloy - We use the most hard to get alloy for our foil, 1145. In America right now, nobody is willing to work with 1145 due to the scarcity of it, but more importantly, the costs. 1145 is the utmost ideal foil for hair as it's softer in nature, and more pliable to work with for highlights. Color- The ink that we use is called 'solvent based ink'. No company in the US current makes this ink for hairdressing foil. If the ammonia and peroxide from the hair color mixes with ink that's improperly coated, the results are catastrophic to the hair(turns it into mush). We can provide images if need be. When the printing cylinder transfers the ink onto the foil, it must enter a heating tunnel of at least 360 degrees Fahrenheit. If the process is not done 100% correctly, the ink will not stay on the foil once bleach is applied, thus creating SEVERE damage to the hair. Furthermore, the patterns created on our foils have never been made by anyone else in the world for hair foil, other than the factory that we work with. We spent two years developing a new ombre printing technique for this specific foil. No other factory in the world has been able to replicate it. Temper - Our temper which is O soft, is not common practice combined with 1145 for hair foil. We used this for our hair foil as it performs best. Without this, the foil is brittle and does not hold in place. Our company depends on creating unique foil, not simply foil that is your generic 8011 and put into a box that says 'hair foil'. We take pride in creating foil that is only for our brand, so that it performs better and continues to bring colorists back to using it time and time again.
-
- HTSUS: 7607116010
- Total Requested Annual Exclusion Quantity in Kilograms: 200000
- Date Submitted: 1/22/2020

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive branch agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality; or 2) based upon specific national security considerations. Any aluminum article for which relief is granted from quantitative limitations under Clause 1 of Proclamation 9777 is also not subject to the additional rate of duty set forth in Proclamation 9704.

The above-captioned request for relief ("exclusion request") has met the requirements for consideration as a "complete submission" under Supplement No. 1 to 15 CFR Part 705.

BIS has considered the evidence provided, including in the exclusion request and in BIS's report to the President of January 11, 2018, and has assessed other interagency comments as applicable. No objections have been filed to this exclusion request that meet the requirements laid out in Supplement No. 1 to 15 CFR Part 705, and therefore none have been considered.

Based on BIS's review of the evidence presented, and the absence of objectors, BIS finds 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.

BIS also finds that no overriding national security concerns require that this exclusion request be denied notwithstanding the lack of sufficient domestic availability.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be granted for one year.

This approval of your exclusion request does not constitute a ruling under Title 19 Part 177, Code of Federal Regulations (19 CFR 177.1(d)(1)), or official confirmation of the correct provision under the Harmonized Tariff Schedule of the United States for your goods. To be certain of the correct tariff provision, you may request a ruling by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York NY 10014, attn: Binding Ruling Request or you may submit your request electronically at https://erulings.cbp.gov/home.

DECISION ON EXCLUSION REQUEST # 54297

_____**X**_____ I approve granting this exclusion request. The granted exclusion number is 54297. This exclusion is granted for the merchandise described in the exclusion request and classified in the 10-digit provision of the Harmonized Tariff Schedule of the United States (HTSUS) claimed in the exclusion request. This exclusion is granted only in the quantities requested from each identified supplier and country of origin, as specified in the original exclusion request form. This exclusion is granted for one year from the date of signature below. The requester may consult CSMS #39-633923 for further instructions on using the exclusion number and receiving retroactive relief.

_____ I do not approve granting this exclusion request.

_____ I would like to discuss.

Matthew S. Borman

Deputy Assistant Secretary of Export Administration

March 18, 2020

Date

Exhibit 5

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports

Exclusion Request Requirements: Only individuals or organizations operating in the United States that use aluminum products (e.g. slab, billets, ingots, extrusions, rod and bar, sheet and plate, foil, pipe and tube, castings and forgings, etc.) in business activities (e.g., construction, manufacturing, supplying aluminum product to users) in the United States may submit an Exclusion Request. For an Exclusion Request to be considered, the Exclusion Requester must provide factual information on 1) the single type of aluminum product they require using a 10-digit HTSUS code, including its specific dimension; 2) the quantity of product required (stated in kilograms) under a one-year exclusion; 3) a full description of the properties of the aluminum product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data. Exclusion Requests must be submitted using this Excel-based document. Paper submissions will not be accepted.

A separate Exclusion Request must be submitted on each distinct type and dimension of aluminum product to be imported. All applicable question blocks in the form must be completed for the Exclusion Request to be accepted. Exclusion Requests will be denied if the applicant: 1) does not sufficiently address the specified reporting requirements; 2) cites the improper HTSUS code, or 3) provides incorrect product descriptions.

Organizations electing to attach supporting documents must provide these documents in PDF format and it must not exceed 25 pages. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.

Organizations should upload their completed Exclusion Request pertaining to an aluminum product to www.regulations.gov under Docket Number BIS-2018-0002. An Exclusion Request may be submitted at any time. Processing of an Exclusion Request will take approximately 90 business days. Notification of granted Exclusions will be posted on www.regulations.gov. For questions related directly to completing this form, contact BIS via email (Aluminum232@bis.doc.gov) or telephone (202-482-4757).

1.a	Identify the class of Aluminum product for which the Exclusion is sought:	Foil	10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single aluminum product covered by this request: (See https://www.usitc.gov/)	7607116010

1.b

Requesting Organization Information		Importer of Record for Organization Requesting an Exclusion	
Full Organization Legal Name	All Foils, Inc	Full Organization Legal Name	All Foils, Inc
Street Address	16100 Imperial Parkway	Street Address	16100 Imperial Parkway
City	Strongsville	City	Strongsville
State	Ohio	State	Ohio
Zip Code	44149	Zip Code	44149
Headquarters Country	United States	Headquarters Country	United States
Point of Contact Name	Kevin Foos	Point of Contact - Representative Name	Kevin Foos
Phone Number	440-378-0130	Phone Number	440-378-0130
E-mail Address	kcfoos@allfoils.com	E-mail Address	kcfoos@allfoils.com
Web Site Address	www.allfoils.com	Web Site Address	www.allfoils.com
Parent Company of Requesting Organization		**Requester's Authorized Representative/Agent (If applicable)**	
Full Organization Legal Name		Requester Point of Contact Name	
Street Address		Point-of-Contact Organization	
City		Country Location	
State/Province		Phone Number	
Zip Code/Postal Code		E-mail Address	
Headquarters Country		Web Site Address	
Web Site Address		Other Information	

1.c	Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as an: Aluminum Manufacturer; Aluminum Distributor; Aluminum Exporter or, Aluminum Importer? If "Yes" identify the activity.		If "Yes" - Identify the organization		Identify the country where the organization is headquartered	
	Comments:					

1.d	Identify the primary type of aluminum activity of the Exclusion Requester:	Other (Explain in Comment Box)	Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	164,000 kg
	Comments:	All Foils is a convertor of alumimun foil. We purchase jumbo coils from mills all over the world and slit, sheet, coat and anneal. We further process over 95% of our sales.		

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

2.a	Average annual consumption for years 2015-2017 of the aluminum product that is subject of this Exclusion Request - Kilograms	164,000 kg
2.b	Explain why your organization requires an Exclusion using 1) the drop-down box and 2) by providing written comments in the space provided below.	Insufficient U.S. availability
	Comments:	We seek exemption from 232 restriction due to the fact we were not granted enough capacity domestically to supply this item.
2.c	Identify the percentage of total aluminum product covered under this Exclusion Request not available from aluminum manufacturers in the United States:	100%
2.d	Estimate the number of days required to take delivery of the aluminum product covered by this Exclusion Request, from the time the purchase order is issued by your organization:	120
2.e	Estimate the number of days required to manufacture the aluminum product covered by this Exclusion Request, from the time a binding purchase order is executed:	45
2.f.	Estimate the number of days required to ship the aluminum product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock:	45
2.g	Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the aluminum product subject to this Exclusion Request:	10

2.h Identify the U.S. Destination Port(s) of Entry through which the aluminum product subject to this Exclusion Request would be transported:

Port 1	Port 2	Port 3	Port 4	Port 5	Port 6	Port 7
Cleveland, OH	New York, NY	Los Angelos, CA	Tacoma, WA	Chicago, IL	Norfolk, VA	

2.i	Is the organization making this Exclusion Request doing so on behalf of a non-U.S. aluminum producer that does not manufacture aluminum products in the United States?			No
	If "Yes" identify the non-U.S. aluminum producer		Identify the country where the organization is headquartered	
	Comments:			

Exclusion Request Product Information

2.j For this single Exclusion Request, provide a full, complete description of the product in the space provided below. * See explanation below.
The product for which an Exclusion is being requested is defined as follows:

.025 mm x 1258 mm 8011-0 aluminum foil for food service lamination

* With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., "hot-rolled," "seamless pipe," "suitable for use in boilers," "longitudinally submerged arc welded," etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., "cross-sectional diameter of 5.50 mm") or measurements (e.g., "yield strength of 300 MPa," "carbon content 0.08%," etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., "cross-sectional diameter falling within the range 5.35 mm and 5.65 mm," "yield strength greater than or equal to 300 MPa," "carbon content less than or equal to 0.15%, by weight," etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.

Comments: N/A

2.k Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation		Organization	Designation		Organization	Designation
1	ASTM	B479-06	3		N/A	5		N/A
2		N/A	4		N/A	6		N/A
Other (specify)	Aluminum Association		Other (specify)	N/A		Other (specify)	N/A	

General Aluminum Product Description

2.l Identify the classification and properties of the aluminum product covered under this Exclusion Request. Other classification or properties may be described in the Comment box below. (Select all that apply)

Slab	Blooms	Billets	Ingots	Fittings	Flat	Long	Beams	Semi-Finished	Pipe	Tube	Wire	Hot Rolled	Cold Rolled
No	No	No	No	No	No	No	No	Yes	No	No	No	No	Yes

Annealed	Plated	Electro-Plated	Galvanized	Electro-Galvanized	Zinc Plated	Aluminum Plated	Lead Plated	Tin Plated	Painted	Varnished	Plasticized	Pickled	Other (Use Comment Box)
Yes	No	No	No	No	No	No	No	No	No	No	No	No	No

Comment:

Continued on Next Page

3.a

State the chemical composition of the specific aluminum product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored.

Chemical Composition

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Magnesium	Manganese	Nickel
Minimum %									0.06000%				
Maximum %						0.05000%		0.10000%	1.00000%		0.05000%	0.20000%	

	Niobium	Nitrogen	Phosphorous	Selenium	Silicon	Sulfur	Tin	Titanium	Tungsten	Vanadium	Zinc	[Other - List Below]	[Other - List Below]
Minimum %					0.05000%								
Maximum %					0.09000%			0.08000%			0.10000%		

Comments: Aluminum: Remainder

3.b

Provide information on the single aluminum product that is the subject of this Exclusion Request: 1) dimensional information for the single aluminum product and a single size - not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.) A separate Exclusion Request must be submitted for each aluminum product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature. Numbers may appear rounded, but full values will be stored.

	Aluminum Product Specifications (Millimeters)						Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other (specify type in comment box)
										Temperature (°C)			
Minimum	.02 mm	152.0 mm			1258.0 mm		N/A			Joules			
Maximum	.03 mm						N/A			% Shear			

Comments: the above thickenss id rounding - the min thickness is .02286 mm - .02794 mm max

3.c

Provide the following information on the single aluminum product that is the subject of this Exclusion Request: 1) performance data for ductility and surface finish; and 2) metal coating process, material type, weight, and thickness. Numbers may appear rounded, but full values will be stored.

	Global Ductility		Local Ductility (If Applicable)			Surface Finish (If Applicable)	Coating Type and Composition (If Applicable)				
	Elongation %	Reduction -in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness [millimeter]		Profilometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys)	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]
Minimum	1%										
Maximum											

Select any additional processing methods used:					Other (specify)	

Comments:

Continued on Next Page

4.a List the Commercial Name(s) of the single aluminum product that is the subject of this Exclusion Request.

.001 x 49.50" 8011-0 Aluminum for food service lamination		

Comments:

4.b Identify the Aluminum Association code for the aluminum product that is the subject of this Exclusion Request: 8011-0

State below: 1) the application for the aluminum product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar aluminum products manufactured in the United States, if available, are not suitable.

This product is used for a laminated food service item - I cannot purchase this item domestically due to my allotments from the mills.

4.c If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single aluminum product:

4.d Identify the source countries for the single aluminum product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the aluminum product. If this aluminum product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin.

NOTE: Aluminum products encompassing more than one 10-digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)
1	India	India	164,000 kg	Hindalco Industies Limited	
2	Bulgaria	Bulgaria	164,000 kg	Alcomet	
3					
4					
5					

Product Availability Information

4.e Does the requester possess knowledge of any domestic U.S. parties that currently manufacture the described aluminum product in the United States? No

Comment:

4.f Does the requester possess knowledge of any parties that currently manufacture the described aluminum product a country exempted from this tariff? If yes, identify the country or countries below. No

Comment:

4.g Is the requester aware of any manufacturers capable of producing a substitute for the aluminum product in the United States? If "Yes" provide supporting information (name and address) in the space below? No

Comment:

4.h Has the Exclusion requester attempted to qualify any aluminum manufacturer in the United States as a supplier of the aluminum product for that is the subject of this Exclusion Request in the past two years? If "Yes" provide supporting information in the space below. Supporting documents must be submitted as a consolidated PDF file and may not exceed 25 pages. No

1		5	
2		6	
3		7	
4		8	

Comment:

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

5.a	Has the Exclusion Requester attempted to purchase the described aluminum product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If "Yes" identify the manufacturers, addresses, and your points of contact at the U.S. aluminum manufacturing organizations in the space below.	No
	Comment:	
5.b	Has the Exclusion Requester had supply contracts, or have current contracts, with aluminum producers that manufacture in the United States the aluminum product identified in the Exclusion Request? If "Yes" identify the U.S. aluminum manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the space below.	No
5.c	Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent aluminum product that would meet qualification requirements? If "Yes" identify in the space below the testing standards/procedures employed to make that determination.	No
	Comment:	
5.d	In the last two years, has the requester purchased a substitute aluminum product manufactured in the United States in place of the aluminum product described in the Exclusion Request? If "Yes" provide supporting information in the space below.	No
	Comment:	
5.e	Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the aluminum product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.	
	Import documents (commercial invoice and packing list) will specifically identify the physical properties and geometry of the aluminum foil.	

Submission of Exclusion Requests: All Exclusion Requests must be fully completed and submitted to www.regulations.gov under Docket Number BIS-2018-0002 using this Microsoft Excel electronic form. All information submitted will be subject to public disclosure, regardless of any statements by the requester that some information should be treated otherwise. Any further information required as a part of this Exclusion Request will be determined and requested solely by the U.S. Department of Commerce.

Submission of Supporting Documents (Attachments): Supporting attachments should be submitted to www.regulations.gov as PDF documents and must be posted to www.regulations.gov under Docket Number BIS-2018-0006. Total supporting submissions may not exceed 25 pages.

Other Comments:	

This request is for a product from a country subject to quantitative limitations:		I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission:		

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete.

CERTIFICATION

The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. **It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.** [18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name:	All Foils, Inc		
Name of Authorizing Official:	Kevin C. Foos	Title of Authorizing Official	President
Phone Number: 440.378.0130		Email of Authorizing Offical:	kcfoos@allfoils.com

If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.

Point-of-Contact Name:		Title	
E-Mail Address:		Phone Number	

Paperwork Reduction Act Notice

Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0139. Commerce may not collect this information, and you are not required to respond; unless this OMB number is displayed.

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: BIS-2018-0002-20691

Summary:

- Requester: All Foils, Inc
- Product description: .025 mm x 1258 mm 8011-0 aluminum foil for food service lamination
- HTSUS: 7607116010
- Total Requested Annual Exclusion Quantity in Kilograms: 164000
- Date Submitted: 04/26/2019

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive branch agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality; or 2) based upon specific national security considerations. Any aluminum article for which relief is granted from quantitative limitations under Clause 1 of Proclamation 9777 is also not subject to the additional rate of duty set forth in Proclamation 9704.

The above-captioned request for relief ("exclusion request") has met the requirements for consideration as a "complete submission" under Supplement No. 1 to 15 CFR Part 705.

BIS has considered the evidence provided, including in the exclusion request and in BIS's report to the President of January 11, 2018, and has assessed other interagency comments as applicable. No objections have been filed to this exclusion request that meet the requirements laid out in Supplement No. 1 to 15 CFR Part 705, and therefore none have been considered.

Based on BIS's review of the evidence presented, and the absence of objectors, BIS finds 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.

BIS also finds that no overriding national security concerns require that this exclusion request be denied notwithstanding the lack of sufficient domestic availability.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be granted for one year.

This approval of your exclusion request does not constitute a ruling under Title 19 Part 177, Code of Federal Regulations (19 CFR 177.1(d)(1)), or official confirmation of the correct provision under the Harmonized Tariff Schedule of the United States for your goods. To be certain of the correct tariff provision, you may request a ruling by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York NY 10014, attn: Binding Ruling Request or you may submit your request electronically at https://erulings.cbp.gov/home.

DECISION ON EXCLUSION REQUEST # BIS-2018-0002-20691

_____**X**_____ I approve granting this exclusion request. The granted exclusion number is BIS-2018-0002-20691. This exclusion is granted for the merchandise described in the exclusion request and classified in the 10-digit provision of the Harmonized Tariff Schedule of the United States (HTSUS) claimed in the exclusion request. This exclusion is granted only in the quantities requested from each identified supplier and country of origin, as specified in the original exclusion request form. This exclusion is granted for one year from the date of signature below. The requester may consult CSMS #18-000378 for further instructions on using the exclusion number and receiving retroactive relief.

_____ I do not approve granting this exclusion request.

_____ I would like to discuss.

Matthew S. Borman

Deputy Assistant Secretary of Export Administration

July 19, 2019

Date

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports

Exclusion Request Requirements: Only individuals or organizations operating in the United States that use aluminum products (e.g. slab, billets, ingots, extrusions, rod and bar, sheet and plate, foil, pipe and tube, castings and forgings, etc.) in business activities (e.g., construction, manufacturing, supplying aluminum product to users) in the United States may submit an Exclusion Request. For an Exclusion Request to be considered, the Exclusion Requester must provide factual information on 1) the single type of aluminum product they require using a 10-digit HTSUS code, including its specific dimension; 2) the quantity of product required (stated in kilograms) under a one-year exclusion; 3) a full description of the properties of the aluminum product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data. Exclusion Requests must be submitted using this Excel-based document. Paper submissions will not be accepted.

A separate Exclusion Request must be submitted on each distinct type and dimension of aluminum product to be imported. All applicable question blocks in the form must be completed for the Exclusion Request to be accepted. Exclusion Requests will be denied if the applicant: 1) does not sufficiently address the specified reporting requirements; 2) cites the improper HTSUS code, or 3) provides incorrect product descriptions.

Organizations electing to attach supporting documents must provide these documents in PDF format and it must not exceed 25 pages. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.

Organizations should upload their completed Exclusion Request pertaining to an aluminum product to www.regulations.gov under Docket Number BIS-2018-0002. An Exclusion Request may be submitted at any time. Processing of an Exclusion Request will take approximately 90 business days. Notification of granted Exclusions will be posted on www.regulations.gov. For questions related directly to completing this form, contact BIS via email (Aluminum232@bis.doc.gov) or telephone (202-482-4757).

1.a	Identify the class of Aluminum product for which the Exclusion is sought:	Foil	10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single aluminum product covered by this request: (See https://www.usitc.gov/)	7607116010

1.b

Requesting Organization Information		Importer of Record for Organization Requesting an Exclusion	
Full Organization Legal Name	All Foils, Inc	Full Organization Legal Name	All Foils, Inc
Street Address	16100 Imperial Parkway	Street Address	16100 Imperial Parkway
City	Strongsville	City	Strongsville
State	Ohio	State	Ohio
Zip Code	44149	Zip Code	44149
Headquarters Country	United States	Headquarters Country	United States
Point of Contact Name	Kevin Foos	Point of Contact - Representative Name	Kevin Foos
Phone Number	440-378-0130	Phone Number	440-378-0130
E-mail Address	kcfoos@allfoils.com	E-mail Address	kcfoos@allfoils.com
Web Site Address	www.allfoils.com	Web Site Address	www.allfoils.com
Parent Company of Requesting Organization		**Requester's Authorized Representative/Agent (If applicable)**	
Full Organization Legal Name		Requester Point of Contact Name	
Street Address		Point-of-Contact Organization	
City		Country Location	
State/Province		Phone Number	
Zip Code/Postal Code		E-mail Address	
Headquarters Country		Web Site Address	
Web Site Address		Other Information	

1.c	Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as an: Aluminum Manufacturer; Aluminum Distributor; Aluminum Exporter or, Aluminum Importer? If "Yes" identify the activity.		If "Yes" - Identify the organization		Identify the country where the organization is headquartered	
	Comments:					

1.d	Identify the primary type of aluminum activity of the Exclusion Requester:	Other (Explain in Comment Box)	Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	136,000 kg
	Comments:			

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

2.a	Average annual consumption for years 2015-2017 of the aluminum product that is subject of this Exclusion Request - Kilograms	136,000 kg
2.b	Explain why your organization requires an Exclusion using 1) the drop-down box and 2) by providing written comments in the space provided below.	Insufficient U.S. availability
	Comments:	We seek exemption from 232 restriction due to the fact we were not granted enough capacity domestically to supply this item.
2.c	Identify the percentage of total aluminum product covered under this Exclusion Request not available from aluminum manufacturers in the United States:	100%
2.d	Estimate the number of days required to take delivery of the aluminum product covered by this Exclusion Request, from the time the purchase order is issued by your organization:	120
2.e	Estimate the number of days required to manufacture the aluminum product covered by this Exclusion Request, from the time a binding purchase order is executed:	45
2.f.	Estimate the number of days required to ship the aluminum product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock:	45
2.g	Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the aluminum product subject to this Exclusion Request:	8

2.h Identify the U.S. Destination Port(s) of Entry through which the aluminum product subject to this Exclusion Request would be transported:

Port 1	Port 2	Port 3	Port 4	Port 5	Port 6	Port 7
Cleveland, OH	New York, NY	Los Angelos, CA	Tacoma, WA	Norfolk, VA		

2.i	Is the organization making this Exclusion Request doing so on behalf of a non-U.S. aluminum producer that does not manufacture aluminum products in the United States?			No
	If "Yes" identify the non-U.S. aluminum producer		Identify the country where the organization is headquartered	
	Comments:			

Exclusion Request Product Information

2.j For this single Exclusion Request, provide a full, complete description of the product in the space provided below. * See explanation below.
The product for which an Exclusion is being requested is defined as follows:

.037 mm x 609.60 mm 8011-0 aluminum foil for food service lamination

* With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., "hot-rolled," "seamless pipe," "suitable for use in boilers," "longitudinally submerged arc welded," etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., "cross-sectional diameter of 5.50 mm") or measurements (e.g., "yield strength of 300 MPa," "carbon content 0.08%," etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., "cross-sectional diameter falling within the range 5.35 mm and 5.65 mm," "yield strength greater than or equal to 300 MPa," "carbon content less than or equal to 0.15%, by weight," etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.

Comments: N/A

2.k Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation		Organization	Designation		Organization	Designation
1	ASTM	B479-06	3		N/A	5		N/A
2		N/A	4		N/A	6		N/A
Other (specify)	Aluminum Association		Other (specify)	N/A		Other (specify)	N/A	

General Aluminum Product Description

2.l Identify the classification and properties of the aluminum product covered under this Exclusion Request. Other classification or properties may be described in the Comment box below. (Select all that apply)

Slab	Blooms	Billets	Ingots	Fittings	Flat	Long	Beams	Semi-Finished	Pipe	Tube	Wire	Hot Rolled	Cold Rolled
No	No	No	No	No	No	No	No	Yes	No	No	No	No	Yes

Annealed	Plated	Electro-Plated	Galvanized	Electro-Galvanized	Zinc Plated	Aluminum Plated	Lead Plated	Tin Plated	Painted	Varnished	Plasticized	Pickled	Other (Use Comment Box)
Yes	No	No	No	No	No	No	No	No	No	No	No	No	No

Comment:

Continued on Next Page

3.a State the chemical composition of the specific aluminum product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored.

Chemical Composition

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Magnesium	Manganese	Nickel
Minimum %									0.06000%				
Maximum %						0.05000%		0.10000%	1.00000%		0.05000%	0.20000%	

	Niobium	Nitrogen	Phosphorous	Selenium	Silicon	Sulfur	Tin	Titanium	Tungsten	Vanadium	Zinc	[Other - List Below]	[Other - List Below]
Minimum %					0.05000%								
Maximum %					0.09000%			0.08000%			0.10000%		

Comments: Aluminum: Remainder

3.b Provide information on the single aluminum product that is the subject of this Exclusion Request: 1) dimensional information for the single aluminum product and a single size - not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.) A separate Exclusion Request must be submitted for each aluminum product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature. Numbers may appear rounded, but full values will be stored.

	Aluminum Product Specifications (Millimeters)						Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other (specify type in comment box)
										Temperature (°C)			
Minimum	.04 mm	152.0 mm			1238.25 mm		N/A			Joules			
Maximum	.04 mm						N/A			% Shear			

Comments: the above thickenss id rounding - the min thickness is .0356 mm - .0393 mm max

3.c Provide the following information on the single aluminum product that is the subject of this Exclusion Request: 1) performance data for ductility and surface finish; and 2) metal coating process, material type, weight, and thickness. Numbers may appear rounded, but full values will be stored.

	Global Ductility		Local Ductility (If Applicable)			Surface Finish (If Applicable)	Coating Type and Composition (If Applicable)				
	Elongation %	Reduction -in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness [millimeter]		Profilometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys)	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]
Minimum	1%										
Maximum											

Select any additional processing methods used:					Other (specify)	

Comments:

Continued on Next Page

4.a	List the Commercial Name(s) of the single aluminum product that is the subject of this Exclusion Request.		
	.001475(+/-5%) x 48.75" 8011-0 Aluminum for food service		
	Comments:		

4.b	Identify the Aluminum Association code for the aluminum product that is the subject of this Exclusion Request:	8011-0	State below: 1) the application for the aluminum product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar aluminum products manufactured in the United States, if available, are not suitable.

4.c	If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single aluminum product:

4.d

Identify the source countries for the single aluminum product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the aluminum product. If this aluminum product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin.

NOTE: Aluminum products encompassing more than one 10-digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)
1	India	India	136,000 kg	Hindalco Industies Limited	
2	Bulgaria	Bulgaria	136,000 kg	Alcomet	
3					
4					
5					

Product Availability Information

4.e	Does the requester possess knowledge of any domestic U.S. parties that currently manufacture the described aluminum product in the United States?	No
	Comment:	

4.f	Does the requester possess knowledge of any parties that currently manufacture the described aluminum product a country exempted from this tariff? If yes, identify the country or countries below.	No
	Comment:	

4.g	Is the requester aware of any manufacturers capable of producing a substitute for the aluminum product in the United States? If "Yes" provide supporting information (name and address) in the space below?	No
	Comment:	

4.h

Has the Exclusion requester attempted to qualify any aluminum manufacturer in the United States as a supplier of the aluminum product for that is the subject of this Exclusion Request in the past two years? If "Yes" provide supporting information in the space below. Supporting documents must be submitted as a consolidated PDF file and may not exceed 25 pages.			No
1		5	
2		6	
3		7	
4		8	
Comment:			

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

5.a	Has the Exclusion Requester attempted to purchase the described aluminum product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If "Yes" identify the manufacturers, addresses, and your points of contact at the U.S. aluminum manufacturing organizations in the space below.	No
	Comment:	
5.b	Has the Exclusion Requester had supply contracts, or have current contracts, with aluminum producers that manufacture in the United States the aluminum product identified in the Exclusion Request? If "Yes" identify the U.S. aluminum manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the space below.	No
5.c	Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent aluminum product that would meet qualification requirements? If "Yes" identify in the space below the testing standards/procedures employed to make that determination.	No
	Comment:	
5.d	In the last two years, has the requester purchased a substitute aluminum product manufactured in the United States in place of the aluminum product described in the Exclusion Request? If "Yes" provide supporting information in the space below.	No
	Comment:	
5.e	Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the aluminum product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.	
	Import documents (commercial invoice and packing list) will specifically identify the physical properties and geometry of the aluminum foil.	

Submission of Exclusion Requests: All Exclusion Requests must be fully completed and submitted to www.regulations.gov under Docket Number BIS-2018-0002 using this Microsoft Excel electronic form. All information submitted will be subject to public disclosure, regardless of any statements by the requester that some information should be treated otherwise. Any further information required as a part of this Exclusion Request will be determined and requested solely by the U.S. Department of Commerce.

Submission of Supporting Documents (Attachments): Supporting attachments should be submitted to www.regulations.gov as PDF documents and must be posted to www.regulations.gov under Docket Number BIS-2018-0006. Total supporting submissions may not exceed 25 pages.

Other Comments:	

This request is for a product from a country subject to quantitative limitations:		I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission:		

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete.

CERTIFICATION

The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. **It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.** [18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name:	All Foils, Inc		
Name of Authorizing Official:	Kevin C. Foos	Title of Authorizing Official	President
Phone Number: 440.378.0130		Email of Authorizing Offical:	kcfoos@allfoils.com

If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.

Point-of-Contact Name:		Title	
E-Mail Address:		Phone Number	

Paperwork Reduction Act Notice

Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0139. Commerce may not collect this information, and you are not required to respond; unless this OMB number is displayed.

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: BIS-2018-0002-20886

Summary:

- Requester: All Foils, Inc
- Product description: .037 mm x 609.60 mm 8011-0 aluminum foil for food service lamination
- HTSUS: 7607116010
- Total Requested Annual Exclusion Quantity in Kilograms: 136000
- Date Submitted: 04/30/2019

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive branch agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality; or 2) based upon specific national security considerations. Any aluminum article for which relief is granted from quantitative limitations under Clause 1 of Proclamation 9777 is also not subject to the additional rate of duty set forth in Proclamation 9704.

The above-captioned request for relief ("exclusion request") has met the requirements for consideration as a "complete submission" under Supplement No. 1 to 15 CFR Part 705.

BIS has considered the evidence provided, including in the exclusion request and in BIS's report to the President of January 11, 2018, and has assessed other interagency comments as applicable. No objections have been filed to this exclusion request that meet the requirements laid out in Supplement No. 1 to 15 CFR Part 705, and therefore none have been considered.

Based on BIS's review of the evidence presented, and the absence of objectors, BIS finds 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.

BIS also finds that no overriding national security concerns require that this exclusion request be denied notwithstanding the lack of sufficient domestic availability.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be granted for one year.

This approval of your exclusion request does not constitute a ruling under Title 19 Part 177, Code of Federal Regulations (19 CFR 177.1(d)(1)), or official confirmation of the correct provision under the Harmonized Tariff Schedule of the United States for your goods. To be certain of the correct tariff provision, you may request a ruling by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York NY 10014, attn: Binding Ruling Request or you may submit your request electronically at https://erulings.cbp.gov/home.

DECISION ON EXCLUSION REQUEST # BIS-2018-0002-20886

_____**X**_____ I approve granting this exclusion request. The granted exclusion number is BIS-2018-0002-20886. This exclusion is granted for the merchandise described in the exclusion request and classified in the 10-digit provision of the Harmonized Tariff Schedule of the United States (HTSUS) claimed in the exclusion request. This exclusion is granted only in the quantities requested from each identified supplier and country of origin, as specified in the original exclusion request form. This exclusion is granted for one year from the date of signature below. The requester may consult CSMS #18-000378 for further instructions on using the exclusion number and receiving retroactive relief.

_____ I do not approve granting this exclusion request.

_____ I would like to discuss.

Matthew S. Borman

Deputy Assistant Secretary of Export Administration

July 19, 2019

Date

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports

Exclusion Request Requirements: Only individuals or organizations operating in the United States that use aluminum products (e.g. slab, billets, ingots, extrusions, rod and bar, sheet and plate, foil, pipe and tube, castings and forgings, etc.) in business activities (e.g., construction, manufacturing, supplying aluminum product to users) in the United States may submit an Exclusion Request. For an Exclusion Request to be considered, the Exclusion Requester must provide factual information on 1) the single type of aluminum product they require using a 10-digit HTSUS code, including its specific dimension; 2) the quantity of product required (stated in kilograms) under a one-year exclusion; 3) a full description of the properties of the aluminum product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data. Exclusion Requests must be submitted using this Excel-based document. Paper submissions will not be accepted.

A separate Exclusion Request must be submitted on each distinct type and dimension of aluminum product to be imported. All applicable question blocks in the form must be completed for the Exclusion Request to be accepted. Exclusion Requests will be denied if the applicant: 1) does not sufficiently address the specified reporting requirements; 2) cites the improper HTSUS code, or 3) provides incorrect product descriptions.

Organizations electing to attach supporting documents must provide these documents in PDF format and it must not exceed 25 pages. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.

Organizations should upload their completed Exclusion Request pertaining to an aluminum product to www.regulations.gov under Docket Number BIS-2018-0002. An Exclusion Request may be submitted at any time. Processing of an Exclusion Request will take approximately 90 business days. Notification of granted Exclusions will be posted on www.regulations.gov. For questions related directly to completing this form, contact BIS via email (Aluminum232@bis.doc.gov) or telephone (202-482-4757).

1.a	Identify the class of Aluminum product for which the Exclusion is sought:	Foil	10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single aluminum product covered by this request: (See https://www.usitc.gov/)	7607116010

1.b

Requesting Organization Information		Importer of Record for Organization Requesting an Exclusion	
Full Organization Legal Name	All Foils, Inc	Full Organization Legal Name	All Foils, Inc
Street Address	16100 Imperial Parkway	Street Address	16100 Imperial Parkway
City	Strongsville	City	Strongsville
State	Ohio	State	Ohio
Zip Code	44149	Zip Code	44149
Headquarters Country	United States	Headquarters Country	United States
Point of Contact Name	Kevin Foos	Point of Contact - Representative Name	Kevin Foos
Phone Number	440-378-0130	Phone Number	440-378-0130
E-mail Address	kcfoos@allfoils.com	E-mail Address	kcfoos@allfoils.com
Web Site Address	www.allfoils.com	Web Site Address	www.allfoils.com
Parent Company of Requesting Organization		**Requester's Authorized Representative/Agent (If applicable)**	
Full Organization Legal Name		Requester Point of Contact Name	
Street Address		Point-of-Contact Organization	
City		Country Location	
State/Province		Phone Number	
Zip Code/Postal Code		E-mail Address	
Headquarters Country		Web Site Address	
Web Site Address		Other Information	

1.c	Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as an: Aluminum Manufacturer; Aluminum Distributor; Aluminum Exporter or, Aluminum Importer? If "Yes" identify the activity.		If "Yes" - Identify the organization		Identify the country where the organization is headquartered	
	Comments:					

1.d	Identify the primary type of aluminum activity of the Exclusion Requester:	Other (Explain in Comment Box)	Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	65,000 kg
	Comments:	All Foils is a convertor of alumimun foil. We purchase jumbo coils from mills all over the world and slit, sheet, coat and anneal. We further process over 95% of our sales.		

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

2.a	Average annual consumption for years 2015-2017 of the aluminum product that is subject of this Exclusion Request - Kilograms	65,000 kg
2.b	Explain why your organization requires an Exclusion using 1) the drop-down box and 2) by providing written comments in the space provided below.	Insufficient U.S. availability
	Comments:	We seek exemption from 232 restriction due to the fact we were not granted enough capacity domestically to supply this item.
2.c	Identify the percentage of total aluminum product covered under this Exclusion Request not available from aluminum manufacturers in the United States:	100%
2.d	Estimate the number of days required to take delivery of the aluminum product covered by this Exclusion Request, from the time the purchase order is issued by your organization:	120
2.e	Estimate the number of days required to manufacture the aluminum product covered by this Exclusion Request, from the time a binding purchase order is executed:	45
2.f.	Estimate the number of days required to ship the aluminum product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock:	45
2.g	Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the aluminum product subject to this Exclusion Request:	8

2.h Identify the U.S. Destination Port(s) of Entry through which the aluminum product subject to this Exclusion Request would be transported:

Port 1	Port 2	Port 3	Port 4	Port 5	Port 6	Port 7
Cleveland, OH	New York, NY	Los Angelos, CA	Tacoma, WA	Norfolk, VA		

2.i	Is the organization making this Exclusion Request doing so on behalf of a non-U.S. aluminum producer that does not manufacture aluminum products in the United States?			No
	If "Yes" identify the non-U.S. aluminum producer		Identify the country where the organization is headquartered	
	Comments:			

Exclusion Request Product Information

2.j For this single Exclusion Request, provide a full, complete description of the product in the space provided below. * See explanation below.
The product for which an Exclusion is being requested is defined as follows:

.037 mm x 609.60 mm 8011-0 aluminum foil for food service

* With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., "hot-rolled," "seamless pipe," "suitable for use in boilers," "longitudinally submerged arc welded," etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., "cross-sectional diameter of 5.50 mm") or measurements (e.g., "yield strength of 300 MPa," "carbon content 0.08%," etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., "cross-sectional diameter falling within the range 5.35 mm and 5.65 mm," "yield strength greater than or equal to 300 MPa," "carbon content less than or equal to 0.15%, by weight," etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.

Comments: N/A

2.k Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):

	Organization	Designation		Organization	Designation		Organization	Designation
1	ASTM	B479-06	3		N/A	5		N/A
2		N/A	4		N/A	6		N/A
Other (specify)	Aluminum Association		Other (specify)	N/A		Other (specify)	N/A	

General Aluminum Product Description

2.l Identify the classification and properties of the aluminum product covered under this Exclusion Request. Other classification or properties may be described in the Comment box below. (Select all that apply)

Slab	Blooms	Billets	Ingots	Fittings	Flat	Long	Beams	Semi-Finished	Pipe	Tube	Wire	Hot Rolled	Cold Rolled
No	No	No	No	No	No	No	No	Yes	No	No	No	No	Yes

Annealed	Plated	Electro-Plated	Galvanized	Electro-Galvanized	Zinc Plated	Aluminum Plated	Lead Plated	Tin Plated	Painted	Varnished	Plasticized	Pickled	Other (Use Comment Box)
Yes	No	No	No	No	No	No	No	No	No	No	No	No	No

Comment:

Continued on Next Page

3.a

State the chemical composition of the specific aluminum product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored.

Chemical Composition

Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Magnesium	Manganese	Nickel
Minimum %									0.06000%				
Maximum %						0.05000%		0.10000%	1.00000%		0.05000%	0.20000%	
	Niobium	Nitrogen	Phosphorous	Selenium	Silicon	Sulfur	Tin	Titanium	Tungsten	Vanadium	Zinc	[Other - List Below]	[Other - List Below]
Minimum %					0.05000%								
Maximum %					0.09000%			0.08000%			0.10000%		

Comments: Aluminum: Remainder

3.b

Provide information on the single aluminum product that is the subject of this Exclusion Request: 1) dimensional information for the single aluminum product and a single size - not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.) A separate Exclusion Request must be submitted for each aluminum product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature. Numbers may appear rounded, but full values will be stored.

	Aluminum Product Specifications (Millimeters)						Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other (specify type in comment box)
										Temperature (°C)			
Minimum	.04 mm	152.0 mm			609.60 mm		N/A			Joules			
Maximum	.04 mm						N/A			% Shear			

Comments: the above thickenss id rounding - the min thickness is .0356 mm - .0393 mm max

3.c

Provide the following information on the single aluminum product that is the subject of this Exclusion Request: 1) performance data for ductility and surface finish; and 2) metal coating process, material type, weight, and thickness. Numbers may appear rounded, but full values will be stored.

	Global Ductility		Local Ductility (If Applicable)			Surface Finish (If Applicable)	Coating Type and Composition (If Applicable)				
	Elongation %	Reduction -in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness [millimeter]		Profilometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys)	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]
Minimum	1%										
Maximum											

Select any additional processing methods used:					Other (specify)	

Comments:

Continued on Next Page

4.a	List the Commercial Name(s) of the single aluminum product that is the subject of this Exclusion Request.		
	.001475(+/-5%) x 24" 8011-0 Aluminum for food service lamination		
	Comments:		

4.b	Identify the Aluminum Association code for the aluminum product that is the subject of this Exclusion Request:	8011-0	State below: 1) the application for the aluminum product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar aluminum products manufactured in the United States, if available, are not suitable.

4.c	If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single aluminum product:

4.d

Identify the source countries for the single aluminum product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the aluminum product. If this aluminum product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin.

NOTE: Aluminum products encompassing more than one 10-digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)
1	India	India	65,000 kg	Hindalco Industies Limited	
2	Bulgaria	Bulgaria	65,000 kg	Alcomet	
3					
4					
5					

Product Availability Information

4.e	Does the requester possess knowledge of any domestic U.S. parties that currently manufacture the described aluminum product in the United States?	No
	Comment:	

4.f	Does the requester possess knowledge of any parties that currently manufacture the described aluminum product a country exempted from this tariff? If yes, identify the country or countries below.	No
	Comment:	

4.g	Is the requester aware of any manufacturers capable of producing a substitute for the aluminum product in the United States? If "Yes" provide supporting information (name and address) in the space below?	No
	Comment:	

4.h

Has the Exclusion requester attempted to qualify any aluminum manufacturer in the United States as a supplier of the aluminum product for that is the subject of this Exclusion Request in the past two years? If "Yes" provide supporting information in the space below. Supporting documents must be submitted as a consolidated PDF file and may not exceed 25 pages. No

1		5	
2		6	
3		7	
4		8	
Comment:			

Continued on Next Page

Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports - *Continued*

5.a	Has the Exclusion Requester attempted to purchase the described aluminum product that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If "Yes" identify the manufacturers, addresses, and your points of contact at the U.S. aluminum manufacturing organizations in the space below.	No
	Comment:	
5.b	Has the Exclusion Requester had supply contracts, or have current contracts, with aluminum producers that manufacture in the United States the aluminum product identified in the Exclusion Request? If "Yes" identify the U.S. aluminum manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the space below.	No
5.c	Has the Exclusion Requester determined that there is no U.S. manufacturer that produces a near-equivalent aluminum product that would meet qualification requirements? If "Yes" identify in the space below the testing standards/procedures employed to make that determination.	No
	Comment:	
5.d	In the last two years, has the requester purchased a substitute aluminum product manufactured in the United States in place of the aluminum product described in the Exclusion Request? If "Yes" provide supporting information in the space below.	No
	Comment:	
5.e	Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the aluminum product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures.	
	Import documents (commercial invoice and packing list) will specifically identify the physical properties and geometry of the aluminum foil.	

Submission of Exclusion Requests: All Exclusion Requests must be fully completed and submitted to www.regulations.gov under Docket Number BIS-2018-0002 using this Microsoft Excel electronic form. All information submitted will be subject to public disclosure, regardless of any statements by the requester that some information should be treated otherwise. Any further information required as a part of this Exclusion Request will be determined and requested solely by the U.S. Department of Commerce.

Submission of Supporting Documents (Attachments): Supporting attachments should be submitted to www.regulations.gov as PDF documents and must be posted to www.regulations.gov under Docket Number BIS-2018-0006. Total supporting submissions may not exceed 25 pages.

Other Comments:	

This request is for a product from a country subject to quantitative limitations:		I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission:		

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete.

CERTIFICATION

The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. **It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction.** [18 U.S.C. 1001 (1984 & SUPP. 1197)]

Company Name:	All Foils, Inc		
Name of Authorizing Official:	Kevin C. Foos	Title of Authorizing Official	President
Phone Number: 440.378.0130		Email of Authorizing Offical:	kcfoos@allfoils.com
If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.			
Point-of-Contact Name:		Title	
E-Mail Address:		Phone Number	

Paperwork Reduction Act Notice

Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0139. Commerce may not collect this information, and you are not required to respond; unless this OMB number is displayed.

BIS Decision Document – Aluminum Section 232 Remedy Exclusion Request

EXCLUSION REQUEST NUMBER: BIS-2018-0002-20414

Summary:

- Requester: All Foils, Inc
- Product description: .037 mm x 609.60 mm 8011-0 aluminum foil for food service
- HTSUS: 7607116010
- Total Requested Annual Exclusion Quantity in Kilograms: 65000
- Date Submitted: 04/30/2019

Analysis:

The Bureau of Industry and Security ("BIS") has received a request, referenced above, to exclude certain aluminum articles from the remedies (including quantitative limitations and/or duties, as applicable) set forth by the President in Proclamation 9704 of March 8, 2018, as amended, and in Proclamation 9739 of April 30, 2018 and Proclamation 9760 of May 31, 2018 and their accompanying annexes, in exercise of his authority to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). Clause 3 of Proclamation 9704 and Clause 1 of Proclamation 9777 of August 29, 2018 authorized the Secretary of Commerce to provide relief from duties and quantitative limitations, respectively, upon request by a directly affected party and in consultation with other executive branch agencies as appropriate, for: 1) any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality; or 2) based upon specific national security considerations. Any aluminum article for which relief is granted from quantitative limitations under Clause 1 of Proclamation 9777 is also not subject to the additional rate of duty set forth in Proclamation 9704.

The above-captioned request for relief ("exclusion request") has met the requirements for consideration as a "complete submission" under Supplement No. 1 to 15 CFR Part 705.

BIS has considered the evidence provided, including in the exclusion request and in BIS's report to the President of January 11, 2018, and has assessed other interagency comments as applicable. No objections have been filed to this exclusion request that meet the requirements laid out in Supplement No. 1 to 15 CFR Part 705, and therefore none have been considered.

Based on BIS's review of the evidence presented, and the absence of objectors, BIS finds 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.

BIS also finds that no overriding national security concerns require that this exclusion request be denied notwithstanding the lack of sufficient domestic availability.

Final Recommendation:

The Bureau of Industry and Security recommends that the above-captioned exclusion request should be granted for one year.

This approval of your exclusion request does not constitute a ruling under Title 19 Part 177, Code of Federal Regulations (19 CFR 177.1(d)(1)), or official confirmation of the correct provision under the Harmonized Tariff Schedule of the United States for your goods. To be certain of the correct tariff provision, you may request a ruling by either mailing your request to Director, National Commodity Specialist Division, Customs and Border Protection, 201 Varick Street, Suite 501, New York NY 10014, attn: Binding Ruling Request or you may submit your request electronically at https://erulings.cbp.gov/home.

DECISION ON EXCLUSION REQUEST # BIS-2018-0002-20414

_____**X**_____ I approve granting this exclusion request. The granted exclusion number is BIS-2018-0002-20414. This exclusion is granted for the merchandise described in the exclusion request and classified in the 10-digit provision of the Harmonized Tariff Schedule of the United States (HTSUS) claimed in the exclusion request. This exclusion is granted only in the quantities requested from each identified supplier and country of origin, as specified in the original exclusion request form. This exclusion is granted for one year from the date of signature below. The requester may consult CSMS #18-000378 for further instructions on using the exclusion number and receiving retroactive relief.

_____ I do not approve granting this exclusion request.

_____ I would like to discuss.

Matthew S. Borman

Deputy Assistant Secretary of Export Administration

July 19, 2019

Date

Exhibit 6

Worldwide Imports For Consumption 2019

Commodity: 7607116010

Data Type	Quantity Description	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Total
First Unit of Quantity	kilograms	2,831,750	2,626,276	2,517,687	4,611,113	6,025,099	5,272,657	4,773,590	3,457,265	2,410,513	2,005,946	1,577,018	1,474,555	39,583,469

Source: USITC Dataweb Official Import Statistics

Exhibit 7

Trinidad Jumbo Rolls to Finished Product

Russell A. Farrow/Framar International Products

Exhibit 8

Imports For Consumption **Source Country: China**

Commodity: 7607116010

Data Type	Quantity Description	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Total
First Unit of Quantity 2019	kilograms	814,535	799,144	609,578	979,923	745,890	781,902	1,079,892	904,080	1,009,782	837,163	685,002	537,023	9,783,914
First Unit of Quantity 2020	kilograms	1,619,270	778,446	69,865	353,576	738,336	1,107,998	1,787,671	873,098	1,213,010	1,335,938			9,877,208

Source: USITC Dataweb Official Import Statistics

ARC
PIONEERING SAFETY. SINCE 1948

February 8, 2021

The Honorable Wynn Coggins
Acting Secretary of Commerce
Bureau of Industry and Security
14th Street & Constitution Ave., N.W.
Washington, DC 20230

RE: Section 232 Steel and Aluminum Tariff Exclusions Process; ARC Automotive Inc.'s Comments on Docket No. BIS-2020-0022

Dear Acting Secretary Coggins:

We write on behalf of ARC Automotive Inc. ("ARC") and in reference to the Department of Commerce's interim rule published as *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. 81,060 (Dec. 14, 2020) ("Interim Rule"). ARC fully supports and appreciates the Department's implementation of a General Approved Exclusion ("GAE") to streamline the application of tariff exclusions for steel articles where no objections were filed. ARC requests that the Department consider adding seven (7) products to the list of steel articles approved under a GAE. All seven products are classified under the following two Harmonized Tariff Schedule codes: 7304.51.5060 and 7304.31.6050 and are high strength, low alloy, seamless hermetic steel tubing of in different dimensions that are and have been subject to unopposed exclusion requests for the past two years. We further describe the products and our basis for this request below.

ARC is a U.S. purchaser of certain imported steel tubes. Since the Section 232 duties were imposed in 2018, ARC has obtained exclusions and renewals for each of the product exclusions that it has requested under these two HTS codes. No interested party has opposed any of ARC's exclusion requests, and the Department has consistently - and for the past two years - found that these products are not available from U.S. producers and therefore granted ARC's exclusions. Notwithstanding these findings, ARC faces business uncertainty each year as it attempts to renew its exclusion requests for a component that forms a critical part of its supply chain. Additionally, ARC has faced uncertainty with respect to the volumes requested in these exclusions, which is an issue that the Department noted in the Interim Rule. *See* 85 Fed. Reg. at 81,061. In ARC's case, we have not sought larger volumes than needed, but rather have been forced to make difficult estimates based on unknown timing for the Department to process the exclusion requests. In an effort to avoid gaps in coverage of the exclusions, ARC has had to carefully balance its purchasing decisions with timing of filing renewed requests for exclusion. ARC also notes that under current Department practice, ARC must file separate exclusions for its different importers who supply the same product. If the Department grants GAEs for the products below, this issues will be resolved, creating administrative efficiency and business certainty for the company.

We therefore seek GAEs for these steel tubes and submit that this request aligns with the Department's stated intention in granting GAEs. ARC requests that the Department grant GAEs for either the two HTS codes in full or the seven specific products described below.

Product Description for Requested GAEs

ARC requests GAEs for carbon and alloy steel tube (high strength, low alloy, seamless hermetic steel tubing) that meets the ASTM A519 product standard and is imported in the dimensions noted below. The steel tube is used for automotive applications and particularly for airbag inflator tubes.

Below, ARC provides proposed language that permits the Department to draft GAE language that either excludes the two HTS codes (10-digit level) in full, which would cover all dimensions of the imported tubes or, should the Department prefer a more narrow exclusion, ARC provides the complete description (including dimensions) for each product for inclusion on the GAEs. ARC requests that if the Department does not exclude the complete 10-digit HTS codes of 7304.31.6050 and 7304.51.5060, then it issue the specific GAE language for the seven products as drafted below.

Proposed Federal Register Language

Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)

> 7304.51.5060. Tubes/Pipes of other alloy steel with a chemical composition as follows: Carbon 0.12 max, Manganese 1.15 - 1.4 max, Sulfur 0.01 max, Phosphorus 0.02 max, Silicon 0.15 - 0.35 max, Nickel 0.20 max, Chromium 0.30 to 0.50 max, Molybdenum 0.1 - 0.55 max, Copper 0.2 max, Aluminum 0.015 – 0.04, Niobium 0.05 max and Residual elements 0.15 max (0.05 max each element). Mechanical Properties: Tensile 825 – 1,000 MPa, Yield 680 MPa minimum and Elongation 12% minimum. Dimensional requirements: Inside Diameter 17.25mm – 17.45 mm, Thickness 1.5mm – 1.8 mm and Length between 4800mm and 7000mm.[1]
>
> 7304.51.5060. Tubes/Pipes of other alloy steel with a chemical composition as follows: Carbon 0.12% max, Manganese 1.15% to 1.4%, Sulfur 0.01% max, Phosphorus 0.02% max, Silicon 0.15% to 0.35%, Nickel 0.2% max, Chromium 0.3% to 0.5%, Molybdenum 0.1% to 0.55%, Vanadium 0.04% to 0.10%, Copper 0.2% max, Aluminum 0.015% to 0.04%, Niobium 0.05% max, Titanium 0.04% max. Residual elements (Sn, Sb, As, Pb) 0.15% max (0.05% max each element). Mechanical Properties: Tensile 825 – 1,000 MPa, Yield 680 MPa minimum and Elongation 12% minimum. Dimensional requirements: Inside Diameter 21.6mm – 21.8 mm, Thickness 1.63mm – 2.03 mm and Length between 4800mm and 7000mm.[2]
>
> 7304.51.5060. Tubes/Pipes of other alloy steel with a chemical composition as follows: Carbon 0.12% max, Manganese 1.4% max, Sulfur 0.015% max, Phosphorus 0.025%

[1] BIS Decision Memo. 69217 (May 1, 2020).
[2] BIS Decision Memo. 69190 (May 1, 2020).

max, Silicon 0.35% max, Nickel 0.50% max, Chromium 0.3% to 0.5% max, Molybdenum 0.18% max, Copper 0.50% max, Aluminum 0.015% – 0.060%, Niobium 0.10% max, Vanadium 0.1% max. Residual elements (Boron, Titanium, and Cobalt) 0.15% max (0.05% max each element). Mechanical Properties: Tensile 900 – 1,100 MPa, Yield 680 MPa minimum and Elongation 9% minimum. Dimensional requirements: Inside Diameter 26.5mm – 26.7 mm, Thickness 1.65mm – 2.05mm and Length between 4800mm and 7000mm.[3]

7304.51.5060. Tubes/Pipes of other alloy steel with a chemical composition as follows: Carbon 0.12 – 0.17, Manganese 1.00 max, Sulfur 0.015 max, Phosphorus 0.025 max, Silicon 0.35 max, Nickel 0.50 max, Chromium 0.50 max, Molybdenum 0.15 max, Copper 0.50 max, Aluminum 0.015 – 0.060, Niobium 0.10 max and Residual elements 0.15 max (0.05 max each element). Mechanical Properties: Tensile 825 – 1,000 MPa, Yield 725 MPa minimum and Elongation 12% minimum. Dimensional requirements: Inside Diameter 17.25mm – 17.45 mm, Thickness 1.5mm – 1.8 mm and Length between 4800mm and 7500mm.[4]

7304.51.5060. Tubes/Pipes of other alloy steel with a chemical composition as follows: Carbon 0.12 – 0.17, Manganese 1.00 max, Sulfur 0.015 max, Phosphorus 0.025 max, Silicon 0.35 max, Nickel 0.50 max, Chromium 0.50 max, Molybdenum 0.15 max, Copper 0.50 max, Aluminum 0.015 – 0.060, Niobium 0.10 max and Residual elements 0.15 max (0.05 max each element). Mechanical Properties: Tensile 825 – 1,000 MPa, Yield 725 MPa minimum and Elongation 12% minimum. Dimensional requirements: Inside Diameter 21.6mm – 21.8 mm, Thickness 1.63mm – 2.03 mm and Length between 4800mm and 7000mm[5]

7304.51.5060. Tubes/Pipes of other alloy steel with a chemical composition as follows: Carbon 0.12 – 0.17, Manganese 1.00 max, Sulfur 0.015 max, Phosphorus 0.025 max, Silicon 0.35 max, Nickel 0.50 max, Chromium 0.50 max, Molybdenum 0.15 max, Copper 0.50 max, Aluminum 0.015 – 0.060, Niobium 0.10 max and Residual elements 0.15 max (0.05 max each element). Mechanical Properties: Tensile 825 – 1,000 MPa, Yield 725 MPa minimum and Elongation 12% minimum. Inside Diameter 26.5mm – 26.7 mm, Thickness 1.65mm – 2.05mm and Length between 4800mm and 7000mm[6]

7304.31.6050. Tubes/Pipes of nonalloy steel with a chemical composition as follows: Carbon 0.07 - 0.12 max, Manganese 1.10 - 1.6 max, Sulfur 0.03 max, Phosphorus 0.03 max, Silicon 0.15 - 0.55 max, Nickel 0.10 max, Chromium 0.29 max, Molybdenum 0.03 max, Copper 0.20 max, Aluminum 0.015 – 0.060, Niobium 0.10 max and Residual elements 0.15 max (0.05 max each element). Mechanical Properties: Tensile 825 – 1,000 MPa, Yield 725 MPa minimum and Elongation 12% minimum. Inside Diameter 17.25mm

[3] BIS Decision Memo. 69210 (May 1, 2020).
[4] BIS Decision Memo. 69358 (May 19, 2020).
[5] BIS Decision Memo. 69298 (May 1, 2020).
[6] BIS Decision Memo. 69340 (May 1, 2020).

min. to 17.45mm max., Outside Diameter 20.25mm min. to 21.05mm max. and length 80.0mm min. to 6000.0mm max[7]

Other limitations (e.g., country of import or quantity allowed)
None

ARC appreciates the Department's time and attention to this request. We further confirm that ARC qualifies for GAEs for the above products based on the Department's previous determinations in granting our exclusion requests. Given the administrative burden that ARC faces in filing these requests -- including the requirement that ARC file multiple requests for the same product to cover different suppliers -- and the business uncertainty caused by the process, ARC respectfully requests that the Department grant this request.

Should you have any questions regarding this letter, please do not hesitate to contact me at the phone number or email address below.

Sincerely,

Lisa Milsom
VP of Purchasing & Supply Chain
ARC Automotive Inc.
Phone: (865) 583-7841
Email: lisa.milsom@arcautomotive.com

[7] BIS Decision Memo. 143387 (Nov. 13, 2020).

February 9, 2021

The Honorable Wynn Coggins
Acting Secretary of Commerce
Bureau of Industry and Security
14th Street & Constitution Ave., N.W.
Washington, DC 20230

Re: Docket No. BIS-2020-0022; Section 232 Steel and Aluminum Tariff Exclusions Process; Written Comments by Zurn Industries, LLC

Dear Acting Secretary Coggins:

On behalf of Zurn Industries, LLC ("Zurn"), I submit the following in response to the Department of Commerce's interim rule published as *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. 81,060 (Dec. 14, 2020) ("Interim Rule"). Zurn fully supports and appreciates the Department's implementation of General Approved Exclusions ("GAEs") to streamline the application of tariff exclusions for steel articles where no objections were filed. Zurn, in fact, has consistently supported such streamlined procedures in comments to the Department, including those filed in June 2020. We appreciate the opportunity to again stress the importance of a workable and efficient exclusion process for U.S. manufacturers, like Zurn, who require reliable and consistent supply of certain steel articles that are not available in the United States.

Zurn requests that the Department swiftly move to expand the list of GAEs to avoid business uncertainty and obviate the need for submission of multiple exclusion requests on a yearly basis. Zurn further requests that the Department not limit GAEs to exclusions that received no objection but rather also include exclusions for which the objection was demonstrably baseless. In particular, Zurn urges the Department to expand the list of GAEs to include 13 specific steel articles for which the Department granted Zurn's exclusion requests after Zurn documented that there was no basis for an objection, even though objections were filed. Based on Zurn's experience in seeking exclusions for the 13 different sizes of this product, Zurn believes that the Department should not base selection of GAEs on objection status alone but rather a more complete review of the record. We provide further details below.

Overview of the Company

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 (the subject of its Section 232 exclusion requests), into these water control and waste management products for sale in the United States.

Zurn's Section 232 Exclusion Requests

Zurn requested exclusions for 13 steel articles, all of which are specialty stainless steel pipes used as "in building risers."[1] Zurn filed these requests in September 2019, and it took nearly one full year for review and decision. All 13 steel pipes are classified under Harmonized Tariff Schedule (US) 7304.41.6045, and all are 90 degree elbow-shaped sections that are welded between two straight lengths of pipe, of 13 different sizes, all 72 inches in length, and varying from 4 to 10 inches in outer diameter and from 77 to 268 lbs in weight.

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 to that objector. The objector subsequently 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 is speculation. 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 in the GAE consideration process. In response, Zurn provided uncontroverted documentation to BIS that the objections were factually invalid, and still, Zurn's exclusion requests were pending for nearly one year. Throughout that time, these critical products faced both Section 232 and Section 301 duties, cumulatively amounting to significant tariffs, plus burdensome additional Customs compliance, on an already strained supply chain. Ultimately, BIS granted all 13 exclusion requests in August 2020.

Zurn also filed five additional requests on November 18 and November 20, 2020 to address additional volume needed for these same products. No objections were filed in response these exclusion requests, and BIS granted all five exclusions expeditiously and shortly after the comment period closed without objection.[2] This further supports the granting of GAEs for these in-building risers.

Now, Zurn requests that BIS consider these products for GAEs, notwithstanding the fact that an objection had been filed in the past. This request aligns with the Department's stated intention in granting GAEs, including reducing uncertainty with respect to volume requests and promoting administrative efficiency both within the Department and within the private sector. *See* 85 Fed. Reg. at 81,061. Zurn is a significant domestic employer whose interests and continuing operations employ hundreds of U.S. employees, including U.S. manufacturing-related workers. A full and fair exclusion process is essential to Zurn's operations.

[1] *See* BIS Dec. Memos. for Exclusion Request Nos. 21311, 21313, 21318, 25371, 25378, 25379, 25796, 25806, 25817, 25946, 25977, 25989, and 26002 (all granted on Aug. 9, 2020).
[2] *See* BIS Dec. Memos. for Exclusion Request Nos. 162043, 161880, 161840, 160956, and 160910 (Dec. 31, 2020).

Proposed Federal Register Language

Based on the above, Zurn proposes the following language for these requested GAEs:

Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)

> 7304.41.6045. TUBES/PIPES/HLLW PRFLS OF STAINLESS STEEL, OS DIAMETER 4, 6, 8, or 10 INCHES, LENGTH 72", WEIGHT >70 LBS

The above GAE is narrowly tailored and specific. It would also cover 13 exclusion requests for which Zurn is otherwise required to seek renewal on an annual basis, thereby reducing the burden on the Department in administering requests for which there is no U.S. production.

* * *

Zurn greatly appreciated that BIS has held objectors accountable for the accuracy of their comments and has considered evidence submitted that detracts from objectors' claims. However, once such facts are established, the product should also qualify for a GAE. For these reasons, we request the Department to consider including stainless steel pipes for in building risers, in the sizes and dimensions listed above, classified under HTS 7304.41.6045 in the next round of announced GAEs. 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,

_____

Clint Rees
NA Import Compliance Mgr.
Zurn Industries LLC

PUBLIC SUBMISSION

As of: 2/10/21 11:07 AM
Received: February 10, 2021
Status: Pending_Post
Tracking No. 1k5-9lpi-5671
Comments Due: February 12, 2021
Submission Type: API

Docket: BIS-2020-0022
Section 232 Steel and Aluminum Tariff Exclusions Process

Comment On: BIS-2020-0022-0001
Steel and Aluminum Tariff Exclusions Process; Revision

Document: BIS-2020-0022-DRAFT-0005
UPDATE

Submitter Information

Name: Anonymous Anonymous
Address:
15F, IT Venture tower, 135 Jungdae-ro
Songpa-gu,
Seoul, Korea, South,
Organization: Korea Iron & Steel Association

General Comment

Comments regarding 'Section 232 steel and aluminum tariff exclusions process'.

Korea Iron & Steel Association(KOSA) submits the following comments on behalf of the Korean steel industry in response to the Interim Final Rule of Section 232 Steel and Aluminum Tariff Exclusions Process.

KOSA supports the Department of Commerce(DOC)'s effort to revise the exclusion process through the interim final rule. However, KOSA would like to address some vulnerable points of the revised procedure regarding the adoption of General Approved Exclusions (GAEs) and modification of the exclusion process.

Despite the fact that the imports of Korean steel products are covered by the absolute quota (70% of Korea's average steel exports to the U.S. between 2015 and 2017), the imports made through the product exclusions are counted within the annual quota. This may result in unexpected damage to other Korean exporters that plan to clear customs through the annual quota due to the imports made through the exclusion process.

KOSA, therefore, respectfully requests the DOC to treat exclusions, including GAEs, separate from the annual quota, so that the products that were granted exclusion do not count within the annual quota.

KOSA hopes the exclusions, including GAEs, to be applied in accordance with its initial purpose to

provide a stable supply of steel products to the U.S. customers.

TRI SEAL
A TEKNI-PLEX BUSINESS

United States Commerce Department
Bureau of Industry and Security
Section 232 Investigation
Imports of Steel and Aluminum

February 3, 2021

Tri-Seal Opco LLC
Comments on Section 232 Exclusion Process – 85 FR 81060 dated Dec. 14, 2020

BIS-2020-0022
RIN 0694-AH55

Tri-Seal Opco LLC ("Tri Seal) submits these comments to the interim final rule published on December 14, 2020. This rule, which amends the regulations for submission of Section 232 requests, is addressed as *Supplement No. 1 to Part 705—Requirements for Submissions Requesting Exclusions From the Adjustment of Imports of Aluminum and Steel Imposed Pursuant to Section 232 of the Trade Expansion Act of 1962, as Amended.*

We also note that this interim final rule follows a *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* published in 85 Federal Register, No. 101 dated May 26, 2020.

Specifically, Tri Seal submits comments regarding the established process for General Approved Exclusions, Supplement No. 2 to Part 705—General Approved Exclusions (GAEs) for Steel Articles Under the 232 Exclusions Process and Supplement No. 3 to Part 705 – General Approved Exclusions (GAEs) for Aluminum Articles Under the 232 Exclusions Process.

I. BACKGROUND

By means of background, Tri-Seal Opco is a subsidiary of Tekni-Plex, Inc., a globally-integrated company focused on developing and manufacturing innovative packaging materials, medical compounds and precision-crafted medical tubing solutions for some of the most well-known names in the medical, pharmaceutical, personal care, household & industrial, and food & beverage markets. Tekni-Plex, Inc. is headquartered in Wayne, Pennsylvania, and employs approximately 2,330 people in the U.S. The company also operates facilities in locations outside of the U.S., including Brazil, Belgium, Canada, China, Costa Rica, Germany, India, Italy, Northern Ireland.

Tekni-Plex is a developer, manufacturer, and supplier of a wide range of products including packaging materials, medical compounds, and precision-crafted medical tubing. These products are sold to most well-known names in the medical, pharmaceutical, personal care, household & industrial, and food & beverage markets.

Tri-Seal, a subsidiary of Tekni-Plex, is a leading global manufacturer of closure liners and seals for glass, metal, and plastic containers. The company's innovative products provide tamper evidence, barrier protection and seal integrity.

Tri-Seal has been producing aluminum foil backed with a sealant layer in its facility in Winston-Salem, North Carolina for the last five years. This foil is used in food packaging and medical packaging products. In 2016, the company greatly expanded its operations, adding a new extrusion line to produce custom, sealable, and easy-peel products for use in other industries besides food packaging.

Tri-Seal sources the bare aluminum foil in several countries, primarily in the EU. Tri-Seal imports the foil into the U.S. and pays all applicable duties due, including the Section 232 tariffs assessed as a result of the Section 232 investigation on steel and aluminum.

Although Tri-Seal has requested and been granted exclusions for certain products, they have also had requests denied.

The company has reviewed the interim final rule and although the company acknowledges that Commerce and BIS have addressed concerns with the exclusion process itself, Tri-Seal believes that the General Approved Exclusion ("GAE") process is arbitrary and capricious as there was no official comment period on the proposed lists of HTS provisions eligible for use by all importers. There was

no transparency in the selection of these provisions or an opportunity for the public to challenge these determinations.

II. SECTION 232 – NOTICE OF INQUIRY/INTERIM FINAL RULE

By means of background, a Notice of Inquiry was published by the Department of Commerce on May 26, 2020.[1] Within this Notice, Commerce provided an opportunity to provide comments on many aspects of the existing exclusion process. At issue here is the following statement included in the Notice: *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);*

Annex 1 and Annex 2 provided the list of HTS provisions and corresponding product descriptions for which no objections had been filed.

However, the Notice of Inquiry lacked full details of what was contemplated by this "blanket approval" and failed to even identify the HTSUS provisions as possibly qualifying for such treatment. Annex 1 and Annex 2 simply identified these as "232 Process Statistics-Objection Rate by Steel HTSUS as of 3/23/20" and "232 Process Statistics-Objection Rate by Aluminum HTSUS as of 3/23/20".

[1] 85 FR No. 101, 31441, dated May 26, 2020.

The Notice of Inquiry lacked transparency as to what was contemplated by this "blanket approval". It did not state that the "blanket approval" would be a "General Approved Exclusion" available to all importers of such a product. The Notice of Inquiry should have clearly stated that it was the Department's intention to establish a blanket approval available for all importers of the products included in Annex 1 and Annex 2. It should have also stated that comments should be submitted addressing the specific HTSUS provisions being contemplated.

This lack of transparency carried over to the interim final rule with the announcement of the "General Approved Exclusion" process. The GAE process clearly states that such exclusions are available to all importers of the products on each Annex. This was not stated in the Notice of Inquiry and the fact that Commerce waited until the interim final rule to provide specifics on the proposed "blanket approval" was unfair to the domestic industry and not in compliance with the requirements of the Administrative Procedure Act (5 U.S.C. 553). Although the interim rule states that as the regulation involves a military or foreign affairs function of the United States, the required notice of proposed rulemaking, opportunity for public comment and delay in effective date are inapplicable, we disagree with this statement as it applies to the GAE.

Commerce did not provide full details of this process in its Notice of Inquiry. The public was not advised that this "blanket approval" would apply to the HTSUS provisions included in Annex 1 and 2, nor did they state that it would be available to all importers. Instead, Commerce moved forward with a GAE process without providing a fair comment period.

The GAE process announced in the interim final rule is also problematic. It does not provide transparency as to the process of selecting HTSUS provisions and products to be covered. It simply

includes products for which there were no objections as of March 23, 2020 identified in the Notice of Inquiry. The rule also states the following:

These GAEs are indefinite in length, but the Department of Commerce on behalf of the Secretary of Commerce may at any time issue a ***Federal Register*** *notice removing, revising or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process as described in supplement no. 1 to this part. The Department of Commerce on behalf of the Secretary of Commerce may periodically publish notices of inquiry in the* ***Federal Register*** *soliciting public comments on potential removals, revisions or additions to this supplement.*

This statement is completely arbitrary and leaves the decision-making on GAE's solely to the Department of Commerce unless they decide to publish a Notice of Inquiry. We believe that there should be a proposed GAE list published for comment prior to announcement of a final list. To that end, the initial list, published in the interim final rule, was covered by a Notice of Inquiry that did not specifically identify that the proposed HTSUS provisions would be granted a GAE, allowing for all importers to use the exclusion for an unlimited time. The Notice of Inquiry merely mentioned a "blanket approval" for a one-year period.

We bring to your attention the inclusion of HTSUS 7607.20.5000 which currently appears on the GAE for aluminum. According to the Notice of Inquiry, as of March 23, 2020, there were no objections submitted to the 84 exclusion requests submitted for goods under this HTSUS provision. However, Tri-Seal has suffered financial loss because of the exclusions issued by Commerce to a competitor who imports bare aluminum into Canada and then processes it into the same or substantially similar type of backed aluminum foil product that the company produces in North

Carolina. Due to the offshoring of the competitor's product, Tri-Seal could not compete and filed objections to five of the exclusion request extensions submitted by this competitor. These objections were submitted in October 2020. Thus, the statistics used by Commerce from March 23, 2020 are clearly no longer accurate.

We believe that Commerce should have reviewed the proposed lists to ensure that there were no objections filed prior to the announcement issued on December 14. Had they done so, HTSUS 7607.20.5050 would not have qualified as being "objection-free".

In fact, a review of the 232 Portal shows that over 70 exclusion requests involving HTSUS provisions included on the Annexes in the interim final rule had objections filed and in a number of cases, the requests were denied by Commerce. Despite this, they were still included on the interim final list. (EXHIBIT A – List from Portal)

This is blatantly unfair to companies who filed objections and the exclusion requests were denied. Not only does it allow the company who submitted the exclusion request to import the steel or aluminum product, it opens the market to all companies who import that aluminum or steel product.

It is illogical that Commerce would initiate a program granting a GAE to products for which the exclusion request was denied. According to the portal information, GAE's were issued for 38 products covered by HTSUS provisions on the Annexes for which Commerce denied the original exclusion request. These all occurred during the time period of July 29-November 18, 2020. We note that the Notice of Inquiry stated that the items on the Annexes had not received any objections which is presumably one of the requirements for a GAE.

TRI SEAL®
A TEKNI-PLEX BUSINESS

Had Commerce published the proposed list of HTSUS provisions under consideration for the GAE, those companies who had filed objections to the exclusion requests could respond. Instead, by moving forward with the list in the interim final rule, these products can now be imported without payment of Section 232 tariffs by any company.

III. CONCLUSION

The Section 232 exclusion process has been problematic, controversial, and legally challenged since its inception. We appreciate the efforts made by Commerce to address the systemic issues with this process. However, the establishment of a GAE process without a proper comment period and a fully transparent overview of how the process will work is unfair to the domestic industry and for this reason, the interim rule should be modified to terminate this process until a proper comment period and fully transparent process is provided to the trade community. The floodgates have been open to imports of products for which Commerce had already denied exclusion requests and for products for which objections had been filed.

We thank you for the opportunity to submit these comments.

Respectfully submitted,

David L. Andrulonis

Sr. VP, General Manager, Global Tri-Seal

Tri Seal Opco LLC

TEKNIPLEX®
Global strength. Superior solutions.

EXHIBIT A

ID	Company	Product	HTSUS	Status	Posted Date	Details	Objections	Objection Rebuttals	Surrebuttals
147698	Toyota Tsusho America, Inc	Steel	7212200000	Denied	10/22/2020	Details	United States Steel Corporation	Toyota Tsusho America, Inc.	United States Steel Corporation
147676	Toyota Tsusho America, Inc	Steel	7212200000	Denied	10/22/2020	Details	United States Steel Corporation	Toyota Tsusho America, Inc.	United States Steel Corporation
143535	Perfection Sources Corporation	Steel	7217108030	Denied	10/9/2020	Details	Davis Wire Corporation	Perfection Sources Corp.	Davis Wire Corporation
143527	Perfection Sources Corporation	Steel	7217108030	Denied	10/14/2020	Details	Davis Wire Corporation	Perfection Sources Corp.	N/A
143514	Perfection Sources Corporation	Steel	7217108030	Denied	10/9/2020	Details	Davis Wire Corporation	Perfection Sources Corp.	Davis Wire Corporation
143503	Perfection Sources Corporation	Steel	7217108030	Denied	10/9/2020	Details	Davis Wire Corporation	Perfection Sources Corp.	Davis Wire Corporation
143495	Perfection Sources Corporation	Steel	7217108030	Denied	10/9/2020	Details	Davis Wire Corporation	Perfection Sources Corp.	Davis Wire Corporation
143490	Perfection Sources Corporation	Steel	7217108030	Denied	10/13/2020	Details	Davis Wire Corporation	Perfection Sources Corp.	N/A
151558	Perfection Sources Corporation	Steel	7217204560	Denied	10/28/2020	Details	WCJ Pilgrim Wire	N/A	N/A
-		-	-	-	-	-	Davis Wire Corporation	N/A	N/A
142864	Perfection Sources Corporation	Steel	7217204560	Denied	10/6/2020	Details	Davis Wire Corporation	Perfection Sources Corp.	Davis Wire Corporation
-		-	-	-	-	-	WCJ Pilgrim Wire LLC	Perfection Sources Corp.	N/A
142860	Perfection Sources Corporation	Steel	7217204560	Denied	10/5/2020	Details	Davis Wire Corporation	Perfection Sources Corp.	Davis Wire Corporation
150165	Lotters Wire Corporation	Steel	7217304541	Pending-Rebuttal Window Closed	10/26/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
150071	Lotters Wire Corporation	Steel	7217304541	Pending-Rebuttal Window Closed	10/26/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
146804	Lotters Wire Corporation	Steel	7217304541	Denied	10/19/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
156152	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/5/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
156144	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/5/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
156121	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/5/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
156077	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/5/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
156067	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/5/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
156025	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/5/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
155990	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/5/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
154556	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/3/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
154494	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/4/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
153720	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/3/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
153700	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/3/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
153677	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/2/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
153648	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	11/2/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
150215	Lotters Wire Corporation	Steel	7217901000	Pending-Rebuttal Window Closed	10/26/2020	Details	WCJ - Pilgrim Wire, LLC	N/A	N/A
166039	Kanematsu USA Inc.	Steel	7219210005	Pending-Rebuttal Window Closed	12/3/2020	Details	Electralloy, a G.O. Carlson Inc. Co	N/A	N/A
128837	Kanematsu USA Inc.	Steel	7219210005	Denied	8/27/2020	Details	ATI Flat Rolled Products Holdings, LLC	N/A	N/A
128818	Kanematsu USA Inc.	Steel	7219210005	Denied	8/27/2020	Details	ATI Flat Rolled Products Holdings, LLC	N/A	N/A
128806	Kanematsu USA Inc.	Steel	7219210005	Denied	8/27/2020	Details	ATI Flat Rolled Products Holdings, LLC	N/A	N/A
128796	Kanematsu USA Inc.	Steel	7219210005	Denied	8/27/2020	Details	ATI Flat Rolled Products Holdings, LLC	N/A	N/A
128787	Kanematsu USA Inc.	Steel	7219210005	Denied	8/27/2020	Details	ATI Flat Rolled Products Holdings, LLC	N/A	N/A
128781	Kanematsu USA Inc.	Steel	7219210005	Denied	8/27/2020	Details	ATI Flat Rolled Products Holdings, LLC	N/A	N/A
125425	Nippon Yakin America, Inc.	Steel	7219220040	Denied	8/20/2020	Details	ATI Flat Rolled Products Holdings, LLC	Nippon Yakin America, Inc.	N/A
-		-	-	-	-	-	Electralloy, a G.O. Carlson Inc. Co	Nippon Yakin America, Inc.	Electralloy, a G.O. Carlson Inc. Co
124869	Nippon Yakin America, Inc.	Steel	7219220040	Denied	8/19/2020	Details	ATI Flat Rolled Products Holdings, LLC	Nippon Yakin America, Inc.	N/A
-		-	-	-	-	-	Electralloy, a G.O. Carlson Inc. Co	Nippon Yakin America, Inc.	N/A
124763	Nippon Yakin America, Inc.	Steel	7219220040	Denied	8/19/2020	Details	ATI Flat Rolled Products Holdings, LLC	Nippon Yakin America, Inc.	N/A
-		-	-	-	-	-	Electralloy, a G.O. Carlson Inc. Co	Nippon Yakin America, Inc.	N/A
159846	Crompion International, LLC	Steel	7219320036	Pending-Surrebuttal Window Closed	11/18/2020	Details	Carpenter Technology Corporation	Crompion International, LLC	N/A
152344	Zapp Precision Wire	Steel	7220206010	Pending-Surrebuttal Window Closed	10/29/2020	Details	Carpenter Technology Corporation	Zapp Precision Wire	N/A
137900	voestalpine Precision Strip, LLC	Steel	7220900060	Denied	9/22/2020	Details	Carpenter Technology Corporation	voestalpine Precision Strip, LLC	N/A
134737	voestalpine Precision Strip, LLC	Steel	7220900060	Denied	9/21/2020	Details	Carpenter Technology Corporation	voestalpine Precision Strip, LLC	N/A
133156	voestalpine Precision Strip, LLC	Steel	7220900060	Denied	9/10/2020	Details	Carpenter Technology Corporation	voestalpine Precision Strip, LLC	N/A
132495	voestalpine Precision Strip, LLC	Steel	7220900060	Denied	9/8/2020	Details	Carpenter Technology Corporation	voestalpine Precision Strip, LLC	Carpenter Technology Corporation
132492	voestalpine Precision Strip, LLC	Steel	7220900060	Denied	9/8/2020	Details	Carpenter Technology Corporation	voestalpine Precision Strip, LLC	Carpenter Technology Corporation
130144	voestalpine Precision Strip, LLC	Steel	7220900060	Denied	9/1/2020	Details	Carpenter Technology Corporation	voestalpine Precision Strip, LLC	N/A
129971	voestalpine Precision Strip, LLC	Steel	7220900060	Denied	9/1/2020	Details	Carpenter Technology Corporation	voestalpine Precision Strip, LLC	N/A
125724	voestalpine Precision Strip, LLC	Steel	7220900060	Denied	8/21/2020	Details	Carpenter Technology Corporation	N/A	N/A
123645	voestalpine Precision Strip, LLC	Steel	7220900060	Denied	8/14/2020	Details	Carpenter Technology Corporation	voestalpine Precision Strip, LLC	N/A
151840	Precision Metal Services, Inc	Steel	7221000045	Pending-Surrebuttal Window Closed	10/28/2020	Details	Carpenter Technology Coporation	Precision Metal Services, Inc	N/A
147636	Central Wire Inc.	Steel	7221000045	Denied	10/22/2020	Details	Carpenter Technology Coporation	Central Wire Inc.	N/A
121611	Zapp Precision Wire	Steel	7221000045	Denied	8/7/2020	Details	Carpenter Technology Coporation	Zapp Precision Wire	N/A
115619	Zapp Precision Wire	Steel	7221000045	Denied	7/29/2020	Details	Carpenter Technology Coporation	Zapp Precision Wire	N/A
147524	DSS America, Inc	Steel	7225501110	Denied	10/21/2020	Details	Crucible Industries LLC	N/A	N/A
147365	DSS America, Inc	Steel	7225501110	Denied	10/21/2020	Details	Crucible Industries LLC	N/A	N/A
147057	DSS America, Inc	Steel	7225501110	Denied	10/21/2020	Details	Crucible Industries LLC	N/A	N/A
146813	DSS America, Inc	Steel	7225501110	Denied	10/19/2020	Details	Crucible Industries LLC	N/A	N/A
152951	Gantrex, Inc.	Steel	7302101015	Pending-Rebuttal Window Closed	10/30/2020	Details	Steel of West Virginia	N/A	N/A
152759	Gantrex, Inc.	Steel	7302101015	Pending-Rebuttal Window Closed	10/30/2020	Details	Steel of West Virginia	N/A	N/A
157724	Marubeni-Itochu Tubulars America Inc	Steel	7304293160	Pending-Surrebuttal Window Closed	11/10/2020	Details	United States Steel Corporation	Marubeni-Itochu Tubulars America Inc	United States Steel Corporation
151473	Marubeni-Itochu Tubulars America Inc	Steel	7304293160	Pending-Surrebuttal Window Closed	10/28/2020	Details	United States Steel Corporation	Marubeni-Itochu Tubulars America Inc	United States Steel Corporation
152462	Winpak Heat Seal Corporation	Aluminum	7607205000	Pending-Surrebuttal Window Closed	10/30/2020	Details	Tri Seal Opco LLC	Winpak Heat Seal Corporation	Tri Seal Opco LLC
151585	Winpak Heat Seal Corporation	Aluminum	7607205000	Pending-Surrebuttal Window Closed	10/30/2020	Details	Tri Seal Opco LLC	Winpak Heat Seal Corporation	Tri Seal Opco LLC
151573	Winpak Heat Seal Corporation	Aluminum	7607205000	Pending-Surrebuttal Window Closed	10/30/2020	Details	Tri Seal Opco LLC	Winpak Heat Seal Corporation	Tri Seal Opco LLC
151459	Winpak Heat Seal Corporation	Aluminum	7607205000	Pending-Surrebuttal Window Closed	10/29/2020	Details	Tri Seal Opco LLC	Winpak Heat Seal Corporation	Tri Seal Opco LLC
150635	Winpak Heat Seal Corporation	Aluminum	7607205000	Pending-Surrebuttal Window Closed	10/27/2020	Details	Tri Seal Opco LLC	Winpak Heat Seal Corporation	Tri Seal Opco LLC
150813	Schaeffler Group USA Inc	Aluminum	7616995170	Pending-Rebuttal Window Closed	10/28/2020	Details	Brass Aluminum Forging Enterprises	N/A	N/A
-	-	-	-	-	-	-	Alumina LLC	N/A	N/A
146995	Tempo Global Resources, LLC	Aluminum	7601209095	Denied	10/20/2020	Details	Century Aluminum Company	N/A	N/A
152516	LK ALUMINUM LLC	Aluminum	7616995160	Pending-Surrebuttal Window Closed	10/30/2020	Details	Brass Aluminum Forging Enterprises	LK ALUMINUM LLC	
152498	LK ALUMINUM LLC	Aluminum	7616995160	Pending-Surrebuttal Window Closed	10/30/2020	Details	Brass Aluminum Forging Enterprises	LK ALUMINUM LLC	

BRAUMILLER
LAW GROUP, PLLC
INTERNATIONAL TRADE LAW

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
U.S. Department of Commerce
Attn: Bureau of Industry and Security
1401 Constitution Avenue, NW
Washington, DC 20230

VIA REGULATIONS.GOV

RE: Comments on Section 232 Interim Final Rule (Docket No. BIS-2020-0022)

1. Introduction

On behalf of Parker Steel Company[1], we submit this comment urging the U.S. Bureau of Industry and Security to revise the new certifications requirements contained in its December 14, 2020 Notice of Interim Final Rule.[2] Specifically, Parker Steel wishes to comment on the new paragraph *(c)(5)ii Certification for volume requested, (A) My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request or I have a purchase order or orders for such products.*

2. About Parker Steel Company

Parker Steel Company, now headquartered in Maumee, OH is unique because it is the only steel distributor in the United States that stocks exclusively metric dimensional metals. Parker Steel International was started in 1991 as a warehouse to stock metric sizes in carbon steel, alloy steel, stainless steel, aluminum, brass and copper in all the standard shapes. Parker Steel's goal is to make the purchase of metric sizes of metals as fast, convenient and easy for the customer as possible.

Parker Steel has two warehouses to serve their customer's needs. Both are located in Toledo, OH. The company stocks more than 6,000 line items in products such as round, flat and hex bars. Also chrome plated shafting, equal and unequal angles, tees, I-beams, channels, shim stock, plates, sheets, round and seamless round tubing, square and rectangular tubing. Parker Steel's business is mainly driven by small ground package deliveries to its customers. In fact, in Year 2020, Parker Steel's average Sale was 119 pounds.

Parker Steel is a business-to-business provider that has an extremely diverse customer base, ranging from engineers and large corporations to small job shop owners and everyone in between. Because of its extensive stock, and low minimum order of $85, the company can ship 96% of orders the same day.

[1] Parker Steel Company is headquartered at 1625 Indian Wood Circle, Maumee Ohio 43537.
[2] *Section 232 Steel and Aluminum Tariff Exclusion Process*, 85 Fed. Reg. 81060 (December 14, 26, 2020) ("*December Request for Comments*").

3. The New (c)(5)ii(A) Purchase Order Requirements are Unfair to Steel and Aluminum Distributors

This new requirement directly and unfairly targets steel and aluminum distributors like Parker Steel who do not manufacture, process, or otherwise transform the imported product, but rather provide a valuable service to their U.S. Customers by maintaining an inventory of products on the basis of carefully anticipated product need rather than on the basis of having a specific order in-hand.

The requirement for a distributor to have a purchase order in-hand at the time of the submission of an exclusion request covering a full upcoming year is essentially impossible to meet and will unfairly eliminate distributors like Parker from eligibility to participate in the exclusion process. This result entirely disregards the purpose of providing exclusions in the first place, which is to recognize that there is no threat to national security by permitting exclusion from Section 232 tariffs of imports of steel and aluminum that is not otherwise available in the U.S.

Parker Steel's entire business model is based on its ability to have small quantities of a variety of products available on-hand for its end customers at all times, and in nearly all cases with the ability to deliver on a next-day basis. Also, the fact that Parker Steel's established market niche is to supply metal products in metric sizes dramatically increases Parker Steel's reliance on imported sources of product, primarily from Europe, that Parker can verify are not available in small quantities from U.S. producers.

4. The Purchase Order Requirement is Unnecessary to Achieve BIS's Exclusion Process Improvement Goals

Parker Steel fully support BIS's efforts to improve the exclusion process to deter those that would manipulate the process for improper gain and supports the goal of assuring the utmost integrity in the process of determining exclusion volumes. However, this goal does not have to be pursued in a way that will do irreparable harm to many long-standing U.S. steel and aluminum distributors and their employees and families. The balance of the certification requirements clearly provides ample assurances that parties seeking exclusions must base these requests on valid, verifiable information.

Under the new rules, <u>under the threat of criminal penalty</u> parties must certify:

- They do not intend to use the exclusion solely to hedge or arbitrage the price;
- They <u>expect</u> to consume, sell, or otherwise use the total volume of product across all active exclusions and pending exclusion requests in the course of their organizations business activities within the next calendar year;
- If an organization did not import its previous year's full exclusion amount it was due to verifiable legitimate business reasons; and
- Exclusion amounts requested are in line with what the organization expects to import <u>based on the current business outlook</u>, and the requestor commits to providing documentation justifying its assertions in regarding its past imports of steel or aluminum

5220 SPRING VALLEY RD.,SUITE 200 DALLAS, TEXAS 75254 (214)348-9306 TEL. (214) 217-9309 FAX (877) 277-5987 TOLL-FREE
WWW.BRAUMILLERLAW.COM

articles and its projections for the current year, as it relates to past and current calendar year exclusion requests.

Taken together the requirements clearly prohibit, under threat of criminal penalty, unverifiable speculation as to requested quantities or the inflation of requested volumes above those anticipated for legitimate business needs. Further the requirements expressly recognize that the determination of the import volumes over an entire year must be based in part on expectations and current business outlook.

Parker Steel is entirely committed to adherence with the above requirements and is fully able to provide detailed historical consumption, product availability, and highly detailed technical product specifications, however actual required volumes for an entire upcoming year must necessarily be based on careful, verifiable analysis of prior purchase volumes, and other marketplace factors. Further, it is critical for Parker Steel to correctly determine its anticipated purchasing volumes as it must invest its own limited financial resources in its product purchases and must maintain these products in inventory at a substantial cost in limited storage space. If Parker Steel were to purchase more products arbitrarily or incorrectly than it could sell over a reasonable time period, it would quickly go out of business.

5. Conclusion

The imposition of the new (c)(5)ii(A) purchase order requirements will effectively dismiss Parker Steel, as well as many other important U.S. steel and aluminum distributors, from the ability to participate in the Section 232 exclusion process. This is contrary to the national security objectives of Section 232 and is also patently unfair. Parker Steel is fully capable of providing verifiable information related to the products it imports, including detailed historical consumption, product availability, and highly detailed technical product specifications to alleviate any concerns related to the risk of overstated or inflated exclusion volumes somehow founded on the fact that they are a distributor. Further, the requirements will have profound negative financial implications for an important U.S. industry and puts in jeopardy the financial viability of Parker Steel as well as the valued U.S. jobs it provides.

Thank you for your kind assistance in this matter. If you require any additional information or have any questions, please contact me at (214) 348-9306.

Best regards,

Paul Fudacz
Trade Counsel for Parker Steel Company

5220 SPRING VALLEY RD.,SUITE 200 DALLAS, TEXAS 75254 (214)348-9306 TEL. (214) 217-9309 FAX (877) 277-5987 TOLL-FREE
WWW.BRAUMILLERLAW.COM

Kelley Drye & Warren LLP
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007

Tel: (202) 342-8400
Fax: (202) 342-8451

February 11, 2021

VIA Regulations.gov
Docket BIS-2020-0022

Matthew S. Borman
Acting Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: Public Comments on Section 232 Steel and Aluminum Tariff Exclusions Process; Interim Final Rule

Dear Mr. Borman,

These comments are submitted on behalf of the Wire Rod Producers Coalition, an *ad hoc* trade organization of U.S. producers of carbon and alloy steel wire rod in response to the December 14, 2020 Federal Register publication of the interim final rule on the Section 232 Steel and Aluminum Tariff Exclusion Process.[1] Specifically, the Bureau of Industry and Security (hereinafter "BIS" or "Commerce") explained that while it "believes these changes {implemented by the interim final rule} will make important improvements, {it} is also requesting public comments to evaluate how effective these changes will be in further improving the 232 exclusions process."[2] The Wire Rod Producers Coalition submits these comments to express concern regarding the General Approved Exclusions ("GAEs"), which favor administrative efficiency in the exclusion process at the much greater expense of the effectiveness of the Section 232 program overall.

I. Background

The Wire Rod Producers Coalition is an *ad hoc* trade organization representing domestic producers of carbon and alloy steel wire rod. The current members of the Wire Rod Producers

[1] Section 232 Steel and Aluminum Tariff Exclusions Process, 85 Fed. Reg. 81,060 (Dep't Commerce Dec. 14, 2020) ("Section 232 IFR").

[2] Id. at 81,060, 81,071 (seeking comments on "which features are an improvement and comments highlighting any areas of concern or suggestions for improvement").

Coalition are Charter Steel (Saukville, WI, Cuyahoga Heights, OH, and Fostoria, OH), Liberty Steel USA (Peoria, IL and Georgetown, SC), and Optimus Steel, LLC (Beaumont, TX). The Wire Rod Producers Coalition was formed in the early 1980s for the purpose of representing the domestic industry in antidumping (AD) and countervailing duty (CVD) proceedings involving unfairly traded imports of wire rod from numerous countries. In fact, the domestic wire rod industry has filed a number of successful unfair trade case since the 1990s because wire rod is an interchangeable product that is produced around the world, making the large U.S. wire rod market an attractive target for low-priced imports that have repeatedly been found to injure American wire rod producers.[3]

In this context, after years of facing unfair import competition driven by global excess capacity, member of the Wire Rod Producers Coalition welcomed the imposition of the Section 232 tariffs as critical relief from the high volume of wire rod imports that are not currently subject to AD or CVD orders. The Section 232 program has benefitted domestic wire rod producers in allowing them to rebuild capacity, increase production, and invest in the U.S. wire rod industry. Understanding that the exclusion request process was designed to address specific, narrow instances in which a steel product is not "produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality" or when "specific national security considerations" come into play,[4] members of the Wire Rod Producers Coalition have objected to exclusion requests on a case-by-case basis. As discussed further below, the lack of an objection from a wire rod producer to an exclusion for a particular wire rod product request has not meant, in every instance, that the domestic wire rod industry is incapable of producing the product at issue, or more importantly, that it is incapable of producing other wire rod products within the same Harmonized Tariff System of the United States ("HTSUS") statistical subcategory.

II. The General Approved Exclusions Raise Significant Concerns

The Section 232 IFR placed into effect as of December 29, 2020 General Approved Exclusions ("GAEs") for steel imports identified under 108 HTSUS codes. Each GAE allows any importer, without quantitative limitation, to import or withdraw from warehouse for consumption the products identified under such codes free of Section 232 tariffs.[5] The GAEs are permanent (absent a subsequent discretionary determination to revoke a particular GAE) regardless of current of future market

---

[3] AD and CVD petitions were filed on behalf of the Wire Rod Coalition against unfairly-traded imports throughout the 1990s, in 2001, 2005, 2014, and, most recently, in 2017. There are currently AD orders in effect covering wire rod imports from Belarus, Brazil, China, Indonesia, Italy, Mexico, Moldova, Russia, South Africa, South Korea, Spain, Trinidad and Tobago, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom; and CVD orders in effect covering wire rod from Brazil, China, Italy, and Turkey.

[4] Section 232 IFR, 85 Fed. Reg. at 81,060.

[5] Id. at 81,071, 81,079-81,083.

conditions or domestic industry capabilities. The members of the Wire Rod Producers Coalition are deeply concerned about the GAEs, which will undermine the effectiveness of the Section 232 program overall and the fairness of the exclusion process in particular, which was intended to provide narrow exceptions to the tariffs under very specific circumstances.[6]

As a threshold matter, the GAEs fail to accomplish their stated purpose of "creat{ing} a more efficient process to approve certain exclusions for use by all importers *where Commerce has determined that no objections will be received*."[7] For example, members of the Wire Rod Producers Coalition currently produce many carbon and alloy welding quality wire rod grades properly classified under GAE 44/ HTSUS 7213.91.3020, GAE 50/ HTSUS S 7227.90.6020, and GAE 72/ HTSUS 7227.20.0030. Thus, there is no support for the contention that "no objections" will ever be received for grades of welding quality wire rod that enter under these HTSUS codes and for which specific exclusion requests would otherwise have been required.

To the extent Commerce's rationale for including these specific GAEs is that it has "typically not received any objections" to exclusions requests for certain welding quality wire rod grades, that is not a fair basis for granting blanket and permanent exclusions for all products imported under these HTSUS codes. There may be many reasons why members of the domestic wire rod industry have not objected to exclusion requests for these or other wire rod products besides an inability to manufacture, including problems or confusion with the exclusion request (e.g., misclassification, improper description, misreported values), very small request volumes, customer relationships/ongoing negotiations and other confidential commercial reasons, or a sheer inability to keep up with the volume and pace of exclusion requests. Even in cases in which a particular product was not being produced at the time of the exclusion request, granting a permanent exclusion request with no recourse will inhibit the development of the domestic industry's capability to produce such products in the future.

Importantly, the GAEs are overly broad and not narrowly tailored to correspond to only those specific products described in the exclusion requests for which there were no objections. This is because while HTSUS codes describe a general product type (e.g., welding quality wire rod), they often also cover a vast array of grades and sizes of that product. In contrast, Section 232 exclusion requests must be made with particularity. Separate exclusion requests are required for different grades and

---

[6] We share many of the specific objections to the GAEs as expressed by the steel producers and industry associations to date. See, e.g., American Iron and Steel Institute Comments on "Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas" (July 10, 2020); Letter to Secretary of Commerce Wilbur L. Ross, Jr., from American Iron and Steel Institute, Committee on Pipe and Tube Imports 232 Coalition, Specialty Steel Industry of North America, and Steel Manufacturers Association (Jan. 4, 2021).

[7] Section 232 IFR, 85 Fed. Reg. at 81,062 (emphasis added).

sizes, identified by "chemistry by percentage breakdown by weight, metallurgical properties, surface quality (e.g., galvanized, coated), and critical dimensions" even when such grades are covered by a common HTSUS code.[8] For example, one requestor sought an exclusion for a proprietary version of low-residual welding quality wire rod with very specific chemistry restrictions that it claimed is not currently made by any domestic wire rod producer. Even if that is the case and the reason for no objection, that specialty product enters under HTSUS 7227.90.6020, under which many other welding quality wire products that the domestic manufacturers *do* produce are also imported.

Thus, the GAEs will allow imports to enter the U.S. market under automatic and permanent Section 232 tariff exclusions that (1) are *not* the same products as those for which exclusion requests were previously made, and (2) in volumes exceeding the actual tonnage at issue in the specific exclusion requests to which there were no objections. This is at odds with both Commerce's continuing requirement that exclusion requests be product-specific (not HTSUS subcategory-specific) and the new volume certifications intended to prevent overly large tonnage exclusion requests. To illustrate this, the tonnage requested in exclusion requests posted in calendar year 2020 and classified under HTSUS codes 7213.91.3020, 7227.20.0030, and 7227.90.6020 totaled approximately 32,635 metric tons – *less than one-third* of the 119,715 metric tons in imports under the same three HTSUS codes in 2020. Relying solely on the much broader HTSUS code to identify a permanent exclusion for a subset of known products is antithetical to the purpose of the Section 232 program. It removes – without factual basis – the tariffs from products that are currently made by the domestic industry to which the program is designed to provide relief.

The Wire Rod Producers Coalition recognizes the importance of easing the administrative burden on both Commerce and interested parties and applauds Commerce for taking steps to implement such improvements. While Commerce explains that the GAEs will accomplish an estimated reduction of 5,000 exclusion requests annually,[9] that is a small savings compared to the 222,773 exclusion requests filed through July 27, 2020 – or about 111,000 per year on average since the Section 232 tariffs were introduced in March 2018.[10] That modest savings in effort for the agency is more than offset by the harm to the effectiveness of the Section 232 program that the will occur as these GAEs play out over all 108 steel products. The GAEs, therefore, serve neither the goals of the Section 232

---

8 15 C.F.R. Pt. 705, Supp. 1, para. (c)(2).

9 Section 232 IFR, 85 Fed. Reg. at 81,061.

10 This total includes 198,869 steel exclusion requests and 23,904 aluminum exclusion requests. Congressional Research Service, "Section 232 Investigations: Overview and Issues for Congress" (Updated Aug. 4, 2020), at 12.

program nor provide a "significant improvement" in administrative efficiency in the exclusion process.[11]

In sum, the GAEs will permit the Section 232 tariff-free import of a wide range of wire rod products that were *never* subject to an exclusion request and for which Commerce has *no data* on whether the domestic wire rod industry would object if such requests were submitted. The members of the Wire Rod Producers Coalition are alarmed by the significant likelihood that there will be a sharp increase in wire rod imports under these HTSUS codes by importers that did not previously have a basis for seeking an exclusion (because the products are available from U.S. producers), but are now being granted freedom from the duties by fortuitously sharing a common HTSUS category with a narrow subset of specialty wire rod grades. The GAEs also greatly increase the likelihood of circumvention by those importers that will attempt to misclassify their entries to avoid tariffs; the GAEs are effectively a GPS for importers seeking a roadmap to do just that.

The Wire Rod Producers Coalition asks Commerce to revoke the current GAEs, which were implemented without an opportunity to comment on their identification, and establish a process for a fair notice and comment period on the identification of GAEs *before* they go into effect. Commerce must also clarify the criteria for approving GAEs. Although the Section 232 IFR points to the introductory text of the new GAE regulatory supplement as explaining "how Commerce will approve these GAEs,"[12] the text itself states merely that the Secretary of Commerce, in consultation with other cabinet officials and assistants to the President "as appropriate," will make "these determinations that certain steel articles may be authorized under a GAE *consistent with the objectives of the 232 Exclusions Process*."[13] Consistent with other aspects of the Section 232 exclusion process, Commerce should provide tangible, objective criteria for GAE selection to guide interested parties.

Finally, to the extent that GAEs are not suspended or revoked, Commerce should consider limiting application of each GAE to the specific products identified in the unopposed exclusion(s) that served as the basis for the GAE. This can be accomplished through a carve-out product description and/or importer certification requirement corresponding to the GAE.[14] Such a change would not undermine the expected benefit from the annual reduction of 5,000 exclusion requests because

---

[11] Section 232 IFR, 85 Fed. Reg. at 81,061.

[12] Id. at 81,065.

[13] 15 C.F.R. Pt. 705, Supp. 2 (emphasis added); see also Section 232 IFR, 85 Fed. Reg. at 81,065 ("As previously noted, these determinations for what steel or aluminum articles warrant being included in a GAE will be made by Commerce, in consultation with the other agencies referenced in the new supplements.").

[14] A model for this may be the specially prepared product description for carve-out exclusions from the Section 301 tariffs on imports from China granted by the Office of the U.S. Trade Representative.

Commerce presumably determined the estimated benefit based on exclusion requests actually received. Importantly, tying each approved GAE to the actual products for which exclusions were requested (and presumably unopposed) would meaningfully mitigate the unintended and destructive impact of the GAEs on the Section 232 program overall.

* * *

The Wire Rod Producers Coalition thanks Commerce for the opportunity to provide comments on these important issues. We appreciate efforts being made to make the Section 232 exclusion process more equitable and efficient. Such changes, however, should not be made at the expense of the Section 232 program's effectiveness in addressing the impairment of the domestic steel industry, including wire rod producers, from imports driven by the scourge of other countries' overcapacity.

Respectfully submitted,

Paul C. Rosenthal
Kathleen W. Cannon
R. Alan Luberda
Brooke M. Ringel

Counsel to the Wire Rod Producers Coalition

PUBLIC SUBMISSION

As of: 2/12/21 9:45 AM
Received: February 11, 2021
Status: Pending_Post
Tracking No. 1k5-9lqo-rppg
Comments Due: February 12, 2021
Submission Type: Web

Docket: BIS-2020-0022
Section 232 Steel and Aluminum Tariff Exclusions Process

Comment On: BIS-2020-0022-0001
Steel and Aluminum Tariff Exclusions Process; Revision

Document: BIS-2020-0022-DRAFT-0009
Comment on FR Doc # 2020-27110

Submitter Information

Name: David Craven
Address:
3744 N ASHLAND AVE
CHICAGO, IL, 60613-3602
Email: dcraven@craventrade.com
Phone: 7737098506
Organization: Now Plastics, Inc.

General Comment

These comments are filed on behalf of Now Plastics, Inc, an importer, distributor, and supplier of a range of products including Aluminum Foil products used in the flexible packaging industry. Now Plastics submits that there are several issues with the interim final regulations. These comments focus on three of the more egregious issues.
The certification requirements in the interim regulations do not consider the nature of the market and the methods of distribution of the Aluminum Foil to the U.S. producers of such flexible packaging;
The disclosure of the names of the requestors is not relevant to an analysis of domestic availability and provides an unfair opportunity for market research by competitors; and
The absence of an appeal process and the requirement that parties resubmit requests is an inefficient use of resources.

See attached for further detail.

Attachments

P NOW PLASTICS COMMENT

February 11, 2021

U.S. Department of Commerce
Bureau of Industry and Security
Section 232 Investigation
Imports of Aluminum

Now Plastics, Inc.
BIS-2020-0022
Comments on Section 232 Interim Final Rule

These comments are filed on behalf of Now Plastics, Inc, an importer, distributor, and supplier of a range of products including Aluminum Foil products used in the flexible packaging industry. Now Plastics submits that there are several issues with the interim final regulations. These comments focus on three of the more egregious issues.

- The certification requirements in the interim regulations do not consider the nature of the market and the methods of distribution of the Aluminum Foil to the U.S. producers of such flexible packaging;
- The disclosure of the names of the requestors is not relevant to an analysis of domestic availability and provides an unfair opportunity for market research by competitors; and
- The absence of an appeal process and the requirement that parties resubmit requests is an inefficient use of resources.

I. The Certifications in the Interim Regulations do not Consider the Nature of the Market and the Methods of Distribution

The first of the required certifications limits the ability to file exclusion requests to either U.S. manufacturers and end-users that use the aluminum or companies that have purchase orders for such aluminum products. This ignores a particularly important segment of the U.S. industry. Now Plastics, Inc, and several other companies, act as reliable sourcing companies for the U.S. flexible packaging

industry. Such companies work with the U.S. producers and help them identify sources, whether U.S. or foreign, which can supply raw materials with the physical qualities necessary to manufacture food packaging. These sourcing companies provide a range of raw materials to the flexible packaging producers including aluminum foil and various types of plastic films. Flexible packaging, which is critical to a safe food supply, has specific demands and through companies such as Now Plastics, a strong and critical supply chain is established coordinating the supply of a broad range of different materials to the flexible packaging industry producers. Companies such as Now Plastics also handle the logistics including freight and warehousing of the products.

One of the strengths of this supply chain is the ability to change between suppliers based on production availability. Further, unlike other end uses, the foil used in flexible packing is specific to the type of package produced with a range of thicknesses and widths. Depending upon consumer demand, the specific products needed will change. Accordingly, the end users do not historically ask the distributors to purchase specific quantities of specific products, but rather ask the distributors to quote a range of quantities with a range of thicknesses and widths with the exact product to ultimately be supplied to depend on the specific product needed.

For example, one packaging producer may want to buy a quantity of foil with a thickness between 6.7 and 8.0 micros (ultra-thin foils) with a thickness of 37, 37.25, 37.50 and 37.75 inches. The specific combination will depend upon the demand of the food processor consuming the packaging and the ultimate customer purchasing the packaged food (or medicine). This is driven both by consumer demand and the harvest. Yet under the new certification requirements, such product

could not be subject to an exclusion request covering all of the needs as the exact final amounts would not be known at the time of the initial order, but rather only an approximate quantity and value with minimums. Further, as the specific physical properties will vary depending upon demand, the specific product would not be known until later in the process. Critically, some producers are capable of producing thinner foil than other producers and some producers are capable (and willing) to produce narrower foils. A small shift in physical properties could result in a change in supplier.

The best solution to this problem would be an elimination of the new certification requirements established in the interim regulations. These regulations appear to be intended to correct a problem that did not, in fact, exist, and add an unnecessary level of complexity to the process.

If BIS decides to leave some or all of the interim certification requirements in place, these certifications should be modified to read as follows:

(A) My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request, or I have a purchase order or orders for such products *or my request is based on firm inquiries from unrelated customers based on annual projections*;

(B) My organization does not intend to use the exclusion for which I have filed an exclusion request, if granted, solely to hedge or arbitrage the price;

(C) My organization expects to consume, sell, or otherwise use the total volume of product across all my active exclusions and pending exclusion requests in the ordinary course of my organization's business activities *within a reasonable period of time* ~~within the next calendar year~~;

(D) If my organization is submitting an exclusion request for a product for which we previously received an exclusion, I certify that my organization either imported the full amount of our approved exclusion(s) last year or intended to import the full amount but could not due to one of the following reasons:

(1) Loss of contract(s);
(2) Unanticipated business downturns; ~~or~~
(3) Other factors that were beyond my organization's control that directly resulted in less need for steel or aluminum articles; or
(4) Changes in demand for the raw material based on change in demand for the underlying product; and

(E) I certify that the exclusion amount requested this year is in line with what my organization expects to import based on our current business outlook *and requests from our customers based on their projections of demand*. If requested by the Department of Commerce, my organization shall provide documentation that justifies its assertions in this certification regarding its past imports of steel or aluminum articles and its projections for the current year, as it relates to past and current calendar year exclusion requests.

The proposed modifications would allow the distributors to continue to serve their important place in the market. Furthermore, due to the nature of foil and the nature of demand, projected demand may result in larger quantities being requested than actually used. This is not unusual in the flexible packaging industry as various conditions can radically change demand for specific packages. (For example, COVID-19, and the need for significantly more vaccines, has increased demands for flexible packaging used to safely transport the vaccines and the equipment used to inject vaccines. In contrast, other food products have seen a loss in demand and use less flexible packaging than originally projected.)

Accordingly, to the extent that the certification requirements in the interim regulations continue to remain in effect, they should be modified.

II. The Exclusion Process Should be Anonymous

The interim regulations require public disclosure of the name of the requestor and the foreign mill to supply the product. The public identity of the requestor is not relevant to the availability of specific product from the U.S. producers. The public identity of the foreign mill, and its country of location, supplying the foil is not relevant to US. availability. The foil in question is either available or not available from U.S. producers. The identity of the requestor or the proposed mill does not change the availability of the foil.

However, the identity of the requestor is, in fact, critical to a competitor trying to assemble a detailed roadmap as to its competitors' suppliers and products. The 232 process is not intended to serve commercial purposes, but rather is to protect the national security from threats to key U.S. industries.

Accordingly, Now submits that the regulations should be modified to make the name and address of the requestor confidential as well as the identity and country of the proposed foreign mill. This information is not relevant to a determination as to whether or not particular types of foil are available from U.S. sources.

III. BIS Should Set-Up an Appeal Process for Denials

The BIS should set-up an appeal process for denials. Under the interim regulations, if a request is denied, a requestor's only option is to file a new request. However, if the BIS decision is based on an error or a flaw, there should be a specific appear process to allow such errors or flaws to be corrected. This would provide far greater protections than simply re-submitting a request as the requestor could

directly address the flaws and errors in the decision and point out the specific support for the alternate position.

The Japan Iron and Steel Federation

3-2-10, Nihonbashi-Kayabacho
Chuo-ku, Tokyo, 103-0025 Japan
TEL: +81 3 3669 4818 Fax: +81 3 3661 0798
http://www.jisf.or.jp/en

12 February 2021

Comments of the Japan Iron and Steel Federation regarding the Interim Final Rule on 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 interim final rule 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 *Section 232 Steel and Aluminum Tariff Exclusions Process* that was published in the Federal Register on December 14, 2020. JISF appreciates the opportunity to provide these comments.

In response to the Department of Commerce request for public input on the 232 Process interim final rule, JISF offers comments on the amended (1) General Approved Exclusions and (2) Volume Certification as below.

1. Establishment of General Approved Exclusions

We applaud the establishment of the list of General Approved Exclusions (GAEs) in the Interim final rule.

There have been cases where evaluation process of exemption applications took inappropriately long time, or where the decision did not appear to have been made after due consideration. Therefore, from the viewpoint of efficiency, it is reasonable to establish the GAE list.

As manufacturers and exporters of the high quality steel products, the Japanese steel industry is pleased that the BIS has introduced a system such as the GAE.

We would like to request the same treatment that the GAE would be applied for other applicable products on a continuing basis.

2. Requirements for Volume Certification

Regarding the requirements for volume certification to ensure application quantities to be consistent with legitimate business needs, we would like to suggest the following points regarding supporting documents that serve as the basis for

proving that the quantity applied for is "consistent with legitimate business needs".

(1) Catalogs, inventory lists, past orders, etc. of wholesalers, with whom the importers do business, should also be accepted as supporting documents.

(2) When a purchase order for a certain grade or size is obtained, such items that are related to the purchase order should also be accepted as the subject of the exemption request.

Furthermore, in the following comments, which overlap with those we submitted in our public comments last July, we would like to point out what we consider to be the problems based on the experiences of our customers and importers who have been actually involved in submission of application for exemptions of steel products over the past year.

Given the uncertainty of the outcome of the exemption request and the length of time it takes to reach a conclusion, we are missing an opportunity to supply the products that the US customers require. It will be highly appreciated if the BIS take these impacts in consideration.

Problem 1: Unclear standards for decisions regarding exclusion applications.

Our proposals:

(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 mill(s) would claim they could make equivalent products,

the decision about the exclusion should take into consideration such problems about the U.S. mill(s) 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.

Our proposal:

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.

Our proposal:

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

Our proposal:

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

Our proposal:

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,

Shigeru Hagiuda

Shigeru HAGIUDA
General Manager

SCHAGRIN ASSOCIATES

900 SEVENTH STREET, N.W. - SUITE 500 - WASHINGTON, D.C. 20001
P: (202) 223-1700 E: RSCHAGRIN@SCHAGRINASSOCIATES.COM F: (202) 429-2522

February 12, 2021

The Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Submitted via www.regulations.gov

Re: BIS-2020-0022 or RIN 0694-AH55 – Comments on BIS Interim Final Rule

Dear Secretary:

This submission is filed on behalf of the undersigned counsel for numerous domestic producers of steel and steel products in response to the request for comments on the interim rule published in *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. 81,060 (Dec. 14, 2020). We appreciate the continued interest of the Bureau of Industry and Security ("BIS") in improving the exclusion process for duties and quantitative limitations on imports of aluminum and steel. We believe that certain of the proposed changes under consideration would improve the process, and that additional modifications would lead to even more improvement.

First, BIS proposes creating general approved exclusions ("GAEs") to eliminate the need for exclusion requests where there was no objection to a prior exclusion request. In particular, the agency proposes 108 GAEs for steel products and 15 for aluminum products, based on tariff classifications. The creation of GAEs defined by tariff categories would, however, be problematic because the headings and subheadings of the Harmonized Tariff Schedule of the United States ("HTSUS") often do not adequately define the product that was the subject of the exclusion request. A single tariff classification can include a variety of steel and steel products

with varying specifications, grades, and dimensions. A January 4, 2021 letter from four steel industry associationscorrectly identified seven proposed GAEs that include products manufactured by the domestic industry.[1] Additional proposed GAEs that include products manufactured in the United States include certain high strength hot rolled coils less than 4.75 mm in thickness (GAE 92/HTS 7208390015, GAE 93/HTS 7208380015). Thus, the GAE proposal would likely lead to exclusions for variety of products currently manufactured in the United States –contrary to the goals of the 232 adjustments. For this reason, if Commerce does create GAEs, they should be limited to particular products actually subject to prior exclusion requests that were granted without objection, not the more general HTSUS categories that such products might fall into.

Second, we appreciate the acknowledgement that many exclusion requests seek volumes that bear no relation to market demand, and that new certification requirements were implemented to address these concerns. Yet, it is apparent that many parties requesting exclusions continue to have little regard for their obligation to be truthful. Recent requests for many products, including for example seamless stainless steel pipe – a high value, low-volume product – continue to request volumes that are multiples of actual annual demand. In addition, many parties are not addressing the unfulfilled volume certification requirement in their requests, which if properly completed would help BIS identify unrealistic volume requests. Among other things, we consider it to be a clear giveaway when there are multiple requests for identical products that vary only by dimension and each one of the requests specifies the sale volume. We also believe that BIS should require that requesters provide Customs forms for the last several

[1] The four associations are the American Iron and Steel Institute, the Steel Manufacturers Association, the Specialty Steel Industry of North America, and the Committee on Pipe and Tube Imports.

years indicating the volumes actually imported in order to deter continued requests for inflated volumes.

Third, with respect to Comment (c)(3) and "Size ranges," BIS states that "products identical in all aspects, with the exception of a dimensional characteristic, and that are classified within the same HTSUS statistical reporting number, may be included within a single request. However, objections that indicate the ability to produce one or more products within the range, even if not the entire range, will be considered to be valid objections to an exclusion request." We support the consideration of a range of sizes in a single exclusion request, but consider that limiting such consolidated requests to only those sizes falling within a particular tariff classification is unwarranted given our more general concerns about the imprecision of HTSUS categories when it comes to distinguishing particular steel products. In addition, if parties object to one or more products within the size range, BIS should only consider the objection for those specific sizes. If there are no objections to the other sizes, then BIS can adjust the exclusion decision as appropriate.

Fourth, the proposed changes regarding "immediately" available are consistent with earlier comments we provided regarding the application of the same time standard to U.S. objectors and foreign suppliers. We appreciate BIS establishing this time frame for the term "immediately."

We are aware that other proposed changes we offered in response to your May 26, 2020 Notice of Inquiry have not been addressed. This includes undo reliance on tariff classifications over product descriptions, a more detailed requirement that requesters specify why particular products are not available from domestic sources, improvements in notifying parties of when

objections, rebuttal and surrebuttals are posted, and greater transparency regarding the analysis underlying decisions. We look forward to BIS addressing these concerns in the near future.

We appreciate the efforts the BIS has made in administering this program, and its willingness to solicit suggestions on how the process can be improved. In sum, we believe (1) any GAEs should be on a product-specific basis, not tariff classification; (2) requestors continue to seek exclusions for volumes that are unjustifiable in light of domestic demand conditions, and that (3) those requesting exclusions should consolidate requests when the only difference is dimensional. We look forward to continuing to work with BIS to improve the process.

Please contact the undersigned with questions regarding this submission.

Respectfully Submitted,

_/s/ Roger B. Schagrin_____
Roger B. Schagrin
Christopher T. Cloutier

Schagrin Associates

KING & SPALDING

1700 Pennsylvania Avenue, NW
Washington, DC 20006-4706
Phone: 202/737-0500
Fax: 202/626-3737
www.kslaw.com

February 12, 2021

VIA http://www.regulations.gov

Mr. Jeremy Pelter
Acting Deputy Under Secretary of Industry and Security
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

DOCKET NO. BIS–2020–0022

Re: Comments of Cleveland-Cliffs Inc. in Response to Interim Final Rule Regarding Section 232 Steel and Aluminum Tariff Process

Dear Mr. Pelter:

On behalf of Cleveland-Cliffs Inc. ("Cleveland-Cliffs"), and its wholly-owned U.S. subsidiary, AK Steel Corporation ("AK Steel"), we submit these comments in response to the Section 232 Steel and Aluminum Exclusions Process Interim Final Rule (the "Section 232 Interim Final Rule") issued by the Bureau of Industry and Security, U.S. Department of Commerce ("Commerce") on December 14, 2020.[1] Commerce specifically requested comments on which features of the Section 232 Interim Final Rule "are an improvement and comments highlighting any areas of concern or suggestions for improvement."[2]

AK Steel is the only remaining manufacturer of grain-oriented electrical steel ("GOES") in the United States. GOES is a type of electrical steel used primarily to make cores and

[1] Bureau of Industry and Security, U.S. Department of Commerce, *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. 81060 (Dec. 14, 2020).

[2] *Id.*, 85 Fed. Reg. at 81071.

laminations used in the production of transformers. Commerce has already concluded that preserving our nation's ability to make electrical steel is essential to the national security interests of the United States.[3] AK Steel has actively participated in two separate Section 232 national security investigations on (1) steel and (2) cores and laminations made from electrical steel. AK Steel's primary focus is to preserve a vital portion of the U.S. infrastructure that supports the nation's electrical grid—namely, the manufacturing capacity necessary to make GOES for transformers. If that capacity is lost, the United States will be wholly dependent on imports for a vital part of our electrical grid. Thus, it is vital that Commerce prevent the Section 232 program from being undermined by unnecessary and/or improper exclusions.

I. CLEVELAND-CLIFFS SUPPORTS THE SECTION 232 INTERIM FINAL RULE

First, Cleveland-Cliffs strongly supports Commerce's decision to add a new Volume Certification Requirement to the Section 232 Interim Final Rule "to ensure that the volume request in exclusion requests is consistent with the past use of steel or aluminum by an exclusion requestor"[4] because of Commerce's concern "that certain exclusion requestors may have requested more volume than they may have needed for their own business purposes compared to past usage."[5]

In fact, the situation that the Volume Certification Requirement was designed to remedy, is exactly what happened to AK Steel when Commerce granted a total of ten product exclusions in September 2020 and January 2021 relating to certain "extra-wide" (one-meter) GOES from

[3] U.S. Department of Commerce, *The Effect of Imports of Steel on the National Security* (Jan. 11, 2018) at 46.

[4] *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. at 81070.

[5] *Id.*, 85 Fed. Reg. at 81061.

South Korea. The total volume of imports associated with these exclusions is 44,600 metric tons, or 49,163 net tons. The volume of potential imports associated with these exclusions is significantly greater than the total volume of all U.S. imports of GOES last year. In fact, this figure far exceeds the largest annual volume of U.S. imports of GOES from South Korea in any year.

AK Steel can make GOES up to 920 millimeters ("mm") in width, and very few U.S. customers require coils of GOES wider than 920 mm. In fact, AK Steel believes that the total annual business needs in this niche product segment is approximately 1,400 net tons per year. **In other words, Commerce approved exclusions in an import volume that is 3,511.6% *higher* than the actual business needs of U.S. customers for this product.**

This glut of duty-free imports from South Korea will take place at volumes that bear no relationship to legitimate business needs. Prior to these exclusions being granted, the domestic GOES market had already been severely degraded through steel transshipment involving imports of laminations and cores produced in Canada and Mexico, forcing AK Steel to consider permanently stopping GOES production at the company's Butler Works and Zanesville Works. The granting of these exclusions creates yet another path for circumvention of the national security tariffs applied to GOES thus further degrading an already weakened market. If this volume of GOES is permitted to enter the United States, such a development would be a knockout blow to AK Steel's Butler and Zanesville facilities, with devastating consequences for the 1,400 personnel who work in those facilities. A potential new surge of imports also threatens the long-term stability of the U.S. electrical grid, putting this country's national security at risk. Commerce should not allow these exclusions to continue without interruption when doing so would: (1) be contrary to the new rules at issue here; and (2) be likely to cast serious doubt on

the continuing viability of the only domestic producer of a steel product that is critical to the national security interests of the United States.

Second, AK Steel also strongly supports Commerce's decision to modify the rules so as "to remind all parties submitting 232 submissions of the prohibition against making false statements to the U.S. Government and the consequences that may occur for such false statements."[6] Commerce explained that this enhancement is designed to address the "trend identified by commenters and validated in data reviewed by Commerce—that certain exclusion requesters may have requested more volume than they may have needed for their own business purposes compared to past usage."[7] As stated above, Commerce's decision to grant eight exclusion requests for GOES in September 2020, and two others in January 2021, opens the door to GOES import volumes that bear no relation to the legitimate needs for the product that was identified in the exclusion requests. Indeed, as shown above, the exclusions rest on the groundless assumption that the U.S. market needs many times more imported GOES from South Korea than U.S. companies have ever purchased. The exclusion requests all relied on a claim by the requesting companies that they require GOES wider than 920 mm, but the domestic market for this product is far less than the volumes that were requested and approved by Commerce.

Because of these exclusions, the requesting companies will now be permitted to import massive volumes of South Korean GOES. Those imports will undoubtedly be slit to reduced widths to compete directly with products that AK Steel makes for customers that are used primarily to make cores and laminations used in the production of power and distribution

---

[6] *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. at 81061.

[7] *Id.*, 85 Fed. Reg. at 81061.

transformers. In fact, Korean GOES producer POSCO has a significant processing center in McCalla, Alabama. That facility can slit coils of GOES to meet customer specifications. It is apparent to AK Steel based on conversations with customers and other market intelligence that many of POSCO's U.S. customers are obtaining GOES from the McCalla facility. This fact means that GOES wider than 920 mm is being imported into the United States and actively marketed to U.S. customers who require smaller widths through slitting at the Alabama facility. This course of conduct undercuts the stated basis for the exclusions in the first place and should not be permitted to continue any longer.

A brief statement for additional context is warranted here. After the Section 232 Steel tariffs took effect in 2018, overseas producers of GOES took steps to circumvent the protections that were put in place. For example, one tactic was to increase shipments of GOES to Canada and Mexico, where they could be turned into cores and laminations and resold to transformer producers in the United States tariff free. By reducing demand for domestically-produced GOES, this tactic directly harmed AK Steel by reason of U.S. imports of downstream GOES products from Canada and Mexico. This tactic also triggered an ongoing Section 232 investigation by Commerce into how imports of cores and laminations affect national security.[8] As it now stands, Commerce's exclusions have opened the front door to the U.S. GOES market at the very same time that cores and laminations are pouring through the back door. Commerce

[8] *See, e.g.,* Bureau of Industry and Security, U.S. Department of Commerce, *Extension of Deadline for Public Comments for Section 232 National Security Investigation of Imports of Laminations for Stacked Cores for Incorporation Into Transformers, Stacked Cores for Incorporation Into Transformers, Wound Cores for Incorporation Into Transformers, Electrical Transformers, and Transformer Regulators*, 85 Fed. Reg. 35899 (June 12, 2020).

should utilize this opportunity to take a fresh look at the GOES exclusions through the lens of the Section 232 Interim Final Rule.

II. THE INTERIM FINAL RULE SHOULD BE APPLIED RETROACTIVELY OR, IN THE ALTERNATIVE, EXCLUSIONS SHOULD BE FROZEN UNTIL REQUESTERS AND OBJECTORS SUBMIT SUPPLEMENTAL INFORMATION IN ACCORDANCE WITH THE NEW REQUIREMENTS

As stated above, AK Steel supports the Section 232 Interim Final Rule and appreciates Commerce's efforts to revise important aspects of the exclusion process. AK Steel has significant concerns, however, because if Commerce had applied the standards and procedures of the Section 232 Interim Final Rule in September and January, it should have denied ten GOES product exclusions that unfortunately were granted.

As the only remaining GOES producer in the United States, AK Steel is uniquely positioned to express its concerns on this point. Critical national security considerations will not be protected unless the changes in the Section 232 Interim Final Rule are applied retroactively. In the alternative, previously-granted exclusions should be frozen until such time that requesters and objectors are provided with the opportunity to file supplemental information and argument in accordance with the new rules. Any failure to apply the changes retroactively or to freeze exclusions until supplemental submissions are filed would be contrary to "the stated purposes of the {Section 232} duties in helping to support the domestic production capabilities and capacity that are critical to protecting U.S. national security."[9]

AK Steel has first-hand experience with the need for these modifications. GOES imports into the U.S. market are likely to increase rapidly because of exclusions that Commerce granted in September 2020 and January 2021. AK Steel objected to all the exclusion requests and

[9] *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. at 81066.

presented information and argument to Commerce to support its claims that the exclusions should not be approved on the basis that AK Steel has an alternative, equivalent or superior product to the steel article at issue. A fundamental premise of AK Steel's argument was that each of the GOES-related exclusions were based on misleading claims. The possibility that requesters are submitting incorrect information – and a desire to address that problem – is a major motivation for many of the substantive modifications that Commerce has instituted under the interim final rule. Despite AK Steel's opposition, Commerce granted ten exclusion requests in September 2020 and January 2021 that have opened the door to sales of almost 50,000 net tons of imported GOES to U.S. customers without paying any national security duties. The following table provides additional details of these exclusions.

Previously-Granted Product Exclusions On GOES

Company	Exclusion Request	Grade	Volume (MT)	NOTES
ABB	77197	27PHD085	4,000	AK Steel equivalent X-1DR
Hyundai	56333	27PHD090	1,500	AK Steel equivalent H-1DR
POSCO	16947	27PHD085	6,000	AK Steel equivalent X-1DR
POSCO	16937	27PHD090	3,300	AK Steel equivalent H-1DR
POSCO	16928	23PHD085	2,000	AK Steel H-0DR has better core losses
POSCO	8011	27PH100	2,200	AK Steel equivalent H-1 Carlite
POSCO	8003	23PHD080	10,600	AK Steel equivalent H-0DR
POSCO	7956	23PHD085	8,000	AK Steel H-0DR has better core losses
SPX	142492	27PHD085	4,000	AK Steel equivalent grades X-1DR, X-0DR, and H-0DR
SPX	126853	23PHD080	3,000	AK Steel equivalent X-0DR
			44,600 MT	
			(49,163 NT)	

In addition to these exclusions, Korean producers are also eligible to ship roughly 8,200 net tons of Korean-origin GOES on a duty-free basis into the United States each year due to an annual quota on Korean imports.

Giving the green light to almost 50,000 net tons of GOES imports when the market for the specific product at issue is estimated to be 1,400 net tons cannot be reconciled with the Section 232 Interim Final Rule's requirement that requested exclusion volumes must be "consistent with the past use of steel…by an exclusion requestor" within the meaning of the Volume Certification requirement.[10] If Commerce applied the Volume Certification Requirement to the GOES-related exclusion requests that were granted in September 2020 and January 2021, all of the requests would have been denied. Finally, the quota on Korean-origin steel already allows for an enormous increase in the market for this niche, "extra-wide" (one-meter) product (*i.e.*, the Korean quota of 8,200 net tons is 585.71% of 1,400 net tons). This fact constitutes further evidence that the requested volumes simply were not plausible.

The disconnect between the approved GOES exclusion volumes and the actual market situation in the United States is exactly the type of scenario that Commerce's new Volume Certification Requirement and False Statement Reminders are designed to address. The volume of GOES that is subject to the exclusions is not "consistent with the past use of steel…by an exclusion requestor" within the meaning of the Section 232 Interim Final Rule's Exclusion Request Volume Certification requirement.[11] To the contrary, the already-approved GOES exclusion volumes far exceed any import volumes that will serve any legitimate business needs.

---

[10] *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. at 81070.

[11] *Id.*, 85 Fed. Reg. at 81070.

Nor will GOES imports at these volumes serve the national security interests of the United States.

If Commerce does not apply the rule changes retroactively or freeze previously-granted exclusion requests pending the filing of supplemental submissions in accordance with the new rules, it will perpetuate an inherent unfairness in the Section 232 exclusion process. On the one hand, companies that have obtained an approved exclusion from Commerce are able to "file Post-Summary Corrections with" U.S. Customs and Border Protection ("CBP") "on unliquidated entries to recoup any tariffs paid on products that made entry between the submission date and the date of signature" of an approved exclusion.[12] On the other hand, however, absent retroactive application or freezing the exclusions in order to allow supplemental submissions under the Section 232 Interim Final Rule, U.S. manufacturers will have no opportunity to submit information and argument that would be relevant to Commerce's ability to ascertain "the veracity of the {requesting party's} submission"[13] or to assess the new Volume Certification Requirement that is designed "to ensure that the volume request in exclusion requests is consistent with the past use of steel or aluminum by an exclusion requestor."[14]

If importers can recoup Section 232 duties paid to CBP, U.S. manufacturers certainly ought to be given a chance to make their best case as to why exclusions do not meet Commerce's standards under the Section 232 Interim Final Rule. In sum, AK Steel should be given the

---

[12] *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. at 81064.

[13] *Id.*, 85 Fed. Reg. at 81067.

[14] *Id.*, 85 Fed. Reg. at 81070.

opportunity to make its case why the previously-granted GOES exclusions should be reversed and denied under the Section 232 Interim Final Rule.

III. CONCLUSION

Cleveland-Cliffs appreciates this opportunity to express its strong support for the Section 232 Interim Final Rule. As the only producer of GOES in the United States, Cleveland-Cliffs' wholly-owned subsidiary, AK Steel, has actively participated in the underlying investigation regarding the effect of imports of steel on national security, and as an objector to numerous exclusion requests. It also has actively participated in the ongoing Section 232 investigation by Commerce into how imports of cores and laminations affect national security. AK Steel agrees with Commerce's decision to implement new a new Volume Certification Requirement and to remind parties that false statements or representations to the U.S. Government are punishable under 18 U.S.C. § 1001.

Cleveland-Cliffs strongly believes, however, that critical national security considerations will not be protected unless the modifications under the Section 232 Interim Final Rule are applied retroactively or, in the alternative, that previously-granted exclusions are frozen until such time that requesters and objectors are provided with the opportunity to file supplemental information and argument in accordance with the new rules. A failure to apply the changes retroactively or to freeze exclusions until supplemental submissions may be filed would be contrary to "the stated purposes of the {Section 232} duties in helping to support the domestic production capabilities and capacity that are critical to protecting U.S. national security."[15]

[15] *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. at 81066.

Please contact us if you have any questions about this submission.

Respectfully submitted,

/s/ Stephen P. Vaughn
Stephen P. Vaughn
Patrick J. Togni

Counsel for Cleveland-Cliffs Inc.

ALUMINUM EXTRUDERS COUNCIL

1000 N. Rand Road, Suite 214
Wauconda, IL 60084
Phone: (847) 526-201O
Fax: (847) 526-3993
mail@aec.org

BY EMAIL (*Aluminum232@bis.doc.gov*)

February 12, 2021

PUBLIC DOCUMENT

Ms. Erika Maynard
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

RE: Comments of the Aluminum Extruders Council Regarding the Section 232 Aluminum Tariff Exclusions Process

Dear Ms. Maynard:

The Aluminum Extruders Council ("AEC"), on behalf of its members, respectfully submits the following comments regarding the Interim Final Rule: "Section 232 Steel and Aluminum Tariff Exclusions Process," ("Interim Final Rule") issued by the U.S. Department of Commerce's Bureau of Industry and Security ("Commerce") on December 14, 2020, amending the exclusion request process for national security of imports of aluminum pursuant to Section 232 of the Trade Expansion Act of 1962, as amended ("Section 232").[1] The AEC represents U.S. manufacturers of aluminum extrusion products, comprising of critical products for defense, including fighter jets and armored vehicles, and critical infrastructure, including for bridge and infrastructure projects, train bodies and rail cars, aviation and vessels, and renewable energy

[1] *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. 81,060 (Dec. 14, 2020). ("Interim Final Rule").

production. Aluminum extrusions are used in the construction of commercial facilities, government facilities and critical manufacturing, as well as in emergency services and nuclear facilities.[2] In addition, the AEC assists manufacturers, engineers, architects, and others to understand why aluminum extrusion is the preferred material process for better aluminum products. The AEC has more than 120 member companies and represents aluminum extruders operating hundreds of extrusion presses in hundreds of plants in 35 states in the United States.

The AEC recognizes the significant efforts by Commerce to continually make improvements to the substantive and procedural aspects of the Section 232 exclusions request process – including this request for additional comments. However, as outlined below, the AEC respectfully requests that Commerce "pause" the applicability of the aluminum General Approved Exclusions ("GAEs") for a period of three months, providing interested parties, and Commerce itself, additional time for consultations to structure a GAE program that meets Commerce's goal of administrative efficiency without undercutting the very goals of the Section 232 tariffs to protect domestic aluminum extrusion production that is critical to national security.

I. INTRODUCTION

The AEC is encouraged by the Biden Administration's stated commitment to protecting critically-important domestic aluminum extrusion production. In that same regard, the AEC strongly urges Commerce to also reconsider this late-issued Interim Final Rule, which unfairly handicaps a domestic aluminum extrusions industry that continues to face an unrelenting Chinese industry.

Extrusion products made by AEC members are vital components to most of the American

[2] *See* Letter from Jeff Henderson, President, Aluminum Extruders Council, to Brad Botwin, Dir., Bureau of Industry and Security, entitled "*Comments of the Aluminum Extruders Council Regarding the Section 232 National Security Investigation on Imports of Aluminum*" (June 23, 2017).

industries deemed essential in this time of COVID-19, including healthcare, defense, transportation, etc. However, despite the domestic aluminum industry's pleas for relief and the previous Administration's efforts to level the playing field, the U.S. aluminum extrusions industry remains in crisis. The Chinese government continues to massively subsidize its aluminum industry and maintains a range of restrictive trade measures, which have generated vast excess aluminum production capacity in China and led to unprecedented volumes of aluminum imports flooding the U.S. market. These imports, in the words of Section 232, threaten to impair U.S. national security by further weakening the U.S. aluminum industry.

While the stated purpose of Section 232 was to incentivize increased U.S. production and manufacturing, U.S. production of upstream aluminum has continued to decline.[3] For example, Alcoa closed its Intalco Works facility near Ferndale, Washington, the only remaining billet supplier West of the Mississippi.[4] Meanwhile, the threat caused by Chinese aluminum flooding the market has not abated – it has in fact increased. Chinese exporters have resorted to importing aluminum products under HTSUS lines not covered under Section 232.[5] While there was a small reduction in China's aluminum output in 2019 for the first time in a decade amid production stoppages and Chinese economic slowdown, these were resolved and China is projected to add another 3 million tons of aluminum capacity in 2021.[6] Chinese-origin aluminum extrusions

---

[3] *See* Letter to the Honorable Wilbur L. Ross, Sec'y of Commerce, from the Aluminum Extruders Council, June 4, 2020 ("Joint Aluminum Industry Letter").

[4] Brent Lindquist, *Alcoa reacts to tariffs on foreign aluminum*, LYNDEN TRIBUNE (Apr. 18, 2019), https://www.lyndentribune.com/news/alcoa-reacts-to-tariffs-on-foreign-aluminum/article_608323ae-3d8c-11e8-81f2-9fbdc51a3b5b.html (last visited Feb. 2, 2021). Of course, billet is the "raw material" for extrusion production. As such, this closure has significantly impacted domestic aluminum extruders.

[5] *News Release: Aluminum Extruders Council Demands an End to the Section 232 Tariffs on Imported Aluminum*, ALUMINUM EXTRUDERS COUNCIL (June 9, 2020), https://www.aec.org/page/end-section-232-tariffs (last visited Feb. 2, 2021).

[6] Tom Daly, *China's annual aluminum output slips for first time in decade*, REUTERS (Jan. 16, 2020), https://www.reuters.com/article/us-china-economy-output-aluminium/chinas-annual-aluminum-output-slips-for-first-time-in-decade-idUSKBN1ZG07Z (last visited Feb. 2, 2021); Ming Zhang & Shivani Singh, *China to add 3*

continue to enter the U.S. market, either co-mingled or transshipped via a different country of origin.[7]

The Section 232 exclusion process, in particular, has not lived up to its narrow purpose:

> to provide relief… for any aluminum article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality and … to provide such relief based upon specific national security considerations. Such relief shall be provided for an aluminum article only after a request for exclusion is made by a directly affected party located in the United States.[8]

As of March 23, 2020, Commerce had received 179,128 exclusion requests, 157,983 for steel and 21,145 for aluminum.[9] In addition, Commerce has acknowledged that "certain exclusion requesters may have requested more volume than they may have needed for their own business purposes compared to past usage."[10] This is a clear indication that importers are seeking any way possible to avoid paying the Section 232 tariffs.

The following comments build on the AEC's earlier remarks and comments on the Section 232 aluminum tariffs and related exclusion process. In so doing, the AEC strongly urges Commerce to reconsider any sort of blanket or general exclusion for categories of imports of aluminum extrusion products. Specifically, HTSUS-based aluminum GAEs frustrate the goals of the Section 232 exclusions process, and serve to weaken U.S. national security caused by

---

mln T of aluminium capacity in 2021 – Antaike, REUTERS (Oct. 14, 2020), https://www.reuters.com/article/china-aluminium/china-to-add-3-mln-t-of-aluminium-capacity-in-2021-antaike-idINL4N2H44U4.

[7] Memorandum from Brian M. Hoxie, Director, Customs & Border Protection Office of Trade, regarding "*Notice of Determination as to Evasion*," EAPA Cons. Case No. 7423 (Jan. 28, 2021). U.S. Customs and Border Patrol determined that eight importers were importing aluminum extrusions from China with a claimed country of origin as the Dominican Republic, in violation of antidumping duty (AD) order A-570-967 and countervailing duty (CVD) order C-570-968 on aluminum extrusions from China.

[8] *See e.g. Proclamation 9704 - Adjusting Imports of Aluminum Into the United States*, 83 Fed. Reg. 11,619 (Mar. 8, 2018); *See, e.g.*, *Aluminum Import Monitoring and Analysis System: Delay of Effective Date*, 86 Fed. Reg. 7,237 (Jan. 27, 2021).

[9] *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,441, 31,442 (May 26, 2020) ("May 26 Notice").

[10] *See Interim Final Rule* at 81, 061.

imports of aluminum extrusions.

II. BACKGROUND

Until December 14, 2020, Commerce's exclusion process required individual importers to submit exclusion requests based on very detailed and specific product descriptions. Any approved exclusions applied only to the specific product requested (and not based on HTSUS line), and could only be used by the original requestor. While that process requires requestors to identify the relevant HTSUS line applicable to the product for which they are seeking an exclusion, Commerce has never granted an exclusion based on the applicable HTSUS line, and has in fact rejected exclusion requests that do not provide specific-enough product details.[11] Indeed, under the exclusion request procedures, Commerce itself has specified that:

> [s]eparate exclusion requests must be submitted for aluminum products with distinct critical dimensions (e.g., 10 mm diameter bar, 15 mm bar, or 20 mm bar) covered by a common HTSUS statistical reporting number. Separate exclusion requests must also be submitted for products falling in more than one 10-digit HTSUS statistical reporting number. The Commerce Department will approve exclusions on a product basis and the approvals will be limited to the individual or organization that submitted the specific exclusion request.[12]

However, per the Interim Rule issued on December 14, 2020 (effective December 29, 2020), certain HTSUS GAE came into force. These GAEs are HTSUS-based lines of aluminum imports covered by Section 232 that can be imported duty-free, by any importer, without quantity limits, for an indefinite amount of time. Importers importing goods covered under the designated GAEs are no longer required to request individual, product-based exclusions for their imports.

Commerce has indicated that it "intends to publish at least one subsequent interim final

---

[11] *See Interim Final Rule* at 81,067.

[12] *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. 12,106, 12, 12 (Mar. 19, 2018).

rule that will describe the unaddressed comments received on the May 26 notice and any additional revisions Commerce will make to the 232 exclusions process as a result of those comments."[13] For the reasons identified below, the AEC and its members respectfully request that Commerce also "pause" the applicability of the aluminum GAEs for a period of three months, providing interested parties, and Commerce itself, additional time for consultations to structure a GAE program that meets Commerce's goal of administrative efficiency without undercutting the very goals of the Section 232 tariffs to protect domestic aluminum production that is critical to national security.

III. PRODUCT EXCLUSION REQUESTS SHOULD CONTINUE TO BE ASSESSED ON A PRODUCT-SPECIFIC BASIS – NOT BY OVERLY BROAD HTSUS LINES

Again, until issuance of the HTSUS-based GAEs, Commerce has always required separate exclusion requests for specific products – regardless if they shared an HTSUS line. While there may well be some administrative efficiency created by the issuance of GAEs, doing so based on HTSUS line is entirely over-inclusive and undermines the very protections the Section 232 tariffs are designed to provide the domestic aluminum extrusions industry. As such, the AEC urges Commerce to reconsider its decision to grant blanket GAE exceptions by HTSUS line – for the simple undeniable fact that HTSUS lines encompass a wide range of different products. Indeed, just because no oppositions were submitted for certain exclusion requests that identified a specific product under a particular HTSUS line does not mean that *all* products that fall under that same HTSUS line would also not be objected to. Far from it. By way of example, the Interim Final Rule created the following GAEs, all of which cover aluminum extrusions:

GAE Identifier	HTS	HTS Description
GAE.1.A	7609.00.0000	Aluminum Tube Or Pipe Fittings (Couplings, Elbows, Sleeves)

[13] *See Interim Final Rule* at 81,061.

GAE Identifier	HTS	HTS Description
GAE.4.A	7604.21.0010	Aluminum Alloy Hollow Profiles Of Heat-Treatable Industrial Alloys Of A Kind Described In Note 6 To This Chapter.
GAE.5.A	7604.29.1010	Aluminum Alloy Profiles Other Than Hollow Profiles Of Heat-Treatable Industrial Alloys Of A Kind Described In Note 6 To This Chapter.
GAE.13.A	7604.29.5090	Aluminum Alloy Bars And Rods, Other Than Round Cross Section, Other Than Heat-Treatable Industrial Alloys Of A Kind Described In Notes 5 & 6 Of This Chapter.

Again, products classified under the four above-listed HTSUS lines can now be imported by *any company* free of the Section 232 tariffs. However, as demonstrated at **Attachment 1**, these HTSUS lines cover an extraordinarily wide range of aluminum extrusion products, each of which would require a separate exclusion request under Commerce's exclusion request process. Under the Section 232 exclusions process, the domestic industry may only object to exclusion requests for products once they are requested. As such, it is simply illogical, and thus unreasonable, for Commerce to conclude that since it has not yet received domestic industry objections to specific products that happen to fall into one of the above four HTSUS lines, that the domestic aluminum extrusions industry is not concerned with *all* of the aluminum extrusion products that fall under those HTSUS lines.

In short, the exclusion request process for the Section 232 aluminum tariffs was intended to be narrow and targeted at a specific product. Because HTSUS-based GAEs effectively block objections for entire categories of products indefinitely, switching to an HTSUS line-based system unfairly prejudices domestic aluminum extrusions producers who may well seek to object to exclusion requests in the future. However, if Commerce insists on issuing GAEs, they should be based on product characteristics and descriptions as submitted during the exclusion request process – and not on overly-broad HTSUS lines.

IV. INTERESTED PARTIES WERE NOT GIVEN APPROPRIATE NOTICE TO COMMENT ON CHANGES IN THE INTERIM FINAL RULE

The Interim Final Rule diverged extensively from the May 26 notice, most notably with regards to the length of the exceptions and on the designated HTSUS lines. In the Interim Final Rule, Commerce acknowledged, "[t]he public will not be involved in requesting new or revised GAEs, but Commerce will use the information provided in exclusion requests to inform its review process for what additional GAE should be added or what revisions should be made to existing GAEs."[14] Because of lack of notice, interested parties were not afforded an "opportunity to participate in the rule making," as required by the Administrative Procedure Act.[15] Even in the areas where the parties were able to provide input, the Interim Final Rule, "does not summarize or respond to the comments included in the May 26 notice…. that are still being reviewed."[16] This is yet another reason why these GAEs should be paused until a more thorough and inclusive discussion can be had amongst the relevant interested parties.

A. Duration of Approvals

With regards to the length of the exceptions, in the May 26 notice, Commerce noted that it was considering granting "blanket approvals of exclusion requests" valid for one year.[17] However, in the Interim Final Rule, Commerce established "general aluminum exclusions," of indefinite length.[18] Obviously, one year is quite different from an indeterminate length, especially alongside continually deteriorating market conditions for aluminum extrusions in the United States. The Interim Final Rule fails to provide clarity on how an affected domestic

---

14 *See Interim Final Rule* at 81,065.

15 Administrative Procedure Act, 5 U.S.C. § 553 b-c.

16 *See Interim Final Rule* at 81,061.

17 *See May 26 Notice* at 31,442.

18 *See Interim Final Rule* at 81,071.

producer might even go about contesting a GAE for an entire HTSUS line.[19] Given the inability of interested domestic stakeholders to weigh in on this significant change in length of GAEs prior to the Interim Final Rule, the AEC requests that Commerce reconsider indeterminately long GAEs, or use its authority under the Interim Final Rule to revoke these GAEs.

B. List of Covered HTSUS Lines

The specific HTSUS lines outlined in the Interim Final Rule differed from the May 26 notice: seven HTSUS lines were removed from the list and two new ones were added (GAE.4.A, HTS 7604.21.0010 and GAE.5.A, 7604.29.1010).[20] The AEC and its members were not afforded reasonable notice and opportunity to comment on the inclusion of GAE.4.A and GAE.5.A – both of which cover a wide variety of aluminum extrusion products (again, *see* **Attachment 1**). Thus, in the event that Commerce declines to pause the applicability of all of the GAEs for a three month consultation period, at a minimum, the AEC requests that Commerce immediately revoke GAE 4.A and GAE 5.A under the authority provided in the Interim Final Rule.

V. HTSUS-BASED GAES SHOULD NOT BE GRANTED FOR PRODUCTS COVERED BY THE CHINESE ALUMINUM EXTRUSIONS ANTIDUMPING/COUNTERVAILING DUTY ORDERS

Another reason why the AEC believes that Commerce should suspend application of the GAE pending further consideration is that many of the GAEs in the Interim Final Rule are included in the antidumping ("AD") and countervailing duty ("CVD") orders on aluminum extrusions from China.[21] For example, GAE.1.A, GAE.5.A, GAE.11.A, GAE.13.A, and

---

[19] The *Interim Final Rule* states that Commerce "may…[solicit] public comments on potential removals, revisions or additions," but did not detail an explicit consultation requirement or process. *See id.*

[20] *See Interim Final Rule* at Supplement 2, 81,079.

[21] See e.g. *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2018,* 86 Fed. Reg. 6,630, 6,632 (January 22, 2021)*; Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty*

GAE.15.A are covered by the CVD orders by way of the following HTSUS lines, respectively: 7609.00.00, 7604.29.1010, 7616.99.51, 7604.29.5090, 7616.99.51. Similarly, GAE.1.A, GAE.11.A, and GAE.15.A would be covered by the following HTSUS lines in the AD orders: 7609.00.00, 7616.99.51, and 7616.99.51, respectively. There are existing mechanisms whereby interested parties may weigh in on imports of those products and Commerce and U.S. Customs and Border Protection ("CBP") may evaluate relevant imports. As previously discussed, even recently, aluminum extrusions of Chinese origin were found to be violating these AD/CVD orders through evasion by an examination pursuant to the Enforce and Protect Act (EAPA).[22]

Establishing these HTSUS lines as GAEs, when the concerning imports from China are already covered by the AD/CVD orders on aluminum extrusions from China, would be over-inclusive and frustrate the purpose of the Section 232 tariffs.

VI. COMMERCE'S PROCESS FOR CREATING THE CURRENT HTSUS-BASED GAES WAS FLAWED

As set forth below, the AEC also submits that the process by which Commerce identified and established the GAEs was fundamentally flawed.

A. There Are Many Reasons Why Domestic Industry Might Not Object To An Exclusion Request

One of the stated key basis for creation of the GAEs was whether the domestic industry has objected to exclusion requests that reference a particular HTSUS line.[23] Commerce was clearly making the assumption that if the domestic industry had not yet objected to an exclusion request, the product was not being produced in the United States in a sufficient quantity or

---

Administrative Review and Rescission of Review, in Part; 2017– 2018, 84 Fed. Reg. 15,587, 15,587 (April 16, 2019).

[22] *See* EAPA Cons. Case # 7423.

[23] *See May 26 Notice at 31,442 ("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")*

satisfactory quality. That is, Commerce assumed that no objection means that that the domestic industry does not produce the product and is not concerned if it is imported free from the Section 232 tariffs. Commerce's assumption is misplaced.

There are any number of reasons, other than non-production, that the domestic industry does not object to a particular exclusion request, including:

- The product produced by the domestic industry is classified under the same HTSUS, but has different product characteristics than the product requested for exclusion (making it neither identical nor a substitute);
- The quantity being requested is minimal enough to make the administrative effort of objecting not worth it;
- There is an existing commercial relationship with the requestor such that the domestic producer does not want to harm the relationship with respect to that particular product;
- Etc.

In short, simply because the domestic industry might not have objected to a particular exclusion request does not reasonably lead to the conclusion that the specific product at issue is not made in the United States/is not important to the domestic aluminum extrusions industry. As such, if Commerce chooses to continue to consider issuing GAEs, it must consider additional criteria.

B. A Baseline Date of March 23, 2020 Is Arbitrary

While the May 26 notice suggested a "baseline date" of March 23, 2020 to evaluate whether certain "Aluminum HTS Codes With 0% Objection Rates" would be eligible for a "[o]ne year blanket exception," Commerce did not provide justification for why it chose March 23, 2020. [24] Almost a year has passed since then, and economic conditions and priorities have shifted extensively in the interim. The Interim Final Rule, on the other hand, did not provide a baseline date by which it evaluated objection requests for purpose of deciding on GAEs.

[24] *See May 26 Notice* at 31,448-31,449.

C. GAE Lists Incorrectly Compiled

As set forth below, another reason why the effectiveness of the GAEs should be temporarily suspended is that errors were made in creating the GAE lists.

1. There Were In Fact Domestic Industry Objections Filed Against Certain Of the GAE HTSUS

In creating the GAE lists, Commerce stated that it was including HTSUS where no domestic industry objections had been received.[25] However, on that basis, Commerce's GAE list was incorrectly assembled, as domestic industry objections had in fact been filed against the following:

- HTSUS 7607.20.50.00 (GAE.2.A)[26]
- HTSUS 7616995170 (GAE.11.A)[27]
- HTSUS 7601.20.90.95 (GAE.14.A)[28]
- HTSUS 7616.99.51.60 (GAE.15.A)[29]

In addition, other GAEs, including HTSUS 7607.20.50.00 (GAE.2.A), HTSUS 7607.19.60.00 (GAE.3.A), and HTSUS 7607.11.60.10 (GAE.10.A) have outstanding exclusion requests with an open objection window.[30]

---

[25] *See id.*

[26] *See e.g.* Winpak Heat Seal Corporation, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER ID # 151459 (Oct. 9, 2020); Winpak Heat Seal Corporation, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER ID # 150635 (Oct. 27, 2020); Winpak Heat Seal Corporation, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER ID # 151573 (Oct. 30, 2020); Winpak Heat Seal Corporation, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER ID # 151585 (Oct. 30, 2020); Winpak Heat Seal Corporation, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER ID # 152462 (Oct. 30, 2020).

[27] *See e.g.* Schaeffler Group USA Inc, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER ID # 150813 (Oct. 28, 2020) (the exclusion request was objected to and denied by Commerce); Schaeffler Group USA Inc, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER ID # 170453 (Dec. 16, 2020) (the exclusion request was has been objected to and the rebuttal window is closed).

[28] *See* Tempo Global Resources, LLC, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER ID # 146995 (Oct. 20, 2020) (the exclusion request was objected to and denied by Commerce).

[29] *See* LK ALUMINUM LLC, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER # 152516 (Oct. 30, 2020) (the exclusion request was objected to and denied by Commerce); LK ALUMINUM LLC, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER # 152498 (Oct. 30, 2020) (the exclusion request was objected to and denied by Commerce).

[30] *See e.g.* Winpak Heat Seal Corporation, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER ID # 180275 (Feb. 2, 2021); Goodman Manufacturing Co., ER ID # 177999 (Jan. 21, 2021); Winpak Heat Seal

Since there have in fact been objections to the GAEs listed in the Interim Final Rule, the AEC requests that Commerce reconsider the listed GAEs, in consultation with interested parties, and revoke any GAEs that have not been objected to.

2. Commerce Should Also Consider Exclusion Request Denials – Regardless Of Whether Domestic Industry Submitted An Objection

In the May 26 notice, Commerce noted that it was considering "[o]ne-year blanket approvals of exclusion requests for product types that have received no objections as of a baseline date." In the Interim Final Rule, Commerce stated:

> The Interim Final Rule "addresses the need to create a more efficient method for approving exclusions where objections have not been received in the past for certain steel or aluminum articles. Commerce has determined creating general approved exclusions that may be used by any importing entity is warranted. This has been noted by commenters who submit exclusion requests, and by trade associations that represent those companies, as one of the most important changes that could be made to improve the efficiency of the 232 exclusion process… this interim final rule addresses this issue with the adoption of General Approved Exclusions (GAEs).[31]

This approach focuses on the ability of domestic industry to have become aware of and object to every single possible exclusion request prior to the arbitrarily determined date set by Commerce. However, as Commerce is well aware, during the product-specific exclusion request process, some exclusion requests have been denied even without domestic industry objection. As such, the GAE list should not include any HTSUS lines that have been previously denied by Commerce.[32] Switching to a non-specific, general approach to exclusion requests would be

---

Corporation, Request for Exclusion from Section 232 Aluminum Import Tariffs, ER ID # 180289 (Feb. 2, 2021); Russell A. Farrow, Request for Exclusion from Section 232 Aluminum Import Tariffs, ED ID # 178341 (Jan. 22, 20201).

[31] *See Interim Final Rule* at 81,061.

[32] While *Regulations.gov* only lists exclusion request decisions by HTS-6, the AEC notes that the following nine exclusion requests the fall under HTS 7604.21.00 were denied even though not objected to, and may very well fall under HTSUS 7604.21.00.10 (GAE.4.A). Therefore, if exclusion requests have been denied regardless of industry objection, the AEC believes that these HTSUS should not be included as GAE. *See e.g.* EXCLUSION DENIED - Offshore Direct - Tube - HTS 76042100 BIS-2018-0002-0155 (May 7, 2018); EXCLUSION DENIED - Offshore Direct - Tube - HTS 76042100 BIS-2018-0002-0156 (May 7, 2018); EXCLUSION DENIED - Offshore

mistaken and harm domestic industry, so the AEC recommends that Commerce reconsider and possibly revoke these GAEs under the authority provided in the Interim Final Rule.

VII. CONCLUSION

As Commerce considers this GAEs issue, it is exceedingly important that Commerce understand that GAEs have had an immediate and negative impact on the domestic aluminum extrusions industry. Indeed, as previously referenced, on January 28, 2021 CBP issued a Notice of Determination as to Evasion on EAPA Case Number: 7423. In that case, CBP:

> …determined there is substantial evidence that" seven named companies "(collectively the Importers) entered merchandise covered by antidumping duty (AD) order A-570-967 and companion countervailing duty(CVD) order C-570-968 on aluminum extrusions from China into the customs territory of the United States through evasion. Substantial evidence demonstrates the Importers imported Chinese-origin extrusions that were either co-mingled or transshipped to the United States with a claimed country of origin as the Dominican Republic. As a result, no cash deposits were applied to the merchandise at the time of entry.

The exporter of the aluminum extrusions was Kingtom Aluminios SRL, a wholly-owned Chinese company located in the Dominican Republic. For Commerce's information, during the last six months, Kingtom has been exporting an average of 2,841,520 pounds per month of aluminum extrusions into the United States, tripling its exports from the same period a year ago. Since the GAEs were issued, all of Kingtom's shipments to the United States are no longer subject to Section 232 tariffs.[33] As such, these GAEs are serving as a "reward" to this wholly-owned Chinese company, and it is fully expected that their shipments to the United States will increase

---

Direct - Tube - HTS 76042100, BIS-2018-0002-0158 (May 7, 2018); EXCLUSION DENIED - Offshore Direct - Tube - HTS 76042100, BIS-2018-0002-0159 (May 7, 2018); EXCLUSION DENIED - Offshore Direct - Tube - HTS 76042100, BIS-2018-0002-0160 (May 7, 2018); EXCLUSION DENIED - Offshore Direct - Tube - HTS 76042100, BIS-2018-0002-0161 (May 7, 2018); EXCLUSION DENIED - Offshore Direct - Tube - HTS 76042100, BIS-2018-0002-0162 (May 7, 2018); EXCLUSION DENIED - Offshore Direct - Tube - HTS 76042100, BIS-2018-0002-0164 (May 7, 2018); EXCLUSION DENIED - Offshore Direct - Tube - HTS 76042100, BIS-2018-0002-0165 (May 7, 2018).

[33] While seven of Kingtom's U.S. importers were sanctioned by the USCBP investigation; 62 other U.S. importers continue to do business with this company – all to the detriment of the domestic aluminum extrusions industry.

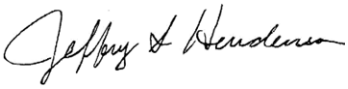
even more dramatically as a result. Similarly, the AEC notes that International Dominican Aluminum, an aluminum extruder located in the Dominican Republic, is advertising their reopening of export operations to Puerto Rico after the GAEs were issued, because now they have a price advantage against U.S. extruders due to the elimination of Section 232 tariffs while domestic extruders still have to pay Section 232 tariffs on aluminum raw materials (*e.g.*, billet).

Consistent with the stated purpose of the Section 232 aluminum tariffs, protecting the domestic aluminum industry, including producers of aluminum extrusions, is critical to national security. China's subsidization, overcapacity, and other distortive trade practices continue to have a devastating impact on U.S. aluminum extrusion producers and other segments of the domestic aluminum industry. Amidst challenging times over the last year, protecting domestic aluminum extrusion production has become increasingly critical for security. As such, we ask that Commerce immediately suspend, for a period of three months, this late-term Interim Final Rule that unfairly and opaquely grants indeterminate exclusions for entire HTSUS lines. During that three-month period, Commerce should solicit input from interested parties and seek a balance between administrative efficiency, fairness, and consistent with the objectives of the Section 232 program.

* * *

If there are any questions concerning this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,



Jeffrey S. Henderson
President
Aluminum Extruders Council

ATTACHMENT 1

GAE.1.A - HTS 7609.00.0000

Aluminum Tube or Pipe Fittings (Couplings, Elbows, Sleeves)

Product Class	Commercial Name(s)	Classification and Properties	Application	Thickness (mm)	Inside Diameter (mm)	Outside Diameter (mm)	Length (mm)	Width (mm)	Height (mm)
Pipe - 6063 Alloy	Schedule 40 Aluminum Pipe	Distributor Grade	Numerous	Numerous	.269"-10.02"	.125" - 10.75"	Varies - <12" - 40'	N/A	N/A
Pipe - 6061 Alloy	Schedule 40 Aluminum Pipe	Distributor Grade	Numerous	Numerous	.269"-10.02"	.125" - 10.75"	Varies - <12" - 40'	N/A	N/A
Square Tube - 6063 Alloy	Schedule 40 Aluminum Pipe	Distributor Grade	Numerous	Numerous	.269"-10.02"	.125" - 10.75"	Varies - <12" - 40'	N/A	N/A
Square Tube - 6061 Alloy	Schedule 40 Aluminum Pipe	Distributor Grade	Numerous	Numerous	.269"-10.02"	.125" - 10.75"	Varies - <12" - 40'	N/A	N/A
Square Tube - 6063 Alloy	Boat Railings	Marine Industry	Railings for boats	N/A	.5" - .875"	.75" - 2"	Varies - <12' - 35'	N/A	N/A
Rectangular Tube - 6063 Alloy	N/A	Distributor Grade	Numerous	Numerous	N/A	N/A	Varies - <12' - 35'	.5" - 12" +	.75" - 12" +
Rectangular Tube - 6063 Alloy	Architectural Shapes	Commercial Building	Construction	Numerous	N/A	N/A	Varies - <12' - 35'	1" - 12" +	1" - 12" +
Rectangular Tube - 6061 Alloy	Transportation Applications	Trailers, Trucks	Transportation	Numerous	N/A	N/A	Varies - <12' - 35'	.5" - 12" +	.75" - 12" +
Seamless Pipe and Tube	Aerospace	Distributor Grade	Aerospace	Numerous	.5" - 10" +	.65" - 11" +	Varies <12' - 35'	N/A	N/A
Seamless Pipe and Tube	Automotive	N/A	Automotive	Numerous	.5" - 15.375"	.65" - 15"	Varies - <12" - 40'	N/A	N/A
Drawn Tube	N/A	N/A	Tent Poles, Flagpoles, Patio Furniture	Numerous	.5" - 15.375"	.65" - 15"	Varies - <12" - 40'	N/A	N/A
Seamless Pipe and Tube	Electrical bus conductor pipe and tube	Electrical Grade	N/A	Numerous	.5" - 15.375"	.65" - 15"	Varies - <12" - 40'	N/A	N/A

GAE.4.A - HTS 7604.21.0010

Aluminum Alloy Hollow Profiles of Heat-Treatable Industrial Alloys of a Kind Described in Not 6 to This Chapter

Product Class	Commercial Name(s)	Classification and Properties	Application	Thickness (mm)	Inside Diameter (mm)	Outside Diameter (mm)	Length (mm)
Note: There are hundreds of thousands of applications involving hollow aluminum extrusions. Here are a few examples.							
All shapes in this category are custom designed and only limited by the size of the press. Any category of shape in this section can be in various lengths, widths, alloys, or finishes.							
Semi-Finished	Door & Window Frames, Thresholds	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Canopies and Skywalks Framing	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Lanai Frames	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Fence Pickets	Building & Construction	Pickets	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Transoms & Storefronts	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Curtain Wall Components	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Above Ground Swimming Pool Frames	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Mobile Chicken Coop Doors	Building & Construction	Doors	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Ladder Frames	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Automotive bumpers	Transportation	Bumpers	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Side Rails - Trailers	Transportation	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	LED Lighting Housings	Building & Construction	Housing	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Solar Mounting Systems	Building & Construction	Framing & Mounts	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Electrical Cable Trays	Electrical	Conduit	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Heat Sinks	Electrical	Thermal Management	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Broom Handles	Consumer Products	Brooms	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Curtain Rods	Building & Construction	Curtains	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Stadium Seating Components	Building & Construction	Stadium Seats	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Custom Trailer Parts	Transportation	Framing, tongue, Posts	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Hand Rails	Industrial or Building & Construction	Architectural, etc.	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Bridge Supports	Building & Construction	Bridges	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Battery Boxes for Electric Vehicles	Automotive	EV Battery Container	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Flooring Systems - Boats, Trailers	Transportation	Floor System	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Electrical Conduit	Building & Construction	Electrical	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Hurricane Shutters	Building & Construction	Window Coverings	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Wall sections for railway industries	Transportation	Rail Car Walls	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Boat Masts	Transportation	Boat Masts	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Medical Equipment	Healthcare	Structural Parts, Arms for devices, thermal management	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Framing for Ships	Transportation	Internal Structure	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Crash Management Systems	Automotive	Internal Crash Management - Behind the bumper	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Sub-Frame/Body in White	Automotive	Internal Automobile Structure	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Rockers	Automotive	Auto Rockers	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Condensers	Consumer Products	Refrigerator/HVAC	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Evaporator Systems	Automotive	Cooling Unit in Vehicles	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Soccer Goals	Consumer Products	Soccer Goals	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Office Partition Systems	Building & Construction	Framing, Structure	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Flashlights	Consumer Products	Casing	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Inner-tower structural elements	Building & Construction	Wind Towers	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Wheelchair	Healthcare	Wheelchair Frames	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Conveyor Frames	Industrial or Building & Construction	Conveyor Systems	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Car Wash Brush Drive	Building & Construction	Car Wash	Numerous	Numerous	Numerous	Numerous
Semi-Finished	High Speed Rail Framing	Transportation	Body & Chassis	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Sun Room Frames	Building & Construction	Sun Room Structures	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Shower Doors and Enclosures	Building & Construction	Showers	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Highway Signs	Building & Construction	Highway Signs	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Louvers & Ducts	Building & Construction	Louvers & Duct Systems	Numerous	Numerous	Numerous	Numerous

GAE.5.A - HTS 7604.29.1010

Aluminum Alloy Profiles Other Than Hollow Profiles of Heat-Treatable Alloys of a Kind Described in Note 6 to This Chapter

Product Class	Commercial Name(s)	Classification and Properties	Application	Thickness (mm)	Inside Diameter (mm)	Outside Diameter (mm)	Length (mm)
Note: There are hundreds of thousands of applications involving hollow aluminum extrusions. Here are a few examples.							
All shapes in this category are custom designed and only limited by the size of the press. Any category of shape in this section can be in various lengths, widths, alloys, or finishes.							
The duplication of applications in this list from the 7604.21.0010 list is based on the fact that many of these applications can use a hollow shape or a solid shape. It's a design choice.							
Semi-Finished	Door & Window Frames, Thresholds	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Canopies and Skywalks Framing	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Lanai Frames	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Fence Pickets	Building & Construction	Pickets	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Transoms & Storefronts	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Curtain Wall Components	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Lighting frames	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Helicopter Landing Pads	Military	Aerospace Support	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Ladder Frames	Building & Construction	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Automotive bumpers	Transportation	Bumpers	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Side Rails - Trailers	Transportation	Framing Materials	Numerous	Numerous	Numerous	Numerous
Semi-Finished	LED Lighting Housings	Building & Construction	Housing	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Solar Panel Frames	Building & Construction	Framing & Mounts	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Electrical Cable Trays	Electrical	Conduit	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Heat Sinks	Electrical	Thermal Management	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Broom Handles	Consumer Products	Brooms	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Curtain Rods	Building & Construction	Curtains	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Stadium Seating Components	Building & Construction	Stadium Seats	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Custom Trailer Parts	Transportation	Framing, tongue, Posts	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Aluminum Angle	Numerous	Numerous	.035 - 18" +	N/A	N/A	Numerous
Semi-Finished	Aluminum Z-Bar	Numerous	Numerous	.035 - 18" +	N/A	N/A	Numerous
Semi-Finished	Aluminum C - Channel	Numerous	Numerous	.035 - 18" +	N/A	N/A	Numerous
Semi-Finished	Aluminum T - Bar	Numerous	Numerous	.035 - 18" +	N/A	N/A	Numerous
Semi-Finished	Headers for Curtains, or other hanging systems	Consumer products	Hang something from ceiling	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Ramps	Consumer Products	Various Ramp Applications	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Scaffolding Supports	Building & Construction	Scaffolding Systems	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Bridge Supports	Building & Construction	Bridges	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Battery Boxes for Electric Vehicles	Automotive	EV Battery Container	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Flooring Systems - Boats, Trailers	Transportation	Floor System	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Hurricane Shutters	Building & Construction	Window Coverings	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Wall sections for railway industries	Transportation	Rail Car Walls	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Busbars	Electrical	Busbar	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Medical Equipment	Healthcare	Structural Parts, Arms for devices, thermal management	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Carpet Trim	Building & Construction	Carpet Trim	Numerous	Numerous	Numerous	Numerous
Semi-Finished	T-Slots	Industrial Applications	Aluminum Erector Sets	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Framing for Ships	Transportation	Internal Structure	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Automotive Trim	Transportation	Roof Rails, Spoilers, Exterior Trim	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Crash Management Systems	Automotive	Internal Crash Management - Behind the bumper	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Sun Roofs	Automotive	Sun Roof Systems	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Sub-Frame/Body in White	Automotive	Internal Automobile Structure	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Rockers	Automotive	Auto Rockers	Numerous	Numerous	Numerous	Numerous
Semi-Finished	School Bus Window Systems	Transportation	Windows	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Archery Bow	Consumer Products	Bow	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Appliance Trims	Consumer Products	Dryers, Refrigerators, etc.	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Golf Car Components	Consumer Products	Structural Parts, Trim, Framing	Numerous	Numerous	Numerous	Numerous
Semi-Finished	High Speed Rail Framing	Transportation	Body & Chassis	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Sun Room Frames	Building & Construction	Sun Room Structures	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Shower Doors and Enclosures	Building & Construction	Showers	Numerous	Numerous	Numerous	Numerous
Semi-Finished	Recreational Vehicles	Transportation	Framing, Structure, Trim	Numerous	Numerous	Numerous	Numerous

GAE.13.A - HTS 7604.29.5090

Aluminum Alloy Bars and Rods, Other Than Round Cross Section, Other Than Heat-Treatable Industrial Alloys of a Kind Described in Notes 5 & 6 of This Chapter

Product Class	Commercial Name(s)	Classification and Properties	Application	Outside Diameter (mm)	Length (mm)	Width (mm)
Note: Bars & Rods come in a number of widths, heights, lengths, and diameters. This is decided by the customer depending on their application.						
Most Bars & Rods are used as machine stock for unlimited applications.						
Rods	Aluminum Rods	Alloy 6061, 6063, 6040, 6082	Numerous/Machining	.18" to 12.125"	<12" to 36'	N/A
Bars	Aluminum Bars - Squares & Rectangular	Alloy 6061, 6063, 6040, 6082	Numerous/Machining	N/A	<12" to 36'	.18" to 18"
Bars	Aluminum Bars - Hex shaped	Alloy 6061, 6063, 6040, 6082	Numerous/Machining	.18" to 12.125"	<12" to 36'	N/A

Miller & Chevalier

Richard A. Mojica
Member
(202) 626.1571
rmojica@milchev.com

February 12, 2021

Matthew S. Borman
Deputy Assistant Secretary for Export Administration
U.S. Department of Commerce
Bureau of Industry and Security
1401 Constitution Ave. NW
Washington, DC 20230

Re: BIS-2020-0022; Comments on Section 232 Interim Final Rule Regarding Volume Certification Requirements

Dear Mr. Borman:

This letter is in response to the Interim Final Rule published December 14, 2020 in 85 Federal Register 81060. The new rules revise aspects of 15 C.F.R. Part 705, which relates to the Section 232 exclusion process. Our comments are based on discussions with firm clients and are focused on the new volume certification requirements of Subsection (c)(5)(ii).

A. Removing the Purchase Order Requirement

Under the new requirements, requesters that do not "manufacture, process, or otherwise transform" the steel or aluminum product for which the exclusion is being requested must have a purchase order or purchase orders for the product (the "Purchase Order Requirement").[1] Removing Subsection (c)(5)(ii)(A) entirely will allow all requesters, not just those that will "manufacture, process, or otherwise transform" the product, to base their exclusion requests on current business outlook (as opposed to actual purchase orders). This will make the new volume certification requirements significantly less burdensome and still meet Commerce's goals of ensuring that the exclusion requests are "consistent with legitimate business needs" and preventing large numbers of unneeded exclusion requests.[2] Requesters will still have to certify to the provisions of Supplement No. 1 to Part No. 705, Subsection (c)(5)(ii)(B) – (E), ensuring that the request is based on actual business projections and, if applicable, that they actually imported the requested volume the previous year.

The term "purchase order" is not defined in the regulations, nor are the requirements of what a purchase order must contain set forth in the regulations or the Interim Final Rule. However, given that the new certification in Subsection (c)(5)(ii) is entitled "[c]ertification for volume requested," one

[1] Supplement No. 1 to Part No. 705, Subsection (c)(5)(ii)(A) ("My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request, or I have a purchase order or orders for such products.").
[2] 85 Fed. Reg. 81060 (Dec. 14, 2020), at 81070.

reasonable interpretation is that the purchase order must state the *exact* quantity of the product at issue that would be purchased by the requester within the next calendar year.

As set forth in these comments, the Purchase Order Requirement imposes an unnecessarily narrow limitation on requesters that can otherwise demonstrate, through other documentation and established business practices, that the exclusion amount requested is in line with what the company expects to import within the next calendar year based on its current business outlook. Below are some examples of the challenges companies are facing in complying with the new Purchase Order Requirement of Subsection (c)(5)(ii)(A).

1. Use of "Blanket Purchase Orders" and Forecasts

One of our clients is a trading company. The company buys products from ex-U.S. suppliers and sells those products to customers in the United States. Once our client agrees on the terms with a U.S. customer on a certain product, the customer will often issue a "blanket purchase order" that specifies the product and the purchase price but does not include quantity or delivery dates. In addition, the customer will issue a forecast that specifies the projected purchasing quantities over a certain time period, usually several months to a few years. With that framework in place, the customer then orders a specific quantity of the product on a "just-in-time" basis, perhaps once every three months or so.

If our client must wait to request exclusions until it receives each just-in-time purchase order with a specific quantity, requesting the exclusion will several weeks to the time it takes to deliver each batch of products to the customer. In addition to being inefficient, because our client would file multiple exclusion requests for the same product over the course of a calendar year, the unnecessarily long lead times may require U.S. manufacturers to purchase larger volumes of tariff-excluded products than they need to avoid production stoppages, increasing costs for both the U.S. manufacturer and U.S. consumers. This outcome can be avoided by removing the Purchase Order Requirement (or at least clarifying that the requirement is satisfied if the requester can produce documentation to support that the company intends to import the requested amounts). Indeed, the Purchase Order Requirement hurts trading companies like our client who may not have a purchase order covering the total volume of product at hand at the time of the exclusion request, but nevertheless expect to import the requested amounts based on their current business outlook, as set forth in other commercial documents – such as blanket purchase orders and forecasts.

2. Variances from Quantity Stated on the Purchase Order

Sometimes, a U.S. customer of the trading company will issue a blanket purchase order stating a definite quantity while knowing that the quantity, which will be purchased in batches over the course of the project, will almost certainly vary from the stated quantity. Occasionally, the purchase order will use a term such as "+/- X percent" to explicitly state that variances are expected. Most of the time, however, it does not; nonetheless, both parties understand that the stated quantity is an estimate.

In some industries, such as the automotive, construction, and oil and gas industries, the purchased quantities can vary by as much as 30 percent based on consumer demand, supply chain shortages, or

other reasons. The recent global automotive semiconductor shortage is a good example of why the quantities can vary over time. The semiconductor shortage is expected to result in the production of fewer automobiles in 2021. As a result, automotive manufacturers will almost certainly order fewer automotive parts from their suppliers in the next year, even though they have purchase orders with their suppliers for specific quantities.

Given this understanding and the expectations of its customers, it would be appropriate for the trading company to request exclusions of up to 30 percent more volume, depending on the industry/product, than is stated on the purchase order. This will allow it to ensure that even if the quantity ordered by the customer increases from the quantity stated in the purchase order (but still within its expected variance), it will still be able to import the product without paying additional Section 232 tariffs. However, the Purchase Order Requirement does not allow that if the requester must have a purchase order with the exact quantity of the product at issue when the exclusion request is filed. That outcome is not consistent with the spirit of the new volume certification requirements because the variances in quantity are in line with what the requester expects to import based on its current business outlook.

3. Transactions Without Purchase Orders

Another example concerns situations where buy/sell transactions are not backed by a purchase order. Sometimes, U.S. suppliers to U.S. customers will purchase imported product based on documented forecasts from its customers. Other U.S. customers simply tell the U.S. supplier verbally what they want to order, without documenting the details of that transaction. Still other U.S. suppliers purchase products based on the historical needs of their U.S. customer base, with no explicit agreement. These are all common ways of doing business across multiple industries, whether or not Section 232 tariffs are at issue, particularly when there is a long-standing customer relationship. The Purchase Order Requirement would preclude a company from requesting an exclusion in these scenarios, even when the requester is still able to certify to the new volume certification statements in Subsections (c)(5)(ii)(B) – (E). Removing the Purchase Order Requirement would allow these requesters to continue doing business without having to ask their customers to change their ordering practices.

B. Defining "Purchase Order"

If the Purchase Order Requirement of Subsection (c)(5)(ii)(A) becomes permanent, we respectfully request that Commerce provide guidance on what the requirement entails (i.e., what the "purchase order" must contain). Specifically, Commerce should clarify the following:

1. Does the Purchase Order Requirement require that the requester have a purchase order in its possession at the time of filing the exclusion request that specifies the *exact* total quantity of product that the requester intends to import within the next calendar year?

2. Is the Purchase Order Requirement satisfied in the scenarios described above? Specifically:

(a) Is the Purchase Order Requirement satisfied when the requester has a "blanket purchase order" and a forecast that set forth the agreed-upon price and total quantity of product that a U.S. customer intends to purchase within a given timeframe.

(b) Is it permissible for companies to request exclusion requests for quantities that account for an expected upward variance to the amount stated in a purchase order?

(c) Is the Purchase Order Requirement satisfied when the requester has a purchasing forecast issued by a U.S. customer, but not a purchase order?

(d) Does a verbal purchase order meet the Purchase Order Requirement?

(e) Can the Purchase Order Requirement be satisfied with historical data only (i.e., purchasing forecasts based on the historical needs of a certain supplier or suppliers, where there is no formal agreement)?

3. Is the Purchase Order Requirement satisfied if the requester has a "conditional" purchase order – i.e., one that states that the purchase order is void if no exclusion is obtained, and/or states that the volume listed may decrease based on a change in business outlook?

   Specifically, one client is considering using this language (or similar) in applicable situations:

   This purchase order is conditioned upon the grant by Bureau of Industry and Security of the Department of Commerce ("BIS") of an Exclusion Request excluding all or part of the goods from duties under Section 232 (an "ER"). If no such ER is granted, or if a smaller quantity than ordered is excluded, either Buyer or Seller may cancel the order as to any non-excluded goods. The quantity of goods specified in this Purchase Order represents Buyer's best estimate of its needs during the delivery time frame. The parties will confirm date(s) of delivery after the ER is granted. Quantities may be reduced or increased in accordance with changes in Buyer's needs. The price of the goods shall be adjusted to reflect market conditions [number] days before delivery. If the market price of [product] fluctuates more than 5% from the price as of the date of the order, the parties will refer to published prices on [publication] or another, comparable recognized industry publication, to determine any necessary pricing adjustments. The foregoing order is submitted in accordance with directives of the BIS and subject to modification pending additional guidance from the BIS.

Finally, to the extent "purchase order" remains undefined and unexplained, expanding the scope of the language of Subsection (c)(5)(ii)(A) could help clarify that a purchase order stating a specific volume is not required in order for parties to submit exclusion requests. One possible solution is to amend Subsection (c)(5)(ii)(A) to read: "My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request, or I have a purchase order or orders **or other documentation to support the fact that my organization intends to import the requested volume on behalf of a specific customer** for such products."

C. Unknown HTSUS Classifications at Time of Order

Occasionally, an importer orders a steel or aluminum product from a foreign manufacturer with a specification that spans two Harmonized Tariff Schedule of the United States ("HTSUS") codes. For example, the specification may designate a range for chromium of 0.03% – 0.07%. A product with less than 0.05% chromium is classified as non-alloy steel; the same product with 0.05% or more chromium is classified as other alloy steel. In filling the order, the foreign steel mill will produce material within specification, but the final steel chemistry as provided on the mill certificate of analysis will determine whether the material is correctly classified as non-alloy or alloy steel when imported into the U.S. The requester has no way of knowing which classification will ultimately be appropriate at the time the order is placed. In the past, clients have submitted exclusion requests for both the alloy steel classification and the non-alloy classification for the product, so that it is covered by an exclusion regardless of whether the foreign manufacturer produces a product with 0.04% chromium or 0.06% chromium. Under the new volume certification requirements, this is presumably not allowed. Our clients respectfully request clarification that requesting exclusions under both possible HTSUS classifications for products is permissible in this situation.

D. Certifying Last Year's Imported Volumes; Lead Times for Exclusion Requests

Because more than 90 days can elapse between the time an exclusion request is filed and the time it is granted or denied, clients have been filing exclusion requests 90 days before their current exclusions expire. This allows them to continue importing products year-round, rather than having a three-month period in which they must either pay Section 232 tariffs or stop importing products. However, the new requirements require requesters to certify that they "imported the full amount of [their] approved exclusion(s) last year" or intended to do so but could not for specific business reasons. Neither of those statements fit the scenario just described, where the requester intends to import the full volume within the year, but also wishes to file a new request before the previous request expires. We suggest amending Subsection (c)(5)(ii)(D) to allow this practice. Due to pandemic and global supply chain disruptions, anticipated quantities for import may be delayed during the twelve-month effective time period of a granted exclusion.

E. Documentation to Support Subsection (c)(5)(ii)(D)

We respectfully request guidance on what documentation, if any, requesters need to obtain and maintain to justify situations in which they did not import the entire requested volume the previous year. In accordance with Subsection (c)(5)(ii)(D), such situations may occur due to "loss of contract(s)" "unanticipated business downturns," or "other factors beyond [the] organization's control that directly resulted in less need for steel and aluminum articles."

F. Enforcement

Finally, we respectfully request clarification from Commerce as to how the Purchase Order Requirement and other certifications will be enforced, and what penalties will be faced by those who do

not comply. We understand that it is a criminal offense to willfully make a false statement of representation about the volumes of covered product they plan to import.

* * *

We share Commerce's goals of 1) ensuring that the volumes listed in Section 232 exclusion requests are consistent with the past use of steel/aluminum by the requester; and 2) preventing requesters from submitting requests for unnecessarily large volumes, which decreases the efficiency of the exclusion process for potential objectors and for Commerce. At the same time, we are concerned that overly strict volume certification requirements, particularly the Purchase Order Requirement, will unnecessarily constrain legitimate business at a time when U.S. businesses are already suffering from supply chain disruptions, lost business, and uncertainty.

Thank you for considering these comments on the new volume certification requirements. Please do not hesitate to reach out with any questions.

Respectfully submitted,

Richard Mojica
Dana Watts

February 12, 2021

Matthew S. Borman
Deputy Assistant Secretary for Export Administration
Bureau of Industry and Security
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Re: BIS-2020-0022; RIN 0694-AH55: Written Comments of the Specialty Steel Industry of North America in Response to Section 232 Steel and Aluminum Tariff Exclusions Process. (85 Fed. Reg. 81,060)

Dear Deputy Assistant Secretary Borman:

These comments are filed on behalf of the Specialty Steel Industry of North America ("SSINA")[1] in response to the interim final rule ("IFR") set forth in the December 14, 2020 *Federal Register* notice entitled *Section 232 Steel and Aluminum Tariff Exclusions Process*. See 85 Fed. Reg. 81,060 (December 14, 2020). SSINA appreciates the ongoing efforts of the Bureau of Industry and Security ("BIS") to bring fairness and clarity to the Section 232 exclusions process; however, the Association has grave concerns about the IFR's adoption of General Approved Exclusions ("GAEs") for certain stainless steel products, and the effects of such exclusions on the domestic industry. For the reasons described herein, SSINA urges BIS to revoke or revisit the stainless steel GAEs established in the December IFR.

[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.

3050 K Street, N.W. · Washington, DC 20007
Telephone: (202) 342-8630 · Fax: (202) 342-8451 · Toll-Free: (800) 982-0355 ·
www.ssina.com

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, the members of SSINA play an essential role in the United States national security apparatus. The specialty metal and steel products 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 July 10, 2020, SSINA described, exemplified, and proposed solutions to a number of existing issues with respect to the Section 232 exclusion process in written comments to BIS. See *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* (BIS-2020-0012-0078) (July 10, 2020). These issues included – but were not limited to – exclusion requests for volumes that bear no rational relationship to market size, exclusion requests submitted by entities with no interest in domestic consumption or domestic production, and exclusion requests that attempt to misconstrue and circumvent the strict domestic unavailability requirements. See id. Importantly, in its written comments SSINA also discouraged BIS against expanding the exclusion process in a manner that would allow for overarching, permanent duty exemptions for certain products. See id.

SSINA applauds the continued efforts of BIS to improve both procedural and technical aspects of the exclusion process. The introduction of the new exclusion process portal, for instance, has greatly reduced the burden faced by the domestic industry in filing objections and

surrebuttals. More importantly, several of the proposed changes to the exclusion process set forth in the December 14, 2020 IFR will improve the accuracy and efficiency of the exclusion process moving forward. The implementation of an additional exclusion request volume certification requirement will discourage requesting organizations from artificially inflating exclusion volumes, and will reduce the disparity between aggregate exclusion volumes and market sizes. Furthermore, the clarification of the immediate availability benchmark will ensure that foreign manufacturers are held to the same standard as the domestic industry.

That being said, SSINA strongly opposes the establishment of General Approved Exclusions that provide sweeping duty relief for broad product categories. Of particular concern for SSINA are the 33 GAEs that pertain to stainless steel products classified under Harmonized Tariff Schedule of the United States ("HTSUS") headings 7218, 7219, 7220, 7221, and 7223. These 33 stainless steel GAEs account for nearly one third of the 108 total steel GAEs established in the IFR, despite the fact that U.S. imports of stainless steel represented only 1.9 percent of total U.S. imports of iron and steel in 2019. SSINA believes that, in order to protect the integrity of the exclusion process, BIS should revoke all of the stainless steel GAEs established in the IFR. A failure to do so will have severe consequences for the domestic industry, and will undermine the intended effects of the Section 232 remedies.

First and foremost, the criteria that BIS uses to select the stainless steel products that qualify for GAEs is fundamentally flawed. In the IFR, BIS explains that it generated the list of GAEs by identifying those products for which "objections have not been received in the past." See 85 Fed. Reg. 81,061 (December 14, 2020). However, the absence of an objection in and of itself does not indicate that the domestic industry is unable to manufacture and supply the

product in question, nor does it indicate that the domestic industry has not benefitted from the protection against unfair trade that the Section 232 remedies offer. On the contrary, the decision to file or to not file an objection is usually driven by complex, high-level business considerations. The domestic industry must weigh the tangible cost of filing an objection against the potential benefit of doing so, and must also consider intangible costs such as customer relationships. Moreover, the sheer frequency and volume at which importers submit exclusion requests precludes comprehensive monitoring and filing of objections, when warranted, on the part of the domestic industry.

Notably, there were no exclusion requests filed in 2020 for three of the stainless steel products that qualify for GAEs. See Exh. 1. Nine additional stainless steel products were the target of more than zero but less than ten exclusion requests. See id. In total, these products constitute more than one third of the stainless steel GAEs that BIS established in the IFR. Here, the domestic industry is effectively being punished for its failure to identify and oppose a mere handful of exclusion requests, a number of which were filed more than one year ago. Even more concerning, however, is the fact that the individual members of SSINA are more than capable of manufacturing and supplying the vast majority of the stainless steel products that qualify for GAEs. A decision not to object to an exclusion request is not indicative of a fundamental inability to manufacture and supply the product in question, and therefore SSINA strongly encourages BIS to reconsider the establishment of the stainless steel GAEs.

Moreover, the establishment of the stainless steel GAEs is unlikely to have any of the long-term benefits that BIS expects. In the IFR, for instance, BIS explicitly states that the establishment of GAEs is largely intended to ease the administrative burden associated with the

exclusion process, "resulting in a significant improvement in efficiency." See 85 Fed. Reg. 81,061 (December 14, 2020). SSINA recognizes the difficulties that BIS has faced in thoroughly reviewing and dispositioning hundreds of thousands of exclusion requests. However, the establishment of the stainless steel GAEs is likely to have a negligible impact on the time cost and financial strain created by the exclusion process. In 2020, importers submitted only 1,175 exclusion requests that pertain to the stainless steel products that qualify for GAEs. See Exh. 1. This figure stands in stark contrast to the 103,329 total exclusion requests submitted in that same year.

On an annual basis, therefore, the establishment of the stainless steel GAEs will reduce the administrative burden associated with the exclusion process by just over 1.0 percent. Importantly, this estimate is an upper bound, as the domestic industry did not object to any of the 1,175 exclusion requests mentioned above. The existence of objections, rebuttals, and surrebuttals greatly increases the time intensity of reviewing and dispositioning a given exclusion request. Accordingly, *ceteris paribus*, the establishment of the stainless steel GAEs is likely to result in a minimal reduction in administrative burden. SSINA maintains that the injury to the domestic industry that will result from the establishment of the stainless steel GAEs far outweighs any potential gains in efficiency.

Indeed, the 1,175 exclusion requests mentioned above exemplify one of the fundamental flaws of the exclusion process. That is, the ability of importers to overwhelm the system by requesting exclusion volumes that bear no rational relationship to market size. In this sense, the establishment of the stainless steel GAEs has rewarded a group of importers that has, under penalty of perjury, consistently misrepresented its supply needs. Consider the fact that, in 2020,

the aggregate exclusion volume associated with the stainless steel products that qualify for GAEs was 276,904,780 pounds. See id. This figure is 189.1 percent higher than the corresponding U.S. import volume in 2019 of these products, which stood at 95,783,900 pounds. See id. Clearly, the outrageous exclusion volumes sought in these exclusion requests do not demonstrate that the domestic industry is unable to supply the U.S. market, but instead reveal that importers aim to bypass the Section 232 remedies and flood the U.S. market with low-priced merchandise.

On an individual basis, exclusion volumes exceeded the corresponding U.S. import volumes for 22 – or two thirds – of the 33 stainless steel products that qualify for GAEs. See id. The disparities exhibited in the figures for flat-rolled stainless steel sheet, strip, and plate are particularly egregious. The request volumes in 2020 exceeded the import volumes in 2019 by more than 1000.0 percent for four[2] of the flat-rolled stainless steel products that qualify for GAEs, and by more than 100.0 percent for an additional eight[3] such products. See id. Notably, Belgium, Japan, and South Korea numbered among the largest sources of U.S. imports of these flat-rolled stainless steel products in 2019. Imports of most flat-rolled stainless steel products from all of these countries are currently subject to antidumping or countervailing duty orders. SSINA believes that the establishment of the stainless steel GAEs will further encourage unfair trade in the U.S. market and, therefore, urges BIS to immediately revoke these GAEs.

Furthermore, the exclusion requests that pertain to the stainless steel products that qualify for GAEs usually apply to extremely specific product grades, chemical compositions, and

---

[2] HTSUS #s 7219.11.0030, 7220.20.6010, 7220.20.7060, and 7220.20.8000

[3] HTSUS #s 7219.11.0060, 7219.12.0051, 7219.31.0010, 7219.32.0036, 7219.33.0025, 7219.35.0005, 7220.20.6060, and 7220.90.0060

dimensions. The GAEs, in contrast, apply to broad ten-digit HTSUS categories that cover dozens, or even hundreds, of different products. For instance, all of the exclusion requests submitted in 2020 for HTSUS No. 7219.90.0060 pertained to BE4034, a proprietary knife steel grade that is functionally equivalent to standard grade AISI 420. Likewise, several of the exclusion requests submitted in 2020 for HTSUS # 7219.22.0035 pertained to BÖHLER N701, a proprietary precipitation hardenable steel grade that is functionally equivalent to AISI XM-12. If the domestic industry is unable to produce a proprietary grade encompassed by one ten-digit HTSUS category, it is not necessarily unable to produce an equivalent grade within that entire ten-digit HTSUS category. As such, BIS should immediately revoke the stainless steel GAEs, pending an evaluation of the ability of the domestic industry to manufacture and supply *all* of the products that qualify for those GAEs.

In aggregate, U.S. imports of the stainless steel products that qualify for GAEs fell precipitously from 2017 to 2019, falling by 38.0 percent from 154,412,403 pounds to 95,783,900 pounds. See id. SSINA believes that the implementation of the Section 232 remedies in March 2018 is directly responsible for this decrease. In this sense, the Section 232 remedies had their intended effect. The domestic industry was able to ramp up production in response to the declining import volumes, thereby ensuring the survival of a strong domestic industrial base that can provide critical components for national security applications. If the stainless steel products that qualify for GAEs are allowed to enter the U.S. market without the assessment of a 25.0 percent duty, SSINA expects that import volumes will quickly return to historic levels. The results will be disastrous for the domestic industry, and will further undermine the intended purpose of the Section 232 remedies.

For the foregoing reasons, SSINA urges BIS to immediately revoke the stainless steel GAEs established in the IFR and revisit the entire basis for this program. SSINA would be pleased to provide any information that would assist BIS in further understanding the detrimental impact of the stainless steel GAEs on the domestic industry.

Respectfully submitted,

LAURENCE J. LASOFF

Counsel
Specialty Steel Industry of North America

EXHIBIT 1

U.S. Imports of Stainless Steel Products Subject to Section 232 GAEs

Annual 2017 - 2019, Jan - Nov 2019 & 2020
(Quantity in Pounds)

	2017	2018	2019	Jan - Nov 2019	Jan - Nov 2020	Percent Change (2017 - 2019)	Percent Change (Jan - Nov 2019 & 2020)	# of Exclusion Requests Filed (2020)	# of Exclusion Requests Granted (2020)	Volume Requested (2020)	Volume Granted (2020)
7218.91.0030	105,961	1,655,917	2,633,218	1,984,059	4,188,485	2385.1%	111.1%	-	-	-	-
7219.11.0030	1,438,043	2,093,115	1,117,853	941,681	1,641,097	-22.3%	74.3%	43	43	14,285,938	14,285,938
7219.11.0060	2,125,351	1,917,221	1,050,523	713,658	2,392,341	-50.6%	235.2%	12	10	8,424,378	6,120,991
7219.12.0021	1,478,775	947,058	1,568,614	1,403,708	523,026	6.1%	-62.7%	5	5	2,645,544	2,645,544
7219.12.0026	5,526,652	5,591,633	5,263,993	4,370,703	1,288,788	-4.8%	-70.5%	10	9	3,730,856	2,849,008
7219.12.0051	5,031,798	3,571,072	2,384,674	2,212,757	1,398,809	-52.6%	-36.8%	11	11	9,149,173	9,149,173
7219.12.0071	3,692,489	2,448,094	3,198,954	3,021,066	733,100	-13.4%	-75.7%	10	10	4,539,676	4,539,676
7219.12.0081	15,648,948	15,672,249	14,478,094	13,382,795	5,664,822	-7.5%	-57.7%	3	3	1,477,095	1,477,095
7219.13.0081	1,448,102	1,199,130	2,364,393	2,364,393	1,595,065	63.3%	-32.5%	2	2	118,137	118,137
7219.21.0005	670,405	495,266	197,470	197,470	156,711	-70.5%	-20.6%	7	-	175,027	-
7219.22.0005	480,872	599,002	263,139	254,202	384,724	-45.3%	51.3%	-	-	-	-
7219.22.0035	17,608,785	10,198,685	7,542,270	6,909,932	6,122,274	-57.2%	-11.4%	28	28	13,927,107	13,927,107
7219.22.0040	4,131,037	7,093,759	1,947,228	1,629,527	1,424,650	-52.9%	-12.6%	10	6	2,552,690	2,371,911
7219.31.0010	10,239,020	4,188,073	5,208,521	4,536,310	4,307,080	-49.1%	-5.1%	27	27	17,624,328	17,624,328
7219.32.0020	10,555,707	6,503,913	2,876,837	2,864,974	966,347	-72.7%	-66.3%	7	7	3,637,623	3,637,623
7219.32.0036	678,295	579,595	1,789,697	1,683,060	250,599	163.9%	-85.1%	10	9	10,600,768	6,100,766
7219.32.0038	5,237,606	4,017,567	1,681,340	1,553,832	1,051,249	-67.9%	-32.3%	3	3	903,894	903,894
7219.32.0045	4,751,256	3,531,252	1,576,471	1,546,940	885,876	-66.8%	-42.7%	13	13	1,857,657	1,857,657
7219.33.0025	9,134,735	6,498,757	5,849,554	5,611,245	2,685,355	-36.0%	-52.1%	39	39	17,157,808	17,157,808
7219.35.0005	5,861,708	2,745,367	5,260,327	5,039,157	1,407,008	-10.3%	-72.1%	10	10	12,544,288	12,544,288
7219.90.0060	80,945	13,616	172,622	166,663	58,440	113.3%	-64.9%	5	3	88,185	66,139
7220.12.1000	4,661,177	3,616,587	3,394,581	3,016,055	1,510,434	-27.2%	-49.9%	8	6	2,387,603	2,156,118
7220.12.5000	574,687	682,204	689,535	612,490	833,108	20.0%	36.0%	3	2	357,148	268,964
7220.20.6010	898,623	1,203,652	2,928,148	2,635,740	2,002,730	225.8%	-24.0%	55	45	37,856,881	30,372,466
7220.20.6060	307,970	217,622	372,753	330,658	179,176	21.0%	-45.8%	15	15	926,381	926,381
7220.20.6080	1,210,515	765,892	631,588	434,429	364,232	-47.8%	-16.2%	-	-	-	-
7220.20.7060	1,556,056	1,385,447	855,882	820,066	742,679	-45.0%	-9.4%	49	49	12,115,776	12,115,776
7220.20.8000	2,572,838	2,942,004	2,811,025	2,557,659	1,907,620	9.3%	-25.4%	60	58	67,903,498	65,698,878
7220.90.0060	4,394,013	3,383,051	3,758,293	3,678,197	2,699,985	-14.5%	-26.6%	247	222	12,276,409	10,569,592
7222.40.3045	1,382,189	2,061,148	2,512,295	2,440,184	2,240,696	81.8%	-8.2%	17	17	3,619,986	3,619,986
7222.40.3085	748,400	982,650	1,114,729	1,057,999	1,712,577	48.9%	61.9%	16	16	2,020,534	2,020,534
7222.40.6000	25,438,841	7,524,000	2,916,457	2,705,697	2,190,685	-88.5%	-19.0%	394	382	3,961,488	3,919,905
7223.00.5000	4,740,603	4,574,840	5,372,824	5,013,513	5,721,059	13.3%	14.1%	56	56	8,038,904	8,038,904
Total	**154,412,403**	**110,899,436**	**95,783,900**	**87,690,817**	**61,230,827**	**-38.0%**	**-30.2%**	**1,175**	**1,106**	**276,904,780**	**257,084,585**

Source: U.S. Department of Commerce and USITC

United States Steel Corporation
600 Grant Street
Pittsburgh, PA 15219

February 12, 2021

Director, Industrial Studies
Office of Technology Evaluation
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

SUBMITTED VIA *REGULATIONS.GOV* (DOCKET NO. BIS-2020-0022)

Re: United States Steel Corporation's Comments on the Interim Final Rule Revising Certain Aspects of the Section 232 Steel and Aluminum Tariff Exclusions Process (RIN 0694-AH55)

Dear Director:

In accordance with the procedures outlined in the *Interim Final Rule*,[1] United States Steel Corporation ("U. S. Steel") submits the attached written comments regarding revisions to certain aspects of the Section 232 steel and aluminum tariff exclusion process and establishment of General Approved Exclusions. The U.S. Department of Commerce ("Commerce") indicated that it was seeking comments only regarding whether the *Interim Final Rule* appropriately address concerns raised in earlier public comments.[2] Therefore, U. S. Steel has limited its current feedback to the specific changes to the Section 232 exclusion process that were included in the *Interim Final Rule*.

U. S. Steel appreciates the opportunity to share its perspective and Commerce's careful consideration of this matter.

Sincerely,

Kaitlin M. Wojnar
Counsel – International Trade & Public Policy
United States Steel Corporation

Enclosure

---

[1] *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. 81.060 (Dec. 14, 2020) ("*Interim Final Rule*").
[2] *Id.*, at 81,071.

U.S. DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
SECTION 232 STEEL AND ALUMINUM TARIFF EXCLUSION PROCESS
RIN 0694-AH55

UNITED STATES STEEL CORPORATION'S COMMENTS ON THE FOURTH INTERIM FINAL RULE

United States Steel Corporation ("U. S. Steel") is a leading integrated producer of flat-rolled and tubular steel products in the United States. U. S. Steel is headquartered in Pittsburgh, Pennsylvania, with world-class operations—including iron mines, both blast furnaces and electric arc furnaces, integrated processing facilities, and finishing operations—located in Alabama, Arkansas, California, Illinois, Indiana, Michigan, Minnesota, Mississippi, Ohio, Pennsylvania, and Texas. These facilities supply high value-added steel products to customers in the automotive, infrastructure, appliance, container, and energy industries. U. S. Steel is actively investing in advanced steelmaking technology and, in the face of unfairly traded import competition, continues to support efforts that put U.S. manufacturers on a level playing field with foreign competitors and secure the long-term viability of the domestic steel industry. U. S. Steel is hopeful that the Section 232 measures imposed on steel product imports will be strongly enforced to incentivize demand for steel that is melted and poured in the United States, reduce imports by 37 percent, and strengthen national security, as recommended by the U.S. Department of Commerce ("Commerce").

Therefore, in accordance with the *Interim Final Rule* published on December 14, 2020,[1] these comments regarding revisions to certain aspects of the Section 232 steel and aluminum tariff exclusion process and establishment of General Approved Exclusions ("GAEs"). As

---

[1] *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. 81,060 (Dec. 14, 2020) ("*Interim Final Rule*").

discussed below, U. S. Steel is supportive of certain modifications intended to increase efficiency of Section 232 exclusion request review (*e.g.*, submission size limitations).[2] However, several of the procedural and substantive revisions included in the *Interim Final Rule* increase exclusion process efficiency at the expense of the overall effectiveness of the Section 232 action and, thus, negatively impact domestic steel manufacturers.

I. OVERLY BROAD GENERAL APPROVED EXCLUSIONS

The creation of GAEs, as described in the *Interim Final Rule*,[3] does not appropriately address concerns raised in earlier comments on the Section 232 steel and aluminum exclusion process and requires immediate adjustments and/or clarification from Commerce to avoid circumvention, evasion, manipulation, and deterioration of the Section 232 action. Specifically, to the extent Commerce is defining—and U.S. Customs and Border Protection ("CBP") is enforcing—GAEs for steel articles based solely on 10-digit Harmonized Tariff Schedule of the United States ("HTSUS") codes,[4] multiple products that can be domestically manufactured and are readily available in the U.S. market are now broadly excluded from the Section 232 tariffs.

A. General Approved Exclusions Should Be Defined in Significantly Greater Detail

As currently drafted and enforced by CBP,[5] Commerce seems to have broadly defined GAEs based solely on HTSUS codes. Relying solely on HTSUS codes to define excluded products, however, directly contradicts Commerce's consistently stated goal of granting Section 232 tariff exclusions only for very specific products that are not available from domestic

[2] 15 C.F.R. 705, Supplement No. 1 at paras. (e), (f)(2), (g)(2).
[3] *Interim Final Rule*, 85 Fed. Reg. at 81,061, 81,071; 15 C.F.R. 705, Supplement No. 2.
[4] 15 C.F.R. 705, Supplement No. 2.
[5] *See* CBP, Cargo Systems Messaging Service #45271041 - GUIDANCE: Additional Section 232 Steel and Aluminum Product Exclusions and Revisions to Exclusions Process, Dec. 23, 2020 (stating that CBP will not collect Section 232 tariffs for entries reporting 10-digit HTSUS codes associated with GAEs).

manufacturers. The Section 232 exclusion process regulations recognize that an HTSUS code, alone, is not sufficient to identify a specific steel article and require a separate exclusion request for each, individual steel product based on distinct chemistries, metallurgical properties, and surface quality (*e.g.*, coating), *even if multiple products are covered by a single HTSUS code*.[6] Many steel HTSUS codes are "basket categories," vaguely defined, at most, by general factors like level of processing (*e.g.*, hot-rolled or cold-rolled) and broad, greater-than or less-than dimensional ranges (*e.g.*, of a width of 600 millimeters or more).[7] Such basket categories, and even HTSUS codes that include tighter dimensional specifications, can cover an extremely wide variety of steel articles, which are differentiated commercially primarily by very targeted performance characteristics (*e.g.*, strength, formability, and weldability metrics not generally accounted for in HTSUS classifications) rather than dimensions at the time of purchase.

For instance, although corrosion-resistant galvanized steel has thousands of possible performance capabilities and end-use applications (*e.g.*, advanced materials used in cars and trucks, basic construction materials, packaging, and a wide variety of downstream consumer goods) , *all electrogalvanized iron and nonalloy steel products are classified under just four 10-digit HTSUS codes*.[8] Two of these HTSUS codes are now on Commerce's list of GAEs, thereby broadly excluding *all* narrower electrogalvanized steel products and *all* wider electrogalvanized steel products that are coated with plastic.[9] HTSUS code 7209.90.0000, which is also on the current list of GAEs, is a prime example of a basket category, defined simply as "Other" cold-

[6] 15 C.F.R. 705, Supplement No. 1 at para. (c)(2).

[7] *See*, *e.g.*, HTSUS code 7209.90.0000, which covers "other" cold-rolled iron and nonalloy steel at least 600 millimeters wide.

[8] *See* HTSUS codes 7210.30.0030, 7210.30.0060, 7210.70.6030, and 7212.20.0000.

[9] *See* HTSUS codes 7212.20.0000 (covering all electrogalvanized steel less than 600 millimeters wide) and 7210.70.6030 (covering all plastic-coated electrogalvanized steel at least 600 millimeters wide).

rolled iron or nonalloy steel that is at least 600 millimeters wide, with no additional parameters. In short, HTSUS codes do not adequately account for the critical chemical, mechanical, and functional specifications that U. S. Steel and its customers rely on to differentiate steel products.

To the extent Commerce continues to establish and administer GAEs for steel products, GAEs must be defined on a much more detailed, product-specific basis, incorporating all relevant chemical and performance specifications that are not accounted for in HTSUS codes and ensuring that other, domestically available products classified under the same HTSUS codes are not given a free pass from the Section 232 action. Issuing GAEs based solely on HTSUS codes is inconsistent with Commerce's stated intentions in the *Interim Final Rule* and elsewhere.[10]

B. The Current List of General Approved Exclusions Includes Steel Products That Are Readily Available in the U.S. Market

Contrary to statements in the *Interim Final Rule*,[11] the current list of steel GAEs includes HTSUS codes for which Commerce previously received exclusion objections and, in several instances, *previously denied exclusions based on sufficient domestic availability*. A cursory review of the Section 232 Exclusions Portal reveals that the domestic industry has submitted dozens of objections to tariff exclusion request for steel products classified under at least 14 of the HTSUS codes associated with GAEs.[12] U. S. Steel, specifically, has objected to multiple

---

[10] *See* 15 CFR 705, Supplement No. 2 (indicating that GAEs will be authorized only as consistent with the objectives of the Section 232 exclusions process outlined in supplement no. 1). Separately, in recent oral arguments on behalf of Commerce in *ThyssenKrupp Materials NA, Inc. v. United States*, U.S. Ct. Int'l Trade Case. No. 20-00093, the U.S. Department of Justice indicated that GAEs are described by both 10-digit HTSUS codes *and* by narrow product descriptions.

[11] *See, e.g.*, *Interim Final Rule*, 85 Fed. Reg. at 81,061 (stating that the GAEs address "the need to create a more efficient method for approving exclusions *where objections have not been received in the past*…").

[12] On the Section 232 Exclusions Portal, objections have been filed to exclusion requests for steel products classified under HTSUS codes 7212.20.0000, 7217.10.8030, 7217.20.4560, 7217.30.4541, 7217.90.1000, 7219.21.0005, 7219.22.0040, 7220.20.6010, 7220.90.00060, 7225.50.1110, 7227.90.1060, 7302.10.1015, 7304.29.3160, and 7304.29.3180. Additional objections to exclusion requests for steel products classified under HTSUS codes associated with GAEs may be available on *Regulations.gov* within docket no. BIS-2018-0006.

exclusion requests for standard flat-rolled products and oil country tubular goods classified under HTSUS codes associated with GAEs, three of which were denied by Commerce *within the last 30 days*.[13]

U. S. Steel carefully reviews Section 232 exclusion requests and, consistent with Commerce's regulations,[14] only opposes requests for products it can manufacture or for which it can provide a suitable substitute. Adhering to this policy, U. S. Steel has objected to roughly three percent of all Section 232 exclusion requests submitted to Commerce.[15] Among the small percentage of exclusion requests opposed by U. S. Steel, however, are 20 percent of all exclusion requests filed in 2020 for steel articles classified under HTSUS code 7212.20.0000,[16] 25 percent of all exclusion requests filed in 2020 for steel articles classified under HTSUS code 7304.29.3180,[17] and more than 66 percent of all exclusion requests filed in 2020 for steel articles classified under HTSUS code 7304.29.3160.[18] *U. S. Steel objected to these exclusion requests because it has the ability to manufacture each of the requested steel products or a substitute*.

Regardless of objections from the domestic industry, since the Section 232 tariffs were implemented in March 2018, Commerce has *denied* exclusion requests for steel products classified under 45 of the 108 HTSUS codes associated with GAEs.[19] In fact, roughly 12 percent

---

[13] *See* Decision Memoranda for Exclusion Requests 147676 (signed Jan. 24, 2021), 147698 (signed Jan. 24, 2021), and 151473 (signed Jan. 31, 2021).

[14] 15 C.F.R. 705, Supplement No. 1.

[15] As of January 31, 2021, more than 220,000 Section 232 exclusion requests for steel products had been posted Commerce on *Regulations.gov* and the Section 232 Exclusions Portal.

[16] *See* Exclusion Requests 147676 and 147698.

[17] *See* Exclusion Request 143815.

[18] *See* Exclusion Requests 151473 and 157724

[19] Per information on *Regulations.gov* and the Section 232 Exclusions Portal, Commerce has denied Section 232 tariff exclusion requests listing HTSUS codes 7304.59.2080, 7220.90.0060, 7306.90.1000, 7212.60.0000, 7220.20.7060, 7223.00.5000, 7220.20.8000, 7217.10.8060, 7226.92.3060, 7229.90.5016, 7304.59.8060, 7304.24.6030, 7304.59.8045, 7306.40.1090, 7211.29.6080, 7217.20.1500, 7219.22.0035, 7219.11.0030, 7217.10.8030, 7212.20.0000, 7217.20.4560, 7217.10.8025, 7209.90.0000, 7213.91.3020, 7217.90.5030, 7226.92.3030, 7227.90.6020, 7217.90.5090, 7219.22.0040, 7304.90.1000, 7304.39.0002,

of exclusion requests listing those 45 HTSUS codes have been denied by Commerce,[20] with additional decisions still pending. Notably, 32 of the 33 exclusion requests listing HTSUS code 7209.90.9000 have been denied, and no new requests for products classified under this code have been filed since the Section 232 Exclusions Portal was implemented in July 2019. Nevertheless, Commerce has now created an unbounded tariff exclusion for imported steel articles classified under HTSUS code 7209.90.9000.[21]

U. S. Steel has established capabilities to manufacture steel products classified under HTSUS code 7209.90.9000, as well as products that are identical to or substitutes for articles classified under 11 other HTSUS codes associated with GAEs,[22] many of which are standard products for automotive, energy, or other high-value applications that are critical to sustaining the company's operations. U. S. Steel is concerned that, for many of the new GAEs, Commerce lacks sufficient data to determine whether "no objections will be received."[23] For instance, through December 31, 2020, the domestic industry only had the opportunity to comment on three exclusion requests listing HTSUS code 7208.38.0015,[24] four exclusion requests listing HTSUS code 7208.39.0015,[25] two exclusion requests listing HTSUS code 7210.70.6030,[26] seven

---

7225.50.1110, 7217.90.5060, 7226.92.8005, 7304.41.3005, 7215.50.0090, 7227.20.0030, 7302.10.1045, 7219.21.0005, 7304.29.3160, 7304.90.5000, 7217.10.4045, 7304.29.3180, 7306.69.5000, and 7211.23.4500.

[20] In total, Commerce has received roughly 5,106 Section 232 tariff exclusion requests for articles classified in the 45 HTSUS codes associated with steel GAEs and listed above. Of these 5,106 exclusion requests, at least 600 have been denied.

[21] 15 C.F.R. 705, Supplement No. 2.

[22] U. S. Steel is capable of providing steel products that are identical to or suitable substitutes for certain articles classified under the following HTSUS codes associated with GAEs: 7208.38.0015, 7208.39.0015, 7209.90.0000, 7210.70.6030, 7212.20.0000, 7304.29.3160, 7304.29.3180, 7304.59.2030, 7304.59.2080, 7304.59.8045, 7304.59.8060, 7305.31.6090.

[23] *Interim Final Rule*, 85 Fed. Reg. at 81,062.

[24] *See* Exclusion Requests 42279, 45388, and 89160.

[25] *See* Exclusion Requests 39825, 39828, 39830, and 42282.

[26] *See* Exclusion Requests 9939 and 9949.

exclusion requests listing HTSUS code 7304.29.3160,[27] six exclusion requests listing HTSUS code 7304.29.3180,[28] and seven exclusion requests listing HTSUS code 7305.31.6090.[29] Given the fact that, as explained above, many HTSUS codes for steel articles are basket categories with no differentiation of critical performance specifications, granting broad HTSUS-defined GAEs based on a handful of denied exclusions is unreasonable and opens the U.S. market to a flood of foreign-made steel products that are readily available from domestic manufacturers. Indeed, there may be so few Section 232 tariff exclusion requests for the standard steel articles classified under these HTSUS codes because there is an unquestionably sufficient supply already available in the United States, as well as countries already exempt from the Section 232 tariffs. Based on import data published by the U.S. International Trade Commission ("ITC"), articles classified under 95 of the 108 HTSUS codes associated with steel GAEs were available from at least one foreign source that is wholly exempt from the Section 232 action (*i.e.*, from Australia, Canada, and/or Mexico).[30] Allowing imports of these products to be broadly excluded from the Section

---

[27] *See* Exclusion Requests BIS-2018-0006-18388, BIS-2018-0006-18390, BIS-2018-0006-18671, 43516, 49367, 151473, and 157724.

[28] *See* Exclusion Requests BIS-2018-0006-18666, 17271, 67123, 67132, 78302, and 143815.

[29] *See* Exclusion Requests BIS-2018-0006-83725, BIS-2018-0006-89694, BIS-2018-0006-106549, BIS-2018-0006-106553, BIS-2018-0006-145373, 50568, and 50633.

[30] ITC DataWeb import data indicates that steel articles classified under each of the following 10-digit HTSUS codes associated with steel GAEs were imported from Australia, Canada, and/or Mexico during 2018, 2019, and/or 2020: 7208.38.0015, 7208.39.0015, 7209.27.0000, 7209.90.0000, 7210.70.6030, 7211.14.0090, 7211.23.4500, 7211.29.6080, 7212.20.0000, 7212.60.0000, 7213.20.0080, 7213.91.3020, 7215.50.0018, 7215.50.0090, 7216.33.0090, 7216.40.0010, 7217.10.4045, 7217.10.4090, 7217.10.6000, 7217.10.8025, 7217.10.8030, 7217.10.8060, 7217.20.1500, 7217.20.4550, 7217.20.4560, 7217.30.4541, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7218.91.0030, 7219.11.0030, 7219.12.0021, 7219.12.0051, 7219.12.0081, 7219.13.0081, 7219.21.0005, 7219.22.0005, 7219.22.0035, 7219.22.0040, 7219.31.0010, 7219.32.0020, 7219.32.0036, 7219.32.0038, 7219.32.0045, 7219.33.0025, 7219.35.0005, 7219.90.0060, 7220.12.1000, 7220.12.5000, 7220.20.6010, 7220.20.6060, 7220.20.6080, 7220.20.7060, 7220.90.0060, 7222.40.3045, 7222.40.3085, 7222.40.6000, 7223.00.5000, 7224.10.0005, 7225.50.1110, 7225.50.6000, 7226.92.3060, 7226.92.8005, 7226.99.0110, 7227.20.0030, 7227.90.1060, 7227.90.6020, 7228.50.1040, 7229.20.0015, 7229.90.5016, 7229.90.5031, 7302.10.1015, 7302.10.5020, 7304.24.3010, 7304.24.6030, 7304.29.3160, 7304.29.3180, 7304.39.0002, 7304.39.0016, 7304.51.5005, 7304.59.2030, 7304.59.2080, 7304.59.8010, 7304.59.8045, 7304.59.8060, 7304.90.1000, 7304.90.5000, 7305.31.6090, 7305.39.1000, 7306.40.1090, 7306.61.7060, 7306.69.5000, 7306.69.7060, and 7306.90.1000. Many of these articles are also available from Argentina, Brazil, and/or South Korea, which are subject to quantitative limitations instead of tariffs.

232 action would be in direct conflict with the objectives of the 232 exclusions process, as outlined in Commerce's regulations,[31] and has the potential to significantly harm the domestic industry, effectively erasing and surpassing the $740,000 public cost savings estimated by Commerce.[32]

For the reasons, if GAEs continue to be defined by HTSUS codes, Commerce should remove from its list of GAEs any HTSUS codes that meet at least one of the following criteria:

(1) HTSUS codes listed in any Section 232 exclusion requests to which the domestic industry has objected;

(2) HTSUS codes listed in any Section 232 exclusion requests denied by Commerce;

(3) HTSUS codes listed in an insignificant number of Section 232 exclusion requests filed during the most recent 12-month period, such that there is insufficient data as to whether various products classified under such HTSUS codes are currently available from domestic manufacturers; or

(4) HTSUS codes containing steel articles that are already available from at least one other Section 232 tariff-exempt country (*i.e.*, Australia, Argentina, Brazil, Canada, Mexico, or South Korea).

Removing such HTSUS codes from the approved list of GAEs is especially critical if Commerce declines to define GAEs using narrower, product-specific descriptions that address differentiating performance characteristics. Going forward, U. S. Steel also suggests that Commerce establish a clear framework for non-governmental stakeholders, in addition to senior Executive Branch officials, to provide input *prior to* implementation of GAEs, whether through

[31] The *Interim Final Rule* states that GAEs may only be authorized only to the extent they are "consistent with the objectives of the 232 Exclusions Process as outlined in supplement no. 1" to 15 C.F.R. Part 705. 19 C.F.R. 705, Supplement No. 2. Supplement no. 1 to 15 C.F.R. Part 705 and the implementing guidance provided by Commerce clearly indicate that the objective of the Section 232 tariff exclusion process is to *only* grant product-, importer-, and country-specific exclusions for products that are not sufficiently available in the U.S. market from domestic manufacturers or other sources already exempt from the Section 232 tariffs (*i.e.*, from Argentina, Australia, Brazil, Canada, Mexico or South Korea).

[32] *Interim Final Rule*, 85 Fed. Reg. at 81,072.

typical public notice and comment procedures or through established public-private partnerships (*e.g.*, the Industry Trade Advisory Committee for steel, which is co-managed by Commerce).

II. "IMMEDIATELY" AVAILABLE

U. S. Steel supports Commerce's revised definition of "immediately" available, for purposes of the Section 232 exclusions process, which now holds foreign and domestic steel producers to the same standards regarding production and delivery timelines.[33] Specifically, by expanding the "immediately" available standard from a hard eight weeks to match product-specific reported lead times for relevant foreign suppliers, the *Interim Final Rule* establishes a more equitable criterion for evaluating whether requested steel products are reasonably available in the U.S. market.[34] As such, the revision appropriately addresses earlier public comments on this issue.

Since the Section 232 exclusion process was first implemented, U. S. Steel has consistently provided Commerce with confidential supplemental evidence of is reported production and delivery timelines, where appropriate. The *Interim Final Rule* makes it clear that both exclusion requestors and objectors are required to provide such supporting documentation.[35] In its analysis of Section 232 exclusion requests, U. S. Steel encourages Commerce to ensure entities seeking exclusions do, indeed, provide sufficient evidentiary support for reported foreign producer lead times, thereby ensuring a balanced review of the relevant factors.

---

[33] *Id.*, at 81,067, 81,070; 15 C.F.R. 705, Supplement No. 1 at para. (d)(4).

[34] *Id.* U. S. Steel further notes that, outside the specific context of Commerce's Section 232 exclusion process, standard industry lead times for various steel products that are actively manufactured in the United States often exceed eight weeks, especially when longer delivery terms are agreed upon in sales negotiations.

[35] 15 C.F.R. 705, Supplement No. 1 at para. (d)(4) (stating that it is incumbent on both exclusion requestors and objecting producers to provide supplemental supporting evidence). To the extent a specific exclusion request does not reach the surrebuttal stage, U. S. Steel urges Commerce to follow-up with objecting producers for such evidence because it is generally business proprietary in nature and, as such, cannot be securely submitted to Commerce with the initial public objection. The Section 232 exclusion process does not establish procedures for any party to submit confidential information prior to the rebuttal and surrebuttal stages.

III. REQUESTED VOLUME CERTIFICATIONS

U. S. Steel supports the new inclusion of a certification for volume requested at the initial exclusion request stage of the Section 232 exclusion process.[36] As confirmed by Commerce, certain entities consistently request significantly greater quantities of Section 232 tariff-free steel imports than they have historically consumed or otherwise required for their own business purposes.[37] Requiring exclusion requestors to certify their requested volumes, as outlined in the *Interim Final Rule*,[38] is a positive first step toward addressing this issue of excessive exclusion quantities.

In addition to simply requiring this additional certification, U. S. Steel encourages Commerce to explicitly consider significant volume increases, comparing requested quantity to historical consumption of a specific steel product, in its analysis of Section 232 exclusion requests. Furthermore, when granting Section 232 tariff exclusions, Commerce should use its authority to proactively adjust or limit exclusion quantities, as appropriate, in the context of historical consumption and whether the requestor has sufficient demonstrated a need for the full requested volume. Finally, U. S. Steel reiterates prior comments suggesting that Commerce revise its regulations such that only steel product end users are permitted to submit Section 232 tariff and quota exclusion requests.[39] Currently, trading companies and distributors are permitted to file requests, but such entities are ill-equipped to certify required volume and historical consumption of various products. Exclusion requests filed by trading companies are often exact

[36] 15 C.F.R. 705, Supplement No. 1 at para. (c)(5)(ii).
[37] *Interim Final Rule*, 85 Fed. Reg. at 81,061, 81,070.
[38] *Id.*, at 81,070; 15 C.F.R. 705, Supplement No. 1 at (c)(5)(ii).
[39] *See* U. S. Steel's Comments on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (RIN-0694-XC058), July 13, 2020.

duplicates of exclusion requests filed by end users,[40] thereby duplicating requested volumes and duplicating the analysis that must be conducted by Commerce. Revising exclusion request eligibility requirements would further Commerce's stated goal of addressing such procedural inefficiencies.

IV. MISCELLANEOUS

As noted in the introduction to these comments, U. S. Steel is generally supportive of the submission word limits established in the *Interim Final Rule*, which further Commerce's goal of improving the efficiency of the Section 232 exclusion request review process.[41] U. S. Steel also agrees with Commerce that the Section 232 Exclusions Portal's AutoFill Feature is a valuable tool that appropriately reduces the burden of participating in the exclusion process.[42] However, Commerce should decline to implement any additional Section 232 Exclusions Portal features that would permit revision of an exclusion request *after* it has been publicly posted for comment/objection.[43] Allowing for such *post hoc* revisions would complicate the administrative record of the edited request and potentially deny domestic producers of sufficient notice and opportunity to oppose the exclusion. U. S. Steel already sorts through hundreds of requests posted on the Section 232 Exclusions Portal *each day*, isolating the specific subset of requests for steel products within U. S. Steel's production capabilities. If requestors were given the ability to modify already posted exclusion requests,[44] each request would present a moving target for

---

[40] *See, e.g.*, Exclusion Requests 105672 (submitted by an end user) and 126279 (submitted by a trading company, which was identified in Exclusion Request 106672 as the end user's importer of record).

[41] *Interim Final Rule*, 85 Fed. Reg. at 81,070; 15 C.F.R. 705, Supplement No. 1 at paras. (e), (f)(2), (g)(2).

[42] *Interim Final Rule*, 85 Fed. Reg. at 81,069.

[43] *Id.*, at 81,065.

[44] Exclusion requestors currently have the ability to withdraw and refile technically flawed requests without prejudice. This remedy is sufficient.

domestic producers, requiring constant monitoring for changed specifications and negatively impacting the overall efficiency of the Section 232 exclusions process.

* * *

U. S. Steel recognizes the significant efforts by Commerce to continually improve the Section 232 steel and aluminum exclusions process and urges Commerce to quickly adopt the additional revisions suggested herein to appropriately address procedural and substantive concerns raised in earlier public comments and prevent the *Interim Final Rule* from undermining the overall efficacy of the Section 232 action.

North American Stainless

PUBLIC

February 12, 2021

Via Regulations.gov

Matthew S. Borman
Deputy Assistant Secretary for Export Administration
Bureau of Industry and Security
Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

RE: Section 232 Steel and Aluminum Tariff Exclusions Process [BIS-2020-

0022] Dear Mr. Borman:

Though North American Stainless (NAS) is a member of the American Iron and Steel Institute (AISI) and fully agrees with the concerns raised by AISI in its February 12, 2021 comments relating to the Interim Final Rule (IFA) creating General Approved Exclusions (GAEs), I feel compelled to submit these additional comments to bring to the attention of the Department of Commerce (Commerce) what I assume are unintended consequences of the IFRs to our company. Our Kentucky factory is the largest fully integrated stainless steel producer in the United States, where our 1,500 employees produce a wide range of products and grades. Thanks to the Section 232 tariffs addressing the threats from the Chinese and other imports, our employees have been able to safely continue working during the COVID 19 pandemic to supply our customers with quality U.S. stainless steel, including stainless needed for much needed medical equipment in the fight against COVID.

Though NAS monitored and filed objections to Requests for Exclusion, including the importing 300,000 tons of Chinese produced slabs from Indonesia which threatened the entire U.S. industry, NAS did not file objections to many Requests for Exclusion for small quantities or special grades. In retrospect, I suppose NAS should have objected because it is our understanding that the lack of objections is the basis for Commerce believing that granting automatic exclusions to 108 HTS codes, including at least 25 HTS stainless codes, will not harm U.S. workers which I respectfully submit is not correct. We reviewed our 2020 sales covered by these HTS codes and determined that these codes which now are approved for GAE equal [ ] of our 2020 sales.

The following examples may help to explain why NAS did not file objections for small quantities and why we are now so concerned with Commerce's new rule:

[ ] HTS Code [ ] – NAS sold [ ] mt of steel classified under this HTS code in 2020 and did not file objections to [ ] exclusion requests which totaled only [ ] of the total shipments under the code.

[ ] HTS Code [ ] – NAS sold [ ] mt of steel classified under this HTS code in 2020 and did not file objections to [ ] exclusion requests which totaled only [ ] of the total shipments under the code.

[ ] HTS Code [ ] – NAS sold [ ] mt of steel classified under this HTS code in 2020 and did not file objections to [ ] exclusion requests which totaled only [ ] mt or [ ] of the total shipments under the code.

The above information is confidential but I think it is important that you have the information to better understand the unintended consequences of the new rule on our company and its employees.

We request confidential treatment for the information in brackets (identified by "[ ]") in this submission, which contains reference to NAS' confidential business information. Public release of the information would endanger NAS' competitive position because it would reveal confidential sales information as well as sensitive commercial information on the specific products supplied by NAS not otherwise available to the public and not customarily released to the public. Thus, this is considered confidential information in accordance with 15 C.F.R. §705.6 (a). Additionally, this confidential business information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. §552(b)(4).

Thank you for considering our concerns. We also thank you and everyone at Commerce for your efforts to provide our employees with the opportunity to continue producing high quality stainless for our country.

Sincerely,

NORTH AMERICAN STAINLESS

Cristobal Fuentes
President, CEO

Southwire Company, LLC ("Southwire"), based in Carrollton, GA, is a leading manufacturer of a range of aluminum products, including aluminum rod. Southwire is a family-owned business, employing approximately 7,000 people at facilities in eleven states across the U.S.

Southwire provides the comments below on the interim final rule regarding the Section 232 aluminum tariff exclusion process published by the Department of Commerce's Bureau of Industry and Security ("BIS") on December 14, 2020.[1] Southwire's comments focus on the General Approved Exclusions ("GAE") contained in the interim final rule. In particular, Southwire encourages BIS to ensure that GAEs apply *only* to products in the tariff lines specified in the interim final rule.

Southwire has been an active participant in the Section 232 aluminum tariff exclusion process since it was initiated in 2018, including by objecting on several occasions to requested exclusions involving aluminum rod products. Southwire understands that the interim final rule provides for GAEs for aluminum products classified in fifteen tariff lines.

The tariff lines in question do not describe Southwire's products. As such, Southwire takes no position on the granting of GAEs for products in these tariff lines specifically. However, Southwire urges BIS to ensure that any GAEs apply only to products in the HTS lines specified in the interim final rule – and not to products in additional HTS lines that commenters may suggest.

The Section 232 tariffs have played a vital role in ensuring that domestic producers like Southwire can compete on a level playing field with foreign manufacturers. As Southwire has repeatedly stated in response to competitors' exclusion requests, Southwire's Hawesville, KY facility currently produces aluminum rod products and has additional capacity to provide additional aluminum rod to the market at a fair market price. Southwire's competitors have repeatedly suggested they are unable to source aluminum rod from domestic producers, when in reality these competitors have simply tried to circumvent the Section 232 duties and source cheaper rod from abroad. BIS has rightly denied these exclusion requests, but Southwire is concerned that competitors will attempt to use the GAE process as another "bite at the apple."

Accordingly, BIS should ensure that no GAEs are granted to products that classified outside the tariff lines specified in the interim final rule – and, in particular, that GAEs are not granted for aluminum rod products classified at HTS lines 7605.11.0000 or 7605.21.0000. These are the tariff lines that describe Southwire's aluminum rod products. Granting GAEs for products classified in these HTS lines would undermine the very goals of the Section 232 duties by allowing these products to be sourced from abroad at expense of domestic suppliers such as Southwire.

The Section 232 tariffs are intended to address the threat to national security posed by the importation of aluminum articles to the U.S. The tariffs are intended to create long-term viability of the domestic aluminum industry so that the United States does not become reliant on foreign producers to meet its national security needs. At a time of virtually unprecedented economic

[1] 85 *Fed. Reg.* 81060 (Dec. 14, 2020).

uncertainty, Southwire is proud that the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency has designated Southwire an essential business for the purposes of the COVID-19 crisis. It is especially important at this time to ensure that Southwire's domestic production is protected against unfair competition from abroad. Accordingly, BIS should ensure that any GAEs for aluminum products apply only to products classified in the fifteen HTS lines in the interim final rule.

* * *

DAVIS WIRE
THE HEICO COMPANIES
5555 North Irwindale Avenue, Irwindale, CA 91706
800.350.7851

February 12, 2021

Ms. Erika Maynard
Bureau of Industry and Security
US Department of Commerce

Dear Ms. Maynard,

Davis Wire Corporation ("Davis Wire") is the largest wire manufacturer in the Western United States. We operate two plants in California and Washington, where we employ over 200 individuals in manufacturing related jobs. We are committed to our US manufacturing workers and operations. Since 1927, we have built our company on a foundation of dependability and quality. We have one of the most diversified product lines in the world with the capability to meet virtually any wire application. Our diverse wire product offerings are used in industrial, transportation, power transmission, communications, agricultural, and construction applications.

We provide these comments to the *Section 232 Steel and Aluminum Exclusions Process* interim final rule ("IFR") published on December 12, 2020. Specifically, Commerce stated that it is seeking "comments highlighting any areas of concern or suggestions for improvement." IFR at 81071. We identify two areas of concern.

First, the IFR notes that the "steel … articles that have been identified as being eligible for GAEs have typically not received any objections." IFR at 81072. That is not the case for the following GAEs where BIS has previously received objections ***and*** denied exclusions:

GAE Identifier	HTS	Denied Exclusions (ERID)
GAE.37.S: 7217108030	7217108030	143535, 143527, 143514, 143503, 143495, 143490
GAE.39.S: 7217204560	7217204560	151558, 142864, 142860
GAE.71.S: 7217304541	7217304541	150165, 150071, 146804

Second, we are concerned that Commerce granted GAEs after consultation with multiple government stakeholders, but not the private sector. IFR at Supplement No. 2 to Part 705. We are particularly concerned with the wire related GAEs listed below (which includes the three with denied exclusions set forth above). As the largest wire producer in the Western United States, we have the capacity and expertise to produce wire products described by these GAEs, and doing so would support US manufacturing workers. It is also problematic that the GAEs, as adopted, contain broad language that differs from the exclusions that were previously requested and would encourage the circumvention of tariffed HTS codes. Under the old process, objections were tied to the specific language of the exclusion

request. Those requests described specific types of products, not general tariff classifications. Davis Wire objected to specific exclusions based on the product description, not the tariff classification. As noted, Davis Wire has the capability to produce products that fall under each of the descriptions set forth below but was deprived an opportunity to object to these broad GAEs.

GAE Identifier	HTS	Description
GAE.83.S: 7217104045	7217.10.4045	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON, DIAM <1.5MM, HEAT-TREATED, IN COILS WEIGHING >2 KG
GAE.94.S: 7217104090	7217.10.4090	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON, DIAM <1.5MM, NOT HEAT-TREATED
GAE.64.S: 7217106000	7217.10.6000	OTHER WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON
GAE.41.S: 7217108025	7217.10.8025	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >0.6% CARBON, HEAT-TREATED, DIAM <1.0MM
GAE.37.S: 7217108030	7217.10.8030	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >0.6% CARBON, HEAT-TREATED, DIAMETER >/=1.0MM BUT <1.5MM
GAE.11.S: 7217108060	7217.10.8060	ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >0.6% CARBON, NOT HEAT-TREATED, DIAM <1.0MM
GAE.108.S: 7217204550	7217.20.4550	ROUND WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC, DIAMETER >/=1.0MM BUT <1.5MM, >/=0.25% BUT <0.6% CARBON
GAE.39.S: 7217204560	7217.20.4560	ROUND WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC, DIAMETER >/=1.0MM BUT <1.5MM, >/=0.6% CARBON
GAE.71.S: 7217304541	7217.30.4541	ROUND WIRE IRON/NONALLOY STL, PLATED/COATED W/OTH BASE METALS,

		DIAMETER >/=1.0MM BUT <1.5MM, <0.25% CARBON
GAE.47.S: 7217905030	7217.90.5030	WIRE IRON/NONALLOY STL, NOT PLATED/COATED WITH BASE METALS OR PLASTICS, <0.25% CARBON
GAE.61.S: 7217905060	7217.90.5060	WIRE IRON/NONALLOY STL, PLATED/COATED, >0.25% BUT <0.6% CARBON
GAE.51.S: 7217905090	7217.90.5090	WIRE IRON/NONALLOY STL, NOT PLATED/COATED WITH BASE METALS OR PLASTICS, >/=0.6% CARBON

Commerce indicates in the IFR that it "may at any time issue a Federal Register notice removing, revising or adding to an existing GAE...." IFR at Supplement No. 2 to Part 705. We urge Commerce to do so as soon as possible in order to reconsider these GAEs because (1) several include classifications where Commerce has previously denied exclusions, and (2) US manufacturers like us did not have an opportunity to object to the GAEs before they entered into effect.

Sincerely,

Joe Barrett
President

VOLKSWAGEN
GROUP OF AMERICA
CHATTANOOGA OPERATIONS LLC.

Docket Number BIS-2020-0022

February 12, 2021

Matthew S. Borman
Deputy Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: Volkswagen Group of America Chattanooga Operations, LLC Proposed Recommendations Regarding the Exclusion Process for Section 232 Tariffs and Quota Limits

Dear Mr. Borman:

Volkswagen Group of America Chattanooga Operations, LLC ("VWGoACO") submits this comment in response to the request for comments issued by the U.S. Department of Commerce ("Commerce"), Bureau of Industry and Security, concerning its December 14, 2020 interim final rule revising certain aspects of the Section 232 product exclusion process.[1] As explained in Section I of this comment, as VWGoACO continues to expand its U.S. manufacturing sector presence, it has utilized the Section 232 product exclusion process to help sustain that growth. Despite its successes with this process, VWGoACO has also experienced firsthand certain inefficiencies of the process, and therefore supports the revisions contained in the December 2020 interim final rule. As explained in Section II of this comment, VWGoACO submits the below proposals as suggestions to further improve the Section 232 product exclusion process. Specifically,

[1] *Section 232 Steel and Aluminum Tariff Exclusions Process,* 85 Fed. Reg. 81,060 (Dec. 14, 2020).

VOLKSWAGEN
GROUP OF AMERICA
CHATTANOOGA OPERATIONS LLC.
8001 Volkswagen Drive
Chattanooga, TN 37416

VWGoACO makes two recommendations in this comment: (1) VWGoACO respectfully requests that Commerce issue additional guidance on the volume certification document request so that requesters can begin planning for those requests now; and (2) VWGoACO respectfully requests that Commerce expand the scope of granted exclusions in instances where identical products are classified in more than one Harmonized Tariff Schedule of the United States ("HTSUS") subheading. VWGoACO provides additional details on each suggestion below.

I. Due to the Section 232 Exclusion Process, VWGoACO Has Increased its Investment in U.S. Manufacturing, Job Growth, and Suppliers Over the Past Several Years

Over the past several years, VWGoACO has dedicated substantial resources to growing its U.S. manufacturing sector presence. To date, VWGoACO has invested $3.1 billion in its Chattanooga, Tennessee facility, where it supports over 3,800 manufacturing and other skilled, high-wage jobs. In Chattanooga, VWGoACO manufactures several popular automobile lines for markets worldwide, including the Passat sedan, the 7-passenger Atlas SUV, and the Atlas Cross Sport, a 5-passenger variant of the Atlas SUV. In 2019, VWGoACO broke ground on a new $800 million electric vehicle manufacturing facility in Chattanooga, the first for the VW Group in North America. This new manufacturing facility will add hundreds of new jobs to the Chattanooga area and expand VWGoACO's manufacturing base. Beginning in 2022, VWGoACO plans to produce an electric crossover SUV – the ID.4 – at this new facility, and hopes to begin production on a second battery-powered electric vehicle soon after.

VWGoACO has increasingly relied on steel procured from U.S. mills to sustain this growth. In 2017, VWGoACO sourced approximately 53% of its steel inputs from U.S. mills and

intends to increase this number to 70% by 2022. To meet these goals, VWGoACO is investing in changes to its manufacturing processes to accommodate additional U.S.-made steel products. For example, VWGoACO is currently investing in new stamping equipment that will accommodate certain U.S.-manufactured products that do not currently meet the width requirements of VWGoACO's existing stamping equipment. More broadly, in cases where strict safety requirements and other auto standards require an extensive and time-consuming qualification process to ensure the steel is suitable for use in automobiles, VWGoACO has been working with U.S. steel suppliers as they undergo the qualification process.

VWGoACO's growth and increased reliance on U.S. steel would not be possible without the Section 232 product exclusion process. At this time, there are no qualified domestic suppliers that can produce certain specialized steel parts that can be safely used in the manufacture of many VW Group vehicles. In those cases, VWGoACO must import parts from qualified overseas suppliers. Without the product exclusion process, the Section 232 tariffs would add millions of dollars to VWGoACO's operating costs and imperil VWGoACO's ability to continually invest in its facilities and expand its manufacturing base. Further, the Section 232 product exclusion process has given VWGoACO the flexibility to transition to U.S. suppliers safely. As detailed in its exclusion requests, VWGoACO's supplier qualification and testing process is time consuming, complex, and expensive, reflecting the intense scrutiny applied to automobile components by both VWGoACO and the National Transportation Safety Board ("NTSB"). As VWGoACO's U.S. presence has rapidly increased, the product exclusion process has allowed it to import steel from

qualified suppliers that have shown they can meet all U.S. safety standards, while investing the required time and resources to thoroughly evaluate new U.S. suppliers.

VWGoACO's Section 232 product exclusion request experience has demonstrated that these investments have paid off. In recognition of VWGoACO's commitment to U.S. manufacturing, Commerce has granted a number of VWGoACO's exclusion requests. Further, for several parts subject to these requests, VWGoACO has since identified and qualified a U.S. supplier, negating the need for renewed exclusions. VWGoACO is hopeful that these successes will continue as it grows its U.S. manufacturing footprint and expands its U.S. supplier relationships.

II. VWGoACO's Proposals for Creating a More Efficient Section 232 Exclusion Process

Although VWGoACO has benefitted from the Section 232 exclusion process, it has also experienced the process' inefficiencies firsthand. For that reason, VWGoACO supports the revisions contained in the December 2020 interim final rule, and respectfully submits its own recommendations to help Commerce create an even more efficient process: (1) that Commerce issue additional guidance on the volume certification document request; and (2) that Commerce expand the scope of granted exclusions in instances where identical products are classified in more than one HTSUS subheading. VWGoACO provides details on these recommendations below.

a. Commerce Should Clarify How it Will Administer the Volume Request Certification

VWGoACO supports Commerce's goal of decreasing the number of unneeded product exclusion requests by requiring the submission of a new certification concerning the product volume subject to each request. However, to ensure that this new requirement does not unnecessarily burden requesters, VWGoACO recommends that Commerce provide additional instructions on the documentation that must be submitted to substantiate a requester's volume requests.

Paragraph (c)(5)(ii)(E) of Supplement No. 1 to 15 C.F.R. § 705 stipulates that requesters certify that they will provide documentation regarding "past imports of steel or aluminum articles" and "projections for the current year," upon a request by Commerce. However, the interim final rule provides no additional guidance on the type of documentation that Commerce will accept to substantiate past imports and projections, whether the documentation will be eligible for confidentiality protections, or how Commerce will select which requesters must provide documentation. VWGoACO is concerned that, without such guidance, requesters may struggle to satisfy the documentation requirement, especially if they do not currently produce specific documentation for current-year projections or cannot publicly disclose documents for confidentiality reasons. In those situations, it is not clear whether Commerce could reject an otherwise valid request if it believes that submitted documentation is insufficient before seeking clarification from the requester. Even if Commerce commits to *not* summarily rejecting requests on those grounds, the lack of clarity on these issues could result in a less efficient Section 232

product exclusion process, as Commerce and requesters engage in back-and-forth discussion on documentation requests. Therefore, VWGoACO recommends that Commerce provide additional guidance on the documentation requirement so that requesters can plan and gather the appropriate documentation as needed.

In providing guidance, VWGoACO encourages Commerce to consider the practical challenges that arise with gathering and submitting documentation to substantiate volume requests. Specifically, VWGoACO recommends that Commerce consider the following:

- At a minimum, Commerce should ensure submitted documentation remains confidential, as the documentation covering customer requests or future projections is often subject to confidentiality requirements.
- Commerce should limit documentation requests related to past imports to less than five years prior to the request. Under U.S. customs regulations, importers are only required to preserve records for five years from date of entry,[2] meaning requesters are unlikely to be able to obtain information from before that time period and efforts to do so would be overly burdensome.
- Due to changing demands and market fluctuations, the documentation required to substantiate current year projections may take many different forms depending on the industry or individual requester, and Commerce should avoid requiring requesters to submit a specific type of document.

[2] *See*, 19 C.F.R. § 163.4(a).

- Likewise, Commerce should not require that requesters submit documentation prepared by third-party manufacturers and customers, as these entities are often unwilling to share this information.
- Finally, when Commerce believes that a requester has not submitted sufficient documentation to substantiate a volume request, VWGoACO encourages Commerce to work with the requester instead of rejecting the documentation and denying the request. Commerce should convey to the requester why the documentation is insufficient and give the requester an opportunity to provide additional information to substantiate its request.

VWGoACO believes that providing additional guidance on these issues will help requesters prepare for Commerce's documentation requests and cut down on unnecessary work on the part of Commerce, making the Section 232 exclusion process more efficient overall.

b. Commerce Should Update Exclusion Scopes To Account for Products Classified in More Than One HTSUS Subheading

In keeping with its goal of creating a more efficient Section 232 product exclusion process, VWGoACO recommends that Commerce also consider expanding the scope of granted exclusions in situations in which identical products are classified in more than one HTSUS subheading. Doing so will align with manufacturing realities and result in fewer requests.

As detailed in its exclusion requests, VWGoACO requires that its suppliers achieve certain quality standards to ensure that its products meet automotive safety regulations and integrate with VWGoACO's manufacturing processes. Many similarly-situated requesters require their own

standards or follow certain industry standards (*e.g.*, ASTM, API, etc.) for the same reasons. However, these standards do not always align with the HTSUS, on which exclusions are currently based. For example, VWGoACO accepts a titanium content between 0% and 0.3% for certain steel products used in its manufacturing process. However, the HTSUS classifies steel products with a titanium content of 0.049% or less differently than those with a titanium content of 0.05% or more.[3] Therefore, the very same VWGoACO part may be classified under two different HTSUS subheadings based solely on its titanium content, even though all other commercial characteristics – measurements, mechanical properties, end-uses, etc. – are the same and work equally well for VWGoACO's manufacturing purposes.

As a workaround, many requesters – VWGoACO included – submit two requests to account for both classifications, resulting in additional work for requesters, objectors, and Commerce. To reduce these redundant filings, VWGoACO recommends that Commerce expand the product scope definition of exclusions in these situations. Using the above example, Commerce could include in the scope definition of the excluded product the product- and exclusion-specific standards (*e.g.*, with a titanium content less than 0.3%) as well as the related HTSUS subheadings (*e.g.*, described in HTSUS 7210.XX.XXXX or 7225.XX.XXXX). Defining the scope of the excluded product based on such standards would thereby reduce the number of exclusion request submissions and minimize the burden on all parties involved.

[3] *See* Note 1(f) to Chapter 72 of the HTSUS.

* * * * *

VWGoACO is grateful to Commerce for the opportunity to present these comments and respectfully requests that Commerce consider the suggestions included in this submission. Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

John Critchfield
Corporate Counsel
Volkswagen Group of America, Inc.
8001 Volkswagen Drive
Chattanooga, TN 37416
Email: John.Critchfield@vw.com
Phone: +1-423-582-5140
Wireless: +1-423-596-5422

Philip K. Bell
President

Phone: (202) 296-1515
Fax: (202) 296-2506

21st Century Steelmakers

Friday, February 12, 2021

Submitted via www.regulations.gov

Matthew S. Borman
Deputy 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-AH55: Notice of Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0022)

In response to the Department of Commerce's (Department) request for public comments on *Interim Final Rule on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, the Steel Manufacturers Association (SMA) offers the following comments for the Department's consideration.

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 United States and account for over 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 95 percent recycled content.

Overview

The SMA applauds the Department for its ongoing efforts to ensure that the Section 232 product exclusion process operates as transparently and efficiently as possible. These efforts include issuing determinations on an unprecedented volume of more than 220,000 exclusion requests. SMA also appreciates modifications to the product exclusion process in response to the concerns raised by interested parties. These include specifically

requiring requestors to submit certifications regarding their requested volumes, and clarifying the term "immediately available," so that foreign producers do not gain unfair advantage over domestic producers in terms of production/delivery times. SMA also supports the proposal for submitting exclusion requests on a bi-annual basis, which should significantly streamline the exclusions process.

It is critical that any future modifications to the product exclusion process are consistent with the goals and objectives of the Section 232 program. The rule makes several changes/clarifications to the exclusion process (most of which are in effect), including the adoption of General Approved Exclusions ("GAEs"). If allowed to stand, the GAEs will result in significant import volumes being excluded from the Section 232 tariffs and will severely undermine the effectiveness of the 232 programs.

Commerce's "General Approved Exclusions" Will Undermine the Section 232 Program

In its final rule, Commerce identified 108 HTS codes/product descriptions that are approved for import under a GAE. As a result, these products can now be imported into the U.S. (no matter the source country) free from Section 232 tariffs without the need to apply for an exclusion. Further, GAEs are permanent and indefinite in length.

The GAEs are problematic for several reasons. First, while the GAEs are intended to capture steel products for which the domestic industry has never objected, the list contains numerous products that the domestic industry can and does produce. There are a number of reasons why the domestic industry may not object to a given request that are unrelated to domestic production capabilities (e.g., minimal volume requested, requests are in metric sizes, pending trials, and other commercial reasons). The mere fact that the domestic industry has not previously objected to a product exclusion request in no way justifies an indefinite blanket exclusion for that product.

Second, the HTS codes listed are significantly broader in terms of product coverage than the underlying exclusion requests that are the basis for Commerce's GAE list. As a result, the GAEs will likely exclude import volume from the 232 program that is far in excess of the actual tonnage at issue in the specific exclusion requests. As an example, from April 2018 to March 2020, the total volume of imports covered by the underlying exclusion requests (for non-stainless steel GAEs falling under Chapter 72) was 682,971 metric tons; this is compared to the 3,601,391 metric tons of imports that entered the U.S. market under the same HTS codes/product descriptions during the same period.

Third, the GAE list goes far beyond Commerce's stated purpose in implementing this change, which is to "create a more efficient method for approving exclusions" where objections have not been received on exclusion requests. By including broad HTS categories/product descriptions as the basis for its GAE list, Commerce is categorically excluding a wide range of steel products from the 232 program that were never subject to an exclusion request and to which the domestic industry never had an opportunity to object.

Fourth, excluding entire HTS categories from the Section 232 program will incentivize tariff misclassification and other forms of circumvention by U.S. importers.

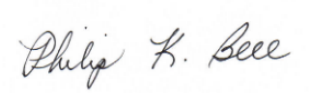
Conclusion – Commerce should immediately revoke all GAEs

Commerce's decision to permanently exclude 108 broadly defined HTS codes/product descriptions (many of which can be produced by the U.S. industry) from the Section 232 program is contrary to the program's objectives – i.e., to stimulate domestic steel production and capacity.

Significant volumes of U.S. steel imports are already entering the U.S. market free from Section 232 tariffs. Allowing additional volume to enter the U.S. market tariff free will severely undermine the program's effectiveness, and is particularly problematic given the dramatic declines in U.S. steel consumption and capacity utilization resulting from the current COVID-19 crisis.

Commerce should immediately revoke all GAEs until it can narrowly tailor the scope of these exclusions to products that the domestic industry is not capable of producing. At a minimum, Commerce should immediately revoke all GAEs where the import volume for the HTS code materially exceeds the volume subject to the underlying exclusion requests.

Sincerely,



Philip K. Bell
President, Steel Manufacturers Association

MARUBENI-ITOCHU TUBULARS AMERICA INC.

750 Town & Country Blvd., Suite 300, Houston, Texas 77024-3980
Tel: 281-368-7000; Fax: 281-368-7070

February 12, 2021

Comments of Marubeni Itochu Tubulars America, Inc. regarding the Interim Final Rule on the Exclusion process for Section 232 Steel and Aluminum Import Tariffs and Quotas

Marubeni Itochu Tubulars America, Inc. hereby submits the following comment on the interim final rule on the exclusion process for Section 232 Steel and Aluminum Import Tariff and Quotas pursuant to the invitation for comment set forth in the Commerce Departments *Section 232 Steel and Aluminum Tariff Exclusions Process* that was published in the Federal Register on December 14, 2020.

We seek to have the BIS reconsider the limitations imposed on the requester by the addition of the Volume Certification.

Paragraph (c)(5)(ii)(A) dictates that the exclusion requester intends to manufacture, process, or otherwise transform the imported product for which they have filed an exclusion request, or has a purchase order or orders for such products.

This greatly restricts our ability to support our customers and creates a timing issue within the supply chain. Customers will delay purchase because of the uncertainty of the Section 232 exclusion. If we are forced to wait until we have an order in hand to request an exclusion, our customers will not be able to use our bids to get orders because neither our customer nor theirs will know the final cost.

Furthermore, this contradicts the BIS' own response to a previous submitted concern, when comment was made regarding allowing unlimited number of refilings (refer to Comment (f) (2) of the interim final rule), the BIS responded that "Commerce believes that it is important to allow an unlimited number of exclusion requests to be submitted" and concluded their response with "Commerce does not agree that a restriction should be added to restrict the number of exclusion requests that may be submitted". Yet this volume certification paragraph was added.

We respectfully request that paragraph (c)(5)(ii)(A) be revised to allow documents other than purchase orders to justify filing for an exclusion request. The list should be expanded to include things like catalogs, a customer's inventory line up, project requirements, past orders, and forecasted product lists.

Respectfully submitted,

Carrie Starr

Carrie Starr

Assistant Sales Manager, Specialty Tubular Products

American Iron and Steel Institute

25 Massachusetts Avenue, NW
Suite 800
Washington, D.C. 20001
Phone 202.452.7100
Fax 202.452.1039

www.steel.org

Kevin M. Dempsey
President and CEO

February 12, 2021

Matthew S. Borman
Deputy Assistant Secretary for Export Administration
Bureau of Industry and Security
Department of Commerce
1401 Constitution Ave, NW
Washington, DC 20230

RE: Section 232 Steel and Aluminum Tariff Exclusions Process [BIS-2020-0022]

Dear Mr. Borman:

In response to a request[1] from the U.S. Department of Commerce (DOC), the American Iron and Steel Institute (AISI), on behalf of its producer member companies, is pleased to submit the following comments on the interim final rule (IFR) that revised the Section 232 product exclusions process on steel imports. AISI serves as the voice of the 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's membership is comprised of integrated and electric arc furnace steelmakers, and associate members who are suppliers to or customers of the steel industry.

I. Introduction

It has been nearly three years since the implementation of tariffs and quotas under Section 232 of the Trade Expansion Act of 1962 following a finding by the DOC that "present quantities and circumstances of steel imports" threaten to impair U.S. national security. As a result of the Section 232 remedy on steel imports, domestic steelmakers have been able to invest billions of dollars in new and upgraded facilities, which will further expand the capabilities of the industry to supply domestically produced steel for a wide range of applications.

Unfortunately, the COVID-19 public health crisis caused a significant drop in demand for steel in the United States while also increasing global overcapacity for steel, making

[1] Department of Commerce, "Section 232 Steel and Aluminum Tariff Exclusions Process," December 14, 2020, 85 FR 81060-81084.

the domestic steel industry even more vulnerable to renewed surges of steel imports. Thus, it is critical to maintain the effectiveness of the Section 232 program and essential that the product exclusions process does not undermine the integrity of the remedy.

The product exclusions 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, many of the exclusion requests that have been filed to date would undermine the Section 232 remedy, as importers requested exclusions for products that the domestic industry can make. In addition, requestors sought exclusions in volumes that vastly exceeded historical levels of steel imports.

We appreciate that DOC has taken steps to address some of these issues through its revision of the definition of "immediately available" and through the new certification requirement as to volume, and we strongly support these changes. Unfortunately, the adoption in the IFR of a new category of General Approved Exclusions (GAEs) is likely to weaken the overall effectiveness of the program by allowing a large volume of steel products that can be made by domestic producers to enter the U.S. market tariff-free, contrary to the purpose of the Section 232 program.

II. General Approved Exclusions

When DOC issued its request for comments in May 2020, it outlined for the first time the possibility of both blanket approvals and blanket denials of certain exclusion requests, and attached annexes of steel products based on objections made during the first two years of the exclusions process.[2] In our submission in July 2020,[3] we expressed concerns regarding the granting of blanket approvals, noting that one benefit of the Section 232 program was that it promoted increased investment by domestic steelmakers in new production capabilities to better serve the domestic market, including by re-entering market segments that may have been lost to foreign dumped and subsidized imports. Accordingly, just because a domestic steelmaker 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. As we also noted, the September 2018 update to the exclusions process included expedited review for requests that had not received objections from domestic steelmakers. This allowed domestic steelmakers the ability to

[2] 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.
[3] AISI Submission on "Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas," July 10, 2020.

object to a request, while simultaneously allowing requestors the ability to receive an accelerated decision in cases that were truly noncontroversial.

The IFR that went into effect on December 29, 2020, identified 108 tariff codes under the Harmonized Tariff Schedule (HTS) of the United States that are eligible for the new GAE program. Any steel product included in this list is now eligible for import into the U.S. tariff-free without seeking a specific product exclusion request. These 108 HTS tariff codes were derived from previous exclusion requests that were allegedly not objected to by domestic steelmakers; however, as noted in our July 2020 comments, just because a request did not receive an objection does not mean that the domestic industry does not produce or is not capable of producing the specific product.

As we noted more recently in a joint industry association letter of January 4, 2021,[4] there are many reasons why the domestic industry may not have objected to a given request that are unrelated to domestic production capabilities, including duplicative requests, minimal volume requested, misclassifications in the requests, requests in metric sizes, pending trials, and other commercial reasons. By granting GAEs solely based on past decisions by domestic producers not to object to specific exclusion requests, the new rule effectively eliminates specific segments of the domestic steel market from the Section 232 tariffs, while offering no recourse for domestic steelmakers.

This situation is extremely concerning because the current GAE list includes numerous steel products that the domestic industry can and does produce. Indeed, our January 4 letter lists several such products included in the program that the domestic steel industry currently produces.

We are also concerned that the list of products subject to GAEs is overly broad and goes beyond the intention of creating a more efficient and streamlined process for granting exclusion requests. The exclusions process is intended to be narrowly focused, requiring a detailed product description alongside a specific HTS code. But the GAEs are based on broad HTS categories that may capture many more products than were described in the original exclusion requests to which the domestic industry did not object. For example, while an exclusion request may have been narrowly tailored to a small volume of a proprietary grade of steel, the resulting GAE will include all products that fit within the same HTS category as that proprietary grade, even though these other products were not intended to be excluded by the original request. As a result, DOC is excluding steel products from the Section 232 remedy that were never the subject of an exclusion request.

---

[4] AISI, SMA, SSINA, CPTI 232 Coalition Letter to Secretary of Commerce Wilbur L. Ross Jr., January 4, 2021.

Additionally, the permanency of the GAE program is concerning since the IFR was issued without the ability of domestic industry to provide detailed feedback on the steel products included in the GAEs. In fact, the GAEs went into effect within 15 days of publication in the *Federal Register*, even though public comments were not due for another 45 days. While the initial request for comments in May 2020 provided the concept of blanket approvals and blanket denials and included a list of HTS tariff codes that could be included, an intermediate step is needed to afford domestic steelmakers the ability to provide detailed feedback on which HTS tariff codes should or should not be included in a GAE system.

To rectify the current situation, AISI requests that DOC immediately revoke all the GAEs until a proper review can take place, as the system as it currently stands creates a loophole that undermines the effectiveness of the Section 232 program. During the review, we would implore DOC to implement a formal process that will provide domestic steelmakers the ability to comment on which specific products and HTS codes should be included in a future GAE system prior to the establishment of these new tariff-free categories. This is necessary to ensure that no GAEs are granted for products that the domestic industry can produce.

III. New Certification Requirements

The domestic steel industry strongly supports the introduction of a certification requirement for all product exclusion requests to ensure requests are consistent with historic consumption of the specified steel products. In our submission last summer, we explained the need for requestors to provide detailed documentation alongside their product exclusion requests in the portal to reduce instances of erroneous or duplicative requests. Our submission outlined certain issues to be addressed in a certification process, including: (1) historic consumption data for the requested steel product; (2) documentation of the ability to domestically consume the requested product, including the historic product mix for the relevant production facility; and (3) a guarantee that the requested volume does not exceed historic consumption or processing ability by more than five percent.

The industry is pleased that DOC has implemented a thorough certification process where requestors must verify certain aspects of an exclusion request in order to disincentivize requestors from filing excessive or unnecessary exclusions. It is extremely important that requesters certify that they "expect to consume, sell, or otherwise use the total volume of product across all their active exclusions and pending exclusion requests in the court of their organization's business activities within the next

calendar year."[5] Furthermore, requiring that requestors verify that they utilized the full amount of previous exclusion requests will disincentivize requestors from filing requests far in excess of consumption trends.

Additionally, the new IFR includes a certification requirement that the volume requested is realistic based on current market conditions. The DOC has also informed requestors that they may need to provide specific documentation justifying claims presented in the exclusion request, particularly on historic import trends. Requesters must now validate that they either intend to utilize the imported steel for further manufacturing or processing, or that there is a purchase order in place for the product. Requestors must also certify that the purpose of their request is not to unfairly influence the price of the product. Ultimately, these new processes for certification – and under certain circumstances, verification – should help ease the burden on both objectors and DOC officials, who must thoroughly review each exclusion request.

One specific example of an issue that this volume certification requirement should address involves exclusion requests on imports of grain-oriented electrical steel (GOES) from South Korea, where DOC granted ten product exclusions in September 2020 and January 2021 on extra-wide (one meter) GOES. The total volume of exclusions requested far exceeded all U.S. GOES imports in 2020, even surpassing the largest amount of U.S. GOES imports from South Korea in any year. If the certification requirement had been in place when these ten exclusions were requested, all of the requests would have been denied. Given that some exclusion requests were granted despite concerns about the volume being requested, DOC should apply the changes in this IFR retroactively. If DOC did not apply these rule changes to previously-granted exclusions requests, it would perpetuate an inherent unfairness in the Section 232 exclusions process. The industry appreciates that DOC's new certification process is designed to address these types of scenarios, and therefor requests that this certification requirement be applied retroactively to existing exclusions as well.

IV. Immediately Available

One aspect of the exclusion process about which domestic steel producers expressed concern in the past was the more limited timeframe that objectors were expected to manufacture a requested steel product compared to the timeframe for availability of imports from foreign sources. As originally laid out, the eight-week timeframe for determining whether domestic production was "immediately available" was

[5] Department of Commerce, "Section 232 Steel and Aluminum Tariff Exclusions Process," December 14, 2020, 85 FR 81070.

unreasonable given that this same time constraint was not required for requestors to procure the steel from abroad. As we noted, a domestic producer's objection to an exclusion request should not be denied simply because the producer could not manufacture the product within eight weeks if the requestor could not procure the steel from a foreign supplier within that same timeframe.

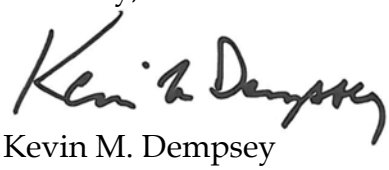
AISI appreciates that the IFR seeks to put domestic objectors and foreign suppliers on a more even playing field in terms of the ability to meet customer needs within a set timeframe. Objectors are no longer strictly limited to fulfilling a request within an arbitrary eight-week period if no foreign supplier can deliver the product within that same eight weeks. In such circumstances, a domestic objection should be recognized where the domestic producer can deliver the product in question in the same timeframe that it would take a foreign supplier to provide the competing product. This change will ensure that domestic producers are not given less time to produce the designated steel product than their foreign competitors.

V. Conclusion

We appreciate the steps the Department of Commerce has taken to address several of the industry's concerns with the Section 232 product exclusions process, particularly by adding a certification requirement that aims to limit excessive volume requests and by aligning the immediate availability requirement for both objectors and foreign suppliers. However, the integrity of the entire Section 232 program is at risk if the General Approved Exclusions program is allowed to continue as initially implemented. We request the immediate revocation of the 108 GAEs until a thorough review process can take place that ensures any such exclusions are limited to products that the domestic industry truly is not capable of producing.

Thank you for the opportunity to provide feedback to DOC on its interim final rule making modifications to the Section 232 product exclusions process. We appreciate the continued efforts by you and your team to ensure that product exclusion process is fair and equitable and ensures the continued effectiveness of the Section 232 remedy on steel.

Sincerely,



Kevin M. Dempsey
President and Chief Executive Officer

wiley

PUBLIC

Alan H. Price
aprice@wiley.law
202.719.4651

February 12, 2020

VIA REGULATIONS.GOV

Matthew S. Borman
Acting 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-AH55****: Notice of Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0022)*

Dear Acting Assistant Secretary Borman:

On behalf of Commercial Metals Company ("CMC"), we hereby submit the following comments in response to the U.S. Department of Commerce's (the "Department") request for comments on its *Interim Final Rule on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* ("*Interim Final Rule*").[1]

CMC is a U.S. steel producer with headquarters in Irvine, Texas, and operations throughout the United States. CMC has steel producing facilities in Alabama, Arizona, 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 Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 81,060 (Bureau of Indus. and Sec. Dec. 14, 2020).

As detailed below, while CMC appreciates the Department's ongoing efforts to make the Section 232 product exclusion process more effective and transparent, including through several changes and clarifications set forth in the *Interim Final Rule*, CMC has significant concerns regarding the Department's recent adoption of General Approved Exclusions ("GAEs"). GAEs will severely undermine and weaken the Section 232 program and, therefore, should be revoked immediately.

Pursuant to 15 C.F.R. § 705.6(a), CMC requests that the information contained in single brackets throughout this submission be treated as business confidential information and withheld from public disclosure. This information in brackets constitutes CMC's proprietary information, including trade secrets and commercial information, the release of which to the public would cause substantial harm to CMC's competitive position. This company proprietary information is exempted from public disclosure by the Freedom of Information Act at 5 U.S.C. § 552(b)(4). This information is also exempted from public disclosure in trade remedy cases, pursuant to 19 U.S.C. § 1677f(b). A non-confidential version of this letter with business confidential information redacted is being submitted concurrently with this business confidential version.

I. INTRODUCTION

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 more than 220,000 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 a number of modifications to the product exclusion process in response to concerns raised by interested parties. These modifications include two that are set forth in the

Interim Final Rule – specifically, requiring requestors to submit certifications regarding their requested volumes,[2] and clarifying the term "immediately available,"[3] so that domestic producers are not held to a higher standard than foreign producers in terms of production/delivery times. CMC strongly urges the Department to ensure that any future modifications to the product exclusion process are consistent with and further 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 declines in U.S. steel consumption and capacity utilization rates resulting from the current COVID-19 crisis. At the same time, global steel excess capacity continues to grow, with the OECD estimating that overcapacity reached 633 million metric tons in 2020, or the equivalent of 5.8 times total U.S. production capacity. 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.

As a result of country exclusions and product specific exclusions, it stands, the majority of significant volumes of U.S. steel imports are currently entering the U.S. market free from Section 232 tariffs. We estimate that since the inception of the program in March 2018, Commerce has granted more than 150,000 exclusions totaling almost 59 million metric tons of steel.

In light of this limited coverage and depressed U.S. demand for steel, any further erosion of the 232 measures – including by maintaining the GAEs and/or making any future adjustments to the exclusion process that result in an increase in U.S. import volumes excluded from tariffs – would render the program completely ineffective. To this end, if permitted to stand, the GAEs

---

[2] *Id.* at 81,070.

[3] *Id.* at 81,067-68.

will effectively eliminate the Section 232 tariffs on a large number of steel products that the domestic industry is capable of producing, thereby directly undermining the Section 232 program. Therefore, as detailed below, the Department should immediately revoke the GAEs.

II. THE DEPARTMENT SHOULD IMMEDIATELY REVOKE THE GAES

In its *Interim Final Rule*, the Department identified 108 codes under the Harmonized System of Tariffs ("HTS") that are approved for import under a GAE.[4] Any steel product classified in these HTS codes can now be imported into the U.S. free from Section 232 tariffs without the need to apply for an exclusion. These permanent, blanket exclusions are alarming for several reasons. As an initial matter, the GAE list contains a number of errors. While the GAEs are intended to capture steel products for which the domestic industry has never objected, the list contains numerous products that the domestic industry can and does produce. Further, the HTS codes listed are significantly broader in terms of product coverage than the underlying exclusion requests that are the basis for the Department's GAE list. In addition, the GAE list goes far beyond the Department's stated purpose in implementing this change, which is to "create a more efficient method for approving exclusions" where objections have not been received on exclusion requests.[5] Lastly, excluding entire HTS categories from the Section 232 program will incentivize tariff misclassification and other forms of circumvention by U.S. importers.

First, the Department's GAE list contains a number of errors. According to the Department, the "GAEs address a long-standing request from public comments of exclusion requesters to create a more efficient process to approve certain exclusions for use by all importers where Commerce has determined that no objections will be received and where it is warranted to approve an

---

4 *Id.* at 81,079-84.

5 *Id.* at 81,061.

exclusion for all importers to use."[6] This is not the case. In fact, the GAE list includes a number of products/HTS codes for which the domestic industry has submitted an objection.[7] The GAE list also includes a number of HTS codes for which the Department has denied a Section 232 exclusion request.[8] The Department's GAE list is, therefore, flawed.

Second, the GAE list contains a number of products that CMC can and does produce. As the chart below demonstrates, between 2019 and 2020, CMC produced and shipped a significant volume of steel products that fall within the scope of GAE 78 (HTS 7216400010) and GAE 90 (HTS 7216100010):

	Production (tons)		**Shipments (tons)**	
GAE/HTS	**2019**	**2020**	**2019**	**2020**
GAE 78/ HTS 7216400010	[ ]	[ ]	[ ]	[ ]
GAE 90/ HTS 7216100010	[ ]	[ ]	[ ]	[ ]

These volumes are significant and not hypothetical. They represent actual domestic steel production and shipments that are at risk of being replaced by imports if the Department maintains the GAEs.

The fact that the domestic industry has not previously objected to a product exclusion request does not justify an indefinite blanket exclusion. There are many reasons why the domestic industry may not object to a given request that are unrelated to domestic production capabilities. For instance, CMC did not object to the underlying exclusion requests for GAE 78 and GAE 90

---

6 *Id.* at 81,062.

7 *See* **Attachment 1**

8 For example, the Department has denied a Section 232 exclusion for the following products covered by a GAE: GAE 6, 7212600000, flat-rolled iron/nonalloy stl, wdth <600MM, CLAD; GAE 18, 7229905031, round wire other alloy stl, with diameter >/=1.0MM but <1.5MM; and GAE 43, 7209900000, flat-rolled iron/nonalloy stl, wdth >/=600MM, cold-rld, not claf/plated/coated, whether or not in coils.

because the requests were for metric sizes only, which the domestic steel industry does not produce. Had the exclusion requests been for U.S. imperial sizes, CMC and likely others in the domestic industry would have objected to these requests. Other reasons that a domestic producer may not object to a request include duplicative requests, minimal volume requested, misclassifications in the requests, pending trials, and other commercial reasons. None of these reflect a producer's inability to produce the requested product. Moreover, the sheer volume of requests alone has made it difficult for the domestic industry to carefully review and object to each request where it is capable of producing the product at issue.

Third, the GAE list is overly broad in its coverage and goes far beyond the Department's stated purpose in implementing this change, which is to "create a more efficient method for approving exclusions" where objections have not been received on exclusion requests.[9] Instead of being narrowly tailored to the specific products subject to exclusion requests that have received no objections, the GAE list is based on broad HTS categories that capture products beyond those defined in the underlying exclusion requests. As a result, the GAEs will allow imports to enter the U.S. market free from Section 232 tariffs in volumes that exceed the actual tonnage at issue in the specific exclusion requests.

Specifically, from April 2018 to March 2020, the total volume of imports covered by the underlying exclusion requests related to the 108 HTS codes was 1,484,375 metric tons; this is compared to the 2,469,747 metric tons of imports that entered the U.S. market under the same HTS codes during the same period. As one specific example, the total volume of imports for the 5 exclusion requests submitted under HTS 7216400010 (certain flat-rolled high strength hot-rolled

---

[9] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. at 81,061.

steel) was 5 metric tons as of March 2020; by contrast, 88,301 metric tons of imports entered the U.S. market under this HTS code during the same period.

Finally, excluding entire HTS categories from the Section 232 program will incentivize tariff misclassification and other forms of circumvention by U.S. importers. Indeed, excluding entire HTS categories from the scope of Section 232 tariffs and quotas will give U.S. importers every incentive to misclassify their product under an HTS code on the GAE list. With evasion and circumvention already a major problem with U.S. steel imports, the GAEs will only make matters worse.

In sum, by adopting the GAEs based on broad HTS categories instead of narrowly defined products, the Department is effectively excluding a wide range of steel products from the Section 232 program that were never subject to an exclusion request and that the domestic industry is producing, contrary to the purpose of the program. The end result will likely be a sharp increase in steel imports entering our market tariff free at a time when the industry is recovering from the COVID-19 shock. For these reasons, the Department should immediately and permanently revoke all GAEs. At a minimum, the Department should narrowly tailor the scope of these exclusions to products that the domestic industry is not capable of producing. Doing so would be entirely consistent with the Department's authority to "at any time issue a Federal Register notice

removing, revising, or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process" as set forth in the *Interim Final Rule*.[10]

III. THE DEPARTMENT SHOULD CONTINUE TO IMPOSE A CERTIFCATION REQUIREMENT FOR THE TONNAGE REQUESTED AND MAINTAIN ITS CLARIFICATION OF THE "IMMEDIATELY AVAILABLE" STANDARD

While CMC has serious concerns regarding the Department's adoption of GAEs, it commends the agency for implementing a certification requirement to address the excessive tonnage sought in many exclusion requests. CMC also supports the Department's refinement of the "immediately available" standard to ensure that domestic producers are not held to a higher standard than foreign producers in terms of production/delivery times.

With respect to tonnage requested, and as noted in CMC's prior comments to the Department, 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.[11] 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.[12] 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.[13] One of the more egregious examples of requests for excessive tonnage is slab, where, in total, U.S. slab importers CSI,[14] AM/NS Calvert, Evraz, JSW, and NLMK have submitted

---

[10] *Id.* at 81,071.

[11] Letter from Wiley Rein LLP to Assistant Sec'y for Export Administration, Bureau of Indus. and Sec., re: *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0012)* (July 10, 2020) at 5-6 ("CMC Comments on Product Exclusion Process").

[12] *Id.* at 6.

[13] *Id.*

[14] CSI alone has requested exclusion tonnage for slab totaling more than 32 million metric tons since the exclusions process was implemented.

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.[15] By contrast, U.S. imports of slab from *all sources* totaled only 6.2 million metric tons in 2018.

To help address this issue, the *Interim Final Rule* "specifies that in order to ensure that the volume requested in an exclusion request is consistent with legitimate business needs for the same steel or aluminum articles obtained (*i.e.*, imported from abroad either directly by the requester or indirectly by purchasing from distributors) by the entity requesting an exclusion, a certification needs to be made in the 232 Exclusions Portal when completing the submission of a 232 exclusion request."[16] *The Interim Final Rule* further notes that "an exclusion request that does not include a certification . . . will be treated as an incomplete submission and will therefore be rejected."[17] This new certification requirement is necessary to help ensure that the tonnage requested in exclusion requests more closely aligns with actual consumption.

In terms of the "immediately available" standard, in its prior comments to the Department, CMC argued that to the extent a requestor claims that an exclusion request should be granted because the domestic industry cannot produce and deliver a requested product within the necessary time frame, the requestor should provide documentary evidence that the imported product can be produced and delivered within the needed timeframe.[18] In response, the *Interim Final Rule* correctly recognizes that in "defining 'immediately available as eight weeks meant that, in certain cases, U.S. producers could be held to a shorter delivery time than foreign competitors and was

---

[15] *See generally* slab exclusion requests submitted by AM/NS Calvert, CSI, Evraz, JSW, and NLMK.

[16] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. at 81,070.

[17] *Id.*

[18] CMC Comments on Product Exclusion Process at 9.

more restrictive than the timeframe needed by the importer for their business needs."[19] In order "to address this fairness issue and to create equal treatment," the *Interim Final Rule* requires as follows:

> {I}f an objector is asserting that it is not currently producing the steel or aluminum identified in an exclusion request but can produce the steel or aluminum, the objector must be able to make it available in accordance with the commercial needs of the U.S. user of the steel or aluminum, as described in the exclusion request. Under this revised criteria in paragraph (d)(4), the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the date that a named foreign supplier can deliver the entire quantity of the requested product. It is incumbent on both the exclusion requester and the objecting producers to provide supplemental evidence supporting their claimed delivery times.[20]

CMC fully supports this clarification, which will help to ensure that U.S. producers are held to the same standard as foreign producers in terms of whether the requested product is available.

IV. CONCLUSION

In sum, CMC respectfully requests that the Department consider the aforementioned comments in implementing its *Interim Final Rule* and in making any further adjustments to its Section 232 exclusions process. Again, CMC emphasizes that any further adjustments made to the process should further the purpose of the Section 232 program by helping to stimulate domestic steel production.

---

[19] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. at 81,067.

[20] *Id.*

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,

Alan H. Price, Esq.

Counsel to Commercial Metals Company

ATTACHMENT 1

ATTACHMENT 1

GAE Identifier	GAE Number	Requesting Company	HTSUS Code	OBJ_ID	Objecting Company
GAE.52.S	125425	Nippon Yakin America, Inc.	7219220040	39178	ATI Flat Rolled Products Holdings, LLC
GAE.52.S	124869	Nippon Yakin America, Inc.	7219220040	39180	ATI Flat Rolled Products Holdings, LLC
GAE.52.S	124763	Nippon Yakin America, Inc.	7219220040	39182	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128781	Kanematsu USA Inc.	7219210005	40939	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128787	Kanematsu USA Inc.	7219210005	40940	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128796	Kanematsu USA Inc.	7219210005	40941	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128806	Kanematsu USA Inc.	7219210005	40942	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128818	Kanematsu USA Inc.	7219210005	40944	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128837	Kanematsu USA Inc.	7219210005	40945	ATI Flat Rolled Products Holdings, LLC
GAE.3.S	123645	voestalpine Precision Strip, LLC	7220900060	42622	Carpenter Technology Corporation
GAE.3.S	123645	voestalpine Precision Strip, LLC	7220900060	43274	Carpenter Technology Corporation
GAE.52.S	124763	Nippon Yakin America, Inc.	7219220040	44197	Electralloy, a G.O. Carlson Inc. Co
GAE.52.S	124869	Nippon Yakin America, Inc.	7219220040	44198	Electralloy, a G.O. Carlson Inc. Co
GAE.52.S	125425	Nippon Yakin America, Inc.	7219220040	44201	Electralloy, a G.O. Carlson Inc. Co
GAE.3.S	125724	voestalpine Precision Strip, LLC	7220900060	44550	Carpenter Technology Corporation
GAE.3.S	129971	voestalpine Precision Strip, LLC	7220900060	46850	Carpenter Technology Corporation
GAE.3.S	130144	voestalpine Precision Strip, LLC	7220900060	46851	Carpenter Technology Corporation
GAE.3.S	132492	voestalpine Precision Strip, LLC	7220900060	47446	Carpenter Technology Corporation
GAE.3.S	132495	voestalpine Precision Strip, LLC	7220900060	47452	Carpenter Technology Corporation
GAE.3.S	133156	voestalpine Precision Strip, LLC	7220900060	47453	Carpenter Technology Corporation
GAE.7.S	145880	Universal Bearings, LLC	7227901060	48711	Valbruna Slater Stainless, Inc.
GAE.7.S	145880	Universal Bearings, LLC	7227901060	48712	Valbruna Slater Stainless, Inc.
GAE.3.S	134737	voestalpine Precision Strip, LLC	7220900060	48749	Carpenter Technology Corporation
GAE.3.S	137900	voestalpine Precision Strip, LLC	7220900060	48750	Carpenter Technology Corporation
GAE.39.S	142860	Perfection Sources Corporation	7217204560	48898	Davis Wire Corporation
GAE.39.S	142864	Perfection Sources Corporation	7217204560	49183	Davis Wire Corporation
GAE.37.S	143490	Perfection Sources Corporation	7217108030	49185	Davis Wire Corporation

ATTACHMENT 1

GAE.37.S	143495	Perfection Sources Corporation	7217108030	49186	Davis Wire Corporation
GAE.37.S	143503	Perfection Sources Corporation	7217108030	49187	Davis Wire Corporation
GAE.37.S	143514	Perfection Sources Corporation	7217108030	49188	Davis Wire Corporation
GAE.37.S	143527	Perfection Sources Corporation	7217108030	49189	Davis Wire Corporation
GAE.37.S	143535	Perfection Sources Corporation	7217108030	49190	Davis Wire Corporation
GAE.87.S	143815	Vallourec USA Corporation	7304293180	50132	United States Steel Corporation
GAE.60.S	146813	DSS America, Inc	7225501110	50532	Crucible Industries LLC
GAE.60.S	147524	DSS America, Inc	7225501110	50533	Crucible Industries LLC
GAE.60.S	147057	DSS America, Inc	7225501110	50534	Crucible Industries LLC
GAE.60.S	147365	DSS America, Inc	7225501110	50535	Crucible Industries LLC
GAE.39.S	151558	Perfection Sources Corporation	7217204560	51483	WCJ Pilgrim Wire LLC
GAE.39.S	142864	Perfection Sources Corporation	7217204560	51492	WCJ Pilgrim Wire LLC
GAE.39.S	151558	Perfection Sources Corporation	7217204560	51966	WCJ Pilgrim Wire LLC
GAE.38.S	147698	Toyota Tsusho America, Inc	7212200000	52195	United States Steel Corporation
GAE.38.S	147676	Toyota Tsusho America, Inc	7212200000	52197	United States Steel Corporation
GAE.68.S	152951	Gantrex, Inc.	7302101015	52243	Steel of West Virginia
GAE.68.S	152759	Gantrex, Inc.	7302101015	52245	Steel of West Virginia
GAE.71.S	150165	Lotters Wire Corporation	7217304541	52368	WCJ - Pilgrim Wire, LLC
GAE.71.S	146804	Lotters Wire Corporation	7217304541	52387	WCJ - Pilgrim Wire, LLC
GAE.71.S	150071	Lotters Wire Corporation	7217304541	52449	WCJ - Pilgrim Wire, LLC
GAE.37.S	143527	Perfection Sources Corporation	7217108030	52695	Davis Wire Corporation
GAE.39.S	151558	Perfection Sources Corporation	7217204560	52696	Davis Wire Corporation
GAE.35.S	150215	Lotters Wire Corporation	7217901000	52814	WCJ - Pilgrim Wire, LLC
GAE.35.S	153648	Lotters Wire Corporation	7217901000	52817	WCJ - Pilgrim Wire, LLC
GAE.35.S	153677	Lotters Wire Corporation	7217901000	52819	WCJ - Pilgrim Wire, LLC
GAE.76.S	151473	Marubeni-Itochu Tubulars America Inc	7304293160	52823	United States Steel Corporation
GAE.76.S	157724	Marubeni-Itochu Tubulars America Inc	7304293160	52825	United States Steel Corporation
GAE.35.S	153700	Lotters Wire Corporation	7217901000	52828	WCJ - Pilgrim Wire, LLC

ATTACHMENT 1

GAE.35.S	153720	Lotters Wire Corporation	7217901000	52880	WCJ - Pilgrim Wire, LLC
GAE.35.S	155990	Lotters Wire Corporation	7217901000	52882	WCJ - Pilgrim Wire, LLC
GAE.35.S	154494	Lotters Wire Corporation	7217901000	52883	WCJ - Pilgrim Wire, LLC
GAE.35.S	156025	Lotters Wire Corporation	7217901000	52896	WCJ - Pilgrim Wire, LLC
GAE.35.S	154556	Lotters Wire Corporation	7217901000	52906	WCJ - Pilgrim Wire, LLC
GAE.35.S	156067	Lotters Wire Corporation	7217901000	52913	WCJ - Pilgrim Wire, LLC
GAE.35.S	156077	Lotters Wire Corporation	7217901000	52924	WCJ - Pilgrim Wire, LLC
GAE.35.S	156144	Lotters Wire Corporation	7217901000	53191	WCJ - Pilgrim Wire, LLC
GAE.35.S	156121	Lotters Wire Corporation	7217901000	53193	WCJ - Pilgrim Wire, LLC
GAE.35.S	156152	Lotters Wire Corporation	7217901000	53240	WCJ - Pilgrim Wire, LLC
GAE.39.S	151558	Perfection Sources Corporation	7217204560	54065	WCJ Pilgrim Wire
GAE.23.S	152344	Zapp Precision Wire	7220206010	55135	Carpenter Technology Corporation
GAE.56.S	159846	Crompion International, LLC	7219320036	57900	Carpenter Technology Corporation
GAE.75.S	166039	Kanematsu USA Inc.	7219210005	56543	Electralloy, a G.O. Carlson Inc. Co
GAE.37.S	170423	Inter Wire Products, INC.	7217108030	60918	Davis Wire Corporation
GAE.34.S	96882	ATLAS STEEL PRODUCTS CO.	7219330025	27934	Crucible Industries LLC

wiley

PUBLIC

Alan H. Price
aprice@wiley.law
202.719.4651

February 12, 2020

VIA REGULATIONS.GOV

Matthew S. Borman
Acting 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-AH55****: Notice of Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0022)*

Dear Acting Assistant Secretary Borman:

On behalf of Steel Dynamics, Inc. ("SDI"), we hereby submit the following comments in response to the U.S. Department of Commerce's (the "Department") request for comments on its *Interim Final Rule on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* ("*Interim Final Rule*").[1] As described further below, SDI requests that GAE 78 (HTS 7216400010) be immediately revoked.

Pursuant to 15 C.F.R. § 705.6(a), SDI requests that the information contained in single brackets throughout this submission be treated as business confidential information and withheld from public disclosure. This information in brackets constitutes SDI's proprietary information, including trade secrets and commercial information, the release of which to the public would cause substantial harm to SDI's competitive position. This company proprietary information is exempted from public disclosure by the Freedom of Information Act at 5 U.S.C. § 552(b)(4). This

[1] *See Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 81,060 (Bureau of Indus. and Sec. Dec. 14, 2020).

information is also exempted from public disclosure in trade remedy cases, pursuant to 19 U.S.C. § 1677f(b). A non-confidential version of this letter with business confidential information redacted is being submitted concurrently with this business confidential version.

While SDI appreciates the Department's ongoing efforts to make the Section 232 product exclusion process more effective and transparent, SDI has significant concerns regarding the Department's recent adoption of General Approved Exclusions ("GAEs"). Specifically, the GAEs, which are based on HTS codes, are significantly broader in terms of product coverage than the underlying exclusion requests that are the basis of the Department's GAE list. Indeed, while the GAEs are intended to capture steel products for which the domestic industry has never objected to and are unable to manufacture, the list contains numerous products that the domestic industry, including SDI, can and does produce.

As the chart below shows, in both 2019 and 2020, SDI shipped over [ ] of steel products that fall within the scope of GAE 78 (HTS 7216400010), which consists of "L SECTIONS IRON/NONALLOY STL, HOT-ROLLED/DRAWN/EXTRUCTED, HEIGHT >/=80MM":

	Shipments (tons)	
GAE/HTS	**2019**	**2020**
GAE 78/ HTS 7216400010	[ ] NT	[ ] NT

These volumes are neither insignificant nor hypothetical. Rather, they represent actual domestic steel production and shipments that are at risk of being replaced by imports if the Department maintains this GAE. By contrast, the total volume of imports covered by the exclusions related to

GAE 78 were only 24.5 NT from 2019 through 2020.[2] As such, these exclusion amounts represent just a tiny fraction of SDI's production of these products during this period.

The fact that the domestic industry has not previously objected to a product exclusion request does not justify an indefinite blanket exclusion. There are many reasons why the domestic industry may not object to a given request that are unrelated to domestic production capabilities. For instance, SDI did not object to the underlying exclusion requests for GAE 78 because SDI manufactures L shaped angles in imperial weights. Since the requests were for metric sizes only, SDI did not object to these requests.

In sum, by adopting the GAEs based on broad HTS categories instead of narrowly defined products, the Department is effectively excluding a wide range of steel products from the Section 232 program that were never subject to an exclusion request and that the domestic industry is producing, contrary to the purpose of the program. The end result will likely be a sharp increase in steel imports entering our market tariff free at a time when the industry is operating at depressed levels due to the COVID-19 crisis. For these reasons, the Department should immediately and permanently revoke GAE 78 (HTS 7216400010).

---

[2] *See generally* U.S. Dep't of Commerce Section 232 Steel and Aluminum Portal, *available at* https://232app.azurewebsites.net/steelalum.

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,

Alan H. Price, Esq.

Counsel to Steel Dynamics, Inc.

wiley

PUBLIC

Timothy C. Brightbill
tbrightbill@wiley.law
202.719.3138

February 12, 2020

VIA REGULATIONS.GOV

Matthew S. Borman
Acting 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-AH55****: Notice of Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0022)*

Dear Acting Assistant Secretary Borman:

On behalf of the American Line Pipe Producers Association ("ALPPA"), we hereby submit the following comments in response to the U.S. Department of Commerce's (the "Department") request for comments on its *Interim Final Rule on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quota*s ("*Interim Final Rule*").[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.

At the outset, ALPPA respectfully submits that maintaining robust Section 232 tariffs on U.S. imports of LDWP has become even more important given substantial declines in U.S. LDWP

[1] *See Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 81,060 (Bureau of Indus. and Sec. Dec. 14, 2020).

consumption and capacity utilization rates stemming from the ongoing COVID-19 pandemic, increased U.S. imports of LDWP (including those not subject to Section 232 tariffs), and other factors. Moreover, notwithstanding declining U.S. demand for LDWP, global LDWP production and capacity continues to grow, creating excess capacity. As a result, the U.S. LDWP industry is even more vulnerable today than in prior years to the increased imports that would result from any further weakening of the Section 232 program.

While ALPPA appreciates the Department's ongoing efforts to make the Section 232 product exclusion process more effective and transparent, including through several changes and clarifications set forth in the *Interim Final Rule*, ALPPA has significant concerns regarding the Department's recent adoption of General Approved Exclusions ("GAEs"). GAEs will undermine and weaken the Section 232 program and, therefore, should be revoked immediately.

I. THE DEPARTMENT SHOULD IMMEDIATELY REVOKE THE GAES

In its *Interim Final Rule*, the Department identified 108 codes under the Harmonized System of Tariffs ("HTS") that are approved for import under a GAE.[2] Any steel product classified in these HTS codes can now be imported into the U.S. free from Section 232 tariffs without the need to apply for an exclusion. These permanent, blanket exclusions are problematic and concerning for several reasons.

As an initial matter, the GAE list contains errors. While the GAEs are intended to capture steel products for which the domestic industry has never objected, the list contains line pipe products that domestic LDWP producers can and do produce. Further, the HTS codes listed are significantly broader in product coverage than the underlying exclusion requests that are the basis

[2] *Id.* at 81,079-84.

for the Department's GAE list. In addition, the GAE list goes far beyond the Department's stated purpose in implementing this change.[3] Lastly, excluding entire HTS categories from the Section 232 program will incentivize tariff misclassification and other forms of circumvention by U.S. importers.

First, the Department's GAE list contains errors. According to the Department, the "GAEs address a long-standing request from public comments of exclusion requesters to create a more efficient process to approve certain exclusions for use by all importers where Commerce has determined that no objections will be received and where it is warranted to approve an exclusion for all importers to use."[4] This is not the case. In fact, the GAE list includes a number of products/HTS codes for which domestic producers have submitted an objection, covering more than a dozen GAEs. Moreover, the GAE list also includes a number of HTS codes for which the Department has denied Section 232 exclusion requests.[5] The Department's GAE list is, therefore, flawed.

Second, the GAE list contains products that ALPPA can and does produce. Specifically, at least one or more ALPPA members has produced LDWP classified under GAE #77/HTS No. 7305316090 and GAE #107/HTS No. 7305391000 during the prior two-year period. The fact that the domestic LDWP industry has not previously objected to a product exclusion request does not justify an indefinite blanket exclusion for an entire HTS category. There are many reasons why domestic producers may not have previously objected to a prior request that are unrelated to current

---

[3] *Id.* at 81,061.

[4] *Id.* at 81,062.

[5] For example, the Department has denied a Section 232 exclusion for the following products covered by a GAE: GAE 6, 7212600000, flat-rolled iron/nonalloy stl, wdth <600MM, CLAD; GAE 18, 7229905031, round wire other alloy stl, with diameter >/=1.0MM but <1.5MM; and GAE 43, 7209900000, flat-rolled iron/nonalloy stl, wdth >/=600MM, cold-rld, not claf/plated/coated, whether or not in coils.

domestic production capabilities. These include, for example, duplicative requests, minimal volume requested, misclassifications in the requests, pending trials, and other commercial reasons. None of these reflect a producer's inability to produce the requested product. In fact, due to sharply declining demand in the United States, ALPPA members have significantly more available capacity roday than in prior years. These domestic LDWP producers are now being forced to reduce employee shifts and hours given depressed demand. Finally, the sheer volume of requests alone has made it extremely difficult for the domestic industry and individual companies to carefully review and object to each request where it is capable of producing the product at issue.

Third, the GAE list is overly broad in its coverage and goes far beyond the Department's stated purpose in implementing this change, which is to "create a more efficient method for approving exclusions" where objections have not been received on exclusion requests.[6] Instead of being narrowly tailored to the specific products subject to exclusion requests that have received no objections, the GAE list is based on broad HTS categories that capture products beyond those defined in the underlying exclusion requests. As one specific example, the total volume of U.S. imports for the one exclusion request submitted under HTS 7305391000 (covers certain welded pipe) was only eight metric tons as of March 2020; by contrast, 18,050 metric tons of U.S. imports entered the U.S. market under this HTS code during the same period. As a result, the GAEs will allow imports to enter the U.S. market free from Section 232 tariffs in volumes that exceed the actual tonnage at issue in the specific exclusion requests.

Finally, excluding entire HTS categories from the Section 232 program will incentivize tariff misclassification and other forms of circumvention by U.S. importers. Indeed, excluding

---

[6] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. at 81,061.

entire HTS categories from the scope of Section 232 tariffs and quotas will give U.S. importers strong incentives to misclassify their product under an HTS code on the GAE list. With evasion and circumvention already a problem with U.S. imports of LDWP, the GAEs will only make matters worse.

In sum, by adopting the GAEs based on broad HTS categories instead of narrowly defined products, the Department is effectively excluding a wide range of LDWP and other steel products from the Section 232 program that were never subject to an exclusion request and that the domestic industry is producing, contrary to the purpose of the program. The end result will likely be a sharp increase in LDWP imports entering the U.S. market tariff free at a time when the industry is recovering from the COVID-19 shock. For these reasons, the Department should immediately and permanently revoke all GAEs. At a minimum, the Department should narrowly tailor the scope of these exclusions to products that the domestic industry is not capable of producing. Doing so would be entirely consistent with the Department's authority to "at any time issue a Federal Register notice removing, revising, or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process" as set forth in the *Interim Final Rule*.[7]

II. THE DEPARTMENT SHOULD CONTINUE TO IMPOSE A CERTIFICATION REQUIREMENT FOR THE TONNAGE REQUESTED AND MAINTAIN ITS CLARIFICATION OF THE "IMMEDIATELY AVAILABLE" STANDARD

While ALPPA has serious concerns regarding the Department's adoption of GAEs, it commends the agency for implementing a certification requirement to address the excessive tonnage sought in many exclusion requests. ALPPA also supports the Department's refinement of

[7] *Id.* at 81,071.

the "immediately available" standard to ensure that domestic producers are not held to a higher standard than foreign producers in terms of production/delivery times.

With respect to tonnage requested, and as noted in ALPPA's prior comments to the Department, 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.[8] 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.[9] 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.[10]

To help address this issue, the *Interim Final Rule* "specifies that in order to ensure that the volume requested in an exclusion request is consistent with legitimate business needs for the same steel or aluminum articles obtained (*i.e.*, imported from abroad either directly by the requester or indirectly by purchasing from distributors) by the entity requesting an exclusion, a certification needs to be made in the 232 Exclusions Portal when completing the submission of a 232 exclusion request."[11] *The Interim Final Rule* further notes that "an exclusion request that does not include a certification . . . will be treated as an incomplete submission and will therefore be rejected."[12] This

---

[8] Letter from Wiley Rein LLP to Assistant Sec'y for Export Admin., Bureau of Indus. and Sec., re: *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0012)* (July 10, 2020) at 5-6 ("ALPPA Comments on Product Exclusion Process").

[9] *Id.* at 6.

[10] *Id.*

[11] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. at 81,070.

[12] *Id.*

new certification requirement is necessary to help ensure that the tonnage requested in exclusion requests more closely aligns with actual consumption.

In terms of the "immediately available" standard, in its prior comments to the Department, ALPPA argued that to the extent a requestor claims that an exclusion request should be granted because the domestic industry cannot produce and deliver a requested product within the necessary time frame, the requestor should be required to provide documentary evidence that the imported product can be produced and delivered within the needed timeframe.[13] In response, the *Interim Final Rule* correctly recognizes that in "defining 'immediately available as eight weeks meant that, in certain cases, U.S. producers could be held to a shorter delivery time than foreign competitors and was more restrictive than the timeframe needed by the importer for their business needs."[14] In order "to address this fairness issue and to create equal treatment," the *Interim Final Rule* requires as follows:

> {I}f an objector is asserting that it is not currently producing the steel or aluminum identified in an exclusion request but can produce the steel or aluminum, the objector must be able to make it available in accordance with the commercial needs of the U.S. user of the steel or aluminum, as described in the exclusion request. Under this revised criteria in paragraph (d)(4), the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the date that a named foreign supplier can deliver the entire quantity of the requested product. It is incumbent on both the exclusion requester and the objecting producers to provide supplemental evidence supporting their claimed delivery times.[15]

ALPPA fully supports this clarification, which will help to ensure that U.S. producers are held to the same standard as foreign producers in terms of whether the requested product is available.

---

[13] ALPPA Comments on Product Exclusion Process at 9.

[14] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg at 81,067.

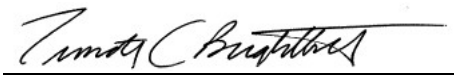
[15] *Id.*

III. CONCLUSION

In sum, ALPPA respectfully requests that the Department consider these comments in implementing its *Interim Final Rule* and in making any further adjustments to its Section 232 exclusions process. Again, ALPPA emphasizes that any further 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 us if you have any questions.

Respectfully submitted,



Timothy C. Brightbill, Esq.

Counsel to ALPPA

February 12, 2021

The United States Commerce Department
Bureau of Industry and Security
Section 232 Investigation
Imports of Steel

MAGELLAN CORPORATION

BIS-2020-0022

COMMENTS ON SECTION 232 INTERIM FINAL RULE

Magellan Corporation ("Magellan") is commenting on The Department of Commerce ("Commerce Department"), Bureau of Industry and Security's ("BIS") *Interim Final Rule: Section 232 Steel and Aluminum Tariff Exclusions Process* Docket number BIS-2020-0022 or RIN 0694-AH55. Magellan previously provided comment to BIS in response to the request for comments as detailed in Federal Register Vol. 85, No. 101, dated Tuesday, May 26, 2020.

I. The Company

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 Deerfield, 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 purchaser of American made steel, distributing the supply from domestic manufacturers with manufacturer purchasers around the country. Since 2018, Magellan has been compelled to pay tariffs imposed pursuant to Section 232 in connection with its importation of steel manufactured outside the United States.

1650 Lake Cook Road, Deerfield, IL60015 USA
847.205.1155 Telephone · 847.564.4779 Facsimile · www.e-magellan.com

II. Interim Final Rule

While Magellan appreciates the Department's efforts to improve the exclusion process and for a willingness to consider input, we find the changes instituted in the interim final rule to continue to be insufficient, do not solve the problems with the process and lacking in rigor, consistency, coordination and fairness.

The overall BIS objective of creating a more efficient process interim final rule states it achieves three primary objectives. The first is the adoption of a General Approved Exclusion (GAE) process that will provide an unlimited exclusion for specifically listed products. Second, the rule adds new certification requirements for volumes requested and reiterates the prohibition of making false statements to the government. Third, the rule redefines the term "immediately" to ensure it applies evenly to US objectors and foreign suppliers.

Magellan submits that the exclusion process needs continued refinement to create a swift, objective and fair process. As noted in the interim final rule, it does not summarize or respond to all of the comments included in the May 26, 2020 Federal Register Notice (85 Fed. Reg. 31441). We hope that comments submitted by Magellan and others, along with these comments will inform the Department of vital revisions in the next iteration of the 232 exclusion process. As such, we provide these comments demonstrating the fundamental flaws with the interim final rule and the exclusion process. We further submit suggested changes to the interim final rule to address these flaws.

A. Fundamental Flaws

- *The 232 Exclusion Process Selects Winners and Losers*

A primary flaw with the interim final rule is that the exclusion framework functionally permits BIS to create winners and losers without proper adequate knowledge to make an informed decision. In evaluating exclusion requests, the BIS should operate as a neutral

decision maker balancing the competing interests for the overall good of the United States economy. The same objective criteria applied to one application should be applied to all applications. If an objection is made to an exclusion request, that objection should be considered for any subsequent request for the same product. Currently, BIS upholds virtually all objections without considering if the objectors are targeting specific competitors while not objecting to other requests. The end result is that BIS functionally rubber stamps the preferences of objectors regarding which of their competitors will or will not be granted exclusions from the tariffs. This flaw is evidenced by the fact that there are many instances in which one requestor is determined to be a winner (granted an exclusion) and another requestor of an identical product is determined to be a loser (denied the exclusion).

- *Anonymity*

The winners and losers paradigm results, in part, from the fact that the names of the requestors are disclosed during the exclusion process. This enables objectors—who are commonly competitors of requestors—to develop a profile of the requestors' business, and through the filing or non-filing of objections, to help certain such competitors (by staying silent) while harming others (by filing objections—certain to be sustained—even against identical products to which they did not object when exclusions were sought by other companies). The resulting BIS decisions are therefore not driven by whether the importation of the specific product is helpful or harmful to the national security, but rather by whether a company can obtain a competitive advantage by objecting. Further, companies/competitors may use the information gleaned from the petitions filed to obtain proprietary information on specific product offerings. **The interim final rule should be amended to make submissions for exclusions anonymous. The identity of objectors should not be anonymous to enable the requestors to reach out to the domestic industry to provide the goods they allege they produce and can supply.**

- *Cumulative Consideration*

By calling for the evaluation of each particular exclusion request independently and without reference to other exclusions, the process results in inconsistent outcomes. Exclusions are granted purportedly based on the non-availability of the product from the domestic industry. If the product is not available in response to one request, it is not available to a second request. As such, the decision to grant an exclusion should be applicable broadly, and not limited to a particular requestor and objector. While domestic availability may change over time, within discrete time periods, the availability of a product should not change depending on the identity of the company seeking the exclusion. For the exclusion framework to operate with integrity and consistency, BIS must be required to take into account more than just whether or not an objection was filed in opposition to any particular exclusion request. BIS must be required to consider the totality of all the requests for exclusions for a single product, including the volume being sought and the ability of the domestic industry to supply the requested volume from its own domestic production facilities.

Furthermore, taking a comprehensive review approach to products versus to individual companies seeking exclusions, BIS would have visibility into exclusion request abusers. Certain companies continue to submit requests that do not reflect the current market demand for their exclusion requests. Taken individually, this abuse cannot be detected, but when looking cumulatively at the requests for the product, BIS would have visibility into this issue.

The interim final rule should be amended to apply a consistent and coordinated objective framework to the product at issue (not to the entity seeking the exclusion) to remove the perception of BIS choosing winners over losers, or in allowing the domestic industry to target specific competitors.

- *Partial Exclusions*

If BIS uses a comprehensive and objective framework in considering exclusion requests, it will be able to assess domestic production capacities. BIS will be able to determine whether a domestic producer can meet the cumulative needs of all the requests. BIS must consider:

- whether the domestic producer can produce the full quantity being requested or only a portion of the total;
- whether the domestic producer can only produce one component or a semi-finished product which then requires additional processing by an unnamed/unknown third entity to supply the exact product; and,
- whether the domestic producer is also an importer and has been granted an exclusion for the same product intending to meet the exclusion request using its own exclusion for the imported product.

These considerations should not be sufficient to justify the complete denial of an exclusion request, but it should not grant the full exclusion request either. **Thus, the interim final rule should be modified to enable adjudicators to grant exclusions in part, and to provide the appropriate guidance for such partial exclusions.**

- *GAE Additions*

The addition of "General Approved Exclusions" ("GAE") to the exclusion framework is a positive development in eliminating the filing of needless individual exclusion requests for products presumptively subject to tariff-free importation. The concept of the GAE will provide greater certainty to the industry for importers and downstream domestic processors and users of the GAE listed goods. If properly instituted, it will ensure an even, reliable source of supply for those U.S. industries that rely upon access to specific materials. However, as currently drafted, it is insufficient.

The current process does not provide a coherent method for promulgating additional GAE. **The interim final rule should be amended to provide a clear process for seeking the**

addition of products to the GAE list; to provide a detailed explanation of the process for the review of these requests; and provide a regular and recurring timeframe for submitting requests for additions to the GAE.

- *The Interim 232 Regulations Ignore Key Industry Segments*

The interim 232 regulations ignore key industry segments by implementing certification requirements that effectively deny certain customer classes access to the exclusion process. The requirement that an attestation must be filed regarding an intention to manufacture, process or otherwise transform the imported product for which the exclusion request is being filed, or to provide a purchase order for the product as well as the requirement for renewal request to attest to having used the full amount of the prior request limits the exclusion process to end users that directly request exclusions and to suppliers of these end users that are able to obtain commitments in the form of orders and purchase orders from such end users. This certification process typically denies the following entities the ability to use the exclusion process:

- *Smaller manufacturers that purchase steel from service centers in smaller quantities on an as-needed basis*. Smaller volume orders tend to be made by smaller businesses that are unable to make longer-term, larger commitments. As a result, they are effectively frozen out of a process that require certifications as currently envisioned. They cannot project their needs in a given year and cannot afford to place purchase orders for larger volumes.
- *Service centers that sell steel to end users*. Service centers survive by having available a range of steel for purchase by smaller end users. Such steel is held in stock. The certifications do not allow for steel service centers to participate in the exclusion process. The certifications, as currently constructed, do not allow the importation of steel to hold the product in stock for sale to Customers based on projected needs.

- *Steel Distributors*. These entities import larger quantities of steel and also purchase steel from domestic mills. These entities hold this steel for distribution to service centers and small and medium sized manufacturers in order to fill-in gaps in supply. These service centers and small and medium sized manufacturers purchase from large importers and distributors because these importers and distributors have created a business model in which they buy steel up front anticipating trends and needs for the coming year. They bear the cash outlay and risk and are able to provide a broad range of product to these service centers and small and medium sized manufacturers.

The interim final rule should amend 5(ii)(A) - the requirement to certify that the requestor is the entity that will manufacture, process or otherwise transform the imported product or require a purchase order.

- *New Certification Requirements Act as an Unfair Trade Barrier*

The new certification requirement also stipulates that the filer must attest that it intends to consume, sell or otherwise use the total volume of product across all active exclusions within a calendar year assumes that business is conducted on a calendar year basis. That is not how business works and it would require a complete depletion of inventory each year. For steel distributors, they rely on product inventory in sufficient quantities to meet the needs of domestic producers. Such needs are fluid and fluctuate within a given year and from year to year. As much science as possible is included speculating on the demands for certain products but can never be fully accurate. Thus, the business model and the ability to predict use in a calendar year discriminate against steel distributors.

The interim final rule should amend 5(ii)(C) – the requirement to consume, sell, or otherwise use the total volume of all product across all active exclusions within the calendar year.

- *The Approval Process Is Unclear and Uncertain*

The approval process needs to be further modified to provide greater clarity and certainty. At this time, the approval process does not contain any clear standards to determine whether or not an exclusion is to be issued. There are no clearly stated criteria for either approval or denial. The process does not allow requestors to address surrebuttal arguments or to correct errors in a BIS determination. Simply put, there is no opportunity to address a BIS determination and point out flaws in the decision. **The interim final rule should be amended to establish an appeal process to BIS for denied requests. This process should consider the correction of facts relevant to the case and require that BIS confirm assertions by the requestors.**

- *Pending Requests Should Not be Retroactively Modified*

When the interim regulations were promulgated, the certification language was retroactively added to all requests for exclusion (whether granted, pending, or denied). While the language of the certifications state that the enhanced language did not apply to any requests filed prior to the effective date of the interim regulations, the physical modification of earlier requests is troublesome. BIS had held that any requests filed were immutable, and if a request contained an error of any kind, the error could only be remedied by the requestor filing a new request. This, of course, is not true if BIS can retroactively modify applications and add certifications. BIS should take care to preserve the integrity of the original filings, and to the extent that they are modified, should note the changes.

B. Modifications to Interim Regulations

1. Modify the Certifications

A. BIS should either omit or modify paragraph 5(ii)(A) of the certification to read as follows:

(A) My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request, or I have a purchase order or orders for such products *or I distribute product to other stockists or manufacturers and I intend to distribute the product for which I have filed an exclusion request.*

This amendment would address the problem of an entire class of potential requestors being excluded from the process by providing additional criteria to which this class of requestor could certify.

B. BIS should amend 5(ii)(C) to read:

(C) My organization *intends* to consume, sell, *distribute* or otherwise use the total volume of product across all my active exclusions and pending exclusion requests in the course of my organization's business activities within *twelve months from the date of import.*

This amendment would address the realities of business practices that are not tied to a calendar year (January to December).

2. *Modify the Information Collected*

BIS should modify two aspects of the information collected. The first modification should be to protect the identity of the requestor along with other identifying information– allowing for anonymity when seeking exclusions. This anonymity would focus all objections on the product at issue and not on the entity seeking the exclusion. It would address the problem of objectors weaponizing the exclusion and objection process for competitive advantage rather than for its intended purpose-- to protect the national security by focusing on a product's domestic availability.

The second change should be for a cumulative consideration of the request. Such cumulative consideration could be achieved through the addition of a field for citation in the portal for requests previously granted for similar products. As discussed above, BIS should be fully aware of any similar granted requests, and should take them into account when making decisions, in order to ensure consistency.

3. *Modify the Objection Process*

The objection form should include a field requiring the objector to address any granted exclusions for similar products and to justify the objection in light of the cited exclusions. This would promote consistency in the exclusion process.

The objector should be required to provide detailed information about the objector's ability to manufacture the final product to which the objection is being filed, including publicly identifying the facility or facilities where the product is produced. This would ensure that objections are filed only with respect to products to which the objector has a reasonable, good faith basis for objecting.

4. *Modify Decision Process*

The decision process should be modified to state clear and objective standards for determining whether or not to grant an exclusion. The current standard is nebulous and does not provide clear guidance as to when an exclusion might be granted notwithstanding an objection and when an objection might be upheld. The concept of "commercial availability" should be incorporated. The domestic manufacturer must be able to provide the product being requested, not just a semi-finished product that relies on another unrelated manufacturer to complete to meet the specifications; must be available in the quantity requested; and must be available in a timely fashion. Furthermore, the domestic industry must demonstrate that it has made the product in the past 12 months and the volumes it produced as well as any investment into additional capacity to meet the requestors needs on top of its current client demands.

In a similar fashion, BIS should be required to clearly state the reasons for the decision and if the decision is based on the ability of the objector to produce and should explain why the objector is capable of producing.

5. *Establish an Appeal process*

BIS should establish an appeal process whereby the party whose exclusion request has been denied may appeal this denial to BIS and demonstrate why its decision is erroneous and should be reversed. A review process is important to allow parties to address erroneous initial decisions without the necessity to resort to actions at the Court of International Trade.

6. *Establish a Partial Exclusion Process*

The interim final rule should be amended to allow partial exclusion requests. If a domestic manufacturer can meet part of the demand for the product but either has insufficient capacity to meet the requested quantity or its current capacity is fully allocated to other buyers, then in lieu of rejected the exclusion request in its entirety, to grant a portion of the quantity in the request.

7. *Establish a Process for GAE Additions*

A clear, regular and recurring process for updating the GAE list should be included to reflect the changes in demand for specific products or domestic availability if certain producers elect to discontinue manufacturing certain products or succumb to negative economic impacts, such as is being experience now because of the pandemic.

The foregoing changes to the decision process will increase the clarity and transparency of the decision process and ensure that any decision by BIS is "swift, fair and objective".

Conclusion

Magellan submits that the 232 exclusions process needs to be greatly improved to meet the needs of all segments of the steel supply chain, and all participants whether small, medium or large. Further, the BIS must ensure that its regulations are transparent with respect to criteria for considering exclusions, for denying exclusions and for appealing decisions. BIS's primary objective must be for swift, fair and objective determinations. The proposed modifications above will address the inconsistencies and fatal flaws found in the current interim final rule.

Respectfully submitted,

Frank Paolillo
Executive Vice President
Sales and Marketing

wiley

PUBLIC

Robert E. DeFrancesco, III
rdefrancesco@wiley.law
202.719.7473

February 12, 2020

VIA REGULATIONS.GOV

Matthew S. Borman
Acting 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-AH55****: Notice of Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0022)*

Dear Acting Assistant Secretary Borman:

On behalf of Century Aluminum ("Century"), we hereby submit the following comments in response to the Department of Commerce's (the "Department") request for comments on its *Interim Final Rule on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quota*s ("*Interim Final Rule*").[1]

Century is the largest remaining primary aluminum producer in the United States, with smelters in Hawesville and Sebree, Kentucky and Mt. Holly, South Carolina. In total, Century employs roughly 1,800 workers. The United States was once one of the world's largest producers with 22 aluminum smelters. The United States was once one of the world's largest producers with 22 aluminum smelters. The number of operating plants has dwindled from 14 in 2011 to only six today. U.S. jobs in alumina refining and primary aluminum production fell nearly 60 percent

[1] *See Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 81,060 (Bureau of Indus. and Sec. Dec. 14, 2020).

between 2013 and 2016, and conditions are only continuing to worsen, making it critical that the Department maintain a robust Section 232 program on aluminum.

As it stands, significant volumes of U.S. aluminum imports are already entering the U.S. market free from Section 232 tariffs due to tariff exemptions on Canada, Argentina, and Australia, replaced by a quota arrangement (*i.e.*, retroactive tariff rate quotas on Canada and hard quotas on Argentina), and the product exclusion process. Indeed, because of the various country exemptions and product exclusions, the program currently covers the absolute minimum amount of volume to maintain the necessary price effects and maintain a domestic supply chain. As such, the blunt instrument of the GAEs as currently proposed will only further erode the effectiveness of the program. Given the broad scope of the GAEs, it will likely serve to principally benefit the main sources of the aluminum overcapacity crisis, including China, Russia, India, and the Gulf Cooperation States. If permitted to stand, the GAEs will effectively eliminate the Section 232 tariffs on a significant volume of aluminum that the domestic industry is capable of producing, thereby directly undermining the Section 232 program. Therefore, as detailed below, the Department should immediately revoke all GAEs and, at a minimum, the GAE on aluminum slab.

I. THE DEPARTMENT SHOULD IMMEDIATELY REVOKE THE GAE ON ALUMINUM SLAB

In its *Interim Final Rule*, the Department identified 15 codes under the Harmonized System of Tariffs ("HTS") that are approved for import under a GAE. Any aluminum product classified in these HTS codes can now be imported into the U.S. free from Section 232 tariffs without the

need to apply for an exclusion. Among these HTS codes is an HTS code for aluminum slab. This is problematic for several reasons.

According to the Department, the "GAEs address a long-standing request from public comments of exclusion requesters to create a more efficient process to approve certain exclusions for use by all importers where Commerce has determined that no objections will be received and where it is warranted to approve an exclusion for all importers to use." Indeed, the GAE are intended to cover "{a}luminum HTS {c}odes {w}ith 0% {o}bjection {r}ates."[2] However, this is not the case. For instance, Century has objected to roughly 49 exclusion requests for aluminum slab since the start of the Section 232 program. Nonetheless, slab is currently listed under GAE 14 (HTS 7601209080/unwrought aluminum alloy, sheet ingot (slab)). The Department's GAE list is, therefore, inherently flawed.

Moreover, the GAE list contains an aluminum product that the domestic aluminum industry can and does produce – specifically, aluminum slab. As previously indicated, since the start of the process, Century has objected to almost 50 exclusion requests, totaling more than 600,000 metric tons, seeking to exempt aluminum slab from Section 232 tariffs. Notably, the vast majority of these objections were to requests for U.S. imports of aluminum slab filed under HTS 7601209090 (an "other" category covering slab);[3] the HTS code for aluminum slab was only changed to its current HTS code – 7601209<u>80</u> (a more specific code covering slab) – on July 1, 2019. As a result, that there were no objections filed under the HTS code for aluminum slab under GAE 14 (HTS 7601209080) is not surprising given that this code only took effect on July 1, 2019, and very

---

[2] *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 31,448-49 (Bureau of Indus. and Sec. May 26, 2020).

[3] Specifically, 44 out of 49 of the slab exclusions were filed under HTS 7601209090; 5 out of 49 were filed under HTS 7601106000, which is also an "Other" category.

few requests for slab were filed under this new HTS between July 1, 2019 and March 23, 2020 (*i.e.*, the end date for the Department's collection of data for purposes of compiling the GAE list). That Century objected to nearly 50 requests for aluminum slab under the old HTS code shows that the domestic industry has interest in this product and can produce it, making its inclusion on the GAE list entirely inappropriate.

Maintaining the GAE on aluminum slab will allow a significant volume of imports to enter the U.S. market free from Section 232 tariffs, despite the domestic industry's ability to produce the product. This is completely contrary to the purpose of the Section 232 program – to help ensure the economic viability of the domestic aluminum industry – an industry that the Secretary of Commerce had previously identified as essential to our critical industries and national defense. to stimulate domestic production and capacity.

In addition to slab, the GAE list for aluminum includes downstream aluminum products that should be removed from the list, including aluminum extrusions. While Century does not produce any of these downstream aluminum articles, as noted in Century's Section 232 objections to exclusion requests for can sheet and other products, providing blanket exemptions to downstream aluminum products will inevitably erode demand for domestically produced primary aluminum products. As such, the Department should also remove these 14 products from its GAE list.

In sum, the Department should immediately and permanently revoke all GAEs. At a minimum, the Department should narrowly tailor the scope of these exclusions to products that the domestic industry is not capable of producing. Doing so would be entirely consistent with the Department's authority to "at any time issue a Federal Register notice removing, revising, or

adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process" as set forth in the Interim Final Rule.

II. THE DEPARTMENT SHOULD CONTINUE TO IMPOSE A CERTIFCATION REQUIREMENT FOR THE TONNAGE REQUESTED AND MAINTAIN ITS CLARIFICATION OF THE "IMMEDIATELY AVAILABLE" STANDARD

While Century has serious concerns regarding the Department's adoption of GAEs, it commends the agency for implementing a certification requirement to address the excessive tonnage sought in many exclusion requests. Century also supports the Department's refinement of the "immediately available" standard to ensure that domestic producers are not held to a higher standard than foreign producers in terms of production/delivery times.

With respect to tonnage requested, since the product exclusion process was established, U.S. importers have requested exclusions for volumes far in excess of actual consumption. This is a clear abuse of the product exclusion process, as the Department itself has recognized. Indeed, in order to help address this issue, the *Interim Final Rule* "specifies that in order to ensure that the volume requested in an exclusion request is consistent with legitimate business needs for the same steel or aluminum articles obtained (*i.e.*, imported from abroad either directly by the requester or indirectly by purchasing from distributors) by the entity requesting an exclusion, a certification needs to be made in the 232 Exclusions Portal when completing the submission of a 232 exclusion request." *The Interim Final Rule* further notes that "an exclusion request that does not include a certification … will be treated as an incomplete submission and will therefore be rejected." This new certification requirement is necessary to help ensure that the tonnage requested in exclusion requests more closely aligns with actual consumption.

In terms of the "immediately available" standard, the *Interim Final Rule* correctly recognizes that in "defining 'immediately available as eight weeks meant that, in certain cases,

U.S. producers could be held to a shorter delivery time than foreign competitors and was more restrictive than the timeframe needed by the importer for their business needs." In order "to address this fairness issue and to create equal treatment," the *Interim Final Rule* requires as follows:

> if an objector is asserting that it is not currently producing the steel or aluminum identified in an exclusion request but can produce the steel or aluminum, the objector must be able to make it available in accordance with the commercial needs of the U.S. user of the steel or aluminum, as described in the exclusion request. Under this revised criteria in paragraph (d)(4), the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the date that a named foreign supplier can deliver the entire quantity of the requested product. It is incumbent on both the exclusion requester and the objecting producers to provide supplemental evidence supporting their claimed delivery times.

Century fully supports this clarification, which will help to ensure that U.S. producers are held to the same standard as foreign producers in terms of whether the requested product is available.

III. CONCLUSION

In sum, Century respectfully requests that the Department consider the aforementioned comments in implementing its *Interim Final Rule* and in making any further adjustments to its Section 232 exclusions process. Again, Century emphasizes that any further 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,

Robert E. DeFrancesco, III, Esq.

Counsel to Century Aluminum

wiley

PUBLIC

Alan H. Price
aprice@wiley.law
202.719.4651

February 12, 2020

VIA REGULATIONS.GOV

Matthew S. Borman
Acting 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-AH55****: Notice of Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0022)*

Dear Acting Assistant Secretary Borman:

On behalf of Gerdau Long Steel North America ("Gerdau"), we hereby submit the following comments in response to the U.S. Department of Commerce's (the "Department") request for comments on its *Interim Final Rule on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* ("*Interim Final Rule*").[1]

Over the years, Gerdau, which is headquartered in Tampa, Florida, 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, offering a diverse and balanced mix of structural steel, piling, rebar, merchant bar, and special bar

[1] *See Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 81,060 (Bureau of Indus. and Sec. Dec. 14, 2020).

quality products. As detailed below, while Gerdau appreciates the Department's ongoing efforts to make the Section 232 product exclusion process more effective and transparent, including through several changes and clarifications set forth in the *Interim Final Rule*, Gerdau has significant concerns regarding the Department's recent adoption of General Approved Exclusions ("GAEs"). GAEs will severely undermine and weaken the Section 232 program and, therefore, should be revoked immediately.

Pursuant to 15 C.F.R. § 705.6(a), Gerdau requests that the information contained in single brackets throughout this submission be treated as business confidential information and withheld from public disclosure. This information in brackets constitutes Gerdau's proprietary information, including trade secrets and commercial information, the release of which to the public would cause substantial harm to Gerdau's competitive position. This company proprietary information is exempted from public disclosure by the Freedom of Information Act at 5 U.S.C. § 552(b)(4). This information is also exempted from public disclosure in trade remedy cases, pursuant to 19 U.S.C. § 1677f(b). A non-confidential version of this letter with business confidential information redacted is being submitted concurrently with this business confidential version.

I. INTRODUCTION

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 more than 220,000 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 a number of modifications to the product exclusion process in response to concerns raised by interested parties. These modifications include two that are set forth in the

Interim Final Rule – specifically, requiring requestors to submit certifications regarding their requested volumes,[2] and clarifying the term "immediately available,"[3] so that domestic producers are not held to a higher standard than foreign producers in terms of production/delivery times. Gerdau strongly urges the Department to ensure that any future modifications to the product exclusion process are consistent with and further 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 declines in U.S. steel consumption and capacity utilization rates resulting from the current COVID-19 crisis. At the same time, global steel excess capacity continues to grow, with the OECD estimating that overcapacity reached 633 million metric tons in 2020, or the equivalent of 5.8 times total U.S. production capacity. 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.

As a result of country exclusions and product specific exclusions, the majority of significant volumes of U.S. steel imports are currently entering the U.S. market free from Section 232 tariffs. We estimate that since the inception of the program in March 2018, Commerce has granted more than 150,000 exclusions totaling almost 59 million metric tons of steel. In light of this limited coverage and depressed U.S. demand for steel, any further erosion of the 232 measures – including by maintaining the GAEs and/or making any future adjustments to the exclusion process that result in an increase in U.S. import volumes excluded from tariffs – would render the program completely ineffective. To this end, if permitted to stand, the GAEs will effectively

---

[2] *Id.* at 81,070.

[3] *Id.* at 81,067-81,068.

eliminate the Section 232 tariffs on a large number of steel products that the domestic industry is capable of producing, thereby directly undermining the Section 232 program. Therefore, as detailed below, the Department should immediately revoke the GAEs.

II. THE DEPARTMENT SHOULD IMMEDIATELY REVOKE THE GAES

In its *Interim Final Rule*, the Department identified 108 codes under the Harmonized System of Tariffs ("HTS") that are approved for import under a GAE.[4] Any steel product classified in these HTS codes can now be imported into the U.S. free from Section 232 tariffs without the need to apply for an exclusion. These permanent, blanket exclusions are alarming for several reasons. As an initial matter, the GAE list contains a number of errors. While the GAEs are intended to capture steel products for which the domestic industry has never objected, the list contains numerous products that the domestic industry can and does produce. Further, the HTS codes listed are significantly broader in terms of product coverage than the underlying exclusion requests that are the basis for the Department's GAE list. In addition, the GAE list goes far beyond the Department's stated purpose in implementing this change, which is to "create a more efficient method for approving exclusions" where objections have not been received on exclusion requests.[5] Lastly, excluding entire HTS categories from the Section 232 program will incentivize tariff misclassification and other forms of circumvention by U.S. importers.

First, the Department's GAE list contains a number of errors. According to the Department, the "GAEs address a long-standing request from public comments of exclusion requesters to create a more efficient process to approve certain exclusions for use by all importers where Commerce has determined that no objections will be received and where it is warranted to approve an

---

4 *Id.* at 81,079-81,084.

5 *Id.* at 81,061.

exclusion for all importers to use."[6] This is not the case. In fact, the GAE list includes a number of products/HTS codes for which the domestic industry has submitted an objection.[7] The GAE list also includes a number of HTS codes for which the Department has denied a Section 232 exclusion request.[8] The Department's GAE list is, therefore, flawed.

Second, the GAE list contains a number of products that Gerdau can and does produce. As the chart below demonstrates, Gerdau shipped a significant volume of steel products that fall within the scope of several GAEs in both 2019 and 2020.

	Shipments (tons)	
GAE/HTS	**2019**	**2020**
GAE 46/HTS 7216330090[9]	[ ]	[ ]
GAE 78/ HTS 7216400010	[ ]	[ ]
GAE 90/ HTS 7216100010	[ ]	[ ]

[6] *Id.* at 81,062.

[7] *See* **Attachment 1.**

[8] For example, the Department has denied a Section 232 exclusion for the following products covered by a GAE: GAE 6, 7212600000, flat-rolled iron/nonalloy stl, wdth <600MM, CLAD; GAE 18, 7229905031, round wire other alloy stl, with diameter >/=1.0MM but <1.5MM; and GAE 43, 7209900000, flat-rolled iron/nonalloy stl, wdth >/=600MM, cold-rld, not claf/plated/coated, whether or not in coils.

[9] Although neither HTS 7216330030 nor HTS 7216330060 are included on the GAE list, Gerdau has [

].

These volumes are neither insignificant nor hypothetical. Rather, they represent actual domestic steel production and shipments that are at risk of being replaced by imports if the Department maintains the GAEs.

The fact that the domestic industry has not previously objected to a product exclusion request does not justify an indefinite blanket exclusion. There are many reasons why the domestic industry may not object to a given request that are unrelated to domestic production capabilities. For instance, Gerdau did not object to the underlying exclusion requests for GAE 78 and GAE 90 because the requests were for metric sizes only, which the domestic steel industry does not produce. Other reasons that a domestic producer may not object to a request include duplicative requests, minimal volume requested, misclassifications in the requests, pending trials, and other commercial reasons. None of these reflect a producer's inability to produce the requested product. Moreover, the sheer volume of requests alone has made it difficult for the domestic industry to carefully review and object to each request where it is capable of producing the product at issue.

Third, the GAE list is overly broad in its coverage and goes far beyond the Department's stated purpose in implementing this change, which is to "create a more efficient method for approving exclusions" where objections have not been received on exclusion requests.[10] Instead of being narrowly tailored to the specific products subject to exclusion requests that have received no objections, the GAE list is based on broad HTS categories that capture products beyond those defined in the underlying exclusion requests. As a result, the GAEs will allow imports to enter the

---

[10] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. at 81,061.

U.S. market free from Section 232 tariffs in volumes that exceed the actual tonnage at issue in the specific exclusion requests.

Specifically, from April 2018 to March 2020, the total volume of imports covered by the underlying exclusion requests related to the 108 HTS codes was 1,484,375 metric tons; this is compared to the 2,469,747 metric tons of imports that entered the U.S. market under the same HTS codes during the same period. As one specific example, the total volume of imports for the 5 exclusion requests submitted under HTS 7216400010 (certain flat-rolled high strength hot-rolled steel) was 5 metric tons as of March 2020; by contrast, 88,301 metric tons of imports entered the U.S. market under this HTS code during the same period.

Finally, excluding entire HTS categories from the Section 232 program will incentivize tariff misclassification and other forms of circumvention by U.S. importers. Indeed, excluding entire HTS categories from the scope of Section 232 tariffs and quotas will give U.S. importers every incentive to misclassify their product under an HTS code on the GAE list. For instance, although neither HTS 7216330030 nor HTS 7216330060 are included on the GAE list, Gerdau has [

]. With evasion and circumvention already a major problem with U.S. steel imports, the GAEs will only make matters worse.

In sum, by adopting the GAEs based on broad HTS categories instead of narrowly defined products, the Department is effectively excluding a wide range of steel products from the Section 232 program that were never subject to an exclusion request and that the domestic industry is producing, contrary to the purpose of the program. The end result will likely be a sharp increase in steel imports entering our market tariff free at a time when the industry is recovering from the

COVID-19 shock. For these reasons, the Department should immediately and permanently revoke all GAEs. At a minimum, the Department should narrowly tailor the scope of these exclusions to products that the domestic industry is not capable of producing. Doing so would be entirely consistent with the Department's authority to "at any time issue a Federal Register notice removing, revising, or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process" as set forth in the *Interim Final Rule*.[11]

III. THE DEPARTMENT SHOULD CONTINUE TO IMPOSE A CERTIFCATION REQUIREMENT FOR THE TONNAGE REQUESTED AND MAINTAIN ITS CLARIFICATION OF THE "IMMEDIATELY AVAILABLE" STANDARD

While Gerdau has serious concerns regarding the Department's adoption of GAEs, it commends the agency for implementing a certification requirement to address the excessive tonnage sought in many exclusion requests. Gerdau also supports the Department's refinement of the "immediately available" standard to ensure that domestic producers are not held to a higher standard than foreign producers in terms of production/delivery times.

With respect to tonnage requested, and as noted in Gerdau's prior comments to the Department, 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.[12] 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.[13] This means that, for each year that the process has been in effect, U.S.

---

[11] *Id.* at 81,071.

[12] Letter from Wiley Rein LLP to Assistant Sec'y for Export Administration, Bureau of Indus. and Sec., re: *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0012)* (July 10, 2020) at 5-6 ("Gerdau Comments on Product Exclusion Process").

[13] *Id.* at 6.

importers have requested exclusions totaling more than three times the total volume of steel imports.[14] One of the more egregious examples of requests for excessive tonnage is slab, where, in total, U.S. slab importers CSI,[15] 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.[16] By contrast, U.S. imports of slab from *all sources* totaled only 6.2 million metric tons in 2018.

To help address this issue, the *Interim Final Rule* "specifies that in order to ensure that the volume requested in an exclusion request is consistent with legitimate business needs for the same steel or aluminum articles obtained (*i.e.*, imported from abroad either directly by the requester or indirectly by purchasing from distributors) by the entity requesting an exclusion, a certification needs to be made in the 232 Exclusions Portal when completing the submission of a 232 exclusion request."[17] *The Interim Final Rule* further notes that "an exclusion request that does not include a certification . . . will be treated as an incomplete submission and will therefore be rejected."[18] This new certification requirement is necessary to help ensure that the tonnage requested in exclusion requests more closely aligns with actual consumption.

In terms of the "immediately available" standard, in its prior comments to the Department, Gerdau argued that to the extent a requestor claims that an exclusion request should be granted because the domestic industry cannot produce and deliver a requested product within the necessary

---

[14] *Id.*

[15] CSI alone has requested exclusion tonnage for slab totaling more than 32 million metric tons since the exclusions process was implemented.

[16] *See generally* slab exclusion requests submitted by AM/NS Calvert, CSI, Evraz, JSW, and NLMK.

[17] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. at 81,070.

[18] *Id.*

time frame, the requestor should provide documentary evidence that the imported product can be produced and delivered within the needed timeframe.[19] In response, the *Interim Final Rule* correctly recognizes that in "defining 'immediately available as eight weeks meant that, in certain cases, U.S. producers could be held to a shorter delivery time than foreign competitors and was more restrictive than the timeframe needed by the importer for their business needs."[20] In order "to address this fairness issue and to create equal treatment," the *Interim Final Rule* requires as follows:

> {I}f an objector is asserting that it is not currently producing the steel or aluminum identified in an exclusion request but can produce the steel or aluminum, the objector must be able to make it available in accordance with the commercial needs of the U.S. user of the steel or aluminum, as described in the exclusion request. Under this revised criteria in paragraph (d)(4), the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the date that a named foreign supplier can deliver the entire quantity of the requested product. It is incumbent on both the exclusion requester and the objecting producers to provide supplemental evidence supporting their claimed delivery times.[21]

Gerdau fully supports this clarification, which will help to ensure that U.S. producers are held to the same standard as foreign producers in terms of whether the requested product is available.

IV. CONCLUSION

In sum, Gerdau respectfully requests that the Department consider the aforementioned comments in implementing its *Interim Final Rule* and in making any further adjustments to its Section 232 exclusions process. Again, Gerdau emphasizes that any further adjustments made to

---

[19] Gerdau Comments on Product Exclusion Process at 9.

[20] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. at 81,067.

[21] *Id.*

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,

Alan H. Price, Esq.

Counsel to Gerdau Long Steel North America

ATTACHMENT 1

ATTACHMENT 1

GAE Identifier	GAE Number	Requesting Company	HTSUS Code	OBJ_ID	Objecting Company
GAE.52.S	125425	Nippon Yakin America, Inc.	7219220040	39178	ATI Flat Rolled Products Holdings, LLC
GAE.52.S	124869	Nippon Yakin America, Inc.	7219220040	39180	ATI Flat Rolled Products Holdings, LLC
GAE.52.S	124763	Nippon Yakin America, Inc.	7219220040	39182	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128781	Kanematsu USA Inc.	7219210005	40939	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128787	Kanematsu USA Inc.	7219210005	40940	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128796	Kanematsu USA Inc.	7219210005	40941	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128806	Kanematsu USA Inc.	7219210005	40942	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128818	Kanematsu USA Inc.	7219210005	40944	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128837	Kanematsu USA Inc.	7219210005	40945	ATI Flat Rolled Products Holdings, LLC
GAE.3.S	123645	voestalpine Precision Strip, LLC	7220900060	42622	Carpenter Technology Corporation
GAE.3.S	123645	voestalpine Precision Strip, LLC	7220900060	43274	Carpenter Technology Corporation
GAE.52.S	124763	Nippon Yakin America, Inc.	7219220040	44197	Electralloy, a G.O. Carlson Inc. Co
GAE.52.S	124869	Nippon Yakin America, Inc.	7219220040	44198	Electralloy, a G.O. Carlson Inc. Co
GAE.52.S	125425	Nippon Yakin America, Inc.	7219220040	44201	Electralloy, a G.O. Carlson Inc. Co
GAE.3.S	125724	voestalpine Precision Strip, LLC	7220900060	44550	Carpenter Technology Corporation
GAE.3.S	129971	voestalpine Precision Strip, LLC	7220900060	46850	Carpenter Technology Corporation
GAE.3.S	130144	voestalpine Precision Strip, LLC	7220900060	46851	Carpenter Technology Corporation
GAE.3.S	132492	voestalpine Precision Strip, LLC	7220900060	47446	Carpenter Technology Corporation
GAE.3.S	132495	voestalpine Precision Strip, LLC	7220900060	47452	Carpenter Technology Corporation
GAE.3.S	133156	voestalpine Precision Strip, LLC	7220900060	47453	Carpenter Technology Corporation
GAE.7.S	145880	Universal Bearings, LLC	7227901060	48711	Valbruna Slater Stainless, Inc.
GAE.7.S	145880	Universal Bearings, LLC	7227901060	48712	Valbruna Slater Stainless, Inc.
GAE.3.S	134737	voestalpine Precision Strip, LLC	7220900060	48749	Carpenter Technology Corporation
GAE.3.S	137900	voestalpine Precision Strip, LLC	7220900060	48750	Carpenter Technology Corporation
GAE.39.S	142860	Perfection Sources Corporation	7217204560	48898	Davis Wire Corporation
GAE.39.S	142864	Perfection Sources Corporation	7217204560	49183	Davis Wire Corporation
GAE.37.S	143490	Perfection Sources Corporation	7217108030	49185	Davis Wire Corporation

ATTACHMENT 1

GAE.37.S	143495	Perfection Sources Corporation	7217108030	49186	Davis Wire Corporation
GAE.37.S	143503	Perfection Sources Corporation	7217108030	49187	Davis Wire Corporation
GAE.37.S	143514	Perfection Sources Corporation	7217108030	49188	Davis Wire Corporation
GAE.37.S	143527	Perfection Sources Corporation	7217108030	49189	Davis Wire Corporation
GAE.37.S	143535	Perfection Sources Corporation	7217108030	49190	Davis Wire Corporation
GAE.87.S	143815	Vallourec USA Corporation	7304293180	50132	United States Steel Corporation
GAE.60.S	146813	DSS America, Inc	7225501110	50532	Crucible Industries LLC
GAE.60.S	147524	DSS America, Inc	7225501110	50533	Crucible Industries LLC
GAE.60.S	147057	DSS America, Inc	7225501110	50534	Crucible Industries LLC
GAE.60.S	147365	DSS America, Inc	7225501110	50535	Crucible Industries LLC
GAE.39.S	151558	Perfection Sources Corporation	7217204560	51483	WCJ Pilgrim Wire LLC
GAE.39.S	142864	Perfection Sources Corporation	7217204560	51492	WCJ Pilgrim Wire LLC
GAE.39.S	151558	Perfection Sources Corporation	7217204560	51966	WCJ Pilgrim Wire LLC
GAE.38.S	147698	Toyota Tsusho America, Inc	7212200000	52195	United States Steel Corporation
GAE.38.S	147676	Toyota Tsusho America, Inc	7212200000	52197	United States Steel Corporation
GAE.68.S	152951	Gantrex, Inc.	7302101015	52243	Steel of West Virginia
GAE.68.S	152759	Gantrex, Inc.	7302101015	52245	Steel of West Virginia
GAE.71.S	150165	Lotters Wire Corporation	7217304541	52368	WCJ - Pilgrim Wire, LLC
GAE.71.S	146804	Lotters Wire Corporation	7217304541	52387	WCJ - Pilgrim Wire, LLC
GAE.71.S	150071	Lotters Wire Corporation	7217304541	52449	WCJ - Pilgrim Wire, LLC
GAE.37.S	143527	Perfection Sources Corporation	7217108030	52695	Davis Wire Corporation
GAE.39.S	151558	Perfection Sources Corporation	7217204560	52696	Davis Wire Corporation
GAE.35.S	150215	Lotters Wire Corporation	7217901000	52814	WCJ - Pilgrim Wire, LLC
GAE.35.S	153648	Lotters Wire Corporation	7217901000	52817	WCJ - Pilgrim Wire, LLC
GAE.35.S	153677	Lotters Wire Corporation	7217901000	52819	WCJ - Pilgrim Wire, LLC
GAE.76.S	151473	Marubeni-Itochu Tubulars America Inc	7304293160	52823	United States Steel Corporation
GAE.76.S	157724	Marubeni-Itochu Tubulars America Inc	7304293160	52825	United States Steel Corporation
GAE.35.S	153700	Lotters Wire Corporation	7217901000	52828	WCJ - Pilgrim Wire, LLC

ATTACHMENT 1

GAE.35.S	153720	Lotters Wire Corporation	7217901000	52880	WCJ - Pilgrim Wire, LLC
GAE.35.S	155990	Lotters Wire Corporation	7217901000	52882	WCJ - Pilgrim Wire, LLC
GAE.35.S	154494	Lotters Wire Corporation	7217901000	52883	WCJ - Pilgrim Wire, LLC
GAE.35.S	156025	Lotters Wire Corporation	7217901000	52896	WCJ - Pilgrim Wire, LLC
GAE.35.S	154556	Lotters Wire Corporation	7217901000	52906	WCJ - Pilgrim Wire, LLC
GAE.35.S	156067	Lotters Wire Corporation	7217901000	52913	WCJ - Pilgrim Wire, LLC
GAE.35.S	156077	Lotters Wire Corporation	7217901000	52924	WCJ - Pilgrim Wire, LLC
GAE.35.S	156144	Lotters Wire Corporation	7217901000	53191	WCJ - Pilgrim Wire, LLC
GAE.35.S	156121	Lotters Wire Corporation	7217901000	53193	WCJ - Pilgrim Wire, LLC
GAE.35.S	156152	Lotters Wire Corporation	7217901000	53240	WCJ - Pilgrim Wire, LLC
GAE.39.S	151558	Perfection Sources Corporation	7217204560	54065	WCJ Pilgrim Wire
GAE.23.S	152344	Zapp Precision Wire	7220206010	55135	Carpenter Technology Corporation
GAE.56.S	159846	Crompion International, LLC	7219320036	57900	Carpenter Technology Corporation
GAE.75.S	166039	Kanematsu USA Inc.	7219210005	56543	Electralloy, a G.O. Carlson Inc. Co
GAE.37.S	170423	Inter Wire Products, INC.	7217108030	60918	Davis Wire Corporation
GAE.34.S	96882	ATLAS STEEL PRODUCTS CO.	7219330025	27934	Crucible Industries LLC

wiley

PUBLIC

Alan H. Price
aprice@wiley.law
202.719.4651

February 12, 2021

VIA REGULATIONS.GOV

Matthew S. Borman
Acting 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-AH55****: Notice of Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0022)*

Dear Acting Assistant Secretary Borman:

On behalf of Nucor Corporation ("Nucor"), we hereby submit the following comments in response to the U.S. Department of Commerce's (the "Department") request for comments on its *Interim Final Rule on the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* ("*Interim Final Rule*").[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 Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. 81,060 (Bureau of Indus. and Sec. Dec. 14, 2020).

products. Many of Nucor's products are used in national defense and critical infrastructure projects throughout the United States.

As detailed below, while Nucor appreciates the Department's ongoing efforts to make the Section 232 product exclusion process more effective and transparent, including through several changes and clarifications set forth in the *Interim Final Rule*, Nucor has significant concerns regarding the Department's recent adoption of General Approved Exclusions ("GAEs"). GAEs will severely undermine the benefits of the Section 232 program and should be revoked immediately.

Pursuant to 15 C.F.R. § 705.6(a), Nucor requests that the information contained in single brackets throughout this submission be treated as business confidential information and withheld from public disclosure. This information in brackets constitutes Nucor's proprietary information, including trade secrets and commercial information, the release of which to the public would cause substantial harm to Nucor's competitive position. This company proprietary information is exempted from public disclosure by the Freedom of Information Act at 5 U.S.C. § 552(b)(4). This information is also exempted from public disclosure in trade remedy cases, pursuant to 19 U.S.C. § 1677f(b). A non-confidential version of this letter with business confidential information redacted is being submitted concurrently with this business confidential version.

I. INTRODUCTION

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 more than 220,000 exclusion requests that the Department has received since the start of the process – a number which has significantly exceeded expectations. Nucor also appreciates that the Department has made a number of

modifications to the product exclusion process in response to concerns raised by interested parties. These modifications include two that are set forth in the *Interim Final Rule* – specifically, requiring requestors to submit certifications regarding their requested volumes,[2] and clarifying the term "immediately available,"[3] so that domestic producers are not held to a higher standard than foreign producers in terms of production/delivery times. In addition, Nucor welcomes the Department's review of its proposal for a 60-day window for submitting exclusion requests on a bi-annual basis, which should make the process more efficient. Nucor strongly urges the Department to ensure that any future modifications to the product exclusion process are consistent with, and further 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 declines in U.S. steel consumption and capacity utilization rates resulting from the ongoing COVID-19 pandemic. At the same time, global steel excess capacity continues to grow, with the OECD estimating that overcapacity reached 633 million metric tons in 2020, or the equivalent of 5.8 times total U.S. production capacity. Given these factors, 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 a result of country exclusions and product specific exclusions from the 232 tariffs, the majority of U.S. steel imports are currently entering the U.S. market free from Section 232 tariffs. We estimate that since the inception of the program in March 2018, the Department has granted more than 150,000 exclusions totaling almost 59 million metric

---

[2] *Id.* at 81,070.

[3] *Id.* at 81,067-68.

tons of steel. As such, the volume of imports covered by tariffs under the program is already very limited, as the data collected by U.S. Customs and Border Protection confirms.

In light of this limited coverage and depressed U.S. demand for steel, any further erosion of the 232 measures – including by maintaining the GAEs and/or making any future adjustments to the exclusion process that result in an increase in U.S. import volumes excluded from tariffs – would render the program completely ineffective. To this end, if permitted to stand, the GAEs will effectively eliminate the Section 232 tariffs on a large number of steel products that the domestic industry is capable of producing, severely undermining the Section 232 program. Therefore, as detailed below, the Department should immediately revoke the GAEs.

II. THE DEPARTMENT SHOULD IMMEDIATELY REVOKE THE GAES

In its *Interim Final Rule*, the Department identified 108 codes under the Harmonized System of Tariffs ("HTS") that are approved for import under a GAE.[4] Any steel product classified in these HTS codes can now be imported into the United States free from Section 232 tariffs without the need to apply for an exclusion. According to the Department, the GAE list is intended to cover "{s}teel HTS {c}odes {w}ith 0% {o}bjection {r}ates." However, this is not true. These permanent, blanket exclusions are concerning for this and several other reasons.

First, the GAE list goes far beyond the Department's stated intention for this change – to "create a more efficient method for approving exclusions" where objections have not been received on exclusion requests.[5] According to the Department, "GAEs address a long-standing request from public comments of exclusion requesters to create a more efficient process to approve certain exclusions for use by all importers where Commerce has determined that no objections will be

---

[4] *Id.* at 81,079-84.

[5] *Id.* at 81,061.

received and where it is warranted to approve an exclusion for all importers to use."[6] However, instead of being narrowly tailored to the specific products subject to exclusion requests that have received no objections, the GAE list is based on broad HTS categories that capture products beyond those defined in the underlying exclusion requests. As a result, the GAEs will allow imports to enter the U.S. market free from Section 232 tariffs in volumes that exceed the actual tonnage at issue in the specific exclusion requests.

Specifically, from April 2018 to March 2020, the total volume of imports covered by the underlying exclusion requests related to the 108 HTS codes was 1,484,375 metric tons; this is compared to the 2,469,747 metric tons of imports that entered the U.S. market under the same HTS codes during the same period. As one specific example, the total volume of imports for the 5 exclusion requests submitted under HTS 7216400010 (certain flat-rolled high strength hot-rolled steel) was 5 metric tons as of March 2020; by contrast, 88,301 metric tons of imports entered the U.S. market under this HTS code during the same period. Nucor produced more than [ ] of product falling within this HTS code in 2020 alone.

Second, the GAE list contains a number of products that Nucor can and does produce. As the list below demonstrates, in both 2019 and 2020, Nucor produced a significant volume of steel products that fall within the scope of the GAEs, including the following:

- GAE #14 (HTS 7215500018): [ ]
- GAE #24 (HTS 7211296080): [ ][8]

---

6 *Id.*

7 [ ].

8 [ ].

- GAE #43 (HTS 7209900000): [ ][9]
- GAE #45 (HTS 7306617060): [ ]
- GAE #47 (HTS 7217905030): [ ]
- GAE #77 (HTS 7305316090): [ ]
- GAE #78 (HTS 7216400010): [ ]
- GAE #84 (HTS 7209270000): [ ]
- GAE #91 (HTS 7306695000): [ ]
- GAE #92 (HTS 7208390015): [ ]
- GAE #93 (HTS 7208380015): [ ]
- GAE #105 (HTS 7211234500): [ ][10]

These volumes are significant and not hypothetical. Indeed, [ ]. Nucor's volume represents [ ] of actual domestic steel production that are at risk of being replaced by imports if the Department maintains the GAEs.[11] The entire purpose of the GAEs is to allow for the efficient approval of exclusion requests for products that the domestic industry does not produce. The fact that the domestic industry does in fact produce numerous steel products on the GAE list completely invalidates the purposes and rationale for this modification.

---

9 *See id.*

10 *See id.*

11 In fact, Nucor is investing billions of dollars to enhances it steelmaking capabilities, including with respect to products contained in the GAEs listed above. *See* https://assets.ctfassets.net/aax1cfbwhqog/4pIZT94jc6xfnyqL3EcZnU/736dfc12f263989f2f1770bd4495498b/Nucor_Strategic_Investments_Update_February_2021.pdf

Moreover, the fact that the domestic industry has not previously objected to a product exclusion request does not justify an indefinite blanket exclusion. There are many reasons why the domestic industry may not object to a given request that are unrelated to domestic production capabilities. For instance, Nucor did not object to the underlying exclusion requests for GAE #78 because of the minimal tonnage sought (17 requests submitted to exclude 22 tons) and the fact that the requests were for metric sizes only. Likewise, Nucor did not object to the underlying requests for GAE# 43 and GAE #84 because they were for a very small volume of product. Other reasons that a domestic producer may not object to a request include duplicative requests, misclassifications in the requests, pending trials, negotiations to supply,[12] and other commercial reasons. None of these reflect a producer's inability to produce the requested product. Moreover, the sheer volume of requests alone has made it difficult for the domestic industry to carefully review and object to each request where it is capable of producing the product at issue.

Further, even if the domestic industry is not currently producing a product, it may be developing the capabilities to do so. Indeed, one of the purposes of the Section 232 program is to promote increased industry investment in new production capabilities to better serve the domestic market, including by re-entering markets that have been lost to unfairly traded imports. That a domestic producer did not object to an exclusion request, or has not produced a product in the past, does not predict current or future market considerations and should not hinder the industry's ability to adapt to changing market conditions.

---

[12] [

].

Third, the Department's GAE list contains a number of errors. According to the Department, the GAEs were selected based on product exclusion requests that have received no objections from the domestic industry and therefore would likely not be subject to objections in the future. However, this is not the case. The GAE list includes a number of products/HTS codes for which the domestic industry did in fact submit an objection.[13] Indeed, at least 70 objections have been filed under HTS codes/product descriptions falling under a GAE, and more than a dozen GAEs are covered under these objections. In addition, the GAE list also includes a number of HTS codes for which the Department has denied a Section 232 exclusion request.[14] The Department's GAE list is, therefore, flawed.

Finally, excluding entire HTS categories from the Section 232 program will incentivize tariff misclassification and other forms of circumvention by U.S. importers. Indeed, excluding entire HTS categories from the scope of Section 232 tariffs and quotas will give U.S. importers every incentive to misclassify their product under an HTS code on the GAE list. The GAE system will only exacerbate existing evasion and circumvention issues related to U.S. steel imports.

In sum, by adopting the GAEs based on broad HTS categories instead of narrowly defined products, the Department is effectively excluding a wide range of steel products from the Section 232 program that were never subject to an exclusion request and that the domestic industry is capable of producing, contrary to the purpose of the program. The end result will likely be a sharp increase in steel imports entering our market tariff free at a time when the industry is recovering

---

[13] *See* **Attachment 1.**

[14] For example, the Department has denied a Section 232 exclusion for the following products covered by a GAE: GAE 6, 7212600000, flat-rolled iron/nonalloy stl, wdth <600MM, CLAD; GAE 18, 7229905031, round wire other alloy stl, with diameter >/=1.0MM but <1.5MM; and GAE 43, 7209900000, flat-rolled iron/nonalloy stl, wdth >/=600MM, cold-rld, not claf/plated/coated, whether or not in coils.

from the COVID-19 shock and facing growing excess steel capacity overseas. For these reasons, the Department should immediately and permanently revoke all GAEs. At a minimum, the Department should immediately revoke all GAEs until it can narrowly tailor the scope of these exclusions to products that the domestic industry is not capable of producing. Doing so would be entirely consistent with the Department's authority to "at any time issue a Federal Register notice removing, revising, or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process" as set forth in the *Interim Final Rule*.[15]

III. THE DEPARTMENT SHOULD CONTINUE TO IMPOSE A CERTIFCATION REQUIREMENT FOR THE TONNAGE REQUESTED AND MAINTAIN ITS CLARIFICATION OF THE "IMMEDIATELY AVAILABLE" STANDARD

While Nucor has serious concerns regarding the Department's adoption of GAEs, it commends the agency for implementing a certification requirement to address the excessive tonnage sought in many exclusion requests. Nucor also supports the Department's refinement of the "immediately available" standard to ensure that domestic producers are not held to a higher standard than foreign producers in terms of production/delivery times.

With respect to tonnage requested, and as noted in Nucor's prior comments to the Department, 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.[16] 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

---

[15] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. at 81,071.

[16] Letter from Wiley Rein LLP to Assistant Sec'y for Export Administration, Bureau of Indus. and Sec., re: *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas (BIS–2020–0012)* (July 10, 2020) at 5-6 ("Nucor Comments on Product Exclusion Process").

million metric tons.[17] 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.[18] One of the more egregious examples of requests for excessive tonnage is slab, where, in total, U.S. slab importers CSI,[19] 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.[20] By contrast, U.S. imports of slab from *all sources* totaled only 6.2 million metric tons in 2018.

To help address this issue, the *Interim Final Rule* "specifies that in order to ensure that the volume requested in an exclusion request is consistent with legitimate business needs for the same steel or aluminum articles obtained (*i.e.*, imported from abroad either directly by the requester or indirectly by purchasing from distributors) by the entity requesting an exclusion, a certification needs to be made in the 232 Exclusions Portal when completing the submission of a 232 exclusion request."[21] *The Interim Final Rule* further notes that "an exclusion request that does not include a certification . . . will be treated as an incomplete submission and will therefore be rejected."[22] This new certification requirement is necessary to help ensure that the tonnage requested in exclusion requests more closely aligns with actual consumption.

---

17 *Id.* at 6.

18 *Id.*

19 CSI alone has requested exclusion tonnage for slab totaling more than 32 million metric tons since the exclusions process was implemented.

20 *See generally* slab exclusion requests submitted by AM/NS Calvert, CSI, Evraz, JSW, and NLMK.

21 *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg. at 81,070.

22 *Id.*

In terms of the "immediately available" standard, in its prior comments to the Department, Nucor argued that to the extent a requestor claims that an exclusion request should be granted because the domestic industry cannot produce and deliver a requested product within the necessary time frame, the requestor should provide documentary evidence that the imported product can be produced and delivered within the needed timeframe.[23] In response, the *Interim Final Rule* correctly recognizes that in "defining 'immediately available as eight weeks meant that, in certain cases, U.S. producers could be held to a shorter delivery time than foreign competitors and was more restrictive than the timeframe needed by the importer for their business needs."[24] In order "to address this fairness issue and to create equal treatment," the *Interim Final Rule* requires that:

> {I}f an objector is asserting that it is not currently producing the steel or aluminum identified in an exclusion request but can produce the steel or aluminum, the objector must be able to make it available in accordance with the commercial needs of the U.S. user of the steel or aluminum, as described in the exclusion request. Under this revised criteria in paragraph (d)(4), the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the date that a named foreign supplier can deliver the entire quantity of the requested product. It is incumbent on both the exclusion requester and the objecting producers to provide supplemental evidence supporting their claimed delivery times.[25]

Nucor fully supports this clarification, which will help to ensure that U.S. producers are held to the same standard as foreign producers in terms of whether the requested product is available.

IV. CONCLUSION

In sum, Nucor respectfully requests that the Department consider the aforementioned comments in implementing its *Interim Final Rule* and in making any further adjustments to its

---

[23] Nucor Comments on Product Exclusion Process at 9.

[24] *Interim Final Rule Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas*, 85 Fed. Reg at 81,067.

[25] *Id.*

Section 232 exclusions process. Most significantly, the Department should immediately revoke the GAEs for the reasons specified above. Moreover, any further 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,

Alan H. Price, Esq.
Christopher B. Weld, Esq.
Tessa V. Capeloto, Esq.

Counsel to Nucor Corporation

ATTACHMENT 1

ATTACHMENT 1

GAE Identifier	GAE Number	Requesting Company	HTSUS Code	OBJ_ID	Objecting Company
GAE.52.S	125425	Nippon Yakin America, Inc.	7219220040	39178	ATI Flat Rolled Products Holdings, LLC
GAE.52.S	124869	Nippon Yakin America, Inc.	7219220040	39180	ATI Flat Rolled Products Holdings, LLC
GAE.52.S	124763	Nippon Yakin America, Inc.	7219220040	39182	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128781	Kanematsu USA Inc.	7219210005	40939	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128787	Kanematsu USA Inc.	7219210005	40940	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128796	Kanematsu USA Inc.	7219210005	40941	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128806	Kanematsu USA Inc.	7219210005	40942	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128818	Kanematsu USA Inc.	7219210005	40944	ATI Flat Rolled Products Holdings, LLC
GAE.75.S	128837	Kanematsu USA Inc.	7219210005	40945	ATI Flat Rolled Products Holdings, LLC
GAE.3.S	123645	voestalpine Precision Strip, LLC	7220900060	42622	Carpenter Technology Corporation
GAE.3.S	123645	voestalpine Precision Strip, LLC	7220900060	43274	Carpenter Technology Corporation
GAE.52.S	124763	Nippon Yakin America, Inc.	7219220040	44197	Electralloy, a G.O. Carlson Inc. Co
GAE.52.S	124869	Nippon Yakin America, Inc.	7219220040	44198	Electralloy, a G.O. Carlson Inc. Co
GAE.52.S	125425	Nippon Yakin America, Inc.	7219220040	44201	Electralloy, a G.O. Carlson Inc. Co
GAE.3.S	125724	voestalpine Precision Strip, LLC	7220900060	44550	Carpenter Technology Corporation
GAE.3.S	129971	voestalpine Precision Strip, LLC	7220900060	46850	Carpenter Technology Corporation
GAE.3.S	130144	voestalpine Precision Strip, LLC	7220900060	46851	Carpenter Technology Corporation
GAE.3.S	132492	voestalpine Precision Strip, LLC	7220900060	47446	Carpenter Technology Corporation
GAE.3.S	132495	voestalpine Precision Strip, LLC	7220900060	47452	Carpenter Technology Corporation
GAE.3.S	133156	voestalpine Precision Strip, LLC	7220900060	47453	Carpenter Technology Corporation
GAE.7.S	145880	Universal Bearings, LLC	7227901060	48711	Valbruna Slater Stainless, Inc.
GAE.7.S	145880	Universal Bearings, LLC	7227901060	48712	Valbruna Slater Stainless, Inc.
GAE.3.S	134737	voestalpine Precision Strip, LLC	7220900060	48749	Carpenter Technology Corporation
GAE.3.S	137900	voestalpine Precision Strip, LLC	7220900060	48750	Carpenter Technology Corporation
GAE.39.S	142860	Perfection Sources Corporation	7217204560	48898	Davis Wire Corporation
GAE.39.S	142864	Perfection Sources Corporation	7217204560	49183	Davis Wire Corporation
GAE.37.S	143490	Perfection Sources Corporation	7217108030	49185	Davis Wire Corporation

ATTACHMENT 1

GAE.37.S	143495	Perfection Sources Corporation	7217108030	49186	Davis Wire Corporation
GAE.37.S	143503	Perfection Sources Corporation	7217108030	49187	Davis Wire Corporation
GAE.37.S	143514	Perfection Sources Corporation	7217108030	49188	Davis Wire Corporation
GAE.37.S	143527	Perfection Sources Corporation	7217108030	49189	Davis Wire Corporation
GAE.37.S	143535	Perfection Sources Corporation	7217108030	49190	Davis Wire Corporation
GAE.87.S	143815	Vallourec USA Corporation	7304293180	50132	United States Steel Corporation
GAE.60.S	146813	DSS America, Inc	7225501110	50532	Crucible Industries LLC
GAE.60.S	147524	DSS America, Inc	7225501110	50533	Crucible Industries LLC
GAE.60.S	147057	DSS America, Inc	7225501110	50534	Crucible Industries LLC
GAE.60.S	147365	DSS America, Inc	7225501110	50535	Crucible Industries LLC
GAE.39.S	151558	Perfection Sources Corporation	7217204560	51483	WCJ Pilgrim Wire LLC
GAE.39.S	142864	Perfection Sources Corporation	7217204560	51492	WCJ Pilgrim Wire LLC
GAE.39.S	151558	Perfection Sources Corporation	7217204560	51966	WCJ Pilgrim Wire LLC
GAE.38.S	147698	Toyota Tsusho America, Inc	7212200000	52195	United States Steel Corporation
GAE.38.S	147676	Toyota Tsusho America, Inc	7212200000	52197	United States Steel Corporation
GAE.68.S	152951	Gantrex, Inc.	7302101015	52243	Steel of West Virginia
GAE.68.S	152759	Gantrex, Inc.	7302101015	52245	Steel of West Virginia
GAE.71.S	150165	Lotters Wire Corporation	7217304541	52368	WCJ - Pilgrim Wire, LLC
GAE.71.S	146804	Lotters Wire Corporation	7217304541	52387	WCJ - Pilgrim Wire, LLC
GAE.71.S	150071	Lotters Wire Corporation	7217304541	52449	WCJ - Pilgrim Wire, LLC
GAE.37.S	143527	Perfection Sources Corporation	7217108030	52695	Davis Wire Corporation
GAE.39.S	151558	Perfection Sources Corporation	7217204560	52696	Davis Wire Corporation
GAE.35.S	150215	Lotters Wire Corporation	7217901000	52814	WCJ - Pilgrim Wire, LLC
GAE.35.S	153648	Lotters Wire Corporation	7217901000	52817	WCJ - Pilgrim Wire, LLC
GAE.35.S	153677	Lotters Wire Corporation	7217901000	52819	WCJ - Pilgrim Wire, LLC
GAE.76.S	151473	Marubeni-Itochu Tubulars America Inc	7304293160	52823	United States Steel Corporation
GAE.76.S	157724	Marubeni-Itochu Tubulars America Inc	7304293160	52825	United States Steel Corporation
GAE.35.S	153700	Lotters Wire Corporation	7217901000	52828	WCJ - Pilgrim Wire, LLC

ATTACHMENT 1

GAE.35.S	153720	Lotters Wire Corporation	7217901000	52880	WCJ - Pilgrim Wire, LLC
GAE.35.S	155990	Lotters Wire Corporation	7217901000	52882	WCJ - Pilgrim Wire, LLC
GAE.35.S	154494	Lotters Wire Corporation	7217901000	52883	WCJ - Pilgrim Wire, LLC
GAE.35.S	156025	Lotters Wire Corporation	7217901000	52896	WCJ - Pilgrim Wire, LLC
GAE.35.S	154556	Lotters Wire Corporation	7217901000	52906	WCJ - Pilgrim Wire, LLC
GAE.35.S	156067	Lotters Wire Corporation	7217901000	52913	WCJ - Pilgrim Wire, LLC
GAE.35.S	156077	Lotters Wire Corporation	7217901000	52924	WCJ - Pilgrim Wire, LLC
GAE.35.S	156144	Lotters Wire Corporation	7217901000	53191	WCJ - Pilgrim Wire, LLC
GAE.35.S	156121	Lotters Wire Corporation	7217901000	53193	WCJ - Pilgrim Wire, LLC
GAE.35.S	156152	Lotters Wire Corporation	7217901000	53240	WCJ - Pilgrim Wire, LLC
GAE.39.S	151558	Perfection Sources Corporation	7217204560	54065	WCJ Pilgrim Wire
GAE.23.S	152344	Zapp Precision Wire	7220206010	55135	Carpenter Technology Corporation
GAE.56.S	159846	Crompion International, LLC	7219320036	57900	Carpenter Technology Corporation
GAE.75.S	166039	Kanematsu USA Inc.	7219210005	56543	Electralloy, a G.O. Carlson Inc. Co
GAE.37.S	170423	Inter Wire Products, INC.	7217108030	60918	Davis Wire Corporation
GAE.34.S	96882	ATLAS STEEL PRODUCTS CO.	7219330025	27934	Crucible Industries LLC

The Aluminum Association

703.358.2980
1400 Crystal Drive, Suite 430
Arlington, Virginia 22202

February 12, 2021

The Honorable Matthew A. Borman
Deputy Assistant Secretary for Export Administration
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

RE: Interim Final Rule Regarding Section 232 Steel and Aluminum Tariff Exclusions Process (RIN 0694-AH55)

Dear Deputy Assistant Secretary Borman:

On behalf of the members of the Aluminum Association, we are grateful for the efforts of you and your colleagues in examining the policy and technical aspects of the Section 232 exclusion process for aluminum products and for implementing changes to improve the process. We welcome the opportunity to submit comments in response to the Interim Final Rule published on December 14, 2020, regarding the exclusion process.

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, as well as suppliers to the industry. Association member companies make 70 percent of the aluminum and aluminum products shipped in North America, and the U.S. aluminum industry – across the value chain – directly employs more than 166,000 workers and indirectly supports an additional 494,000 workers. As you know, aluminum is foundational to modern societies and to the U.S. economy. Its unique physical properties – light weight, corrosion resistance, and infinite recyclability paired with the innovative application of alloys and manufacturing processes – make the metal an ideal solution for a truly wide range of challenges in the 21st century.

New General Approved Exclusions

In the Interim Final Rule, the Commerce Department created a new mechanism to provide a General Approved Exclusion (GAE) that may be used by any importing entity. These new GAEs apply to aluminum articles classified under 15 different 10-digit classifications in the Harmonized Tariff Schedule of the United States. The establishment of GAEs was a surprising and unexpected action, implemented without any opportunity for formal or informal input by domestic producers, that we find to be troubling.

The *Federal Register* notice that outlined changes to the Section 232 exclusion process indicated that GAEs were established based on the lack of domestic producer objections with respect to requests for exclusions from Section 232 tariffs on certain products. As one notable example, the Department established a GAE for boxed aluminum foil even though only nine such exclusions have been granted by the Commerce Department's Bureau of Industry and

Security (BIS) since the Section 232 exclusion process was established in March 2018. Given the specific parameters of the exclusion request and objection process to date, the absence of objections should not be taken to mean that the imposition of a tariff on such imports pursuant to Section 232 is unimportant generally to domestic producers of aluminum articles. Indeed, we expect these GAEs to have significant implications on the aluminum market for foil in the United States – further exacerbating the incentive for many U.S. purchasers to preference sourcing of certain aluminum products from foreign sources, including China, rather than from domestic manufacturers.

Recommendation:

- We urge that the Commerce Department undertake a wholesale review of the GAEs while the agency evaluates additional changes to the Section 232 exclusion process to ensure the program is benefitting the U.S. aluminum industry it was designed to support. If the new GAE mechanisms remain in place, the Department should establish a process for stakeholders to request a rescission of the GAEs.

Additional Volume Certifications Required by Requesters

The Association has long been deeply concerned that the Commerce Department has granted tariff exclusions for massive volumes of aluminum flat-rolled products like can stock, plate, sheet and foil that far exceed historical import volumes and U.S. market demand. Abuse of the exclusion process has created a market dynamic with an inherent disadvantage for domestic aluminum manufacturers, and the Association's previous comments provided a number of specific recommendations to address this concern.

in response to industry concerns regarding requestors seeking exclusions for volumes that vastly exceed their historical consumption, the Interim Final Rule established new certification requirements for requesters in the portal to validate the volume of product identified in the exclusion request. Filers signing the exclusion request certification under paragraph (c)(5)(ii)(A) must attest that the exclusion requester intends to manufacture, process or otherwise transform the imported product for which it has filed an exclusion request, or has a purchase order or orders for such products. Further, the exclusion requester must certify that it does not intend to use the requested exclusion, if granted, solely to hedge or arbitrage the price – and instead plans to consume entirely the volume of product listed in the exclusion request.

We understand this new rule is intended to discourage importers from requesting exclusions for unrealistic and inflated volumes of product or from utilizing the exclusions to influence pricing, at risk of making a false statement to the U.S. government. The Aluminum Association supports this change.

Current Department of Commerce regulations allow any individual or organization "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 restricts objections to only U.S. producers and requires that any objection submitted 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 objections from one or more domestic producers to flag an

exclusion 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.

Recommendation:

- The Commerce Department must work closely with the aluminum industry to review the effectiveness of the new volume certification in meeting its intended goal.
- The Department should eliminate eligibility for exclusion requests, or presume denial for requests, that are submitted by or on behalf of any entity that is not a manufacturer or processing the metal in some way. Only requestors that are transforming, processing or further manufacturing the imported aluminum product should be eligible for an exclusion. The Metal Service Center Institute's definition for a "service center" or the Aluminum Association's definition for a "producer" could be helpful in identifying objective parameters that cover aluminum production, processing and finishing or companies that operate metals service centers (facilities that provide first-stage fabrication services like cutting-to-length, slitting, etc.).

Clarification of "Available Immediately"

Under the previous regulations, an objector was required to certify it could produce the product at issue within an exclusion request immediately (i.e., within eight weeks). The new rule revises the criteria to clarify that an objector must be able to provide the aluminum product at issue either within eight weeks or "*by a date earlier than the time required for the requester to obtain the entire quantity of the product from the requester's foreign supplier*." In other words, this change aims to eliminate any advantage given to a foreign supplier if the foreign supplier takes longer than eight weeks to deliver the product to the requester. If an objector is not currently producing the aluminum and does not have immediate capacity, but the objector has capability to produce the aluminum (even if only a portion of the total volume) and make it available within the appropriate timeframe, the objector still has grounds to object to the exclusion request.

We believe this change allows flexibility for manufacturers to file an objection involving products that the company does not currently produce, or does not currently have the capacity to produce in the requested quantity, but has the capability to produce. This change to the prior rule also gives companies the ability to submit an objection where they can make the product within a longer timeframe where the customer requests a longer timeframe from a foreign supplier. The Aluminum Association supports this change.

Changes to Procedures

In response to industry concerns about incomplete exclusion requests (those with no alloys identified, for example, or those with no volumes listed for specific countries), the Department noted in the Interim Final Rule that it had revised its standard operating procedures and conducted training for staff reviewing Section 232 exclusion and objection submissions to emphasize the importance of ensuring that the exclusion and objection forms are fully and accurately completed. Further, the interim final rule notes that submissions that do not meet the standards of the information required on the forms will be rejected. Since enactment, we have seen that change take effect and we strongly support this change.

Suggested Additional Changes

As addressed in the Association's written comments on the Department's Notice of Inquiry last year, many facets of the Section 232 exclusion process have caused undue harm to U.S. aluminum companies and their employees. Unfortunately, the implementation of the exclusion process has created a magnet for imports of aluminum products and undermined efforts of the domestic aluminum industry to further strengthen its competitiveness. We continue to urge the Department to consider additional policy changes to improve the execution of the Section 232 program.

The Commerce Department's 2018 report prepared in connection with the underlying Section 232 investigation on aluminum imports identified 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 massive 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 Commerce Department to vigorously enforce AD/CVD orders against Chinese imports and bolster enforcement efforts to help identify and eliminate schemes to circumvent or evade these orders. Unfortunately, the Section 232 remedy in its current form has done little to address the fundamental structural challenge facing the U.S. aluminum industry: China's persistent unfair trade practices and the negative effects of its unfairly subsidized overcapacity on U.S. producers of aluminum and aluminum products.

Chinese aluminum producers are increasingly reliant on exports of semi-fabricated aluminum products – which reached a near-record 11.3 billion pounds in 2019 – to maximize the use of their existing capacity and to justify additional capacity expansions that threaten to 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. Rather, these exclusions artificially boost the profitability of such exports, further undermining the competitiveness of the domestic industry and other market economy producers globally.

Additionally, the administrative burden resulting from the need to monitor the Section 232 portal constantly, evaluating exclusion requests and responding as needed (particularly where a missed response risks opening the door to a presumption of exclusion) is taxing on domestic aluminum producers.

Recommendation:

- Adopt a policy that presumes denial for exclusion requests involving products from non-market economies like China, with exclusions only granted in extraordinary circumstances. If the Department does not presume denial for exclusion requests involving products from 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.

- The Department should set an internal 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 review and 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.

Conclusion

The recommendations outlined above are specific to the Section 232 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.

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. However, the persistent challenge of China's unfairly subsidized overcapacity continues to negatively impact the global aluminum market – including the U.S. industry's long-established supply relationships with traditional trading partners.

The Aluminum Association has been pleased to see the Department move to launch an aluminum import monitoring system and is heartened by the bipartisan support on Capitol Hill for funding the program. We believe this new aluminum-specific import monitoring program will benefit domestic aluminum companies by helping government officials and industry stakeholders to better identify trends in trade flows and address aluminum misclassification, transshipment, and evasion of duties. The Association and its members look forward to working with the Department as it implements this new program.

We appreciate the attention of the Commerce Department to this essential U.S. industry and would be pleased to provide additional information that could help implement changes to the Section 232 exclusion process so that it better supports the continued and future competitiveness of domestic aluminum manufacturers. We also stand ready to leverage the industry's longstanding global relationships and help the Department as it looks to develop and deploy additional policy tools, in conjunction with other market economies, to tackle the common problem of Chinese overcapacity.

Respectfully submitted,

Lauren Wilk
Vice President, Government Relations & International Programs
The Aluminum Association

February 12, 2021

VIA REGULATIONS.GOV **PUBLIC DOCUMENT**

Ms. Wynn Coggins
Acting Agency Head
Attn: Bureau of Industry and Security (BIS)
U.S. Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Re: *Section 232 Steel and Aluminum Tariff Exclusions Process; Revision* (Docket No. BIS–2020–0022; RIN 0694-AH55); Written Comments of Kibar Americas, Inc.

Dear Ms. Coggins:

Pursuant to the U.S. Department of Commerce Bureau of Industry and Security's ("BIS") Notice of Interim Final Rule regarding the Section 232 Steel and Aluminum Tariff Exclusions Process,[1] Kibar Americas, Inc. ("Kibar") respectfully submits these public comments. These comments are timely submitted in accordance with BIS's instructions.[2]

Kibar is a distributor and reseller of Turkish origin aluminum products. Kibar sells imported coil and sheet, foil, and pre-painted aluminum products originating from production facilities in Istanbul and Kocaeli, Turkey. These products are utilized in a variety of food and industrial applications, including packaging, distribution, construction, consumer durables, automotive, and HVAC. Based in Chicago, Illinois, Kibar supplies input aluminum foil to leading semi-rigid container manufacturers in the United States, supporting hundreds of downstream jobs.

Since the Section 232 tariffs took effect, Kibar has requested numerous exclusions for the products it supplies to U.S. container manufacturers. The BIS Section 232 Aluminum Team has found that these products are "not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality."[3] Though Kibar has been successful in receiving exclusions for certain flat-rolled aluminum products, our experience has revealed areas for potential improvement. Consistent with BIS's request, we respectfully submit the following comments

[1] *Section 232 Steel and Aluminum Tariff Exclusions Process*, 85 Fed. Reg. 81060 (Dep't Commerce Dec. 14, 2020) ("BIS Notice").
[2] BIS Notice at 81060.
[3] *See, e.g.*, BIS Document ID Numbers: 106218, 106238, 106246, 106341, 154574, 158342, 158332, 158322, 158310, 158281, 158275, 158172, 158138, 158105, 158316, and 158105.

Kibar Americas, Inc.
One North Wacker Drive, Suite 1900 Chicago, Illinois 60606, USA
T: +1 312 285 2553 **kibaramericas.com**
an Assan Alüminyum company

regarding the changes implemented through the Interim Final Rule.[4] We hope that BIS will consider these comments as it continues to improve the precision and efficiency of the Section 232 exclusion request process.

I. Volume Certifications

The Interim Final Rule made certain regulatory changes to the Section 232 exclusion request process to include certifications from requesters for the necessary volume listed in each request.[5] Pursuant to the BIS Notice, the addition of these certifications was intended to address "exclusion requests for volumes that exceed prior years' consumption."[6] BIS described the volume certifications for requesters as an "initial step" to address the issue of supply limitations inherent in the current exclusion request process.[7] However, in is decision memorandum, BIS explicitly notes that BIS is not considering "the production capacity of a company . . . as a whole."[8] In other words, unlike requesters, BIS currently does not verify the production capabilities of objectors or their capacity to actually produce the aggregate volumes claimed in objections.

The disparity between the certification requirements for requesters and objectors is particularly problematic given that, in Kibar's experience, (1) objections are often filed despite the objector not having adequate capacity to produce the product at issue in the United States and (2) the filing of an objection is frequently fatal to the granting of an exclusion request and, at the very least, substantially delays the time period it takes to receive an exclusion. For example, certain exclusion requests submitted by Kibar have been denied on the basis of an objection from a domestic producer despite the fact that customers report that producer is not capable of supplying the volume of product it requires.[9]

Though BIS acknowledged in the Interim Rule "that there are objections that, in total, exceed the objectors' total capacity,"[10] it declined to implement the necessary certifications from objectors to eliminate this recurring problem. Kibar therefore requests that BIS require objectors to certify that they are capable of producing the aggregate volume of product to which they object. This more equitable rule would ensure that the same volume restrictions apply to both requesters and objectors, and better reflect U.S. producers' true capacity.

---

[4] BIS Notice at 81060.
[5] *Id.* at 81064.
[6] *Id.*
[7] *Id.*
[8] *See, e.g.*, BIS Document ID Number 121162.
[9] *See, e.g.*, BIS Document ID Numbers: 106010 and 121162.
[10] BIS Notice at 81064.

II. General Approved Exclusions

In the Interim Rule, BIS adopts General Approved Exclusions ("GAEs"), which are available to all importers without filing product-specific exclusion requests.[11] BIS states that the purpose of the GAEs is a "significant improvement in efficiency" to the exclusion request process.[12] However, it is unclear how the initial list of products subject to GAEs was selected. Moreover, despite noting that it will consider the "the possibility of more {GAEs} in the future,"[13] fails to outline a transparent process for companies to request products be considered for a GAE. Indeed, beyond noting that GAEs will be approved "where Commerce has determined that no objections will be received and where it is warranted to approve an exclusion for all importers to use,"[14] BIS provides no guidance or details on how products will be added to the GAE list.

Though BIS suggests that "{t}he public will not be involved in requesting new or revised GAEs,"[15] Kibar anticipates that individual companies and industries will lobby the the Secretary of Commerce, as well as the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials to petition for the inclusion of specific products on the GAE list. Without a transparent and equitable process, Kibar fears that more powerful and influential industries will obtain GAEs at the expense of smaller ones.

Kibar therefore requests that BIS provide more detail regarding the process for qualifying for GAEs and that it implement a mechanism for parties to formally request that a product be added to or excluded from the GAE list.

III. Definition of Availability

The Interim Rule makes certain changes to the immediate availability requirements for objectors to Section 232 exclusion requests. Specifically, the term "immediately" is no longer defined as "within 8 weeks," but now considered "in accordance with the commercial needs of the U.S. user of the steel or aluminum, as described in the exclusion request."[16] However, this revision fails to address concerns that the definition of "availability" is based on "lead time," when the more appropriate

---

[11] BIS Notice at 81061-62.
[12] *Id.*
[13] *Id.* at 81061.
[14] *Id.* at 81062.
[15] *Id.* at 81065.
[16] BIS Notice at 81067.

metric is "on time in full delivery." Consideration of a domestic producers ability to deliver product on time in full is a more accurate measure of availability than quoted lead time, which can, in Kibar's experience, be aspirational and inaccurate.

Even with the revisions in the Interim Rule, the current immediate availability standard fails to account for quality and delivery issues that may arise from domestic sources. Because on-time delivery performance is a more important consideration for our customers than quoted lead time, and a more accurate measure of an individual producer's availability, Kibar requests that BIS further revise its availability standard to consider this metric.

IV. Product Groupings

In the Interim Rule, BIS repeatedly notes its desire to improve the efficiency of the Section 232 exclusion process, including through reducing the page limit for exclusion requests, implementing GAEs, and providing a list of common reasons for rejections.[17] However, BIS fails to implement what Kibar considers to be the most straightforward mechanism to reduce the volume of filed requests. Currently, the Section 232 portal requires requesters to submit a separate exclusion request for each specification or SKU. For companies like Kibar, which import hundreds of SKUs, the result is multiple, repetitive requests for substantially the same product.

The availability of a product rarely changes within a narrow size range. As such, the requirement that a separate request be submitted for each size specification is extremely burdensome for requesters, with little added utility for BIS in terms of determining whether an exclusion should be granted. The narrow specification requirements also force requesters to file multiple requests to ensure sufficient availability of any given product given product shifting and natural changes in demand. Again, these restrictions are irrelevant in a market where, as here, aggregate demand exceeds domestic supply.

Consistent with its stated goal of reducing the "numbers of unneeded exclusion requests," which BIS recognizes "decreases the efficiency of the 232 exclusions process for potential objectors and Commerce,"[18] BIS should allow requesters to encompass a wider range of dimensions in a single exclusion request. This revision would enable Kibar to submit a single exclusion request for each product type, rather than the 20+ requests it must currently file for each SKU, thus reducing the burden for both Kibar in filing repetitive exclusion requests and for BIS in ruling upon them.

---

[17] *See, e.g.*, *Id.* at 81061, 81062, 81070,
[18] *Id.* at 81061.

V. Extended Length of Granted Exclusions

In the Interim Rule, BIS notes that exclusions "will generally be approved for one year from the date of the signature on the decision memo, but may be valid for shorter or longer than one year depending on the specifics of the exclusion request."[19] As an example of business considerations justifying the granting of an exclusion exceeding one year, BIS notes "the need for a multi-year contract . . . in order to complete a significant U.S. project by an established deadline."[20] However, in this example, which considers the implementation of long-term contracts only in the context of "significant" projects, BIS fails to recognize that multi-year supply contracts are standard in certain industries, semi-rigid packaging.

To avoid disrupting the preferred, multi-year contracting process in the semi-rigid packaging sector, BIS should grant exclusions based on the length of negotiated contracts. This can be achieved by adding a field to the Section 232 Portal specifying the contract length and corresponding quantity required to satisfy the contract. This more tailored system will provide greater certainty in the exclusion process and further reduce the number of requests filed each year.

VI. Expedited Process for Submission and Granting of Renewals

Per BIS's Interim Rule, in order to renew an existing exclusion, "the exclusion requester may submit a new exclusion request" and an "earlier objector may choose not to object to the new exclusion request based on their past experiences of not being able to provide the . . . aluminum article."[21] If no objector comes forward, "the exclusion request will be reviewed under the expedited process."[22] However, "if the same objector objects to the exclusion request," the requester must reengage in the rebuttal process, including by "document{ing} in the rebuttal the past activity with that objector."[23]

Given the frequency with which prior objectors re-object to renewal requests, irrespective of whether they are actually able to supply the product, BIS's current objection, rebuttal, and surrebuttal process is time consuming, inefficient, and expensive for both requesters and for BIS. Indeed, in requiring the renewal "requestor to document in the rebuttal the past activity with that objector,"[24] BIS is essentially forcing the requestor to repeat the same arguments that it has already accepted in the

---

[19] BIS Notice at 81078.
[20] *Id.*
[21] *Id.* at 81066.
[22] *See id.*
[23] *See id.*
[24] *See id.*

original exclusion request. Not only is this inefficient for requesters, given that it takes substantially longer to receive a decision on requests that receive an objection,[25] but it also requires BIS to expend resources re-reviewing requests and objections it has already ruled upon.

BIS should thus amend the current renewal process for exclusion requests to allow for the automatic re-approval of exclusions for products that have already been found to be unavailable by BIS through the rebuttal process. In the absence of extenuating circumstances, such as the addition of new domestic capacity, this expedited renewal process should apply regardless of whether the same objector objects again.

VII. CONCLUSION

Thank you for your consideration of these comments. Please feel free to contact us if you have any questions.

Sincerely,

Scott M. Croft

Scott Croft
Vice President, Sales
Kibar Americas Inc.
(312) 282-2553
scott.croft@kibaramericas.com

[25] *Id.* at 81064 (noting that "the expedited review process for exclusions that do not receive objections is functioning well, with an average response time, as of July 20, 2020, of approximately 60 days, less than half the average processing time for exclusions that receive objections").

DOCKET NUMBER: BIS–2020–0022
PUBLIC VERSION

February 12, 2021

VIA REGULATIONS.GOV

Mr. Jeremy Pelter
Acting Deputy 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–AH55
Vallourec USA Corporation's Comment on the December 14, 2020 Interim Final Rule and Recommendations to Improve the Section 232 Exclusions Process

Dear Mr. Pelter:

In response to the December 14, 2020 interim final rule on the Section 232 Steel and Aluminum Tariff Exclusions Process ("December 2020 interim final rule"),[1] Vallourec USA Corporation ("Vallourec") submits this comment to recommend certain improvements to the Section 232 exclusions process. Specifically, Vallourec urges the Department of Commerce ("Commerce") to adopt four recommendations that build upon the December 2020 interim final rule to introduce further improvements to the Section 232 exclusion process. These include:

(1) Implementing Vallourec's July 2020 recommendations to improve the Section 232 exclusions process;

(2) Establishing regular reviews of the General Approved Exclusions ("GAEs") to prevent circumvention and problematic import surges;

[1] *Section 232 Steel and Aluminum Exclusions Process*, 85 Fed. Reg. 81,060 (Dec. 14, 2020).

(3) Clarifying that GAEs will not decrement quantitative restrictions (*i.e.*, quota limits), consistent with the GAE decision framework; and

(4) Establishing an affirmative obligation for objectors to certify all claims and substantiate them with reliable evidence.

I. Commerce Should Adopt Vallourec's Previous Recommendations Regarding the Efficiency and Transparency of the Section 232 Exclusion Process.

On July 10, 2020, in response to Commerce's May 26, 2020 request for comments on the "the efficiency and transparency" of the exclusion process,[2] Vallourec submitted six recommendations to improve the process.[3] These included:

(1) Implementing deadlines to reduce delays in decisions on product exclusions for which objections have been filed;

(2) Allowing 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) Permitting U.S. importers to use granted product exclusions prior to Section 232 quota limitations being reached;

(4) Drafting exclusion request scopes to encompass situations in which a single excluded product could be covered by more than one HTSUS subheading;

(5) Requiring parties to substantiate all claims with reliable evidence; and

(6) Eliminating ex parte communications between U.S. agencies and interested third parties to promote efficiency and transparency.

---

[2] *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) ("May 2020 Request").

[3] Vallourec's July 10, 2020 comment ("July 2020 Comment") is available at: https://www.regulations.gov/document?D=BIS-2020-0012-0061.

Vallourec understands that Commerce has not yet addressed every comment submitted in response to its May 2020 Request.[4] Nonetheless, Vallourec encourages Commerce to adopt the above proposals put forth in Vallourec's July 2020 Comment, particularly in light of the changes made to the exclusion process in the December 2020 interim final rule. Both Vallourec's above proposals and the changes implemented in the December 2020 interim rule share the same goal: to create an efficient and transparent exclusion process that serves exclusion requesters, domestic producers, and Commerce equally well. Therefore, Vallourec respectfully reminds Commerce of these proposals and encourages Commerce to adopt them as quickly as possible.

II. Commerce Should Conduct Periodic Reviews of the GAEs.

The GAEs are a laudable development in the Section 232 exclusions process, and a major step toward improving efficiency and reducing administrative burden for the process's stakeholders. Vallourec encourages Commerce to retain the general GAE framework while refining it to respond to new challenges and circumstances. Vallourec has identified two potential challenges that could cut against the objectives of the Section 232 action, and even the GAEs themselves, if not addressed with revisions to the GAE framework.

First, to the extent individual GAEs are based on a lack of objections, as the interim final rule represents is this case,[5] this criterion does not account for scenarios where U.S. producers can supply adequate volumes but do not have an opportunity to file an objection. The latter scenario can arise when: exclusion requests are filed only for a limited subset of products within an HTSUS subheading (*e.g.*, distinct tube grades); these requests do not receive objections; the

[4] *See* 85 Fed. Reg. 81,060, 81,061 ("This interim final rule does not summarize or response to the comments included in the May 26 notice. Commerce will address these comments in the next rule….")

[5] *Id.* ("This interim final rule . . . addresses the need to create a more efficient method for approving exclusions where objections have not been received in the past for certain steel or aluminum articles. Commerce has determined creating general approved exclusions that may be used by any importing entity is warranted.").

entire subheading is converted into a GAE that covers *more* than the products in the initial requests; and consequently, the additional products are excluded without recourse for producers. [

]. A result like this is obviously detrimental to domestic suppliers, and will be particularly problematic if the ensuing GAE is used primarily by suppliers from China or other countries that regularly engage in dumping and other unfair trade practices. Forcing U.S. producers to compete against goods sold at less than fair value is an outcome that undercuts—rather than promotes—the GAEs' rightful objectives of enhancing national and economic security.[6]

A second and related challenge is the increased risk of circumvention that results from duty and quota exclusions across entire HTSUS subheadings. Because GAEs are not tied to specific importing entities that have been reviewed and approved by Commerce (as are "traditional" Section 232 exclusions), they could be used by bad actors who are willing to misclassify imported products to obtain an unfair advantage in domestic markets (and/or are subsidized by state actors to do so). In addition, other less flagrant forms of circumvention are possible given the nature of the product classes involved. For example, it is Vallourec's experience that [

]. This allows importers to legally enter a product under a GAE, yet ultimately deliver a product to downstream customers that Commerce never intended to exclude.

[6] *Id.* at 81,071 ("The Secretary of Commerce . . . makes these determinations that certain aluminum and steel articles may be authorized under a GAE consistent with the objectives of the 232 exclusions process as outlined in supplement no. 1 to this part.").

To address the above challenges, Vallourec recommends that Commerce establish periodic GAE reviews with clear benchmarks to ensure that active GAEs are functioning as intended, *i.e.*, to remove entry barriers only for products for which there is a clear lack of adequate domestic supply. Potential benchmarks could include, for example, checking GAE import volumes for surges that could evidence circumvention, requesting targeted review of GAE entries by U.S. Customs and Border Protection ("CBP"), and establishing an objection window to accommodate U.S. producers and other stakeholders who may not have had the opportunity to comment on a particular product. At a higher level, Vallourec encourages Commerce to continually review the GAE process as a whole, and to consider ways to refine and improve the process to meet the challenges outlined above (and any others that may arise).

III. Commerce Should Clarify That Products Entered Under GAEs Do Not Count Against Remaining Quota Totals.

A significant procedural challenge of the GAEs is the continuing uncertainty and inconsistency as to how they should be applied by both CBP and the trade community. For example, pursuant to the interim final rule, the Commerce regulations now mandate that importers "include the GAE identifier in the Automated Commercial Environment (ACE) system that corresponds to the steel articles being imported."[7] However, not only are these GAE identifiers non-existent in ACE, but CBP has implemented entirely different instructions for applying the GAEs.[8] In fact, for Section 232 duty exclusions under a GAE, CBP has essentially advised that it will not create GAE identifiers and will instead apply GAEs automatically based

[7] *See* 15 C.F.R. Part 705, Supplement No. 2.

[8] *See* CBP Cargo Systems Messaging Service ("CSMS") #45251857 (Dec. 22, 2020), *available at* https://content.govdelivery.com/accounts/USDHSCBP/bulletins/2b27d11; *see also* CBP CSMS #45271041 (Dec. 23, 2020), *available at* https://content.govdelivery.com/accounts/USDHSCBP/bulletins/2b2c801.

on HTSUS classification—meaning importers must enter GAE-eligible goods without any record of affirmatively requesting GAE treatment and with full trust that CBP will nevertheless apply it.

The discrepancy is even more problematic in the quota context, where CBP again declined to create GAE identifiers and has instead instructed importers to report the applicable Section 232 subheading for non-GAE exclusions (*i.e.*, 9903.80.60 for steel products, and 9903.85.11 for aluminum products). This means that steel products entered under subheading 9903.80.60 reduce available quota limits for the respective product category. There is no authority in the interim final rule or the Commerce regulations that authorizes CBP to apply the GAEs in this manner. In effect, CBP has essentially dictated a Section 232-quota consumption policy through informal instructions that are not binding on the agency, that repudiate Commerce regulations that *are* binding on importers, and that are subject to change without notice.

Vallourec strongly urges Commerce to rectify this by clarifying in the next interim final rule that products entered under a GAE will not count against quota limits (as well as in ensuing updates to Commerce regulations). A clarification to this effect will not only increase certainty for the trade community, but will also promote the objectives of the GAEs themselves by further removing entry barriers where there is a *bona fide* lack of domestic capacity or interest to produce covered products. Moreover, it will help ensure at least partial relief from the many issues that arise under an arrangement in which excluded goods do consume quota limits (*i.e.*, the current arrangement for "traditional" non-GAE exclusions). As Vallourec detailed in its July 2020 Comment, that arrangement is problematic for a number of reasons: (1) it requires U.S. companies to schedule imports based on the quota limitations instead of business needs, thereby distorting supply chains and jeopardizing U.S. supply; (2) it perversely incentivizes importers to prioritize entry of the very goods that the United States 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; and (3) it results in substantial storage fees, significant logistics efforts, and other costs related to supply chain uncertainty. In short, it is in the U.S. national interest to *avoid* the very policy that is currently applied to the GAEs.

IV. Commerce Should Require Objectors To Certify And Substantiate All Claims.

Vallourec recognizes Commerce's consistent efforts to increase fairness and transparency in the Section 232 exclusion process. Respectfully, however, the current safeguards—including the latest changes under the interim final rule—do not go nearly far enough to deter domestic producers from undermining these objectives by filing frivolous and unsupported objections to exclusion requests. Adding real teeth to the safeguards that BIS has implemented—in the form of stringent certification and substantiation requirements—is necessary to curb the abuse that continues to plague the system.

As an illustration of the continued problem, Vallourec has been forced to rebut numerous objections that make vague and dubious claims regarding domestic production capability—including in objections filed *after* the December 14, 2020 rule changes. [

[9]]. [

[9] *See* [

].

[10]]. With scant or no substantive basis, these objections amount to frivolous delay tactics meant to stave off justified exclusions.

To this end, the objections have been successful in prolonging Commerce's review of exclusion requests, forcing Vallourec and others to expend resources filing rebuttals, and forcing Commerce to expend unnecessary resources reviewing these objections. The protracted timeline alone is highly problematic. [

.] In effect, these objections harm U.S. importers *in addition to* downstream U.S. customers in the construction and energy industries (among others).

This continuing problem, and the repeated calls for Commerce to address it in meaningful ways, make clear that firmer safeguards are needed to deter baseless objections.[11] Vallourec specifically urges Commerce to amend the relevant provisions of 15 C.F.R. Part 705, Supplement No. 1, to: (1) require that objections include legally binding certifications that attest to

---

[10] *See* [

].

[11] *See, e.g.*, 85 Fed. Reg. 81,060, 81,066 (Dec. 14, 2020) ("A commenter requested that Commerce hold organizations that file objections to the highest of standards. Commerce should require specificity before considering the objection and should question and verify the assertions made by the objectors or claims made in surrebuttals."); 83 Fed. Reg. 46,026, 46,038 (Sept. 11, 2018) ("One commenter argued that the Department should apply reasonable standards to the review of exclusion requests and objections, which the commenter identified as not allowing unsupported assertions of production capacity and, after a prima facie case for an exclusion request is made (accepted as correct until proven otherwise), affording that request a presumption of approval.").

deliverable volumes and timelines within the definition of "immediately available";[12] (2) require that objections include substantive and verifiable evidence to support these certifications (*e.g.*, recent emails, brochures, mill certificates, product literature, or transaction documents such as contracts, invoices or purchase orders for the relevant product); (3) automatically disqualify objections that do not include the foregoing certifications or supporting evidence; and (4) restrict or rescind commenting privileges for objectors with multiple disqualified objections. Implementing these safeguards will improve the Section 232 exclusions process by providing for a more accurate and complete administrative record, removing extraneous materials that currently increase review time and burden on Commerce, enabling quicker turnaround times for exclusions that could impact U.S. national and economic security, alleviating unfair burdens on importers, and promoting transparency and fairness for all stakeholders.

* * * * *

For the reasons above, Vallourec respectfully urges Commerce to adopt the four recommendations 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.

[12] Vallourec notes that in the December 14, 2020 interim final rule, Commerce implemented an additional certification requirement for *requesters* to substantiate volume requests. *See*, Paragraph (c)(5)(ii)(E) of Supplement No. 1 to 15 C.F.R. Part 705. This certification could be used as the basis for a similar certification for objectors.

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,

Chris Cunningham
Director of North America Logistics
Vallourec USA Corporation

ALLIANCE FOR
american
manufacturing

February 12, 2021

Bureau of Industry and Security
Via Regulations.gov

RE: Public Comments in Response to the Section 232 Steel and Aluminum Tariff Exclusion Process Fourth Interim Final Rule (Docket ID BIS-2020-0022; RIN 0694-AH55)

To Whom it May Concern:

On behalf of the Alliance for American Manufacturing (AAM), representing both American workers and U.S. producers, thank you for the opportunity to submit comments in response to the Section 232 Steel and Aluminum Tariff Exclusion Process Fourth Interim Final Rule (Docket ID BIS-2020-0022; RIN 0694-AH55). AAM appreciates several of the reforms included in the *Interim Final Rule*, but is concerned with the approach to defining and enforcing General Approved Exclusions (GAEs). Additional consideration should be given to this issue to avoid undermining the effectiveness of the Section 232 actions.

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 Department of Commerce's 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 Commerce in its Section 232 investigation and the subsequent progress measured by jobs and capital investment. Further, 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 dropped thirty percentage points in the spring of 2020 as demand cratered and has still not recovered to pre-pandemic levels.

[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. According to a U.S. Congressional Research Service report, as of late July 2020, 107,886 steel product exclusion requests had been granted, while only 30,189 had been denied. For aluminum, 13,289 exclusions have been granted, while just 3,189 requests were denied.[2] The data on these exemptions and exclusions show that the reach of the Section 232 action has been diminished.

The underlying overcapacity problems plaguing global markets have only worsened in the absence of a global solution and have been compounded by the COVID-19 pandemic. The American Iron and Steel Institute describes the issue in its recent policy paper, entitled, *The Facts: Preserve the Steel Tariffs*:[3]

> *"Global overcapacity, fueled by foreign government subsidies and other forms of state intervention, was estimated at more than 500 million metric tons in 2019, nearly six times the total steel output of the United States. According to the OECD, it is growing again in 2020 to as much as 700 million metric tons, due to continued nonmarket investment by China and others, despite substantially lower demand in most markets due to the COVID-related economic crisis."*

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. The United States' 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 domestic manufacturing sectors necessary for catastrophic and emergency situations.

AAM appreciates some of the changes made in this *Interim Final Rule* intended to improve the effectiveness of the Section 232 trade action and exclusion process. This includes requiring volume certifications to accompany exclusion requests, in order to rein in the practice of unscrupulous parties requesting quantities of steel well beyond historical consumption and current business needs. This is a step in the right direction and would be further strengthened by requiring consideration of historical consumption when analyzing any exclusion request for significantly increased volumes.

We also appreciate the *Interim Final Rule's* more equitable approach to defining what it means to be "immediately" available. By applying the same standard to foreign and domestic producers of specific products, this approach ensures that relevant market information about the

[2] U.S. Congressional Research Service. Section 232 Investigations: Overview and Issues for Congress. (R45249; Updated August 24, 2020). Accessed February 9 at https://fas.org/sgp/crs/misc/R45249.pdf
[3] "The Facts: Preserve the Steel Tariffs," American Iron and Steel Institute. 23 Oct 2020.

availability of products from foreign producers is used as a point of comparison with domestic producers.

Unfortunately, the *Interim Final Rule* includes revisions to the exclusion process that appear to weaken the Section 232's effectiveness and pose a potential threat to domestic steel production in specific product categories.

- First, the use of Harmonized Tariff Schedule of the United States (HTSUS) codes to define GAEs appears to be overly broad and could result in the granting of exclusions for steel articles that U.S. producers can supply. This approach uses a hammer when Commerce should be using a scalpel. Even at the 10-digit level, HTSUS codes group multiple products with distinctly different metallurgical properties and commercial applications. The goal should be to create a process that grants exclusions only for very specific products that are not available from domestic sources. By using HTSUS codes, however, we are concerned that the degree of specialization of many steel products will be overlooked.

- Second, Commerce should examine whether products on the current list of steel GAEs can be supplied by domestic steel producers. It is our understanding that Commerce itself has denied exclusion requests for products falling under HTSUS codes now being used to determine the current list of GAEs. Despite this, the *Interim Final Rule* would grant GAEs to all products that fall under these HTSUS codes. Additional consideration should be given to this issue to avoid undermining the effectiveness of the Section 232 actions and adversely impacting domestic producers and U.S. security interests.

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 continued, persistent global overcapacity and a severe demand shock, domestic producers of steel and aluminum cannot afford any further weakening of these safeguards.

Sincerely,

Scott N. Paul
President
Alliance for American Manufacturing

CANACERO Cámara Nacional de la Industria del Hierro y del Acero

February 12, 2021.

U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

On May 17, 2019, the United States and Mexico entered into an agreement to remove the U.S. tariffs imposed on Mexican steel pursuant to Section 232 of the Trade Expansion Act of 1962, as well as the retaliatory tariffs that Mexico imposed on U.S. goods in response ("the 232 steel agreement").

To implement and enforce the 232 steel agreement, which includes commitments by the U.S. and Mexico to prevent "… the importation of … steel that is unfairly subsidized and/or sold at dumped prices; and … the transshipment of … steel made outside of Mexico or the United States to the other country," [and to] "…establish an agreed-upon process for monitoring … steel trade between them," both countries, along with their respective steel industries, have been working together to monitor bilateral steel trade, and to prevent steel transshipment, and steel import surges between the U.S. and Mexico.

However, the Department of Commerce's ("DOC") adoption of General Approved Exclusions ("GAEs") from the Section 232 tariffs, pursuant to the agency's December 14, 2020 interim final rule, will effectively eliminate the Section 232 tariffs on a large number of steel products from many countries, and thereby, undermine the Mexican steel supply chain to the United States.

The result is that if the U.S. adopts the GAEs, Mexican steel exports to the United Sates will likely be unfairly hurt by competition from outside the North American region, contrary to the intent of the 232 steel agreement, and the USMCA.

Therefore, CANACERO requests the DOC to revoke all GAEs until it can narrowly tailor them to the scope of products that DOC issued 232 product exclusions for.

CANACERO is committed to support regional enforcement to avoid unfair trade practices and transhipment.

Sincerely,

Salvador Quesada Salinas
General Director

Amores 338 Colonia Del Valle
C.P. 03100, Ciudad de México
T (55) 5448 8160

canacero.org.mx