

**Testimony of David A. Hartquist
Before the Bureau of Industry and Security
United States Department of Commerce
Regarding Copper-Based Scrap Short Supply
May 19, 2004**

Good morning, I am David A. Hartquist of Collier Shannon Scott, counsel to the co-petitioners in this short-supply proceeding. We appreciate having the opportunity to appear before this panel today. My testimony addresses (1) certain legal questions raised by the Institute of Scrap Recycling Industries, Inc. (“ISRI”), (2) the legal standard applicable to this investigation, and (3) our request for relief.

In the first instance, ISRI asserts that the petition is inappropriate due to its being inconsistent with overall trade policy. That claim overlooks or at least understates the fact that short-supply petitions and relief involving exports of metallic materials capable of being recycled are expressly authorized by sections 7(a) through (c) of the Export Administration Act of 1979, the statutory provisions governing this case. Moreover, the legislative history

underlying the short-supply language for recyclable metals is clear that Congress carefully considered the pros and cons of permitting short-supply measures and found on balance that such petitions and relief should be authorized.

ISRI has erroneously judged that short-supply relief by the United States for copper-based scrap would violate the obligations of the United States under Article XI of the General Agreement on Tariffs and Trade (“GATT”). Article XI:1 of the GATT does broadly proscribe export controls, but Article XI:2(a) explicitly permits export prohibitions or restrictions that are temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting party. The Argentine Leather case cited by ISRI is not on point. In that dispute settlement before the World Trade Organization, the focus was a provision in Argentine law that allowed Argentine tanners’ representatives to be present at the time of inspections by customs officials of hides destined for export. This procedure was found to be a de facto export restriction proscribed by Article XI:1 of the GATT.

Argentina did not establish that its law qualified for the exception under Article XI:2 of the GATT.

In contrast, as demonstrated in our petition, in our initial comments, and in our testimony at this hearing, we do satisfy the criteria of the GATT: (1) there is in the United States a critical shortage of copper-based scrap; (2) copper-based scrap is essential to the United States; and (3) the relief we seek is temporary and non-discriminatory and thus consistent with Articles XI:2(a) and XIII:1 of the GATT. Continued exports of huge quantities of copper-based scrap will leave the brass mill industry and the brass and bronze foundries of the United States severely, if not irreparably, incapacitated. The repercussions from such a weakening and perhaps loss of this domestic capability and capacity would be very far-reaching.

Under U.S. domestic law and Articles XI:2(a) and XIII:1 of the GATT, the temporary relief that the co-petitioners seek is appropriate and warranted. As a result, there is no need to refer to any exception in Article XX of the GATT, which would come into

play only if short-supply relief as to copper-based scrap were inconsistent with Articles XI:2(a) and XIII:1. As we will underscore in the balance of our witnesses' statements today, the prerequisites for relief under the statute at 50 U.S.C. App. § 2406(c)(3)(A) are satisfied:

- (1) there has been a significant increase, during a specific period of time, in exports of copper-based scrap in relation to domestic supply and demand;**
- (2) there have been a significant increase in the domestic price and a domestic shortage of copper-based scrap relative to demand;**
- (3) exports of copper-based scrap are as important as any other cause of this price increase and domestic shortage;**
- (4) the increase in the price and domestic shortage of copper-based scrap relative to demand are significantly adversely affecting and will continue to significantly adversely affect the U.S. brass mill industry and the brass and bronze foundry industry; and**
- (5) monitoring and export controls are necessary in order to carry out the statutory policy of protecting the U.S. economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.**

Lastly, in our petition, we have requested that exports of copper-based scrap be monitored and limited to 380,139 metric tons for a year, or 31,678 metric tons per month, with an option of extending this quota beyond a year in the event of continued supply shortages. The annual average of 380,139 metric tons reflects the five-year period of 1996-2000 when exports of copper-based scrap took place at a historically more representative and normal level than in the last several years.

With reference to the several questions by the Department, let me make the following points:

- (1) We believe the restrictions should be implemented on the basis of the Harmonized Tariff Schedule's Schedule B classifications and probably could not be carried out by type or grade of scrap. At the same time, monitoring should include a requirement that the exporter of record and shipping party also identify clearly on the Shipper's Export Declaration ("SED") each type or grade of scrap by volume being exported, and this information should be aggregated and placed in a regularly published report, hopefully weekly.**
- (2) We believe the export controls we are seeking would result in a domestic market for the copper-based scrap embargoed from export. ISRI asserts that**

limiting exports would lead to a build-up in the United States of lower-grade scrap that has no U.S. market and would be used for landfill. To the contrary, we believe the annual limit of 380,139 metric tons, apportioned among all export destinations on a historically grounded, pro rata basis, would leave the United States with a greater supply of the higher grades of copper-based scrap than we have seen over the last several years.

- (3) Along with a larger supply of the higher grades of copper-based scrap, we anticipate the prices for these materials in the United States would fall, not rise as ISRI claims.**
- (4) We also expect that the greater availability and lower prices of the copper-based scrap would reduce the costs and thereby improve the competitiveness of our brass mills' customers.**
- (5) Finally, export controls should also assist the processors in the United States that are central to the domestic scrap-collection industry. These companies have been suffering due to their being unable to process the increasingly large volumes of copper-based scrap that is being exported.**

Thank you.