

Customs Broker Guidance Concerning Valuation of Metal and Non-Metal Content Subject to Section 232 or IEEPA Tariffs

The **NCBFAA Customs Committee and Counsel of Sandler, Travis & Rosenberg, P.A.**, is providing our customs broker members with the following guidance update regarding Customs and Border Protection (CBP) valuation of metal and non-metal content, which is subject to either Section 232 or **IEEPA tariffs**.

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Has CBP issued binding legal advice regarding the valuation of the metal content?

Despite the requirements that Section 232 duties are assessed based on the value of the steel and aluminum content of the subject goods, CBP still has not published binding, formal legal guidance for calculating the value.

What are the main concerns regarding the valuation of metal content?

The concerns arise in two primary contexts:

- Where the imported articles are 100% steel or 100% aluminum, particularly when sold as unfinished, unprocessed or minimally processed metal sold to a fabricator for galvanizing, annealing, alloying, etc., prior to sale to the U.S. importer; and

- Where the imported articles are not wholly of steel or aluminum (there are non-steel/aluminum parts/components) and the metal is sold to the fabricator for such processing (and typically additional fabrication unrelated to the metal occurs) prior to sale to the U.S. importer.

What guidance has CBP provided at this time?

Thus far, the guidance provided by CBP Headquarters (“HQ”) is in its published FAQs addressing the valuation of steel and aluminum content for goods is:

“The value of the steel/aluminum content should be determined in accordance with the principles of the Customs Valuation Agreement, as implemented in 19 U.S.C. 1401a. Thus, the value of the steel/aluminum content is the total price paid or payable for that content, which is the total payment (direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the country of importation) made/to be made for the steel/aluminum content by the buyer to, or for the benefit of, the seller of the steel/aluminum content. Normally, this would be based on the invoice paid by the buyer of the steel/aluminum content to, or for the benefit of the seller of the steel/aluminum content.”

Has CBP provided any additional or differing guidance?

Yes, CBP’s Base Metals Center of Excellence and Expertise (“Center”) recently provided informal guidance attached, which now has been included in CBP Notices of Action advising importers that:

- Where the imported articles are 100% steel or 100% aluminum, there is no backing out of any costs not allowed by the customs value laws. Accordingly, manufacturing, labour, coating, etc., costs are not subtracted; and
- Where the imported articles are not wholly of steel or aluminum the valuation of the non-metal content is based on the price that the *importer* paid for the steel/aluminum content of the *finished* article and is the entered value of the imported article minus the cost of the non-steel/aluminum part/component of the finished article. Accordingly, non-steel/aluminum content does not refer to fabrication, machining, labour, costs, etc.

How does the Center's guidance impact the valuation of metal content for section 232 and non-metal content for IEEPA purposes?

In essence, the Base Metal Center interpreted HQ's FAQ such that the value of the steel/aluminum content should be based on the declared entered value of the merchandise, pro-rated as necessary to exclude the value/cost of non-steel/aluminum parts/components of the finished article.

However, note the bottom of the publication, in which the Center clarifies that **“CBP has not posted any new guidance recently**, but continue to monitor the CSMS messages, Trade Remedy FAQs, and CBP rulings posted on cbp.gov.” In other CBP communication we also have seen acknowledgement that CBP’s position has shifted.

Is this legally binding on importers and what could happen if importers value the metal content differently?

Essentially, this is only the Base Metal Center's interpretation of HQ's formal guidance and is not legally binding unless and until HQ issues a ruling or decision on the issue. However, if and when an importer receives a Notice of Action advising them to declare the value in this manner, it could be seen as a lack of reasonable care not to follow CBP's instruction, requiring them to file a protest or internal advice request for a legally binding HQ ruling.

How should customs brokers approach the metal content valuation issue with their importer-clients?

Given the lack of formal CBP HQ guidance on how the valuation rule should apply, customs brokers should receive written confirmation as to how their importer clients want their metal value content to be declared. The HQ FAQ may continue to be reasonably read to permit valuation based on the price paid by the foreign fabricator (as the "buyer" of the steel or aluminum content) to its steel or aluminum supplier (the "seller").

While this approach arguably aligns with the actual steel or aluminum cost in the production chain and with the statutory principles set forth in 19 U.S.C. § 1401a, the Base Metal's instruction to the contrary must be considered as it very well could reflect CBP's future position when they issue a binding ruling or decision on the matter. That would represent the legal precedent to follow unless a court rules otherwise.

What if my importer-client asks me to advise them on the metal content value issue?

Until CBP HQ publishes definitive guidance or issues a legally binding ruling or decision, the most conservative approach, and the one which would not be questioned as a lack of reasonable care (nor leading to demands for back duties and a monetary penalty), is to follow the Base Metal Center's interpretation methodology and prorate the total

steel/aluminum content value including subsequent processing, fabrication, etc. from the total entered value of the finished article.

Accordingly, there now are heightened compliance concerns in assessing steel and aluminum content value when further processing, fabrication and labor occurs, particularly when there are no other materials in the product.

This could cause CBP to require an importer to report the duty based on the total entered value of the good. In any case, customs brokers should advise importers of the opportunity to obtain binding rulings, internal advice and protest decisions (which also can serve as a basis for judicial action before the Court of International Trade) for clarification and to demonstrate reasonable care, particularly if importers disagree with paying section 232 tariffs on what they believe is part of the non-metal content.

What documentation is needed to support metal content valuation?

CBP has issued CBPF-28s asking for: calculation method, detail explanation, cost analysis, responsible party, importer awareness, supporting documents, invoices and packing lists, schematics/diagrams, and photographs.

Meanwhile, note that CBP will be looking for actual steel/aluminum value and based on these CBP guidance letters and Notices of Action advising importers. This also reinforces the need for documentation to demonstrate those actual costs.

For further information, refer to this CBP Base Metals Center [guidance](#) regarding Section 232 “content value” and [example questions](#) found in CF 28 and CF29 issued by CBP.
(Note: Regular Members must be logged into the NCBFAA website to access the two referenced documents.)

For any questions, please contact **JORI representative**.