

**BEFORE THE BUREAU OF INDUSTRY  
AND SECURITY  
U.S. DEPARTMENT OF COMMERCE**

**COMMENTS ON THE PETITION FOR  
THE IMPOSITION OF MONITORING AND SHORT SUPPLY  
CONTROLS  
WITH RESPECT TO EXPORTS FROM THE  
UNITED STATES OF COPPER SCRAP  
AND COPPER-ALLOY SCRAP**

**DOCKET NO. 040419121-4121-01**

**THE INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

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## EXECUTIVE SUMMARY

On April 7, 2004, the Bureau of Industry and Security (“BIS”) received a written petition from the member companies of the Copper & Brass Fabricators Council, Inc., and the Non-Ferrous Founders' Society (“Petitioners”) requesting that the Department of Commerce impose monitoring and controls on exports of recycled metallic materials containing copper pursuant to the provisions of section 7(c) of the EAA and section 754.7 of the Export Administration Regulations. The Institute of Scrap Recycling Industries (“ISRI”) submits these comments in response to the notice published by BIS in the Federal Register on April 22, 2004 (the “Federal Register notice”) inviting public comment upon the petition. ISRI vigorously opposes the Petition as both unwarranted, based on the lack of a demonstrated short supply situation, and inappropriate, based on its inconsistency with overall U.S. trade policy.

ISRI is the Washington, D.C.-based trade association of the scrap processing and recycling industry. We represent 1,200 companies that process, broker, and industrially consume scrap commodities, including metals, paper, plastics, glass, rubber, and textiles. Our members operate over 3,000 facilities that are located in virtually every state and congressional district, employing more than 30,000 individuals. Many ISRI members are small family-owned businesses, including a significant number that have been in continuous operation for 100 years or more. Several are large, publicly traded corporations. ISRI members handle, process, ship, and/or ultimately recycle scrap commodities. Thus, ISRI’s members are vitally concerned with the potential imposition of short supply controls on exports of copper scrap.

ISRI asserts that the present conditions of the copper and copper-alloy scrap industry do not warrant imposition of monitoring or controls on exports of copper scrap. Although there has been an increase in exports of copper scrap, this increase has not resulted in a shortage of such scrap in the United States. Nor are increased exports the cause of domestic price increases of copper scrap.

The Petition claims that there is currently a domestic shortage of copper scrap. Petitioners, however, failed to provide any evidence to support the existence of a shortage. In fact, recent research indicates that at the end of 2003 there existed a 66.8 million metric ton potential reserve of obsolete scrap. This fact coupled with recent reports of processors that mills are delaying receipt of purchased scrap due to excess inventories of raw materials demonstrate that a shortage does not exist. Recent increases in exports of copper scrap have not depleted the supply of copper scrap available to domestic consumers.

The Petition also claims that the increase in exports of copper scrap caused the domestic price for copper scrap to rise. The domestic price for copper scrap typically mirrors the world market price for such scrap, which is dictated by the global market price for copper metal. Thus, it is the price of copper that dictates the price of copper scrap which always sells at a discount to the price of the more pure and more reliable sources of copper metal. Therefore, the imposition of export controls will not cause a reduction in the domestic price of copper scrap. To the contrary, as in 1972 when export controls were last

imposed on scrap metal, the imposition of export controls will likely lead to prices that will be higher than they would be if controls were not imposed. Implementing export controls will limit the total supply available to the world market and result in higher world market prices. The domestic price for copper scrap will follow suit and rise.

The increase in copper exports is the result of changing conditions in the domestic and world markets for copper scrap. Scrap metal consumers purchase copper scrap according to its grade. The different grades reflect differing requirements of scrap consumers based on the finished products they produce and their tolerance for difference tramp elements. Domestically, all remaining independent secondary smelters, who traditionally purchased the No. 2 or lower grades of copper scrap, have closed in the last ten years. This has resulted in a dramatic decrease in domestic demand for lower grade scrap. At the same time, global demand for copper scrap has increased and the lower grade scrap that was once consumed domestically by the now defunct secondary smelters now makes up the majority of copper scrap exported to foreign consumers. Limiting the export of copper scrap will result in a domestic build up of lower grade scrap that has no U.S. market and could ultimately end up in a landfill. Petitioners fail to distinguish between exports of higher grades and lower grades of copper scrap and present an inaccurate picture of the copper scrap market. It is clear from a complete and accurate understanding of the current domestic market conditions that, if implemented, monitoring and controls will only aggravate the current domestic and global markets for copper and copper-alloy scrap.

Furthermore, the imposition of controls on copper scrap exports would be inconsistent with the international trade policies of the United States. Specifically, if the U.S. were to impose controls it would violate its obligations under the international agreements of the World Trade Organization (“WTO”). The General Agreement on Tariffs and Trade (“GATT”) prohibits restrictions on the exportation or sale for export of any product destined for a member country. Only in limited circumstances, none of which exist in the present copper scrap metal markets, may such controls be imposed. In the past, the Petitioners have argued against similar types of controls implemented by other countries. Petitioners now request that the U.S. engage in the exact conduct that it historically has claimed to violate the WTO agreements.

For these reasons, as more fully explained in the longer comment submitted by ISRI, ISRI opposes the Petition requesting the imposition of monitoring and short supply controls on exports of copper and copper-alloy scrap.

# **COMMENTS ON THE PETITION FOR THE IMPOSITION OF MONITORING AND CONTROLS WITH RESPECT TO EXPORTS FROM THE UNITED STATES OF COPPER SCRAP AND COPPER-ALLOY SCRAP**

On April 7, 2004, the Bureau of Industry and Security (“BIS”) received a written petition from the member companies of the Copper & Brass Fabricators Council, Inc., and the Non-Ferrous Founders' Society (“Petitioners”) requesting that the Department of Commerce impose monitoring and controls on exports of recycled metallic materials containing copper pursuant to the provisions of section 7(c) of the Export Administration Act (“EAA”) and section 754.7 of the Export Administration Regulations. The Institute of Scrap Recycling Industries (“ISRI”) submits these comments in response to the notice published by BIS in the Federal Register on April 22, 2004 (the “Federal Register notice”) inviting public comment upon the petition. ISRI vigorously opposes the petition as both unwarranted, based on the lack of a demonstrated short supply situation, and inappropriate, based on its inconsistency with overall U.S. trade policy.

## ***Background – ISRI and the Scrap Recycling Industry***

ISRI is the Washington, D.C.-based trade association of the scrap processing and recycling industry. We represent 1,200 companies that process, broker, and industrially consume scrap commodities, including metals, paper, plastics, glass, rubber, and textiles. Our members operate over 3,000 facilities that are located in virtually every state and congressional district, employing more than 30,000 individuals. Many ISRI members are small family-owned businesses, including a significant number that have been in continuous operation for 100 years or more. Several are large, publicly traded corporations. ISRI

members handle, process, ship, and/or ultimately recycle scrap commodities. Thus, ISRI's members are vitally concerned with the potential imposition of short supply controls on exports of copper scrap.

The scrap processing and recycling industry is fully integrated worldwide, processes several hundred different industrial grades of material<sup>1</sup> that meet globally accepted industry-wide standards and serve as raw materials inputs in lieu of virgin materials, and ships to varieties of consumers including foundries and mills. The industry worldwide has an annual turnover exceeding 160 billion US dollars and processes over 600 million tonnes of commodities. The American scrap processing and recycling industry's products are worth at least \$30 billion a year. Last year in the United States alone, scrap recyclers handled more than 125 million tons of recyclables destined for domestic use and overseas markets. This tonnage included approximately:

- 68 million tons of scrap iron and steel
- 47 million tons of scrap paper and paperboard
- 4.3 million tons of scrap aluminum
- 2 million tons of scrap copper
- 1.4 million tons of scrap stainless steel
- 1.3 million tons of scrap lead
- 214,000 tons of scrap zinc
- 3.5 million tons of scrap glass or cullet (beverage containers only)
- 300,000 tons of scrap plastic (beverage containers only)
- 56 million scrap tires

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<sup>1</sup> There are nearly three dozen grades of copper and copper alloy scrap alone. Scrap Specification Circular 2003, Institute of Scrap Recycling Industries, Inc. (Washington, D.C.) 2003

These scrap recyclables are collected for beneficial reuse, conserving impressive amounts of energy and natural resources in the recycling process. For example, according to the Environmental Protection Agency (EPA) recycled copper saves the nation 85 percent of the energy that would have been needed to make new copper from ore. Recycled iron and steel result in energy savings of 74 percent; recycled aluminum, 95 percent; recycled paper, 64 percent; and recycled plastic, more than 80 percent.

In addition to the obvious environmental contributions of the scrap recycling industry, ISRI members provide economic benefits to the nation, including exports that contribute significantly to the U.S. balance of trade – in excess of \$5 billion in 2003

### ***Overview: Short Supply Controls and Copper and Copper-Alloy Scrap***

Short supply controls exist in U.S. export control laws as somewhat of an anachronism. With respect to copper scrap, they were last employed during war years when there were genuine shortages and the U.S. government was well advised to limit exports of copper to assure that adequate supplies existed to meet the demands of the U.S. military, industries and consumers. The authority to impose short supply controls has remained a feature of U.S. export control laws even though its rationale has faded. Indeed, the EAA expired on August 30, 2001 and its provisions have been extended by Executive Order 13222 dated August 17, 2001. E.O. 13222 derives its authority from the International Emergency Economic Powers Act, which grants the authority to the President only “to deal with an unusual or emergency threat with respect to which a national emergency has been declared...and may not be exercised for any other purpose.”<sup>2</sup> Before exercising the authority granted by § 7(c) of the EAA we would urge the Secretary of Commerce to consider whether the national emergency declared by the President in E.O. 13222 really

pertains to the Petitioners' requests. It is clear that Congress intended for 7(c) to be applied only to critical situations and not to be applied in every instance where there is an increase in exports of or the price of a recyclable metallic material. In today's increasingly interconnected world market, the United States cannot dictate to or control either the supply or the price of a globally traded commodity such as copper.

The Petitioners' argument under Section 7(c) of the EAA is premised upon several assumptions. As discussed, below, with respect to copper and copper-alloy scrap (referred to hereinafter in these comments as "copper scrap"), each of these assumptions is false. First, and most fundamentally, Petitioners assume a genuine shortage of a given recyclable metal. There is no shortage in the U.S. of copper scrap. In fact, many processors are reporting that mills are currently delaying receipt of purchased scrap due to excess inventories of raw materials at the mills. Furthermore, the vast majority of copper scrap exported from this country can no longer be consumed domestically either because domestic consumption capacity no longer exists or because it is uneconomical to process that material domestically. The lack of evidence of an actual shortage of copper scrap suggests the export control petition is simply an effort to control the price of scrap, rather than a legitimate attempt to address a supply availability problem. Thus, the fundamental premise for the imposition of short supply controls does not exist.

Second, Petitioners assume that the price of scrap dictates, or at least influences, the price of the copper to which it relates.<sup>3</sup> Again, in the case of copper scrap, this assumption is false. In fact, it is the price of refined copper as expressed on the London Metal Exchange

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<sup>2</sup> 50 U.S.C.A. § 1701(b)

<sup>3</sup> For the purposes of these comments the terms primary copper, refined copper and cathode are all used interchangeably.

("LME") or the COMEX division of the New York Mercantile Exchange ("COMEX") that dictates the price of scrap.

Third, Petitioners assume that an increase in exports results from an increase in foreign demand that, in turn, results in a shortage of scrap in the U.S. As explained below, in the case of copper scrap, especially the lower (less pure) grades of copper scrap, increased exports reflect a drop in U.S. demand. Independent secondary smelters that consumed large quantities of "No. 2" copper scrap have all closed in recent years, due largely to the costs of complying with U.S. environmental laws and regulations. Collectively, these smelters consumed more than 450,000 tons annually. As these consumers of "No. 2" copper scrap have closed, the domestic demand for this grade of scrap has diminished. Yet there remain foreign smelters that are willing to purchase this grade of scrap. Thus, scrap processors have begun to export less-pure copper scrap, not because there is a shortage, but because there is no longer any sizable demand for this material on the part of U.S. consumers. Thus, in this case, an increase in exports says little about increasing foreign demand. Rather, it reflects the demise of a significant segment of the U.S. copper industry and the resultant decrease in domestic demand.

Finally, the Petition assumes that the imposition of export controls on scrap metal will drive down the price of that scrap and, by extension, the metal to which it relates. Again, in the case of copper scrap, both of these assumptions are false.

The BIS Federal Register Notice solicits information about the copper industry and copper markets generally. The domestic copper and brass industry is struggling for a number of reasons having nothing to do with scrap supply. The brass mill industry has suffered due to pressures resulting from increased governmental regulation, cathode (*i.e.*, primary



copper) availability, environmental controls, the weak U.S. dollar, and increased competition in their finished product from other domestic industries (*i.e.*, materials or product substitution). In addition, the industry has faced increased competitive pressures from imports of brass mill products. Imports of brass mill products in 2000 hit a record 784 million pounds while brass mill exports have declined. Domestic brass mill rationalization has been an on-going feature. The industry's contraction began more than 25 years ago and has affected scrap processors, secondary copper smelters, primary refiners (*i.e.*, integrated copper producers), brass mills and ingot makers.

It is interesting to note the problems caused by export controls imposed by other countries.<sup>4</sup> The effect has been a shift in global supply patterns and resulting market distortions due to closing off of certain supply regions and a corresponding increase in global demand for U.S. copper scrap. It is well established that export controls can lead to high prices and supply constraints. In a recent letter, Commerce Secretary Donald L. Evans acknowledged that some U.S. trading partners have placed controls on exports of key raw materials, including steel inputs, that may be contributing to high prices and leading to supply constraints. See Exhibit 1. He indicated that the Administration is reviewing these measures and the effect they are having on domestic and world markets to identify appropriate actions that may be taken. Specifically, he indicated that the Department of Commerce is consulting with the Office of the United States Trade Representative to determine the extent to which these export controls may be violating World Trade Organization (“WTO”) obligations. By implementing export controls on copper scrap, the U.S. would engage in the exact conduct that the Secretary of Commerce recognizes may violate WTO obligations. The US government would be better served by working with

these other governments to remove barriers to free and fair trade than exacerbating the problem by imposing artificial market barriers.

It should also be noted that Petitioners vigorously opposed similar restrictions that were placed on the exportation of copper, copper alloy and zinc scrap by certain countries in the European Community in 1987. We note this from a 1987 letter to leaders of ISRI: “*We do not in any way wish to restrict the activities of the U.S. scrap industry, and in fact, feel that ending distortions in the world scrap market caused by foreign export restrictions will benefit the scrap industry as well as scrap consumers.*”<sup>5</sup>

### ***Present State of the Copper Industry***

ISRI commends the Copper Development Association’s Technical Report *The Copper-base Scrap Industry and its By-products – 2002*, authored by Janice L. Jolly, as a source of exhaustive and definitive information relating to the issues raised by the Petition. ISRI will submit electronically to BIS a copy of the Report to the docket in this matter.<sup>6</sup> The CDA Report accurately describes both the copper industry in the U.S. and the role of copper scrap in that industry.

The CDA Report also reflects market conditions at the time it was written in 2002. At that time, there was a surplus of refined copper in world markets, as the global economy was just emerging from a global recession or slowdown. As a result, the global price for both primary copper metal (*i.e.*, cathode) and copper scrap was low. Economic conditions have changed since 2002. The global economy is surging and the global demand for copper

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<sup>4</sup> For example, Russia's export of copper scrap went from 357,000 tons in 1998 to 19,000 tons in 2000 due to new export duties.

<sup>5</sup> Joseph L. Mayer, then and present President, Copper & Brass Fabricators Council, Inc., November 4, 1987.

<sup>6</sup> This submission will cite to the Copper Development Association Report as the “CDA Report.”

has increased. According to Barclays Capital (London), Commodities Research Unit, Ltd (CRU) (London), Brook Hunt (London), and the International Copper Study Group (“ICSG”) (Lisbon), all of which provide independent analysis of the copper industry, global demand for copper has increased 3.7% in 2002 with an estimated 3.2% increase in demand in 2003. It is also estimated that there will be a 6.1% increase in demand in 2004, 4.1% increase in 2005, and 2.2% and 2.6% increases in 2006 and 2007 respectively. Under-investment from 1999-2003 resulted in a drop in production of primary copper (derived from mines) has dropped because, for so many years, the price of copper was low. The net result is a global statistical deficit of refined copper with estimates placed at more than 500,000 metric tons for 2004. As copper prices are rising, production of primary copper will rise. This takes time, however. The capital investment and time necessary to re-open a copper mine are significant. Nevertheless, it remains the case that the copper scrap supply is economically elastic, *i.e.*, as prices rise, so also does supply.

Copper prices are highly cyclical and volatile in nature and prone to distortion by external factors. One classic example includes a period in the mid-1990s when a rogue copper trader from the Sumitomo Corporation was credited for the price gyrations that were apparent during that time. Other examples can be found in the 1973-74, when export controls were placed on certain metal commodities, in 1979-1980, when a petition for copper export controls was threatened, as well as in the late 1990's through 2001, when low prices were attributed in part to the Asian economic crisis and to large aboveground stocks built up earlier.

As can be seen from the chart attached as Exhibit 2, copper price peaks are soon followed by price troughs – most of which reflect the market dynamics of the time period in question. For example, over the last several months, as the price of copper scrap increased,

the scrap supply responded in kind and because of the resultant increase of supply, the average price of copper scrap has since declined over the last several weeks at a *faster* rate than the decline in the COMEX price for cathode. Since early March, for example, COMEX copper values have dropped nearly 20% while scrap—as measured by No. 2 copper prices—has also fallen thus widening the differential between the two benchmarks by more than 30%. In other words, No. 2 copper scrap that was offered at a 15-cent discount to COMEX spot price in March is now commanding little buyer interest at a 20+-cent discount from the COMEX spot price. Further, in an article that appeared in the American Metal Market on April 26, 2004, copper scrap spreads have been pushed to their widest margins in more than two years. Thus, history has shown that conventional economic forces of supply and demand will address whatever imbalance may exist in the short term with respect to pricing and availability. The U.S. government should not intervene in the face of short-term developments to disrupt these ultimately beneficial market forces.

The percentage of copper recycled in the US, and hence its contribution to total copper supply, has dropped in the past twenty years. According to the London-based Commodities Research Unit, Ltd (CRU), the percentage of copper recovered from scrap in 1998 was 36 percent while during the 1980s it was 47.9 percent. The decline, they note, was a reflection of changes in copper end-use applications, developments within the US secondary industry, falling prices for copper scrap and cathode, and tighter environmental restrictions.<sup>7</sup> Thus, the importance of copper scrap to the overall copper and copper-consuming industries is diminishing.

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<sup>7</sup> Secondary copper production worldwide declined 25% in the period between 1995 and 2003 while during the same period world refined production has risen by 29%. Source: ICSG.

Moreover, the availability of copper scrap (as contrasted to primary copper) is also elastic. As the price of copper scrap rises, so also does the quantity of copper scrap that is delivered to scrap processors and, ultimately, to scrap consumers. Thus, here too, government regulation is unnecessary. In the absence of export controls, increasing prices have, in fact, led to increasing supplies as already demonstrated.

Scrap metal markets are inherently cyclical. They are also global<sup>8</sup> and they are one of the purest examples of basic supply and demand economics. As demand increases, it is only normal that price also increases. While individual consumers may complain, these complaints are hardly reason for governmental intervention. Years of experience have shown that price increases are followed by increases in supply, which, in turn, leads to falling prices. It would be both shortsighted and counterproductive for the U.S. government to impose controls on the export from the U.S. of copper scrap in the face of short-term price increases. Indeed, as explained below, the imposition of such controls would only exacerbate the problems they were designed to address.

### ***There is no Shortage of Copper Scrap in the U.S.***

Recent research conducted by Nathan & Associates demonstrates that there is, in fact, no shortage in the U.S. of copper scrap. Nathan & Associates is presently completing a report analyzing the availability of copper scrap in the United States. It expects to complete the report shortly and will present its results at the hearing on May 19, 2004. Based on research completed to date, Nathan & Associates has found that, at the end of 2003, there existed as a potential reserve of 66.8 million metric tons of obsolete copper scrap in the United States alone. This compares to annual demand for copper scrap by the U.S. copper

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<sup>8</sup> The London Metal Exchange started trading copper in 1876, harnessing an already existing global market in copper.

and brass industry of 1 million metric tons. The existence of this potential reserve demonstrates that there has not been, nor is there now, a domestic shortage of copper scrap. This becomes more evident by reports from processors of delayed receipts of purchased scrap at mills due to excessive inventories. There is no evidence that an actual shortage of copper scrap exists in the U.S. The research conducted by Nathan & Associates demonstrates that copper scrap remains plentiful in the United States. Petitioners provide platitudes, but no evidence to the contrary.

***Increased U.S. Exports of Copper Scrap Reflect a Reduction in U.S. Demand and do not Connote a U.S. Shortage***

Scrap processors are expert at what they do. And what do they do? They process scrap commodities into raw materials feedstock, according to globally recognized specifications, for the manufacture of new products that would otherwise be made from virgin materials. If there was not an exigent demand on the part of consumers of copper scrap to carefully distinguish between grades of scrap copper, scrap processors would simply throw all grades of copper scrap into a single bin and offer it to customers without differentiation. The reality is quite different, however. Different grades reflect differing requirements of scrap copper consumers based on the finished products they produce and therefore their tolerance for different tramp elements in the copper scrap.

In the case of copper scrap and its consumers, the grade of scrap is paramount. Each actor has its own unique demands and requirements in this highly specialized market. A copper or brass foundry may buy and consume copper scrap, but if the scrap it buys contains more than a pre-established percentage of tramp elements, the foundry's entire "melt" may fail to meet the foundry's (or its customers') specifications. Even a small percentage of lead solder in a load of copper scrap may render a particular shipment

unusable. Thus, consumers of copper scrap are differentiated by the grades of scrap they purchase.

Most of the consumers who would traditionally purchase the “lower” grades of copper scrap, no longer exist in the U.S. Who are we talking about? Secondary smelters who melted and refined “No.2” and other low grades of copper scrap, removing the impurities, and who sold the resulting higher grade copper to brass rod and copper tube mills. Secondary smelters in the U.S. provided a valuable service to the U.S. economy in recycling the lower grades of copper scrap and providing to consumers more refined or purer grades of copper for consumption or further refining.

As noted in the CDA Report, “Lower copper prices and higher environmental costs over the past several years have created a cost squeeze that contributed to the closure of all U.S. secondary smelters and associated electrolytic refineries.” There are no independent secondary smelters operating in this country anymore. As shown on the chart below, the total annual amount of capacity that has been lost since the mid-1990s is estimated to be 443,000 tons. A detailed and thorough analysis regarding the U.S. secondary copper smelting industry is available on pages 13 and 14 of the CDA Report.

<b>U.S. Secondary Copper Industry Closures (1994 – 2001)</b>			
<b>Company</b>	<b>Location</b>	<b>Capacity (tons per year)</b>	<b>Closed Date</b>
Gaston Recycling Ind.	South Carolina	110,000	1994
Franklin Smelting & Refining	Pennsylvania	18,000	1997
Cerro Copper Products	Illinois	40,000	1998
Southwire	Georgia	140,000	2000
Chemetco	Illinois	135,000	2001
<b>Total lost capacity</b>		<b>443,000</b>	

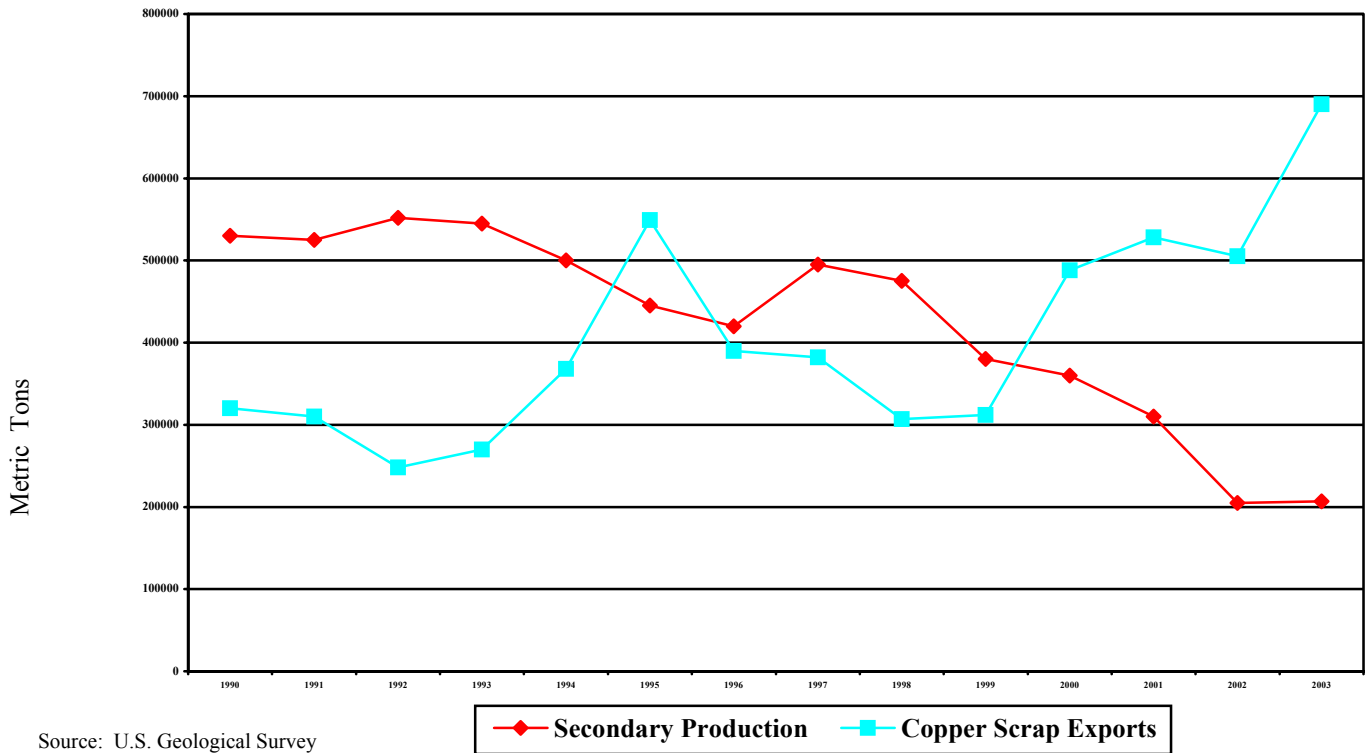
Today, the secondary processing industry consists of fire refiners, ingot makers, brass mills, foundries, chemical plants and other manufacturers. For feedstock, these industries purchase and consume prompt/industrial scrap (sometimes called “new” scrap) as well as obsolete material (otherwise known as “old” scrap).

The demise of domestic secondary smelters has eliminated a significant portion of the domestic market for obsolete scrap and even some prompt/industrial scrap, leaving this material with only two appreciable means of disposition: export markets or domestic landfills. The export market has, historically, been an important outlet for U.S. obsolete scrap.

History clearly shows the *decline* in domestic secondary production has been followed by a corresponding increase in copper scrap exports. As domestic smelters shuttered their operations, more and more of this low-grade material found its way to export markets in general and to China in particular. Thus, the growth in the export market in recent years reflects *both* global demand and, significantly, the lack of domestic secondary smelters to consume scrap for the manufacture of products useful to domestic mills.



### Exports of Copper vs Secondary Production 1990-2003



Supporters of copper scrap export controls point to the rising level of exports over the past 13 years. It is true that copper scrap exports reached 689,000 metric tons in 2003, an all-time record. However, the vast majority of the scrap earmarked for offshore consumers is No.2 and lower grades of copper scrap - the very same materials that used to be consumed by the now-nonexistent domestic secondary smelting industry. This lower grade copper includes such materials as electric motors, copper brass castings, sheet copper, gutters, bus bars, insulated copper wire, and yellow brass to name a few, items for which copper recovery is labor-intensive or otherwise not cost effective to process. The recoverable copper content generally ranges from around 15% to percentages in the high 90s. High grades of copper scrap, such as chopped copper wire, are also sometimes exported based upon regional market conditions.

In this regard, ISRI objects to the petition filed by the Petitioners insofar as it attempts to gloss over the important distinction between high-grade copper scrap typically consumed domestically and the low grade copper scrap for which there is inadequate domestic demand. Petitioners refer indiscriminately to copper scrap and copper-alloy scrap, as if it were the same thing and served the same markets. As explained above, the opposite is the case. When it comes to copper scrap, the grade of the scrap is paramount. The market for “bare bright” or “No. 1” copper scrap is entirely distinct from the market for “No. 2” copper scrap. By lumping these two markets together, Petitioners have misrepresented the commercial reality of the copper scrap market. In considering the Petition, BIS must recognize that it is analyzing several distinct sub-markets, each characterized by its own unique dynamics. More particularly, in analyzing export data, ISRI urges BIS to distinguish between exports of “No. 1” copper scrap and “No. 2” copper scrap.

U.S. domestic export data<sup>9</sup> for copper scrap is reported under four different HTS subheadings which do not directly correspond to exports of “No. 1” or “No. 2” copper scrap. However, HTS 7404.00.0080 (Other Copper and Alloy Waste and Scrap) which is the closest representing exports of “No. 2” copper scrap, has experienced the largest increase in exports for 2002 and 2003 with an increase of 18% and 20% respectively. In comparison, exports of “No. 1” copper scrap which is more closely represented under HTS 7404.00.0020 (Waste and Scrap of Refined Copper) experienced a decrease of 18.6% in exports in 2002. See, Exhibit 3. Of course, exports of the relatively lower grade “No. 2” scrap have increased. The secondary smelters that used to buy and process this scrap have closed. Thus, there is a vastly diminished U.S. demand for this particular product.

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<sup>9</sup> Data is compiled from tariff and trade data from the U.S. Department of Commerce, the U.S. Treasury, and the U.S. International Trade Commission.

The Petitioners themselves note that “some element of the product exported is not of sufficient quality for use by the brass mill industry.” Petition at 11, fn. 14. In fact, the vast majority of copper scrap exported is No. 2, cannot be used by the U.S. brass mill industry, and would end up in landfills if export controls were imposed.

### ***Scrap Prices are Driven by World Prices for Copper***

Section 7(c) authorizes BIS to impose short-supply controls on the export of scrap metal in times of shortage. When metals are scarce, prices rise, and the logic of Section 7(c) seems to be that, by limiting exports from the U.S., supplies will increase and prices will drop. This presupposition simply does not apply in the case of copper scrap. The price of copper scrap does not drive the market or the price. Rather, the price of copper scrap follows the larger global market for copper metal.

Consumers of copper scrap are rational economic actors. They have a variety of choices in buying and sourcing the inputs they require. If copper scrap were equivalent in all respects to copper cathode or copper ingots, the price of copper scrap would equal the price of copper cathode and copper ingots. In fact, consumers of copper scrap confront slightly higher costs when they choose to use copper scrap as compared to copper cathode or copper ingots. First among these is the possibility that the load of scrap they buy and melt might contain a slightly higher level of tramp elements than anticipated. In the case of copper, this incremental excess of tramp elements can render an entire “melt” unusable. Second, consumers of copper scrap typically test the level of tramp elements in loads of scrap that are delivered to them. Even if the test does not indicate the presence of tramp elements, the cost of testing adds to the cost of production.

Generally speaking, brass mills and other scrap copper consumers offer prices for scrap copper based upon a discount to the spot price of copper on the COMEX. Depending on short-term market fundamentals, higher grades of scrap (*e.g.*, “bare bright” copper) can and do occasionally command premiums to the COMEX quotations. This is hardly unusual, as higher premiums are also paid above the prevailing spot COMEX price for copper cathode. Depending on current market conditions, these premiums can range from a penny or two above the spot price to five cents or more. As an example, cathode premiums in April 2004 were reportedly reaching seven cents above the COMEX spot-market price. The price of bare bright No. 1 copper scrap also correlates to the COMEX price and accurately trends with market dynamics. See, charts attached as Exhibits 4.

A better indication of the health of the market is the spread between #1 and cathode, NOT #1 and COMEX. Scrap is used by brass mills as a substitute for cathode. Thus, as the spread between cathode and #1 widens, brass mills use more scrap. Conversely, as the spread narrows, the mills are more likely to use cathode. Scrap copper plays virtually no role in the pricing of cathode. Rather, cathode pricing plays a tremendous role in the pricing of scrap copper. Currently, cathode is in a global short-supply, which until recently accounted for copper prices that were approaching record highs. Yet, as shown on the chart attached as Exhibit 5 in constant dollars, today's prices for copper and copper alloy scrap are not unprecedented.

While price volatility is always present, both buyers of scrap and sellers of brass mill products have at their disposal the means to hedge their respective metal positions as a means of prudent risk management. Hedging metal exposure should be a routine exercise for the domestic brass mill industry as it has proven to be an effective way to mitigate the

volatility in COMEX prices described above. ISRI assumes many brass mills do hedge and are therefore able to control their risk.

While U.S. scrap processors have become ever more efficient and diligent in sorting and grading copper scrap, it nevertheless remains the case that scrap consumers bear marginally higher prices for using copper scrap than they would for using copper cathode or copper ingots. These marginally higher costs are reflected in the “discount” that is paid in the market for various grades of copper scrap.

What is important here is to recognize that the price paid for copper scrap is a function of the price paid for purer or “more reliable” sources of copper metal, *i.e.*, copper cathode or copper ingots. Stated differently, it is not the price of copper scrap that dictates the price of copper. Rather it is the price of copper that dictates the price of copper scrap. Copper scrap always sells at a discount to the price of more pure and more reliable sources of copper metal. The price of copper scrap thus follows the world price of copper metal. The notion that increasing the quantity of scrap available to U.S. consumers would somehow reduce its price is therefore fallacious. The price of both copper metal and copper scrap is driven by world market forces of supply and demand. Demand is now high while supply, in the short term, is low. Of course prices are rising. Market forces will rectify these temporary imbalances, however. Any effort of the U.S. government to intervene would only interfere with these natural market forces.

***The Imposition of Short Supply controls on Copper Scrap Would Actually Cause Scrap Prices to Increase.***

Based on historical experience, ISRI submits that, if BIS were to grant the relief requested by petitioners, *i.e.*, were BIS to limit exports from the U.S. of copper scrap, the imposition of those controls would likely result in higher copper scrap and copper prices

rather than lower prices. As the Secretary of Commerce acknowledged, export controls have been known to contribute to high prices and lead to supply constraints. See Exhibit 1.

Thus, the entire effort would have the unintended result of damaging precisely those copper consumers who now seek the imposition of controls.

U.S. export controls were imposed on ferrous scrap exports during the period of 1973-1974. Like Petitioners, U.S. steel producers argued that scrap exports were creating a domestic scrap shortage and that foreign scrap buyers were thereby raising the cost of U.S. steel to domestic industries. R. Shriner, Control Reversal In Economics: U.S. Scrap Export Restrictions, *The Business Economist*, p. 3 (1977). The objective of the restrictions was to retard the outflow of scrap to foreign users to protect the supply available for domestic users and reduce the level of scrap price increases. Id. Restrictions were placed on the amount of scrap exported from the U.S. in early 1973 and extended to 1974. Despite the imposition of export controls, the price of scrap continued to rise at an accelerating rate through 1973 and into 1974. Id. During this period, export purchasers were agreeing to prices substantially above the domestic market level because the rising demand for steel and the restricted supply of scrap caused foreign buyers to vigorously compete for the available supply. Id.

The 1977 study of the after-effects of the export controls imposed on scrap provided an explanation for the increase in domestic scrap prices during the period the controls were in place.

In the absence of export controls, foreign and domestic scrap are part of the same market and their prices move essentially in harmony. Only when the export controls were imposed did a significant divergence from their traditional relationship emerge. Therefore, any effect on domestic scrap price that is attributed to foreign scrap price must ultimately be attributed to the export restriction itself.

. . . It appears that both buyers and sellers of scrap in the U.S. failed to anticipate or recognize the fact that the traditional relationship between domestic prices and export prices could not be maintained once export controls were applied. Seeing export prices skyrocket and expecting the domestic prices to remain in its normal relationship to export prices, buyers and sellers may well have been led astray by plausible but naïve expectations of market behavior based on previous conditions.

*Id.* at. 5.

The report concluded that the evidence suggests that the scrap export restrictions actually caused domestic scrap prices to rise more than would have been the case otherwise and caused the U.S. steel industry to spend approximately \$2 billion more for ferrous scrap in 1973 and 1974 than it would have without scrap export restrictions. Id.

Petitioners are seeking monitoring and controls to help reduce the domestic price of copper scrap. Specifically, Petitioners request the imposition of a volume-based annual quota on U.S. exports of copper scrap and copper-alloy scrap of 380,139 metric tons. Petition at 32. This is a reduction of 373,402 metric tons in relation to 2003 exports and 186,699 metric tons in relation to 2002 export volumes. Petition at 33. As history shows us, reducing the U.S. supply of copper scrap available to the world market is likely to cause the domestic price to increase rather than decrease. As in 1972, the price of domestic scrap continues to closely reflect the price of scrap on the world market. Limiting the supply of scrap available to foreign purchasers will, as in the past, cause them to compete over the available scrap and drive the export purchase price up. Therefore, the closely related domestic price will likely follow suit and increase. The objective of the proposed controls is to reduce the domestic price not to cause an increase. Imposing monitoring and controls on copper scarp exports would cause the exact opposite of what is intended. There is already significant data gathering on exports through the Department of Commerce's Bureau of the

Census. Imposing monitoring would be redundant with current efforts and would add additional costs and unnecessary burdens on the government and industry.

Furthermore, monitoring and controls are not the appropriate remedy for addressing Petitioners concerns. Petitioners' concerns stem from possible unfair trade practices by foreign governments, which are best addressed with a 301 trade petition. Section 7(c) was not intended to be a surrogate for other more appropriate trade remedies. The present state of the copper scrap industry is not best remedied by imposing short supply controls which would likely cause further increases in the domestic price of copper scrap and thus aggravate the situation.

***The Imposition of Short Supply Controls on the Export of Copper Scrap Would Violate the United States' Obligations Under the International Trade Agreements of the World Trade Organization***

If the United States were to impose controls on the exports of copper scrap, it would violate its obligations under the World Trade Organization ("WTO") agreements. Article XI(1) of the General Agreement on Tariffs and Trade ("GATT") prohibits restrictions on the "exportation or sale for export of any product destined for the territory of any other contracting party." GATT Article XI(1). The purpose of this prohibition is to prevent a party to the WTO agreements from enacting measures that protect or promote its domestic industries. Petitioners have requested that the U.S. engage in the exact conduct that is prohibited by limiting the supply of U.S. copper scrap available to the world market for the purpose of reducing the domestic price of copper scrap for U.S. scrap consumers.

There are certain conditions under which a country may implement export restrictions. However, those conditions do not exist here. GATT Article XI(2)(a) permits temporary export restrictions when applied to prevent critical shortages of products essential to the



member country. As demonstrated above, there is no shortage of copper scrap in the U.S., nor can such scrap be considered essential to the U.S. GATT Article XX provides several exceptions as well. Measures implemented pursuant to Article XX must not be applied in a manner that would constitute “a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or disguised restriction on international trade . . .” GATT Article XX. If imposed, the export controls would be unjustifiable discrimination between countries since the same conditions prevail in the U.S. market and the world markets for copper scrap. Such controls would clearly constitute a restriction on international trade. In the past, the U.S. has consistently taken the position that these types of controls are inconsistent with the GATT.

The submission of our outside counsel Patton Boggs LLP explains these arguments in greater detail.

## CONCLUSION

On April 28, in discussing U.S.-China trade relations, Treasury Secretary John Snow stated, “The Bush Administration maintains that the international trading system works best with free trade. . . . Economic isolationism does not work and it’s a path we will not follow.” These comments, while addressed primarily to China’s pegged currency rates, apply equally to the proposed imposition of short supply controls on U.S. copper scrap.

ISRI believes that the Petition is a misguided effort to address alleged unfair trade practices by some foreign nations or simply an effort to control prices. The Congress declared in § 3(2)(c) of the EAA that “it is the policy of the United States to use export controls...only to the extent necessary...to restrict the export of goods where necessary to protect the domestic economy from the *excessive drain of scarce materials and* to reduce the

*serious inflationary impact of foreign demand.*”<sup>10</sup> Section 7(c)(3)(A) premises relief upon carrying out the policy stated in § 3(2)(c). Petitioners have failed to make a case under § 3(2) (c); therefore, relief should be denied and the Petition dismissed.

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<sup>10</sup> 50 U.S.C.A. 2402(2)

## **EXHIBITS**

The following files are being sent as Exhibits to this document::

ISRI Exhibits to Written Comments on Copper Petition.pdf

CDA Copper Scrap Report02.pdf

Copperbrief1-042204.pdf