

24 July 2018

Statement Concerning Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum

Chairman Reichert and Members of the Subcommittee on Trade, thank you for the distinct honor and privilege of testifying today. My name is Todd Adams, President of Sanitube LLC, a family-owned small business headquartered in Lakeland, Florida. Sanitube is a manufacturer of stainless steel tube, valves, and fittings primarily utilized in the food and beverage processing industry. Sanitube produces food-grade (“sanitary”) stainless steel tubing (ASTM A270) and custom stainless steel tube fittings made entirely in the United States. We supplement our domestically-manufactured products with other stainless steel tube fittings and valves produced under our license abroad, primarily in China. Our imported items are purchased by our sister company Stainless Imports, Inc. for customs formalities.

In July 2017, Sanitube was contacted by a new potential distributor looking for a large quantity of sanitary tubing with unusual dimensions. The outside diameter was large and not standard, the wall was extra thick, and the length of each tube was exceptionally long. Moreover, the tube was to be completely smooth and polished on the inside to prevent contamination in dairy production in accordance with 3-A Sanitary Standards, a self-regulating authority on dairy equipment standards of which Sanitube is a member. Sanitube advised the customer that its equipment is not capable of producing sanitary tubing meeting the requirements outlined by the customer, and the customer had indicated that neither of the other two domestic mills capable and certified to produce ASTM A270 tubing to 3-A standards were able to bid on the project requirement. Sanitube suggested to the customer that the desired material could be procured from a partner mill overseas if the customer would be willing to accept foreign material and an extended lead time. The customer agreed to the proposal, and in November 2017 Sanitube entered into a contract with the customer to produce the material in China at a fixed price. The total order comprised nine full shipping containers of tubing, and the first two containers arrived in the US without incident prior to the announcement of Section 232 tariffs. On March 8, 2018, President Trump announced that Section 232 Tariffs of 25% would be implemented on stainless steel tubing, effective March 23, 2018. At the time of the announcement, the balance of seven containers were in transit from China to the Port of Long Beach, California. Sanitube’s Chinese vendor had already been paid, leaving Sanitube with only one viable option to pay the new duties amounting to nearly \$200,000. Though the unplanned duties imposed an extreme financial strain on Sanitube, the company was confident that the material qualified for an exemption based on the fact that it could not be produced in the United States.

On March 20, 2018, one day after the exclusion application process was “formalized,” Sanitube submitted two applications (one for each of the slightly different product sizes comprising the order). The application states that a company may withhold the answer to any question on the application if the answer to the question is business confidential information that the company does not wish to disclose for public review. The application instructions go on to state that the Department of Commerce Bureau of Industry and Security (“BIS”) would follow up with the company to obtain the confidential information. Based on the competitive nature of its industry, Sanitube did not feel comfortable revealing

the name of the steel mill where the order was produced. Moreover, Sanitube recognized that revealing the name would not affect the merits of the application or hinder a domestic mill's assessment of whether the material could have been produced in the United States. On April 4, 2018 Sanitube was contacted by Mr. Mark Crawford from BIS. Mr. Crawford explained that Sanitube's applications were incomplete because the name of the mill was not provided for public review. Sanitube again objected to disclosing this information to the public (Sanitube was certainly willing to confidentially disclose to BIS). After several days of review, Mr. Crawford informed Sanitube that BIS attorneys had concluded that the source mill is not business confidential. Mr. Crawford went on to explain that he has in fact visited China, and sourcing this material is not difficult. He explained that one only needs to reference the phone book in the City of Chongqing, China to find an appropriate vendor. Mr. Crawford then stated that our exemption applications would not move on to the next required phase of posting for public review and comment until they are re-submitted with the vendor information disclosed. Unfortunately, the rules were not yet published at the time of these discussions that, should an exemption be approved, a refund would only be allowed for product admitted into the United States after the date of the exemption application's posting for public comment. The "posting" date is controlled solely by BIS and can easily be delayed with requests for more information.

One of Sanitube's two exemption applications was finally posted on April 19, 2018. According to BIS, this application was "accidentally" posted, as Sanitube had still not provided vendor information. The second application, for which Sanitube reluctantly provided vendor information, was posted on May 29, 2018. During the period between application submission and posting, two containers of material arrived in the United States. Under the guidelines currently in place, those two containers representing approximately \$55,000 in Section 232 tariffs are ineligible for refund solely due to posting latency outside of Sanitube's control.

On June 20, 2018, Sanitube's first exemption request representing six of the seven containers assessed Section 232 tariffs was denied. The Decision Memo states that the application was "incomplete" and that the Harmonized Tariff Schedule (HTS) code was incorrect. Sanitube attempted to contact BIS after the decision was posted for clarification. Calls and emails were not returned over a period of three weeks, at which point Sanitube appealed for assistance from Florida Senator Bill Nelson. Finally, the company received a response from Matthew S. Borman, Deputy Assistant Secretary of Commerce for Export Administration. Mr. Borman explained that the denied application was indeed complete, but the HTS code was rejected by US Customs. Incidentally, US Customs had already accepted all nine containers under the allegedly incorrect HTS code (and had also accepted containers imported by Sanitube/Stainless Imports over the prior eight years under that same HTS code) without incident. Mr. Borman advised Sanitube to apply for a definitive ruling from US Customs for the correct HTS code and, once that is received, to begin the exemption application process once again. Mr. Borman did indicate that special consideration would be made for refunding Sanitube's Section 232 tariffs back to the original application's posting date should the new application finally be granted. Per Mr. Borman, the two containers that arrived prior to posting will remain ineligible for exemption.

In summary, I would like to bring to the attention of the committee three areas of concern regarding the Steel 232 Exemption Process. First, vendor information should not be required from applicants. This forces applicants to disclose sensitive business information that is irrelevant to determining whether the

potentially excluded product is manufactured in the United States. Second, the time period from application submission to posting is abnormally long and, with respect to applicants seeking refunds, allows for BIS to strategically delay posting to disqualify certain shipments from eligibility for refund under any circumstance. Third, BIS should interface with US Customs as part of the initial application review. Deferring the news of an HTS code mismatch until the final phase of review is yet another opportunity for BIS to strategically delay decisions and and impose further hardship on applicants. Finally, I feel it necessary point out the lack of professionalism exhibited by Mr. Mark Crawford. The exemption application process should be focused solely on gathering the information necessary to make a determination based on the rules outlined by BIS. Mr. Crawford's commentary on his perception of how Sanitube conducts business is irrelevant and, frankly, incorrect. His remarks resonate because they embody what I have perceived as an overarching skepticism of exemption applicants "gaming the system." I feel compelled to remind BIS that at the time Sanitube initiated shipment of the product in question there was no 232 tariff system in place to game.

Thank you again for your attention to this important matter. I look forward to the opportunity to answer any questions or address concerns from the Subcommittee.