

WRITTEN SUBMISSION OF
THE ALLIANCE FOR COMPETITIVE STEEL AND ALUMINUM TRADE

Comments Regarding Interim Final Rule
Docket Numbers BIS-2018-0002 and BIS-2108-0006
May 16, 2018

These comments are submitted by the Alliance for Competitive Steel and Aluminum Trade on the interim final rule (the *Interim Regulations*) which amend the National Security Industrial Base Regulations (the *Existing Regulations*). The amendments set forth a process for U.S. companies to submit requests for exclusions from actions taken by the President under Presidential Proclamations 9704 and 9705, both dated March 8, 2018 (the *Proclamations*), as amended, which place additional tariffs on certain imports of steel and aluminum products pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (*Section 232*).

The Proclamations authorize the Secretary of Commerce to grant a product exclusion from the Section 232 tariffs at the request of an affected party if the U.S. Department of Commerce, Bureau of Industry and Security (*BIS*) determines that the product in question (a) is not produced in the United States in a sufficient and reasonably available amount; or (b) is produced in the United States but not of a satisfactory quality; or (c) should be granted an exclusion based upon specific national security considerations. The Interim Regulations have been promulgated to set forth the procedures for the exclusion process. Pursuant to a Federal Register notice, published on March 19, 2018 (the *FR Notice*), interested persons have been asked to submit comments to BIS regarding the Interim Regulations.

Introduction

The Alliance for Competitive Steel and Aluminum Trade (ASCAT) represents thousands of businesses across the United States who oppose the sweeping Section 232 global tariffs on steel and aluminum products. Our members represent a broad cross-section of industries that produce intermediate and finished goods containing steel and aluminum as important inputs. The Alliance also includes a wide range of manufacturers and farmers that are among America's most export-dependent sectors. Our producers are leaders in productivity and technological innovation and depend upon open trade and competitive inputs to thrive in the global economy.

ASCAT members are convinced that these restrictions are having, and will continue to have, a significant negative impact on our businesses, employees and customers. While we clearly need to address problems of unfair trade practices, subsidies and global overcapacity in steel and aluminum production, mechanisms exist under our trade laws to address these specific problems without the severe damage that is being inflicted on U.S. producers by the Section 232 tariffs. Therefore, we remain opposed to the Section 232 tariffs and will actively seek their removal. Further, we are deeply concerned that the product exclusion process, as set forth in the Interim Regulations, is not working well. We provide the comments below to address our concerns about the product exclusion process.

Specific Comments on the Interim Regulations

The Existing Regulations are being amended by adding two new supplements (the *Supplements*) to Part 705 of Subchapter A of the Existing Regulations. Supplement No. 1 to Part 705 details the requirements for exclusion requests regarding steel products. Supplement No. 2 to Part 705 details the requirements for exclusion requests regarding aluminum products.

Given that the Supplements are very similar in terms of their requirements, our comments regarding Supplement No. 1 should be taken to apply equally to Supplement No. 2. Our detailed comments on the Supplements are provided below.

Comment 1: The Supplements at (c)(1) state as follows:

“Only individuals or organizations using [steel/aluminum] in business activities (e.g., construction, manufacturing, or supplying [steel/aluminum] product to users) in the United States may submit exclusion requests.”

We strongly object to this limitation on who can file an exclusion request because it excludes trade associations from filing exclusion requests on behalf of their members. This limitation stands in stark contrast to the ability of “any individual or organization” to file objections to an exclusion request. In cases where a number of companies would like to make the same exclusion request, such as when the imported product at issue is not produced in the United States and is used by multiple domestic manufacturers, it is very inefficient to ask each of the companies to file the same request. Doing so increases the cost to manufacturers since each manufacturer has to file an individual request rather than allowing them to all benefit from one filing. Further, the review process by BIS will be similarly inefficient if BIS has to review multiple filings which essentially contain the same exclusion request. Given the backlog that BIS is already experiencing in this process, it would be helpful for BIS to allow such multi-party filings because BIS can then make one decision that will apply equally to all of the affected domestic requesting parties.

A more significant concern with this restriction is the effect that the restriction has on small- and medium-sized enterprises (SMEs). SMES suffer a disproportionately negative effect from this process because small companies do not have the expertise or the resources to easily file these exclusion requests. Many small manufacturers routinely rely on their trade associations to assist them with advocating for their issues and trade associations are uniquely suited to make these sorts of filings. A failure to amend the Interim Regulations to allow for multi-party

and trade association filings will therefore most significantly harm SMEs who are already at a disadvantage in this process. BIS should amend the Interim Regulations to allow for filings both by trade associations and by multiple U.S. companies who all seek the same product exclusion.

Comment 2: The Supplements are silent on the issue of whether a company that successfully obtains a product exclusion may obtain a refund of duties paid on such products already entered through U.S. customs procedures. However, the issue was partially addressed in an amendment to each of the Proclamations.¹ This statement in the Proclamations provides retroactive relief for those companies whose products are granted an exclusion request but only to such time as the date of the posting of the exclusion request by BIS.

There are several problems with this resolution of the issue. First, this statement in the Proclamations does not provide any details regarding the process for obtaining refunds, providing no clarity to U.S. businesses as to how this process will work in practice. The Interim Regulations should be amended to describe this process in detail. Further, the Section 232 tariffs went into effect on March 23, 2018, and, to date, no exclusion requests have been granted. Therefore, assuming some product exclusions are ultimately granted, U.S. companies seeking the exclusions will be unable to recover the duties paid during the period from March 23rd until the date on which their comments are posted by BIS (a date that they cannot control since BIS has complete discretion as to when to post filed comments). In addition, the time period between filing an exclusion request and the posting of that request appears to be taking weeks. This delay lengthens the overall time period during which imports which may ultimately qualify for a refund will never be entitled to a refund even if the related product exclusion request is ultimately granted. This result will unfairly penalize the filing company because issuance of a product exclusion essentially means that the product should not have been

¹ See Presidential Proclamation Adjusting Imports of Steel into the United States (Mar. 22, 2018) at (7); Presidential Proclamation Adjusting Imports of Aluminum into the United States (Mar. 22, 2018) at (7).

included within the scope of the tariffs as of March 23, 2018 and any tariffs paid on an excluded product on or after that date should rightly be refunded to the filing party. BIS should amend the Interim Regulations to provide that, upon issuance of a product exclusion, the filing company will be entitled to a refund of duties retroactive to March 23, 2018.

Comment 3: The Supplements at (c)(2) state as follows:

“Separate exclusion requests must be submitted for steel products with chemistry by percentage breakdown by weight, metallurgical properties, surface quality...and distinct critical dimensions...covered by a common HTSUS subheading. Separate exclusion requests must also be submitted for products falling in more than one 10-digit HTSUS statistical reporting number.”

This provision essentially means that a separate exclusion request must be submitted for each variation of a product, even those variations with only minor differences, such as width or length. Further, steel or aluminum products encompassing more than one 10-digit HTSUS statistical reporting number must submit a separate exclusion request for the same product under each of the statistical reporting numbers. Both restrictions are unduly burdensome and make the filing process more complex and more costly than necessary. The Interim Regulations should be amended to allow exclusion requests to cover ranges of dimensions within the same Harmonized Tariff Schedule (HTS) code to simplify the application process for manufacturers.

Comment 4: The Supplements at (f)(2) state as follows:

“Exclusions will generally be approved for one year.”

The Interim Regulations are not clear on what process will be used to review the existing exclusions at the one-year anniversary date. BIS should ensure that the process for a successful filer to seek an extension of the original exclusion order is not overly burdensome. BIS should require the domestic producers to provide evidence that the circumstances leading to the grant of the original exclusion order have changed. BIS should amend the Interim

Regulations such that, if no facts or circumstances regarding the original exclusion request have changed, then a filing company should not be required to file a completely new exclusion request simply in order to retain the benefit of a request that has already been approved.

Comment 5: The Supplements at (c)(2) state as follows:

“The Commerce Department will approve exclusions on a product basis and the approvals will be limited to the individual or organization that submitted the specific exclusion request, unless Commerce approves a broader application of the product-based exclusion request to apply to additional importers.”

The language of this section of the Interim Regulations clearly contemplates that BIS is considering approving broader exclusion requests which can apply to multiple importers. However, the Interim Regulations provides no guidance as to how groups of companies can ask for such a broader exclusion. BIS should amend the Interim Regulations to explain the circumstances under which BIS will approve a broader product exclusion and how U.S. companies may request such an exclusion.

A related issue is whether a company seeking to use a previously approved request will have to submit a completely new exclusion request covering the same product. Again, this would be inefficient and time-consuming. BIS should amend the Interim Regulations to provide a streamlined process whereby a second company seeking to use an exclusion already granted to a U.S. company can quickly obtain the right to use the same product exclusion.

Comment 6: The Supplements at (b)(3) state as follows:

“Individuals and organizations that have proprietary or otherwise business confidential information that they believe relevant to the Secretary’s consideration ... should so indicate in the appropriate field of the relevant form.”

The Interim Regulations make it clear that both the exclusion requests and objections are meant to be made publicly available and that business proprietary information should not be used in completing the request form. However, the language above suggests that, by indicating

that the filing company has relevant business confidential to provide to BIS, there is some mechanism for discussing this information with BIS. In many cases, it is very difficult, if not impossible, to complete the exclusion request form without revealing propriety information and, in doing so, companies run the risk of revealing such information to their competitors. We urge BIS to amend the Interim Regulations to allow for the filing of business confidential information in a way that protects that information from public disclosure.

Comment 7: The Supplements at (f)(3) state as follows:

“The review period will not exceed 90 days, including adjudication of objections submitted on exclusion requests.”

While the Interim Regulations do provide a set period of review for exclusion requests, they do not provide for any limit on the amount of time that BIS may take to conduct its initial review of the exclusion request prior to posting that request on the regulations.gov website.

Companies report that there are extensive delays in this initial vetting process which, in turn, adds significant delay to the overall time frame for the review of the exclusion requests. The Interim Regulations should be amended to provide some finite time period, such as 14 days, between when an exclusion request is filed with BIS and when it is posted for comment.

Without some set period for this step in the process, filing companies have no certainty as to when they can likely get a response to their request. Continued uncertainty is extremely disruptive to U.S. businesses trying to plan and cope with the Section 232 tariffs.

Conclusion

The Alliance for Competitive Steel and Aluminum Products believes that trade is a critical ingredient for economic success. The American economy is strong and our manufacturers, farmers and service industries are seeing the benefits of recent tax cuts and regulatory reform. In light of these trends, this is the worst possible time for U.S. policy-makers

to erect trade barriers. The Section 232 tariffs are undermining rather than advancing U.S. economic growth and our broader national security interests. While the product exclusion process promises to provide some limited forms of relief for those U.S. businesses who can successfully navigate it, the process as set forth in the Interim Regulations is fraught with operational issues, as outlined above. The Alliance respectfully requests that BIS consider our comments and amend the Interim Regulations to address our concerns.

Thank you for the opportunity to present our comments. If you have any questions regarding our comments, please contact Rufus Yerxa, President of the National Foreign Trade Council, at ryerxa@nftc.org.

APPENDIX A

ASCAT MEMBERS WHO SUPPORT COMMENTS

Air-Conditioning, Heating, and Refrigeration Institute

Alliance of Automobile Manufacturers

American Automotive Policy Council

American Chemistry Council

American Exploration and Production Council

American Fuel & Petrochemical Manufacturers

American International Automobile Dealers Association

American Petroleum Institute

American Pipeline Contractors Association

American Soybean Association

American Supply Association

American Wire Producers Association

Associated Equipment Distributors

Associated General Contractors of America

Association of Equipment Manufacturers

Association of Global Automakers

Auto Care Association

Beer Institute

Can Manufacturers Institute

Coalition of American Metal Manufacturers and Users

Distribution Contractors Association

Flexible Packaging Association

Grocery Manufacturers Association

Household & Commercial Products Association
Independent Petroleum Association of America
Industrial Fasteners Institute
International Association of Drilling Contractors
LNG Allies
Midwest Food Products Association
Motor & Equipment Manufacturers Association
National Automobile Dealers Association
National Council of Farmer Cooperatives
National Electrical Manufacturers Association
National Foreign Trade Council
National Marine Manufacturers Association
National Pork Producers Council
National Retail Federation
National Tooling and Machining Association
Outdoor Power Equipment Institute, Inc.
Pet Food Institute
Petroleum Equipment and Services Association
Precision Machined Products Association
Precision Metalforming Association
Shelf-Stable Food Processors Association
Specialty Equipment Market Association
Truck & Engine Manufacturers Association
U.S. Grains Council
U.S. Wheat Associates