



May 18, 2018

The Honorable Wilbur Ross
Secretary
Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

RE: Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum, Docket Nos. BIS-2018-0006 and BIS-2018-0002

Dear Secretary Ross:

The Coalition of American Metal Manufacturers and Users (“CAMMU” or “the Coalition”) is pleased to offer the following comments on the Department of Commerce’s (“Department”) Bureau of Industry and Security (BIS)’s Interim Final Rule relating to requesting exclusions from remedies applied under Section 232 of the Trade Expansion Act of 1962.¹ CAMMU is a broad organization of U.S. businesses and trade associations representing over 30,000 companies and over one million American workers in the manufacturing sector and the downstream supply chains of a wide variety of industries including aerospace, agriculture, appliance, automotive, consumer goods, construction, defense, electrical, food equipment, medical, and recreational industries, among others.

While CAMMU appreciates the detail BIS has provided on the exclusion process, the Coalition has grave concerns regarding the broader effect of tariffs on U.S. businesses and consumers, certain aspects of the rule’s implementation, and requirements on companies filing exclusion requests. Ideally, the Department would eliminate the Section 232 tariffs, but short of that, it is essential exclusion requests are processed in a fair, transparent, and expeditious manner.

¹ Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum, hereafter “Interim Final Rule,” 83 Fed. Reg. 12,106 (March 19, 2018). Online at: <https://www.federalregister.gov/documents/2018/03/19/2018-05761/requirements-for-submissions-requesting-exclusions-from-the-remedies-instituted-in-presidential>

I. Tariffs on Steel and Aluminum are Detrimental to the U.S. Economy and Should be Eliminated

The Administration's steel and aluminum tariffs help a small subsection of domestic industry at the expense of the nation's economy as a whole. According to a study by Joseph Francois, professor of economics and Managing Director of the World Trade Institute and Laura Baughman, President of the Trade Partnership, steel and aluminum tariffs will result in a net loss of nearly 146,000 jobs.² More than five jobs would be lost for every one gained. The ripple effect comes via vastly increased prices that are either borne by downstream businesses or passed through to American consumers. Outcomes this extreme are unacceptable and are a grave concern for metal manufacturers and users across the country, including the 6.5 million Americans employed in steel using jobs.

Even if major exporting steel and aluminum countries receive exemptions and certain products are excluded, failure to adhere to a transparent and expedited process creates uncertainty surrounding the tariffs' direction and scope that is inherently damaging. As the National Retail Federation, the largest retail trade association in the world recently revealed, "the very discussion of tariffs on billions of dollars of goods and threats of a potential trade war create uncertainty across the U.S. business and farm community, depress commodity prices, and have already harmed U.S. companies, farmers, consumers, and markets."³

As stated, the best solution to grow the U.S. economy would be to terminate the Section 232 tariffs on steel and aluminum. Short of that, it is incumbent upon the Department and the Administration to move forward with an accessible, streamlined, and timely exclusion process by addressing the concerns of domestic steel- and aluminum-using manufacturers.

II. The Proposed Exclusion Process Should Be Revised to Reduce Burdens on U.S. Companies

In order to be expedient for affected businesses, the Interim Final Rule should be revised to remedy proven and potential burdens on industry. Already, there are signs that the exclusion process will prove dangerously unwieldy for U.S. businesses. In the Interim Final Rule, the Department predicted there would be only 4,500 responses.⁴ *The New York Times*, however, recently reported that, as of May 13, American

² Francois, Joseph and Laura Baughman. "Does Import Protection Save Jobs? The Estimated Impacts of Proposed Tariffs on Imports of U.S. Steel and Aluminum." The Trade Partnership, March 5, 2018. Online at: <https://tradepartnership.com/wp-content/uploads/2018/03/232EmploymentPolicyBrief.pdf>

³ Letter to Robert Lighthizer Re: Multi-Industry Association Comments on Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, May 11, 2018. Online at: <https://nrf.com/sites/default/files/Multi-Industry%20Association%20China%20301%20Hearings%20Letter%20Docket%20USTR-2018-0005%20-%20051118%20Final.pdf>

⁴ Interim Final Rule at 12,109.

companies have submitted 8,200 requests to BIS for a product exclusion.⁵ That means Commerce has received almost two times as many requests in six weeks than what it predicted for the entire duration of the exclusion process. Additionally, despite the volume of filings and the Department's "unprecedented effort" to review requests, the Commerce Department has yet to grant a single product exclusion.⁶ This points to what is becoming a chaotic and burdensome process that only adds to the uncertainty created by the imposition of the tariffs themselves.

Compounding the problems of U.S. companies who may seek a product exclusion, certain requirements contained within the Interim Final Rule are particularly onerous. For example, the Rule states that, "[a]pproved exclusions will be made on a product basis and will be limited to the individual or organization that submitted the specific exclusion request, unless the Department approves a broader application of the product based exclusion request to apply to additional importers."⁷ This would, in effect, require all companies importing and using the same product to file a separate request which would create massive individual burdens and would likely result in enough duplicative filings to overload the Department's already strained review capacity. Additionally, companies must submit a separate request for each diameter under a product category. Combined, these requirements already resulted in one company submitting 1,167 discrete filings.⁸

Additionally, the Rule limits qualified applicants only to the users of steel or aluminum,⁹ meaning that trade associations cannot file on behalf of their members. This limitation and the product requirement described above are particularly harmful to small businesses that often do not have the resources needed to submit exclusion applications for the products that are not available from domestic sources and therefore must be imported. In addition, this duplicative process creates a clear and overwhelming burden on the staff tasked with reviewing identical requests and will continue to lead to unnecessary delays slowing down the review process.

Furthermore, the Rule does not state the criteria under which the Department will approve a request. As stated, to date, the government has not approved any applications; will the Department automatically approve a request if no objection is filed? In several objections already publicly posted, steel producers admit to not having a history of producing the products listed in the exclusion request yet still filed an objection. While the Rule indicates a 90-day response time, it does not state the standards for reviewing an application or what consideration the Department will give to objections, including those that readily admit to not currently producing the subject material in the quantity, or to the quality, needed.

⁵ Swanson, Ana. "Disarray Plagues U.S. Companies' Efforts to Win Tariff Exemptions. New York Times, May 13, 2018. Online at: <https://mobile.nytimes.com/2018/05/13/business/tariff-exemptions.html>

⁶ Swanson, *Id.*

⁷ Interim Final Rule at 12,107.

⁸ Swanson, *Id.*

⁹ Interim Final Rule at 12,107.

III. Proposed Changes to the Interim Final Rule

Based on the potential severe consequences for U.S. companies who use steel and aluminum and the inauspicious results of the exclusion process to date, it is essential that the Department adjust the Interim Final Rule to operate in a reasonable and efficient manner. A variety of other businesses and trade associations such as the Alliance for Competitive Steel and Aluminum Trade, the Precision Metalforming Association, the National Tooling and Machining Association, and the Industrial Fasteners Institute have raised similar concerns and we associate ourselves with their remarks. Accordingly, the Coalition proposes the following changes:

- Allow companies to file a single unified exclusion request – As written, the Interim Final Rule requires companies to submit separate requests for products with small variations in length and width. Additionally, companies may have to file multiple requests for a single product if it falls under multiple HTSUS reporting numbers. These requirements impose unnecessary costs on filing companies and should be relaxed.
- Make approved exemptions generally applicable for a particular product and product use – As described above companies may be forced to file duplicative requests for previously approved products. While it is possible for BIS to approve a “broader” application, there are no details about how companies should pursue such an application. BIS should also clarify whether requests may be filed for a single set or range of dimensions.
- Allow trade associations, of which steel and aluminum users are a part, to submit requests on behalf of affected members – This would reduce the burden on filing companies and reduce the number of duplicative requests BIS must review.
- Apply reasonable standards to the review of exclusion requests and objections to those requests; specifically, this means not allowing unevidenced assertions of production capacity, and, after a *prima facie* case for an exclusion request is made, giving presumption to that request in the face of objections – In the objections already filed, domestic steel and aluminum producers frequently claim that they have the ability to make a particular product even though they do not do so at present. Just as companies filing requests must present meticulous information on their purchases, producers should have to present meticulous information on the products they produce and their near term availability to U.S. consumers.
- At a minimum, adhere to the review timeline outlined in the Interim Final Rule – For companies that rely on steel and aluminum as primary imports, the tariff process to date has produced extreme uncertainty. Therefore, it is essential that companies receive responses to their requests in a timely manner so that they can adjust supply contracts accordingly.

IV. Conclusion

The Coalition of American Metal Manufacturers and Users is pleased to offer these comments. The tariffs announced by the Administration on March 8, 2018 have come at a great cost for U.S. steel- and aluminum-using manufacturers. Moving forward, it is essential that the process of applying for exclusions from these tariffs be conducted in an improved and expeditious manner to minimize the burden for affected businesses. The Coalition hopes BIS will consider and act on the changes presented here.