Flexible Packaging Association
Connecting. Advancing. Leading.

185 Admiral Cochrane Drive
Suite 105
Annapolis, MD 21401

Tel (410) 694-0800
Fax (410) 694-0900

www.flexpack.org

May 19, 2020

The Honorable Wilbur Ross
Secretary, Department of Commerce
1401 Constitution Ave, NW
Washington, DC 20230

Dear Secretary Ross:

The Flexible Packaging Association (FPA), which is the voice of U.S. manufacturers of flexible packaging and their suppliers, is troubled by the recent additional Department of Commerce activities concerning the Section 232 aluminum tariffs, particularly the exclusions and the new monitoring proposal. At a time when sterile packaging for food, health and hygiene, and medical equipment is more important than ever, and as U.S. manufacturers are suffering from the worst economy in decades, the Administration should be looking at ways to alleviate supply chain burdens, not increase them. Thus, the FPA requests that the additional controls contemplated for the Section 232 exclusionary process and the proposed rule to establish an Aluminum Import Monitoring and Analysis (AIM) system not be finalized. And, FPA requests these tariffs be suspended as others were under the April 28, 2020 Executive Order (EO).

Flexible packaging represents $33.5 billion in annual sales in the U.S. and is the second largest and one of the fastest growing segments of the packaging industry. The industry employs approximately 80,000 workers in the United States and is deemed an Essential Critical Infrastructure Workforce by the Department of Homeland Security. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products. Concerning the tariff impacts, aluminum foil is used for packaging as it provides the barrier protection needed from oxygen, light, moisture, and bacteria that food, health and hygiene, and medical supplies need to ensure stable shelf life, freshness, and sterility.

The Section 232 investigation, which resulted in the 10% tariff on aluminum, which includes foils produced from that aluminum, was initiated under the Trade Expansion Act of 1962, and was to determine what, if any, effects imports of aluminum have on national security. FPA is not aware of any impacts aluminum foil imports for use in the packaging industry has on U.S. national security and the Department of Commerce Report entitled “Effects of Aluminum Imports on the National Security,” (report) did not specify any. Nevertheless, the tariffs were imposed and these import restrictions have had a significant negative impact on the flexible packaging industry and its employment in the U.S.

While FPA supported the adoption of exclusions from the tariffs where aluminum articles are not produced in the U.S. in a sufficient and reasonably available amount or of satisfactory quality,” the process for the exclusions is arduous and slow and has resulted, in some cases, in conflicting

approvals and denials. In addition, manufacturers must apply for the exclusion annually regardless of whether or not there has been a change in circumstances. In the case of fine gauge foil used by flexible packaging manufacturers, the domestic supply of the product has only gotten scarcer. Despite the Section 232 tariffs, as well as the significant Anti-dumping and Countervailing (AD/CVD) duties placed on Chinese aluminum foil imports, one of the only companies in the U.S. supplying light gauge foil chose to go out of business.

As FPA stated in numerous letters and its testimony to the Department, there was never sufficient supply in the U.S. of aluminum foil for flexible packaging to begin with, which is why imports were necessary, and instead of production moving back to the U.S., it simply moved out of China to other parts of the world. Flexible packaging manufacturers' have in some cases moved away from foil, substituting non-foil barrier structures, which does nothing to assist the aluminum industry in the United States. Given that there is not enough supply or quality of the foil flexible packaging manufacturers need in the U.S., the exclusionary process is the only avenue with which to secure aluminum foil for the packaging that must use it, at a time when the public's health and safety are more important than ever.

FPA supports efforts to protect domestic manufacturing and ensure national security. However, aluminum foil used by the flexible packaging industry is not manufactured in the U.S. in the quantities and qualities needed. Since domestic producers made strategic decisions not to participate in the thin gauge aluminum foil market – they cannot now blame imports for filling a void left by their inaction. Failure to invest, and quality lapses, including gauge, width, and lack of appropriate alloys all contribute to the fact that the U.S. producers of aluminum foil are not able to serve the U.S. flexible packaging industry. Flexible packaging manufacturers simply have nowhere to turn but to bring in the vast majority of the aluminum foil they need through imports. Manufacturers often file for more than they need to give them options on width and gauge, to plan for price fluctuations, and to meet increased demand, such as in today's COVID-19 response. To lock into one or more limited suppliers and only file for historical demand only means that prices will soar and U.S. manufacturers' flexibility to modify or source new demand will be severally restricted.

For these reasons, FPA requests that the additional controls contemplated for the Section 232 exclusionary process and the proposed rule to establish an AIM system not be finalized. FPA requests that unless and until the Department can show evidence that aluminum foil for the U.S. flexible packaging industry is manufactured in the U.S. in the quantity and quality needed, these tariffs be suspended in their entirety. At the very least, the tariff relief under the April 28, 2020, EO should be extended to Section 232 duties and the time frame for such should cover imports made through this June. These actions would immediately free up billions of dollars of working capital for American companies and would provide relief to manufacturers that have no choice but to import to continue to provide for the public during this time of crisis.

Keep in mind, these are products that you and I use every day – including hermetically sealed food and beverage products such as candy, salty snacks, yogurt, beverages, and infant formula; and health and hygiene items and pharmaceuticals, such as aspirin, shampoo, shaving cream and yes even flexible packaging for COVID19 and antibody test kits. Aluminum foil is also used by the flexible packaging industry to ensure sterility and efficacy for medical device packaging, enabling the products packaged, such as absorbable sutures, human tissue, and artificial joints, to maintain their efficacy at the time of use. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Carryout, take-out food containers, and e-

commerce delivery, which are increasingly important during this time, are also heavily supported by the flexible packaging industry. Thus, FPA and its members are vital to the supply chain when addressing the needs of U.S. consumers in responding to the COVID-19 crisis.

FPA supports efforts to protect domestic manufacturing; however, any such efforts must consider the impact and consequences on all U.S. manufacturing industries. The Administration should find ways to work together to improve our country's competitiveness. Everybody loses in unfair trade cases, especially the U.S. consumer. FPA's members look forward to supporting the new aluminum foil assets coming online in the next few years in the U.S., but until there is enough aluminum foil in the quantities and quality that our manufacturers need through domestic suppliers, they should not continue to be saddled with the cost and administrative burdens the current tariffs, exclusionary process and proposed monitoring program impose.

Sincerely,

Alison Keane, Esq., CAE, IOM
President & CEO