Hearing on Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

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Hearing on Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum

U.S. House of Representatives,
Subcommittee on Trade,
Committee on Ways and Means,
Washington, D.C

WITNESSES

Brian Semcer
President, MICRO
Witness Statement

Willie Chiang
Executive Vice President, COO, and Director, Plains All American GP LLC
Witness Statement

Rick Huether
President, CEO, and Chairman, Independent Can Company
Witness Statement

Todd Adams
President, Sanitube LLC; Vice President, Stainless Imports, Inc.
Witness Statement

Roy Houseman
Legislative Representative, United Steelworkers
Witness Statement

WAYS AND MEANS
CHAIRMAN KEVIN BRADY

Chairman Reichert Announces Hearing on Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum

House Ways and Means Trade Subcommittee Chairman David Reichert (R-WA) announced today that the Subcommittee will hold a hearing entitled "Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum." The hearing will address the experiences of U.S. companies navigating the process for requesting product exclusions from Section 232 tariffs and quotas on steel and aluminum. The hearing will take place on **Tuesday, July 24, 2018, in 1100 Longworth House Office Building, beginning at 2:00 PM.**

In view of the limited time to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, http://waysandmeans.house.gov, select "Hearings." Select the hearing for which you would like to make a submission, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Tuesday, August 7, 2018**. For questions, or if you encounter technical problems, please call (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the

Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days' notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available at http://www.waysandmeans.house.gov/

PRODUCT EXCLUSION PROCESS FOR SECTION 232 TARIFFS ON STEEL AND ALUMINUM

Tuesday, July 24, 2018
House of Representatives,
Subcommittee on Trade,
Committee on Ways and Means,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:44 p.m., in Room 1100, Longworth House Office Building, Hon. Dave Reichert [chairman of the subcommittee] presiding.

Chairman Reichert. The subcommittee will come to order. Thank you all for being here.

Today's hearing focuses on the experiences of U.S. companies that are participating in the product exclusion process in the hopes of obtaining relief from the tariffs that the administration has imposed on steel and aluminum.

As Congress provides oversight related to the administration's initiatives to confront China's unfair trade practices we must strike the right balance between being caught -- or being tough but also being effective and minimizing harm to American businesses and workers.

China's predatory trading tactics are clear. And we applaud the President for taking action to end these abusive policies, however, these challenges warranted a targeted response that minimizes collateral damage to our economy. There are now a series of problems as a result of the administration's decision to implement broad tariffs on steel and aluminum imports. I believe that these tariffs are hitting the wrong target.

When it comes to market distorting excess capacity to produce steel and aluminum our allies like Canada, Mexico and the European Union are not the problem, China is. Exempting our closest trading partners from these steel and aluminum tariffs would take some pressure off of American businesses, but in the meantime we must help our manufacturers by making the product exclusion process more efficient. As it stands it is broken, and it must be fixed.

In particular, many American manufacturers need to import certain specialized products from other countries that are not really available in the United States so they can manufacturer goods and create jobs here in America. It is clear to me readily available in this context should include availability in the specifications, quality, and timing a U.S. company requires. Otherwise we are penalizing American businesses from making their products here at home, rather than importing finished goods that in most cases would not face steel or aluminum tariffs.

This is why this hearing will focus on improving the exclusion process from Section 232 steel and aluminum tariffs. We must lift the significant burden that American manufacturers are facing, burdens that can lead to lost projects and lost jobs and our manufacturers need certainty and predictability so that they can make their business decisions and do what they do best.

Today we will hear from a broad range of local American job creators about the problems with the exclusion process. We are gathering facts to find out what is working and what is not so that the administration can make the changes to provide relief for our businesses and workers. I want to recognize the small staff at the Commerce Department, the small staff. They are not a large operating organization at the Commerce Department working on the exclusion process, and they have worked hard in very challenging circumstances to consider thousands of exclusion requests.

We received a statement from Secretary Ross today summarizing the efforts that the Commerce Department has made to address the backlog and improve the process, and I ask unanimous consent to place this document on the record.

Without objection, it is ordered.

COMMERCE DEPARTMENT STATEMENT

Updates & Improvements to Section 232 Steel and Aluminum Exclusion Request Processes

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." On March 19, 2018, the Secretary issued an interim final rule setting forth the requirements U.S. businesses must satisfy when submitting exclusion requests. The interim final rule also set forth the requirements that U.S. parties must meet when submitting objections to exclusion requests.

Since March 19, the Commerce Department has diligently worked to develop its exclusion process to ensure that the tariffs protect our national security while also minimizing undue impacts on downstream American industries. Two specific Commerce components have worked closely in this effort, the Bureau of Industry and Security (BIS) and the International Trade Administration (ITA). BIS is the lead agency deciding steel and aluminum tariff exclusion requests, and ITA is analyzing requests and objections to determine whether domestic production capacity can support the product needs of exclusion requesters. We aim to constantly improve the process and will expeditiously implement the changes detailed below.

As of today, the Commerce Department had received 28,711 exclusion requests and 8,074 objections. To streamline the exclusion review process, we've taken several steps:

Streamlining "No Objection" Requests. We will automatically grant properly filed exclusion requests which receive no objections and present no national security concerns. After an exclusion request's 30-day comment period on Regulations.gov, BIS will work with U.S. Customs and Border Protection (CBP) to ensure that the requester provided an accurate Harmonized Tariff Schedule (HTS) designation. If so, BIS will immediately assess the request for any national security concerns. If BIS identifies no national security concerns, it will expeditiously post a decision on Regulations.gov granting the exclusion request. Bypassing ITA review and immediately proceeding to the technical and national security reviews of requests with no objections will save considerable staff time and resources.

Enhancing efficiencies with CBP. We are working with CBP to enhance the speed and accuracy of its review of exclusion requests. Currently, approximately 5,500 cases are awaiting CBP review. BIS will not issue a decision granting an exclusion until CBP confirms that the exclusion is administrable, meaning the exclusion request designates the correct HTS number. To improve and speed the process, CBP is working to provide more staff and resources to conduct technical reviews of exclusion requests. In cases where a request is denied for HTS issues, companies are encouraged to work with CBP to confirm the proper classifications and resubmit.

Applying duty refunds. In cases where a company has had to resubmit an exclusion request, we will allow successful exclusion requesters to obtain refunds of duties paid as of the date their original exclusion request was posted by BIS on Regulations.gov. We are also reviewing with CBP ways to move the refund date as early in the process as possible.

Improving procedures for receiving additional information about domestic capacity. We are developing a rebuttal process to allow exclusion requestors to provide evidence refuting objectors' claims of domestic capacity. We will enhance our process to ensure Commerce Department decisionmakers have as much relevant information as possible when assessing exclusion requests. We will publish a final rule with these and other process enhancements in August. The Commerce Department has received 67 comments on the interim final rule and will be reviewing them carefully to determine what suggested revisions will make the process more efficient. We will respond to comments in the final rule in August.

Marshalling departmental staff and resources. Specifically, the Commerce Department has worked to increase and organize its staff to efficiently process exclusion requests. BIS has hired 8 contractors, with 9 more currently onboarding through the contracting process. ITA has onboarded 25 contractors with 27 more in the queue. Moreover, over a dozen non-BIS Commerce Department staff have been detailed to BIS to assist in its administration of the steel and aluminum exclusion process review. As additional personnel have come on board, the number of requests pending in the initial review stage decreased from 9,976 on June 25 to 4,968 on July 23. As the additional contractors engage, the number of requests pending initial review should decrease substantially. Since July 2, we have been reviewing and posting about 1,800 requests and 700 objections weekly.

With 4 full-time staff and 8 contractors, BIS has processed 1,800 requests per week. The addition of 9 contractors should increase the output to 3,150 decisions per week. Thus, with the congressionally-approved $1 million reprogramming request, BIS's maximum weekly output is 3,150 decisions. The Commerce Department is making considerable progress on the steel and aluminum exclusion requests. We have posted 927 steel and 223 aluminum decisions and will be posting substantially more in the coming weeks. We are optimizing our efforts with the resources we have. We can estimate that with the $3.3 million reprogramming request approved by the Senate Appropriations Committee or the $5 million reprogramming request we submitted – in contrast to the $1 million reprogramming request we received – our output could have been considerably higher, approximately doubling and tripling, respectively, the exclusion requests processed per week.

Reviewing Impact. The Secretary has directed Commerce Department economists to conduct semi-annual reviews of the impacts of the steel and aluminum tariffs, including on downstream sectors. The Secretary will present this information to the President for his consideration.

These improvements will significantly enhance the efficiency of processing exclusion requests. Additional funding, consistent with DOC's requests, would significantly increase the speed of processing exclusions. We will continue to evaluate other process improvements as we work through exclusion requests.

Chairman Reichert. I believe the Commerce Department is moving to improve the exclusion process, but much more is needed. The goal of this hearing is to be constructive in partnering with the Commerce Department to streamline the process and achieve the goal of prompt and fair resolution of all exclusion requests.

Members of this committee have been actively engaged in providing advice since before the tariffs even took effect in March. The improvements that Commerce has made so far were at least in part results of the efforts made by members of this committee and particularly Representative Walorski and the countless other -- and her constituents. For example, Commerce agreed to implement an exclusion process in the first place after many members advised them to do so.

It later agreed to provide some retroactive relief, however, despite these efforts the exclusion process is bogged down. It is bogged down in red tape and is moving far too slowly.

Four months have passed since the steel and aluminum tariffs were imposed, and less than 700 out of 27,000 requests have resulted in determinations by the Commerce Department with only 266 of those accepted and 421 have been denied.

The problem is not lack of resources. The fact is that the process is burdensome, it is unwieldy, and it is inefficient. There are a variety of improvements that the Commerce Department can and should make immediately so that the exclusion process works. I will highlight just a few, and I look forward to hearing more from our witnesses.

One common sense solution would be to streamline the process both at the beginning and the end. Allowing trade associations to apply would prevent duplicative applications and save time and money for both the U.S. company that needs the exclusion and the Commerce Department that must review all requests.

For the same reason at the end of the process when an exclusion is granted it should be available to any U.S. company. Both of these streamlining suggestions would particularly benefit small businesses and manufacturers that are at a disadvantage by having fewer resources to fill out the complicated forms and hire outside lawyers. We don't want a situation in which larger companies with more resources can use the product exclusion process to gain an advantage over smaller firms.

In addition, Commerce has not provided these companies whose petitions have been denied an opportunity to refute objections or appeal the decision even if an objection contains clearly incorrect information. Commerce should institute a brief but fair rebuttal process for these American businesses to ensure a robust record on which we can rely and not pick winners and losers. If there are no objections the petition should be automatically granted.

Moreover, the committee should allow -- Commerce should allow our companies to use the product exclusion process for products coming from countries facing hard quotas like Argentina, Brazil, and South Korea. These are only a few of the changes that can and should be made to the exclusion process to make it more fair and efficient. The last thing we need is an unnecessary, cumbersome process that acts as a new bureaucracy.

Last year's historic passage of tax reform has energized our economy. It has improved the spirits of American manufacturers and businesses and their employees. However, overly broad tariffs can slow this momentum and a cumbersome exclusion process does not provide the necessary relief to affected U.S. companies. It creates uncertainty in the economy, postponing investment, and hindering job growth.

Thank you for your time and thank you for your patience in listening, and I will now yield to Mr. Pascrell for his opening statement.

Mr. Pascrell. Thanks, Mr. Chair, I want to associate myself with much of what you just said.

I want to welcome our witnesses, great witnesses again today. I am eager to hear their perspective on Section 232.

While last week and today's subcommittee hearings are welcome they are not enough. I am deeply disappointed that, again, we don't hear from the administration today. But at the same time my Republican friends got an invitation for tomorrow to sit with the gentleman who is the guru, White House director of trade and manufacturing policy. I never met the guy. Maybe you have. They have a meeting on the Hill tomorrow for -- it is a private meeting to discuss U.S.-China trade policy issues.

I want you to know, Mr. Chairman, that every time anybody in the 21.5 years I have been here as treated anybody in the executive branch regardless of which party it was or the legislature as irrelevant I am at my best, so I look forward to this.

And I am sure Mr. Navarro and I shouldn't be in the same room together, but nonetheless, this is not going unnoticed. Do you want to play those games? We are not going to play games, we are going to play reality.

I supported the administration taking action against Chinese over capacity in steel and aluminum, and I am pleased that more domestic steel is being produced here in the United States following the tariffs taking effect as outlined in Mr. Houseman's testimony today. Mr. Houseman, you testify to that at least in the written testimony.

Previous attempts to counter China's rampant state subsidized steel and aluminum production have been inadequate, and that is really the very center of most of the problems we have with any country we have on trade, and that is subsidized their trade, we don't. We are living in the United States of America, the freest country in the world. We are not living in Russia, and we are not living in China. Thank God.

Too many workers and communities have lost their livelihood because of China's cheating, and it didn't start yesterday. But the success of these tariffs will only be as good as the exclusion process as the chairman pointed out to mitigate unintended consequences or impacts downstream.

We have all heard from local constituents, businesses, other stakeholders regarding concerns with Section 232 product exclusion process. One company I have heard from is MICRO based in Somerset, New Jersey. While they source 93 percent of their raw materials from the United States they import a specialized steel product from South Korea that goes into some devices, medical devices.

Because Commerce has decided not to allow exclusion requests for countries with quotas, get this, such as South Korea, MICRO is now in a situation where it will be prohibited from importing this product from South Korea even if MICRO is willing to pay the tariff. Does that make any sense to you?

They have been unable to find a U.S. company that is willing to produce the product to specifications that they require. We should be hearing from Secretary Ross regarding what he is going to do about the situation and situations like this. I mean, you are not unique. But my majority counterparts aren't willing to have that conversation, not in public anyway.

I also want you to know that the administration's long-term strategies here is bewildering. Will the administration pursue a multilateral solution to these issues, that will address the underlying problem? How do we ensure that we are not trapped in an endless cycle of emergency tariffs followed by erosion of our steel and aluminum production, how do we know that?

What is the status of discussions with our allies, such as Canada, Mexico, and the EU that are facing similar problems in their own steel and aluminum sectors driven by Chinese overcapacity. No administration is here to answer.

And in conclusion let me say this, Mr. Chairman, if it wasn't bizarre enough to have a meeting with only one side, today the administration, correct me if I'm wrong, made the announcement that they are going to provide $12 billion to the farmers of this country who might be getting hurt. Well, we know it is not might, they are getting hurt. Tell me that that makes sense.

Chairman Reichert. The gentleman's time has expired.

Mr. Pascrell. Thank you, Mr. Chairman.

Chairman Reichert. Thank you, Mr. Ranking Member.

Well, again, welcome. You can see we are all on the same page. Maybe not.

Today we are joined by five witnesses, and thank you all for being here today and taking time to answer questions for us so we can get a better picture of what is happening out there in the real world.

First we have Mr. Semcer from MICRO. He is the president of MICRO, a manufacturer of precision medical devices; second, Mr. Chiang, executive vice-president, CEO, and director of Plains All American, a Houston-based pipeline company; third, Mr. Huether -- is that correct -- the president, CEO, and chairman of the Independent Can Company, a manufacturer of metal packaging solutions for a broad range of products including popcorn and lighter fluid; and, fourth, Mr. Adams, president of Sanitube, LLC, and vice-president of Stainless Imports, Inc., which are related companies that provide sanitary grade stainless steel tubes, valves, and fittings to food, beverage, dairy, and other industries; and, fifth, Mr. Houseman, legislative representative of the United States Steelworkers.

Before recognizing our first witness please let me note that our time, as always, is limited. Please limit your testimony to 5 minutes, and members should keep their questioning to 5 minutes.

And Mr. Semcer, your written statement will be made a part of the record, and you are recognized for 5 minutes.

STATEMENT OF BRIAN SEMCER, PRESIDENT, MICRO

Mr. Semcer. Good afternoon, Chairman Reichert, Ranking Member Pascrell, and members of the subcommittee. I am Brian Semcer, president of MICRO, a precision medical device contract manufacturer in Somerset, New Jersey.

MICRO is a third generation family-run business. Today we employ 460 people in New Jersey and Florida, and we continue to grow, developing new products for our customers and adding more high paying advanced manufacturing jobs. I am proud of our incredibly talented team, and I am proud to say 93 percent of all of our raw materials are sourced right here in the U.S.

While I greatly appreciate the opportunity to appear today to tell our story, I wish my appearance was not necessary. I am here because our company needs a fix, and we need it fast.

Most of our business is in the medical device market. Our customers include some of the largest medical device companies in the United States. Our devices are used in minimally invasive surgical procedures, such as cauterizing major vessels during heart surgery or inserting the titanium marker where a breast biopsy was taken for cancer screening. These devices reduce risk with smaller incisions and less aggressive surgery. All the medical devices that we manufacture have one common element, precision stainless steel tubing.

Our products require 36 different high grade stainless steel tubes. These tubes are components of lifesaving medical devices, and that means any potential tube supplier would have to meet rigorous demands starting with qualification audits from our customers to ensure they meet FDA standards.

Finding a tube supplier that can meet these demands is not easy. In the past we worked with a domestic company that faced quality and delivery issues, which is simply unacceptable. So at the request of our customers we set out to find an alternative source.

In 2008 after an intensive search for a new supplier we formed an alliance with a precision tube manufacturer based in South Korea, and that arrangement has been very successful in terms of both quality and delivery. Having this reliable supply of precision tubing has allowed us to become one of the premier companies in our industry and to create quality manufacturing and engineering jobs in the U.S. But now we are dealing with quotas, limiting steel imports from South Korea to a maximum of 70 percent of the average tonnage imported between 2015 and 2017.

Under the Korean quota, based on what we have received so far this year, we had 20 tons remaining according to KOSA, the Korean Iron and Steel Association which allocates imports under the quota.

Let me be blunt. For MICRO, limiting our supply under this quota is catastrophic. Because we are a growing company 70 percent is unacceptable. We need more than the 100 percent of our existing usage, and if that wasn't bad enough in reality things are actually worse. Let me explain how this is playing out with KOSA. We are expecting an additional 20 tons this year. Then in late June KOSA told us we would only get 12 tons. But 2 weeks ago KOSA informed us we will get no more this this year. None. Zero.

So let it be understood if nothing changes we will get no more shipments this year and MICRO will be unable to supply critical medical devices and device components to our customers. For a company like MICRO this quota is far worse than a tariff. If this were a tariff country we could apply for an exclusion, or we could pay the tariff. But under a quota we don't have either of these options. In fact, we don't have any recourse at all.

Our material supply is simply cut off. I won't presume to tell you how to fix this. I just know that MICRO is an American success story, and if we are going to continue that success we need help, and we need it fast.

Thank you Chairman Reichert, Ranking Member Pascrell, and your staff for your proactive efforts on our behalf.

STATEMENT FOR THE RECORD
SUBMITTED BY BRIAN SEMCER, PRESIDENT, MICRO
BEFORE THE HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE
U.S. HOUSE OF REPRESENTATIVES
JULY 24, 2018

Good Afternoon, Chairman Reichert, Ranking Member Pascrell, and members of the subcommittee. My name is Brian Semcer and I am the President of MICRO, a precision medical device contract manufacturer located in Somerset, New Jersey.

While I greatly appreciate the opportunity to appear before the subcommittee to tell our company's story, all things considered, I wish my appearance here today was not necessary. Until recently, we had never actively sought the attention of leaders in Washington and we've certainly never wanted this kind of spotlight on our operations.

I am here today because our company is quickly running out of options.

MICRO is a third-generation, family-run business, and, currently, members of the fourth generation are either in college or interning at MICRO, preparing to continue that legacy. In many ways, MICRO is a quintessential American success story and our family is very proud of what we've achieved.

Today, MICRO employs about 460 people, all of them in New Jersey and Florida. Our annual revenue is approximately $115 million, and we've enjoyed roughly nine percent annual growth and added between 30 and 35 new jobs in each of the last five years.

About 85 percent of our business is in the medical device market. We manufacture device components and also assemble these components in-house to ship complete devices. Our customers – all of whom give us the highest marks for quality and efficiency – include some of the largest original equipment manufacturers, or OEMs, in the United States. For many of the products that we manufacture, we are our customers' sole supplier.

Most of our devices are made for minimally invasive surgical procedures. For example, to cauterize major vessels during heart surgery or insert a titanium marker where a breast biopsy has been taken for cancer screening. These devices allow doctors to perform life-saving procedures without making large incisions or requiring an open surgery.

All the medical devices that we manufacture have a common element: precision stainless steel tubing.

Combined, our product lines require 36 different high-grade tubes varying in size and specificity. Because these tubes are components for life-saving medical devices, quality control and extreme precision are absolute necessities. Finding a tube supplier that can meet these demands has not been easy. In the past, we worked with a domestic company that faced quality and delivery issues, which is unacceptable in our line of work. In light of this, our customers asked us to find an alternative source.

In 2008, after an intensive search for a new supplier, we formed an alliance with a small tube manufacturer based in South Korea, and that arrangement has been very successful in terms of both quality and delivery. We started by purchasing two million linear feet of tubing from the company in the first year. By 2020, if we can achieve our projected goals, we expect to reach nine million linear feet of tubing in order to meet 45 different product specifications. Over the years, we have searched for alternative domestic suppliers, but have been unsuccessful due to our quality and lead time needs.

Having a reliable supply of precision tubing has allowed us to become one of the premier companies in our industry and create quality manufacturing and engineering jobs here in the U.S. MICRO's continued viability and future growth directly depend upon the expansion of our medical device business. Given the subject matter of today's hearing, it will likely not surprise anyone to hear that we've had some major obstacles placed in our path.

In March of this year, the administration imposed a quota on steel imported from South Korea. Specifically, steel imports have been strictly limited to a maximum of 70 percent of the average tonnage imported from South Korea between 2015 and 2017.

Let me be blunt: For MICRO, this quota is catastrophic.

For companies like MICRO to continue growing, we need to increase sales and volume year after year. Even capping our materials at 100 percent of previous years' amounts would be extremely detrimental because it would not allow us to expand to new tubing-related programs – now or in the future.

Under a best-case scenario, the quota would limit MICRO's steel imports to 70 percent of our recent yearly average. That would mean a 30 percent loss of market share and would effectively bar us from helping our customers develop and introduce any new products or expanding our operations in the foreseeable future. For instance, we are scheduled to be part of two product launches in the fourth quarter of this year, but, as of now, we cannot source enough tubing to meet those demands.

Like I said, that's a hypothetical best-case scenario. In reality, things are actually much, much worse.

Under the U.S. agreement with South Korea, the quota is administered by the Korean Iron and Steel Association, or KOSA. There is no requirement that KOSA disburse imports proportionally among all U.S. importers, so there has never been any guarantee that MICRO would even get its 70 percent.

Still, after the quota was implemented, we moved forward assuming we'd be treated at least somewhat fairly based on informal communication between our Korean partner and KOSA. By June, we still had 20 tons available for importation under the quota, assuming we were going to get our 70 percent. That wasn't enough, but we were preparing to deal with it the best we could.

Then, on June 29th, KOSA informed us that our 20 tons would be cut down to twelve. A couple of weeks later, on July 10th, KOSA again reduced our remaining allotment from 12 tons down to zero. In other words, our imports were capped at approximately 60 percent of the total shipments we received in 2017. Our last shipment left Korea July 5th, and, if nothing changes, we will receive no more allotted shipments for the rest of 2018.

If the initial overall quota was catastrophic for MICRO, KOSA's additional reductions will be fatal. Put simply, if nothing changes, MICRO will be unable to supply critical medical devices and device components to its customers.

What does this mean? For starters, MICRO is the sole supplier to our customers of a number of important medical devices. These include trocars and access instruments; general surgical instruments such as scissors, dissectors and graspers; hernia tacking devices; ligation clip appliers, energy-based devices used for tissue transection and sealing; as well as surgical site closure devices.

If our tube supply remains cut off, MICRO will have to start shutting down production on some operations in a matter of weeks. That stoppage will rapidly expand throughout our product lines and end up affecting all our devices before the end of October, forcing us to reduce our workforce and costing the U.S. many high-paying manufacturing jobs.

By itself, that would be bad enough, but the impact will actually extend far beyond MICRO, its customers, and its employees. The entire healthcare industry will feel the ripple effect.

Once we start pulling back production, our customers' supplies will quickly diminish, then hospitals nationwide will be facing device shortages of all our products throughout the fall. Ultimately, a shortage of minimally invasive surgical devices could require doctors to perform more invasive surgeries and procedures, resulting in longer recovery times and higher costs for patients and healthcare providers.

I don't say any of this to be alarmist, but if MICRO even partially starts shutting down operations, several key devices will soon be entirely unavailable. Given the inherent cost and timing restrictions on producing these types of products, it is unclear if or when any suitable replacements would come on the market.

The stated purpose of the quota is to help preserve U.S. manufacturing. At MICRO, we share that goal. In fact, MICRO already purchases over 93 percent of our raw materials from American metal suppliers. The tubes are the only raw materials we purchase from a foreign supplier, and we do so because, quite simply, there isn't a suitable domestic alternative.

I can't stress enough the importance of quality, precision, and specificity in the products we manufacture. Any potential tube supplier would have to meet the most rigorous demands, including qualification audits from our OEM customers to ensure that FDA standards will be met and maintained. We estimate that it would take a company anywhere from six months to three years to adequately prepare for production of these types of tubes.

On top of that, while the tubes are an essential element to the medical devices we manufacture, they are one of the least expensive parts of our supply chain. We spend only about $4 million a year to purchase less than 100 tons of tubing. So, it's been difficult to generate interest among potential American suppliers who would have to go through a long and expensive conversion and approval process just to start working on a product line that isn't all that lucrative.

Over the course of 10 years, MICRO has researched dozens of potential domestic supplier options, but we've had to rule them out due to lack of capability. Periodically, and most recently within the past two months, we've sent out requests for quotes to various U.S. companies. Most of them sent back either incomplete responses or no responses at all. Not a single company even claimed at the earliest stage to be able to meet all our needs, since the precision tolerances and quality requirements present a daunting challenge – not to mention our need for immediate sourcing.

MICRO has also considered purchasing raw strip steel here in the U.S. and shipping it to Korea for tube production. We actually purchased some U.S. stainless steel strip for this purpose. Such a transition would take six to nine months to implement, which, again, is too long, but we wanted to keep all options open in hopes that a new HTS code could be created for tubing made in Korea from U.S. base stock. However, we subsequently received feedback indicating that this process would not help us. Though the tubes would be built from strip steel produced here in the U.S, they would ultimately still be considered Korean products for the purposes of the quota.

Long story short, we don't have any recourse here.

While some apparently considered this quota to be a preferable alternative to new tariffs on South Korean steel, for a company like MICRO, the quota is far worse.

Tariffs would certainly increase our production costs, which would result in higher prices for our customers, health care providers, and, ultimately, patients. But, if it was necessary, we would pay tariffs and find a way to continue growing and innovating. With this quota, we don't have the option of paying a tariff and going about our business. Instead, we have a hard cap on our supply, one that can apparently be lowered at any time with minimal warning or explanation.

In addition, as the administration has been implementing tariffs on other countries' imports, they have considered and approved applications for exemptions for certain products and industries. Yet, with the quota, there is no exemption process whatsoever. The 70-percent limit applies across the board. In both form and substance, this quota is worse for MICRO than any tariffs would have been.

I want to reiterate that I have no desire to wade into our country's broader trade policy debate. I know that these are complicated matters and there are longstanding concerns about the balance of trade with certain countries. I won't presume to tell policymakers how to do their jobs, but MICRO is an American success story, and, if we're going to continue that success, we need help and fast.

As far as I can see, there are a handful of options the government could take to address these problems.

Creating a separate code under the Harmonized Tariff Schedule for high precision, medical-grade stainless steel tubing could pull these types of products out of the quota altogether. As it stands, our extremely small quantity of product is lumped in with the huge steel piping used on oil rigs and in construction. Placing our medical device tubes in the same category with every other steel product doesn't seem appropriate given the sensitive and even life-saving nature of the products that they are used to manufacture. In this light it seems like classification under a separate code would be mostly noncontroversial.

In fact, the overall quota for all South Korean steel imports is set at just over 2.6 million metric tons for 2018. Of that amount, only about 12,000 tons, or 0.5 percent, will go toward medical-grade stainless steel tubing. If MICRO's purchases this year ended up the same as in 2017, we'd take up only about 0.67 percent of the medical-grade tubing imports under the quota. In other words, creating a separate HTS code for medical-grade steel tubing would exempt only a miniscule share of steel from the quota, but it would go a very long way to preserving our country's edge in medical device manufacturing and keeping companies like MICRO in business.

At the very least, the administration could establish a process to apply for exemptions to the South Korea steel quota. They have already recognized the importance of the medical device industry by removing a number of devices from the list of Chinese products subject to Section 301 tariffs. In fact, it was members of this subcommittee who championed the effort to get that exemption. But, at the moment, no similar mechanism exists for the South Korea steel quota. If given a chance, I think MICRO could make a strong case that essential components for life-saving medical devices, which have exceptionally high precision quality requirements, should not be subject to such strict limitations.

There are, I'm sure, other alternatives that would grant our company some relief. Perhaps the combined knowledge and expertise of those in the room today can come up with a suitable solution.

Once again, without some kind of change, MICRO will have to start pulling back much of its operations almost immediately. I'm here today simply to urge Congress and the administration to act to address this problem quickly. It wouldn't just be in our company's interest to do so, it is also in the national interest to prevent a shortage of life-saving devices and to preserve our country's capacity to produce these types of innovative products in the future.

Thank you, once again, for inviting me to testify. I look forward to answering any questions members might have.

Chairman Reichert. Well, thank you very much for your testimony. Mr. Chiang, you are recognized for 5 minutes.

STATEMENT OF WILLIE CHIANG, EXECUTIVE VICE PRESIDENT, COO, AND DIRECTOR, PLAINS ALL AMERICAN GP LLC

Mr. Chiang. Good afternoon, Chairman Reichert, Ranking Member Pascrell, members of the committee. I am Willie Chiang, executive vice-president, chief operating officer, and a director of Plains All American. I have also been named as the incoming CEO effective later this year.

Plains All American is one of the largest crude oil midstream energy companies in America. Every day we transport more than 4.5 million barrels of crude oil in the U.S. We employ nearly 3,400 people in the U.S. and have a presence in almost every State represented by the members of the committee.

We are an American company, and we are proud to source more than 85 percent of our capital investments domestically. We support policies that encourage domestic production of steel just as we have a preference for the domestic production of energy. However, our recently denied exclusion request highlights the important flaws of the implementation of Section 232 tariffs on steel imports.

As a backdrop to my comments today, the U.S. has experienced unparalleled energy production growth over the last several years primarily driven by the Permian Basin. We are concerned that the current 232 tariff process could limit our country's ability to realize its energy growth potential and related jobs.

Our experience with the Department of Commerce 232 exclusion process may provide useful insights for the committee. By making certain improvements Congress and the administration can better position the U.S. to achieve the President's objectives to revitalize the steel industry and to achieve U.S. energy dominance.

Congress and the administration should consider the following changes to improve the 232 process. First, exempt international steel orders placed before imposition of the tariffs and quotas. This would rectify the de facto tax currently placed on preexisting orders. It would also restore certainty around investment decisions and relieve some of the exclusion request backlog faced by the Department of Commerce.

Second, exempt critical infrastructure project components from tariffs and quotas. The Department of Homeland Security has identified energy pipelines as critical infrastructure. Sufficient qualities of line pipe are required to build out our U.S. pipeline infrastructure. According to the American Petroleum Institute line pipe currently amounts to roughly 5 percent of the total volume of steel imports. Congress and the administration should consider exempting line pipe from steel tariffs and quotas until the steel industry is able to build out the capability and the capacity to timely manufacture the line pipe required to meet America's energy growth.

Third, recognize that technical decisions regarding product specifications must be made by individual companies, not the U.S. Government. Every day at Plains we are focused on safe, reliable, and responsible operations. We have developed stringent pipeline specifications to aid us in this effort. In our exclusion review process the Commerce Department appeared to disregard our company's longstanding technical requirements in their analysis. This led to the erroneous conclusion that an equivalent domestic product was available and forced us to pay a tax for a product that is not available in the U.S.

Fourth, ensure companies receive due process in the exclusion request procedures. Incorporate common elements of other government procedures, such as transparency, ability to formally discuss the case, to be informed about the reasons for denial, and to have the opportunity to appeal a decision.

Fifth and finally, consolidate exclusion requests by project or purchase order instead of requiring individual filings for nearly identical products. For instance, one of our smaller pipeline projects required six exclusion requests for the same pipe. Consolidating these requests would help reduce the backlog of more than 20,000 requests and related filings.

Implementing these changes would better balance the administration's objects of steel revitalization and energy security and growth. This would avoid significant unintended consequences that will undermine important progress towards continued energy growth, national security, and the balance of trade.

On a related matter I would like to highlight the importance of avoiding absolute quotas on steel imports. Additional absolute quotas would risk stopping projects in their tracks affecting U.S. jobs and continued energy growth. Limiting the amount of steel available for critical infrastructure projects like crude oil pipelines is unworkable. Receiving 80 percent of the required materials for a pipeline is like receiving 80 percent of the materials for a bridge. It is 0 percent effective. Absolute quotas create uncertainty, cause delays or even cancellations for critical infrastructure projects, and must be avoided.

Mr. Chairman, committee members, thank you for the opportunity to testify, and I look forward to questions.

WRITTEN TESTIMONY

WILLIE C. CHIANG
PLAINS ALL AMERICAN PIPELINE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

"PRODUCT EXCLUSION PROCESS FOR SECTION 232 TARIFFS ON STEEL"

JULY 24, 2018

Chairman Brady, Chairman Reichert, Ranking Member Pascrell and members of the Committee, my name is Willie Chiang, Executive Vice President, Chief Operating Officer and a member of the Board of Directors of Plains All American GP, LLC. I have also been named as the incoming CEO effective later this year.

I appreciate the opportunity to testify regarding the Section 232 tariff exclusion process, including the Commerce Department's recent denial of our exclusion request for 26-inch high-frequency welded[1] (HFW) line pipe that will be used to construct the Cactus II pipeline system. This new 26-inch diameter, 550-mile crude oil pipeline system is a critical infrastructure project that will help enable production growth in the Permian Basin region of west Texas and New Mexico.

About Plains

Plains All American Pipeline is a U.S.-based midstream energy company with nearly 3,400 employees across the United States. We operate one of the nation's largest and most integrated networks of midstream energy infrastructure, with ownership of more than 13,000 miles of active crude oil pipeline in the United States, more than 85 million barrels of liquids storage, 25 crude oil or natural gas liquids rail terminals and five marine terminals. In 2017, Plains handled approximately 4.5 million barrels of crude oil per day in the U.S. We also have sizable pipeline and midstream facilities operations in Canada, managed by our more than 1,450 Canadian colleagues.

Plains All American Pipeline is committed to domestic infrastructure investment. During the past 20 years, we have invested more than $12.5 billion in new North American energy infrastructure to support energy production growth, contributing to U.S. energy independence and national security. With safety as one of our core values, we are committed to designing, constructing, operating and maintaining pipelines in a safe and reliable manner, as well as to meeting or exceeding regulatory standards.

We are an American company headquartered in Houston, and we are proud to source more than 85 percent of our capital investments domestically. We support policies that encourage

[1] *The HFW manufacturing process may also be referred to as Electric Resistance Welding (ERW).*

domestic production of steel, just as we have a preference for the domestic production of energy. However, currently steel imports are essential given the lack of domestic availability for certain products.

When the Section 232 tariffs were introduced in March 2018, we proceeded with the exclusion process for the Cactus II line pipe we had ordered months earlier in December 2017. The specific pipe specification required by the project is not manufactured in the U.S., requiring us to order it from overseas. We were disappointed that the Commerce Department rejected our request for tariff exclusions and, as I will testify, our experience with the exclusion process has revealed significant flaws in the implementation of Section 232 for steel tariffs.

In addition, we appreciate the support of a number of elected officials who understand the challenges we and others in our industry face due to the imposition of the Section 232 tariffs and support our position. In particular, we would like to thank Chairman Conaway and his eight Texas House delegation colleagues, as well as Senator Cornyn and Texas Governor Abbott for their support of our concerns. We also appreciate your Committee's interest and your willingness to devote a hearing to this important topic.

Summary of Policy Recommendations

On March 7, 2018, more than 100 members of Congress, including several members of this Committee, sent a letter to President Trump expressing concern over steel and aluminum tariffs and setting forth four critical elements that should be considered in the 232 exclusion request process. These observations were prophetic as we are now dealing with certain of the same concerns identified in the letter.

It is essential that Congress help rectify flaws in the way Section 232 tariffs and the exclusion request process have been implemented. We believe by making certain improvements to the Section 232 process, Congress and the Administration can achieve President Trump's objectives for revitalizing the steel industry while promoting U.S. energy dominance.

We believe our experience with the Department of Commerce's process and the unique market conditions surrounding our applications will provide useful insight for the Committee as it conducts its oversight. We propose the following recommendations to improve the Section 232 process:

1. Exempt international steel orders placed prior to the imposition of tariffs and quotas.

2. Exempt critical infrastructure project components from tariffs and quotas.

3. Recognize technical decisions regarding product specifications must be made by individual companies, not the U.S. government.

4. Ensure companies receive due process in the exclusion request procedures.

5. Consolidate exclusion requests by project or purchase order instead of requiring individual filings for nearly identical products.

Implementing these enhancements would better balance the Administration's objectives of steel revitalization and the pursuit of energy dominance. Alignment of these goals is critical to avoid significant unintended consequences that could undermine important progress towards realizing American energy independence, strengthening national security and improving the balance of trade.

On a related matter, I would like to highlight the importance of avoiding absolute quotas on steel imports and will expand on this later in my testimony.

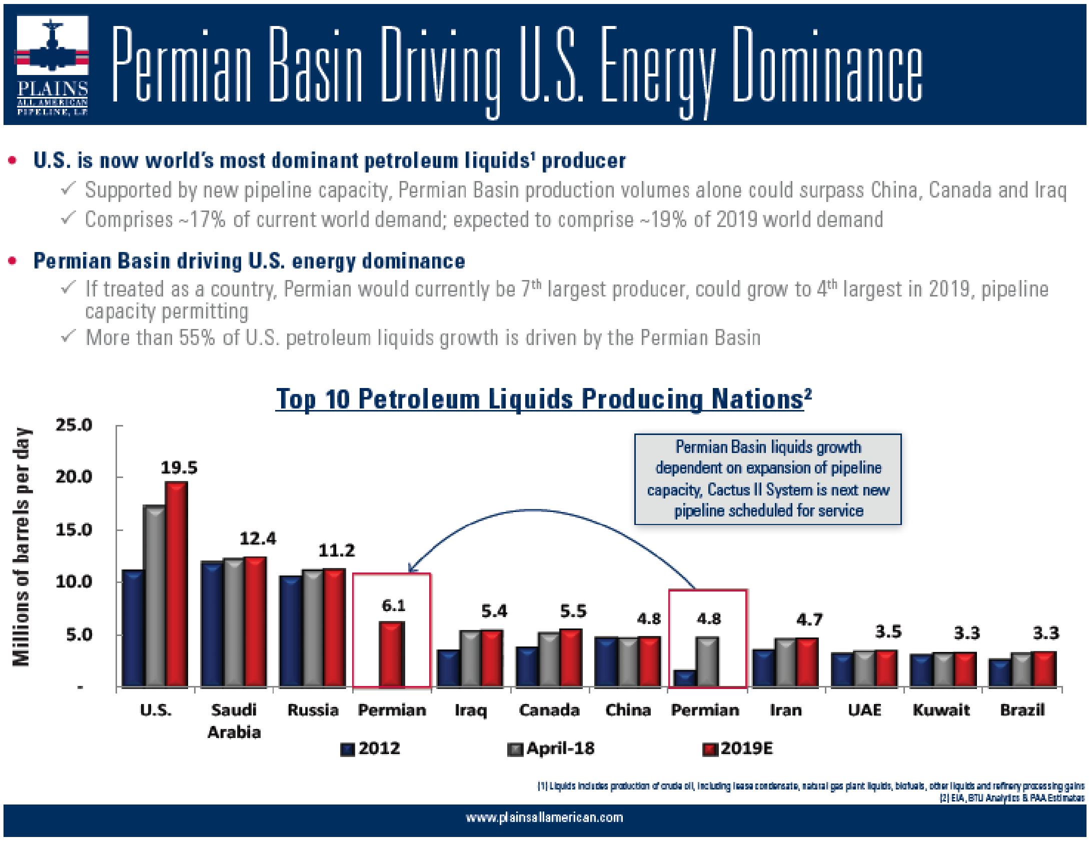
Using as an example our experience in seeking a steel tariff exclusion for our Cactus II pipeline project, I would like to provide more detail on our recommendations to improve the Section 232 process. Understanding the current status of the Permian Basin and the importance of our Cactus II pipeline project to the Permian Basin's continued growth is critical to understanding the detrimental effects of a flawed 232 steel tariff process on the interests of both our company and our country.

The Permian Basin

Located in west Texas and southeastern New Mexico, the Permian Basin is the largest oil play in America, the fastest growing crude oil basin in the world, and by far the largest driver of current and projected future U.S. energy production growth. If it were a country by itself, the Permian Basin would already qualify as the 7^{th} largest petroleum liquids producing country in the world.

Permian Basin energy production growth benefits job creation, national energy security and the balance of trade. However, crude oil production growth in the Permian Basin is being threatened by the very fact that it is rapidly outpacing available pipeline takeaway infrastructure. As a result, we expect, within the coming months, there will not be enough pipeline takeaway capacity to move forecasted volume growth, forcing crude oil production to be shut-in or moved by rail and long-haul truck. These alternative transportation methods are much more costly and are limited in their ability to service projected production growth.

Timely construction of proposed pipeline infrastructure in this region is critical to ensure adequate pipeline capacity that will sustain Permian production growth. If sufficient pipeline infrastructure, including our Cactus II Pipeline system, is built within the next 18 months as planned, it is anticipated the Permian Basin will surpass China, Canada and Iraq to become the fourth largest liquids petroleum producing region in the world.



The Cactus II Pipeline System

Our Cactus II project is a new 26-inch diameter, 550-mile, crude oil pipeline system that will be constructed between the Permian Basin and Corpus Christi. Approximately 80 percent of the $1.1 billion project cost is comprised of U.S. material and labor and will support more than 2,600 construction jobs.

Cactus II will enable the transportation of nearly $15 billion per year of crude oil, benefiting the regional and national economy. With an initial in-service date that is currently projected for the fall of 2019, Cactus II will ultimately provide nearly 700,000 barrels per day of crude oil transportation capacity, helping overcome a major limitation to continued Permian Basin production growth.

Cactus II Steel Procurement Process

The line pipe we utilize in our construction projects must meet exacting specifications. Our original project scope envisioned a 24-inch Outside Diameter (OD), HFW pipeline, and we later increased the size to 26-inch HFW pipe due to customer demand. The 2-inch increase in diameter allows for a nearly 20 percent increase in pipeline capacity.

In 2017 we requested quotes from pre-qualified U.S. and foreign mills to manufacture the required diameters of HFW steel pipe for our Cactus II pipeline in lengths ranging roughly from 70 to 76 feet. These pipeline integrity- related specifications were required to limit the number of girth welds and the length and location of seam welds. We specified HFW pipe because it is consistent with the vast majority of the pipelines we have constructed and because our maintenance and operations processes and practices are largely based on this specification.

Notably, American mills either did not bid for the project or submitted alternative specifications for the 26-inch pipe option that were not acceptable for Cactus II's project design. In fact, the lack of U.S. production capability for the pipe subject to this exclusion request was confirmed in recent testimony by a domestic pipe mill chief executive, who acknowledged he was not aware of any U.S. mill capable of creating 26-inch pipe with the HFW manufacturing technique that meets this project's specifications. This same executive reiterated the same point in a letter of objection to our 232 exclusion request, stating "no U.S. mill can produce 26-inch pipe in HFW."

As a result, in accordance with our project schedule, we placed our initial line pipe order in December 2017 with a mill located in Greece, well in advance of the Section 232 Presidential Proclamation in March 2018. The steel is arriving in multiple shipments, which started earlier this month and will continue through the end of this year.

Cactus II Application for Section 232 Exclusion Decision and Denial

After the March 2018 imposition of the Section 232 25 percent tariff on steel, Plains submitted the necessary tariff exclusion requests to the Department of Commerce for approximately 550 miles of 26-inch, OD, HFW pipe from Corinth Pipeworks (CPW).

On July 13th, the Department of Commerce posted its decision memo, denying our request for tariff exclusion for Cactus II line pipe. The denial of our request appears to be based on an analysis by the International Trade Administration (ITA) that "*the product… is produced in the United States in a sufficient and reasonably available amount and of a satisfactory quality.*" Although we have sought to receive the supporting data generated by the ITA through multiple avenues, we have not yet been provided with that analysis.

Flaws in the 232 process

As it exists, the 232 process has multiple flaws. One significant flaw is that the current 232 exclusion process does not allow for an applicant to effectively engage in the Department of Commerce's exclusion review process. It also provides limited due process or transparency for applicants. Due to the opaque nature of the process, we can only assume that Commerce's determination is based on a review of a combination of the objectors' submissions, which appear to not be required to be substantiated, and other undisclosed data by staff – without interaction with the applicant.

Furthermore, there is no formal process for the applicant to rebut objector comments. In our case, several domestic mills posted comments claiming they could produce acceptable substitutes to Plains' order in satisfactory quality and quantity on the last day of the 30-day comment period. As a result, these comments were posted and made available to Plains only after the comment period had closed, effectively eliminating any opportunity to rebut the comments during the comment period. Plains did submit a rebuttal to the domestic mills' objections directly to staff at the Bureau of Industry and Security of the Department of Commerce, but we still do not know whether our rebuttal was considered in the exclusion request review process. Additionally, we are unaware of an opportunity to appeal the exclusion request denial.

The process is also reportedly challenged by a backlog of more than 20,000 exclusion requests and associated documents needing attention in a limited window of time. As this number climbs, it is possible that projects may begin to face delays due to the uncertainty of tariff assessments if the Commerce Department is unable to process these exclusion requests in a fair and timely manner.

Recommendations to Enhance the Section 232 Exclusion Request Process

The Administration should consider the following changes to improve the 232 exclusion request process:

1. **Exempt international steel orders placed before the imposition of tariffs and quotas.**

   The U.S. government should seek to ensure its policies do not reach back in an "ex-post facto" manner and violate the sanctity of capital investment decisions that were made based on laws and rules in effect at the time the investment decision was made. In addition to the fact that these infrastructure projects are critical to national interest, they are privately financed, and the economics of these projects factor into a company's decision to approve the construction of a project. Imposing a 25 percent tax on one of the most significant contributors of the project cost – after the business decision has been made to proceed – is unjust and may pose a risk to the completion of energy projects critical to our national interest.

   Specific to the pipeline industry, the investment decisions for pipeline infrastructure projects are made months in advance of receiving the first line pipe from a steel mill. In the case of Cactus II project, Plains ordered pipe in December 2017 from a steel mill in Greece, months ahead of both the decision to impose steel tariffs (March 2018) and the date that the implementation of those steel tariffs began to affect EU imports (June 2018). We are now dealing with a major unexpected, unjust retroactive tax that affects the project's economics.

   Ironically, the denial of our exclusion request provides no relief to the U.S. steel industry. We have already begun to receive shipments of the steel, so even if we were able to substitute product specifications, it is too late to cancel our order from Greece and shift it to a U.S. mill without incurring substantial economic loss and major delays in the schedule, a timeline which is critical to maintain in order to support continued Permian Basin production growth. The denial of this tariff exclusion merely punishes an American company for developing a project that supports our national interest.

The Greek steel mill will receive its payment as contracted, and unless our exclusion requests are reconsidered/approved, the Cactus II project will incur a punitive tax of approximately $40 million, yet the U.S. steel industry will receive no benefit.

Retroactive application of new policies to investment decisions and purchase orders already made adds uncertainty to our economy and will inevitably result in delayed investment decisions and slow job creation.

As referenced in the May 7th letter from members of Congress to President Trump, grandfathering orders for imported steel placed prior to the imposition of the tariff would rectify this injustice, restore business certainty for orders made prior to the imposition of the 232 tariffs and could relieve some of the exclusion request backlog faced by the Department of Commerce.

2. Exempt critical infrastructure project components from tariffs and quotas.

The Department of Homeland Security has identified crude oil pipelines as part of our nation's critical infrastructure, and the availability of line pipe is essential to help the Trump Administration achieve its objective of energy dominance. In fact, President Trump's March 28, 2017, Executive Order states: "The safe, reliable transportation of crude oil via pipeline and other modes of transportation enhances U.S. energy independence and national security."

In line with other goals of this Administration, the Section 232 process should make accommodations for projects that are deemed critical infrastructure or supportive of the national interest. In this light, the Commerce Department should exclude line pipe, which is critical to supporting U.S. energy production growth, from tariffs and quotas.

At a time when the Administration and Congress are working to try to introduce a major publicly financed infrastructure bill, such privately financed projects that clearly serve the national interest should be encouraged, not unjustly taxed. In addition, other critical pipeline infrastructure has been recognized by three executive orders of the President to ensure their expedited completion in the name of the national interest as critical energy infrastructure.

According to the American Petroleum Institute, line pipe currently amounts to less than five percent of the total volume of steel imports that have applied for 232 exclusions. Congress and the Administration should consider exempting line pipe from steel tariffs and quotas until the U.S. steel industry is able to build the capability and capacity to timely manufacture the line pipe required to meet America's energy growth.

3. Recognize technical decisions regarding product specifications must be made by individual companies, not the U.S. government.

The pipeline industry in general and Plains specifically is focused on safety for the communities and environment in which we live and operate, and our company has developed exacting pipeline specifications to aid us in this effort. One way pipeline companies like Plains remove variables and decrease risk to the community and the environment involves selecting the right type of pipe and the right mill for a project. It is important that the pipe conform to our specifications, which meet or exceed regulatory and industry standards, and have been developed over decades of experience constructing and operating pipelines. For Plains, HFW pipe has been the backbone of our pipeline construction program for 20 years, so everything from our field crew's experience to our operational and maintenance procedures are geared towards HFW pipe.

Plains has specific design, construction and operating standards, as well as integrity, inspection and maintenance programs based on decades of experience and exacting internal standards. Our engineers have intimate knowledge of the specific requirements of the Cactus II pipeline system. ***After conducting a comprehensive analysis of the project route, required capacity and operating dynamics, Plains engineers determined the Cactus II Pipeline would require 26-inch HFW pipe.*** Because no U.S. mill can produce 26-inch pipe in HFW, our 232 exclusion request should have been granted by the Commerce Department on this basis. Instead, in our exclusion review process, the Commerce Department apparently disregarded our company's long-standing technical requirements and expertise and concluded on its own that a different pipe specification would suffice for the Cactus II project.

When evaluating an exclusion request, it is critically important for the Commerce Department to evaluate the specific technical specifications each industry requires of its steel components, as opposed to merely reviewing the availability of domestic products that, in its own opinion, could serve as a substitute. In its decision to reject the Cactus II exclusion request, the Commerce Department erroneously determined, without seeking input or clarification from Plains, that line pipe manufactured to another specification is an appropriate substitute for the HFW line pipe our engineers specified for the Cactus II pipeline. A technical decision such as this must be made by individual companies that are accountable and responsible for the safe, reliable and responsible operations of their assets. The government should not dictate a critical line pipe specification decision we have to live with for the multi-decade life of the pipeline.

Having the government impose this tariff without taking the unique requirements of the project into account is akin to having government dictate what type of pipe we use – or suffer a tax (or in this case a retroactive punitive tax).

4. Ensure companies receive due process in the exclusion request procedures.

The opaque nature of the 232 exclusion process, the inability to state our case and the lack of an opportunity to appeal the Commerce Department's decision – due process flaws that do not exist with respect to most other government procedures – should be rectified to ensure petitioners receive appropriate due process.

The current 232 process lacks transparency. A petitioner's ability to state its case is limited to the submission of a standardized form and supporting electronic documentation. No forum is provided for interaction with those determining the merits of either the petitioners' or the objectors' arguments. In addition, there is no opportunity to respond to objections – even if the objections contain incorrect information, such as was the case with our exclusion application. The opportunity to respond to on-the-record claims made against Plains, before the Commerce Department staff renders a decision, is a key aspect of due process. In our case, despite multiple inquiries, the Department of Commerce has not provided any information on the basis for its decision to reject our tariff exclusion request.

The existing 232 process for steel tariffs does not allow the submitting company to testify before a committee to request a product exclusion or for a trade association to testify and request relief on behalf of an industry. This is something allowed in the U.S. Trade Representative Section 301 tariff exclusion process.

The Department of Commerce should review the Section 301 tariff exclusion process as it evaluates potential process enhancements. The 301 process provides a notice and comment period that allows for meaningful public engagement. During this time, interested parties have the opportunity to testify before an interagency committee and submit comments and answers to questions regarding the proposed list of tariffs. In some cases, tariffs on proposed products have been removed from consideration. Only after this level of engagement and consideration are 301 tariffs levied on certain products.

Additionally, the 301 exclusion process offers the ability for trade associations to submit requests on behalf of the petitioner beyond just the importer of record. Plains believes this level of engagement at the outset could have helped alleviate situations such as this, where tariffs have been placed on a product for which there is no domestically available substitute.

Finally, from a due process perspective one of the most unjust aspects of the 232 process is the absence of a formal appeal process. While petitioner's request are sometimes denied without prejudice to the right to refile the request, this right is of limited value given that the process lacks transparency and there is no discernable standard for how decisions are made.

5. **Consolidate exclusion requests by project or purchase order instead of requiring individual filings for nearly identical products.**

   Currently, companies must file separate tariff exclusion requests, on a case-by-case basis, for each and every different type of steel it imports. This means companies must file new requests every time they import the same product and file multiple requests for all the different steel components required for a project. This creates a great deal of work both for companies and the Commerce Department.

   For instance, one of our other Permian Basin pipeline projects (a smaller project, but one that is mission critical to ensuring timely growth in the Permian Basin) required six exclusion requests to address multiple possible interpretations of Customs agents for the same pipe. Consolidating these requests would help reduce the backlog of more than 20,000 requests and related filings the Commerce Department is currently addressing in the 232 process.

Absolute Quotas Pose an Even Worse Threat

On a related matter, I would like to highlight the importance of avoiding absolute quotas on steel imports. Potential absolute steel import quotas present even more significant variables that could deny projects such as the Plains Cactus II project access to line pipe, even if a 25 percent import tariff is paid. If quotas were enforced on the EU, we may not be able to receive the steel we ordered prior to tariffs or potential quotas being put in place.

We appreciate and support the Administration's efforts in support of fair trade, but the Administration's position of requiring absolute quotas in exchange for country exclusions from tariffs, such as the KORUS agreement with South Korea, would jeopardize U.S. jobs and energy production growth, a key national security objective and a major driver of American economic prosperity.

Additional absolute quotas would risk stopping projects in their tracks – eliminating U.S. jobs and curtailing continued energy growth. Limiting the amount of steel available for critical infrastructure projects like crude oil pipelines is unworkable. Receiving only 80 percent of required materials for a pipeline is like receiving 80 percent of the materials for a bridge: it is zero percent effective. Furthermore, steel amounts to approximately 20 percent of a pipeline's project cost. Generally, the other 80 percent of the project cost, includes labor, other parts, engineering, transportation, land, etc., and is sourced domestically. A quota would indeed prevent the importation of steel, but it also would prevent the investment of the balance of the capital for that project. Absolute quotas create uncertainty, cause delays, encourage sub-optimal engineering for critical infrastructure projects, and must be avoided.

Unintended Consequences of the Tariff

In closing, Mr. Chairman, we need to find a way to promote both energy production and our steel industry – not pit one against the other. I want to stress Plains All American supports the efforts of achieving fair trade and strengthening the U.S. steel industry. However, without changing a number of aspects of the way the Section 232 steel tariffs and related exclusion request process have been implemented, the tariffs will result in significant negative unintended consequences to national security, American energy dominance and balance of trade.

America's pipeline system is critical infrastructure and must be expanded. Without the above recommended changes, the Section 232 process may chill this development by delaying projects or making them altogether uneconomical while negatively impacting American jobs.

Recognizing that line pipe represents less than five percent of the total volume of steel imports that have applied for 232 exclusions, we also ask that Congress and the Administration consider exempting line pipe from steel tariffs and quotas until the U.S. steel industry is able to build the capability and capacity to timely manufacture the line pipe required to meet America's energy production growth.

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify. I welcome the opportunity to respond to your questions.

Chairman Reichert. Thank you. Mr. Huether, you are recognized.

STATEMENT OF RICK HUETHER, PRESIDENT, CEO, AND CHAIRMAN, INDEPENDENT CAN COMPANY

Mr. Huether. Thank you, Chairman Reichert, and Ranking Member Pascrell, and members of the trade subcommittee for inviting me today. I am Rick Huether, president and CEO of Independent Can Company headquartered in Belcamp, Maryland.

We are a family business founded in 1929. We have five manufacturing plants, two in Maryland, two in Ohio, one in Iowa, and 415 employees. We are a specialty can maker. Our primary competitor is China. Our buying criteria is quality steel tin plate, on time delivery, and globally competitive steel. With these three components we can compete with anyone in the world.

There are only three specialty can makers still in the United States. The mills do not have the capacity to service our needs, and today only deliver 18 percent of the steel ordered on time. The mills have raised their prices to equal the imported steel with the 25 percent tariff. Steel is 100 percent recyclable without losing its attributes. Alternative packaging does end up in landfills. Steel will not.

CMI, our national trade association representing members employing 20,000 workers in 36 States produce beverage, food, aerosol, and general line cans made with steel, tin plate, and aluminum. CMI opposes the administration's Section 232 tariff on imported steel and aluminum.

U.S. Commerce Department Section 232 exclusion request process is costly. And as a small business we have spent over $50,000 internally on staff to prepare 40 exclusions, 20 are in, 20 are going in this week. Money that could have been spent building the business versus defending the business.

The process has created uncertainty and anxiety in the marketplace causing customers to shop for alternative packaging and going overseas for tins. We lost an order for $2 million in tins to China in February just in anticipation of the tariffs coming into effect.

The tariff increase will cost us, between June and December, approximately $1.5 million. We would like the Commerce Department to issue exclusions covering a range of dimensions with the same harmonizing tariff schedule allowing trade associations like CMI to apply for exclusions on behalf of the industry. This would save hundreds of man hours for multiple companies. Until 7 or 8 years ago we bought 90 percent of our tin plate domestically. Today we only have two integrated mills producing tin plate. Our buying criteria is quality steel on time at a fair price.

One mill will not sell us, one of the integrated mills will not sell us due to the number of claims they had for defective material that they accepted. When tariffs were announced we asked this mill for a quote. They told us they were sold out for the year and offered us zero capacity.

Our primary mill we have done business with for decades with contracts for tonnage. This year they turned down additional volume due to no capacity. After much negotiation they did accept additional orders. The quality has been acceptable. On time delivery in 2017 was 12 percent based on their criteria. This year they are 18 percent on time. Imported steel is 85 percent on time and quality is outstanding. We would like to buy 100 percent domestic steel as we have historically. Quality and failure to delivery has forced us to go offshore.

Our product lines are very different than the traditional can companies. We make cans for chocolates, coffee, cookies, popcorn, snack food, and promotions, most of which are gifts that you all would get at Christmastime.

Over the years we faced significant attacks from the low cost countries, especially China. The Chinese have made tremendous inroads from into our markets. Independent Can has invested highly in automated assembly lines. Through automation we have thrived and grown against the low cost imports, adding employees in high paid skilled jobs. Automation permits us to protect business and allows us to reshore tins previously made in China. The steel and aluminum tariffs put this all at risk.

Independent Can invested nearly $30 million in a new plant in Ohio creating 30 jobs, soon to be 60. We recently purchased a failing specialty can company saving 55 jobs. Our concern in the exclusion process is we have four comments against our exclusion request. I have got documentation showing that we went offshore after 3 years of having 50 to 60 percent rejection on this particular specification. The mills are saying they have got the capacity and the capability. I can prove that they have not delivered on that promise. So those that are looking at exclusions, please understand what they are looking at.

Thank you very much for the opportunity to meet with the committee and look forward to answering questions.

Testimony of Richard D. Huether, President & CEO, Independent Can Company
Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum
House Committee on Ways and Means Subcommittee on Trade
July 24, 2018

Thank you, Chairman Reichert and Ranking Member Pascrell and members of the Trade Subcommittee for inviting me today. I am Richard D. Huether (Rick) President and CEO of Independent Can Company Headquartered in Belcamp, Maryland. We are a family business with 5 manufacturing locations (2 in Maryland, 2 in Ohio and 1 in Iowa) and 415 employees. My Father, my Sister and my Son are active every day in the business.

Independent Can Company was incorporated in 1928 and we made our first can in January 1929. Founded in Baltimore, Maryland responding to a consolidation by Continental Can Company of approximately 25 of the 30 operating can companies in Baltimore, the company was named "Independent" to emphasize that it was not part of a large public company.

Independent Can Company is a member of the Can Manufacturers Institute. The Can Manufacturers Institute (CMI) is the national trade association of the can manufacturing industry and its suppliers. Our members employ 20,000 workers in 36 states and produce 119 billion beverage, food, aerosol and general line cans with tinplate steel and aluminum. CMI opposes the Administration's Section 232 tariffs on imported steel and aluminum and has raised concerns about the exclusion process set forth by the U.S. Department of Commerce.

- US Commerce Department Section 232 exclusion request process is costly and as a small business we have spent over $50,000 internally for staff to prepare the 40 exclusions. This represents over 500 hours which could have been time spent building the business versus defend the business.
    - Members of CMI have also contracted with a local law firm to advise on the exemption process which has also substantial costs.
- The process has created uncertainty and anxiety in the market causing customers to shop for alternative packaging or going overseas.
- Costs of domestic tinplate steel has now matched and or exceeded the price being offered for imported steel with the 25% tariff
- We have seen an increase of empty Chinese cans entering the U.S. market tariff free. Our US-based customers are now purchasing these containers, which are a threat to our workers. We lost an order valued at 2 million dollars to China in February 2018 due to tariff concerns.

Independent Can Company through our industry association, CMI has voiced concerns about the Department of Commerce's exclusion process. We would like the Department to issue exclusions covering ranges of dimensions with the same Harmonized Tariff Schedule (HTS) code, allowing trade associations like CMI to apply for exclusions on behalf of the industry and granting product exclusions due to specialized needs like those in the can manufacturing industry. This would save hundreds of man hours by multiple companies.

Investments: Independent Can Company has invested in operational improvements at a very high level annually for years. We want to be a survivor in can making and to do so this requires an aggressive investment plan. In the past 5 years we have invested nearly 30 Million dollars in a new plant in Ohio (creating 30 Jobs) and the purchase of a failing specialty factory owned by one of the major can companies (saving 55 jobs).

We currently are installing two can lines at a cost of approximately 2 million dollars for a project we contracted for more than a year ago. One line has just been installed and the second will be ready for qualification in August 2018. At this point we do not know how to truly respond to the contracted project with the availability and costs of tinplate.

Steel Supply: If we had a choice we would prefer to buy 100% of our steel domestically. We buy based upon: quality of the steel, on time delivery and the price.

10 years ago, we bought 90% of our tin plate domestically. We had multiple mills to buy from as there were more producers in the USA. Today we have 2 integrated mills producing tin plate.

- Mill #1: This Mill has not been willing to sell to us due to the number of claims they received and accepted for delivering poor quality.
    - When the tariffs were announced we asked this mill for a quote and we were told that they were sold out for the year so no capacity was offered.
- Mill #2: We have done business with this mill for decades and with whom we have had a contract for a specific tonnage for many years. This year they tried to turn down additional volume explaining that they did not have the capacity. After much discussion and negotiations they did accept additional orders.
    - Quality has been acceptable
    - On time delivery:
        - 2016- 18% on time
        - 2017- 12% on time
        - 2018- Year to date 18% on time

        Imported steel arrives 85-90% on time and the quality is excellent
    - If we exceed our contracted tonnage mill #2 will apply a substantial increase for each additional ton. This increase makes this mill not competitive with overseas mill even paying the tariff on many of our steel specifications.
    - This mill has made us aware of their investment plans which will provide better quality tinplate and additional capabilities for producing the larger sheets of tinplate that we need to operate our equipment more efficiently.
        - We have asked this mill to support an exemption for 2 years while they bring the new capabilities on line as we would need time to qualify them on our applications and many of our customers specify the particular mill supply due to being FDA certified. We would need 6 to 18 months to recertify this mill after they have supplied samples for qualification. <u>The mill flatly refused to support any exemption.</u>

As a manufacturer, our product lines are very different than others in our industry. We do not make beer, beverage, aerosol or sanitary cans. We make popcorn, snack food, cans for chocolate, coffee, cookies, promotions, and cosmetics. Many of the tins we make are used as gifts for the holiday seasons.

We would describe our business as being a specialty can maker. The products we make are generally what the major can companies have discarded as too small for their interest or too seasonal for their ability to manage.

Over the past 40 years we have had to redefine and retool our plants several times with the investments and training of new skills that are required. Our employees represent brothers and sisters, fathers and sons that have worked for us over generations. We are as committed to our employees as we are to specialty cans being made in America.

We had to deal with the transition of metal cans to plastics and change the markets serviced from industrial products to consumer driven food and non-food items. As soon as we made the conversion to highly decorative round and shaped tins we faced a significant attack from the low costs countries, <u>especially</u> China. The Chinese labor costs are so low that they have made tremendous inroads into our markets. Independent Can responded by investing in very highly automated assembly lines.

Through automation and the creativity of our skilled employees, we were able to thrive and grow against the low-cost imports. One of the most interesting facts is the more automation we added the more employees we hired and needed to train in high paying skilled trades. We learned quickly that automation permitted us to protect the business we had and allowed us to reshore (bring cans produced in China back to the USA) a significant volume of tins, bringing jobs, steel and work back to the USA from China and other countries.

Environmental Concerns: As a society we must consider another factor and that is the waste stream. Steel cans are 100% recyclable and the steel, as it is recycled, loses none of its attributes. Steel can be used over and over and may come back as a car, a structural beam, rail road track and other purposes. The packaging that could replace tins, if the tins are not sold competitively in the market, are NOT fully recyclable. Plastic loses its attributes each time it is recycled, meaning it eventually ends up in the landfill or even worse in the oceans, which we have seen in the news recently.

Recapping the major points:

- Independent Can is a Specialty Can Maker-
  - Our primary competitor is China and they have no duty or a very low duty on specialty cans made in China and shipped to the United States.
  - With quality tinplate, on time delivery and globally competitive costs we can compete with anyone

    - No beer, beverage or sanitary cans
    - We only use tinplate (Steel)
    - Only 3 specialty companies left in USA
- Only one domestic Mill will sell us
    - Cannot supply all specifications
    - Require 6-18 months to qualify their specs for FDA applications
    - Substantial increase in tinplate costs if we buy more than contracted
    - Delivery only 18% on time
    - With Tinplate being approximately 3% of the Global steel production should tinplate even be considered for a tariff?

- Environmental concerns
    - Steel 100% recyclable without losing attributes
        - Recycling does require a primary steel mill with either a blast furnace or electric furnace – jobs in the USA
    - Alternative packaging (plastic or laminated multilayer film) <u>will end up in landfills eventually</u> due to inability to recycle

Thank you for giving me the opportunity to discuss this important issue, I look forward to your questions.

MARKET CHANGES LAST 40 YEARS — May 15, 2018

COMPANY- Litho	**Location**	**CHANGE**
Sheet Metal	Baltimore, MD	Closed
Parker Metal Decorating	Baltimore, MD	Closed
Darco Metal Decorating	Chicago, IL	Lakeside Metals- Operating
Pittsburgh Metal Decorating	Pittsburgh, PA	Closed
Atlantic Cheinco	Burlington, NJ	Closed
Steel-Tin Litho	New Castle, PA	Closed

Company- Cans	**Product line**	**Change**
Quaker Can	Specialty	Sold to Independent Can – Closed 1982
STEELTIN CAN	GEN LINE & SPEC	SOLD-US CAN- sold to Ball, 2016 sold to Independent Can
COLUMBIA SPECIALTY	SPEC & CLOSURES	SOLD-US CAN- Closed
GRAFCO	SPEC & SPICE CANS	SOLD-US CAN - Closed
ELLISCO	SPEC	SOLD-US CAN -Closed
PENN WHEELING	CLOSURES	SOLD- US CAN & SOLD TO Technocap
PROSPECT IND	PAILS	SOLD-US CAN & SOLD TO PRIVATE INVESTORS-Closed
FEIN CONTAINER	GEN LINE & PAILS	SOLD-US CAN - Closed
BALLONOFF	SPEC & HOUSEWARES	SOLD-US CAN - Closed
MIDWEST CAN	GEN LINE	SOLD-US CAN- Closed
GENERAL CAN	GEN LINE & SPEC	SOLD-US CAN- Closed
HUNTER CONTAINER	SPEC	SOLD-US CAN & SOLD TO ALLSTATE
HOWINGTON-5 PLANTS	SANITARY CANS	SHUT DOWN-SOLD-Closed
P K PRODUCTS	SPECIALTY	SOLD- to Wincraft - Closed
CRAWFORD CONTAINER	SPECIALTY	SOLD-INDEPENDENT CAN CO BOUGHT IN 2007
BERTELS CAN COMPANY	SPECIALTY	SOLD-INDEPENDENT CAN CO- BOUGHT IN 2006 CLOSED
US CAN COMPANY	GEN LINE & SPECIALTY	SOLD-BALL
OLIVE CAN COMPANY	SPECIALTY	SOLD-US CAN- Closed
ATLANTIC CHEINCO	SPECIALTY	SHUT DOWN
KIWI	SPECIALTY-SHOE POLISH	SHUT DOWN
ROBERTSON CAN	SPECIALTY	Sold to Crawford Can-Closed
EMPIRE CAN	SPECIALTY	SHUT DOWN
BEDFORD CAN	SPECIALTY	SHUT DOWN
KRAUSE	TRAY & SPECIALTY	SHUT DOWN
LE COMTE	SPECIALTY & WB	SHUT DOWN
KREITLER CONT	SPEC	Sold to Crawford Can
LIBERTY IND	SPEC	SHUT DOWN

EH KNEEN	GEN LINE	Closed

COMPANY- Cans	**PRODUCTS**	**CHANGE**
ARWOOD CAN	GENERAL LINE	CLOSED
EASTERN CAP & CLOSURE Closed	CAPS	Sold to US CAN -
COLUMBIA CAN Closed	CAPS	Sold to US CAN -
Susquehanna Metal Box and Seal - Closed	Shoe Polish Tins	Sold to Crown Cork
Glud & Marstrand Universales	Food and Specialty	SOLD-Envases
Connecticut Cap and Seal	Screw Caps	Sold to Keystone Cap

Independent
Can Company

Product Offerings

Decorative Cookie Tins

Decorative Popcorn Tins

Industrial Tins

Hermetic Food Cans

(410)272-0090 • 1300 Brass Mill Road, Belcamp, MD 21017 • www.independentcan.com • salesdept@independentcan.com

Product Offerings

Conical Pails

Seamless Tins

Wax and Polish Cans

Specialty Closures

Chairman Reichert. Thank you for your testimony. And just as a matter of note you may see members coming and going and moving about. There is activity on the floor across the street in the Capitol, and they are speaking on different bills. It is not that they are not interested, they are just running to do other business, so they will be in and out.

Mr. Adams, you are recognized.

STATEMENT OF TODD ADAMS, PRESIDENT, SANITUBE LLC, VICE PRESIDENT, STAINLESS IMPORTS, INC.

Mr. Adams. Thank you, Chairman Reichert, Ranking Member Pascrell, and members of the subcommittee for inviting me to testify today. My name is Todd Adams, and I am president of Sanitube, LLC and vice-president of Stainless Imports, Inc.

We are a family owned manufacturer of stainless steel tube, valves, and fittings primarily utilized in the food and beverage processing industries with a focus on dairy. My business partner and father Harvey Adams is seated behind me.

Though the vast majority of the stainless steel tubing we sell is produced at our Lakeland, Florida facility we maintain the flexibility to source unique products unavailable in the domestic market from overseas mills with which we have had relationships dating back in some instances over 30 years.

In November 2017 we were awarded one such contract for nine 40-foot shipping containers of stainless steel tubing with unique dimensions and specifications for a cheese factory in Ohio. The product was and is not available through domestic mills, ourselves included. The product had already been manufactured and was in transit to the United States when Section 232 steel tariffs were announced and implemented 15 days later. We had no choice but to pay the tariffs amounting to nearly $200,000 and then applied for an exemption and refund of the tariffs paid.

Our exemption requests were initially rejected because we declined to disclose the Chinese source mill, information that we consider business confidential. Per the application's instructions we requested that the bureau of industry and security follow up with us directly for this business confidential information.

BIS did follow up but insisted that our source mill is not business confidential and must be disclosed to the public record. We were forced to resubmit our applications with the name of our source disclosed, and the applications finally posted on April 19 and May 29 respectively.

However, we have been told for no particularly compelling reason that refunds of Section 232 tariffs will not be retroactive to the application date but only to the posting date, therefore, even if we eventually are granted an exemption, the tariffs paid for two containers that arrived prior to posting will not be eligible for refunds.

On June 20, one of our exemption applications was denied despite no domestic company objecting. We were told the reason for the denial was that we had indicated an incorrect HTS tariff code. Incidentally the allegedly incorrect tariff code had been accepted by U.S. customs for each of the nine containers that were successfully imported into the United States.

We have been advised to apply for a definitive determination of the correct HTS code from U.S. Customs. This process, which we have already commenced, takes at least 30 days. Then we can reapply for an exemption with the new code, a process that has proven to take an additional 3 to 5 months. Meanwhile, the funds we paid in Section 232 tariffs continue to be held to the detriment of our business.

Just last week I did have a constructed conversation with Mr. Matthew Borman, Deputy Assistant Secretary of Commerce for Export Administration. Mr. Borman agreed with several of the inefficiencies I have pointed out today and assured me BIS is working diligently to correct them.

However, the fact remains that I and countless other companies have been severely impacted by poorly thought out rules and processes. I remain confident that the exemption process can be vastly improved with better collaboration between BIS, U.S. Customs and members of the steel and aluminum industries. Thank you again.

24 July 2018

Statement Concerning Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum

Chairman Reichert and Members of the Subcommittee on Trade, thank you for the distinct honor and privilege of testifying today. My name is Todd Adams, President of Sanitube LLC, a family-owned small business headquartered in Lakeland, Florida. Sanitube is a manufacturer of stainless steel tube, valves, and fittings primarily utilized in the food and beverage processing industry. Sanitube produces food-grade ("sanitary") stainless steel tubing (ASTM A270) and custom stainless steel tube fittings made entirely in the United States. We supplement our domestically-manufactured products with other stainless steel tube fittings and valves produced under our license abroad, primarily in China. Our imported items are purchased by our sister company Stainless Imports, Inc. for customs formalities.

In July 2017, Sanitube was contacted by a new potential distributor looking for a large quantity of sanitary tubing with unusual dimensions. The outside diameter was large and not standard, the wall was extra thick, and the length of each tube was exceptionally long. Moreover, the tube was to be completely smooth and polished on the inside to prevent contamination in dairy production in accordance with 3-A Sanitary Standards, a self-regulating authority on dairy equipment standards of which Sanitube is a member. Sanitube advised the customer that its equipment is not capable of producing sanitary tubing meeting the requirements outlined by the customer, and the customer had indicated that neither of the other two domestic mills capable and certified to produce ASTM A270 tubing to 3-A standards were able to bid on the project requirement. Sanitube suggested to the customer that the desired material could be procured from a partner mill overseas if the customer would be willing to accept foreign material and an extended lead time. The customer agreed to the proposal, and in November 2017 Sanitube entered into a contract with the customer to produce the material in China at a fixed price. The total order comprised nine full shipping containers of tubing, and the first two containers arrived in the US without incident prior to the announcement of Section 232 tariffs. On March 8, 2018, President Trump announced that Section 232 Tariffs of 25% would be implemented on stainless steel tubing, effective March 23, 2018. At the time of the announcement, the balance of seven containers were in transit from China to the Port of Long Beach, California. Sanitube's Chinese vendor had already been paid, leaving Sanitube with only one viable option to pay the new duties amounting to nearly $200,000. Though the unplanned duties imposed an extreme financial strain on Sanitube, the company was confident that the material qualified for an exemption based on the fact that it could not be produced in the United States.

On March 20, 2018, one day after the exclusion application process was "formalized," Sanitube submitted two applications (one for each of the slightly different product sizes comprising the order). The application states that a company may withhold the answer to any question on the application if the answer to the question is business confidential information that the company does not wish to disclose for public review. The application instructions go on to state that the Department of Commerce Bureau of Industry and Security ("BIS") would follow up with the company to obtain the confidential information. Based on the competitive nature of its industry, Sanitube did not feel comfortable revealing the name of the steel mill where the order was produced. Moreover, Sanitube recognized that revealing the name would not affect the merits of the application or hinder a domestic mill's assessment of whether the material could have been produced in the United States. On April 4, 2018 Sanitube was contacted by Mr. Mark Crawford from BIS. Mr. Crawford explained that Sanitube's applications were incomplete because the name of the mill was not provided for public review. Sanitube again objected to disclosing this information to the public (Sanitube was certainly willing to confidentially disclose to BIS). After several days of review, Mr. Crawford informed Sanitube that BIS attorneys had concluded that the source mill is not business confidential. Mr. Crawford went on to explain that he has in fact visited China, and sourcing this material is not difficult. He explained that one only needs to reference the phone book in the City of Chongqing, China to find an appropriate vendor. Mr. Crawford then stated that our exemption applications would not move on to the next required phase of posting for public review and comment until they are re-submitted with the vendor information disclosed. Unfortunately, the rules were not yet published at the time of these discussions that, should an exemption be approved, a refund would only be allowed for product admitted into the United States after the date of the exemption application's posting for public comment. The "posting" date is controlled solely by BIS and can easily be delayed with requests for more information.

One of Sanitube's two exemption applications was finally posted on April 19, 2018. According to BIS, this application was "accidentally" posted, as Sanitube had still not provided vendor information. The second application, for which Sanitube reluctantly provided vendor information, was posted on May 29, 2018. During the period between application submission and posting, two containers of material arrived in the United States. Under the guidelines currently in place, those two containers representing approximately $55,000 in Section 232 tariffs are ineligible for refund solely due to posting latency outside of Sanitube's control.

On June 20, 2018, Sanitube's first exemption request representing six of the seven containers assessed Section 232 tariffs was denied. The Decision Memo states that the application was "incomplete" and that the Harmonized Tariff Schedule (HTS) code was incorrect. Sanitube attempted to contact BIS after the decision was posted for clarification. Calls and emails were not returned over a period of three weeks, at which point Sanitube appealed for assistance from Florida Senator Bill Nelson. Finally, the company received a response from Matthew S. Borman, Deputy Assistant Secretary of Commerce for Export Administration. Mr. Borman explained that the denied application was indeed complete, but the HTS code was rejected by US Customs. Incidentally, US Customs had already accepted all nine containers under the allegedly incorrect HTS code (and had also accepted containers imported by Sanitube/Stainless Imports over the prior eight years under that same HTS code) without incident. Mr. Borman advised Sanitube to apply for a definitive ruling from US Customs for the correct HTS code and, once that is received, to begin the exemption application process once again. Mr. Borman did indicate that special consideration would be made for refunding Sanitube's Section 232 tariffs back to the original application's posting date should the new application finally be granted. Per Mr. Borman, the two containers that arrived prior to posting will remain ineligible for exemption.

In summary, I would like to bring to the attention of the committee three areas of concern regarding the Steel 232 Exemption Process. First, vendor information should not be required from applicants. This forces applicants to disclose sensitive business information that is irrelevant to determining whether the potentially excluded product is manufactured in the United States. Second, the time period from application submission to posting is abnormally long and, with respect to applicants seeking refunds, allows for BIS to strategically delay posting to disqualify certain shipments from eligibility for refund under any circumstance. Third, BIS should interface with US Customs as part of the initial application review. Deferring the news of an HTS code mismatch until the final phase of review is yet another opportunity for BIS to strategically delay decisions and and impose further hardship on applicants. Finally, I feel it necessary point out the lack of professionalism exhibited by Mr. Mark Crawford. The exemption application process should be focused solely on gathering the information necessary to make a determination based on the rules outlined by BIS. Mr. Crawford's commentary on his perception of how Sanitube conducts business is irrelevant and, frankly, incorrect. His remarks resonate because they embody what I have perceived as an overarching skepticism of exemption applicants "gaming the system." I feel compelled to remind BIS that at the time Sanitube initiated shipment of the product in question there was no 232 tariff system in place to game.

Thank you again for your attention to this important matter. I look forward to the opportunity to answer any questions or address concerns from the Subcommittee.

Chairman Reichert. Thank you for your testimony.

Mr. Houseman.

STATEMENT OF ROY HOUSEMAN, LEGISLATIVE REPRESENTATIVE, UNITED STEELWORKERS

Mr. Houseman. Chairman Reichert, Ranking Member Pascrell, members of the subcommittee, I thank you for the opportunity to testify today. My name is Roy Houseman, and I am here on behalf of the United Steelworkers Union, which is the largest industrial union in North America representing workers not just in steel and aluminum, but in many other industries, too.

United Steelworkers sees firsthand that the steel and aluminum 232s are providing a central relief from global overcapacity ensuring the domestic industry will be able to supply the necessary materials for our national security and critical infrastructure needs.

The domestic privately owned industry in the world's largest free market can remain competitive if we guide a course against an onslaught of what is all too often government planned and financed nonmarket driven expansion of steel and aluminum production.

The steel and aluminum tariffs are working as intended. According to the American Iron and Steel Institute 1.4 million more tons of domestic steel have been produced so far this year than the year prior. In aluminum our members and other workers are on track to aid in a domestic aluminum production increase of 60 percent by the end of the year. While the increase in domestic operating capacity cannot be attributed to just the tariffs they are having the intended effect.

More personally it is good to hear from local union leaders like James Sanderson at Steelworkers Local 7898 in Georgetown, South Carolina. After a 3-year idle their wire rod facility has restarted putting 125 workers back to work and producing up to 750,000 tons of steel per year. As orders rise, the company says another 195 people will be hired at the mill.

The same goes for Dan Simmons at Local 1899 in Granite City, Illinois. After over 2 years their facility is in the process of restarting both of their basic oxygen furnaces with 800 union members getting recalled and bringing close to three million tons of additional slab capacity for the domestic market.

These are local leaders striving to do the best for their communities and membership. They want to ensure we produce the steel and aluminum products this country needs to supply our defense and critical infrastructure needs while being commercially competitive. I highlight these sites because the union also helped draft and secure their trade adjustment assistance petitions not that long ago when they were idled. Submitting them into a bureaucratic process that often takes months but can even go years to work through.

So we can sympathize with businesses as they work through the exclusion process, but we are quite frankly tired of being told that unilateral action to protect American industry from global overcapacity is a bridge too far. And as a TA recipient myself I know the pain and uncertainty that they have experienced.

From day one the union has said that where there is insufficient domestic capacity and undeveloped market potential, exclusions will be necessary. The last review of exclusion requests the union has seen indicated that 512 requests have been granted and just over 400 requests have been denied by the Department of Commerce.

Our member companies have filed objections to product lines they know they have the capacity and capability to produce. Additional business opportunities are being pursued by our member companies, and we welcome the opportunity to compete for that work.

And where products to meet our Nation's need are truly unavailable we do not object to waivers. Our members not only produce steel, but they are also users of that steel and fabrication in further downstream facilities. The Department of Commerce still faces tens of thousands of exclusion requests, and we support continued efforts to increase staffing and resources at the Department of Commerce to process these requests. However, I do not work at the Commerce Department and steelworkers urge the committee to bring in the administration witnesses to give detailed updates on the exclusion process and use the oversight role this committee has over trade.

The union does not believe many of the issues related to 232 implementations can be remedied through additional resources. Does believe.

The union disagrees with the administration's policies in a number of areas but undermining the domestic steel and aluminum industry and our security interests by allowing a flood of excess capacity in foreign imports wash away our members' jobs and devastate communities is not a solution. We will be first to agree that the process must improve, but the union also cautions against efforts to undermine 232 tariff relief.

We have been and will continue to be a willing partner in seeking a solution to global overcapacity in steel and aluminum while ensuring a timely and fair exclusion process.

The steelworkers look forward to working with the committee, and thank you for the opportunity to testify today.

Testimony of

Roy Houseman
Legislative Representative
United Steelworkers

before the

Committee on Ways and Means Trade Sub-Committee

on

The Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum

July 24th 2018

Chairman Reichert, Ranking Member Pascrell, members of this subcommittee, My name is Roy Housemen and I thank you for the opportunity to testify today and provide the United Steelworkers perspective on the product exclusion process for Section 232 tariffs on steel and aluminum. The United Steelworkers (USW) is the largest industrial union in North America, representing workers not just in steel but in many industries including aluminum, glass, paper, rubber, oil, manufacturing, service and healthcare. Among them are consumers of both steel and aluminum.

USW sees first hand that the steel and aluminum 232's are providing the necessary relief from global overcapacity, ensuring the domestic industry will be able to supply the needed materials for our national security and critical infrastructure needs. The domestic, privately-owned industry in the world's largest free market can remain competitive if we guide a course against an onslaught of what is all-too-often government-planned and financed, non-market driven expansion of steel and aluminum production. This emanates not just from China but from India, Vietnam, Turkey, Russia, Brazil, Saudi Arabia and other economies where state-owned and state-directed enterprises are common.

The steel and aluminum tariffs are working as intended. According to the American Iron and Steel Institute (AISI), 1.4 (1,401,000) million more tons of domestic steel have been produced so far this year than the year prior.[1] In aluminum, our members and other workers are on track to aid in a domestic aluminum production increase of 60 percent by the end of year. While the increase in domestic operating capacity cannot all be attributed to just the tariffs, they are having the intended effect.

According to the American Iron and Steel Institute, Steel imports declined 22 percent from April to May 2018; permits suggest further decline in June. That is bringing back domestic steel and aluminum production jobs and allowing the industry to recapture market share. It should be noted that the steel and aluminum industries have had to work off stockpiled product that was built up in the lead up to the implementation of the 232.

More personally, it is good to hear from local union leaders like James Sanderson at USW local union 7898 in Georgetown, South Carolina. After a three year idle, their wire rod facility is restarting putting 125 workers back to work immediately and is expected to produce 750,000 tons of steel per year. As orders rise, the company says another 195 people will be hired at the mill.[2]

The same goes for Dan Simmons at USW local union 1899 in Granite City Illinois. After over two years, their facility is in the process of restarting both of their basic oxygen furnaces with 800 union members getting recalled and bringing close to 3 million tons of additional slab capacity for the domestic market.[3]

These are local leader's striving to do the best for their communities and membership. They want to ensure we produce the steel and aluminum products this country needs to supply our defense and critical infrastructure needs while being commercially competitive. I highlight these sites because, the union also helped draft and secure their Trade Adjustment Assistance petitions not that long ago when they were idled, submitting them into a bureaucratic process that often takes months but can even go years to work through. So we can sympathize with businesses as they work through the exclusion process but we are quite frankly tired of being told that unilateral action to protect American industry from global overcapacity is a bridge too far.

Since the 232 investigations were initiated and it became clear that comprehensive action would occur, almost 6,500 direct jobs have been created with tens of thousands

[1] https://www.steel.org/industry-data
[2] http://www.live5news.com/story/38497980/georgetown-steel-mill-reopens-after-3-year-closure
[3] https://www.ussteel.com/newsroom/united-states-steel-restart-second-granite-city-works-blast-furnace-comments-2018-guidance

of additional, indirect jobs resulting. New capital expenditures and jobs continue to be announced.

The union has participated for years in steel forums at the Organization for Economic Co-operation and Development (OECD) and other venues like the G-20 global forum on steel. However, after five years the only results we saw were a fifty page report and more inaction.

Since the U.S. slowed the flood of imports, other countries have seen massive increases in their foreign steel imports as global steel overcapacity looks for a place to land. Steel imports into the UK more than doubled ahead of the U.S. imposing tariffs.[4] EU steel imports have increased significantly, from 18 million tons in 2013 to 30 million tons in 2017 – a 66 percent rise. In the first quarter of 2018 alone, steel imports surged by another 8 percent year-on-year.[5] The EU has already put in place preliminary safeguard duties on 23 steel product categories.[6] Canada looks to initiate safeguard actions as well after seeing a flood of imports like Oil Country Tubular Goods (OCTG). Non-U.S. imports of drill pipe, casings and line pipe into Canada rose 90 percent in April from a year earlier and their total value rose 80 percent.

The union has worked closely with our companies to ensure that we rise to the challenge and provide a quality product for commercial, defense and critical infrastructure needs. Where there is insufficient domestic capacity or undeveloped market potential, the union recognizes that exclusions will be necessary in the 232 process. The last review of exclusion requests that the union has studied indicates that close to 200 requests have been granted and just under 400 requests have been denied by the Department of Commerce.

Our member companies have filed objections to product lines they know they have the capacity and capability to produce. The union generally supports these objections as we and our members also know what the domestic industry is capable of producing. It is our understanding that additional business opportunities are being pursued by our member companies and we welcome the opportunity to compete for that work.

The union recognizes that the Department of Commerce still faces tens of thousands of exclusion requests and through media reports there are continued efforts to increase staffing and resources at the Department of Commerce to process these requests.

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[4] https://www.mirror.co.uk/news/politics/steel-imports-uk-more-doubled-12731484

[5] http://www.eurofer.org/News%26Events/Press%20releases/PRESS%20RELEASE%20EU%20steel%20safeguard%20must%20%E2%80%9Cp.fhtml

[6] https://www.reuters.com/article/us-eu-trade-steel/eu-to-launch-safeguards-to-curb-steel-imports-on-thursday-idUSKBN1K80RM

The product exclusion process under the Section 232 remedy though must be transparent, allow for public comment and producing-industry and worker input. There should be a focus on matters related to economic and security considerations. If a product is excluded based on short-term market limitations, the exclusion should be time-limited, and our members believe government should develop strategies that encourage domestic suppliers to begin production.

However, I do not work at the Commerce department and USW urges the committee to bring in Administration witnesses to give detailed updates on the exclusion process and use the oversight role this committee has over trade. USW does believe many of the issues related to 232 implementation can be remedied through appropriating additional resources and Congress providing a guiding hand.

There are also examples of certain actors trying to game or inaccurately request exclusions. California Steel Industries (CSI) has requested exemptions of approximately 30.2 million tons of Brazilian, Japanese, and Taiwanese slab for processing at its mill in Fontana, California. Yet, CSI states that its hot-rolling capacity is only 3.0 million tons, and that it is operating at only 50 percent capacity. In 2017, the total volume of U.S. imports of steel slab into the Los Angeles Customs District, where CSI is located, was 1.2 million metric tons. It is clear, therefore, that CSI is requesting an exemption far greater than anything it can actually use.

Another example of misleading exclusions are oil companies asking for an exclusion to allow them to buy large-diameter welded pipe from Greece, even though there is a pending anti-dumping case AND the domestic industry makes an interchangeable product (same diameter, slightly different weld). For these products, the domestic industry is producing at less than 40 percent of its capacity, and has suffered numerous layoffs. USW urges Congress to inquire with the Commerce department to learn if there are other exclusions which are wildly inaccurate or misleading and see if they are slowing the exclusion process down for others in need.

The USW disagrees with the Administration’s policies in a number of areas, but undermining the ability of the steel and aluminum industry to compete in the domestic market by allowing a flood of excess capacity and foreign imports wash away our member’s jobs and devastate communities is not a solution. We will be the first to agree that the process must improve but the union also cautions against wholesale efforts to undermine 232 tariff relief. Tariffs cannot be the lone solution, but Congress can and should send a strong signal to the Administration and the global community that the world’s largest market will not be a dumping ground for excess and non-rational steel and aluminum capacity.

We must all recognize that, unless the underlying problem of global overcapacity is seriously addressed, that the short-term benefits of the tariff relief that we have seen in the market may be short-lived unless the tariffs are to be in place for an extended period of time. Sustaining domestic production to ensure that our defense and critical infrastructure needs can be met will only occur if fair market conditions can be long-lived. As noted, the Steelworkers have been strong supporters and active participants in multilateral dialogues about overcapacity. We have also been active participants in utilizing our laws against unfair trade to address dumping and subsidies. Our goal must be to have long-term market-led approaches as we are confident that, with those conditions, we can ensure that America will be safe and secure and that, with the best workers in the world, we can outcompete anyone. But, without strong rules, aggressively applied and enforced, we not only jeopardize our security, but our economy and insult the people who work hard, play by the rules and only want a chance to compete on a level playing field.

Thank you for the opportunity to testify at today’s hearing. Our union knows we must be a willing partner in finding a solution to global overcapacity in steel and aluminum while ensuring a timely and fair exclusion process. We look forward to working with you and members of the committee to strengthen America’s economy and national security through smart trade policy.

Chairman Reichert. Well, thank you all for your testimony, and thank you for staying to take some questions from us so that we can kind of dig a little bit deeper. And some of the questions will touch on your testimony, and we will just ask for some additional clarification. I have a couple questions.

So first of all, I was disappointed that the temporary exemptions for Canada and Mexico and the EU were terminated as of June 1st, and I have been urging the President to quickly negotiate a solution with each of these economies because that would create some certainty for all of us if we could do that.

So if we were able to accomplish that my question would be what effect would workable country exemptions for Canada, Mexico, and the EU have on your businesses? Would it cut down on the number of pending product exclusion requests that your businesses have? That is the second part of the question.

So the gentleman here that own businesses, what would be the impact on your business if we had workable country exemptions? And secondly, would it cut down on the number of pending product exclusion requests? Yes, sir.

Mr. Huether. We do not buy from China any steel. We do buy from South Korea. We are locked out of that market right now. We were buying on a regular basis but not under a contract, so that we are locked out of there in through right through the next year. If Europe was excluded and Canada that would eliminate virtually all of our exclusion requests.

Chairman Reichert. And how would it affect your business?

Mr. Huether. We would be able to get the steel that we need. We are installing about $2 million worth of equipment right now as we are speaking it is arriving into our plant in Ohio, and we are not sure how to get the steel on that right now.

That is for a contract we made a year ago. It takes us a year to get equipment in and get in place, and the one comment we have against us on one of our exclusion requests is for that item, which the mill claims they have got the ability to do and to do in quality, and that is the one I have got 3 years of documentation where we were rejecting partials of over 50 percent of the steel delivered by that mill, so -- and Europe has delivered that same spec to us for 2 years without any claims.

So we need to have the ability. We asked one mill to accept a 1 year to 2-year exclusion to allow them time to fix the quality problems and the sheet size capability coil width, and they said absolutely not. We would love to have them invest in the mill, which has not been invested in in 30 or 40 years. It has gone -- tin plate has gone waiting for investments. We need our mills to be able to do the quality. The new equipment really requires very flat square sheets.

Chairman Reichert. Any of the other three business owners and CEOs? Yes, sir.

Mr. Chiang. For us the exemption for the EU would help us, and it would eliminate our exclusion requests. The focus that we talk about is the ability to make the appropriate product specifications so in this case our pipe was specified and was only able to be produced outside of the U.S. and it was in the EU.

Chairman Reichert. Other two, Mr. Adams?

Mr. Adams. It wouldn't affect our exemption requests, but I was just in Canada 2 weeks ago meeting with customers whose business has basically gone dry with us, and they are due to retaliatory tariffs not able to buy from the United States. They are going directly to China and other countries that produce sanitary tubing.

Chairman Reichert. Mr. Semcer?

Mr. Semcer. So our only issue is with South Korea, which is a quota country, so.

Chairman Reichert. So we can add South Korea to the list for you, right? So this would create certainty, ensure jobs, help you make decisions for the future, keep your businesses alive and running. And also a side benefit to this whole thing would be to at least come to a point where it is sort of a balanced approach, right? These countries are friends of ours. The balanced approach, and maybe allowing them to be excluded would be a measure that would at least keep you feeling somewhat comfortable as we address really the bad actor in this whole endeavor is China.

Secondly, some of you touched on this issue during your testimony, but just to clarify for those of you whose product exclusion request received objections, you have already sort of mentioned this, do you feel that you have relevant information to rebut anything in the objections?

And secondly, would the fairness of the process be improved if Commerce created a way for you to submit such information?

Mr. Huether. Absolutely. We need to get our story because the mill -- if you read their specifications they say they. Can performance demonstrates that they cannot at this time.

Chairman Reichert. Anybody else? Just real quick, how many jobs associated in your business, Mr. Semcer?

Mr. Semcer. Mine is 460.

Chairman Reichert. Jobs, Mr. Chiang?

Mr. Chiang. Thirty-four hundred U.S. jobs.

Chairman Reichert. Thirty-four.

Mr. Huether. Four hundred fifteen.

Chairman Reichert. Mr. Adams?

Mr. Adams. Twenty U.S. jobs.

Chairman Reichert. Twenty. So Mr. Houseman, are you working with businesses like the ones represented here? Have you heard from businesses like the ones testifying today about the struggles that they are having, and are you working with them?

Mr. Houseman. Where we have had reports from industry and our vice-president of bargaining has worked to try and work with suppliers to try --

Chairman Reichert. Well, I would guess that a lot of the businesses represented across the country that have stories similar to these four that the gentlemen who shared most of those would be union members, and their jobs are in jeopardy.

Mr. Houseman. I mean, we recognize the possibility that there has been --

Chairman Reichert. Your union members, who are your family members', jobs are in jeopardy.

Mr. Houseman. And we are working to do everything we can to either help support the product exclusion process or get product to the member company.

Chairman Reichert. Would you not agree that what we need to do here is a balanced approach to this? And not--

Mr. Houseman. As my testify outlined, yes, I believe a balanced approach, of course, is necessary.

Chairman Reichert. Do you believe that is what we are taking right now, a balanced approach?

Mr. Houseman. I think that there are important pieces such as the fact that --

Chairman Reichert. Do you believe it is a balanced approach? I am putting you on the spot, and I want a yes or no answer.

Mr. Houseman. The exclusion process needs to be improved, absolutely.

Chairman Reichert. Pardon me?

Mr. Houseman. I said the exclusion process needs to be improved.

Chairman Reichert. Okay. I will let you out on that one. Not quite what I was looking for.

Mr. Pascrell is recognized.

Mr. Pascrell. Very good, Mr. Chairman.

Mr. Semcer, your testimony highlights one of the potential consequences of imposing hard quotas on countries not always any product exclusions, so without additional exports or imports, I am sorry, of the steel tube that you need what happens to your manufacturing line in the near term?

Mr. Semcer. So certainly we are running out of time. Typically we hold 4 weeks of inventory at our company, and typically our customers hold approximately 4 weeks of inventory. I said in my testimony essentially our last shipment of tubing from South Korea is on the water, and that takes 4 weeks. So if you can add up those weeks, that is four plus four plus four is we have a 2- to 3-month problem.

And to be honest, as soon as we start having problems of that tubing needing to go to our manufacturing process is really when the problem starts because we have a lead time through all of our manufacturing processes.

Mr. Pascrell. And what happens to the hospitals, for instance, who use these devices?

Mr. Semcer. So I don't want to answer for our customers because those are customers of our customers, but we make millions of devices a year, and many of them we are sole sourced on. Meaning they can't go to supplier B and get the same device from and make it just from MICRO.

Mr. Pascrell. Can you describe how the FDA requirements affect your ability to change sources of the steel tube you need?

Mr. Semcer. So any time we make changes in a manufacturing process, it takes a very long time. Most of it, most of the changes have to be qualified through our customers, and sometimes through the FDA. Obviously any time you make a process change you want to make sure your inputs are not affecting your outputs of your medical device.

So essentially it is a very rigorous process can take sometimes 6 months up to 2 years for that change to occur.

Mr. Pascrell. Your testimony -- right, Mr. Houseman, highlights some of the unfair trade practices in the steel sector that have taken place in China, Vietnam, India, Turkey, Russia and Brazil, among others. How have steelworkers in the United States been impacted by the often government-supported steel production in these countries?

Mr. Houseman. Thank you. You know, for our members we saw in 2015 over 15,000 steelworkers laid off in various product lines in mills. The steelworkers have done over 100 trade cases and been participants of in the steel industry and aluminum.

You know, our membership really wants to compete and provide the necessary products for domestic production but global overcapacity is significantly impacting our ability to compete. And if you look at prices between 2008 and now there was a significant drop in prices between now and overcapacity has definitely impacted those prices.

And then other factors such as the European Union has primary aluminum tariffs that have prevented domestic U.S. mills from competing in the European products. Those product imports are anywhere between 3 and 7.5 percent for primary aluminum. So in Europe we can't even compete for that domestic market, and then you have a situation where about 1.7 million tons of Gulf

State and Russian metal is now getting moved over into Europe. So it is depressing prices there, and they are looking to increase safeguards in steel and other --

Mr. Pascrell. So we are holding up the chain here whether we are talking about tubes or whether we are talking about cherries, not being able to be shipped across because of what is going on in terms of this tariff war.

So when the chairman, and I am not speaking for the chairman, when the chairman says we need a balanced approach that is exactly what he is talking about, fairness so that all boats rise and that we are not simply directing our efforts at one particular industry at the expense perhaps of the consumer and our own country, and we need to watch it.

We have already been warned, as you know, of the shadow of inflation, and we need to be very careful about that because it could bring down much of this growing economy that we all talk about.

Thank you, Mr. Chairman.

Mr. Paulsen. [Presiding.] Thank you, Mr. Pascrell, and Mr. Reichert had -- Mr. Reichert had to step out, so I will recognize myself for 5 minutes.

I want to jump a little bit Mr. Semcer, on what Mr. Pascrell was just asking you about. Look, I mean, the American technology industry Med Tech is an industry leader on a global level and has also had a consistent trade surplus. I mean, clearly this is an industry where the United States is winning by any metric right now, and you have identified issues not necessarily in response to tariffs but quotas that haven't gotten as much attention, for instance, and on the tariff side you have got almost $3 billion of medical devices that were first included in the initial Section 301 tariff list that was put out by USTR, and even though there were a majority of those devices that were removed from the final list because some of us had raised some concerns on that, regrettably we still have some that are still on the list right now.

And these are tariffs and quotas that are clearly not only jeopardizing our ability to improve the lives of patients but our ability to grow our economy and then compete on a global level.

You mentioned in your testimony that MICRO relies on these precision stainless steel tubing components from South Korea, right, to manufacture medical devices for less invasive surgical procedures. You also mentioned that without some kind of change you may have to scale back your production in the near future in a matter of months.

In your opinion if the quota issue isn't addressed, if the tariff issue isn't addressed and they remain in place what impact is it not only going to have on your company but what is the impact on a broader scale in the medical device industry from a supply perspective, hospitals down to patients?

Mr. Semcer. So for our company it is -- to be blunt it is catastrophic for us. I don't want to talk about all the what could happen because I will be in Washington, D.C. until this gets fixed. It is my new home.

But certainly from a future standpoint we spend a lot of money on capital, a lot of engineering time with our customers developing new products. Probably once a week I have R&D engineers coming to my office telling me that they can't get new tubing for the new devices that they are working on for our customers, which are lifesaving devices. We have two devices that are being launched in the fourth quarter. As of right now we have no tubing for.

So not only is it affecting our current production and devices on the market today, but it is affecting the advancement of these devices and the new devices going on the market in the very near future.

Mr. Paulsen. Thank you.

Mr. Chiang, let me get a question to you. These are tariffs on steel and aluminum that have had a significant impact on infrastructure projects especially in the oil and gas industry, as you had mentioned, that had already been under way with orders for steel and aluminum imports placed before the imposition of tariffs.

And I am worried that these tariffs are going to halt investment in these projects and ultimately that is going to cost jobs. Would grandfathering in existing contracts like the orders that your company has placed to complete your pipeline prevent this sort of job loss? Is that something that would still be workable this far down the line from the imposition of tariffs if we could have that process in place?

Mr. Chiang. Well, clearly grandfathering is what we asked for. You know, we are trying to preserve the sanctity of the deal economics we sanctioned the project, so absolutely on that.

Our project is going forward. We are just essentially having a tax of roughly $40 million on the project. The bigger concern for us is the forward motion on tariff/quotas. Those impact decision-making process for all projects, and the critical nature of this is the trajectory of our energy improvements in production growth is jeopardized by some of these key projects.

One of the projects we have is a key project for takeaway pipelines out of the Permian Basin, and so the concern we have got is any delays on project decisions could delay production growth.

And our industry is all intertwined. We have got upstream decisions or production decisions. Pipelines have to connect it to refineries, so if you don't have steel and refineries can't build expansions it just affects the entire value chain, and, of course, ultimately we want to be able to get to water to supply the world with needed energy.

Mr. Paulsen. Are there any other tradeoffs that your company would have to make if this project is not grandfathered in?

Mr. Chiang. I am sorry, I didn't hear the last point.

Mr. Paulsen. If this project is not grandfathered in are there some other tradeoffs that your company would have to make?

Mr. Chiang. Well, in this specific case, this project we are going forward with the project, and so it is a financial penalty for us to do so.

Mr. Paulsen. Okay. And, Mr. Houseman, you know, we don't have a lot of time left, but I know you had made some comments about Steelworkers coming back on the job, which I think is notable. I think it is part of the President's policies in terms of getting good blue-collar hard working folks back to work.

And the concern that some of us have is the initial estimates were for every job you could bring back in the steel industry you could lose nine in other manufacturing jobs. Or even now if there are retaliatory tariffs you could have as high as 16 jobs lost in other blue-collar manufacturing and ironically hurting some of the very folks that I think the President is intending to help. That is the concern some of us have. With that, Mr. Kind, you are recognized for 5 minutes.

Mr. Kind. Thank you, Mr. Chairman. I want to thank the witnesses for your testimony today and coming to Washington and telling us your personal stories. Mr. Chairman, on May 7, 2018, Ms. Walorski and I submitted a bipartisan letter to the administration signed by 37 of our colleagues with suggestions and clarification on the exclusion process.

Secretary Ross did respond to us on June 7 in 2018 in a way that I thought was incomplete and inadequate and very opaque, and many of the issues that we just heard from your testimony today we were trying to clarify and address in the letter.

Mr. Chairman, I ask unanimous consent to have both of these letters submitted for the record at this time.

Mr. Paulsen. Without objection.

Congress of the United States
Washington, DC 20515

May 7, 2018

37 bi-partisan members of Congress.

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

Dear Secretary Ross,

We appreciate that, in response to Member and constituent requests, you have implemented a product exclusion process for the Section 232 steel and aluminum tariffs. However, we are concerned that over a month after the process began, the review process is moving far too slowly and that it places a significant burden on manufacturers, especially small businesses. We write today to urge you to make needed changes to that process that would improve how it functions and provide relief to small businesses.

The Department of Commerce announced the exclusion process on March 18, 2018 and began accepting applications a day later. Since then, thousands of applications have been filed. However, as of May 4, the Department has posted 1,572 steel and 129 aluminum applications. That is a far too slow of a pace given the volume and the fact that this process is over a month and a half old.

We were pleased that Department of Commerce responded to past Congressional suggestions, such as our request that Customs and Border Protection provide retroactive relief in the event of a positive product exclusion determination. It is abundantly clear, however, that more changes are needed. As such, we request that the Department:

1. Provide relief to those experiencing undue delays in the application review period by extending relief retroactive to the date of submission if the application was considered complete on the date of submission, or to the date when requested information that rendered the application complete was submitted if Commerce had notified the applicant that additional information was needed;
2. Allow exclusions covering ranges of certain dimensions with the same Harmonized Tariff Schedule (HTS) code in order to clear up confusion surrounding the form, simplify the application process for manufacturers – some of whom we understand have had to split one request into as many as 30 separate requests because of this issue – prevent duplicative requests, and reduce the time it takes the Bureau of Industry and Security (BIS) to review and vet applications;
    - In particular, both the steel and aluminum forms contain contradictory and confusing requests. Section 2.j states that "ranges…are allowed." However, section 3.b asks for "information on the single steel [or 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 or sizes…A separate Exclusion Request must be submitted for each steel [or aluminum] product by physical dimension." Further adding to the confusion, section 3.b at the same time asks for the minimum and maximum of various specifications.

3. Allow trade associations to apply for exclusions for an industry, again in order to save both manufacturers (particularly small businesses that otherwise might not be able to afford to apply) the time and money spent filing and BIS the time spent reviewing duplicative applications;
4. Take measures to protect sensitive information and trade secrets, including proactively informing applicants about avenues to protect sensitive information and trade secrets and excluding unnecessary application requirements such as metallurgical composition;
5. Provide timely information to companies requesting exclusions, including status and anticipated wait time, so they can plan;
6. Publish an "FAQ" page clarifying the exclusion request process in plain language, including who must file, what should be included in supplemental materials, how to protect sensitive information and trade secrets, and differences with the separate proposed Section 301 tariffs, which we understand have caused confusion due to similar timing;
7. Incorporate the concept of grandfathering existing contracts in evaluating exclusion applications in order to avoid undue disruption to the operations of U.S. companies that are already relying on qualified suppliers of needed inputs;
8. Regularly review the impact of tariffs on the economy and downstream users and implement a plan to sunset them if they prove to have a significant negative impact;
9. Consider the needs of U.S. manufacturers for custom-made and other specialized steel and aluminum inputs, many of which are not available from domestic producers and for which an advance application may be impractical due to one-off orders; and
10. Authorize all companies granted product exclusions to import tariff-free from any source country unless it is proven to be unfairly traded, given that the basis of the exclusion request is that the U.S. company cannot source the product domestically.

We stand committed to working with you and the President to find a targeted approach that will reach our shared goals while avoiding lasting negative impacts. However, we believe that significant improvements to the exclusion process are still needed to prevent unnecessary duplication, reduce the burden on small businesses, and provide certainty and relief.

Thank you for your attention to this matter.

Sincerely,

Jackie Walorski

JACKIE WALORSKI
Member of Congress

Ron Kind

RON KIND
Member of Congress

CARLOS CURBELO
Member of Congress

BILL HUIZENGA
Member of Congress

MARK WALKER
Member of Congress

MIKE BISHOP
Member of Congress

PETER J. ROSKAM
Member of Congress

A. DREW FERGUSON, IV
Member of Congress

DAVE REICHERT
Member of Congress

PETE OLSON
Member of Congress

RON ESTES
Member of Congress

FRED UPTON
Member of Congress

BRIAN FITZPATRICK
Member of Congress

SUSAN W. BROOKS
Member of Congress

F. JAMES SENSENBRENNER, JR.
Member of Congress

ROGER MARSHALL, M.D.
Member of Congress

ROB WOODALL
Member of Congress

KAREN C. HANDEL
Member of Congress

DARIN LAHOOD
Member of Congress

ADRIAN SMITH
Member of Congress

DAVID P. ROE, M.D.
Member of Congress

JEFF DUNCAN
Member of Congress

KEVIN CRAMER
Member of Congress

LYNN JENKINS, CPA
Member of Congress

BRAD WENSTRUP
Member of Congress

WILL HURD
Member of Congress

GLENN GROTHMAN
Member of Congress

JOHN MOOLENAAR
Member of Congress

BILLY LONG
Member of Congress

WARREN DAVIDSON
Member of Congress

PAUL MITCHELL
Member of Congress

JAIME HERRERA BEUTLER
Member of Congress

KEVIN YODER
Member of Congress

MARK SANFORD
Member of Congress

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PETE SESSIONS
Member of Congress

SAM GRAVES
Member of Congress

JACK BERGMAN
Member of Congress

MARK MEADOWS
Member of Congress

FILEMON VELA
Member of Congress

UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

June 7, 2018

The Honorable Ron Kind
U.S. House of Representatives
Washington, DC 20515

Dear Representative Kind:

Thank you for your letter regarding the Department of Commerce's process for product exclusions from the aluminum and steel tariffs imposed under Section 232 of the Trade Expansion Act of 1962 and finalized by Proclamations 9704 and 9705.

As you know, the Department published procedures for the product exclusion requests in the *Federal Register* on March 19 and subsequently made them available on the Department's website. In addition, the Bureau of Industry and Security (BIS) established dedicated phone numbers and email addresses for U.S. industry to seek assistance or ask questions about the process. These phone numbers and email addresses were included in the press release announcing the exclusion process and the coinciding *Federal Register* notice.

- Aluminum: (202) 482-4757; Aluminum232@bis.doc.gov
- Steel: (202) 482-5642; Steel232@bis.doc.gov

The review of all product exclusion applications from domestic industry is being conducted on a case-by-case basis in a fair and transparent process managed by BIS. As part of this process, BIS is also working closely with industry specialists within the Department's International Trade Administration. We agree that we do not want to unduly burden industry, especially small businesses, and appreciate your suggestions to improve the exclusion request process. In response to your specific concerns:

1. **Provide relief to those experiencing undue delays.** As provided in the President's proclamations proclaiming the applicable tariffs, if a product exclusion request is granted, then tariff relief is retroactive to the day the exclusion request is posted on regulations.gov for public comment. The public posting date was selected in order to ensure that U.S. Customs and Border Protection in the Department of Homeland Security has an easily verifiable and transparent method of confirming when a product exclusion request is complete. Companies that carefully followed the instructions and/or asked specific filing questions in advance of submitting had their forms posted in a timely manner. For submitters with form errors, those companies were notified to revise and refile their requests. The regulations.gov system provides a new filing number when the revised form is submitted. That new number is then utilized when the public posting and comment period takes place.

The regulations.gov system does not allow for replacing rejected forms in the queue with new corrected forms.

2. **Allow exclusions covering ranges of certain dimensions with the same Harmonized Tariff Schedule code.** BIS designed both the steel and aluminum exclusion/objection forms with input from a variety of U.S. Government experts and industry association material experts. The goal was to obtain sufficient information from the exclusion filer so there was enough documentation to allow a U.S. manufacturer of steel or aluminum to file a credible objection to that specific exclusion. To be credible, the objection must state that the objector can produce the specific product for which the exclusion is requested within the time frame covered by the exclusion request. The forms allow for a product that may be within a range, but not products across a wide range.

3. **Allow trade associations to apply for exclusions for an industry.** Individuals or organizations that use steel and aluminum articles identified in the President's Proclamations may submit requests for exclusions from the tariffs. These parties must use these steel or aluminum articles in business activities in the United States, such as construction, manufacturing, or supplying these articles to users. The exclusion request must necessarily specify the precise steel or aluminum product, including whether a product is customized. Because the primary consideration in whether to grant or deny an exclusion request is evidence that the requested product is or readily can be made in sufficient quantity and quality by domestic manufacturers, it is essential that the precise product being sought be clearly identified, along with the quantity needed and the timeframe for delivery. This will necessarily be different for each individual or organization. A credible objection must state that the objector can produce the product being sought. Absent this specificity, it would be impossible for domestic manufacturers to determine whether or not they can produce the product. This 30-day public comment process is essential to the Department's decision on whether or not to grant the exclusion. The need for specificity is why the individual companies need to respond, as opposed to trade associations. The Secretary does have the discretion to make broader exclusions available to all importers if we find the circumstances warrant, and the Secretary will exercise this discretion as appropriate.

BIS has dedicated phone and email addresses to assist filers with any questions or concerns they may have. BIS has also posted guidance with a step-by-step visual guide to assist industry through the process and with tips on how to properly complete the exclusion request forms based on issues identified during BIS's initial review of submissions. BIS will update these guides as appropriate.

The Department also published the regulations establishing the exclusion and objection processes as an Interim Final Rule on March 19 and solicited public comments on the rule. The public comment period on the interim final rule ended May 18, 2018. The Department is presently evaluating suggestions on how the process can be enhanced.

4. **Take measures to protect sensitive information and trade secrets.** The Department is requesting that parties applying for an exclusion and those objecting to the exclusion requests include only public information in their full submissions. The exclusions and objections forms include a section where parties can indicate if they have additional proprietary or business confidential information that is relevant to their exclusion request or their objection. Metallurgical composition is not proprietary information. We do not ask for steel or aluminum process information, which can be business proprietary. In almost every case, only public information is needed for a valid request and a valid objection. In the event that the Department determines that additional information of a proprietary nature is necessary to make a determination, the Department will provide instructions to the affected parties and will protect this information from public disclosure.

5. **Provide timely information to companies requesting exclusions.** Our dedicated phone lines and email accounts are available to assist industry with any inquiries about their exclusion or objection filing. Due to the rolling nature of our exclusion and objection process, the wait time can vary. For example, one company submitted more than 1,000 requests. This is approximately 10 percent of all submissions and has impacted the wait time of other requests.

6. **Publish an "FAQ" page.** The Department published the regulations establishing the Section 232 exclusion and objection processes on March 19, and these regulations explain in great detail the requirements associated with filing exclusion requests and related objections. The Department has made clear in the regulations that parties applying for an exclusion and those objecting to the exclusion requests should include only public information in their full submissions. The exclusions and objections forms include an area where parties can indicate if they have additional proprietary or business confidential information that they believe is relevant to their exclusion request or their objection. As discussed earlier, the Department believes that the public information requested in the forms for both the exclusion request and any objection should suffice to allow a determination to grant or deny. In rare cases, the Department may determine that additional information of a propriety nature is necessary to make a determination; in that case, the Department will provide instructions to the affected parties and will protect this information from public disclosure.

   The Department has also provided online tips and a guide for submitting exclusion requests on regulations.gov. We have been collecting feedback based on our interaction via phone and email with industry and intend to update the document with scenarios that we have encountered. We are always available to answer questions at our dedicated phone and email accounts.

7. **Incorporate the concept of grandfathering existing contracts in evaluations.** The Department of Commerce is not authorized by the Presidential proclamations to grant product exclusions on the basis of existing contracts. An exclusion will only be granted if an

article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for a specific national security consideration. Companies with existing contracts are able to submit exclusion requests for a product covered by an existing contract, and that request will be granted if the product is not produced in sufficient quantity or quality in the United States or if a national security reason justifies granting the request.

8. **Regularly review the impact of tariffs on the economy and downstream users.** The aluminum and steel proclamations signed by the President on March 8 state that the objective of each action is to help our domestic aluminum and steel industries to revive idled facilities, open closed mills and smelters, preserve necessary skills by hiring new workers, and maintain or increase production. These actions will reduce our Nation's need to rely on foreign producers for aluminum and steel and ensure that domestic producers can continue to supply all of the aluminum and steel necessary for critical industries and national defense. The proclamations direct the Secretary of Commerce to monitor imports of aluminum and steel, and from time to time, review the status of such imports with respect to the national security, in consultation with other senior Executive Branch officials. The proclamations also direct the Secretary to inform the President of any circumstances that might indicate the need for further action under Section 232. The proclamations also direct the Secretary to inform the President of any circumstance that might indicate that the increase in duty rates provided in the proclamations is no longer needed.

   It will take time for U.S. steel and aluminum producers to fully restart idled capacity and regain long-term financial health. However, industry has started taking actions to restart idled capacity: U.S. Steel is restarting a 1.5 million metric ton steel blast furnace in Granite City, Illinois, and Liberty Steel is reopening its wire rod coil steel facility in Georgetown, South Carolina. Additionally, other companies have announced plans to restart idled capacity and build new facilities: Republic Steel has announced that it is restarting an idled steel electric arc furnace in Lorain, Ohio; Magnitude 7 Metals intends to restart 236,000 metric tons of aluminum production in Marston, Missouri; Nucor Corporation announced in March that it will build a rebar micro mill in Frostproof, Florida, and had previously announced (November 2017) a rebar micro project in Sedalia, Missouri; and Century Aluminum will invest $100 million to restart and modernize its high purity aluminum smelter in Hawesville, Kentucky.

   Despite these near-term success stories, it is likely that the import adjustments will need to be in place for some time to enable steel and aluminum producers to achieve sustained economic viability. The Department of Commerce, working with other agencies, will continue to monitor the impact of the tariffs and the health and competitiveness of U.S. industry, and the Department will conduct a comprehensive analysis of the impact of the Section 232 tariffs after they have been in effect long enough to make the results of that analysis useful.

9. **Consider the needs of U.S. manufacturers for custom-made and other specialized steel and aluminum inputs.** The purpose of the exclusion process is to protect downstream manufacturers that rely on products not produced by domestic industry. The guiding principle is that, if domestic industry does not or will not produce a given steel or aluminum product, companies that rely on those products will not pay tariffs on them.

10. **Authorize all companies granted product exclusions to import tariff-free from any source country.** The Department of Commerce, in consultation with other Federal agencies, has the authority to grant exclusions for products that are not produced in sufficient quantity or quality in the United States or for specific national security reasons. Review of exclusion requests from domestic industry is being conducted on a case-by-case basis in a fair and transparent process managed by BIS. As part of this process, BIS is also working closely with enforcement and compliance specialists within the Department's International Trade Administration. Parties applying for exclusions are required to identify the source countries for the single product for which the exclusion is requested, the annual quantity to be supplied, and the name of the current manufacturer(s)/supplier(s), and the country of the manufacturer(s)/supplier(s). The exclusion request, if granted, will only pertain to the identified supplier(s) listed in the exclusion request form and the specific country of origin identified by the requester. Under the authority granted by the Presidential proclamations, an exclusion request only applies to aluminum or steel imported from a country subject to a tariff. The Secretary cannot grant exclusion requests for aluminum or steel products imported from a country subject to a quota. The Secretary does have the discretion to make broader exclusions available to all importers if we find the circumstances warrant, and the Secretary will exercise this discretion as appropriate.

Thank you again for your interest and support in assisting us to better serve the needs of industry. If you have further concerns or questions, please have your staff contact Michael Platt, Jr., Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Sincerely,

Wilbur Ross

Wilbur Ross

Mr. Kind. So we have a long a ways to go. But Mr. Pascrell referenced the news today out of the administration that they are planning on coming up with anywhere from $12 to $30 billion worth of subsidies, direct payments to farmers who are being adversely affected by the tariffs and the retaliation taken against you.

Question for anyone on the panel, are any of you here today in Washington with your hand out looking for a government bail out or some type of direct cash transferred to your businesses that are being adversely affected by the tariffs? Anyone here? May the record reflect that they are all shaking their head no.

And that is the point. This is the definition of crony capitalism. Unilateral action being taken by the administration and then expecting businesses large and small to come to Washington on bended knee asking for some type of relief based on what is being done right now with our trade policy. And that is the unfortunate circumstance that we find ourselves, and you guys shouldn't be in this position of having to do that.

In fact, just today, Mr. Chairman, the largest newspaper in our State, the Journal Sentinel, Milwaukee Journal Sentinel just published an article written by Rick Barrett entitled, Trump's Trade War Sweeps Across Wisconsin Raising Prices and Putting Jobs At Risk. And in this article they list company after company either identifying current job losses or future job losses on the horizon because of the effects that these tariffs are having on them.

In fact, Walker Shaw metal products just in this article informed us that four of their 10 largest customers have asked the company to move their product line to Mexico in order to get around the tariffs that are being imposed upon it. And this is what is happening today with companies across America.

And, Mr. Chairman, I would ask unanimous consent to have this newspaper article included in the record at this time.

Mr. Holding. [Presiding.] Without objection.

Trump's trade war sweeps across Wisconsin, raising prices and putting jobs at risk

Rick Barrett, **Milwaukee Journal Sentinel**
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President Donald Trump's trade war is sweeping across Wisconsin — with manufacturers, farmers and soon the rest of us bracing for the impact.

Dairy products, cars, motorcycles, appliances, electronics and sporting goods are just a few things subject to new tariffs, or threats of tariffs, in trade disputes that have engulfed the U.S., Canada, Mexico, China and the European Union.

In Milwaukee, Mike Darrow, president of the Russ Darrow Group of automotive dealerships, says sales of cars and trucks could hit a wall if Trump follows through on a threat to impose a 25 percent tariff on imported vehicles and parts.

It would raise the price of a typical new car sold in the U.S. by $4,400, according to the Center for Automotive Research in Ann Arbor, Mich.

That's an estimated $2,270 for U.S.-built vehicles, since they have foreign parts, and up to nearly $7,000 for luxury imports.

"There would probably be quite the flurry of people purchasing vehicles before the tariffs would go into effect," Darrow said.

The auto industry has pleaded with Trump not to impose the tariff, but if he does, it could come as early as this fall.

The company's competitors in Europe and Japan are the ones who stand to benefit, Ramirez said.

This spring, Trump sparked the global trade war when he announced tariffs, essentially a tax on imported goods and foreign steel and aluminum. The objective of the metal tariffs, according to Commerce Secretary Wilbur Ross, was to reduce the trade deficit and shore up American metal producers.

The administration also has placed tariffs on billions of dollars in Chinese imports — most of which are industrial goods the administration contends receive subsidies or other unfair support from Beijing.

China has retaliated with tariffs on billions of dollars in U.S. products in the global tit-for-tat trade fight that's hitting hundreds of everyday items.

"Tariff upon tariff upon tariff. It's hard to see how this wouldn't spill over into retail prices," said Alex Boian, vice president for government affairs at the Outdoor Industry Association, whose members include North Face, Patagonia and other outdoor equipment companies.

Higher metal prices have forced The Vollrath Co., a Sheboygan manufacturer of food-service equipment with 1,400 employees, to reassess where it makes products.

"These tariffs are now forcing us to aggressively look at foreign sources and potential acquisitions abroad," said company President Steve Heun.

"We have always purchased our raw metal from U.S. suppliers, not imports. However, once the tariffs went into place, domestic suppliers immediately raised prices," Heun said.

Vollrath, in business for 144 years, says it is the only remaining U.S. manufacturer of stainless-steel steamtable pans used in restaurants.

"Historically, we have manufactured approximately 80 percent of our products in the U.S.," Heun said.

U.S. consumers to feel effect

Companies and industry groups are returning to Washington this week in an increasingly futile effort to get relief from tariffs on Chinese imports.

More than 80 witnesses are scheduled to testify during the two-day hearing starting Tuesday on the $16 billion in Chinese goods targeted for 25 percent duties, which could be imposed after a comment period ends July 31, Bloomberg Business News reported.

The administration imposed tariffs on $34 billion of products on July 6, after similar hearings in May.

Expect price increases on a wide range of goods, even if they're not big increases, closer to Christmas.

"I think we'll probably get past the back-to-school period," said Joseph Daniels, economics department chairman at Marquette University.

This could be a good time to buy big-ticket items, such as furniture or a garden tractor, before prices rise from the tariffs and higher raw material costs.

In 2017, when Trump announced a tariff on imported washing machines, it took about six months for the higher prices to hit the stores. But when they did, people paid about 10 percent more.

Low-income households are especially hurt by price increases because they can least afford it, according to Daniels. This time around it could include car repairs, which will be more expensive because of rising costs for parts.

Wisconsin has hundreds of millions of dollars in farm product sales at risk in a global trade fight, including sales of bull semen, beef, pork, cheese, corn, soybeans, vegetables and ginseng.

There's also a spillover effect into the general economy.

Danny Strupp, owner of Strupp Implements in Slinger, is feeling it as farmers have less money to spend on equipment — because of low commodity prices — and equipment prices are rising.

"Our sales are slow now," Strupp said.

When the tariff on foreign steel was announced, one of his equipment suppliers raised its price 18 percent.

And the price "was already too darn high," Strupp said.

Seneca Foods, a Janesville-based fruit and vegetable processor, says retaliatory tariffs imposed by China are hurting the company that has 8,000 year-round and seasonal employees and is the largest vegetable canning operation in the U.S.

Farmers are getting hit by a loss in overseas markets.

The potential for a long-term trade war is increasing, given the administration's "belligerent approach" to negotiations, said Michael Slattery, a Manitowoc County farmer who spent nearly 20 years working in domestic and international finance.

"Historically, trade tariffs and trade wars destabilize domestic and international markets and place the burden of the tariffs on consumers," Slattery said.

Mr. Kind. Thank you. And we can have panel after panel, and quite frankly we are hearing a consistent message from our businesses from customers from farmers and all of our congressional districts today, so we are not surprised by any of this testimony.

What I am surprised though was by the President's response when he was asked directly about the adverse impact this was having on family farmers across America, and he said, and I quote, "it is not nice when they hit the farmers specifically because they think it hits me, but I tell you our farmers are great patriots. They understand that they are doing this for the country."

In essence he is asking them to take one for the team. They nor you should be asked to take one for the team, and my sense is listening to your testimony you are just looking for a level playing field on which to compete and make sure the rules of trade are done on a fair basis.

Which brings me to the point. I don't see a safe landing zone with any of this. We have an administration that is addicted to tariffs. They are addicted to ratcheting this up with a tit-for-tat escalation, and who knows where that may lead, but what should be done at this? Well, if we do have a trade problem, Mr. Houseman, with another country they are not playing by the rules. If we have an agreement with them there are trade remedies in that trade agreement that we go to and we have done in the past to enforce unfair trade practices against us. But for the vast majority of countries around the world that we trade with we don't have a trade agreement with them so we don't have those trade remedies.

But we do have the World Trade Organization, and why the administration didn't take a case of overcapacity and antidumping measures specifically against China to the World Trade Organization is beyond me.

Mr. Kind. The previous administration filed more WTO cases than any previous administration, and they had 100 percent track record, 100 percent success rate. But this is a little more cumbersome than just some strongman saying, I am going to do this impetuously, without a lot of forethought, without considering the consequences, and just deciding for 232 or 301 reasons to start slapping tariffs on our trading partners and putting us in the box that we are currently in.

So I would submit that there is more that Congress can be doing. I have introduced bipartisan legislation with my colleague from Wisconsin, Mr. Gallagher, that has the Corker bill on the House side which lets Congress weigh in on 232 disputes. And I also have a congressional resolution act, a bipartisan bill, that allows Congress a greater voice.

So there are plenty of options to do here rather than the unilateral tariff action that we are seeing right now, putting a lot of you in a very difficult situation.

Thank you, Mr. Chairman. I yield back.

Mr. Holding. Mr. Rice is recognized for 5 minutes.

Mr. Rice. Mr. Semcer, how long has MICRO been in existence?

Mr. Semcer. Seventy-three years.

Mr. Rice. Seventy-three years? Ten years ago, how much of your steel were you buying domestically?

Mr. Semcer. I am sorry. Repeat that.

Mr. Rice. Ten years ago, how much of your steel tubing were you buying domestically.

Mr. Semcer. So we were buying approximately 2 million feet and four product codes.

Mr. Rice. What percentage of your steel is that?

Mr. Semcer. Let's see, it is about 80 --

Mr. Rice. You were buying 80 percent domestically 10 years ago?

Mr. Semcer. No. Domestically, 10 years ago was 100 percent.

Mr. Rice. One hundred percent domestically, and now you are --

Mr. Semcer. At 93 percent.

Mr. Rice. Foreign or domestic?

Mr. Semcer. No, 93 domestic.

Mr. Rice. You are still 93 percent domestic steel?

Mr. Semcer. Right. Just that 7 percent is tubing, and the 93 percent is typically strip steel.

Mr. Rice. Okay. Why did you switch from domestic to foreign steel tubing, to Korean steel tubing?

Mr. Semcer. So it started with major delivery issues and then quality issues.

Mr. Rice. But not pricing?

Mr. Semcer. Not pricing.

Mr. Rice. All right. Mr. Chiang, how long has your company been in existence?

Mr. Chiang. Over 20 years.

Mr. Rice. And 10 years ago, how much of your steel pipe were you buying domestically?

Mr. Chiang. I don't have a good number on that, but it was the majority, a significant amount of U.S. steel.

Mr. Rice. And how much is domestic now?

Mr. Chiang. It is hard to gauge an exact number. I can tell you that one of the largest projects we did last year in our history was roughly two-thirds domestic/one-third international.

Mr. Rice. So your percentages haven't changed in 10 years, you are still buying the same percentage domestically?

Mr. Chiang. I would like to come back with some statistics for you afterwards on that.

Mr. Rice. Mr. Huether, your company, how long has your company been in existence?

Mr. Huether. Ninety years.

Mr. Rice. And I think you said, 10 years ago, you were buying your stuff domestically.

Mr. Huether. Ten years ago, we were about 90 percent domestic.

Mr. Rice. And now, what is your percentage domestic.

Mr. Huether. It is about 30 percent.

Mr. Rice. Thirty. And why is that, price?

Mr. Huether. It is quality.

Mr. Rice. Why has the quality dropped off? I mean, what is the reason for that?

Mr. Huether. I think lack of investment in the mill, in the processing, tension levelers, getting flat sheets. The technology in our industry has changed dramatically.

Mr. Rice. Why is that? Do you think it might be because they are, you know, having to compete at such a low level because other governments might be subsidizing their steel companies?

Mr. Huether. It could be. I think that why they have not invested is -- you have to look at the stock market and see what drives their stock price.

Mr. Rice. Mr. Adams, I was a little confused when you were talking. Did you say you make steel tubing or you buy steel tubing and sell it again?

Mr. Adams. We do produce stainless steel tubing in Florida.

Mr. Rice. Okay. And you buy your raw material from.

Mr. Adams. Domestically.

Mr. Rice. I thought you said you bought it in Korea or in China.

Mr. Adams. No. For the purposes of this one-time exemption request, we bought it from China, but this was outside of our normal scope of operations. We buy 95 percent domestic steel. Ten years ago, we bought 95 percent imported steel.

Mr. Rice. Okay. So your problem is just a one-time thing.

Mr. Adams. Correct.

Mr. Rice. Okay.

Mr. Houseman, you said that 1.4 million tons more steel is being produced this year than last year. What percentage of that is -- what percentage does that represent of total U.S. steel production?

Mr. Houseman. U.S. steel production, in total, is around 105 million tons.

Mr. Rice. So it is about a 1.5-percent increase.

Mr. Houseman. Yes, but if you go off of the operating percentage from the year before, you are looking at a 3-percent increase, because the industry has been operating at low capacity levels for a number of years now and has been unable to invest, quite frankly, because of these low operating percentages.

Mr. Rice. You know, who here thinks that we have been treated fairly by China and even other countries, in terms of steel production that -- who here doesn't believe that China has dumped on us and artificially lowered prices?

I mean, we all recognize there is a problem, right? And had all things been equal, maybe you guys would still be buying 100 percent of your steel domestically. So there is a problem here that we have got to solve. And you guys are in the crosshairs here. You are in a tough spot, and everybody wants to make sure that that gets smoothed out and smoothed out well, but you got to recognize what -- when Mr. Kind says that the administration is addicted to tariffs, I don't think that is true in any fashion; and that there are other trade remedies, well, we have been using these trade remedies, and yet, despite that, despite the fact that the administration had 100 percent, the last administration had 100 percent record, you guys are still buying less domestic steel, because our domestic steel companies can't compete with unfair competition from abroad. The existing remedies aren't working. They have to take these steps. We want to be as short term as possible. I think they have a plan. And we want to smooth out the issues as much as we can, but in the end, we got to face this, and we got to make it fair for American producers.

Thank you, I yield back.

Mr. Holding. Mr. Doggett is recognized for 5 minutes.

Mr. Doggett. Thank you very much.

Mr. Huether, as I understand, you have 40 exclusion requests pending here, and they are costly, and they are time-consuming and a distraction from your family business.

Mr. Huether. That is true.

Mr. Doggett. And I believe the other members of the panel who represent business, they have a fewer number of exclusions, but Mr. Semcer said he actually essentially has to live here to try to get this taken care of. By my count from the numbers that we have, 28,711 exclusion requests, of which 686 have been resolved.

And that would appear to me to be a burden on our business community, a really outrageous system and very much, as Mr. Kind suggested, the whole notion that people have to come on bended knee to Washington to get these matters evaluated just lends itself to all kinds of problems.

Of course, it may be that not everyone has to come all the way to Washington to get their matter resolved. Let me ask you if any of your businesses are affiliated in any way with any Russian enterprise, any Russian corporation? Are you, Mr. Huether? You are a family-owned operation. You don't have Russian subsidiaries or Russian control.

Mr. Huether. No, we are 100 percent domestic.

Chairman Reichert. How about you, Mr. Adams?

Mr. Adams. No, no relationship with Russia.

Mr. Doggett. And Mr. Semcer?

Mr. Semcer. No relation.

Mr. Doggett. No relation. Mr. Chiang?

Mr. Chiang. None.

Mr. Doggett. Well, you know, that may be part of your problem is that you are not related there because, on July the 16th, when Mr. Trump surrendered to Mr. Putin in Helsinki and had a 2-hour meeting which was so secret that even the Director he appointed as head of the CIA could not attend the meeting, a mere 3 days later, Rusal USA got its exclusion approved by the Commerce

Department. They are now importing as a distributor for the company that controls them 3 billion kilograms of aluminum commodity billet from their parent in Russia. And that Russian company had been under sanctions. They are a consumer here in this country only in the sense that they are distributing Russian product. This isn't aluminum billet that is being produced in the United States; it is being produced in Russia.

And I want to just draw attention to who the people are that are working with Rusal USA. They are Oleg Deripaska and Viktor Vekselberg, who are the two largest shareholders, and they were under individual sanctions because of the malign activity of the Russians and the conclusions of a number of our diplomats in leaked cables that they are two or three of the oligarchs that are the closest to Putin and to whom he turns on a regular basis. Mr. Deripaska has been accused of illegal wiretaps, extortion, racketeering, money laundering, and death threats against his business rivals.

I asked Secretary Ross, when he came here in March, to explain why the administration chose to do global action instead of targeted, and all I got back was a belated nonresponse. Now, I am pleased that he could forward a statement over here today to Chairman Reichert and that Mr. Reichert, Chairman Reichert is honoring the Commerce staff, who I am sure are working really hard, since they have got to go through 28,000-plus exclusions to review for U.S. businesses, and I don't know if there are any other Russian ones mixed in there or not.

But it certainly looks to me like Rusal got special treatment right after the surrender in Helsinki and that this whole process lends itself to special treatment not just for Russian corporations but for others, and it is a system that we ought not to have as a part of our operation. And for us to have another hearing where all Secretary Ross can do is forward a one-page statement about these operations and where no one from the Commerce Department or the administration can come and explain the confusing trade policy of the Trump administration, the erratic nature of it, is really, really unacceptable.

And those people here who complain about the Trump policy -- and I am sure we share the same view about some aspects of it -- who are willing to enable the administration to continue this process by not calling them to account here, where there is no real accountability for this administration, are contributing to a bad trade policy.

I yield back.

Mr. Holding. Mr. Kelly is recognized for 5 minutes.

Mr. Kelly. Thank you, Mr. Chairman.

Thank you all for being here today.

I don't know how many members have actually gone through a government program, though well intended, was really burdensome. I would just share with you a little bit what happened to me. I am an automobile dealer. In 2009, when we had the Cash for Clunkers program, it was called the Car Allowance Rebate System.

At one point -- and I am a small business man, as some of you are -- the largest receivable I ever had in a family business that has been in business for 67 years was almost $700,000. It was from an entity that we could not petition to actually handle that. It was the United States Government. So that was a program, by the way, that I know was well intended, and I know that Congress, when they put it through at that time, thought they were really throwing a lifeline to the automobile industry. But actually what they did was they really were able to close out several small businesses because they didn't have the capacity to handle that type of a receivable.

So I am looking at you now, and I am understanding the size and scope of the exclusions and the request for the exclusion. And my concern was, again, going back to what I went through, trying to get an answer from the people who were supposedly handling each of these cases.

So where you are right now, I don't know that you have the ability to have high-priced lawyers on your team or be able to engage in a high-powered legal team that could take care of things for you. So the process of navigating this -- and, again, I can only tell you because of what I went through and went through it on a daily basis, trying to get reimbursed for things that we had already extended to the buyer.

What are you doing to get your process in? Are you hiring extra help? Are you getting more people in? I think the real problem isn't with you. The problem is there is not enough people to process, right? There is just not enough people.

And I got to tell you I come from a town, by the way, when it comes about steel, represent AK Steel, the last producer of electrical steel in the United States.

We do have a major problem. But in this case, I think that what you are being burdened with is something that we really need to be aware of and be concerned with, government programs that are well intended but understaffed, and you don't have the ability to match up.

So any of you can weigh in on what you are going through right now. And we can start, Mr. Semcer. Whatever you want, whoever wants to start, please go ahead and share what it is that you are going through.

Mr. Semcer. It should be understood that, for my company, we don't have an exclusion process. The quota countries don't have a process for that. So, although other companies are going through a long process for that, we don't have one, and we are running out of time.

Mr. Chiang. For us, it is a shifting of a lot of responsibilities to focus on this. The actual cost of dealing with this I think pales in comparison; it is much less than the potential impact for the industry. So we are trying to take a very targeted approach on projects that we have got coming up to ensure that we can get some certainty on deliveries, quotas, and tariffs.

Mr. Huether. Our challenge is just, to a great extent, is knowing who is looking at the exclusions and understanding when there is a comment against what the heck it means. Because a mill can make a specification, but can they deliver it to a customer that functions in their equipment? One spec is not the same for every mill exactly the way it is written, metallurgy and flatness of sheet.

And qualifying our products in many cases are FDA specified, as other people on the panel, and that takes I would have said 6 to 18 months. I believe it could be 2 years. We supply some of the pharmaceutical companies with parts. Our supply chain is defined by them. They have qualified mills. So having a cliff, having a tariff come in at a specific date without our ability to function around that, we just take a penalty from day one.

And then the uncertainty of whether this is a long-term or a tactical approach from the administration, our customers don't know what to do. They don't know whether to go to another package, to stay in steel, to buy it overseas. The doubt is as painful as anything. Our customers are really wondering what they do in the future.

A lot of the products are for small businesses, gift giving. It is a challenge for them to absorb an increase, which we are putting through, because we can't absorb the million and a half dollars that will hit us between now and just the end of the holiday season.

Mr. Kelly. You are going through what I was told when I was trying to get this money. They said, well, it is only $700,000, what are you worried about? I said: Well, you know, that is easy to say only if it is not your money. When it is your money, that is the difference between life and death.

Mr. Adams, I know we are running out of time, but --

Mr. Adams. No, we don't have any help. We don't have a high-priced legal team. We are $200,000 in the hole, and that is a lot of money for me. I know it is not for some people.

Mr. Kelly. That is a lot of money for anybody.

Mr. Adams. Yeah. And it is very difficult to get a hold of anyone at BIS at the Commerce Department. They don't answer phone calls, don't answer emails. When they want to get ahold of me, I will get a call at 6:30 at night. And, you know, if I am there to answer it, I will answer their question, but it is a one-way stream of information. I can't ask them any questions.

Mr. Kelly. I know I am out of time, but listen, I want to thank you all. I know you are going through a great deal of pain. We have an obligation to make sure -- I don't care who is sitting in the White House. We have an obligation to take care of the people we represent.

So thank you all for taking time out of your life to come here and tell your story. This is critical, and we can't sit and watch it happen.

Thank you.

Mr. Holding. Mr. Levin is recognized for 5 minutes.

Mr. Levin. Thank you and very much welcome.

I think it is useful for us to take a look at why we are where we are. And I think everybody needs to honestly look at where they were when issues arose. When China PNTR was brought up before this committee, I was on the Trade Subcommittee, I think, maybe ranking, some of us kind of stuck our neck out. We put into China PNTR an antisurge provision relating to China. Four times it was recommended that action be taken, and four times under the Bush administration there was a refusal to take action against a surge from China. One of them, as I remember, was a steel product. I think all of us need to ask where we were.

Currency. China began to manipulate its currency dramatically, dramatically. And I think everybody, including those in this Congress who were there then, need to ask themselves where were they. China was manipulating its currency, and it was one reason why China's steel production that 10, 12 years ago was the same as the U.S. began to rise to the point it is 10 times. So there were antidumping and countervailing duty provisions.

By the way, we passed a currency provision through the House once or twice with some Republican support, but mainly opposition. And then the antidumping, countervailing duty provisions that we protected or safeguarded in the Uruguay Round were used and used, but they weren't working. And so there was a discussion about doing it globally.

And here is the testimony from the union that I think is totally accurate. The union has participated for years in steel forums at the Organization for Economic Cooperation and Development and other venues like the G20 Global Forum on Steel. However, after 5 years, the only results we saw were a 50-page report and more inaction.

So I think all of us, especially those who did not take action -- Mr. Rice said: We all recognize.

The trouble is that wasn't true for a number of years. And a number of us tried to force recognition of what was happening.

And so there was a vacuum, and it was filled by this administration. And it has been done in a way that has resulted in this complex, I think at times convoluted, process that all of us are caught in. And one opportunity is to see if we can make it work. Another is to use it to do what should have been done long ago, and that is there be a global answer to the dramatic overcapacity in China that has really been a major source of the loss of jobs in this country.

The worst thing we can do is to say: Well, only 25,000 jobs were lost, and under this approach, there will be 100,000.

That shortchanges people who suffered and companies that suffered because of this dramatic overcapacity rampage economically by China and the refusal of too many people in this country to stand up and be counted.

And so, as you come here asking for help -- and I think we understand it is a very complicated process -- I think you have to also recognize there is a responsibility for why we are where we are. And this administration has, in a sense, taken advantage of that and is using, in some respects, a sledgehammer, and that is because for many years too many people were unwilling to even use a scalpel.

I yield back.

Mr. Kelly. [Presiding.] Thank you.

Dr. Davis is recognized.

Mr. Davis. Thank you very much, Mr. Chairman.

And I thank all of the witnesses for coming to share and respond to the inquiries that we have made today.

I think all of us would probably agree that Chinese overcapacity in the steel and aluminum sectors has been a problem in our country for many years. Strong action is needed to support our workers, firms, and communities. But I am a bit concerned about the Trump administration's haphazard approach to implementing these tariffs. In particular, the administration has ended up imposing tariffs on our allies.

Mr. Houseman, do you have concerns about imposing tariffs on allies like Canada? Do you think we could develop alternative arrangements with our allies that would still ensure that Chinese and other unfairly traded steel and aluminum does not end up flooding the United States market?

Mr. Houseman. Yes. So the United Steel Workers have supported an exclusion for Canada, and they have been very adamant about it since the beginning of the 232 investigation process.

The union does have some concerns with European Union exclusion, particularly since we see that there is a 3- to 7-percent tariff on primary aluminum coming from the U.S. into the EU, 29 existing AD/CVD orders, significant state ownership of hydropower that supplies aluminum smelters, for example.

You know, there is a pending AD case against a facility in Greece, for example, that produces a line pipe product that our members can make in mills operating at 40-percent operating capacity.

So we do want to be responsive to our allies, but it is a global solution that needs to be addressed on overcapacity. And we just, as the world's most open market, we just don't want to see our members impacted first in any sort of overcapacity overhang.

Mr. Davis. There have been numerous concerns highlighted today about problems with the product exclusion process. In my view, it is crucial that there is an exclusion process that is transparent and provides due process to interested parties.

Mr. Houseman, what is your perspective on the need for Commerce to implement a functioning product exclusion process? Do you think it would be helpful if we had an administration witness here today, because after all of the answers and all of the questions, we have not heard from the administration relative to this process? Do you think it would have been helpful?

Mr. Houseman. Yes. You know, the union obviously works with our member companies, and they have filed some objections on some products, for example. But the best witness to talk about the exclusion process would be from the Department of Commerce. They have the staff and personnel, and they are seeing what these exclusion requests are coming in as.

Now, our member companies have raised concerns on, you know, resubmissions of exclusion requests with no material changes, and it ends up Commerce has to review these processes again and slowing up the work. So, if there are, you know, duplications in processes and applications, you know, this is overwhelming the Commerce Department, or at least from our perspective. And we want to make sure that they are doing it the right way, but I don't work there. So I think that the Commerce Department would be the best witness to come in here and to have that discussion.

Mr. Davis. Well, I want to thank you, because I feel exactly the same way. We have heard problems. We have commiserated with our companies who are producing steel, but we still don't have the answer.

So I thank you and all of the witnesses for being here, and I yield back the balance of my time.

Chairman Reichert. [Presiding.] Thank you, Mr. Davis.

I just want to make an additional note. So, again, you have seen people moving around quite a lot and especially in this chair. I think four or five people have been sitting here since I left, so it takes that many people to replace me.

But I just want to point out, so what is happening is there are bills on the floor, and each one of us that have left are managing other pieces of legislation. Mr. Pascrell is now on the floor doing the same thing on his side of the aisle. So I just wanted to clarify why we are all kind of bouncing around just a little bit.

Thank you, Mr. Davis.

And, Mrs. Walorski, you are recognized.

Mrs. Walorski. Thank you, Mr. Chairman.

Thank you to the panel for being here today. Your stories illustrate how the exclusion process is broken, but this hearing is avoidable. I partnered with my colleague Mr. Kind to send a letter to Secretary Ross asking for 10 commonsense changes to the process. Thirty-seven other Members signed on our letter. Secretary Ross shrugged off our suggestions. It is especially ironic since USTR's exclusions process for Section 301 tariffs implemented some of the exact same things we asked Chairman Ross to do, such as more generous retroactive relief and allowing trade associations to file.

My district in northern Indiana makes 85 percent of the RVs you see on the road and is home to major boat and trailer manufacturers as well. I have been watching this process closely because a working exclusions process matters for manufacturers in my district and their supply chains.

I want to emphasize a few of the major problems, using your stories today as well as statistics my office compiled from regulations.gov.

Mr. Adams, your story shows the importance of getting posted on regulations.gov because it determines retroactive relief. But these days, most requests end up sitting for 3 to 4 weeks before being posted and a few sat for as many as 12 weeks. Yet, even after sitting for weeks, some are forced to resubmit and restart the clock.

It could be over a minor clerical error, even though they posted others with the same error. In other cases, Commerce was unclear on what ranges of dimensions it allowed. Eventually, so many got kicked back because of it, everyone just split applications into individual dimensions, which exploded the workload.

Sixty-nine percent of steel and 83 percent of aluminum requests that made it through the 30-day comment period had no objections from domestic producers. However, Mr. Chiang, you pointed out a fundamental unfairness facing requests with objections. Of the 5,700 steel and aluminum objections posted, only 54 of those remained public before the end of the comment period. This leaves requesters with no formal way to challenge claims made in the objections. This is basic due process. I am worried that, without any rebuttal process, Commerce is making multimillion-dollar decisions based on an incomplete picture; it becomes a very expensive he-said/she-said moment.

As approvals and denials start to roll in, we see opaque and inconsistent decisions. This was foreshadowed by a Commerce official who told The Washington Post back in June: It is going to be so unbelievably random, and some companies are going to get screwed.

Commerce gives one of two reasons for denying a request: One, either there is a sufficient domestic quantity and quality available; or the application was incomplete. It never discloses the analysis that led them to conclude a sufficient domestic supply exists, and it never says what made the application incomplete.

Seven requests have been denied on the basis of sufficient supply, despite having zero objections. This means the company said there wasn't sufficient domestic supply. Domestic industry didn't disagree, but Commerce said there is. How did they arrive at that conclusion? It is a black box.

Many were forced to resubmit steel requests because they didn't include iron content in their application. Yet there are numerous examples of requests that were not just posted without iron content; they were approved too. There are also multiple instances of companies whose requests for the same tariff line only differed in dimensions, yet one was approved, the other one was denied, because Commerce said it was incomplete. Commerce doesn't explain why one was incomplete but the other wasn't, despite being nearly identical.

It is annoying to see even uneven decisions for the same company. It is scary to think about uneven decisions happening across industries and what competitive advantage one company could be getting over a rival.

The current exclusion process is opaque, unfair, and inconsistent. We are not asking Commerce to grant every request. We are saying there are major structural issues causing uneven outcomes. We are saying that the deck seems to be stacked toward one side right now, and it needs to be rebalanced.

I feel for the BIS analysts who are doing the best they can to implement a bad process. They are in an impossible situation. Secretary Ross complains about funding, but with all these issues, it would be the height of irresponsibility by this Congress to give them more money without making changes.

I am urging Secretary Ross to bring true transparency, fairness, and consistency to the process by issuing a final rule that fixes these as soon as possible.

A question really quickly just to cue you in. Secretary Ross has said that companies filing exclusions and importing steel and aluminum are, quote/unquote, gaming the system. I doubt that any of you sitting here are gaming the system. I am guessing all of you here are expecting a fair shot. That is what we want. That is what we are working for. And we are fighting for you.

Thank you, Mr. Chairman, I yield back.

Chairman Reichert. Thank you.

Mr. Smith, you are recognized.

Mr. Smith. Thank you, Mr. Chairman.

And thank you to our panel certainly for being here and sharing your insight and expertise. We know that tariffs and trade in general is such an important topic. I think some of the discussion that we have had across America about trade has been healthy recently. I believe that tariffs are negative, end up hurting producers and consumers. That is a huge concern that I have.

I appreciate the President's objective. I appreciate what his intentions are. And I would also say that it stands to reason that the sooner we can get this resolved, the better. I hear multiple concerns from Nebraskans about the impact on tariffs. We have a large sector of center-pivot manufacturing. Those big sprinklers that are shipped around the world use a lot of steel. And Reinke, for example, they tell me that, you know, their input costs for steel have gone up already, and it actually hurts their competitiveness. So we see that more and more.

I mentioned last week, in terms of more agriculture products themselves, the dry bean industry. Kelley Bean in Scottsbluff, they tell me that they have seen reduced orders from Europe, actually. Also, Preferred Popcorn in Chapman, Nebraska, they tell me that they have lost orders in Asia and in Europe.

And so we see the exclusion process, and as has been mentioned, it is not working very effectively. So we need it to work more effectively and also acknowledge these realities.

I know, Mr. Semcer, you pointed out that the concerns with the quota system that perhaps could leave you without product to buy, perhaps at any price. That is a concern expressed to me by some Nebraska producers as well and that with Brazil, for example, choosing the quota rather than being subjected to the 232 tariffs, that that conceivably could leave a good opportunity in Nebraska without product at all at any price. I hope we can address that.

And so, Mr. Semcer, of course, I don't want you to repeat yourself, what you have already said, but I am just wondering if you could perhaps give us a best case scenario moving forward.

Mr. Semcer. The best case scenario moving forward is our politicians and our administration fixing our issue very quickly. I mean, that is the best case. If it could be today, that would be great. That is best case for us.

Mr. Smith. Anyone else wishing to respond to that same question?

Mr. Chiang. I just wanted to make a comment. I think another critical factor we have got to keep in mind is we can't let government trade officials determine product specs. So we have talked a lot about tariffs, exclusions, quotas, but the real alarming thing for me is if we end up having a trade official overrule a company and say adequacy of a product spec, it is our pipelines -- specifically speaking for Plains, it is our assets. We are responsible for them. We are held accountable for them, and we will operate them for decades and decades. So I think it is a key factor that we have got to keep in mind.

Mr. Smith. Thank you.

Mr. Huether. I agree very much here. We have asked our primary mill to give us steel, 20,000 to 50,000 tons of specific specifications. They want to charge us extra to give us a trial order to requalify. We have got to qualify. It takes 6 months to 2 years to qualify. And, right now, we are spec'd at a German mill. If we can't compete with Germany, a high-cost country, we have got a problem in this country, and it is probably technical. It is not people; it is technical. It is putting in the right equipment to run the right products.

And this is a cliff. We are being tariffed. Our supply chain is 6 months. If we don't order now for December or January, we don't have it. So we are betting on the future. What is the future? We have no idea. It is really a tariff that is very, very painful.

Mr. Smith. Mr. Semcer.

Mr. Semcer. One of the ideas that we came up with through this whole process, which would be probably the next best scenario for us to support the government's initiative is to source all the stainless steel strip from the U.S. and ship it to Korea for processing. But, unfortunately, that type of system still falls under the same HTS code and the same quota system as we have today. So, although we are supporting the initiative, we still get no good outcome for MICRO.

Mr. Smith. So virtually, the highly specialized aspects of the product is a complicating factor. Is that accurate?

Mr. Semcer. Correct.

Mr. Smith. And I think it is important to note that the mere number of requests for exclusions certainly speaks to the complexity of this entire issue. So that I just want to say that I hope we can get this resolved sooner rather than later.

Thank you. I yield back.

Chairman Reichert. Thank you, Mr. Smith.

Before I close, I wanted to ask Mr. Houseman a question or two. So I asked each of the other gentlemen how many employees they had. How many employees does the United Steel Workers Union employ?

Mr. Houseman. Direct employees?

Chairman Reichert. Yes.

Mr. Houseman. We are under 900, I would say.

Chairman Reichert. Nine hundred or so. How many employees do you represent, does your union represent?

Mr. Houseman. We represent 850,000 members.

Chairman Reichert. So your point about, you know, the administration and their engagement, I was just curious, have you or anyone in the union administrative positions, have they had a chance to meet with the Secretary or representatives from the Secretary's office?

Mr. Houseman. Yeah. The union has been engaged in the 232 process since the beginning. We feel very strongly, obviously, that global overcapacity is an issue, that this needs to be addressed.

Chairman Reichert. Have you personally met with anyone from the Secretary's office?

Mr. Houseman. I would have to get back. I just can't recall off the top of my head if I have had a conversation.

Chairman Reichert. Do you know how many times members of your union would have had the opportunity to meet with the Secretary or representatives from the Commerce Department?

Mr. Houseman. I would have to get back to you on the number of times.

Chairman Reichert. Would you say it is less than five or --

Mr. Houseman. I mean, I think it is -- we have definitely --

Chairman Reichert. So you have had opportunities to interact with them and provide your opinion, and you know what they are thinking and the direction that they are headed?

Mr. Houseman. And there were hearings and other items.

Chairman Reichert. Any of the businessmen at the table been able to have a conversation with anyone in the Secretary's office other than filling out your application and getting denials? No. It sounds to me like there needs to be more outreach into the small business and the corporate world versus the union.

I would like to thank the witnesses for their testimony and for their responses to our questions. I know each of you has already put substantial time and resources into participating in the product exclusion process, and I thank you for taking even more time away from your business to come here today and share your stories. I think you have helped us immensely, helped us better understand the challenges that you are having in navigating through this system. So thank you all for being here.

Please be advised that members will have 2 weeks to submit written questions to be answered later in writing. Those questions and your answers will be made part of the formal hearing record. Our record will remain open until August 7, and I urge interested parties to submit statements to inform the committee's consideration of the issues discussed today.

The subcommittee stands adjourned.

[Whereupon, at 4:25 p.m., the subcommittee was adjourned.]

MEMBER QUESTIONS FOR THE RECORD

Independent
Can Company

Dave Reichert
Chairman on Trade
Congress of the United States
U.S. House of Congress
1102 Longworth House Office Building
Washington, DC 20515-6348

September 12, 2018

Dear Representative Reichert,

I am responding to a question submitted to me by Dave Reichert Chair Subcommittee on Trade that was posed by Rep. Rice:

"Stanley Black and Decker, which employers 16,000 workers in Connecticut and Cheraw South Carolina, manufactures steel tape measures. These tape measures are made of certain steel which has not been made in the United States since 1988. Since that time, Stanely Black and Decker have continued to seek a domestic steel producer who can meet their needs, without much success and have applied for a 232 exclusion. Can you discuss how you have attempted to seek domestic manufactures for your raw materials?"

The supply of thin gage steel that is ultimately qualified for a particular product is very dependent on the specific equipment that is being used to fabricate the item, holding a specific gauge and temper consistently order after order for long periods of time.

Independent Can is a growing small user of tin plated steel founded in 1929 and until about 10-15 years ago we were using 100% domestic steel. As Stanley Black and Decker was forced overseas in 1988 due to the mills either discontinuing the type of steel they had historically bought or the mills having lost the quality of production to support the Stanley Black and Decker specification. In the past 10 years Independent Can has also been force overseas because of poor quality.

There are two steel mills making tinplate and one will not even sell us due to no capacity available. This mill will not even take a qualification order.

In 2011 we introduced a new technology for making a specific package and initiated buying the steel from a domestic steel mill. The technology we introduced along with the printing systems that we have are globally very technical requiring very flat steel (not bowed, not out of square and with a clean surface). Please see the documentation attached as we tried to buy domestically for 3 years until we could no longer tolerate the performance.

We are too small to offer enough volume to a mill to influence their investments. In 2015 we told a domestic mill that we would commit to buy more domestically if they would commit to investment and we received the letter attached. We placed additional orders and they canceled their investment plan 9 months later see attached.
In the past 4-5 months (this year) we have asked for 20 – 50 ton trial orders to requalify the domestic mills for supply as we have FDA supply requirement for a number of the products we make and have had little cooperation from the domestic mills. One told us they were sold out and could not take any new orders and the other wanted to charge a premium to even get a trial order.

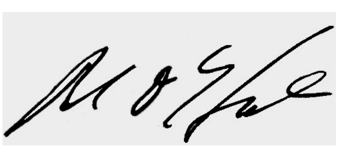
I realize that I have not answered your question as to how do we seek domestic sources. There are many specifications that will work very well from the local sources although the on time delivery from our domestic source are only 12- 18% delivering on the promised delivery schedule they give us.

We buy on quality, service and price in that order. Our mills have let their quality degrade to a scary level. They need to make significant investments to be able to be globally competitive and I am not sure that the mills will spend money on Tinplate production, which is only 2-3% of global steel produced domestic mills can only currently make about 56% of the domestic demand.

Thank you for asking the questions and please let me know if I can be of additional help please let me know.

The item referred to in this letter is one that was denied for an exemption and we will have to continue to import due to quality and service not price.

Sincerely



Rick Huether
President and CEO

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United States Steel Corporation
Tin & Container Group
600 Grant Street
Pittsburgh, PA 15219-2749

February 16, 2015

President

We Agreed To
Increase The Steel
We Bought From
USS Based upon a
Commitment To Invest

Dear

I am pleased to inform you that United States Steel Corporation (USS) will invest in two technologies that will enhance our overall quality at our Midwest Tin Mill located in Portage, IN. The first piece is the installation of in-line trimmers on our tin coating line at this facility. This equipment will aid in overall shape of the strip, particularly camber and coil weave, as it enters into the plating section of the line. It will also help improve our on-time delivery (OTD) performance since in most cases; there will be no need for further processing after the coating is applied.

The second piece of equipment that will be installed on the same line is a state-of-the-art tension leveler. This leveler, manufactured by REDEX in France will provide superior overall shape and flatness that is critical for your coating and lithography applications. USS has installed this equipment on our two tin coating lines in Košice, Slovakia and the shape improvements there have been dramatic.

The current time table for installing the side trimmers is mid-July while the tension leveler will be installed in early November. We expect to take delivery of the leveler in October and are hopeful that we can take possession earlier. Based on this schedule, the leveler should be operational by the first of December, 2015. After installation, it will take approximately two weeks to fine tune the system and we expect to be making product with enhanced flatness by mid-December. We will keep you apprised of our progress and notify you if we encounter any appreciable delays.

These projects illustrate our commitment to investing in our tin mill facilities and improving our overall quality. We will continue to evaluate our operations and make the necessary improvements once identified in order to provide a world class product to our customers. We look forward to providing these products to Independent Can now and into the future. If you have any questions regarding these projects, please do not hesitate to contact me.

Sincerely,

David J. Klacik

David J. Klacik
Director of Sales – Tin, Container & International

This Gentleman was
Let Go

Approximately
8-9 Months
After This Letter
USS Canceled The
Investments.

Bicki

Specification # 116 - Claims for Defects Accepted by Steel mill2

Orders placed for delivery in 2012

PO #	Tons Ordered	Steel mill 2 Claim #	Claim Value	Defect
31624	100	No Claims	$ -	
31685	60	CX23335	$ 2,016.34	STAINS
31778	225	No Claims	$ -	
32366	100	CX25449	$ 6,078.06	STAINS
		CX25202	$ 11,180.19	STAINS
		CX25203	$ 15,712.38	STAINS
32508	100	CX25211	$ 1,411.83	STAINS
		CX25208	$ 2,402.70	STAINS
		CX25209	$ 3,675.53	STAINS
		CX25210	$ 3,713.26	STAINS
		CX25207	$ 9,875.94	STAINS
		CX25206	$ 10,727.50	STAINS
		CX25204	$ 11,403.62	STAINS
		CX25205	$ 14,070.65	STAINS
32745	100	CX25558	$ 4,215.36	STAINS
		CX25557	$ 5,181.42	STAINS
32854	100	CX36874	$ 10,601.69	STAINS
32898	200	No Claims	$ -	
32936	50	CX36492	$ 1,333.08	STAINS
33048	100	No Claims	$ -	

2012 Summary

Total Tons Ordered:	1,135
Total # of Orders:	10
Total # of Orders with No Claims:	4 (40%)
Total # of Orders with Claims:	6 (60%)
Total # of Claims Accepted:	16
Total Value of Claims:	$113,599.55

Orders placed for delivery in 2013

PO #	Tons Ordered	Steel mill 2 Claim #	Claim Value	Defect
33143	150	CX38163	$ 9,056.34	STAINS
		CX38435	$ 12,431.31	COATING LINES
		CX49468	$ 1,228.95	HEAVY PLATING LINE, STAINS
33270	150	CX37206	$ 1,969.62	TIN PICK UP
		CX37207	$ 4,509.65	**RUST**
33505	125	CX37789	$ 2,897.37	STAINS & RUST
33763	150	No Claims	$ -	
33920	150	No Claims	$ -	
33971	200	CX49134	$ 4,984.63	HEAVY TIN PICKUP ON ONE MILL EDGE AND A 2" WIDE BAND ALONG THE OPPOSITE EDGE
		CX49226	$ 7,861.02	PLATING LINE STAINS
		CX48763	$ 13,375.37	STAINS
		CX49133	$ 13,402.63	3/8" WIDE BRIGHT STREAK IN THE CENTER OF THE STRIP ON THE TOP SIDE
		CX48742	$ 55,957.44	BITE MARKS, STAINS
34173	150	No Claims	$ -	
34263	100	No Claims	$ -	
34377	50	No Claims	$ -	

2013 Summary

Total Tons Ordered:	1,225
Total # of Orders:	9
Total # of Orders with No Claims:	5 (50%)
Total # of Orders with Claims:	5 (50%)
Total # of Claims Accepted:	11
Total Value of Claims:	$127,674.33

Orders placed for delivery in 2014

PO #	Tons Ordered	Steel mikke 2 Claim #	Claim Value	Defect
34557	50	No Claims		
34581	100	No Claims		
34682	75	No Claims		
34766	75	CX52068	$ 4,568.51	HEAVY SCATTERED SOLUTION STAIN SPOTS
		CX52069	$ 11,081.54	ENTIRE BOTTOM SURFACE HAD A GRAY, CLOUDY STAIN CONDITION
35297	50	CX53055	$ 2,706.28	HEAVY MILL STAINS
35440	100	No Claims		
35845	150	No Claims		

<u>2014 Summary</u>

Total Tons Ordered:	600
Total # of Orders:	7
Total # of Orders with No Claims:	5 (71%)
Total # of Orders with Claims:	2 (19%)
Total # of Claims Accepted:	3
Total Value of Claims:	$18,356.33

Notes:

- ICC ceased purchasing this specification after 2014 because Steel mill 2 was unable to meet the requirements of this specification, especially in the area of surface finish. All purchase orders for this material clearly state that all surfaces must be clean and free of excess oil, dirt, corrosion, contaminants, stains, scratches, uneven tin coating, and other visual defects.

- The claims listed above are claims accepted by Mill 2 . Additional claims were to be submitted but ICC worked with Steel mill 2 and accepted defective material for an alternate use at a later date.

- The equipment used to lithograph the sole product produced from this specification is high precision, German produced machinery that requires that the material used be defect free, especially in the areas of flatness and surface finish. This is not only a requirement of the production equipment, it is also the customer's requirement.

PUBLIC SUBMISSIONS FOR THE RECORD

association for print technologies
Innovating Graphic Communications
1899 Preston White Drive • Reston, VA 20191 • USA
T. 703/264-7200 • F. 703/620-0994 • PrintTechnologies.org

Statement
Association for Print Technologies
August 7, 2018

Submitted to
House Ways and Means Committee Trade Subcommittee
For the Record of the July 24, 2018 Hearing on
Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum

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Introduction

The Association for Print Technologies (APTech[SM]) is a U.S. trade association representing over 580 member companies that supply printing technologies to support the entire print value chain. We submit this statement for the record of the July 24, 2018 hearing of the Trade Subcommittee of the House Ways and Means Committee, which was focused primarily on the topic of the product exclusion process for Section 232 tariffs on steel and aluminum. This is a subject of high importance to APTech member companies, because the imposition of the 10 percent tariff on aluminum and 25 percent tariff on steel is having a damaging impact on their businesses, those of their direct customers and others down-stream in the print value chain.

In the context of these tariffs, a well thought out and efficiently functioning product exclusion process is imperative to avoid collateral economic harm stemming from these tariffs. Therefore, APTech thanks and commends Trade Subcommittee Chairman Reichert and Ranking Member Pascrell for their leadership in holding this hearing, and in pursuing improvements to the product exclusion process that is clearly not working well. We also acknowledge the interest and efforts of the other Subcommittee members.

The Importance of Free and Fair Trade

APTech fundamentally disagrees with the Section 232 steel and aluminum tariffs as a matter of U. S. trade policy in a globally integrated and interdependent system of commerce and manufacturing supply chains. The U.S. tariff on aluminum imported from Canada, Mexico and the European Union (EU), recently imposed by the Trump Administration on June 1, is damaging the United States printing industry, as well as its suppliers and customers, by increasing the cost of aluminum used to produce high quality lithographic printing plates that are widely relied upon for commercial printing.

When the proposed aluminum tariff, first announced on March 14, 2018 was held in abeyance APTech was optimistic that it would not be imposed, thus avoiding the harm it now brings. That optimism was sustained when agreements were reached with various countries that removed their aluminum exports from being subject to the tariff. But regrettably, no such accommodation was achieved with Canada, Mexico or the European Union (EU). So now we are burdened with the extra cost of a 10% tariff on aluminum imported from those countries, the EU being the leading source of lithographic aluminum.

While APTech understands and applauds the Trump Administration's concern for American workers who are disadvantaged by unfair trade practices, and agrees with and supports the enforcement of U.S. trade laws designed to preserve free, fair trade and national security, we respectfully disagree with the imposition of the current Section 232 aluminum tariff, which we believe results in more economic harm than benefit when measured against the far greater number of firms and workers that use aluminum in manufacturing products than those who supply the raw material.

In addition to our general aversion to tariffs, APTech's objection to the current Section 232 aluminum tariff is compounded by the fact that according to our members there are no other domestic sources for the specific grade of aluminum necessary to produce high quality printing plates. This fact creates burdensome extra costs with no alternative, but we believe it also provides the predicate for printing plate manufacturers to qualify for exclusions from the tariff under the Commerce Department's announced protocol. While APTech itself is not a manufacturer eligible to seek such exclusions, we have met with Department of Commerce officials to better understand the exclusion process and its requirements, and to urge that exclusions be retroactive to June 1 when the tariff was imposed.

Section 232 Tariffs on Steel and Aluminum from the EU Should be Suspended

Based on media coverage of the meeting between President Trump and EU Commission President Juncker on July 25, as well as reports since then, we are optimistic that there will soon be a rescission of the Section 232 tariffs on steel and aluminum imports from the EU, if not from all international sources. In the meantime, we appeal to this Subcommittee to urge the Trump Administration to at least suspend the Section 232 steel and aluminum tariffs while the U. S. and EU work to find a mutually agreeable accord on their trade relationship. A suspension would nearly, if not totally, eliminate exclusion requests for lithographic aluminum. Without one, we must continue to object to the harm being inflicted on the printing industry, its suppliers and customers, while these tariffs remain in effect. Moreover, we strongly disagree with some characterizations that this is a small price to pay to achieve a larger benefit. It isn't a small price when you are the one paying it. And many of those paying it in the printing industry are small businesses that can least afford it, and who would be much better served using their resources to grow their businesses rather than paying tariffs.

The Urgent Need to Improve the Product Exclusion Process

While completely rescinding or at least suspending the Section 232 steel and aluminum tariffs would be best, until either occurs we must proceed under the existing facts. Currently those facts are that out of a total universe of 2,575 aluminum exclusion requests at this date, there are 345 from APTech members for lithographic aluminum, which account for 13.4% of all aluminum exclusion requests. Unfortunately, no decisions have yet been rendered on these requests. We have heard that Section 232 steel tariffs are also problematic for some of our members, but we have not yet been able to identify any steel tariff exclusion requests from APTech members.

While we continue to monitor and analyze these data, the most glaring thing is that in both the cases of aluminum and steel only about 10% of exclusion requests have been decided. To borrow a phrase, like justice, exclusion requests delayed are exclusion requests denied, and tariffs continue to burden printing plate manufacturers and their customers. Therefore, to improve its fairness, veracity and efficiency, APTech recommends that the exclusion process should:

- Ensure due process, including adequately documenting the basis upon which a request is either granted or denied, and providing an appeals process from the decision
- Ensure more timely and efficient processing of exclusion requests
- Exempt international steel and aluminum orders placed before the imposition of tariffs and quotas.
- Consolidate exclusion requests by project or purchase order rather than requiring individual filings for nearly identical products.
- Recognize and respect technical product specifications provided by companies' exclusion requests.
- Remove quotas that block access to steel and/or aluminum at any cost.

In addition to these general recommendations, APTech submits for the record the following questions that have arisen as suppliers of aluminum printing plates have pursued exclusion requests with DOC.

1. Is there an appeal process if an exclusion request is denied?

2. How much explanation will be provided by the DOC for a denied or approved exclusion request?

3. Since this is an annual reprocess, will companies have to replicate the process and file individual exclusion requests each year, or will there be a separate "extension" process?

4. How will customs handle the importation of materials if a company is only granted partial exclusion of their materials, and will there be reporting requirements?

    a. If a company is granted an exclusion, we believe the exclusion number to be filed with customs at the time of importation will be 'ALU' followed by the last 6 digits of the specific docket number for each exclusion request. This allows us to file our import declaration at the material number since each material has its own docket number. However, that is direction for our electronic filing with Customs. With that stated, are there import documentation requirements that will need to be in place for this as well?

b. Note from Customs is shown below:

Importers and filers importing products granted an exclusion should submit the product exclusion number based on the last six digits of the product exclusion docket number at Regulations.gov. The product exclusion number should be submitted in the Importer Additional Declaration Field (54 record) of the entry summary data, based on the following format:

For excluded steel mill articles -STLXXXXXX
For excluded aluminum articles= ALUXXXXXX

Section 232 Steel and Aluminum Tariffs in Context

Finally, we would be remiss if we failed to note that the Section 232 steel and aluminum tariffs aren't affecting the printing industry in a vacuum. Rather, they come at the same time the industry is reeling from unwarranted and debilitating countervailing and anti-dumping duties on Canadian uncoated groundwood paper, and the imposition of tariffs on certain Chinese imports, including some printing technologies. To be sure, these other tariffs, which are also taxes on U. S. businesses and consumers, are imposed by authority of other laws. But, there is no denying that they are part of the overall challenging context in which U. S. printers, their technology suppliers and customers find themselves right now.

Conclusion

APTech appreciates the opportunity to submit this statement and stands ready to work with the Trade Subcommittee to improve the Section 232 steel and aluminum tariffs product exclusion process.

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Kenneth M. Roessler
President & CEO

July 23, 2018

The Honorable Dave Reichert
Chairman

The Honorable Bill Pascrell, Jr.
Ranking Member

Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20510

Dear Chairman Reichert and Ranking Member Pascrell:

In anticipation of the upcoming Ways & Means Committee hearing on the product exclusion process for Section 232 tariffs on steel and aluminum, I would like to bring to your attention certain challenges BWAY Corporation has confronted in this regard.

BWAY is one of the largest manufacturers of rigid metal, plastic and hybrid containers in the United States. Using tinplate steel, BWAY makes a wide variety of aerosol cans, paint cans, pails and other containers. Headquartered in Chicago and with corporate offices in Atlanta, BWAY employs over 5,800 U.S workers at 68 facilities across the country.

The senior leadership of our company has undertaken extensive engagement with the U.S. Government since April 2017, when the Department of Commerce initiated an investigation to determine the effect of imported steel on national security under Section 232 of the Trade Expansion Act of 1962. Our overarching goal, along with that of others in our industry sector, has been to seek an exclusion from tariffs for imports of tinplate steel because:

- there is no national security application for domestically-produced tinplate steel, and therefore this product should not be subject to Section 232 authorities; and,

- tinplate steel is not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, the criteria by which Presidential Proclamation 9705 ("Adjusting Imports of Steel Into the United States") stated that certain steel articles may be excluded from tariffs.

To this end, BWAY submitted testimony during the Commerce Department's 2017 hearing process, met with senior Commerce Department officials as they conducted their investigation, conveyed information to the White House – both directly and through our Members of Congress – as the President considered actions pursuant to the Commerce Department's report, and now have submitted an exclusion request for imports of tinplate steel that are essential to our business.

Throughout this process, we have sought to alert U.S. Government officials to the realities confronting both our industry sector overall and our company in particular. Broadly, and as documented by the Can Manufacturers Institute, in recent years the annual domestic demand for tinplate steel has been approximately 2.1 million tons, compared to U.S. production of only 1.2 million tons – thus requiring container manufacturers that rely on tinplate steel to import in order to meet customer demand and sustain the employment of more than 22,000 American workers. With regard to BWAY's specific requirements, repeated efforts to place new 2018 orders with U.S. tinplate manufacturers since the imposition of tariffs have been met with responses by those companies that additional tinplate products are not available in the quantity and within the timeframe required by our company.

BWAY presented this and other relevant information in our exclusion request to the Department of Commerce, as did many others in our industry sector. Despite these facts, U.S. tinplate manufacturers have filed objections asserting that they have the capability and capacity to produce the items required by its customers. Yet it remains the case that tinplate steel is not currently produced in the United States in a sufficient and reasonably available amount, which as noted above is the criteria by which Presidential Proclamation 9705 stated that exclusions may be granted. Neither BWAY nor other tinplate steel customers are in a position to wait until U.S. manufacturers can make available the supplies needed if we are to remain viable in a competitive global market.

With regard to the quality of tinplate steel produced by U.S. manufacturers, we would note that at a February 27 U.S. International Trade Commission hearing involving tin and chromium-coated steel sheet from Japan, a primary U.S. manufacturer of tinplate steel acknowledged concerns raised by customers regarding the quality of its products and its delivery performance. The manufacturer's representative noted that it is "rising to this challenge" through its "Can Do Program," but that "these are not improvements that can be accomplished overnight. We began planning the Can Do Program in 2016, began making investments in the last half of 2017, and **<u>will not complete the program until 2020</u>**." Meanwhile, U.S. can manufacturers need tinplate steel that is available and of a satisfactory quality today.

Given the clear and important distinction between (1) U.S. manufacturers' assertions of capability and capacity to produce more tinplate steel, and (2) U.S. can manufacturers' immediate need for sufficient and reasonably available amounts of quality supplies in order to remain competitive in our market, BWAY provided this additional information to the Department of Commerce prior to the May 24 deadline for comments on our exclusion request. To our surprise and frustration, BWAY received a notification from the Commerce Department on July 20 that it "will not accept or consider 'Objections to Objections,'" and that "[i]f The Department believes additional documents/information is needed to rule on any individual exclusion request, we will ask for said information directly from the requesting company." BWAY has not been asked for additional information as of this date.

We are deeply concerned about our inability to address the distinctions noted above with the Commerce Department, and its apparent lack of interest in additional relevant information. These concerns were compounded upon reviewing the first determination on an exclusion request for imports of tinplate steel, which the department's Bureau of Industry and Security issued on July 13. Its Decision Memo stated that the International Trade Administration "recommends finding, based on all of the evidence presented, that [tinplate steel] 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." Such a finding is inconsistent with the evidence cited above and detailed in numerous exclusion requests.

In light of the above, BWAY requests that the Ways & Means Committee seek ways to ensure that all relevant information is accepted and considered by the Commerce Department in its evaluation of exclusion requests. We believe that a fair and complete review of the facts will result in the exclusions needed for the continued success of American manufacturers of steel containers.

Sincerely,

Kenneth M. Roessler
President and Chief Executive Officer

Can
Manufacturers
Institute
CANS: INFINITELY RECYCLABLE℠

July 20, 2018

The Honorable Dave Reichert
Chairman
Ways and Means Trade Subcommittee
Washington, DC 20515

The Honorable Bill Pascrell
Ranking Member
Ways and Means Subcommittee
Washington, DC 20515

Re: Hearing on Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum July 24, 2018

Dear Chairman Reichert and Ranking Member Pascrell:
Attached materials for the record, we would like to submit for the: **Hearing on Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum on July 24, 2018.**

Sincerely,

Sylvester A. Giustino
Director of Government & Technical Affairs
Can Manufacturers Institute

See Attachment

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July 6, 2018

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

Dear Secretary Ross:

As a follow up to my letter on May 15, 2018, I draw your attention to the continuing deleterious effects that the Section 232 tariffs on imported steel and aluminum have on our industry. The President's trade policies continue to erode our industry's manufacturing base and advantage importation of foreign industrial containers, unfilled cans and canned food. The imposition of tariffs has created the loss of income and jobs.

At a hearing conducted by the Senate Finance Committee on June 20, you explained that the Commerce Department is developing a list of downstream products that have been hurt by imports since tariffs have been imposed and is including as many of these as are logical on the Section 301 tariff list of $200 billion that will be released shortly. Our member companies have identified several of their own products that have been hurt in this manner, and we respectfully request that they be considered for inclusion on the list you cited to reduce the impact of these unintended consequences. These products are specified in the attachment to this letter, and our member companies are prepared to provide more details if needed.

Below are verifiable examples of how these costly taxes are negatively impacting American companies and workers:

- The Campbell Soup Company publicly announced they expect profits to decline 6% this year, worse than earlier projections of between 1 & 3%, and posted a $393 million loss due to the tariffs on imported steel and aluminum.
- A domestic producer of general line cans (paints, oils, military ammunition), has seen low price imports from China, Canada and EU flood into the market. (See Appendix for further information) Domestic general line can producers will experience business losses from Chinese and other foreign made cans as their US customers shift to these cheaper non-taxed cans.
- A food canner located on the West Coast that specializes in canning fruits and tomatoes for private brands has experienced a 9% increase in the cost of steel and a 6% increase in finished cans. They have been told by suppliers that they can expect a 13.5% increase in the cost of steel by the years end, representing an 8% increase in can costs. These cost increases are occurring against the backdrop of cheaper imported food products from China and the E.U. which are not subject to tariffs. The President's trade policy is endangering American food security.
- A food processor and distributor in February closed a plant that had a unionized workforce of over 1,500 employees in Modesto, California due to aggressive importation of canned food from Asian markets. A major retailer has informed them that they plan to import 1 million cases of canned corn from Thailand. The company will be unable to ship 400,000 cases of canned corn to the EU market. All due to the 232 tariffs and retaliatory tariffs from the European Union.

CMI requests that you meet with us to hear our views on the quotas, tariffs and overall trade policy. We look forward to your speedy response on this very important issue.

Sincerely,

Robert Budway
President
Can Manufacturers Institute

See Attachment

Canned Foods

Below are our product groups that we are seeing competition from overseas.

Many canned foods are imported to the United States from China, the EU and other countries tariff-free. We encourage the Commerce Department to investigate whether foreign canned foods should be included in the 301 list. American farmers, processors and can makers and consumers will be threatened by imported canned food products.

Tinplate Paint cans

All paint can size 4oz, 8oz, 16oz, 32oz Gallon up to 4L paint cans
Application - for water based and solvent based products

F styles
(16oz capacity to 1 liter in size) -Pint, Quart, Gallon, 4L F style cans made of tinplate - rectangular threaded and non-threaded openings
Application - for paints, coatings, solvents

RFT cans
made of tinplate water based and solvent based products. Also called monotops. 4,8,16 and 32oz sizes threaded nozzle cans
Application – For PVC Cement and tire repair products

Aerosol cans
made of tinplate - 3 piece and 2-piece cans - 6oz to 24oz in size
Application – paints, chemicals, insect repellants, household uses

Steel pails
made of tinplate and cold rolled steel -1 Gallon through 6-gallon sizes with crimped on covers as well as seamed on tops
Application - for use with water based and solvent based products – construction, chemical and paint and coatings industry

Conetop cans
threaded and non-threaded openings
Application - for fluids such as oils and solvent based products 12oz,16 oz, 32oz and liter sizes - automotive, construction, lawn care, commercial and household uses

Ammunition boxes
boxes made of steel for the sale to US Government, Government contractors for use with military ammunition. Also sold to commercial accounts for retail sales

Countries impacting, the USA currently with low prices imports:
Canada, China, Germany, India, Italy, Mexico, Turkey, Taiwan. We expect other countries from Europe to get aggressive as we are seeing Germany and Scandinavian countries now importing into the USA as well.

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May 15, 2018

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

The Honorable Robert Lighthizer
United States Trade Representative
600 17th Street NW
Washington DC 20006

Secretary Ross and Ambassador Lighthizer:

The Can Manufacturers Institute (CMI) is the national trade association of the can manufacturing industry and its suppliers. Our members employ 20,000 workers in 36 states and produce 119 billion beverage, food, aerosol and general line cans with tinplate steel and aluminum. CMI is writing to voice our concerns on the following:

1) Country exemptions from the Section 232 tariffs for U.S. allies such as Canada, the European Union and the Gulf states are vital to ensure that U.S. can manufacturers have an adequate supply of quality aluminum cansheet and tinplate steel to support their manufacturing operations and protect U.S. jobs. The quota which has been applied in the Korea bilateral trade agreement has distorted the tinplate market to a significant extent. <u>If quotas are imposed on our allies, our industry will be unable to procure sufficient aluminum cansheet and tinplate steel to produce cans to package the variety of beverages and foods Americans need to meet their basic nutritional needs. The American food supply is at risk if additional quotas are imposed.</u>

2) Recently, US Steel filed an objection to Seneca Foods' application to exclude tinplate from the 232 steel tariffs. CMI's members strongly object to US Steel's assertions that it has the ability to supply our members with tinplate in the near future. CMI members estimate that the can industry's tinplate consumption for the next 12 months will be 2.6 million tons; US Steel's tinplate production capacity is 1.4 million tons for the next 12 months.

   Attachment 1 details CMI member company experiences this year where <u>US Steel and other domestic steel suppliers have repeatedly shown the inability or unwillingness to supply quality tinplate in a timely manner to meet our needs.</u> We urge the Department to Commerce to grant the tinplate exclusion petitions that are pending before the Bureau of Industry and Security to ensure a continuous supply of tinplate.

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3) The Administration's trade policy has created situations that the Administration surely could not have intended. One example is that imported canned foods, especially from China and Europe, are now more cost competitive or even cheaper than US-produced foods, putting American crop farmers at risk. Another example is that empty Chinese cans are entering the U.S. market tariff free. Our US-based customers are now purchasing these containers, which are a threat to American can manufacturers. ***Attachment 2*** details business losses that our industry has suffered due to tariffs. <u>The bottom line is that the Administration's policy is encouraging use of foreign products. American jobs are on the line. And our country's food security is at risk.</u>

CMI requests that you meet with us this week to hear our views on the quotas, tariffs and overall trade policy. We are aligned with the goals of the Administration to reinvigorate our industrial base, but we know our industry will suffer greatly unless sound policies are put in place to protect our workers, factories, customers and consumers.

Sincerely,

Robert Budway

Robert Budway
President
Can Manufacturers Institute

See Attachments

Attachment 1

NOTE: THIS ATTACHMENT DETAILS INSTANCES WHERE DOMESTIC STEEL SUPPLIERS HAVE BEEN UNABLE TO PROVIDE SUFFICIENT QUANTITIES OF STEEL ACCORDING TO QUALITY STANDARDS NECESSARY TO MAKE STEEL FOOD, AEROSOL AND GENERAL LINE CANS. WE NOTE SEVERAL YEARS AGO A MAJOR DOMESTIC PRODUCER, LOCATED AT SPARROWS POINT, MARYLAND, SHUT DOWN. THIS CLOSURE REMOVED 450k OF TINPLATE, MAKING OUR INDUSTRY MORE DEPENDENT ON IMPORTED TINPLATE.

FOR ANTITRUST REASONS, NAMES OF THE COMPANIES ARE NOT DISCLOSED IN THIS DOCUMENT, BUT WE WILL BE PLEASED TO REVEAL COMPANY DETAILS AT AN IN-PERSON MEETING WITH SECRETARY ROSS OR AMBASSADOR LIGHTHIZER.

Company A: "we would like to review our June orders with US Steel accounting for 1,000 tons (it should be noted our Exclusion request is for 12,000 tons).

- March 14th – Placed June orders for 1,000 tons
- April 12th – received communication that 500 tons were placed for June 17th but the remaining 500 tons needed to move to July.
- April 13th – We sought clarification if we could order 250 tons per week in July and how should orders be placed
- April 17th – received communication that they would do best to get the 500 ton (June orders) which were pushed to July done in early July. "Will have to get back to you as soon as you can with direction about your July orders"
- April 19th – We inquired if any news (no response)
- April 23rd – We inquired again for update
- April 23rd – Received response that account rep last minute travel and would update soon
- April 24th – Communication by phone advised us that June tonnage filed July production availability and nothing was available until August.

US Steel does not have in the near term capacity to handle our additional volume. They seem unable to supply in a timely manner the smaller volume that we are currently trying to secure from them. It should be further noted, that while US Steel claims the ability to supply 100% of the product, that notion has not been demonstrated with current business".

Company B: "Our most significant problem today domestically is on time delivery. USS in 2016 delivered to us on their promised dates at a rate of 19% on time. In 2017 they delivered at 12% on time and in 2018 so far at 14% on time. It is very difficult to manage a business with a supplier where we have no confidence in when we will receive the base metals we need to operate our business.

In 2015 we told USS that we would increase our domestic buy if they would commit to investments. They provided a letter of commitment. One of those investments included raising the capability of producing wider coil widths that would allow us to be more efficient with internal processes, matching overseas competitors' capability. We increased our orders with them but 8-9 months later US Steel canceled their investment.

We would prefer to buy domestic steel although we need quality tinplate, delivered when promised, at a near globally competitive price. With these facts we will be able to compete globally with anyone using technology to offset the low labor cost countries".

Company C: This Company engaged in detailed tracking with US Steel regarding on time deliveries. Below is data from US Steel on their on time performance**.**

	Total Items	On Time	%
12/31	9	9	**100%**
1/7	14	9	**64%**
1/14	7	3	**43%**
1/21	1	1	**100%**
1/28	0	0	**0%**
Jan	**31**	**22**	**71%**
2/4	5	4	**80%**
2/11	11	5	**45%**
2/18	17	2	**12%**
2/25	5	0	**0%**
Feb	**38**	**11**	**29%**
3/4	1	0	**0%**
3/11	4	3	**75%**
3/18	9	7	**78%**
3/25	18	11	**61%**
Mar	**32**	**21**	**66%**
1st QTR	**101**	**54**	**53%**
4th Qtr	**0**	**0**	**0%**
3rd Qtr	**0**	**0**	**0%**
2nd Qtr	**0**	**0**	**0%**
1st Qtr	**101**	**54**	**53%**
2018 YTD	**101**	**54**	**53%**

Company D: Company D outlined US Steel's performance below:

- US Steel's on time delivery is at 55% versus over 90% for import suppliers.
- US Steel's has the highest quality claim rate of all suppliers. The reject rate of US Steel exceeds most import suppliers by ten times.
- We requested additional volume in 2018 from US Steel to supplant import supply. US Steel could only commit to 40% of the requested volume.

Attachment 2

THIS ATTACHMENT DETAILS BUSINESS LOSSES EXPERIENCED OR ANTICIPATED BY CAN MAKERS DUE TO THE SECTION 232 TARIFFS.

Company A: "We are a small business producing specialty cans in the United States and our competition today is nearly 100% imported cans from Asia. The tins we compete against are allowed to enter the USA without any duty. In the first quarter of this year a major customer asked for us to guarantee their price for the year of 2018 which we normally do based upon our annual contracts with our global supplier. We said that due to the fact that this customer's steel was 50% produced in the USA and 50% produced overseas we could not guarantee the price. The customer gave a million dollar order to China as they did guarantee the price. We as a nation lost it all."

Company B: Pacific Coast Producers, one of the nation's largest canned fruit producers, said it plans to buy 700 million cans PCP for this year's growing season. The price increases on steel from tariffs will add close to $20 million in unplanned additional cost. The company had expected profit for this year of $24 million, but the extra steel costs could cut PCP's profits by up to $18 million. Rivals of PCP and other U.S. based food producers in China and Europe, meanwhile, are seen getting a boost from steel tariffs. Canned fruit and vegetables imported into the United States will not be subject to tariffs because they are classified as finished goods, so foreign competitors are under no pressure to raise prices.

Company C: This CMI member company has already lost a significant amount of general line business to Chinese rivals due to the threat of tariffs. Their U.S. customers said these finished Chinese cans are cheaper to import since there is no tariff versus U.S. manufactured cans. Company C will be happy to detail the circumstances of this business loss in an in-person meeting.

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Flexible Packaging Association (FPA)

Statement for the Record

House Ways and Means Trade Subcommittee
Hearing on Hearing on Product Exclusion Process for
Section 232 Tariffs on Steel and Aluminum
Tuesday, July 24, 2018

My name is Alison Keane, and I am President and CEO of the Flexible Packaging Association (FPA). FPA is the voice of U.S. manufacturers of flexible packaging and their suppliers. The association's mission is connecting, advancing, and leading the flexible packaging industry. Flexible packaging represents over $30 billion in annual sales in the U.S. and is the second largest and one of the fastest growing segments of the packaging industry. The industry employs over 80,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products. With respect to aluminum foil, this packaging includes everyday food and beverage products such as candy, salty snacks, yogurt, and beverages; as well as health and beauty items and pharmaceuticals, such as aspirin, shampoo and shaving cream. Aluminum foil provides the barrier protection from oxygen, light and bacteria that these products need to ensure stable shelf-life and freshness. Aluminum foil is also used by the flexible packaging industry for medical device packaging to ensure that the products packaged, such as absorbable sutures, human tissue, and artificial joints, maintain their efficacy at the time of use.

This Section 232 investigation, that was initiated under the Trade Expansion Act of 1962, was to determine what, if any, effects imports of aluminum have on national security. FPA is not aware of any impacts aluminum foil imports for use in the packaging industry has on U.S. national security and the Department of Commerce Report entitled "Effects of Aluminum Imports on the National Security," (Report) did not specify any. FPA supports efforts to protect domestic manufacturing and ensure national security, however, these efforts must consider the impact and consequences on all U.S. manufacturing industries, and the recently imposed 10% tariff on aluminum imports does not. Aluminum foil imports necessary for the packaging industry, and without application for national defense, should have been excluded from the tariffs. In its investigation, the Administration was to consider a range of factors related to national security, including the economy and the effects of foreign competition on the economic welfare of domestic industries, including impacts on employment. However, this does not appear to have been the case. These import restrictions on aluminum will have a significant negative impact on the flexible packaging industry and its employment in the U.S with regard to aluminum foil converting.

FPA was pleased to see that one aspect of the Report was adopted in the Administration's proclamation instituting the aluminum tariffs – the process for exclusions from the tariffs "upon request of affected parties if the steel or aluminum articles are determined not to be produced in the U.S. in a sufficient and reasonably available amount or of a satisfactory quality or based upon specific national security considerations." However, the exclusion process has been woefully inadequate. Not only is the process unclear in many respects, particularly with confidential business information submissions, it is unnecessarily burdensome and time consuming and the timing for review and approval is alarming. The tariffs went into effect on March 23, 2018, and the earliest possible date Commerce could grant an exclusion would have been May 18, 2018, so there was no guaranteed timeframe in which petitioners would know whether or not their petition had been approved and, in fact, they have been paying the tariff since March 23rd with no relief in sight. The damage to U.S. flexible packaging industry and its domestic jobs is already being felt and these tariffs may do long term damage even if exclusion requests are granted in the near future.

FPA members report having to submit literally hundreds of petitions in some cases, since the process specifies an individual petition for every gauge and type of foil, and for every vendor. Since aluminum foil for our industry is not made in the U.S. and aluminum foil from China is already subject to anti-dumping and countervailing duties, which the Section 232 tariffs are then added to, the landscape for purchasing aluminum foil has changed drastically and manufacturers are vying for a limited number of suppliers. Thus, FPA believes petitions will continue to be filed by flexible packaging manufactures, as the process does not allow for an industry-wide petition, filed by FPA or any other trade association on behalf of U.S. manufacturers. And, if the delays in the decisions on the petitions continue as they have, flexible packaging aluminum converting jobs will move out of the U.S. and may never return.

FPA members report that petitions that were filed as early as May, with a close of the public comment period in June, still have not been ruled upon. This is well beyond the 90 day determination assured by the exclusion process Commerce put forth and these are for petitions where no objections were filed. Further, there is little to no clarity on the process once requests are granted. Members are unsure about exactly how to go about receiving refunds for previous entries once granted; how exactly entry officials will match up granted exclusions to entries; what happens when there are even small errors in entry paperwork (i.e., typos); and how to properly resolve an entry that is denied tariff exclusion when an exclusion has been granted. FPA and other interested parties have requested FAQ's from Commerce answering such questions to no avail.

The rule states that Commerce may approve a broader exclusion request to apply to multiple similarly situated importers but gives absolutely no information on how groups of companies can apply for this broader exclusion and to date, FPA has not seen any. Again, as trade associations such as FPA, do not "use aluminum in business," we cannot file on behalf of multiple companies. If a product exclusion is granted because it is not manufactured domestically in quantities and quality necessary for the industry – why wouldn't that exclusion be granted to all users of the product? What is the process for FPA or others to apply for this broader exclusion if and when our members finally get their exclusions? This would save time and resources of the FPA members as well as Commerce itself.

The exclusion process, if granted, would only be applicable for one-year. Will companies have to petition for the exclusion every year? If the product is not available domestically now, why does Commerce believe it will be available next year, or the year after, or ever? It should not be up to individual companies to prove to the Administration that these products do not exist domestically, this should have been part of Commerce's analysis before instituting the overly broad tariff in the first place. Even if the domestic aluminum foil suppliers guaranteed to start making the aluminum foil gauges flexible packaging manufacturers need tomorrow – it would take several years for the mills to produce the quantity and quality of the foil our companies need. Further, under Federal Food and Drug Administration regulations, substitution of the foil substrate could take two to ten years for approval, depending on use in packaging for food or medical devices.

FPA is also concerned about the lack of transparency with regard to the Section 232 remedy and the process Commerce will use to monitor and report on its effects. As stated above, while the investigation was supposed to take into consideration the effects of foreign competition on the economic welfare of domestic industries, including impacts on employment; Commerce failed to address downstream industries dependent on aluminum or steel. How will Commerce monitor and report on the effect of this tariff on the primary manufacturers of aluminum in the U.S.; let alone downstream industries, which were ignored in the Report? Commerce must be accountable to show the impacts to all affected industries and ultimately work towards alleviating the devastating impacts of these tariffs on downstream users of aluminum products and mitigating the burdensome and unnecessary paperwork this exclusionary process would apparently mandate on an annual basis.

The Section 232 investigation and proposed remedy is paralleling an International Trade Commission (ITC) investigation and remedies for Chinese aluminum foil imports. Thus, FPA members are being penalized twice – first with the ITC anti-dumping and countervailing duties, as previously mentioned, that in some cases exceed 140% and then with the new 10% tariffs on other imports of aluminum foil, which are applied on top of the duties already in place. The consequences of the tariff under this investigation, combined with the duties from the ITC probe, is the loss of flexible packaging jobs in the U.S. The negative impact on American jobs by cutting off the supply of aluminum foil for flexible packaging manufacturing will far outweigh any job benefits that are envisioned by the ITC and Section 232 taxes. These duties and tariffs are leading to U.S. companies sourcing aluminum foil from other non-U.S. manufacturers at a much higher cost; Chinese suppliers of printed or otherwise converted aluminum foil products entering the U.S. market, since this bypasses the duties; and/or U.S. companies moving flexible foil packaging production outside the U.S., thereby reducing the amount of U.S. foil converting jobs. There is simply no scenario where the benefits to the U.S. aluminum manufacturers outweighs the detriment to the U.S. flexible packaging industry.

Aluminum foil used by the flexible packaging industry is not manufactured in the U.S. in the quantities and qualities needed. Failure to invest, and quality lapses, including gauge, width, and lack of appropriate alloys all contribute to the fact that the U.S. producers of aluminum foil are not able to serve the U.S. flexible packaging industry. In fact, the ITC, at its preliminary hearing on March 30, 2017, found that domestic ultra-thin foil production "may be limited or nonexistent." Thus, the packaging industry in the U.S. should be granted an exclusion for aluminum foil imports from the Section 232 tariff. Since FPA is not eligible to petition on their behalf, Commerce should recognize the broad-based exclusion the rule mentions to reduce the repetitive and burdensome petitions it will received with regard to this foil for flexible packaging manufacturers.

FPA shares the same goal as the domestic aluminum foil producers who want more American jobs and understands the importance of protecting national security. This tariff is not the answer. The Administration should find ways to work together to improve our country's competitiveness. Everybody loses in unfair trade cases, especially the American consumer.

Thank you.

Motor & Equipment Manufacturers Association
1030 15th Street, NW Suite 500 East Washington, DC 20005
Tel 202.393.6362 Fax 202.737.3742 www.mema.org

August 7, 2018

The Honorable Dave Reichert Chairman Subcommittee on Trade Committee on Ways and Means U.S. House of Representatives Washington, D.C. 20515	The Honorable Bill Pascrell Ranking Member Subcommittee on Trade Committee on Ways and Means U.S. House of Representatives Washington, D.C. 20515

Dear Chairman Reichert and Ranking Member Pascrell:

Thank you for the opportunity to submit this letter for inclusion in the record on the Subcommittee's hearing "Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum" held on July 24, 2018. The Motor & Equipment Manufacturers Association (MEMA) represents motor vehicle parts manufacturers. Many member companies have direct experience with the exclusion process for steel and aluminum tariffs administered by the Department of Commerce's (DOC) Bureau of Industry and Security (BIS).

Introduction

MEMA represents more than 1,000 vehicle suppliers[1] that manufacture and remanufacture new original equipment (OE) and aftermarket components and systems for use in passenger cars and heavy trucks. Motor vehicle parts manufacturers lead the way in developing advanced, transformative technologies that enable safer, smarter, and more efficient vehicles, all within a rapidly growing global marketplace with increased regulatory and customer demands.

Vehicle suppliers are the largest sector of manufacturing jobs in the United States, directly employing over 871,000 Americans in all 50 states. Together with indirect and employment-induced jobs, the total U.S. employment impact of the supplier industry is 4.26 million jobs.[2] Nearly $435 billion in economic contribution to the U.S. GDP is generated by the motor vehicle parts manufacturers and its supported activity. In total, motor vehicle parts suppliers contribute more than 77 percent of the value of today's vehicles.

MEMA supports the administration's agenda to assure free, fair, and reciprocal trade and a level playing field for all Americans. Additionally, MEMA supports the administration's efforts to strengthen our nation's economy. However, MEMA remains very concerned about the adverse impact on manufacturing jobs resulting from the Section 232

[1] MEMA represents vehicle suppliers through the following four divisions: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), Motor & Equipment Remanufacturers Association (MERA) and Original Equipment Suppliers Association (OESA).
[2] "Driving the Future: The Employment and Economic Impact of the Vehicle Supplier Industry in the U.S." Available here: https://www.mema.org/sites/default/files/MEMA_ImpactBook.pdf, released by MEMA in January 2017.

tariffs on steel and aluminum. These tariffs, combined with the uncertainty stemming from the unclear future of the North American Free Trade Agreement (NAFTA), Section 301 tariffs on materials and products imported from China, and the 232 investigation into imported automobiles and motor vehicle parts, are causing significant harm to suppliers. These trade actions impact supplier jobs and the domestic investments made by parts manufacturers. Furthermore, the harm resulting from increased prices on products impacts not only the industry's supply chain customers, but also American consumers.

The product exclusions process for steel and aluminum as administered by BIS has proven to be unworkable for suppliers and unnecessarily difficult and burdensome for applicants. This process is putting US jobs and investment at risk and MEMA urges this subcommittee to work with the administration to improve the exclusion process.

Recommendations to Improve Exclusion Process

On April 12, 2018, MEMA testified before the House Ways and Means Committee and made a number of recommendations on how DOC and BIS could improve the exclusion process. Additionally, MEMA submitted comments on May 18, 2018 to the DOC and BIS on the interim final rule (IFR), which echoed and expanded on our April testimony. MEMA's recommendations included ways to simplify the process and develop clearer procedures and processes for product exclusion applications. Specifically, we urged the DOC and BIS to do the following:

- **Allow duty refunds to the date an exclusion request is deemed complete instead of the date the request is published in the *Federal Register* and clarify how companies can seek refunds.**
- **Provide timely information to companies exclusion submissions on the completeness of their application to allow the company to submit complete requests quickly.**
- **Streamline the exclusion process to allow for applications covering products with the same Harmonized Tariff Schedule (HTS) code in different dimensions.**
- **Consolidate the process to allow trade associations to apply for exclusions on behalf of an industry to avoid duplicative exclusion requests that places additional workload burdens on BIS.**
- **Clarify how a broader application of granted exclusions will work and the criteria for same.** The IFR clearly considers allowing broad approvals of products for exclusions when it states ". . . unless Commerce approves a broader application of the product-based exclusion request to apply to additional importers."[3] However, the IFR does not clarify how a broader application will be considered.
- **Publish an "FAQ" page clarifying the exclusion request process.**

[3] Supplements at (c)(2)

- **Review, on a regular basis, the impact of tariffs on the economy and downstream users and develop and implement a plan to sunset them if they prove to have a significant negative impact.**
- **Allow companies to apply for exclusions for products from countries with exemptions and quotas in place.**

BIS Has Made Little Progress to Address Industry Concerns and Recommendations

Since the Committee's hearing and the closing of the DOC public comment period, BIS published an "FAQ" on document that answered many basic questions from applicants. MEMA applauds BIS for making this important document available to applicants. However, the FAQ document was not posted on the BIS website until July 24, 2018 – about four months after the IFR was published in the *Federal Register*.

Additionally, the FAQ document includes information about how companies can seek refunds for tariffs paid after an exclusion has been granted.

As of today, no further changes have been made by BIS or Commerce.

BIS Exclusions Process Continues to be Difficult and Unworkable

The exclusion application process continues to be problematic and uncertain for many suppliers. After months of reviewing and posting over 24,000 exclusion requests received, the Commerce Department has begun to grant and deny applications. As of today, fewer than ten percent have been finalized. The process is opaque, inconsistent, and inaccessible. Some companies have described the experience as arbitrary and capricious, lacking substantial evidence for the denial determinations.

For example, a large Tier One vehicle supplier reported to us that several of their requests have been denied on the grounds that it was not a "complete submission" where BIS stated that information provided was insufficient information to verify the product description and the HTS code. This is simply not the case; the company used the HTS code provided by their importer. They also included the manufacturer, manufacturer identification number, and port, which appear on the customs entry forms. In this case, there should be no issue about identifying the product. The challenge is in the process established by Commerce, not in the applicant's request.

Many suppliers have indicated that they have had requests for more information because the iron content has not been included in the original request. This content figure is not a number that is used in the industry and is not relevant to the HTS classification. DOC and BIS have not provided sufficient explanation about why that information is necessary. Additionally, this unnecessary request for more information regarding iron content effectively delays the posting of request on Regulations.gov for several weeks and limits the ability of the company to receive refunds on tariffs paid until the date of posting.

Member companies report – and a cursory examination on Regulations.gov show – that as exclusions are granted or denied, final decision memos are not always linked or are linked incorrectly to the application's unique docket ID number. Suppliers would like to re-file the exclusion requests that have been denied, but in cases where a decision memo is not posted, are unable to ascertain the reason for the denial and respond to the denial in a future filing.

Another challenge for filers is that it is difficult to rebut any objections. Our member companies report objections that have been filed to their applications by steel and aluminum producers that have failed product testing and validation. Other objections have been filed by producers that are late on current deliveries. In both cases, it is difficult or impossible for the applicant to file rebuttals to these objections demonstrating why the steel or aluminum supplier is unable to meet the specific requirements. In fact, the direction from BIS is that the company must start from square one and file a brand-new application and include any refuting information. MEMA argues that it is inefficient and burdensome on both the company and the government resources required to re-process refuting applications.

Allow Exclusions on Materials from Countries with Quotas in Place

The inability for a company to apply for an exclusion for materials from countries with quotas in place creates an unnecessary burden on suppliers and could put jobs at risk. Motor vehicle parts manufacturers depend on specialty materials that are unavailable in sufficient quantities or not available at all in the U.S. For example, a large Tier One supplier is facing steel shortages due to hard quotas on a specialty steel imported from South Korea and Brazil. This specialty steel is not available from any other steel producer. For this company, quotas are having a more drastic impact than tariffs would because they are facing shortages. If the necessary steel is unavailable, this company could be forced to shutter facilities and lay off workers.

MEMA has urged DOC and BIS to allow companies to seek exclusions on steel and aluminum imported from countries with quotas in place due to 232 action. Currently, there is no avenue for relief from quotas. For example, if steel can only be sourced from Brazil, U.S. manufactures who depend on that steel are left without supply once the quota has been met. This could be addressed by creating an exclusion process for quota countries by utilizing the BIS tariff exclusion process. Many product tariff exclusion requests are already in the pipeline. This would allow a supply of steel sufficient for a company to avoid a shutdown and provide time to certify and validate domestic suppliers. Additionally, exclusions are company-specific and expire in one year. They can be renewed or revoked depending on market situation once transition into the quota regime is more mature.

Conclusion

Representing the largest employer of manufacturing jobs in the United States, motor vehicle suppliers operate in a complex integrated global supply chain with access to open markets with free and fair trade. Our members are very concerned about the impacts of these tariffs and the unnecessary challenges created by this unworkable and broken exclusion process. If tariffs remain in place and the challenges caused by this process are not solved, the results will be supply chain disruptions and increased costs. This will not contribute to the national security of the U.S. and will have a negative impact on the ability of suppliers to continue investing in U.S. facilities and jobs.

MEMA urges this subcommittee to work with Congress and the administration to improve the exclusion process and conduct oversight on a product exclusions process being implemented by the U.S. Trade Representative (USTR) on China Section 301 tariffs to avoid similar problems.[4]

We appreciate the opportunity to submit a statement to the subcommittee and we look forward to continuing to work with you on these issues. If you have any questions, please contact Catherine Boland, vice president of legislative affairs, at cboland@mema.org.

Sincerely,

Ann Wilson

Ann Wilson
Senior Vice President, Government Affairs
MEMA

[4] 83 *Fed. Reg.* at 33608

New Castle
Stainless Plate, LLC

July 27, 2018

The Honorable Dave Reichert
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Reichert:

Thank you for holding a hearing to examine the Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum. I welcome the Committee's request for public submissions and would like to provide you with evidence of the financial hardship and lack of response related to the Department of Commerce's (DOC) handling of our exclusion requests for stainless steel products subject to the section 232 steel tariffs. Our exclusion requests remain pending, despite our efforts to expedite and clarify essential elements of the record.

By way of introduction, New Castle Stainless Plate (NCSP) has been in continuous operation in Indiana for 115 years. After 45 years of multinational ownership, we are now proudly a US-owned enterprise. We employ ~100 in New Castle and support ~500 lives through wages, benefits and retiree support. We have worked hard to develop a fully domestic supply chain wherever possible, and now purchase close to 50% of our raw material (slab) from domestic producers. However, domestic producers do not have the capability of making the full range of grades and section sizes critical to our product offering to US-based fabricators and end users. Our need to import those special sizes and grades from the EU has resulted in tariffs paid to date in excess of $1.5 million, an amount that represents a significant financial hardship to our small company.

We have filed exclusion requests for the products required to ensure we can continue to support our customers with high quality, American-made products, as all of our material is rolled and finished in the U.S. Initially, we were heartened by Secretary Ross' June 20 testimony before the Senate Finance Committee, that any exemption requests that received no objections would be immediately granted approval. However, we now understand this to no longer be the case. The following critical matters require immediate attention and we would like DOC to immediately grant exemptions based on the intention of removing the tariffs over time, given the Administration's new framework for agreement with the European Union. Concurrent with the exemptions, we would expect all tariffs paid to be refunded in a timely manner since all of NCSP's exemption requests have been posted since the month of June.

Moreover, the current process has enabled another domestic steel manufacturer, AK Steel, to file inaccurate objections to some of our exclusion requests, without providing any mechanism for us to rebut those objections. The objections to our exclusion requests, as we were informed by officials at AK Steel, are based solely on 'opinion' that AK Steel can make a substitutable product, rather than an understanding of our production methods, assets or technical merit. Despite repeated attempts to meet with DOC officials responsible for making decisions on exclusion requests, we were informed that Department officials were not taking any meetings to discuss exclusion requests or related objections. As such, we are left with no way to rebut these erroneous claims, and risk losing exclusions on products essential to our downstream US manufacturers.

To this end, we are working with our Counsel at Adduci, Mastriani & Schaumberg LLP to secure expeditious approval and the removal of unwarranted challenges based on the lack of production in the United State of stainless steel slabs 140mm, 170mm and 300mm thick critical to our unique capabilities and high-quality products that are imported from the UK and Sweden.

P. O. Box 370, 549 W. State Rd. 38, New Castle, IN 47362 ▪ Tel. 800-349-0023 ▪ Fax 765-529-8177
www.ncestainlessplate.com

New Castle
Stainless Plate, LLC

Specifically, we would like to draw your attention to the following issues we have encountered in the section 232 steel tariff exclusion process. Any progress you can achieve in ameliorating these problems will yield substantial benefits for New Castle and countless other small US businesses in a similar position.

- Companies filing an objection should have a demonstrated commercial offering for the products at issue; if not, Commerce should grant minimal weight to statements made in objections regarding capacity and capability.
    - Example: AK Steel cannot produce the slab size that NCSP needs in any grade; a fact that AK Steel does not dispute. It is AK Steel's erroneous *opinion* that it can provide a substitute, which NCSP can rebut with ample factual information about its process.

- Commerce has not provided a transparent policy for how to weigh exclusion requests against claims about specifications and capacity in the corresponding objection filings. Trade officials should not be in the position of making technical determinations about product specifications.
    - Example 1: AK Steel's opinion that NCSP can substitute 200mm slab for 170mm slab demonstrates AK's lack of understanding of specialty stainless steel plate requirements.
    - Example 2: AK Steel filed two objections to NCSP's exclusion requests for a special chemistry that mischaracterize and appear to misunderstand the nature of the proprietary product.

- Commerce should duly consider statements made by the requestor about the ability to source product domestically that meets quality, delivery and specification requirements. Commerce must also consider the realities of delivery of product to the specifications required by the company requesting the exclusion.
    - Example: AK Steel alleges that it can provide 100% of the product requested within 35 days, yet the company has taken over 5 weeks (and counting) to respond to a request to quote one of their most commonly-produced grades.

- Commerce should review the objection request in conjunction with the exclusion request to ensure that the objector is properly characterizing the exclusion request.
    - Example: AK Steel claims in its objection that NCSP provided "Special Order Product" as the reason for requesting all of the exclusions to which they objected, yet AK Steel based its objections on incorrect assumptions about slab size substitutability.

- Commerce has not responded to repeated attempts via email and phone to contact officials involved in the exclusion process, leaving the company requesting the exclusion request without recourse to rebut erroneous objections. This constitutes a lack of due process.

Thank you in advance for the assistance you may be able to provide our company, which has produced steel products in support of U.S. Defense applications since the beginning of the 20th Century. If you or your staff have any questions, they can contact Deanna Okun at Adduci, Mastriani & Schaumberg LLP (Okun@adduci.com).

Sincerely,

Michael J. Stateczny
President & CEO
New Castle Stainless Plate, LLC

cc: Deanna Tanner Okun – Adduci, Mastriani & Schaumberg LLP

For New Technology Network

NTN®

August 7, 2018

Committee on Ways and Means
Subcommittee on Trade
U.S. House of Representatives

Re: Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum

Dear Chairman Reichert, Ranking Member Pascrell, and Members of the Subcommittee on Trade:

NTN Corp. ("NTN") is a multinational manufacturer of many different kinds of antifriction bearings used in passenger automobiles, industrial vehicles, and innumerable industrial machines. In 2018, NTN is celebrating its 100^{th} anniversary of manufacturing high-quality and technologically-advanced antifriction bearings.

NTN began manufacturing in the United States in the early 1970s; it now operates eight plants in the United States, including subsidiaries American NTN Bearing Manufacturing Corp. ("ANBM"), in Elgin, Illinois, established in 1973, and NTN Driveshaft, Inc. ("NDI") in Columbus, Indiana, established in 1989. Both of these plants are Tier 1 suppliers to nearly every major automotive manufacturer in North America. Together, those two plants employ approximately 2500 people.

ANBM manufactures millions of automotive wheel hub units annually; NDI is one of the world's largest manufacturers of constant velocity joints. Both components are safety-critical parts and both components require specialized steel. Both ANBM and NDI purchase imported steel because neither company can source domestically the steel they need in the quality and quantity required by NTN's specifications, which NTN has developed through many years of research and development efforts.

Given that both ANBM and NDI are dramatically affected by the new "Section 232" tariffs on imported steel, both companies have submitted numerous requests for exclusion from tariffs.

Both companies, however, also source a significant portion of the steel from domestic manufacturers, only a limited number of which can produce the required steel. For example, ANBM purchases specialty steel from Republic Steel, one of the few companies that can supply some of NTN's requirements. In late 2017, ANBM and Republic completed a two-year process of assessing whether Republic's steel met not only NTN's internal specifications, but also the performance specifications of NTN's customer (the auto maker). However, since shipments from Republic to ANBM began this Spring, Republic has had protracted and unyielding performance issues and has repeatedly failed to deliver on-time – beginning with the first shipment.

ANBM and its affiliated suppliers have had daily contact with Republic Steel about these performance issues and have attended numerous "late delivery" meetings with management officials at Republic. Despite promises made at these meetings, including the promise of additional capacity at a formerly idled plant, Republic has repeatedly failed to deliver within the required deadlines. As of today, Republic's latest shipment to ANBM is expected to be approximately two weeks late. Republic's performance issues now threaten ANBM's ability to deliver its products to the original-equipment automotive assembly lines, leaving ANBM not only with the possible loss of credibility and customers, but also the threat of enormous charges if a late delivery from ANBM causes a delay in the automotive assembly process.

Yet, Republic Steel has objected to a number of ANBM's exclusion requests on the grounds that it will have new capacity. ***That is, Republic, which cannot timely supply ANBM's existing orders, wants to take on new orders of the same product.*** Furthermore, Republic has made no mention in its objection submissions of its late deliveries. NTN companies have had the same experience of late deliveries (four-to-eight weeks late) with TimkenSteel, another domestic manufacturer that has also objected to NTN's exclusion requests.

But, the exclusion process provides no methodology or process that allows NTN, or any other requestor, to rebut or challenge the facts of an objection filed by a domestic steel maker. Also, there is no appeal from any Commerce Department decision and no opportunity to correct clerical or other errors. Additionally, unlike most other tariff programs and without apparent rational explanation, refunds (if any) are only retroactive to the date of posting on the web site, rather than the date the tariffs became effective. In short, the exclusion request system simply does not provide due process for the requestors – the thousands of businesses that use steel to manufacture countless products while employing hundreds of thousands of Americans.

For many U.S. manufacturers, including NTN, millions of dollars are at stake in the exclusion process. Businesses and jobs are on the line. The exclusion process is an entirely new procedure, one familiar to neither the government agencies involved nor U.S. businesses. Exclusion requests for steel products that cannot be sourced from the United States and that are needed to power hundreds of thousands of U.S. manufacturing jobs should not be denied without substantive analysis and sufficient due process.

We hope that the exclusion process will be revised immediately.

Thank you for the opportunity to submit these comments.

Sincerely,

Mr. Katsuaki Miyake
Executive Officer, NTN Corporation
General Director – NTN Americas Region
President, NTN USA Corporation

August 1, 2018

VIA ELECTRONIC MAIL

The Honorable Dave Reichert
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Re: Hearing on Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum

Dear Chairman Reichert:

On July 24, the Subcommittee on Trade of the House Ways and Means Committee held a hearing on the product exclusion process for section 232 tariffs on steel and aluminum. As Chairman Reichert, Ranking Member Pascrell, members of the subcommittee, and the panelists recognized, the exclusion process in its current form is broken; marred by uncertainty, delay, opacity, and inconsistency. Outokumpu welcomes the Committee's request for public submissions to provide additional detail on the disruption caused by the tariffs on imports of stainless steel from important U.S. allies, including the EU, Canada, and Mexico.

Outokumpu is the second-largest producer of stainless steel in the United States, operating facilities in Alabama, South Carolina, and Illinois, and employing nearly 1,100 Americans. The state-of-the-art, $1.6 billion stainless steel mill in Calvert, Alabama is one of only two single-site, integrated stainless steel mills in the country.

In addition to the stainless steel melted at its Alabama mill, Outokumpu Americas imports stainless steel bar and coil from its own operations in Europe as internal transfers between its divisions to support the U.S. stainless steel market. These imports are comprised of specialized products that Outokumpu has been unable to source successfully in the United States, including proprietary materials for which there is no other source.

As you noted at the beginning of the hearing, the section 232 tariffs are not hitting the intended target. Our allies are not the source of unfairly traded steel and aluminum, and imports of specialized materials from our allies are necessary for U.S. manufacturers to make finished products. Specialty product imported from Outokumpu's European facilities is further worked in its U.S. facilities, thereby supporting U.S. jobs and local economies. If these exclusions requests are not granted, it will have the perverse effect of burdening American downstream manufacturers, while imports of finished goods would not be subject to section 232 tariffs.

To ensure the supply of these critical raw materials, Outokumpu has filed 281 exclusion requests (109 requests for stainless steel long products and 172 for stainless steel coil) on Regulations.gov through the Department of Commerce's section 232 tariff product exclusion process. The coil exclusion requests were filed on May 30 and 31, but were not posted on Regulations.gov until July, averaging 6-7 weeks from filing to posting. Outokumpu's long product exclusion requests were filed on Regulations.gov on June 22 and 23, but, as of July 30, only one has been posted. Lengthy delays between submission and posting unfairly disadvantage American manufacturers who rely on the products identified in their exclusion requests, because duty rebates are retroactive to the date of posting, not the date of submission.

Another critical problem with the exclusion process is the lack of transparency. Repeated requests by Outokumpu's counsel via telephone and email to discuss and seek clarity on the exclusion process have gone unanswered by officials purported to be involved in the decision-making process at the Department of Commerce. It is worth noting that the agency has not identified the officials ultimately responsible for the exclusion process to whom requestors can direct specific inquiries about their applications. Moreover, Commerce has refused meeting requests.

As noted in the hearing testimony, for exclusion requestors, communication with Commerce is a one-way street. Outokumpu received an email from the general "Steel232" email address stating that two fields in Outokumpu's long product exclusion requests were missing data. The email indicated that one field was required, although that requirement was nowhere noted on the exclusion request form—and in fact, is not applicable data for the products in question. Rather than accepting supplemental information from Outokumpu, the email requested that Outokumpu add the "required" data and resubmit the exclusion requests, essentially restarting the time clock. Further, the Department of Commerce never acknowledged Outokumpu's July 18 email response to the agency's inquiry, leaving Outokumpu uncertain as to how to proceed—yet Commerce posted one of the requests at issue on July 26.

All of these problems point to an exclusion process that must be reformed. U.S. manufacturers need certainty and predictability, with timely, transparent decision-making on exclusion requests by the Department of Commerce. Where no objections are raised to an exclusion request, such request should be granted automatically. The lengthy delays and uncertainty are placing undue burdens on American manufacturers.

Thank you for your efforts, and those of your fellow Committee Members, to help American manufacturers such as Outokumpu through this onerous product exclusion request process. If you or your staff have any questions, they can contact our counsel, Deanna Tanner Okun at Adduci, Mastriani & Schaumberg LLP at okun@adduci.com; Outokumpu is prepared to provide any additional information that the Committee requires to determine how to improve the exclusion process.

Sincerely,

M S Williams

Michael Williams
President, Outokumpu Americas
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1 Steel Drive, P.O. Box 13000
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cc: Deanna Tanner Okun, Adduci, Mastriani & Schaumberg LLP

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The Honorable David G. Reichert
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1103 Longworth House Office Building
Washington, D.C. 20515

The Honorable William J. Pascrell
Ranking Member, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1103 Longworth House Office Building
Washington, D.C. 20515

July 23, 2018

Dear Chairman Reichert and Ranking Member Pascrell:

I am writing on behalf of the Printing Industries of America (PIA) to thank you for holding a hearing on the topic of the product exclusion process for Section 232 Tariffs on Steel and Aluminum. A critical component of offset lithographic printing is the aluminum-based printing plate; thus, the printing and graphics communications industry is closely monitoring the impacts of Section 232 tariffs and the product exclusion process.

As noted above, aluminum is used in the production of lithographic printing plates and the highest quality sources of this input are countries in the European Union (EU). This input is generally not available for print equipment manufacturing companies to source domestically. Since President Trump announced this particular tariff on June 1, 2018, the reaction by suppliers in the printing and graphics communications industry – and the pain felt by printing companies purchasing aluminum-based plates – has been swift.

Within the past three weeks, the major suppliers of aluminum printing plates in the U.S. have announced double-digit percentage price increases and/or "surcharges" as pass-through costs to their printing company customers. At least three of these suppliers pointed directly to the Section 232 tariff impact as a reason for these price increases.

In the case of at least one supplier, a letter to printing company customers stated that the aluminum tariff surcharge of 10 percent would be removed and monies refunded if: 1) the tariff is lifted; or 2) the exclusions for which the supplier has applied through the US Department of Commerce are approved. While this particular company applied for exclusions on June 15, 2018 and was told the formal timeline by which to receive a decision would be 90 days, the reality is that this deadline is undefined due to the deluge of applications and a backlogged process. Clearly, for printing companies who rely on aluminum-based printing plates, the Section 232 tariffs and related exclusions process is creating not only unexpected price hikes but also uncertainty surrounding the duration of such negative cost impact.

This negative impact was predictable. On June 20, 2018, I met with Department of Commerce officials alongside representatives of printing equipment suppliers to warn of the economic hit end users of aluminum-based printing plates would feel due to Section 232 tariffs on steel and aluminum. We expressed frustration and concern over the expense, cumbersome nature and impractical 90-day timeline of the product exclusion process. It is my hope that examples such as the one shared by PIA above along with the impact statements shared by witnesses at the hearing on July 24, 2018 will spur urgently needed improvements to this process.

The printing industry began 2018 with increased economic optimism buoyed by the potential benefits of tax reform and an expectation that Congress would address the issue of postal reform in short order. However, as the year has progressed, the pile up of market disruption of a pending anti-dumping/countervailing duties case targeting uncoated groundwood paper (newsprint) from Canada, the languishing postal reform legislation, and, now, Section 232 tariffs, threaten to erode both business confidence and actual positive economic outcomes for many of the companies represented by PIA. I appreciate and welcome the work by the Ways and Means Subcommittee on Trade to address at least one of these economic obstacles via the July 24th hearing.

Thank you for your time and attention. PIA and its member companies stand ready to work with this Committee to seek trade policy solutions that combat unfair trade practices while at the same time avoid harming U.S. manufacturers in the printing and graphic communications industry.

Sincerely,

Michael Makin
President and CEO

Cc: The Honorable Kevin Brady, Chairman
Committee on Ways and Means
U.S. House of Representatives

The Honorable Richard E. Neal, Ranking Member
Committee on Ways and Means
U.S. House of Representatives

WRITTEN FOLLOW-UP TO QUESTION POSED REPRESENTATIVE TOM RICE (R-SC)

WILLIE C. CHIANG
PLAINS ALL AMERICAN PIPELINE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
"PRODUCT EXCLUSION PROCESS FOR SECTION 232 TARIFFS ON STEEL"
JULY 24, 2018

During the hearing, we were asked whether the proportion of steel Plains purchases in the U.S. has changed, from 10 years ago to today. Our steel purchases are driven by the projects we undertake, which have materially changed over that time period. This makes a comparison on a equivalent basis very difficult, and challenges conclusions that would result from this comparison alone.

In 2008, Plains was a smaller company, domestic oil production was on the decline, and our focus was on acquiring existing infrastructure and building new storage facilities to enable the import of foreign crude oil into U.S. markets. As a result, at that time, our steel purchases were focused on plate steel and storage facility piping, and the majority of our steel was purchased from U.S. distributors, rather than direct from the mill. Given that our purchases were through distributors, it is a challenge to retroactively determine the country of origin of all of our purchases.

In the intervening years, the United States has seen significant crude oil production growth, and we are building more new pipelines to meet customer demand. As a result, we are now buying more steel line pipe directly from the mills, rather than purchasing through distributors.

These projects are driven by highly technical specifications which can vary widely from project to project, and our decision on where to source pipe is driven by factors such as mill capability to meet our project-specific specifications and production capacity to meet our construction timeline. For example:

- Last year, we completed the Diamond Pipeline, constructed with approximately two-thirds U.S. steel. We sourced the remaining one-third internationally to meet our delivery schedule, as the U.S. mill could not physically produce enough pipe to meet our project construction deadlines.
- We're currently receiving pipe for our Cactus II Pipeline System from Greece. Due to the need for a unique combination of pipe specifications for this particular project, the majority of this pipe was only available from international mills.

Priefert Ranch Equipment
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Priefert STEEL

July 23, 2018

To: Committee on Ways and Means
1102 Longworth HOB
Washington D.C. 20515

Priefert Mfg. Co., Inc. filed an exclusion request dated March 30th, 2018.
Our exclusion request was limited to specific ultra-wide hot rolled steel sheet in coil produced by the mill HBIS Group Serbia Iron & Steel d.b.o Beograd of the Republic of Serbia.

Our request was given the ID of BIS-2018-0006-1317. There were two objections submitted against our request, and one of those has been withdrawn.

On May 18th 2018 United States Steel Corporation submitted a letter to Secretary Ross making several errant claims against our request and against our company. The letter was submitted by Robert Y Kopf III, General Manager – Business Support for USS.

In point number 1 of the letter Mr. Kopf drew a conclusion that our request is unworthy since our website refers to Priefert having been in business since 1964 and was able to "survive and prosper" in spite of not having purchased steel from that mill for a 10 year period (2003 – 2012) in which he was the managing director of Sales and Marketing under its previous ownership. Priefert has indeed been in business since 1964 with a primary focus of the manufacture and sales of quality ranch equipment. However in 2016 Priefert expanded its manufacturing capabilities to include producing steel products for other manufacturers in various industries. The need for this ultra-wide hot roll product is new and separate from its needs as a ranch equipment manufacturer.

In point number 2 of the letter Mr. Kopf flat out called us liars. He made a claim that *"to the best of his knowledge SSAB has two facilities and Nucor has one facility and Arcleor Mittal has one facility that are all capable of making hot rolled coil in the widths necessary"*. Mr. Kopf is simply wrong! Our exclusion request is for a 10 gauge 96" wide hot rolled carbon steel coil. None of the mills mentioned can produce the product in question to the specified width and gauge combination. We had pursued all of these sources with due diligence before making an exclusion request.

Nucor filed a similar objection to Priefert's request. They initially claimed they had the ability to produce the material in question. We pursued Nucor again after reviewing the objection and we were once again told they had never made that product and would only consider performing a test to do so if we committed to multiple heats on a "trial basis". **In light of the complete facts, Nucor has withdrawn their objection to our request**.

In point number 4, Mr. Kopf takes liberty in presenting the case for rising steel prices as mutually exclusive of the Section 232 steel investigation. There are indeed many factors affecting rising steel prices, but to suggest the Section 232 actions undertaken are not responsible is simply preposterous.

Finally in closing his letter Mr. Kopf makes his plea to deny our exclusion request based upon national security concerns and the need to help American Steel producers increase capacity utilization rates to 80%.

Priefert does not appreciate being referred to in the slanderous manner Mr. Kopf used. Priefert is an employer of ~ 900 in a small North East Texas community, operating in a very grassroots hard working ethical manner. We do not possess the resources a USS or Nucor enjoys. While we are working hard and tightening our belts to compete in a tough market place, "Big Steel" corporations like Nucor report of their great earnings and bonuses paid to its employees above and beyond. Nucor reported that 2017 was its most profitable year since 2008. Net Earnings of $1.32 billion, up from $796.3 million in 2016. This allowed for an additional contribution into the company's profit sharing plan of over $165 million. We seem to have a difference of opinion on which American business need help.

If national security concerns are really in play then perhaps Congress should step in and require the "Big Steel" companies to use their already lucrative profits on this much needed capacity growth. But on second thought that sounds too much like socialism, versus free enterprise. Nucor is a great American business success story. The USA needs more strong businesses like Nucor. However, the types of steel we use and need to obtain from willing international sources have nothing to do with national security concerns. "Big Steel" already has the advantage needed to prosper and grow without the aid of government actions under Section 232.

Please consider the process by which these exclusion requests and reviews are conducted. The current forum has been used inappropriately by USS, serving to attack our integrity and character without fear of reprisal. Priefert welcomes the Department of Commerce to substantiate our rebuttal with its own investigation.

Sincerely,

David K. Smith

CFO – Priefert Mfg. Co., Inc.

TECHNOFORM

August 7, 2018

The Honorable Dave Reichert
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Reichert:

We followed with interest the House Ways and Means Trade Committee's recent hearing on the Section 232 exclusion request process; Technoform welcomes the opportunity to share our experience with the Committee. The exclusion request process has been both exceptionally slow and opaque, adding unexpected financial burden, uncertainty, and risk to our small business. We want to thank Sen. Sherrod Brown and Rep. Dave Joyce and their staffs for their attempts to help us navigate the section 232 steel tariff exclusion process.

Technoform North America is a small company based in Twinsburg, Ohio that specializes in manufacturing an energy saving, thermally insulating spacer for insulating glass units used in windows, storefront and curtain wall. The thin gauge, high precision, oil free stainless steel we use in our product in order to meet the thermal performance, dimensional specifications and durability requirements of the application is not produced in the U.S., so we have supply contracts to procure this product from the European Union.

It has been difficult to navigate the exclusion process and to ascertain where our applications are in the process, since it has been hard to get responses from the Department of Commerce. For example, our phone calls to BIS have not been returned, and when we proactively reached out to BIS to correct a single dimension on one exclusion request, they required us to re-submit the entire exclusion request. Although we filed our exclusion requests early, at the end of April, it still took over three weeks for our requests to be posted. We understood from Secretary Ross' testimony before the Senate Finance Committee on June 20 that the process would be expedited and that exclusion requests without objections would be immediately approved. We later learned that, contrary to Secretary Ross' testimony, BIS now plans to issue decisions 90 days after requests have been posted. Even though our exclusion requests received no objections, Technoform must continue to pay tariffs that we can ill-afford, and we must continue managing our business in this period of high financial uncertainty while we wait for the 90-day period to end.

As a small business, the exclusion process is extremely burdensome, in terms of both financial and human resources. By the time that this process is complete, we estimate that we will have spent over $20,000 dollars just to file and manage the exclusion requests alone. In addition, because of the slow speed at which BIS is administering the requests, we are currently paying tariffs on our steel imports from the European Union. To date, we have incurred over $131,000 in tariffs.

Not only are these out of pocket costs substantial for a small business, but now we also face significant risk of revenue and margin loss due to higher material costs. The section 232 steel tariffs disadvantage Technoform vis-a-vis foreign competitors who have chosen to import cheaper finished products that are not subject to the section 232 tariffs, rather than investing in local U.S. manufacturing, as Technoform has done. Because of these increased material costs and the uncertainty as to whether our exclusion requests will be granted, we have had to delay plans to make new investments in equipment and people to grow our business.

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TECHNOFORM

Businesses large and small are essential to the health of the U.S. economy, but small businesses do not have the same resources to withstand the onerous exclusion request process. We are highlighting the unintended consequences of the section 232 tariffs and related exclusion request process for the record so that the process can be made more transparent, simplified, and accelerated to mitigate its burden on small businesses like Technoform.

Thank you again for your help,
Kindest regards,

Helen Sanders
General Manager

cc: Senator Sherrod Brown
Senator Rob Portman
Congressman Dave Joyce

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