

From: [Fischer Fox, Lynn](#)
To: [Curtis, Deborah \(Federal\)](#)
Cc: [JEST, JOE \(Federal\)](#); [KLASON, PETER \(Federal\)](#)
Subject: RE: U.S. Department of Commerce-OFFICIAL BUSINESS
Date: Friday, January 24, 2020 3:00:13 PM

Dear Ms. Curtis,

Thank you for your e-mail. If possible, I think it would be helpful for CNG's leadership to meet with BIS officials to better understand why their requests were treated differently than those made by their competitors for the same products.

In response to your inquiry below, there is nothing in the e-mails below that needs to be redacted. Can you confirm when and how a member of the public might have access to these or other communications with BIS officials.

Best regards,

Lynn Fischer Fox

Lynn Fischer Fox
Partner

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743

T: [REDACTED] | www.arnoldporter.com

From: Curtis, Deborah (Federal) [REDACTED]
Sent: Thursday, January 23, 2020 10:10 AM
To: Fischer Fox, Lynn [REDACTED]
Cc: JEST, JOE (Federal) [REDACTED]; KLASON, PETER (Federal) [REDACTED]
Subject: RE: U.S. Department of Commerce-OFFICIAL BUSINESS

External E-mail

Dear Ms. Fox,

I am in receipt of the below emails sent to Deputy Assistant Secretary Matthew Borman concerning certain tariff exclusion requests filed by your client, Central National Gottesman.

The Bureau of Industry and Security is unable to engage in any non-public communications, either oral or written, on the merits of a given exclusion request or group or series of exclusion requests. While exclusion decisions can be reviewed for administrative errors, such as failure to post duly submitted objections, rebuttals, or surrebuttals, there is no process, informal or otherwise, for reconsideration of decisions. Thus, the decisions you referenced are being reviewed for administrative errors. You will be notified of the results of that review.

Any non-public communication, such as your email below, to Department officials or employees regarding the merits will be considered an ex parte presentation, the contents of which will not be considered in the Department's review of the relevant exclusion request. Any ex parte written

presentation, including a written presentation provided in support of an oral communication or meeting, will also be placed on the public record. Should you or your client wish to redact any confidential business information from the below communications prior to posting please let us know.

If you have any questions or concerns, please feel free to reach out to my office.

Regards,

Deborah A. Curtis

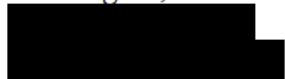
Chief Counsel for Industry and Security

U.S. Department of Commerce

1401 Constitution Ave NW

Room 3839

Washington, DC 20230



Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law.

From: Fischer Fox, Lynn [REDACTED]
Sent: Thursday, January 09, 2020 3:57 PM
To: Matthew Borman [REDACTED]; Aluminum232
<Aluminum232@bis.doc.gov>; Kevin Coyne [REDACTED]
Cc: Brad Botwin [REDACTED]; Marisa Yaskil [REDACTED]; Michael Jones
[REDACTED]; Nathan Kahn [REDACTED]
Subject: RE: U.S. Department of Commerce-OFFICIAL BUSINESS

Dear Mr. Borman,

I am writing to follow up on CNG's request to meet to discuss its exclusion requests. As noted below, the disparate and discriminatory treatment of CNG's exclusion requests in comparison to its competitors' request is having an immediate and grave impact on the company's competitive position. We are requesting a meeting with you and appropriate members of your staff to better understand BIS's decision-making process and seek a fair resolution for CNG.

It seems clear that ITA has made contradictory findings regarding the domestic production and availability of various gauges of common alloy aluminum sheet. In multiple cases, ITA has found such products are not sufficiently available in the United States. However, when analyzing CNG's request related to the same product, it provided BIS with a contradictory finding. This contradictory analysis has continued -- since CNG's exclusions were denied in December, its competitor Empire, a subsidiary of a Taiwanese producer, has received multiple exclusions for products indistinguishable from those in CNG's requests. BIS's reliance on ITA findings has resulted in decisions that place CNG in an impossible competitive position as its competitors can now imports product free of Section 232 duties, while CNG must pay those duties. The disparate treatment does not further the goals of the President's Section 232 action, as CNG's loss of business will not be replaced by domestic production -- it will be replaced by competing importers who were granted exclusions.

We are aware that ITA's review is often being handled by contractors who may not be expert in

issues related to the aluminum market. Thus, we are concerned that errors may have been made in the ITA review. As one of your staff noted to me on the phone with regard to another issue, there is not always consistency in lower level staff or contractor evaluation of exclusion requests. We would like to discuss how this may have happened in CNG's case and how it can be addressed. While we understand the difficulties in implementing such a large scale exclusion process, discrepancies have real world consequences for American companies. CNG is not asking for special treatment, it would like the same treatment that was given to its competitors who were granted exclusions.

Best regards and happy new year.

Lynn

Lynn Fischer Fox

Partner

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T: [REDACTED]

[REDACTED] | www.arnoldporter.com

From: Fischer Fox, Lynn

Sent: Wednesday, December 18, 2019 9:36 PM

To: 'Matthew Borman' [REDACTED]

Cc: 'Brad Botwin' [REDACTED]; 'Marisa Yaskil' [REDACTED];

'Aluminum232' <Aluminum232@bis.doc.gov>; 'Kevin Coyne' [REDACTED]

Subject: RE: U.S. Department of Commerce-OFFICIAL BUSINESS

Dear Mr. Borman,

Thank you again for agreeing to consider a meeting with Central National Gottesman (CNG). The urgency of meeting on this has been heightened as we see that today BIS posted denials of these same exclusions that were originally granted in May 2019. BIS's reversal of its May 10 decision letters has caused significant confusion and economic hardship for this American company. In addition, the denial of these exclusions based on a determination that there is sufficient domestic production is arbitrary and contradicted by recent decisions made by BIS for identical products.

BIS has found that there was not sufficient domestic availability of certain aluminum sheet and has granted exclusions to CNG's competitors for products identical to those covered by the denials issued today. For example, over the last several months BIS has granted 32 exclusions to CNG's direct competitor AA Metals for identical products. On October 17, 2019 BIS issued exclusion BIS-2018-0002-6484 for 500,000 kilograms of 1.6mm 3003 Alloy Sheet in Temper H14. The product in this request is identical to CNG's request with docket number BIS-2018-0002-13595. Arconic objected to the AA Metals request, just as it did CNG's request. CNG's request was denied while AA Metal's was granted. No explanation is provided for the disparity in treatment. This is only one example.

Also on October 17, 2019, BIS issued 25 other exclusions to AA Metals for common alloy sheet products that are identical or nearly identical to requests submitted by CNG. We would be happy to provide you with a complete summary of all of these exclusions.

In each case, BIS found:

In examining whether the relevant aluminum article is produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, ITA recommends

finding, based on the all of the evidence presented, *that the product referenced in the above-captioned exclusion request is not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality*, and recommends granting the request for an exclusion.

Given the similarity of the products covered by the AA Metals requests and CNG's requests, ITA's contrary finding with respect to CNG's requests is not credible.

As a preliminary matter, given the past confusion in the handling of these requests, it is critical that BIS confirm that the denials were not also issued in error. If there was another error, it should be immediately corrected.

CNG continues to believe that differential treatment of its requests from those of other importers is arbitrary. The current exclusion status results in an advantage to CNG's direct competitors, which include not only AA Metals, but also Ta Chen International and Empire -- importers that, unlike CNG are affiliated with foreign producers.

Given BIS's policy of reconsidering its decisions, CNG believes it is important for BIS to reconsider these decisions to ensure that BIS's determinations are not arbitrary and do not unintentionally result in BIS and ITA picking winners and losers among importers. If the discriminatory treatment of CNG is not corrected, the survival of CNG's aluminum business is at risk.

I look forward to your response and arranging a meeting to discuss this further.

From: Fischer Fox, Lynn

Sent: Monday, December 16, 2019 7:17 PM

To: 'Matthew Borman' [REDACTED]

Cc: Brad Botwin [REDACTED]; Marisa Yaskil [REDACTED]; Aluminum232 <Aluminum232@bis.doc.gov>; Kevin Coyne [REDACTED]

Subject: RE: U.S. Department of Commerce-OFFICIAL BUSINESS

Matt,

Thank you for the quick reply.

Best regards,

Lynn

From: Matthew Borman [REDACTED]

Sent: Monday, December 16, 2019 6:41 PM

To: Fischer Fox, Lynn [REDACTED]

Cc: Brad Botwin [REDACTED]; Marisa Yaskil [REDACTED]; Aluminum232 <Aluminum232@bis.doc.gov>; Kevin Coyne [REDACTED]

Subject: RE: U.S. Department of Commerce-OFFICIAL BUSINESS

External E-mail

Lynn,

Checking with our team on status. Will let you know.

Matt

From: Fischer Fox, Lynn [REDACTED]
Sent: Monday, December 16, 2019 6:23 PM
To: Matthew Borman [REDACTED]
Cc: Brad Botwin [REDACTED]; Marisa Yaskil [REDACTED]; Aluminum232
<Aluminum232@bis.doc.gov>
Subject: RE: U.S. Department of Commerce-OFFICIAL BUSINESS

Dear Mr. Borman,

I'm writing to follow up on this issue. We understand that BIS is handling a very large amount of exclusion requests and limited staff. However, the continued uncertainty for CNG while it waits for the reissue of these exclusions is very difficult for the company. If possible, we'd like to arrange a meeting for you with CNG officials to help you understand the issues in this market and the importance of a level playing field for aluminum sheet importers.

Best regards,

Lynn Fischer Fox

Lynn Fischer Fox
Counsel

Arnold & Porter
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T: [REDACTED]
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From: Fischer Fox, Lynn
Sent: Monday, December 9, 2019 4:35 PM
To: 'Matthew.Borman@bis.doc.gov' [REDACTED]
Cc: 'Brad Botwin' [REDACTED]; 'Marisa Yaskil' [REDACTED];
'Aluminum232' <Aluminum232@bis.doc.gov>
Subject: FW: U.S. Department of Commerce-OFFICIAL BUSINESS

Dear Mr. Borman,

I am writing to inquire about the status of the below exclusions requests. Central National Gottesman ("CNG") submitted the referenced exclusion requests approximately one year ago, on December 10, 2018. BIS issued letters dated May 10, 2019 granting the exclusions. Pursuant to the below e-mail BIS appears to be in the process of correcting the text of the decision memos granting the exclusions. Are you able to provide an idea of the timing for the exclusions to be reissued? This process is causing significant confusion and uncertainty for CNG, an American company that provides critical distribution, logistics and finance services to American companies that rely on aluminum sheet for their manufacturing processes.

It is urgent that BIS re-issue the exclusions granted to CNG as soon as possible to avoid irreparable harm to the company. As demonstrated in rebuttal comments submitted by CNG (attached here), BIS has granted exclusions for identical or similar products to CNG's direct competitors, including Ta Chen International, Inc. a Taiwanese trading company and its US subsidiary Empire Metals, Garmco (*aka* Gulf Aluminum Rolling Mill, a company established by the governments of Bahrain, Saudi Arabia, Kuwait, Oman, Iraq and Qatar), as well as AA Metals and Mandel Metals. Examples of a few recently granted exclusions for identical products are attached -- there are many, many more. All of these trading companies compete directly with CNG to supply American manufacturing companies with Aluminum Sheet. Furthermore, even US aluminum producers, such as Novelis have applied for (and received) exclusions for the products described in CNG's requests, because the US supply of common alloy sheet has not been adequate to meet US demand.

If CNG's exclusions are not expeditiously reinstated, the disparate treatment of CNG will put the company at a significant disadvantage. Given BIS's prior decisions to grant exclusions for identical products to those described in CNG's exclusion requests, we hope you can act quickly to reinstate CNG's May 10 exclusions and put it back on a level playing field.

If there is any additional information we can provide to facilitate this process, please do not hesitate to ask.

Best regards,

Lynn

Lynn Fischer Fox

Counsel

Arnold & Porter

601 Massachusetts Ave., NW

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T: [REDACTED]

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From: Aluminum232 <Aluminum232@bis.doc.gov>

Date: December 2, 2019 at 13:41:14 EST

To: [REDACTED]

Cc: "Fischer Fox, Lynn" [REDACTED]

Subject: U.S. Department of Commerce-OFFICIAL BUSINESS

External E-mail

Good afternoon,

Due to a technical error, the decision memos posted on regulations.gov state that the exclusion requests were approved based on the absence of objectors. However, the exclusion requests did receive objections and were analyzed by International Trade Administration to determine whether or not there is sufficient U.S. availability for the requested product. As a result, decision memos must

be corrected and reposted for the following requests:

BIS-2018-0002-13588
BIS-2018-0002-13590
BIS-2018-0002-13591
BIS-2018-0002-13592
BIS-2018-0002-13593
BIS-2018-0002-13595
BIS-2018-0002-13596
BIS-2018-0002-13576
BIS-2018-0002-13579
BIS-2018-0002-13580
BIS-2018-0002-13581
BIS-2018-0002-13582
BIS-2018-0002-13584
BIS-2018-0002-13585
BIS-2018-0002-13586
BIS-2018-0002-13587
BIS-2018-0002-13577

The following decisions associated with the above exclusions are now withdrawn:

BIS-2018-0002-33506
BIS-2018-0002-33508
BIS-2018-0002-33507
BIS-2018-0002-33509
BIS-2018-0002-33510
BIS-2018-0002-33511
BIS-2018-0002-33512
BIS-2018-0002-33507
BIS-2018-0002-33496
BIS-2018-0002-33498
BIS-2018-0002-33500
BIS-2018-0002-33499
BIS-2018-0002-33501
BIS-2018-0002-33502
BIS-2018-0002-33503
BIS-2018-0002-33504
BIS-2018-0002-33505
BIS-2018-0002-33497

If you have any questions, please contact Aluminum232@bis.doc.gov.

Kind regards,

BIS Section 232 Steel and Aluminum Team
U.S. Department of Commerce
Steel: 202-482-5642
Steel232@bis.doc.gov
Aluminum: 202-482-4757
Aluminum232@bis.doc.gov

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