



April 22, 2024

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Mr. Juan Millan
Acting General Counsel
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20508

PUBLIC DOCUMENT
Docket Number USTR-2024-0002

Re: Written Comments on Measures to Advance Supply Chain Resiliency in the U.S. Specialty Metals Industry

Dear Mr. Millan:

These comments are submitted on behalf of the Specialty Steel Industry of North America (“SSINA”), the trade association representing producers of specialty metals in North America, including stainless steels, tool steels, nickel-, cobalt-, and titanium-based alloys, and other high performance specialty materials. SSINA wholly supports the Office of the United States Trade Representative’s (“USTR”) efforts to promote resilient supply chains and offers the following comments on the best approach for doing so.¹

While the Request for Comments addresses a broad array of issues and poses a range of questions, as discussed below, these written comments focus on two key issues: (1) the

¹ Request for Comments on Promoting Supply Chain Resilience, 89 Fed. Reg. 16,608, (Mar. 7, 2024) (hereinafter “Request for Comments”).

competitiveness of U.S. producers in the U.S. and global markets; and (2) the importance of balanced and resilient supply chains for key critical input materials.

I. Competitiveness of U.S. Producers in the U.S. and Global Markets

No segment of the domestic steel industry is more integral to U.S. national security and the defense industrial base than the specialty steel sector. Specialty steels, as well as nickel-based alloys (including superalloys) and other specialty metals (e.g., alloys of cobalt, titanium and zirconium) produced by SSINA member companies, are unique, long lead-time, and high technology materials that are vitally important to virtually every U.S. military and aerospace platform. These products rely on complex global supply chains that are unique to the metals sectors. Specialty metals products (including specialty steel) are critical components in the production of military aircraft, helicopters, land-based vehicles, military-grade weapons, and navy vessels.

Notably, the survival of the specialty metals sector and its ability to meet U.S. national defense needs are dependent on the viability of all of the industry's markets, not just those related to defense and military applications. The production equipment used to make high performance specialty metals for defense purposes is the same equipment used to produce materials like stainless steel for higher volume non-defense applications, such as energy and infrastructure projects.

It is the efficiencies of these higher volume, non-defense related businesses that sustain the development and production of leading edge specialty metals for defense applications. As USTR is aware, there has been a persistent global overcapacity situation that has threatened the existence of the domestic specialty steel industry, driven in large part by non-market actors. If

the global overcapacity situation in specialty steels is not addressed adequately and promptly, the specialty metals sector will not be able to operate its mills at a level of profitability and return on investment that will permit necessary investments in the research and development of the unique materials critical to our national defense and aerospace sectors. The investments required to produce these strategic materials, particularly for the defense industrial base, are substantial and of a long term nature.

Thus, it is extremely important from a national security and defense industrial base perspective that SSINA member companies are able to compete on a global scale. Trade policy must reflect considerations of both maintaining a competitive landscape in the United States for SSINA members' products, but also ensuring a resilient supply chain for critical input materials that in many instances are not produced in sufficient volumes in the United States.

A. Maintain and Expand the Section 232 Program

As USTR negotiates with its foreign counterparts in the coming years, SSINA urges that the current Section 232 remedies on steel products not be lifted without, at a minimum, an agreement on meaningful, sustainable and enforceable measures to address the legitimate concerns of overcapacity, circumvention, and national security that were the basis for the current regime and that directly impact the domestic specialty steel industry, and by implication, the entire specialty metals sector. The Section 232 program has served an essential function in providing domestic producers much needed relief from persistent overcapacity, and while there are issues with the program, it is nonetheless an important trade policy that SSINA members encourage USTR to maintain.

At the outset of the Section 232 measures and in subsequent reviews and discussions of the program, SSINA testified concerning the overlap in the production processes and equipment utilized to produce, in particular, high-nickel stainless steels and certain nickel-based alloys that do not fall under the harmonized tariff schedule classifications subject to Section 232 tariffs. Indeed, SSINA originally requested that this overlap warranted coverage of nickel alloys in the Section 232 program. Similar concerns were expressed regarding cobalt- and titanium-based alloys. While SSINA's request to expand the scope of the Section 232 tariffs was not accepted, the concerns remains.

SSINA reiterates these concerns, which are underscored by the fact that during the pendency of the Section 232 program, the industry uncovered multiple instances where U.S. importers attempted to misclassify high value nickel stainless steel products (which are covered in HTSUS Chapter 72) as nickel alloys (which are covered in HTSUS Chapter 75) and, therefore, fall outside the scope of the Section 232 tariffs on various steel products.

SSINA respectfully requests that consideration be given to raising these concerns regarding the overlap between the stainless sector and the nickel-alloy/superalloys sectors in USTR's continuing discussions with the European Union over Section 232 remedies, as well as with other allies and trading partners that are involved in negotiations. Virtually all of the SSINA members that produce low volume, high-value nickel alloys for defense and aerospace purposes also produce stainless steels.

SSINA also urges USTR to account carefully for the impact and effective operation of the product exclusion process in place with respect to the Section 232 tariffs and quota remedies. It is important to consider the impact of past and current exclusions on the setting of quota levels

going forward, as well as the Commerce Department's General Approved Exclusions ("GAEs") – an element that has disproportionately affected the stainless and tool steel sector.

Specialty steel producers, which in most instances are small to medium-sized companies, have had to address thousands of exclusion requests, many of which request volumes that exceed the size of the low-volume U.S. market for these products. SSINA has addressed these concerns in detail in written comments submitted to the Commerce Department, but in negotiating with the Europe Union and other trading partners, USTR should take these issues into consideration when analyzing the volumes of imports and future quota levels.

B. Ensure U.S. Producers Are Not Placed At A Global Competitive Disadvantage With Carbon Emission and Other Environmental Standards

Over the last several years there has been an increasing interconnectedness between climate change and environmental policies and international trade. SSINA members are encouraged by the possibility of leveling the playing field from a cost perspective by ensuring that foreign competitors are held to the same standards as U.S. producers.

In addition to domestic sales, SSINA members produce high quality products that are exported to other markets, and these exports are a key to the health of the domestic industry. SSINA members are already being asked to supply information to importers in the European Union ("EU") as part of the EU's Carbon Border Adjustment Mechanism ("CBAM"), and in a short period of time these exports may become subject to additional barriers. In addition, SSINA members have been cooperating with the U.S. International Trade Commission's ongoing Section 332 investigation involving carbon emissions, through the submission of comments, preparation of questionnaire responses, and hosting agency officials on tours of production facilities. As standards rise in the United States, and more is asked of U.S. producers to gather

and supply data on carbon emissions, costs increase commensurately, and it is imperative in securing resilient supply chains that U.S. producers not be placed at a disadvantage relative to foreign competitors that may be subject to less rigorous standards.

II. Balanced and Resilient Supply Chains for Critical Inputs

As noted above, SSINA members consume many critical minerals and materials in the production of downstream specialty steel and other alloys. Any trade policy that encourages resilient supply chains must account for the supply of these critical input materials, which are not all produced in sufficient volumes in the United States.

For example, the United States maintains a 15 percent normal duty on titanium sponge,² but there has been no domestic production of this critical input material in the United States for several years. This places domestic producers at a disadvantage relative to major competitors in China and Russia that do not have to pay a tariff on this critical input and, therefore, can sell downstream titanium products in the United States that undercut U.S. producer prices. Senator Cortez Masto (D-NV) addressed this issue with Ambassador Tai during a Senate Finance Committee hearing on April 17, 2024, and SSINA encourages the Biden Administration to support legislation recently introduced by Senators Cortez-Masto, Blackburn, Capito, Manchin, and Tillis that would suspend the 15 percent normal duty on titanium sponge imports from nations with preferential trade status until 2031 as a means of strengthening the operations of U.S. producers of downstream titanium products.

Another critical input in the production of specialty steels (classified in HTSUS Chapter 72) and nickel-based alloys (covered in HTSUS Chapter 75) is nickel, which has historically

² Titanium sponge is classified under HTSUS statistical subheading 8108.20.0010.

posed supply chain challenges for SSINA members. Nickel is traded as a commodity on the London Metal Exchange, and is often characterized by extreme volatility in its pricing because of its commodity status. The supply chain challenges are further complicated by the fact that different grades and forms of nickel are used in the production of stainless steel and nickel-based alloys, including ferronickel, Class 1 nickel (99% nickel content or greater), and certain nickel-bearing scrap. Nickel was not included on the Department of Interior's initial critical minerals list published in 2018, but was added to the list in 2022³ and also was included on the Department of Energy's list of critical materials for energy⁴ demonstrating its clear criticality. Indeed, China is the largest stainless steel producer in the world with no signs of the country reducing its capacity. Due to the importance of nickel in stainless production, China has increased its dominance of the nickel supply chain through both investments in third-countries and also recycling of nickel from stainless steel production and consumption. Indonesia, however, is the world's largest miner of nickel ore and since 2020 has imposed a ban on exports of this input material.

In order to protect the integrity of the nickel supply chain, including nickel bearing scrap, and others, USTR should also consider the implications of sanctions and other policy considerations (e.g., retaliatory tariffs) that may have unintended consequences on material supply chains in both the short and long term. These include sanctions, which may directly or indirectly impact other companies from friendly nations (e.g., Canada) from supplying U.S. specialty metals manufacturers that rely on global supply chains such as nickel. Access to a

³ 2022 Final List of Critical Minerals, 87 Fed. Reg. 10,381 (Dep't Interior Feb. 24, 2022).

⁴ Notice of Final Determination on 2023 DOE Critical Materials List, 88 Fed. Reg. 51,792 (Dep't Energy Aug. 4, 2023).

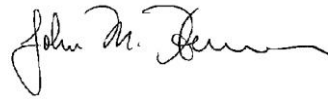
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steady supply of nickel is imperative for SSINA members, and USTR should focus its efforts on enhancing such access in order to ensure a resilient supply for U.S. producers of specialty metals.

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SSINA commends USTR's efforts to work with industry to establish trade policies that encourage resilient supply chains. There are persistent trade-distorting practices that threaten our industry's economic and national security that can be addressed through collaboration with industry and strong negotiating objectives. We look forward to continuing to work with USTR's negotiating teams on these matters.

Respectfully submitted,



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