















environment involves selecting the right type of pipe and the right mill for a project. It is important that the pipe conform to our specifications, which meet or exceed regulatory and industry standards, and have been developed over decades of experience constructing and operating pipelines. For Plains, HFW pipe has been the backbone of our pipeline construction program for 20 years, so everything from our field crew's experience to our operational and maintenance procedures are geared towards HFW pipe.

Plains has specific design, construction and operating standards, as well as integrity, inspection and maintenance programs based on decades of experience and exacting internal standards. Our engineers have intimate knowledge of the specific requirements of the Cactus II pipeline system. ***After conducting a comprehensive analysis of the project route, required capacity and operating dynamics, Plains engineers determined the Cactus II Pipeline would require 26-inch HFW pipe.*** Because no U.S. mill can produce 26-inch pipe in HFW, our 232 exclusion request should have been granted by the Commerce Department on this basis. Instead, in our exclusion review process, the Commerce Department apparently disregarded our company's long-standing technical requirements and expertise and concluded on its own that a different pipe specification would suffice for the Cactus II project.

When evaluating an exclusion request, it is critically important for the Commerce Department to evaluate the specific technical specifications each industry requires of its steel components, as opposed to merely reviewing the availability of domestic products that, in its own opinion, could serve as a substitute. In its decision to reject the Cactus II exclusion request, the Commerce Department erroneously determined, without seeking input or clarification from Plains, that line pipe manufactured to another specification is an appropriate substitute for the HFW line pipe our engineers specified for the Cactus II pipeline. A technical decision such as this must be made by individual companies that are accountable and responsible for the safe, reliable and responsible operations of their assets. The government should not dictate a critical line pipe specification decision we have to live with for the multi-decade life of the pipeline.

Having the government impose this tariff without taking the unique requirements of the project into account is akin to having government dictate what type of pipe we use – or suffer a tax (or in this case a retroactive punitive tax).

#### **4. Ensure companies receive due process in the exclusion request procedures.**

The opaque nature of the 232 exclusion process, the inability to state our case and the lack of an opportunity to appeal the Commerce Department's decision – due process flaws that do not exist with respect to most other government procedures – should be rectified to ensure petitioners receive appropriate due process.

The current 232 process lacks transparency. A petitioner's ability to state its case is limited to the submission of a standardized form and supporting electronic documentation. No forum is provided for interaction with those determining the merits of either the petitioners' or the objectors' arguments. In addition, there is no opportunity to respond to objections – even if the objections contain incorrect information, such as was the case with



our exclusion application. The opportunity to respond to on-the-record claims made against Plains, before the Commerce Department staff renders a decision, is a key aspect of due process. In our case, despite multiple inquiries, the Department of Commerce has not provided any information on the basis for its decision to reject our tariff exclusion request.

The existing 232 process for steel tariffs does not allow the submitting company to testify before a committee to request a product exclusion or for a trade association to testify and request relief on behalf of an industry. This is something allowed in the U.S. Trade Representative Section 301 tariff exclusion process.

The Department of Commerce should review the Section 301 tariff exclusion process as it evaluates potential process enhancements. The 301 process provides a notice and comment period that allows for meaningful public engagement. During this time, interested parties have the opportunity to testify before an interagency committee and submit comments and answers to questions regarding the proposed list of tariffs. In some cases, tariffs on proposed products have been removed from consideration. Only after this level of engagement and consideration are 301 tariffs levied on certain products.

Additionally, the 301 exclusion process offers the ability for trade associations to submit requests on behalf of the petitioner beyond just the importer of record. Plains believes this level of engagement at the outset could have helped alleviate situations such as this, where tariffs have been placed on a product for which there is no domestically available substitute.

Finally, from a due process perspective one of the most unjust aspects of the 232 process is the absence of a formal appeal process. While petitioner's request are sometimes denied without prejudice to the right to refile the request, this right is of limited value given that the process lacks transparency and there is no discernable standard for how decisions are made.

**5. Consolidate exclusion requests by project or purchase order instead of requiring individual filings for nearly identical products.**

Currently, companies must file separate tariff exclusion requests, on a case-by-case basis, for each and every different type of steel it imports. This means companies must file new requests every time they import the same product and file multiple requests for all the different steel components required for a project. This creates a great deal of work both for companies and the Commerce Department.

For instance, one of our other Permian Basin pipeline projects (a smaller project, but one that is mission critical to ensuring timely growth in the Permian Basin) required six exclusion requests to address multiple possible interpretations of Customs agents for the same pipe. Consolidating these requests would help reduce the backlog of more than 20,000 requests and related filings the Commerce Department is currently addressing in the 232 process.

### **Absolute Quotas Pose an Even Worse Threat**

On a related matter, I would like to highlight the importance of avoiding absolute quotas on steel imports. Potential absolute steel import quotas present even more significant variables that could deny projects such as the Plains Cactus II project access to line pipe, even if a 25 percent import tariff is paid. If quotas were enforced on the EU, we may not be able to receive the steel we ordered prior to tariffs or potential quotas being put in place.

We appreciate and support the Administration's efforts in support of fair trade, but the Administration's position of requiring absolute quotas in exchange for country exclusions from tariffs, such as the KORUS agreement with South Korea, would jeopardize U.S. jobs and energy production growth, a key national security objective and a major driver of American economic prosperity.

Additional absolute quotas would risk stopping projects in their tracks – eliminating U.S. jobs and curtailing continued energy growth. Limiting the amount of steel available for critical infrastructure projects like crude oil pipelines is unworkable. Receiving only 80 percent of required materials for a pipeline is like receiving 80 percent of the materials for a bridge: it is zero percent effective. Furthermore, steel amounts to approximately 20 percent of a pipeline's project cost. Generally, the other 80 percent of the project cost, includes labor, other parts, engineering, transportation, land, etc., and is sourced domestically. A quota would indeed prevent the importation of steel, but it also would prevent the investment of the balance of the capital for that project. Absolute quotas create uncertainty, cause delays, encourage sub-optimal engineering for critical infrastructure projects, and must be avoided.

### **Unintended Consequences of the Tariff**

In closing, Mr. Chairman, we need to find a way to promote both energy production and our steel industry – not pit one against the other. I want to stress Plains All American supports the efforts of achieving fair trade and strengthening the U.S. steel industry. However, without changing a number of aspects of the way the Section 232 steel tariffs and related exclusion request process have been implemented, the tariffs will result in significant negative unintended consequences to national security, American energy dominance and balance of trade.

America's pipeline system is critical infrastructure and must be expanded. Without the above recommended changes, the Section 232 process may chill this development by delaying projects or making them altogether uneconomical while negatively impacting American jobs.

Recognizing that line pipe represents less than five percent of the total volume of steel imports that have applied for 232 exclusions, we also ask that Congress and the Administration consider exempting line pipe from steel tariffs and quotas until the U.S. steel industry is able to build the capability and capacity to timely manufacture the line pipe required to meet America's energy production growth.

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify. I welcome the opportunity to respond to your questions.