



**American
Iron and Steel
Institute**

25 Massachusetts Ave., NW
Suite 800
Washington, DC 20001
P: 202.452.7100
F: 202.452.1039

www.steel.org

Kevin M. Dempsey
President and CEO

September 7, 2021

Craig T. Clark, Director
Commercial and Trade Facilitation Division
Regulations and Rulings
Office of Trade
U.S. Customs and Border Protection
90 K Street NE, 10th Floor
Washington, DC 20229-1117

**RE: USCBP-2021-0025 – Comments on Non-Preferential Origin Determination for
Merchandise Imported from Canada and Mexico**

Dear Director Clark:

In response to a request from U.S. Customs and Border Protection (CBP)¹, the American Iron and Steel Institute (AISI) respectfully submits these comments regarding CBP's proposal to modify its regulations such that 19 C.F.R. Part 102 (the Part 102 rules) will apply to determine the origin of goods imported from Canada and Mexico for non-preferential purposes. AISI supports CBP's proposal, which will close loopholes that currently allow steel manufacturers outside of North America to avoid duties imposed under Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974 through limited processing operations in Canada and Mexico.

AISI serves as the voice of the American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI also plays a lead role in the development and application of new steels and steelmaking technology. AISI's membership is comprised of integrated and electric arc furnace steelmakers, and associate members who are suppliers to or customers of the steel industry.

¹ *Non-Preferential Origin Determination for Merchandise Imported from Canada or Mexico for Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)*, 86 Fed. Reg. 35,422 (USCBP July 6, 2021) (notice of proposed rulemaking; request for comments) ("Proposal Notice"). These comments are timely filed in accordance with the deadline extension reflected in *Non-Preferential Origin Determination for Merchandise Imported from Canada or Mexico for Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)*, 86 Fed. Reg. 42,758 (USCBP Aug. 5, 2021) (notice of proposed rulemaking; extension of comment period).

In its request for comments, CBP explains that the Part 102 rules and the agency's traditional, "case-by-case" substantial transformation analysis are meant "to produce the same determinations as to origin."² However, there are cases in which the two analyses produce different results. For example, under the "case-by-case" analysis, hot-rolled or cold-rolled steel flat products are substantially transformed and thus given a new origin when they are annealed and galvanized.³ However, the Part 102 rules applicable to corrosion-resistant steel flat products do not allow for a change in origin based on the annealing and galvanization of hot-rolled or cold-rolled steel flat products. Rather, for galvanized or similarly-coated flat products to undergo a change in origin under the Part 102 rules, they must be processed from raw material inputs (*e.g.*, scrap, ferroalloys, direct reduced iron) or from semi-finished goods such as steel slab.⁴ Similarly, certain steel pipe products have been considered substantially transformed under the "case-by-case" analysis, based on heat-treating and drawing operations performed on "green pipe."⁵ Under the Part 102 rules, however, such processing cannot result in the required tariff shift unless non-seamless pipe of circular cross-section is reduced from an external diameter greater than 406.4 mm to a diameter below that amount.⁶

These distinctions between the results of the "case-by-case" analysis and the Part 102 rules result in loopholes that negatively affect the United States' ability to appropriately enforce Section 232 and Section 301 duties on imported steel products. Currently, determinations of origin for Section 232 and Section 301 purposes are governed by the "case-by-case" analysis.⁷ But as noted above, this analysis is less stringent in its requirements for certain steel products than the Part 102 rules. Given that Section 232 and Section 301 duties are not currently applicable to goods of Canada and Mexico, this situation incentivizes non-North American steel producers' relocation of relatively minor processing operations to Canada and Mexico in a bid to avoid Section 232 and Section 301 duties that would otherwise be owed. CBP's proposal to extend its use of the Part 102 rules would effectively close this loophole. By the same token, adoption of

² Proposal Notice, 86 Fed. Reg. at 35,423.

³ *See, e.g.*, Headquarters Ruling 951472 (Apr. 4, 1992); *Ferrostaal Metals Corp. v. United States*, 11 CIT 470 (1987).

⁴ 19 C.F.R. § 102.20 (rules applicable to goods of heading 7210-7211); *see also* New York Letter Ruling 806811 (Mar. 3, 1995).

⁵ Headquarters Ruling H242034 (Aug. 12, 2013).

⁶ 19 C.F.R. § 102.20 (rules applicable to goods of heading 7301-7307).

⁷ *See, e.g.*, Headquarters Ruling Letter H301494 (Oct. 29, 2019) (explaining that the "case-by-case" analysis, rather than the Part 102 rules, is currently applied to determine the origin for Section 232 purposes of steel products processed in Canada and Mexico); Headquarters Ruling Letter H305370 (Oct. 11, 2019) (explaining that the "case-by-case analysis, rather than the Part 102 rules, is currently applied to determine the origin for Section 301 purposes of imported products processed in Canada and Mexico).

Craig T. Clark, Director

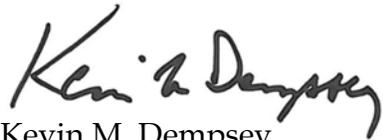
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the proposal stands to strengthen the North American supply chain for steel production, by further incentivizing use of North American steel substrate in North American production operations for coated flats and pipe products.

AISI therefore supports CBP's expeditious adoption of its proposal.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Dempsey". The signature is written in a cursive, flowing style.

Kevin M. Dempsey

President and Chief Executive Officer