WRITTEN TESTIMONY

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U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

"PRODUCT EXCLUSION PROCESS FOR SECTION 232 TARIFFS ON STEEL"

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Chairman Brady, Chairman Reichert, Ranking Member Pascrell and members of the Committee, my name is Willie Chiang, Executive Vice President, Chief Operating Officer and a member of the Board of Directors of Plains All American GP, LLC. I have also been named as the incoming CEO effective later this year.

I appreciate the opportunity to testify regarding the Section 232 tariff exclusion process, including the Commerce Department's recent denial of our exclusion request for 26-inch high-frequency welded[1] (HFW) line pipe that will be used to construct the Cactus II pipeline system. This new 26-inch diameter, 550-mile crude oil pipeline system is a critical infrastructure project that will help enable production growth in the Permian Basin region of west Texas and New Mexico.

About Plains

Plains All American Pipeline is a U.S.-based midstream energy company with nearly 3,400 employees across the United States. We operate one of the nation's largest and most integrated networks of midstream energy infrastructure, with ownership of more than 13,000 miles of active crude oil pipeline in the United States, more than 85 million barrels of liquids storage, 25 crude oil or natural gas liquids rail terminals and five marine terminals. In 2017, Plains handled approximately 4.5 million barrels of crude oil per day in the U.S. We also have sizable pipeline and midstream facilities operations in Canada, managed by our more than 1,450 Canadian colleagues.

Plains All American Pipeline is committed to domestic infrastructure investment. During the past 20 years, we have invested more than $12.5 billion in new North American energy infrastructure to support energy production growth, contributing to U.S. energy independence and national security. With safety as one of our core values, we are committed to designing, constructing, operating and maintaining pipelines in a safe and reliable manner, as well as to meeting or exceeding regulatory standards.

We are an American company headquartered in Houston, and we are proud to source more than 85 percent of our capital investments domestically. We support policies that encourage

[1] *The HFW manufacturing process may also be referred to as Electric Resistance Welding (ERW).*

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domestic production of steel, just as we have a preference for the domestic production of energy. However, currently steel imports are essential given the lack of domestic availability for certain products.

When the Section 232 tariffs were introduced in March 2018, we proceeded with the exclusion process for the Cactus II line pipe we had ordered months earlier in December 2017. The specific pipe specification required by the project is not manufactured in the U.S., requiring us to order it from overseas. We were disappointed that the Commerce Department rejected our request for tariff exclusions and, as I will testify, our experience with the exclusion process has revealed significant flaws in the implementation of Section 232 for steel tariffs.

In addition, we appreciate the support of a number of elected officials who understand the challenges we and others in our industry face due to the imposition of the Section 232 tariffs and support our position. In particular, we would like to thank Chairman Conaway and his eight Texas House delegation colleagues, as well as Senator Cornyn and Texas Governor Abbott for their support of our concerns. We also appreciate your Committee's interest and your willingness to devote a hearing to this important topic.

Summary of Policy Recommendations

On March 7, 2018, more than 100 members of Congress, including several members of this Committee, sent a letter to President Trump expressing concern over steel and aluminum tariffs and setting forth four critical elements that should be considered in the 232 exclusion request process. These observations were prophetic as we are now dealing with certain of the same concerns identified in the letter.

It is essential that Congress help rectify flaws in the way Section 232 tariffs and the exclusion request process have been implemented. We believe by making certain improvements to the Section 232 process, Congress and the Administration can achieve President Trump's objectives for revitalizing the steel industry while promoting U.S. energy dominance.

We believe our experience with the Department of Commerce's process and the unique market conditions surrounding our applications will provide useful insight for the Committee as it conducts its oversight. We propose the following recommendations to improve the Section 232 process:

1. Exempt international steel orders placed prior to the imposition of tariffs and quotas.

2. Exempt critical infrastructure project components from tariffs and quotas.

3. Recognize technical decisions regarding product specifications must be made by individual companies, not the U.S. government.

4. Ensure companies receive due process in the exclusion request procedures.

5. Consolidate exclusion requests by project or purchase order instead of requiring individual filings for nearly identical products.

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Implementing these enhancements would better balance the Administration's objectives of steel revitalization and the pursuit of energy dominance. Alignment of these goals is critical to avoid significant unintended consequences that could undermine important progress towards realizing American energy independence, strengthening national security and improving the balance of trade.

On a related matter, I would like to highlight the importance of avoiding absolute quotas on steel imports and will expand on this later in my testimony.

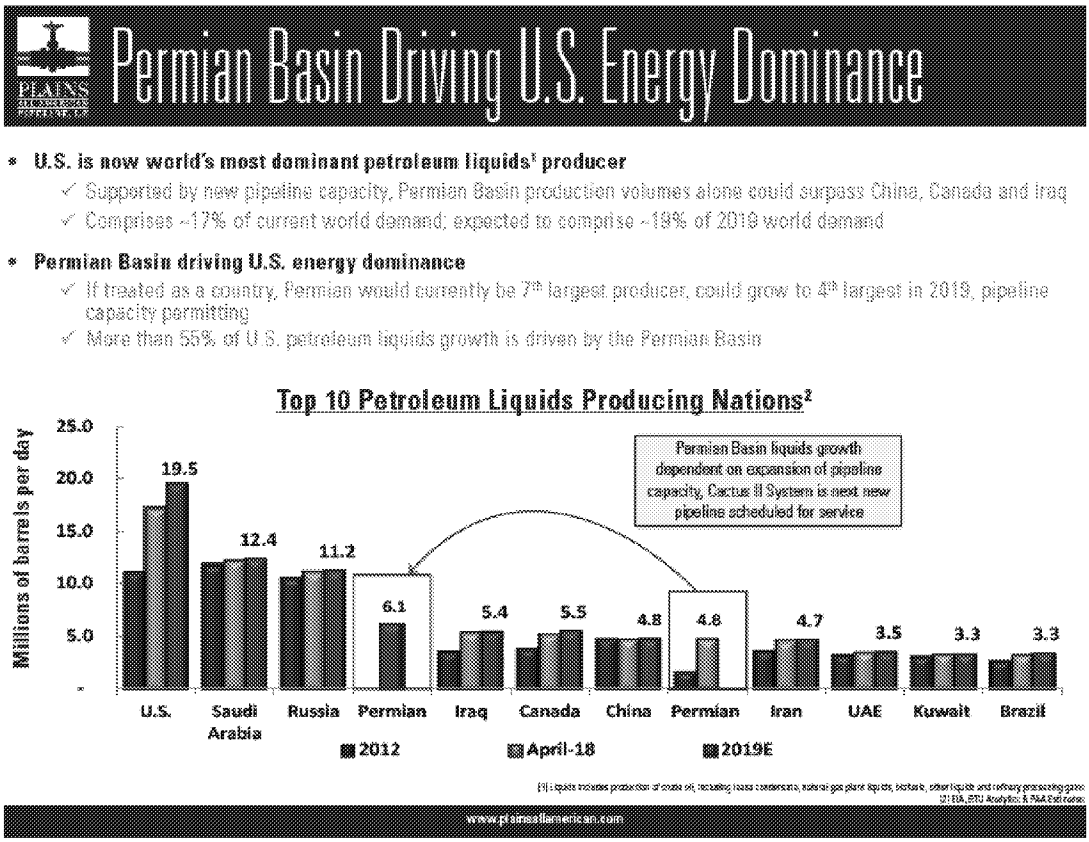
Using as an example our experience in seeking a steel tariff exclusion for our Cactus II pipeline project, I would like to provide more detail on our recommendations to improve the Section 232 process. Understanding the current status of the Permian Basin and the importance of our Cactus II pipeline project to the Permian Basin's continued growth is critical to understanding the detrimental effects of a flawed 232 steel tariff process on the interests of both our company and our country.

The Permian Basin

Located in west Texas and southeastern New Mexico, the Permian Basin is the largest oil play in America, the fastest growing crude oil basin in the world, and by far the largest driver of current and projected future U.S. energy production growth. If it were a country by itself, the Permian Basin would already qualify as the 7th largest petroleum liquids producing country in the world.

Permian Basin energy production growth benefits job creation, national energy security and the balance of trade. However, crude oil production growth in the Permian Basin is being threatened by the very fact that it is rapidly outpacing available pipeline takeaway infrastructure. As a result, we expect, within the coming months, there will not be enough pipeline takeaway capacity to move forecasted volume growth, forcing crude oil production to be shut-in or moved by rail and long-haul truck. These alternative transportation methods are much more costly and are limited in their ability to service projected production growth.

Timely construction of proposed pipeline infrastructure in this region is critical to ensure adequate pipeline capacity that will sustain Permian production growth. If sufficient pipeline infrastructure, including our Cactus II Pipeline system, is built within the next 18 months as planned, it is anticipated the Permian Basin will surpass China, Canada and Iraq to become the fourth largest liquids petroleum producing region in the world.



The Cactus II Pipeline System

Our Cactus II project is a new 26-inch diameter, 550-mile, crude oil pipeline system that will be constructed between the Permian Basin and Corpus Christi. Approximately 80 percent of the $1.1 billion project cost is comprised of U.S. material and labor and will support more than 2,600 construction jobs.

Cactus II will enable the transportation of nearly $15 billion per year of crude oil, benefiting the regional and national economy. With an initial in-service date that is currently projected for the fall of 2019, Cactus II will ultimately provide nearly 700,000 barrels per day of crude oil transportation capacity, helping overcome a major limitation to continued Permian Basin production growth.

Cactus II Steel Procurement Process

The line pipe we utilize in our construction projects must meet exacting specifications. Our original project scope envisioned a 24-inch Outside Diameter (OD), HFW pipeline, and we later increased the size to 26-inch HFW pipe due to customer demand. The 2-inch increase in diameter allows for a nearly 20 percent increase in pipeline capacity.

In 2017 we requested quotes from pre-qualified U.S. and foreign mills to manufacture the required diameters of HFW steel pipe for our Cactus II pipeline in lengths ranging roughly from 70 to 76 feet. These pipeline integrity- related specifications were required to limit the number of girth welds and the length and location of seam welds. We specified HFW pipe because it is consistent with the vast majority of the pipelines we have constructed and because our maintenance and operations processes and practices are largely based on this specification.

Notably, American mills either did not bid for the project or submitted alternative specifications for the 26-inch pipe option that were not acceptable for Cactus II's project design. In fact, the lack of U.S. production capability for the pipe subject to this exclusion request was confirmed in recent testimony by a domestic pipe mill chief executive, who acknowledged he was not aware of any U.S. mill capable of creating 26-inch pipe with the HFW manufacturing technique that meets this project's specifications. This same executive reiterated the same point in a letter of objection to our 232 exclusion request, stating "no U.S. mill can produce 26-inch pipe in HFW."

As a result, in accordance with our project schedule, we placed our initial line pipe order in December 2017 with a mill located in Greece, well in advance of the Section 232 Presidential Proclamation in March 2018. The steel is arriving in multiple shipments, which started earlier this month and will continue through the end of this year.

Cactus II Application for Section 232 Exclusion Decision and Denial

After the March 2018 imposition of the Section 232 25 percent tariff on steel, Plains submitted the necessary tariff exclusion requests to the Department of Commerce for approximately 550 miles of 26-inch, OD, HFW pipe from Corinth Pipeworks (CPW).

On July 13th, the Department of Commerce posted its decision memo, denying our request for tariff exclusion for Cactus II line pipe. The denial of our request appears to be based on an analysis by the International Trade Administration (ITA) that *"the product... is produced in the United States in a sufficient and reasonably available amount and of a satisfactory quality."* Although we have sought to receive the supporting data generated by the ITA through multiple avenues, we have not yet been provided with that analysis.

Flaws in the 232 process

As it exists, the 232 process has multiple flaws. One significant flaw is that the current 232 exclusion process does not allow for an applicant to effectively engage in the Department of Commerce's exclusion review process. It also provides limited due process or transparency for applicants. Due to the opaque nature of the process, we can only assume that Commerce's determination is based on a review of a combination of the objectors' submissions, which appear to not be required to be substantiated, and other undisclosed data by staff – without interaction with the applicant.

Furthermore, there is no formal process for the applicant to rebut objector comments. In our case, several domestic mills posted comments claiming they could produce acceptable substitutes to Plains' order in satisfactory quality and quantity on the last day of the 30-day comment period. As a result, these comments were posted and made available to Plains only

after the comment period had closed, effectively eliminating any opportunity to rebut the comments during the comment period. Plains did submit a rebuttal to the domestic mills' objections directly to staff at the Bureau of Industry and Security of the Department of Commerce, but we still do not know whether our rebuttal was considered in the exclusion request review process. Additionally, we are unaware of an opportunity to appeal the exclusion request denial.

The process is also reportedly challenged by a backlog of more than 20,000 exclusion requests and associated documents needing attention in a limited window of time. As this number climbs, it is possible that projects may begin to face delays due to the uncertainty of tariff assessments if the Commerce Department is unable to process these exclusion requests in a fair and timely manner.

Recommendations to Enhance the Section 232 Exclusion Request Process

Congress and the Administration should consider the following changes to improve the 232 exclusion request process:

1. **Exempt international steel orders placed before the imposition of tariffs and quotas.**

   The U.S. government should seek to ensure its policies do not reach back in an "ex-post facto" manner and violate the sanctity of capital investment decisions that were made based on laws and rules in effect at the time the investment decision was made. In addition to the fact that these infrastructure projects are critical to national interest, they are privately financed, and the economics of these projects factor into a company's decision to approve the construction of a project. Imposing a 25 percent tax on one of the most significant contributors of the project cost – after the business decision has been made to proceed – is unjust and may pose a risk to the completion of energy projects critical to our national interest.

   Specific to the pipeline industry, the investment decisions for pipeline infrastructure projects are made months in advance of receiving the first line pipe from a steel mill. In the case of Cactus II project, Plains ordered pipe in December 2017 from a steel mill in Greece, months ahead of both the decision to impose steel tariffs (March 2018) and the date that the implementation of those steel tariffs began to affect EU imports (June 2018). We are now dealing with a major unexpected, unjust retroactive tax that affects the project's economics.

   Ironically, the denial of our exclusion request provides no relief to the U.S. steel industry. We have already begun to receive shipments of the steel, so even if we were able to substitute product specifications, it is too late to cancel our order from Greece and shift it to a U.S. mill without incurring substantial economic loss and major delays in the schedule, a timeline which is critical to maintain in order to support continued Permian Basin production growth. The denial of this tariff exclusion merely punishes an American company for developing a project that supports our national interest.

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The Greek steel mill will receive its payment as contracted, and unless our exclusion requests are reconsidered/approved, the Cactus II project will incur a punitive tax of approximately $40 million, yet the U.S. steel industry will receive no benefit.

Retroactive application of new policies to investment decisions and purchase orders already made adds uncertainty to our economy and will inevitably result in delayed investment decisions and slow job creation.

As referenced in the May 7th letter from members of Congress to President Trump, grandfathering orders for imported steel placed prior to the imposition of the tariff would rectify this injustice, restore business certainty for orders made prior to the imposition of the 232 tariffs and could relieve some of the exclusion request backlog faced by the Department of Commerce.

2. **Exempt critical infrastructure project components from tariffs and quotas.**

The Department of Homeland Security has identified energy pipelines as part of our nation's critical infrastructure, and the availability of line pipe is essential to help the Trump Administration achieve its objective of energy dominance. In fact, President Trump's March 28, 2017, Executive Order states: "The safe, reliable transportation of crude oil via pipeline and other modes of transportation enhances U.S. energy independence and national security."

In line with other goals of this Administration, the Section 232 process should make accommodations for projects that are deemed critical infrastructure or supportive of the national interest. In this light, the Commerce Department should exclude line pipe, which is critical to supporting U.S. energy production growth, from tariffs and quotas.

At a time when the Administration and Congress are working to try to introduce a major publicly financed infrastructure bill, such privately financed projects that clearly serve the national interest should be encouraged, not unjustly taxed. In addition, other critical pipeline infrastructure has been recognized by three executive orders of the President to ensure their expedited completion in the name of the national interest as critical energy infrastructure.

According to the American Petroleum Institute, line pipe currently amounts to approximately five percent of the total volume of steel imports. Congress and the Administration should consider exempting line pipe from steel tariffs and quotas until the U.S. steel industry is able to build the capability and capacity to timely manufacture the line pipe required to meet America's energy growth.

3. **Recognize technical decisions regarding product specifications must be made by individual companies, not the U.S. government.**

Every day at Plains, we are focused on safe, reliable and responsible operations. Our company has developed stringent pipeline specifications to aid us in this effort. One way pipeline companies like Plains remove variables and decrease risk to the community and the

environment involves selecting the right type of pipe and the right mill for a project. It is important that the pipe conform to our specifications, which meet or exceed regulatory and industry standards, and have been developed over decades of experience constructing and operating pipelines. For Plains, HFW pipe has been the backbone of our pipeline construction program for 20 years, so everything from our field crew's experience to our operational and maintenance procedures are geared towards HFW pipe.

Plains has specific design, construction and operating standards, as well as integrity, inspection and maintenance programs based on decades of experience and exacting internal standards. Our engineers have intimate knowledge of the specific requirements of the Cactus II pipeline system. ***After conducting a comprehensive analysis of the project route, required capacity and operating dynamics, Plains engineers determined the Cactus II Pipeline would require 26-inch HFW pipe.*** Because no U.S. mill can produce 26-inch pipe in HFW, our 232 exclusion request should have been granted by the Commerce Department on this basis. Instead, in our exclusion review process, the Commerce Department apparently disregarded our company's long-standing technical requirements and expertise and concluded on its own that a different pipe specification would suffice for the Cactus II project.

When evaluating an exclusion request, it is critically important for the Commerce Department to evaluate the specific technical specifications each industry requires of its steel components, as opposed to merely reviewing the availability of domestic products that, in its own opinion, could serve as a substitute. In its decision to reject the Cactus II exclusion request, the Commerce Department erroneously determined, without seeking input or clarification from Plains, that line pipe manufactured to another specification is an appropriate substitute for the HFW line pipe our engineers specified for the Cactus II pipeline. A technical decision such as this must be made by individual companies that are accountable and responsible for the safe, reliable and responsible operations of their assets. The government should not dictate a critical line pipe specification decision we have to live with for the multi-decade life of the pipeline.

Having the government impose this tariff without taking the unique requirements of the project into account is akin to having government dictate what type of pipe we use – or suffer a tax (or in this case a retroactive punitive tax).

4. Ensure companies receive due process in the exclusion request procedures.

The opaque nature of the 232 exclusion process, the inability to state our case and the lack of an opportunity to appeal the Commerce Department's decision – due process flaws that do not exist with respect to most other government procedures – should be rectified to ensure petitioners receive appropriate due process.

The current 232 process lacks transparency. A petitioner's ability to state its case is limited to the submission of a standardized form and supporting electronic documentation. No forum is provided for interaction with those determining the merits of either the petitioners' or the objectors' arguments. In addition, there is no opportunity to respond to objections – even if the objections contain incorrect information, such as was the case with

our exclusion application. The opportunity to respond to on-the-record claims made against Plains, before the Commerce Department staff renders a decision, is a key aspect of due process. In our case, despite multiple inquiries, the Department of Commerce has not provided any information on the basis for its decision to reject our tariff exclusion request.

The existing 232 process for steel tariffs does not allow the submitting company to testify before a committee to request a product exclusion or for a trade association to testify and request relief on behalf of an industry. This is something allowed in the U.S. Trade Representative Section 301 tariff exclusion process.

The Department of Commerce should review the Section 301 tariff exclusion process as it evaluates potential process enhancements. The 301 process provides a notice and comment period that allows for meaningful public engagement. During this time, interested parties have the opportunity to testify before an interagency committee and submit comments and answers to questions regarding the proposed list of tariffs. In some cases, tariffs on proposed products have been removed from consideration. Only after this level of engagement and consideration are 301 tariffs levied on certain products.

Additionally, the 301 exclusion process offers the ability for trade associations to submit requests on behalf of the petitioner beyond just the importer of record. Plains believes this level of engagement at the outset could have helped alleviate situations such as this, where tariffs have been placed on a product for which there is no domestically available substitute.

Finally, from a due process perspective one of the most unjust aspects of the 232 process is the absence of a formal appeal process. While petitioner's request are sometimes denied without prejudice to the right to refile the request, this right is of limited value given that the process lacks transparency and there is no discernable standard for how decisions are made.

5. **Consolidate exclusion requests by project or purchase order instead of requiring individual filings for nearly identical products.**

Currently, companies must file separate tariff exclusion requests, on a case-by-case basis, for each and every different type of steel it imports. This means companies must file new requests every time they import the same product and file multiple requests for all the different steel components required for a project. This creates a great deal of work both for companies and the Commerce Department.

For instance, one of our other Permian Basin pipeline projects (a smaller project, but one that is mission critical to ensuring timely growth in the Permian Basin) required six exclusion requests to address multiple possible interpretations of Customs agents for the same pipe. Consolidating these requests would help reduce the backlog of more than 20,000 requests and related filings the Commerce Department is currently addressing in the 232 process.

Absolute Quotas Pose an Even Worse Threat

On a related matter, I would like to highlight the importance of avoiding absolute quotas on steel imports. Potential absolute steel import quotas present even more significant variables that could deny projects such as the Plains Cactus II project access to line pipe, even if a 25 percent import tariff is paid. If quotas were enforced on the EU, we may not be able to receive the steel we ordered prior to tariffs or potential quotas being put in place.

We appreciate and support the Administration's efforts in support of fair trade, but the Administration's position of requiring absolute quotas in exchange for country exclusions from tariffs, such as the KORUS agreement with South Korea, would jeopardize U.S. jobs and energy production growth, a key national security objective and a major driver of American economic prosperity.

Additional absolute quotas would risk stopping projects in their tracks – eliminating U.S. jobs and curtailing continued energy growth. Limiting the amount of steel available for critical infrastructure projects like crude oil pipelines is unworkable. Receiving only 80 percent of required materials for a pipeline is like receiving 80 percent of the materials for a bridge: it is zero percent effective. Furthermore, steel amounts to approximately 20 percent of a pipeline's project cost. Generally, the other 80 percent of the project cost, includes such items as labor, other materials, engineering, transportation and land acquisition, all of which is typically sourced domestically. A quota would indeed prevent the importation of steel, but it also would prevent the investment of the balance of the capital for that project. Absolute quotas create uncertainty, cause delays or even cancellations for critical infrastructure projects, and must be avoided.

Unintended Consequences of the Tariff

In closing, Mr. Chairman, we need to find a way to promote both energy production and our steel industry – not pit one against the other. I want to stress Plains All American supports the efforts of achieving fair trade and strengthening the U.S. steel industry. However, without changing a number of aspects of the way the Section 232 steel tariffs and related exclusion request process have been implemented, the tariffs will result in significant negative unintended consequences to national security, American energy dominance and balance of trade.

America's pipeline system is critical infrastructure and must be expanded. Without the above recommended changes, the Section 232 process may chill this development by delaying projects or making them altogether uneconomical while negatively impacting American jobs.

Recognizing that line pipe represents approximately five percent of the total volume of steel imports, we also ask that Congress and the Administration consider exempting line pipe from steel tariffs and quotas until the U.S. steel industry is able to build the capability and capacity to timely manufacture the line pipe required to meet America's energy production growth.

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify. I welcome the opportunity to respond to your questions.

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