

July 10, 2020

The Honorable Richard E. Ashooh  
Assistant Secretary for Export Administration  
Department of Commerce  
1401 Constitution Ave. NW  
Washington, DC 20230

*RE: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum  
Import Tariffs and Quotas (RIN 0694-XC05)*

Dear Assistant Secretary Ashooh:

The Aluminum Association welcomes the opportunity to submit comments in response to the Notice of Inquiry regarding the exclusion process for Section 232 aluminum tariffs. The current process is being abused, creating a market dynamic that gives foreign competitors – particularly those Chinese producers already benefiting from a number of subsidy regimes inside China – a further unfair advantage over domestic producers. The Association has previously noted the problems with the Section 232 duty as a remedy for this fundamental challenge to the U.S. aluminum industry, particularly as it has been applied to Chinese imports, and called for reforms to the aluminum Section 232 tariff exclusion system. Most recently, the Association sent a [letter](#) in April that proposed a series of changes to the program. We appreciate that the Commerce Department is taking steps to ensure the program better addresses the key challenge facing our members and customers by soliciting industry input on reforms.

The Aluminum Association is the voice of the aluminum industry in the United States, representing aluminum producers and workers that span the entire aluminum value chain from primary production to value-added products to recycling. Association member companies make 70 percent of the aluminum and aluminum products shipped in North America, and together these companies have announced or completed U.S. plant expansion investments totaling more than \$3 billion since 2013.

### ***Executive Summary***

Under current rules set by the Department, any U.S. person can request an exclusion from paying the 10 percent Section 232 tariff on specific aluminum products entering the United States. The exclusion process as administered is incentivizing imports of aluminum products – specifically by brokers and distributors that do not consume the imported aluminum product themselves but rather seek to re-sell it and profit from the price differential that the exclusion confers. These incentives are leading such intermediary parties to flood the exclusion process with requests, creating a significant administrative burden on domestic producers. In some

cases, granted exclusions are incentivizing manufacturing customers to cut back on their domestic aluminum purchases in order to increase their imports, or are being used for leverage in negotiations over purchases from domestic manufacturers of aluminum products.

The President issued an [Executive Order](#) in January expanding Section 232 tariffs to certain metal-intensive derivative products, recognizing recent shifts in trade flows as foreign manufacturers export to the United States more metal-intensive manufactured goods. The current exclusion process incentivizes the import of semi-fabricated aluminum products, undermining domestic producers of flat-rolled products and driving down demand for primary aluminum in the United States. While overall aluminum demand in North America dipped in 2019, and producer net shipments of semi-fabricated products declined nearly 3 percent year-over-year in 2019, imports of those same products increased more than 11 percent. If U.S. manufacturers of aluminum sheet, plate, foil, wire, extrusions and other products continue to lose out in the North American market to overseas competitors, they will naturally have to scale back purchases of primary aluminum. A ripple effect of demand destruction will do more to undermine primary producers in the United States than direct imports of primary aluminum from trading partners, and these outcomes undermine the market within the United States for domestically manufactured aluminum products. Surely, this runs counter to the intent of the Section 232 remedy.

To address these challenges, we strongly urge the Commerce Department to revise current regulations and practices to:

- Presume denial for imports from non-market economies like China, with exclusions only granted in extraordinary circumstances.
- Ensure that volumes in aggregate, for the importer and the product category, are 1) proportional to historical U.S. import volumes, and 2) proportional to market demand.
- Eliminate eligibility for, or presume denial for requests from, importers that are not manufacturing, processing or transforming the imported aluminum.
- Require a verified alloy designation, reported as the Aluminum Association alloy code or alloy-code series.
- Set a deadline of six months for the Department to issue a decision.

Detailed below are the Aluminum Association's recommendations for changes to the exclusion process, in response to the factors outlined in the Notice of Inquiry.

### ***Appropriateness of Factors Considered***

#### **Presume Denial for Imports from Designated Non-Market Economies**

The Commerce Department's 2018 [report](#) that followed the Section 232 investigation on aluminum imports cited China as "a major cause of the recent decline in the U.S. aluminum industry is the rapid increase in production" and acknowledged that China's overcapacity "suppressed global aluminum prices and flooded into world markets." Targeted trade remedy and enforcement actions – like antidumping and countervailing duty (AD/CVD) cases that address unfairly traded U.S. imports of aluminum foil and common alloy sheet from China – are working as a tool to combat unfair trade and incentivize investment by domestic producers. The Association applauds the efforts taken by the Administration to vigorously enforce AD/CVD

orders against Chinese imports and bolster enforcement efforts to help identify and eliminate schemes to circumvent these orders.

Unfortunately, the Section 232 remedy in its current form has not impacted the fundamental structural challenge facing the U.S. aluminum industry: China's persistent unfair trade practices and the negative effects of unfairly subsidized overcapacity on U.S. producers of aluminum and aluminum products. Even as AD/CVD orders have led to a sharp decline in unfairly traded imports from China of certain aluminum products to the United States, global exports of semi-fabricated aluminum products from China have recently hit record levels. Chinese aluminum producers are increasingly reliant on exports of semi-fabricated aluminum products – reaching a near-record 5.14 million metric tons in 2019 – to maximize the use of their existing capacity and to justify additional subsidized capacity expansions that will ultimately displace U.S. (and all market-economy) producers and give China a monopoly status on aluminum production. Exclusions from tariffs on imports of aluminum and aluminum products from China significantly diminish the incentives for the Government of China to take action to address overcapacity in its aluminum industry.

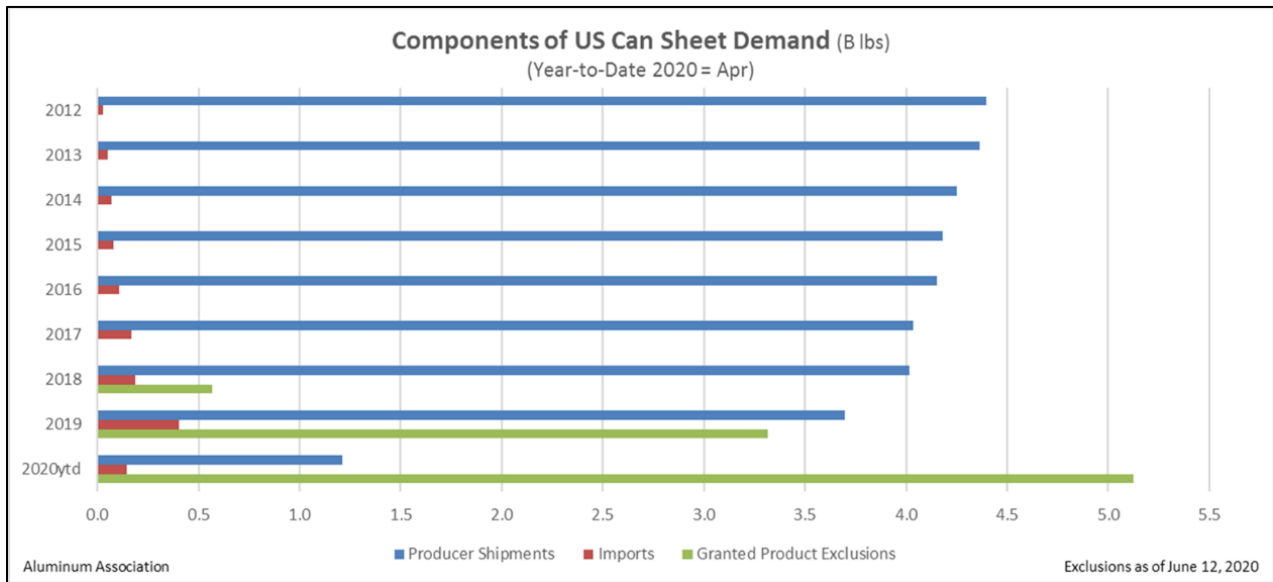
**Recommendation:**

- Adopt a policy that presumes denial for exclusion requests from non-market economies like China, with exclusions only granted in extraordinary circumstances. If the Department does not presume denial for non-market economies, the Department should allow stakeholders to oppose requests on the basis that the product originates from a designated non-market economy or is the likely result of transshipped non-market production.

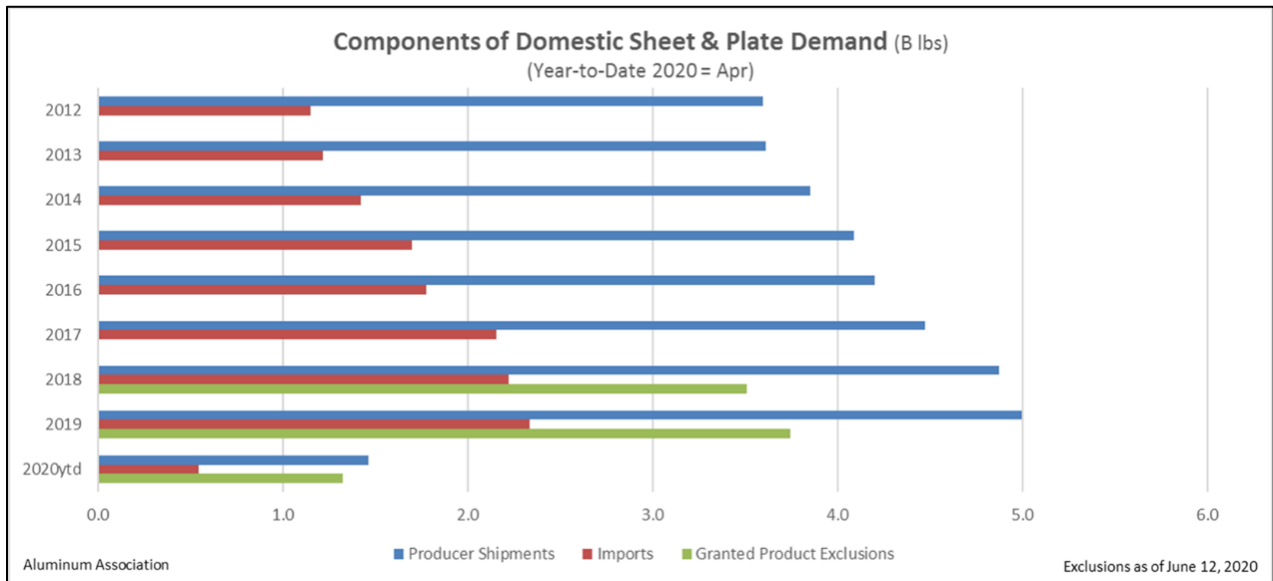
**Limit Volume of Exclusions**

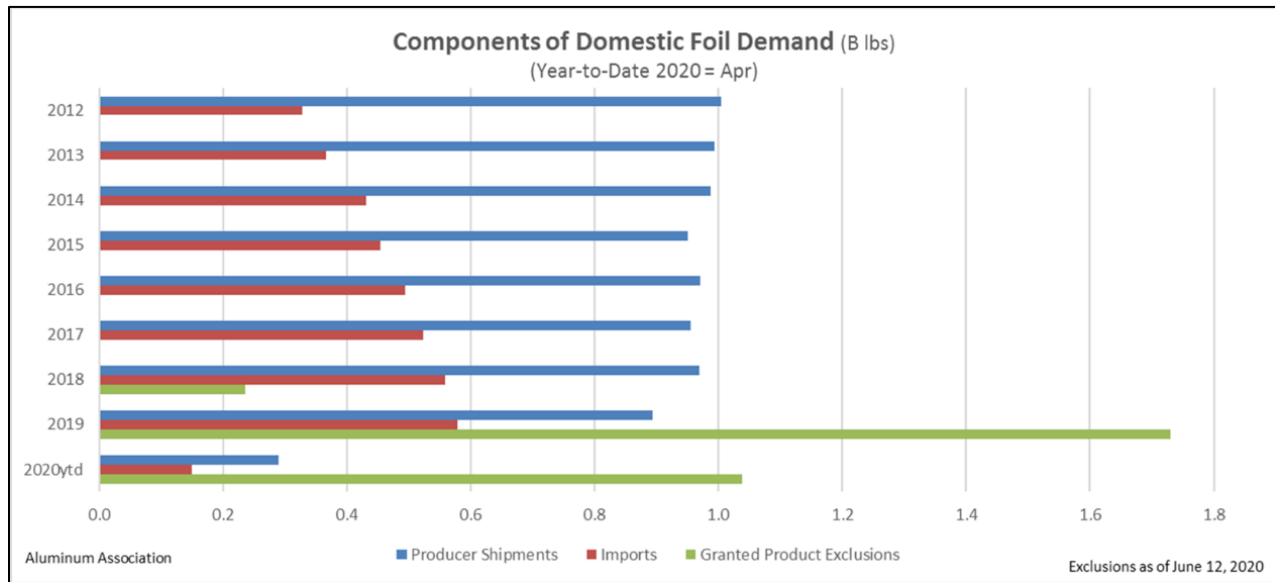
The Association is deeply concerned that the Commerce Department has granted tariff exclusions for huge volumes of aluminum flat-rolled products like can stock, plate, sheet and foil that far exceed historical import volumes and U.S. market demand (see below). The abuse of the exclusion process has created a market dynamic with an inherent disadvantage for domestic aluminum manufacturers. Through June 12, 2020, exclusion requests for 7.6 billion pounds of aluminum have already been granted this year.

Granted exclusions just so far in 2020 exclude from Section 232 tariffs more than 5 billion pounds of aluminum can sheet – much of it unfairly subsidized production from China. Those exclusions requests granted by the Department cover more aluminum can sheet than the entire U.S. market consumes in a year (and dwarf historical import trends for that segment). Put another way, the volume of can sheet exclusions granted by the Department in just the first half of 2020 is greater than the volume of U.S. imports over more than a decade in total. It is hard to overstate how huge those volumes are, or the negative effects they are having in the market.



In addition to can sheet, exclusions have been granted this year for significant volumes of other flat-rolled product (including foil and common alloy sheet) – and there have been a number of exclusions for flat-rolled products granted this year despite domestic producer objections. The U.S. market will face years of future distortions and disruption if importers follow through to import aluminum products in the volumes granted by the Department.





Under the current system, there is no accountability for requests. Recently, a broker submitted over 120 individual requests for common alloy products – more than 1.15 billion pounds in total. This excessive quantity represents more than 50 percent of the total common alloy imports in 2019 and is more than 10 times the actual volume historically imported by this broker. Inflated requests, before they are granted or even if they are never used, give customers purchasing leverage in negotiations with domestic suppliers.

The Association recognizes, though, that a dynamic market with potential growth for aluminum may impact future production realities in the United States. We know that imports can play a constructive and necessary role in the U.S. market, and we believe those necessary imports should come unimpeded from market economy producers (while subsidized, non-market production is met with appropriate duty restrictions). In administering an effective Section 232 exclusion process, the Commerce Department must be prepared to work closely with aluminum industry stakeholders and adapt to changes in the market.

**Recommendation:**

- The Commerce Department should review all Section 232 exclusion requests involving aluminum products to ensure that volumes identified in each request are proportional to historical U.S. import volumes (with an appropriate allowance for increases in market demand), compared to aggregate annual volumes for an individual applicant and its parent company as well as product category, and proportional to U.S. market demand.
- Any importer that is not an aluminum producer or manufacturer should be required to provide a detailed and credible justification for exclusion requests – and particularly for exclusions that involve imports in excess of historical levels, using the full-year prior to the implementation of the Section 232 tariffs as the benchmark. If the Department does grant an exclusion to an importer who is not a manufacturer, that importer should certify that the aluminum is not being used solely to hedge or arbitrage the price.
- If requests from non-manufacturers are above historical import volumes, the Department should shift the burden onto the requestor and require it to demonstrate why it needs to import the aluminum at that volume (in individual applications and in aggregate). Further, there should be a strong presumption of denial where a domestic producer objects to an

exclusion request for an aluminum product, based on that producer's ability to produce in the United States the product for which an exclusion is requested.

### ***Efficiency of Process Employed***

#### **Restrict Eligibility of Exclusion Requestors, Expand Ability to File Objections:**

The current system has opened up an opportunity for gamesmanship. In practice, the exclusion system incentivizes desktop traders to stock up on lower-priced imports – even if those goods aren't immediately needed. The Department should ensure that brokers who are buying and selling aluminum without taking possession of the imported product are not exploiting the exclusion process to gain profit from the sudden price advantage.

Current Department of Commerce regulations allow any individuals or organizations "using aluminum articles" identified by the Section 232 Executive Orders and "engaged in business activities in the United States" to submit exclusion requests. On the other hand, the Department requires that an objection include information about 1) the products that the objector manufactures in the United States, 2) the production capabilities at aluminum manufacturing facilities that the objector operates in the United States; and 3) the availability and delivery time of the products that the objector manufactures relative to the specific product that is subject to an exclusion request. Because the Department is reliant on objectives to flag a request for further review, excessive requests create an administrative and cost burden on domestic producers that have to object to a large number of requests in order to preserve a level playing field.

Further, there is no downside for requestors to inflate their exclusions requests to a volume that a single domestic manufacture cannot supply individually. The Department often grants such requests, in whole or in part, due to lack of domestic capacity. This practice incentivizes brokers and traders to wildly inflate volume requests and often results in a "reduced" exclusion approval that far exceeds domestic market demand.

#### **Recommendation:**

- The Department should eliminate eligibility for exclusion requests, or presume denial for requests, from importers who are not manufacturers or processing the metal in some way. Only importers who are transforming, processing or manufacturing the aluminum should be eligible for an exclusion. MSCI's [definition](#) for a "service center" or the Aluminum Association's [definition](#) for a "producer" could be helpful in drawing objective parameters that cover aluminum production, processing and finishing or companies that operate metals service centers (facilities that provide first-stage fabrication services like cut-to-length, slitting, etc.).
- The Department currently limits the basis for objections to the domestic manufacturing capability and capacity of the filer. The Department should allow trade associations that represent domestic aluminum producers with the ability to produce the requested products to submit objections for products that originate from non-market economy countries or notably exceed the requestor's previous import levels (as indicated in the exclusion request) even if the trade association itself does not manufacture the product identified in the exclusion request. The exclusion process for Section 301 tariffs on imports from China allows for industry groups (like trade associations) to file and object

to exclusion requests, and industry groups should have the same ability to participate in the Section 232 exclusion process.

- The Department should require the exclusion request to demonstrate that the aluminum is filling a direct need and used in the volume requested.

### **Modify Forms to Streamline, Require Information in Exclusion Requests**

Currently, the Section 232 exclusion request form reads: “Identify the Association code for the product that is the subject of this Exclusion Request.” This should be the [alloy](#) designation of the aluminum product, which is the recognizable short-hand of its chemical composition – the key indicator for the application(s) in which the product will be used. The Aluminum Association manages the U.S. alloy designation/registration system and is the major standard-setting organization for the global aluminum industry. There are currently more than 530 registered active compositions, and that number continues to grow.

We would expect any legitimate importer, and certainly any manufacturer, would know the alloy of the product they are purchasing given that this is such a foundational piece of information. Alloys are also a key factor in trade remedy cases, and certain alloys of aluminum products are subject to anti-dumping and countervailing duty (AD/CVD) orders. The alloy, though, is not always provided in the exclusion requests even though the field is on the form. Without that information, it is difficult for a domestic producer to fully evaluate the exclusion request – and, particularly, to determine whether they have the capability to manufacture the product. Aluminum producers often promote their products by touting specific alloys – the information, by practice, is not confidential.

Under the current system, many of the most important product details aren’t disclosed until the rebuttal stage of the request. Such foundational information should be provided by a requestor at the outset of the exclusion process in order to allow U.S. producers to determine if they have the ability to manufacture the product.

### **Recommendation:**

- The current exclusion request form asks for the “Association code.” We recommend that the form be modified to clarify that this is the alloy designation, reported as the Aluminum Association Alloy Code or Alloy-Code Series. The Department should verify that an alloy designation is included in the request before further reviewing the request, and requests that do not identify an alloy should be rejected.
  - If the importer has a “proprietary” alloy code, they should provide the series indicator (5xxx, for example). The Association can arrange a briefing or tutorial on alloys for any Department staff or contractors on the alloy designation system and key indicators.
  - Because a foreign producer may use a foreign alloy code, DOC should provide an option to provide a comment box or similar field to provide the appropriate foreign code.
- The Department should consider the scope of existing aluminum AD/CVD orders and modify the exclusion request form to capture critical points: casting method, nominal width, gauge (nominal thickness), mechanical surface finish, temper, etc. Requiring such information would provide an important means for ensuring that the product identified within an exclusion request is within the capabilities of the foreign producer(s) identified in the exclusion request – and will aid enforcement efforts for AD/CVD orders.

**Set Timeline for Exclusion Request Decisions:**

The administrative burden resulting from the need to monitor the Section 232 portal constantly, evaluating exclusion requests and responding as needed is taxing on domestic aluminum producers. Nonetheless, dynamic market conditions mean that production lines can – and do – shift. Accordingly, procurement and sourcing demands may shift as well and require new kinds of input materials.

**Recommendation:**

- The Department should set a deadline of six months from the time an exclusion request is filed to issue a decision. Some requests have taken a year or longer for the Department to decide. The market is constantly changing, and the market realities at the time of the request may not be the same when it is eventually decided. The Department should adopt a policy of denying any request that is not resolved after six months.
- The Department should coordinate with U.S. Customs and Border Protection (CBP) to guarantee swift action on refunds due to importers – within a calendar year of approval for an exclusion request.

**Conclusion**

The challenges facing our industry are complex and global in scale, without easy solutions, but the Association is dedicated to ensuring the long-term viability of the U.S. aluminum industry. U.S. aluminum companies have competed in a globally integrated market for decades and built constructive relationships with overseas producers that support the ability of domestic aluminum operations to meet growing demand in the United States. As one example, the Aluminum Association has supported country exemptions from the Section 232 tariffs for trading partners that operate as market economies – particularly for close partners like Canada and Mexico. The U.S. aluminum industry deserves to compete on a level playing field within North American and in the global market.

The recommendations outlined above are specific to the aluminum remedy and exclusion process. Given the foundational differences in steel and aluminum operations and markets, the administration of the Section 232 aluminum remedy can rationally diverge from the steel remedy – and there should be industry expertise on both sectors within the Department.

We appreciate your consideration of these comments and would be pleased to work with you and your colleagues as you evaluate and implement changes to the Section 232 exclusion process. Without these necessary changes, the use of the Section 232 exclusion process by some stakeholders will threaten the competitiveness of domestic aluminum manufacturers.

Respectfully submitted,



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The Aluminum Association



**ANNEX: Comments on Potential Revisions Outlined in NOI**

In general, the Association believes that the “blanket” rules outlined in the Notice of Inquiry are problematic given the breadth of the products covered by the Section 232 tariffs. The recommendations above are intended to advance efficiencies that are sought by the blanket proposals in the Notice of Inquiry. More specifically:

**(1) One-year blanket approvals of exclusion requests for product types that have received no objections as of a baseline date (see Annex 1 and 2); and**

**(2) One-year blanket denials of exclusion requests for product types that have received 100 percent objection rates and never been granted as of a baseline date (see Annex 3 and 4);**

The Commerce Department would need to define the meaning of “product types.” For instance, a product type may correspond to the product description of an HTSUS code at 10 digits. U.S. producers may not have the capability of manufacturing all products classifiable at a 10-digit level, but that does not mean that a blanket exclusion should be granted for all products that are classifiable under the 10-digit subheading. If the Department pursues this idea, it should consider allowing for a minimal deviation if there are requests with perhaps one or two requests without objections. In any case, the objection rates should be determined for each product type on a one-year period.

**(3) time-limited annual or semi-annual windows during which all product-specific exclusion requests and corresponding objections may be submitted and decided;**

Addressed in comments, above.

**(4) issuing an interim denial memo to requesters who receive a partial approval of their exclusion request until they purchase the domestically available portion of their requested quantity;**

In practice, we believe this proposal will be difficult to track and enforce.

**(5) requiring requestors to make a good faith showing of the need for the product in the requested quantity, as well as that the product will in fact be imported in the quality and amount, and during the time period, to which they attest in the exclusion request (e.g., a ratified contract, a statement of refusal to supply the product by a domestic producer);**

Addressed in comments, above.

**(6) requiring objectors to submit factual evidence that they can in fact manufacture the product in the quality and amount, and during the time period, to which they attest in the objection;**

As addressed above, we encourage the Department to rely less on objections in reviewing exclusion requests. Instead, the Department should adopt a policy or practice of reviewing requests based on historical volumes, market demand and origin country. If the Department adopts a policy related to capability, it should identify the means by which an objector would demonstrate the capability to manufacture the product in question. For some

products (e.g., 3003 or 5052), this will be easy. For other products (e.g., proprietary alloys, etc.), this could be more complicated.

**(7) setting a limit on the total quantity of product that a single company could be granted an exclusion for based on an objective standard, such as a specified percentage increase over a three-year average;**

As addressed in the comments above, we believe a limit on volumes would help mitigate the abuse of the exclusion system. The Association would be glad to provide input to the Department on how best to determine or apply such a limit.

**(8) requiring that requesters citing national security reasons as a basis for an exclusion request provide specific, articulable and verifiable facts supporting such assertion (e.g., a Department of Defense contract requiring the product; a letter of concurrence from the head of a U.S. government agency or department that national security necessitates that the product be obtained in the quality, quantity and time frame requested);**

This justification seems to be rare, in reviewing the docket, and the Association has no recommendation on this front.

**(9) clarifying that the domestic product is “reasonably available” if it can be manufactured and delivered in a time period that is equal to or less than that of the imported product, as provided by requestor in its exclusion request;**

It should not be less than the current 8-week period.

**(10) requiring that requestors, at the time of submission of their exclusion requests, demonstrate that they have tried to purchase this product domestically;**

We believe this would be too complicated to administer, both for industry stakeholders and the Department. Requestors should at least be able to validate – in a business confidential format if necessary – their need for the imported product.

**(11) in the rebuttal/surrebuttal phase, requiring that both requestor and objector demonstrate in their filings that they have attempted to negotiate in good faith an agreement on the said product (i.e., producing legitimate commercial correspondence).**

We believe this would be too complicated to administer, both for industry stakeholders and the Department.