Wednesday, February 2, 2022

The Honorable Gina M. Raimondo
Secretary of Commerce
United States Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Dear Secretary Raimondo:

We are writing on behalf of the domestic steel industry to raise a critical issue regarding the Section 232 product exclusion process that requires further attention. At the outset, we want to thank the Department for its efforts in administering this process, including implementing recent modifications that address certain abuses by U.S. importers, and that improve the overall efficiency and transparency of the program. These include requiring certification of requested exclusion volumes, further defining key terms like “immediately available,” and revoking certain General Approved Exclusions (“GAE”) that were granted in error.

Despite these improvements, however, the GAEs that remain in effect are overly broad and threaten to undermine the viability of the entire program. Only 26 steel GAEs were revoked pursuant to the Department’s December 9, 2021 Federal Register notice, leaving 82 in effect. Of the remaining GAEs, our analysis indicates that 25 are for Harmonized Tariff Schedule (“HTS”) codes covering products that are produced in significant volumes by the domestic industry. The fact that existing GAEs cover products that the domestic industry can and does produce is contrary to the purpose of the Section 232 program, which is to stimulate domestic steel production.

The Department’s justification for maintaining the 82 GAEs is that they include HTS codes with exclusion requests that did not receive an objection from the domestic industry. However, the absence of an objection does not mean that the domestic industry cannot produce the requested product and is not a sufficient basis for granting a GAE. Domestic producers may decline to object to an exclusion request for any number of reasons, including duplicative requests, minimal volumes requested, misclassifications in the requests, pending trials, and other commercial reasons. For instance, in the first two years of the exclusions process, one U.S. importer submitted 17 exclusion requests seeking a total of 22 metric tons – roughly 1 metric ton per request – under GAE #78 (round wire/nonalloy steel). Although the domestic industry produced significant volumes under this GAE in both 2019 and 2020, no domestic producer objected to the underlying exclusion requests given the minimal tonnage sought and because the requests were for metric sizes.

Many domestic producers may simply decide that they cannot incur the costs associated with reviewing and processing the overwhelming volume of requests that are being submitted. Indeed,
active participation in the product exclusion process is a burdensome endeavor for domestic producers, many of which have limited resources to track and analyze the hundreds of thousands of product exclusion requests that have been submitted to date (roughly 240,000 since June 2019 when the current portal was implemented). Granting GAEs for entire HTS codes based solely on a lack of domestic producer objections results in the exclusion of significant volumes of products from the Section 232 program that the domestic industry can produce and has resulted in a significant surge of imports. In fact, U.S. imports covered by a GAE nearly tripled from January to November 2021 as compared to the same period in 2019.

Particularly given the additional import volumes that will be entering the United States duty free under the new arrangement with the European Union, the exclusion process is central to an effective Section 232 program. To ensure a strong and effective program, we ask that the Department act quickly to close the GAE loophole, and to do so prior to any formal notice and comment or the implementation of any new rules relating to the exclusion process. Because the GAEs apply to overly broad HTS codes rather than to precisely defined products, the Department should only approve GAEs for narrowly defined products and where it has been affirmatively demonstrated that the products are not produced by the domestic industry. The lack of objections to an underlying request should not be sufficient to justify a GAE. Ideally, all current GAEs should be suspended until they can be thoroughly reviewed and modified to ensure consistency with the purpose of the Section 232 program.

Again, we thank you for your efforts in enforcing the Section 232 program. We are happy to discuss this issue with you further and to assist in any way that we can.

Sincerely,

Kevin M. Dempsey Philip K. Bell
President and CEO President
American Iron and Steel Institute Steel Manufacturers Association

cc: Jeremy Pelter
Acting Under Secretary for Industry and Security

Matthew S. Borman
Deputy Assistant Secretary for Export Administration