

MEMORANDUM FOR THE ADMINISTRATIVE RECORD

FROM: Erika Maynard, Senior Trade and Industry Analyst

DATE: September 8, 2020

SUBJECT: Ex Parte discussion with NARSTCO, Inc. regarding 232 Exclusions

On September 1, 2020, the following Bureau of Industry and Security (BIS) officials: Matthew Borman, Deputy Assistant Secretary for Export Administration; Karen Nies-Vogel, Acting Director of the Office of Technology Evaluation; Elena Love, 232 Floor Manager; David Boylan, Senior Trade and Industry Analyst; and Erika Maynard, Senior Trade and Industry Analyst participated in a telephone call with the following representatives of the NARSTCO: Lars-Erik Hjelm, Partner at Akin Gump; Colette McCrone, Associate at Akin Gump; and Benjamin Levy, RailWorks General Counsel. This call was arranged at the request of the Lars-Erik Hjelm representing NARSTCO, Inc.

NARSTCO representatives were informed that a written record of this call would be made public as part of the Department's administrative record.

NARSTCO representatives voiced concerned about a perceived procedural issue. A&K Railroad Materials (A&K), Inc. initially filed a rebuttal to NARSTCO's objection, and then withdrew it. NARSTCO emailed the surrebuttal to BIS directly when they could not submit on the portal due to the withdrawal. NARSTCO was concerned that it was not given the chance to properly respond to A&K's rebuttal points. Mr. Borman informed NARSTCO representatives that as A&K's rebuttals were withdrawn, they were not considered in the analysis of these cases by the Department. NARSTCO's surrebuttals were subsequently not applicable for consideration.

NARSTCO representatives were concerned that the exclusion requests granted included the request that NARSTCO had objected to. Mr. Borman explained the 232 exclusion process and that the International Trade Administration (ITA) had determined that the product offered by NARSTCO was not an acceptable substitute for the product requested by A&K. ITA recommended approval based on this analysis and BIS granted the exclusions. NARSTCO representatives stated that they thought this analysis was not accurate. Mr. Borman informed NARSTCO representatives that there is no appeals process for exclusions and there is no mechanism to revisit decisions.

NARSTCO representatives informed Mr. Borman that they would like to speak with ITA representatives about their analysis. Mr. Borman said he would check with ITA on their request. After the call, Mr. Borman followed-up with NARTSCO and informed them that ITA would not discuss their recommendations with NARSTCO and does not engage in discussion about their recommendations with any members of industry.

Mr. Levy inquired if there have been any off the record discussion about the exclusion requests and objections. Mr. Borman informed him that there have not been.

Mr. Hjelm referenced the 232 Exclusion Process FAQs and stated that BIS had the authority to revoke a granted exclusion request. Mr. Borman confirmed that BIS has that authority but that it would not be based on a party not getting its desired outcome.