



September 5, 2023

The Honorable Lisa Wang
Assistant Secretary for Enforcement and Compliance
International Trade Administration
U.S. Department of Commerce 1401
Constitution Ave NW Washington, DC 20230

Dear Secretary Wang:

As you are aware, a “self-initiated” case (not at the request of the domestic industry, but of its own volition) by the Department of Commerce (DOC) against suppliers of aluminum foil from South Korea and Thailand has imposed unwarranted duties on necessary aluminum foil for domestic food, pharmaceuticals, and medical device packaging. These duties are not appropriate as the converting foil used in these packaging applications is not manufactured in the United States in the quantities and quality needed. DOC must fix this with more appropriate remedies in their final determination expected in August 2023.

Our members make products and packaging that people use daily. Aluminum foil is used as a barrier to provide sterility and shelf-stability for a host of food, beverage, nutraceuticals, pharmaceuticals, and medical devices. This includes food and beverage applications such as yogurt, spices, juices, pet food, and candy; health applications, such as over the counter drugs, supplements, and COVID-19 testing kits; medical device packaging, such as vaccinations, absorbable sutures, and surgery kits. They also manufacture the systems and packaging for institutional food delivery for hospitals, universities, and retail. And, aluminum foil is used for the delivery of Meals, Ready-to-Eat, for the U.S. military. When it comes to packaging for medical devices, food, and health care, sterility is critical – literally a matter of life and death. There is no ideal substitution for the barrier protection aluminum foil provides. And, what makes DOC’s preliminary decision on Thai and South Korean foil especially disturbing, is that much of the foil targeted by these duties is not manufactured by foil producers in the U.S., so flexible packaging manufacturers have no choice but to import.

American packaging converter manufacturers consume large volumes of the thinnest aluminum foil that is simply not available from domestic manufacturers. DOC itself has separately reached the same conclusion by granting hundreds of exemptions from the Section 232 tariffs based on the fact that such foil is not available from domestic manufacturers. In its preliminary decision, DOC failed to similarly exempt converter foil from the extension of Chinese antidumping and countervailing duties to South Korea and Thailand. As a result, U.S. packaging manufacturers have to pay new duties on goods they cannot source domestically. Many U.S. converting jobs have already gone offshore with the imposition of the Chinese and Section 232 duties and tariffs. This new action will only continue this trend. These new duties will add additional costs that will make U.S. packaging manufacturers uncompetitive to offshore manufacturers and more jobs

and manufacturing will move out of the U.S. as foreign suppliers of laminated foil and finished goods do not have to pay the duties. The loss of jobs to the American economy will not be the only negative consequence; there will be an increase in the costs of goods and prices to consumers, particularly in the food sector. National security will also be threatened as more of these products will be produced outside of the U.S. and continue to disrupt the supply chain for goods and services used daily.

FPA supports efforts to protect domestic manufacturing and ensure national security, which should include flexible packaging converting. DOC, particularly in a self-initiated case, has broad discretion to find an appropriate remedy to protect all U.S. jobs and its preliminary decision failed to do so. In its final determination, DOC must rectify this by reversing its decision on Korea circumvention. The statutory factors do not warrant the imposition of circumvention duties in South Korea as DOC recognized aluminum foil in Korea preexisted the Chinese AD/CVD cases, in some instances by decades. In addition, DOC recognized that Korea had ample investment, research and development and intensive production processes as measured by capital investment, processing methods, and the value-add of those processes. DOC must also grant an exemption for converting foil, subject to use certification. Given the lack of domestic supply, Commerce should grant an end-use exemption for foil imported for use in the packaging industry through certification until such time as it is available through domestic companies. There is precedence for this in the Steel Concrete Reinforcing Bar from Mexico circumvention case.

In advance, thank you for your prompt attention to our concerns, namely the protection of packaging and product jobs in the U.S. Please do not hesitate to reach out to any of the undersigned for with questions or for more information.

Sincerely,

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The **Flexible Packaging Association** represents suppliers to and manufacturers of flexible packaging. Flexible packaging is the second largest packaging segment in the country and number one globally. The industry represents \$39 billion in annual sales and employs approximately 75,000 people in the U.S. Many of these packages hold products that consumers use or purchase every day, whether in grocery stores, pet stores, retail stores, or restaurants. Products in flexible packaging are also found in doctors' offices, hospitals, and pharmacies. Mail and e-commerce merchandise also use a host of flexible packaging options.

The **American Institute for Packaging and the Environment (AMERIPEN)** is a coalition of stakeholders dedicated to improving packaging and the environment. We are the only material-neutral packaging association in the United States. Our membership represents the entire packaging supply chain, including materials suppliers, packaging producers, consumer packaged goods companies, and end-of-life materials managers. We focus on science and data to define and support our public policy positions based on rigorous research rooted in our commitment to achieve sustainable packaging and effective and efficient recycling policies. The U.S. packaging industry contributes \$537.91 billion in total economic output to the national economy and is responsible for nearly 1.7 million jobs. These workers earn over \$117.73 billion in wages and benefits, and members of the industry and their employees pay \$43.46 billion in direct federal, state, and local taxes.

The **Consumer Brands Association** champions the industry whose products Americans depend on every day, representing nearly 2,000 iconic brands. From household and personal care to food and beverage products, the consumer packaged goods industry plays a vital role in powering the U.S. economy, contributing \$2 trillion to U.S. GDP and supporting more than 20 million American jobs.

The **National Confectioners Association** is the leading trade organization for the U.S. confectionery industry, which generates \$42 billion in retail sales each year. NCA advocates for an environment that enables candy makers to thrive and works to ensure that chocolate, candy, gum, and mints are celebrated for their contributions to culture, society, the economy, and everyday moments of joy. The industry employs nearly 58,000 workers in more than 1,600 manufacturing facilities across all 50 states and supports an additional 635,000 jobs in related fields. The U.S. confectionery industry has made a commitment to increasing transparency, providing more portion guidance options, and educating consumers about the role of confectionery in a happy, balanced lifestyle.

The **Retail Bakers of America (RBA)** was founded in 1918. The 501(c)(6) not-for-profit trade association, is committed to the success of the retail baking industry. Together with their members, they create industry standards through professional certification, industry research, and school programs. The RBA fosters a community of retail bakeries providing a forum for exchanging industry and business information and networking, learning opportunities, and mentoring among bakers, future and existing.

SNAC International, founded in 1937 and formerly the Snack Food Association, is the leading international trade association for the snack industry representing over 400 companies worldwide, including suppliers, marketers and manufacturers. Upon its three pillars of education, advocacy, and networking, SNAC is committed to connecting the snack industry to create growth and opportunity.