

May 29, 2020

The Honorable Jeffrey I. Kessler
Assistant Secretary for Enforcement and Compliance
U.S. Department of Commerce
1401 Constitution Ave. NW
Room 1870
Washington, DC 20230

RE: Proposed Rule for Aluminum Import Monitoring and Analysis System (RIN 0625-AB18)

Dear Assistant Secretary Kessler:

The Aluminum Association welcomes the opportunity to submit comments in response to the proposed rule published by the United States Department of Commerce regarding the establishment of the Aluminum Import Monitoring and Analysis System (19 CFR 361).

The Aluminum Association is the largest aluminum trade association in the United States, representing aluminum production and jobs that span the entire industry value chain, from primary production to value-added products to recycling, as well as suppliers to the industry. Our country depends on the products manufactured by the aluminum industry to support healthcare, aerospace, transportation, construction, defense, packaging, infrastructure and many other critical segments of the U.S. economy. While aluminum industry jobs and investments had been on track for continued growth prior to the recent global pandemic, 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.

We were quite pleased to see the Department announce the establishment of an aluminum import monitoring (AIM) system, and we have been heartened by the bipartisan support on Capitol Hill for the program. We believe a new aluminum-specific import monitoring program administered by the Department will benefit domestic aluminum companies by helping government officials and industry stakeholders identify trends in trade flows and address aluminum misclassification, transshipment, and evasion of duties. The Association and its members look forward to working with you and your colleagues as the Department implements the AIM program.

Scope of Covered Products

As outlined in the proposed rule, the proposed AIM program would cover Harmonized Tariff System (HTS) codes that mirror the aluminum products covered by the President's Section 232 action in 2018 (HTS headings: 7601, 7604, 7605, 7606, 7607, 7608, 7609,

7616.99.51.60, and 7616.99.51.70). In order to ensure that the benefits of the AIM program are as widespread as possible and assist the entire aluminum industry, we recommend that all products classifiable under Chapter 76 be included in the new AIM program.

For example, scrap and secondary aluminum (classifiable under HTS heading 7602) – an important feedstock material for aluminum products – should be added to the scope of the program. As a product category that has undergone significant change in international trade flows in recent years as a result of the restriction on many scrap imports into China, and with the importance of increasing recycled content in products in order to support American industry and consumers as they continue to embrace the circular economy, the ability to monitor and analyze scrap flows in the future will be of great importance to the aluminum industry. A failure to include products classifiable under HTS heading 7602 from the AIM program could also provide a loophole for transshipment of products, a worrisome development currently seen in some European markets. Further, we strongly recommend that the AIM program also be used to track imports of aluminum wire and cable products (classifiable under HTS subheadings 7614.10.50, 7614.90.20, 7614.90.40, and 7614.90.50) covered by the Executive Order issued in January 2020 (Proclamation 9980) to extend the Section 232 remedy to certain derivative products.

Identifying the Origin of Input Aluminum

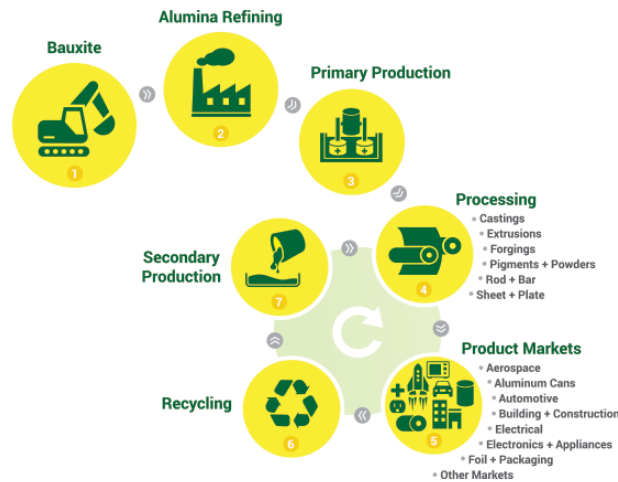
As part of the license application for each shipment, the proposed rule would require filers to identify the country of origin for the imported product as well as the country where the aluminum was “smelted and poured.”

However, the proposed rule does not include a definition for “smelted and poured” or guidance to assist license applicants in properly identifying the country where the aluminum in an imported product was “smelted and poured.” There is not currently a consensus definition within the aluminum industry for the term “smelted and poured,” and it is not a standard that is applied in the context of current government procurement rules, export control regulations, trade agreement Rules of Origin, or trade remedy actions. In comparison, we understand that the steel industry tracks material on a “melted and poured” standard in order to comply with certain federal procurement provisions that incorporate that definition specifically for iron and steel.

Given the characteristics of the material and the aluminum industry, and in the absence of a definition for “smelted and poured” or the existence of an established industry practice for tracking such information, we believe it would be an exceedingly large (and time-consuming) burden on suppliers and U.S. importers to meet this reporting requirement. It would be complex and resource-intensive for a manufacturer – or an importer – to certify the country (or countries) in which all input materials into a semi-fabricated aluminum product like sheet, foil, wire or extrusion were “smelted and poured.” In practice, aluminum manufacturers in the United States do not segregate their input materials by brand or country – only by grade or alloy.

The U.S. aluminum industry is comprised of primary and secondary aluminum production, as well as producers of semi-fabricated aluminum products like foil, sheet, plate, extrusions, powder, and wire and cable. Manufacturers of semi-fabricated products can utilize as an input material either primary aluminum (new aluminum that is produced from alumina in an energy-intensive smelting process) or secondary aluminum (recycled aluminum made from melting scrap) as ingot, billet or slab depending on the kind of product, the manufacturing process and the end-use application. Aluminum producers with on-site casthouses might also purchase scrap aluminum to re-melt themselves. These manufacturers might feed into the furnace primary aluminum from domestic and imported sources or secondary aluminum or

scrap material, or they might mix both primary and secondary aluminum, along with alloying elements, to meet the chemistry profile for their product. For many aluminum products, it would be exceedingly complicated and burdensome to identify and track the country (or countries) in which the input aluminum was “smelted and poured.” Further, an inherent attribute of aluminum is its infinite recyclability. It can be re-melted endlessly without losing performance characteristics. In fact, an estimated 75 percent of aluminum ever smelted is still in use today – giving aluminum and aluminum products an exceedingly long lifecycle and exacerbating the difficulty in identifying the origin of materials used in producing aluminum products.



Today, all bauxite and most of the alumina ultimately used to produce primary aluminum in the United States is imported. Even operating at full capacity, U.S. smelters do not produce enough primary aluminum to meet demand for the semi-fabricated aluminum products manufactured in the United States. Accordingly, the U.S. aluminum industry is part of a closely integrated global supply chain, and we depend on a stable supply of inputs and raw materials – both domestic and imported. There is currently not a standard industry practice to track the country of origin of input aluminum from start to finish, and the Association is not aware of any current supplier arrangement with a requirement to track the country (or countries) in which the original primary aluminum in input aluminum materials was smelted. Many manufacturers do have systems in place to follow the Rules of Origin for trade agreements like the U.S.-Mexico-Canada Agreement (USMCA) that generally set the “origin” point for an aluminum product classified under HTS Chapter 76 at the location of its substantial transformation.

We strongly urge the Department to modify the requirement that importers identify in each license the country where the aluminum was “smelted and poured,” in order to reflect real-world aluminum industry operations and ensure the program is feasible to launch this year. Requiring an importer to provide the country where the input material was “smelted and poured” for each license could delay the establishment of the AIM program, at a time when swift action to monitor and analyze trade flows would be particularly impactful. If the Department would like to track the source of input aluminum for certain products, beyond the designated country of origin for that product, the AIM program could focus in the near-term on identifying the most recent point of melting to determine where the input product was cast. Information to identify the country of casting could begin to illustrate supply chain trends and illuminate issues with trade flows that could be addressed by the U.S. government or the industry.

We understand that identifying where input aluminum material is smelted could be helpful in understanding aluminum supply chain developments and identifying possible trade distortions in near real-time. Tracking this information could help stakeholders – and the U.S. government – in identifying and taking action to stop or prevent transshipment of products, particularly for primary aluminum products like standard ingot and slab. Further, policies to incentivize the sourcing of primary and secondary aluminum from within North America could strengthen the reliability of supply chains and reinforce the sustainability attributes of aluminum. For those reasons, the Association welcomes the opportunity to collaborate with the Commerce Department and other stakeholders to determine how an aluminum material tracing mechanism could reasonably be implemented to achieve the Administration’s policy objectives.

Importer Registration & License Application

As with the current SIMA program to monitor steel imports, the proposed rule would require registered importers of covered aluminum products to apply online for a “license” for each shipment – licenses that will be issued automatically on completion of the application form – and to provide that license information to U.S. Customs and Border Protection (CBP) as part of each shipment’s customs paperwork in order to track aluminum imports for reporting and analysis. A single license could cover multiple products as long as basic information (importer, exporter, manufacturer, country of origin and exportation, expected dates of exportation and expected date of importation) are the same for the shipment. According to the proposed rule, there is no requirement to present physical copies of the license at the time of entry summary, but copies must be maintained in accordance with normal requirements established by CBP. No license will be required for informal entries, such as merchandise valued at less than \$2,500, or other “non-consumption” entries. There will be no fee for licenses or registration. We recognize, however, that importers will incur some costs – including additional fees to customs brokers – to manage and process import licenses.

Significant volumes of aluminum and aluminum products enter the United States by rail and truck. Ensuring immediate approval of license applications is critical, in order to avoid any unnecessary delay in cross-border shipments of aluminum. We encourage the Department to offer an alternative to the online application to ensure that trade is able to continue to flow in case of a system outage or other disruption, and to coordinate closely with CBP to minimize the chance of disruption in the online license system.

Additionally, imports of aluminum have complexities associated with reporting value because product pricing is based on the London Metals Exchange (LME) reference price, which can change minute-by-minute. Companies often initiate imports based on an estimated price and then reconcile the declared price to the final price. This administrative workload could be doubled if importers must reconcile twice – with CBP and with the Commerce Department – for every entry. Further, importers are at risk for significant penalties from CBP if they fail to reconcile or reconcile incorrectly. We recommend the Commerce Department minimize the burden for reconciling estimated prices in the AIM system, perhaps using the same reconciliation for entry purposes.

We also recommend that AIM filers be required to indicate on the license application whether the shipment is utilizing a granted 232 product exclusion and that the AIM website aggregate and report that information.

Aluminum Import Monitoring & Analysis Website

The Department has proposed that aggregated data will be reported on a monthly basis – including import quantity (metric tons), import customs value (U.S. \$), and average unit value (\$/metric ton). The Department’s reporting will also include certain aggregate data at the 6-digit HTS level and will present a range of historical data for comparison purposes. Reported monthly import data will be refreshed each week with new data on licenses issued during the previous week. This data will also be adjusted periodically for cancelled or unused aluminum import licenses, as appropriate. Certain information – like copies of the licenses and the names of importers, exporters, and manufacturers – will be considered business proprietary information and will not be released to the public. We believe that the Monitoring & Analysis website as outlined will help the industry and the government to monitor important trends in imports for the main HTS product groups.

The Association and its members have worked closely with the Administration to modernize 10-digit HTS codes for aluminum products to better monitor trade flows, and we urge the Department to incorporate this work into the new monitoring program by using these codes. As the Association has demonstrated to CBP and the Census Bureau through this amendment process, reporting data in such a detailed manner is critical for certain products. For instance, can sheet end and body stock (7606.12.30.55 and 7606.12.30.45, respectively) are a unique product with unique characteristics that would not be captured if data are reported at the 6-digit or even 8-digit level.

Conclusion

The Aluminum Association has prioritized the establishment of an import monitoring system in response to the troubling rise of flat-rolled aluminum product imports into the United States and the pervasive distortions caused by Chinese aluminum overcapacity. The aluminum industry strongly believes that monitoring the imports of aluminum and aluminum products will enable government officials and the industry to better identify trends in trade flows and address misclassification, transshipment, and evasion of duties. While targeted trade enforcement activity, including successful antidumping and countervailing duty cases, have reduced imports of Chinese aluminum into the U.S. in recent years, China’s overcapacity continues to grow – and, unfortunately, to penetrate other foreign markets.

The Aluminum Association and its members look forward to working the Department as it develops and implements this new AIM program, and we are eager to partner with you and your team as you work to ensure fair competition and a level playing field for U.S. aluminum producers and manufacturers.

In summary, the Association strongly recommends the Department:

- Modify the requirement that importers identify in each license the country where the aluminum was “smelted and poured,” in order to reflect real-world aluminum industry operations and ensure the program is feasible to launch this year;
- Include within the scope of the AIM all products in HTS Chapter 76. At the very least, the program scope should include aluminum wire and cable products and scrap and secondary aluminum classified under HTS 7602;

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- Require filers to indicate on the license application whether the shipment is utilizing a granted 232 product exclusion, and that the AIM website aggregate and report that information.
- Minimize the burden for reconciling estimated and declared prices or volume in the AIM system.
- Offer an alternative to the online application in case of system outage and coordinate with CBP to minimize the chance of disruption in the system; and
- Report in aggregate on the AIM website at least some products at the 10-digit HTS level.

We appreciate your consideration of these comments, and we would be pleased to work with you and your colleagues as the AIM program is finalized and becomes operational.

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