

**Customs Committee
2022 Year-End Report**

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Introduction

The American Metals Supply Chain Institute (AMSCI), formerly the American Institute for International Steel (AIIS), is a trade association representing the full range of the base metals supply chain from producer to end user. The Institute remains the last real voice in Washington for free and responsible trade in steel, aluminum, and other metals.

United States international trade in base metals remained both complex and highly regulated in 2022. Section 232 duties, and the complicated exclusion process, continued in force for steel and aluminum. The US added Tariff Rate Quota (TRQ) agreements with the UK and Japan to supplement the agreement with the EU, and granted Ukraine a one-year exemption from Section 232 duties. The USTR began the mandated four-year review of Section 301 duties on many products from China. Supply chain issues continued to affect trade, not only due to shortages in commodity production, but also natural events such as falling water levels along rivers in both Europe and the US due to drought.

AMSCI worked throughout the year to provide helpful, timely, and accurate information on multiple trade matters, and to represent its members before Congress and government agencies. The AMSCI Customs Committee strives to perform that function for the Customs-related concerns affecting the industry.

1. Customs Committee

The AMSCI Customs Committee's goals are both to educate members on Customs issues affecting all parts of the supply chain relevant to base metal importing and exporting, and to represent the common interests of the members before government agencies when appropriate. All AMSCI members are invited to join the Committee and be included on the distribution list for Committee reports and activities. The Committee holds an Annual Meeting each year, normally at the time of the Institute's Annual Dinner; that meeting is open to all members whether or not they are Committee members or attending the Dinner. The Committee presents webinars on an occasional basis for the benefit of the members on technical matters affecting their business and holds additional meetings as and when needed. These meetings have regularly included participation by government representatives, primarily from US Customs and Border Protection (Customs or CBP) but also from the Commerce Department when issues of interest exist.

The Committee's Annual Meeting returned to New York this year on December 8, with the in-person meeting at the Yale Club augmented by a virtual option. The virtual option allowed persons not in the NYC area to participate. Customs was once again well represented. Presenters from the Base Metals Center for Excellence and Expertise (BMC) included Acting Director Edward Wachovec and Assistant Director Michael Dean. National Commodity Specialist Division, New York, presenters were Steven Mack, the NCS Division Director, and National Import Specialists Angie Amerson and Denise Hopkins. Alex Amdur, Director of CBP's AD/CVD Policy and Programs Division, and Sam Zengotitabengoa, Branch Chief, AD/CVD presented for the AD/CVD Enforcement office in D. C. Several other personnel from the BMC, the NCS and the AD/CVD Enforcement Branch also joined, both in person and virtually.

AMSCI President Richard Chriss welcomed the participants. AMSCI members Ed Fitzgerald of Geodis and Larry Hanson, The Law Offices of Lawrence W. Hanson, also contributed to the meeting agenda. This report includes information received and presented at the committee meeting as well as additional topics believed to be of interest.

2. Base Metals Center for Excellence and Expertise

Acting Base Metals Center Director Ed Wachovic spoke about the status of the Base Metals Center (BMC) 10 years after CBP's creation of the Centers for Excellence and Expertise (CEEs). He noted that the implementation of ACE by CBP, with electronic filing and communication, was essential in making the CEEs viable. The paper-based procedures previously used by Customs would not support the distributed processing methods used by the Centers. The BMC became fully operational in 2016.

Trade legislation has a heavy impact on the operations of the BMC. This includes not only recent legislation such as EAPA, but also older laws such as the Trade Act of 1962, authorizing Section 232 duties, and the Trade Act of 1964, authorizing Section 301 duties, plus the antidumping and countervailing duty laws. The BMC accounts for only about 5% of importations nationwide yet has had 33% of all EAPA investigations since the law took effect, and 87% of all entries with Section 232 duties in FY 2022. Its enforcement efforts are hyper focused on Section 232 and AD/CVD shipments. Involvement in these areas includes working with the Justice Department and CBP General Counsel on court issues.

Assistant Director Michael Dean discussed issues and problem areas involved in Section 232 processing (the BMC has only a small amount of Section 301 entries). The two biggest concerns were filing issues, largely dealing with quota entries, and exclusion problems regarding overuse. In many cases, filers seem to have problems dealing with both the absolute and the tariff rate quotas, particularly regarding allocation to correct categories and apportionment for oversubscribed categories. It is up to the filer to keep on top of the entry and refile as apportionment is determined. Failure to get it right results in rejected entries. The BMC monitors exclusion use, which generally become deactivated when overused. Approximately 1-1.5% of exclusions are overused. It is up to the exclusion holder to monitor use; it will also be responsible for any duties due on overage amounts and potential penalties.

There have been a large number of requests for cancellation of Section 232 entries, often for duplicate filings due to early filing, re-routing of a shipment, or even in some cases entries filed by two different brokers. Although decreasing, such requests have been several dozen per day.

3. National Commodity Specialist Division - Tariff Updates, New Rulings, and Exclusion Processing

NCSA Director Steve Mack introduced the leaders of the metals team, covering HTS Chapters 72-81. NIS Angie Amerson, NIS Denise Hopkins, and Director Mack provided information in a number of areas. Updates to the tariff were limited in 2022. The definitions for bars and rods, profiles, wire, plates, sheets, strip and foil and tubes and pipes were moved to the Section Notes. Russia and Belarus were moved to Column 2 duty rates (with additional increases for some products.) Ukraine was granted a one year suspension of Section 232 duties. Tariff rate quotas (TRQs) for Section 232 were extended to the UK and Japan in addition to the EU.

Exclusion requests took up a lot of time for the metals team. As of December 1, 2022, 3300 Section 232 requests had been reviewed. The NCSA also operates an assistance mailbox, mainly for classification issues, helping to find solutions for filers and preparing resubmissions: Section232assistance@cbp.dhs.gov. The number one cause for denial of an exclusion request is related to the reported chemistry being rejected because of alloy/non-alloy issues. Misplaced decimal points and blank fields on the submission are also common reasons for denials.

The number of binding rulings issued on base metals continued to decline during 2022. A major reason for this was the number of ruling requests filed without the proper required information, resulting in a return to the filer for re-filing. The NCSA issued only 23 rulings, with 3 issued by HQ, for all of the base metals Chapters. In addition to classification, topics for rulings included trade remedies (Section 232 and 301), country of origin determinations, substantial transformation, FTA or Preference Programs eligibility (GN rules), and USMCA marking. It was pointed out that origin rulings are contingent upon on the relevant context – Section 232 or 301 applicability, substantial transformation, USMCA marking – and the country of origin for a given

product may be different depending on the context. Spreadsheets prepared by the NCSD showing the rulings issued for all of the metals Chapters are available from AMSCI on request.

The NIS's discussed two rulings in some detail – complex rulings involving multiple issues, demonstrating the detail required in submitting requests, and the range of issues that can be involved in a single transaction. These discussions are included in the metals team presentation materials for the Customs Committee, a copy of which is also available from AMSCI on request.

4. Customs Trade Legislation Enforcement

Alex Amdur reported on the status of CBP trade enforcement (AD/CVD plus Sections 201, 232, and 301.) At the time of his report there were 666 AD and CVD orders (doubling since 2016), with the filing rate continuing to increase. 50% of the Orders are for steel products. There were 2000 instructions issued by Commerce during FY 2022 regarding the processing by CBP of entries covered by Orders.

Review of EAPA investigations has provided some insight into non-compliant trade practices. The major finding is a lack of due diligence from the parties involved. It is worth noting this has resulted in a significant number of affirmative findings of duty evasion by importers. CBP has conducted 33 audits of steel products in FY 2022. Section 232 duty collections for the year were \$2.6 billion for steel and \$743 million for aluminum. About 340,000 exclusion requests under Section 232 have been processed on steel and aluminum. An ongoing issue is the failure of importers holding multiple exclusions to use the correct exclusion for the product involved. Correction of these errors is complex and difficult to accomplish.

The Policy and Programs Division also provides oversight of US trade quota operations. While CBP has historical experience with both absolute and tariff rate quotas for many years, the sheer number of categories for the Section 232 quotas has created processing problems. Increased automation and better use of ACE is helping to resolve these. Importers with EU exclusions should note that the extension of existing exclusions allowed by BIS for another year should be seamlessly

implemented, but that the quantity of the exclusion renewal in the second year will be limited to the amount of actual usage in the first year, rather than the original amount.

5. Compliance Performance of Metal Importers

Customs conducts regular examinations of imports of all commodities to establish levels of compliance with import requirements. Compliance Measurement develops statistics for both “Letter of the Law” (LOL) compliance and for “Major Trade Discrepancies” (MTD). These cover a wide range of issues, including classification, value, marking, special programs, and AD/CVD, among others. Customs last year expanded the data on imports provided to AMSCI beyond steel in Chapters 72-73 to include compliance measurement data for both the full range of base metal HTS Chapters, 72-82, in aggregate, and separate rates for each chapter. The preliminary figures as reported by Sam Zengotitabengoa for Fiscal Year 2022 are:

Chapter	LOL Rate	MTD Rate
1-98 Aggregate	99.69%	98.8%
72-82 Aggregate	99.79%	99.95%
72 Iron and Steel	99.46%	99.46%
73 Articles of Iron and Steel	99.78%	99.99%
74 Copper	100%	100%
75 Nickel	100%	100%
76 Aluminum	99.7%	99.85%
78 Lead	100%	100%
79 Zinc	100%	100%
80 Tin	100%	100%
81 Other Base Metals	100%	100%
82 Tools, etc. of Base Metal	99.89%	100%

The Aggregate and individual Chapter rates generally reflect an increase in compliance rates for both criteria from the prior year, with the exception of a small drop for Chapter 73 compliance.

6. Customs Broker Perspective

Ed Fitzgerald began his presentation discussing the major overhaul of the Customs regulations governing broker activities which went into effect on December 19, 2022. Many of the changes primarily affect broker operations, including a shift of oversight to processing centers from the ports, requirements for a single point of contact for CBP for each broker, and data breach disclosure requirements. Others have a significant impact on importer clients of brokers as well, such as mandatory notification to CBP when a broker withdraws from representation (along with the reason for withdrawal), and changes to Power of Attorney relationships, with direct representation between the broker and importer (rather than indirectly through a freight forwarder) now required.

Other issues affecting both brokers and importers include the development of a new Manufacturer ID (MID) pilot, intended to eventually replace the current requirement; problems involved in the enforcement of Forced Labor rules (see below); and developments in the definition of “Customs business” which may affect what activities consultants and other parties not holding a broker license can conduct.

7. 21st Century Customs Framework (21CCF)

CBP continues to work toward modernization of US Customs law. For a number of years, CBP has been working toward “a structured modernization approach that will enable the U. S. government to address modern trade challenges, leverage emerging opportunities, and achieve transformational long term change.” The goal is to enhance facilitation and security through 21st Century processes. This procedure will include statutory changes to Customs law, the first major update since the Trade Modernization Act (“Mod Act”) of 1993.

The trade community has been involved through several organizations in discussions with CBP, and there has been progress towards new statutory language in several areas. Most of this has so far been related to security and enforcement matters, however, and the promised trade facilitation efforts are lagging behind.

8. Agriculture Inspections-WPM

CBP now requires CTPAT members to have written procedures covering compliance with the wood packaging material regulations as part of the CTPAT Minimum Security Criteria (MSC). Aggressive enforcement activities continue regarding both the IPPC marking requirements for WPM and evidence of actual infestation regardless of IPPC compliance.

The Houston Wood Packaging Group of carriers, shippers, and importers has reached agreement with CBP and USDA on a trial program for overseas inspection procedures, to be conducted by private entities already engaged in cargo inspection, such as international inspection companies and surveyors. These private companies would provide contracted inspection procedures. Such inspections would not replace any of the USDA inspection and enforcement actions, although they could be part of meeting the MSC under CTPAT. A training program for companies interested in becoming certified providers is scheduled for the second quarter of 2023.

The Houston group is also working with USDA on a wood shredding + hammermill option for dealing with boring pests in dunnage, and hopefully other WPM products. If a workable procedure can be developed that will obliterate any pests and be reasonably mobile, this option could join the limited incineration program as an alternative to the often-costly requirement to export any contaminated dunnage. The group is looking for support for this effort from interested parties.

Any AMSCI member interested in either or both the overseas inspection program and the shredding and hammermill option is invited to contact former AMSCI Board member Rich Brazzale who is one of the organizers of the Houston Wood Packaging Group.

9. Forced Labor

During the past several years Congress has strengthened the legal restrictions on products of forced labor, and the issue has attained higher visibility. CBP has increased the use of Withhold Release Orders restricting specific imports found likely to be products of forced labor and made the first formal Findings in many years excluding products conclusively found to have been made with forced labor. Several Orders have been issued against raw materials, such as cotton; these are applicable not just to the raw materials but also to products made using them.

Congress further expanded forced labor protections with the passage of the Uyghur Forced Labor Prevention Act (UFLPA), applicable to articles produced wholly or in part in the Xinjiang region of China or by an entity on the UFLPA Entity List. This creates a rebuttable presumption that such goods are the product of forced labor. The UFLPA is applicable to downstream products from anywhere in the world that incorporate inputs, however small, from Xinjiang or any entity on the UFLPA Entity List. The presumption went into effect on June 21, 2022. A major concern for importers is the extensive documentation required to demonstrate that either 1) the imported merchandise is not produced in the Xinjiang region or by a UFLPA Entity, or 2) the presumption of forced labor created by UFLPA is inapplicable to the imported merchandise.

CBP has established a new ACE requirement for all goods where China is the Country of Origin for entry and for Manufacturer Identification Code (MID) purposes, which serve as a UFLPA Region Alert. A valid Chinese Postal Code will be a required field in ACE with a warning message issued when a Uyghur region code is input. This requirement, originally scheduled for December 2022, will now be effective March 18, 2023.

CBP has also added Minimum Security Criteria for forced labor concerns as part of the CTPAT program. These include risk-based mapping, a code of conduct, evidence of implementation, due diligence and training, a remediation plan should forced labor in the supply chain be identified, and sharing of best practices.

10. US Section 232 TRQ Agreements- UK and Japan

The United States reached agreements with Japan and the United Kingdom establishing Tariff Rate Quota (TRQ) arrangements for steel (from both countries) and aluminum (from the UK), relaxing Section 232 coverage by allowing up to 1.25 million metric tons of steel from Japan and up to 0.5 million metric tons of steel and 21.6 thousand metric tons of aluminum from the UK to enter without being subject to the current Section 232 duties. All steel products must be melted and poured in the exporting country. These new TRQ Agreements follow the pattern of the US-EU Agreement that became effective on January 1, 2022. There are 54 categories of steel mill products, and 14 product categories for aluminum. Quota levels are based on historical imports during the 2018-2019 period. Section 232 duties will be removed for derivative products.

The Agreements were effective on April 1 (Japan) and June 1 (UK), 2022. The quotas will be administered by the Quota Branch at CBP under the same procedures used for the EU Agreement.

11. Short Comments

A. Commissioner Magnus Resigns

After less than a year in office, CBP Commissioner Chris Magnus was forced out by DHS, apparently over border policy, and resigned in November. Magnus was the first Senate confirmed Commissioner in several years. The Acting Commissioner is now Troy Miller, a career CBP officer, who also held the Acting Commissioner position before Mr. Magnus. There is as yet no indication of the nomination of a new permanent Commissioner, leaving the agency once again without a Senate confirmed leader.

B. Section 232 and Section 301 Court Case Status

The government's success in defending the Section 232 statute in court continued in 2022. The Supreme Court decision in 2020 , in a case brought by AIIS, upholding the constitutionality of the statute was followed in 2021 by the Court of Appeals for the Federal Circuit (CAFC) finding that the President's authority to impose duties is not restricted to action within certain time periods, reversing decisions of the U. S. Court of International Trade (CIT). In 2022, the CAFC issued a decision upholding both the President's finding of a threat to national security and the use of a tariff of indefinite duration. The Supreme Court refused to hear an appeal of that decision.

While the appeals procedures were ongoing, the CIT granted a stay to the government pending appeal, imposing special bonding requirements and suspending liquidations. These actions required CBP to undertake time consuming procedures both during the suspension, and after the decisions to process the entries.

In December 2022, the World Trade Organization (WTO) issued a decision finding that the national security claim for the Section 232 duties by the US violated global trade rules, and the tariffs should be eliminated. The Biden administration denounced the ruling and indicated that no action would be taken. The non-functioning of the WTO appeals mechanism means that no enforcement procedure for the ruling is in place.

The massive case challenging Section 301 duties on certain entries (List 3 and List 4A) from China, also on procedural grounds, involving over 4,000 plaintiffs, was remanded by a three-judge panel of the CIT to the USTR for further consideration. Oral arguments before the court on the remand determination by USTR are scheduled for February 2023. The government (reluctantly) agreed that companies involved in the litigation will be eligible for potential duty refunds regardless of the liquidation status of the entries, while proceeding on entries for non-parties, creating yet another administrative burden for CBP.

C. China Section 301 Review Process

The Section 301 statute provides for an automatic review process four years after implementation of any duties. The China Section 301 duties were imposed in four rounds beginning July 6, 2018, The USTR began the review process in mid-2022 by soliciting requests for extension of the duties from any interested domestic parties. Extensions were requested for all covered products, and the duties were provisionally extended by USTR. The Office of the USTR then began a review of the effectiveness of the duties by requesting comments from interested parties. Comments are requested on the effectiveness of the duties in eliminating the Chinese trade practices at which they are aimed, and whether other actions or modifications would be more effective. Comments are due by January 17, 2023, after which USTR will review the comments and determine if any change in the existing duty structure is warranted.

Respectfully submitted,
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