

August 9, 2019

The Honorable Nazak Nikakhtar
Performing the Non-Exclusive Duties of the
Under Secretary for Industry and Security, and
Assistant Secretary, Industry & Analysis
U.S. Department of Commerce
14th Street and Pennsylvania Avenue NW
Washington, DC 20230

RE: Implementation of New Commerce Section 232 Exclusions Portal (RIN 0694-AH55)

Acting Under Secretary Nikakhtar:

The Aluminum Association welcomes the opportunity to submit comments in response to the interim final rule published by the United States Department of Commerce regarding “Implementation of New Commerce Section 232 Exclusions Portal” (15 CFR 705).

From the outset of the Section 232 investigation involving imports of aluminum entering the United States, the Aluminum Association and its members have urged the Commerce Department to ensure that any aluminum-related Section 232 remedy has as its central objective securing a commitment from the Government of China, through either a bilateral or multilateral agreement, to eliminate its massive, unfairly subsidized overcapacity to produce aluminum and aluminum products. By addressing China’s overcapacity and the distortions it creates in the U.S. and global markets, a targeted remedy could help ensure that U.S. aluminum producers are able to compete on a level playing field in the globally integrated aluminum market.

The Aluminum Association is the largest aluminum trade association in the United States, representing more than 120 companies that produce 70 percent of the aluminum and aluminum products shipped in North America. The Association represents aluminum production and jobs that span the entire value chain, ranging from primary production to value-added products to recycling, as well as suppliers to the industry. In total, the U.S. aluminum industry generates nearly \$71 billion in direct economic output and directly employs more than 162,000 workers. While aluminum industry jobs have grown 3.5% since 2013, the challenges that China poses in the global market are reducing incentives for future investment in the United States and putting significant stress on U.S. aluminum producers – a substantial concern if we want to maintain our momentum and ensure the U.S. industry’s continued competitiveness.

The changes outlined in the interim final rule published June 10 have not yet, based on the experience of our members, fundamentally addressed concerns about transparency, fairness and efficiency. The inherent uncertainty of the product exclusion process continues to add a prolonged cost burden to U.S. aluminum producers and their customers. Over the past year, the Association’s members have found that the underlying policies and processes of the Section 232 exclusion process have adversely affected competition by creating considerable uncertainty and giving artificial and unwarranted leverage to the customers of domestic aluminum producers and

importers of aluminum products from non-market economies – particularly leverage in the form of granted exclusion requests that encompass massive volumes of imported aluminum products. The manner in which the Section 232 exclusion process is being carried out incentivizes U.S. consumers of aluminum and aluminum products to import these products from foreign sources as a first course of action – to the detriment of domestic producers with available domestic capacity. This incentive seems to be in direct opposition to the intent and the underlying national security rationale of the Section 232 remedy to support domestic aluminum producers.

Recommendations: Policy

The U.S. aluminum industry has competed in a globally integrated market for decades and has built constructive relationships with overseas producers that support the ability of domestic mid- and downstream operations to meet the growing demand for aluminum in the United States. As identified in the Section 232 investigation, however, the U.S. aluminum industry faces a structural challenge from producers in China that have long been a beneficiary of unfair support from the Chinese government.

The Aluminum Association strongly urges the Commerce Department to adopt policies for implementing the Section 232 remedy that avoid actions that benefit aluminum and aluminum products manufactured in China, including granting exclusions from the Section 232 tariffs for imports of products originating from China. By streamlining the exclusion request process, utilizing the new portal, the Commerce Department can effectively implement a policy to combat China's unfair trading practices. The Chinese government's policies, designed to directly and indirectly support Chinese producers of aluminum and aluminum products, have incentivized companies within China to overproduce primary aluminum and mid- and downstream products like extrusions or sheet with no regard to conditions in global markets. Because China's slowing economy cannot absorb all the metal produced domestically, Chinese producers have substantial incentives to export these value-added products – including extrusions, sheet and plate, foil and other semi-fabricated products that are covered by the Section 232 remedy – to the United States and other large, open markets. Targeted trade remedy and enforcement actions, including 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, while incentivizing investments by domestic producers. Nevertheless, the decision by the Commerce Department to grant exclusions from Section 232 tariffs on imports of aluminum and aluminum products from China (sometimes in massive volumes) significantly reduces the impetus for the Government of China to take action to address overcapacity in its aluminum industry and undermines the successful collective effort by the U.S. industry and the Department, through the AD/CVD cases, to address the influx of subsidized Chinese aluminum.

Further, the Association is deeply concerned that the Commerce Department is not adequately reviewing requests independent of objections by domestic producers. For example, the Department has granted – both individually and in the aggregate – large volumes of exclusions requests that, if fully utilized by importers, would significantly distort the U.S. aluminum market. We remain quite troubled that the import volumes at issue in granted (and pending) exclusions vastly exceed recent trends for U.S. imports of aluminum in various product categories. The U.S. market will face years of future distortions and disruption if importers follow through to import aluminum products in those volumes.

The Association is also concerned that the exclusion process guidelines are unclear with respect to the obligations and liabilities that come with filing an objection, in terms of a domestic producer's capacity versus capability. We recommend the Department clarify the intent and objective of the product exclusion process and the underlying Section 232 remedy to better guide producers and customers – or, at the very least, modify the objection form (and the rebuttal and sur-rebuttal forms) to clarify whether companies can object on the grounds that they have the capability to make a product even if they do not have immediately available capacity to meet the importer's stated needs. Because the Section 232 remedy covers the input material of primary aluminum (HTS 7601) as well as mid- and downstream aluminum products within HTS Chapter 76, there is an uneven – and compounding – impact within the U.S. market between U.S. aluminum producers and foreign producers that are benefitting from granted exclusion requests. In some scenarios, granting exclusions from the Section 232 tariff to foreign products that are available from U.S. producers will give producers outside the United States an advantage over U.S. producers.

In summary, the Aluminum Association recommends that the Commerce Department further improve the product exclusion process by undertaking the following policy changes:

- Subject all exclusion requests to a comprehensive evaluation – including those for which no objections are filed – to ensure that the volumes requested are not vastly disproportionate to historical U.S. import volumes and the overall size of the U.S. market. We also recommend the Commerce Department evaluate exclusion requests in the context of the aggregate volume of granted (and pending) requests by domestic importers. Before requests are approved, Department officials should be carefully evaluating the size of the exclusion requests relative to the size of the U.S. market and recent import trends in order to ensure that the quantities for which an exclusion is requested are reasonable. Further, the Commerce Department should apply heightened scrutiny to requests that vastly exceed a requestor's historical volume of imports.
- Analyze the utilization of granted exclusion requests, to determine to what extent importers are using granted requests, at what volumes and from which countries of origin -- and share that analysis with private sector stakeholders and policymakers, as appropriate.
- Adopt a stance of presumptive denial for exclusion requests that involve aluminum and aluminum products manufactured in non-market economy countries, such as China. At the very least, the Commerce Department should systematically evaluate exclusion requests for products originating from non-market economy countries.
- Facilitate the above policy changes by allowing domestic producers to oppose requests on the basis that the volumes requested are not proportional to the U.S. market and/or that the product originates from a non-market economy country. Additionally, trade associations that represent domestic stakeholders should have standing to oppose exclusion requests that involve products originating from non-market economy countries or notably exceed the requestor's previous import levels, as indicated in the exclusion request.
- Clarify how domestic producers should approach objections (and the rebuttal and sur-rebuttals) when they have the capability to manufacture a product even if they do not have immediately available capacity to meet the importer's stated needs. Further, the Commerce Department should clarify how it will evaluate such objections.

Recommendations: Process and Technical

Since the interim final rule was published in June, aluminum producers have found the new Section 232 portal to be a technical improvement to the prior process for filing exclusion requests and objections, and the portal has improved the ability of filers to track individual requests through the process. Our members have found the portal has created efficiencies in the process of filing exclusion requests, objections and rebuttals using the autofill option. However, it is more difficult for users to download a request objection, or rebuttal submission. In Regulations.gov, any user can save or share the attached Excel spreadsheet or supporting documentation. In the new portal, users must print the web page on paper or as a PDF in order to save or share the document.

Even with the new portal, it is still very difficult to track and analyze aggregated requests by product, volume, country of origin, alloy or other relevant factors. Aluminum producers have also found that the portal does not readily provide crucial details (country of origin, volume, alloy, temper, etc.) needed to evaluate whether an exclusion request would warrant further scrutiny or an objection. That information can only be reported by clicking into the detail of the request. We strongly urge the Commerce Department to feature that data as a filtering option on the main page where exclusion requests are posted. Additionally, users of the portal are still unable to cross-search with multiple criteria (HTS code, country of origin, alloy, etc.) within the new portal – a function that should be prioritized for deployment. Further, users are unable to assess within the portal whether granted exclusion requests have been utilized and to what extent.

The Aluminum Association strongly recommends that the Commerce Department provide stakeholders a way to more easily review the HTSUS and product information, country of origin, volume and alloys of posted exclusion requests – and to sort through granted or denied requests to analyze aggregate information. The Association has compiled the requests, objections and decisions in the aluminum docket into a searchable, sortable spreadsheet as a resource for our member companies, but the Department should facilitate access to that information for all stakeholders – particularly if the Department is going to rely heavily on stakeholder objections in its review process.

Association members have also expressed concern about technical issues with accessing the new system. In case of documented IT issues with the portal, the Commerce Department should be able to extend the time for companies to file exclusion requests or objections. Small businesses in particular have faced staffing limitations that do not allow adequate resources to be dedicated to the exclusions process.

We have also found, over the past year, that inconsistencies in posted exclusion requests make it difficult for stakeholders to analyze and identify requests that are worthy of objections – and then to analyze the impact of the remedy or the exclusions. Many exclusion requests still include no alloy designation, even though an alloy designation is an important identifier for assessing the validity of an exclusion request.

The Association also recommends that the Commerce Department clarify (and potentially expedite) the timeline for adjudicating exclusion requests for previously approved requests. As the industry faces a second year of participating in the Section 232 exclusion process, and anticipating submission of requests to extend previously approved requests, there is still uncertainty for companies who would like to facilitate continuity of their operations and eliminate gaps between approved requests for the same product. To promote business planning and certainty, the

Commerce Department should consider a policy that allows for granting, in certain circumstances, exclusions that last longer than one year.

In summary, the Aluminum Association recommends that the Commerce Department further refine and improve the product exclusion process by undertaking the following technical or process changes:

- Facilitate the ability of users to filter requests by HTS code, country of origin, volume, alloy, temper, etc. in order to allow companies to evaluate whether an exclusion request would warrant further scrutiny or possibly an objection. Additionally, the Commerce Department should deploy functionality for users of the portal to cross-search with multiple criteria (HTS code, country of origin, alloy, etc.) within the new portal.
- In case of documented IT issues with the portal, extend the time for companies to file exclusion requests or objections.
- Clarify the timeline for adjudicating exclusion requests for previously approved requests.

We appreciate your consideration of these comments and stand ready to discuss them further.

Respectfully submitted,

A handwritten signature in black ink that reads "Lauren Wilk". The signature is written in a cursive, flowing style.

Lauren Wilk
Vice President, Policy & International Trade
The Aluminum Association