November 13, 2018

Ms. Hillary Hess  
Director  
Regulatory Policy Division  
Bureau of Industry and Security  
U.S. Department of Commerce  
Room 2099B  
14th Street and Pennsylvania Avenue NW  
Washington, DC 20230

RE: Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum (83 FR 46026)

Ms. Hess:

The Aluminum Association welcomes the opportunity to submit comments in response to the interim final rule published by the Commerce Department regarding “Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum.” The members of the Aluminum Association, which represent the full value chain of the U.S. aluminum industry, looks forward to working with you to ensure the Section 232 remedy benefits the U.S. aluminum industry and addresses China’s persistent unfair trade practices.

The Aluminum Association is the largest aluminum trade association in the United States, representing 114 companies across the entire value chain that produce 70 percent of all aluminum shipped in North America. The association represents aluminum production and jobs in the United States, ranging from primary production to value-added products to recycling, as well as suppliers to the industry. The U.S. aluminum industry generates nearly $71 billion in direct economic output and directly employs more than 162,000 workers. Notably, aluminum industry jobs have grown 3.5 percent since 2013 despite global trade challenges and a significant drop in employment in primary aluminum smelting.

The changes outlined in the interim final rule have not yet, based on our and our members’ experience, improved the exclusion and objection process or eliminated the issues that raised concerns about transparency, fairness and efficiency. The inherent uncertainty of the product exclusion process is actually adding an unnecessarily prolonged cost burden to our members and their customers and chilling investment in the aluminum industry, rather than promoting domestic production. The status quo is therefore undermining the intent and the underlying national security rationale of the Section 232 remedy.
The Department of Commerce reported in the Interim Final Rule that it was taking “several steps to improve the exclusion process, including expediting the grant of properly filed exclusion requests that receive no objections and present no national security concerns, as well as increasing and organizing the Department’s staff to efficiently process exclusion requests.” Aluminum producers are, so far, not experiencing consistently positive results from these changes. At the last tally, decisions have been made on about 20 percent of published exclusion requests specific to aluminum. The Commerce Department does not yet appear to be adjudicating requests faster as a result of the updated exclusion process. In fact, there are exclusion requests that were published six months ago still awaiting decisions. The process is unfortunately out of sync with the pace of business and means that for several consecutive months, there are circumstances where our member companies and their customers have paid duties on products they were expecting to see excluded by now.

While the number of requests, objections, rebuttals and sur-rebuttals in the aluminum docket are far lower than the steel docket, the requests -- as well as objections and rebuttals -- are still difficult to monitor for stakeholders without an adequate tracking system that supplies relevant information. 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 exclusions without having to open each file for review. The Association has compiled this information into a searchable, sortable spreadsheet as a resource for member companies, but the Department should provide that kind of database for all stakeholders – particularly if the Department is going to rely on stakeholder input and objections to identify requests that deserve further investigation.

Inconsistencies in the exclusion requests also make it difficult for stakeholders to analyze and identify requests that are worthy of objections. Hundreds of exclusion requests include no alloy designation (Question 4.b), but instead reference the HTS code or simply leave that field blank. An alloy designation is an important identifier for assessing the validity of an exclusion request. Additionally, many exclusion grants – including those that have already been granted – fail to indicate a volume associated with the included countries of origin. For those successful requests, an importer can bring in the full approved volume from any of the listed countries. In practice, China could be one of five listed countries on the request form but end up being the sole provider for the entire quantity of imports. That outcome seems at odds with the stated purpose of the remedy and certainly runs counter to the stated objectives for this process of transparency, fairness and efficiency.

Further, the Association is deeply concerned that the Commerce Department is not adequately reviewing requests independent of stakeholder objections. For example, the Department has already granted a number of large-volume requests that will likely distort the U.S. aluminum market – and may soon grant more large-volume requests – without the necessary analysis of claims from requestors. Specifically, the approval of the sheet and plate exclusion requests – including requests for massive volumes of common alloy aluminum sheet – comes less than one year after the Department self-initiated unfair trade cases on imports of common alloy aluminum sheet from China. In our analysis, BIS has granted more than 360 Section 232 exclusions for aluminum products covered by the scope of the common alloy aluminum sheet AD/CVD case (HTS 7606.12.3090) – 306 of which include products from China. There are more than a thousand additional in-scope requests pending, not to mention the hundreds of requests for products identified as potential areas for evasion. Two batches of approvals for requests by
distributors of flat-rolled aluminum products are especially notable. The approval of exclusion requests by Ta Chen International now allow for import of 890,000 metric tons (or nearly 1.8 billion pounds) of common alloy sheet and plate free of Section 232 duties – including more than 1 billion pounds of imports from China. Approved requests from Mandel Metals now allow for the import of 270,000 metric tons (or nearly 600 million pounds) of sheet and plate free of Section 232 duties. The exclusions already granted account for a substantial share of U.S. market for common alloy products, and exceed recent trends for imports of flat rolled products. We are also seeing large volume requests in the foil segment, although most of those requests are still pending a final decision.

The representations made by importers requesting these exclusions that volumes of common alloy aluminum sheet are not available from domestic producers are absolutely false. The common alloy aluminum sheet covered by these exclusion requests is a basic flat-rolled aluminum product that is manufactured in significant volumes by numerous domestic producers.

Generally, it seems the Department is not evaluating whether there is actually demand in the market for these large volumes and has granted the requests based simply on the absence of any objections. This is not a valid basis for the Department to grant such large requests. 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 the volume of imports, in order to ensure that the quantities for which an exclusion is requested are reasonable. We strongly urge the Department to 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.

The Association is also concerned that the exclusion process guidelines are unclear about the obligations that come with filing an objection, and 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. Should producers 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? 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. In turn, mid- and downstream aluminum producers are frustrated to face objections to exclusion requests from companies that may not have the ability or intention of producing or selling such imports in the near term. This conundrum demonstrates the market-distorting effect at the heart of the aluminum remedy and this case-by-case product exclusion process. At the very least, we recommend the Commerce Department modify the objection form (and the rebuttal and sur-rebuttal form) to clarify whether companies can object on the ostensible 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 – and also to clarify how the Department will consider such objections.

The Association strongly recommends the Commerce Department commit to preparing a public quarterly report with analysis on the exclusions granted and decisions pending, as part of the ongoing monitoring of the market. That report should include trends and patterns related to importers, volumes, products and countries of origin. Further, associations should be able to provide comments or input to the Department on trends and patterns related to the product exclusion dockets, even if they cannot submit exclusion requests or objections because they are not producers.
As identified in the Section 232 investigation, the U.S. aluminum industry faces a structural challenge from producers in China that have long been a beneficiary of unlawful support from the Chinese government. The Aluminum Association urges the Department to recommend to the President appropriate country exemptions from the Section 232 aluminum remedy, to better ensure the Department can apply its resources to review requests that might exacerbate that threat from Chinese imports.

The Association also recommends the Commerce Department adopt a monitoring system for aluminum imports to better understand trade flows and imports from countries that pose a circumvention threat (Vietnam, Indonesia, Malaysia, Thailand, etc.) rather than apply tariffs or quotas to countries that have been determined to operate as market economies.

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

- Provide stakeholders a way to more easily review the HTSUS and product information, country of origin, volume, and alloys of posted exclusions – preferably, in a searchable database.
- Commit to publishing a quarterly report with analysis on the exclusions granted and decisions pending that includes trends and patterns related to importers, volumes, products and countries of origin.
- 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.
- Clarify the intent and objective of the product exclusion process and the underlying Section 232 remedy to better guide producers and customers in filing exclusion request and objections, and modify the objection form (and the rebuttal and sur-rebuttal form) to clarify whether companies can object on the grounds that they have the ostensible capability to make a product even if they do not have immediately available capacity to meet the importer’s stated needs.
- Adopt a monitoring system for aluminum imports to better understand trade flows and imports from countries that pose a circumvention threat (Vietnam, Indonesia, Malaysia, Thailand, etc.) rather than apply tariffs or quotas to countries that have been determined to operate as market economies.

We appreciate the Commerce Department’s consideration of these comments and stand ready to discuss them further.

Respectfully submitted,

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The Aluminum Association