



November 13, 2018

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

Submitted via www.regulations.gov

RE: REVISIONS TO REQUIREMENTS FOR SUBMISSIONS OF EXCLUSION REQUESTS AND OBJECTIONS TO SUBMITTED 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’s (BIS) Interim Final Rule that revised the March 19 rules related to requesting exclusions from remedies applied under Section 232 of the Trade Expansion Act of 1962. CAMMU is a broad organization of U.S. businesses and trade associations representing more than 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.¹

While CAMMU appreciates the effort BIS made to address many the numerous concerns raised by stakeholders, the revisions in the September 11 interim final rule still does not address significant obstacles for requesters nor fulfills several key goals set forth in the March 19 rule. Ideally, the Department would eliminate the Section 232 tariffs on steel and aluminum imports as it is clear that the utilization rates for domestic producers now exceed the goals set forth when these tariffs were implemented by the President. As long as the tariffs remain, it is essential that exclusion requests are processed in a fair, transparent, and expeditious manner.

¹CAMMU members include: American Institute for International Steel, Associated Builders and Contractors, Industrial Fasteners Institute, the Hands-On Science Partnership, the National Tooling & Machining Association, North American Association of Food Equipment Manufacturers, the Precision Machined Products Association, the Precision Metalforming Association, and the American Wire Producer Association (Associate Member).

For your consideration, on behalf of our member associations, companies and the over one million workers we represent, please accept these comments specifically on the following included in the Sept. 11 interim final rule:

- “Not Available Immediately” Definition a Positive Step
- 106 Day Target Timeline Too Long – Should Deem Approved if Complete with No Objections
- Improving Transparency: More Action Needed on Tracking Sheet, Clarity When Denied
- Department Should Use its “Discretion to make exclusions available to all importers”

“Not Available Immediately” Definition a Positive Step

All American manufacturers, whether they be a steel and aluminum producer or consumer, need certainty to make investments, hire workers, and provide realistic timelines and quotes to meet a customer’s demand. Prior to the Department updating the interim final rule, in objecting to a manufacturer’s exclusion request, steel and aluminum producers could simply state that they have the ability or capacity to manufacture the product. However, the ability to manufacture is much different than the reality of delivering the actual materials needed on a timely basis.

Many CAMMU members manufacture components and end products for the defense, aerospace, automotive, food and medical device industries, all of which require extensive testing for quality, safety, and durability. This process can often take months and even well over a year, particularly in the case of metals used inside the human body.

Setting a clear definition of “available immediately” at eight weeks is a reasonable timeline and helps provide stability to steel and aluminum-using manufacturers. Prior to imposition of the tariffs, for non-specialty metals, many steel users reported roughly six to eight week lead times. Since the steel tariffs took effect, those same members report the doubling of delivery times, creating significant delays and interruptions in the manufacturing supply chain that could increasingly lead Original Equipment Manufacturers (OEMs) to source their inputs from non-U.S. sources who experience less volatility due to government interference. American manufacturers already faced a shortage of specialty metals in the U.S., with the tariffs placing further strains on the many companies regularly receiving quotes with lead times extending to nearly one full year.

We request that the Department hold organizations that file objections to the highest of standards. The Department should require specificity before considering the objection, and question and verify the assertions made by the objectors or claims made in surrebuttals. U.S. consumers of aluminum and steel need definitive answers from potential suppliers and cannot manufacture a physical product based on a promise to deliver with a date uncertain.

Objections to exclusion requests available on the Regulations.gov website reveal numerous vague assertions that clearly could not meet the “available immediately” threshold set forth by the Department. The Department should reject these objections outright. For example, steel and aluminum producers regularly disregard the process for quality and testing that steel- and aluminum-using manufacturers must go through with their customers prior to acceptance of products.

It should also be noted that one objector even reported its facility is currently operating at an 89% capacity utilization rate, well above the 80% target set by the Department and at levels not seen since prior to the Great Recession. In fact, the American Iron and Steel Institute reported that for the week ending November 10, 2018, domestic raw steel production saw a capacity utilization rate of 81.7%, also above the 80% threshold.

Below are several examples of responses included in objections filed by domestic producers:

“Nucor has been in trial and test phases for over one year with the requestor.” (BIS-2018-0006-33274-Objection) We believe Nucor’s admission about the length of the testing process reinforces our concern over unrealistic promises made by potential suppliers who often lack a full understanding of the end customer’s requirements and the uses of the final product.

“Because Nucor is currently in the process of negotiating and qualifying its tire bead wire rod with various U.S. consumers, Nucor opposes any exclusion for tire bead wire rod or tire cord wire rod used in bead wire applications that is longer than six months in duration.” (BIS-2018-0006-3847-Objection) This again is an example of admission by a steel producer that they cannot meet the “available immediately threshold.” U.S. manufacturers recognize the difference between raw materials being readily available and those in the “process of negotiating and qualifying” the input needed.

“AK Steel objects because it has the ability and capacity to manufacture this product.” (BIS-2018-0006-19579-Objection) This vague statement is typical of many found among the 15,248 objections listed in the steel BIS docket as of November 7, 2018. We believe that the Department should require specificity for realistic delivery to steel and aluminum users by any organization raising an objection or consider that objection as incomplete and deem the exclusion request as accepted.

This product is available from countries not covered by the Steel 232 ad valorem tariffs. (BIS-2018-0006-32385-Objection) In more than one objection, companies admitted they do not manufacture the product and seemed to even encourage the requester to seek importation from a country with quotas rather than tariffs. We ask the Department to clarify whether a company has standing to file an objection over a material that they admit it does not currently manufacture. We encourage the Department to reject this type of an objection and deem the exclusion request as accepted.

106 Day Target Timeline Too Long – The Department Should Deem Exclusion Request Approved if Complete with No Objections

The Department, and BIS specifically, face a nearly insurmountable task in reviewing the nearly 50,000 requests and objections filed between the two exclusion request dockets. And while given the immense undertaking at hand, a roughly three month turnaround even under normal circumstances is often considered expedited. However, most manufacturers compete in a “just in time” environment, where even the slightest disruptions or delays can cause a customer to take their business elsewhere and cost U.S. manufacturers opportunities, and, in turn, Americans jobs.

CAMMU believes that if the Department does not receive an objection or receives an incomplete objection, it should deem the exclusion request as accepted if properly submitted. If the Department is rejecting requests based on incompleteness, we believe it should extend the same scrutiny to objections.

We also believe the stated 106 day timeline from date of posting does not fully reflect the delays faced by requesters. According to available data, American manufacturers must wait on average nearly 23 days, and almost 17 days for aluminum exclusion requests, before the Department posts their steel exclusion requests on regulations.gov. In the best of circumstances, this means that the average U.S. manufacturer must wait more than four months for the federal government to determine whether its most important input is subject to a 25% or 10% tax. No manufacturer can afford to lose one-third of the entire calendar year waiting for a response made in a system that places greater weight to the objections raised than to the facts presented by actual purchasers of the raw materials.

Improving Transparency: More Action Needed on Tracking Sheet, Clarity When Denied

In the September interim final rule, the Department stated that, “submitters will need to check the tracking sheet that will be posted on the Commerce website for updates on their 232 submissions.” While we recognize the Department cannot directly notify each requestor as to the status of their filing, CAMMU strongly suggests that the Department expand the matrix to not only cover rebuttals, but also allow manufacturers, particularly smaller businesses, to identify where their request stands in the process, from pending to post to referred to Customs and on through the objection and rebuttal stages. As previously stated, manufacturers need stability but also must know where their application stands in the process in order to make business decisions.

For the 301 exclusion process, the Office of the U.S. Trade Representative (USTR) established a clear and singular place for all parties to identify the date of an exclusion request posting, a response or a reply closing date, and information on where the review sits in the process. Allowing manufacturers to know where their requests stand is a basic function that is essential in the 232 process.

In addition, we request that the Department provide clarity when rejecting an exclusion request. While we do not expect the Department to customize each individual response, we believe that the government can take additional steps to help U.S. businesses understand the reason for a rejection. BIS should include on the rejection form that is posted online a list of common reasons for rejection. Department staff can simply check a box identifying that as a possible reason for rejection. This would provide badly needed direction to the countless small businesses attempting to navigate this difficult process. The current rejection form leaves American manufacturers guessing why the government denied their applications, especially when that business for years used the identical HTS code accepted by customs to import that product.

Department Should Use its “Discretion to make exclusions available to all importers”

The Department clearly states in the BIS response in the September interim final rule that, “the Secretary does have the discretion to make broader exclusions available to all importers if the Department finds the circumstances warrant.” The Secretary and others at the Department have repeatedly denied associations the ability to submit exclusion requests on behalf of their industries for widely used goods because the Department sought to identify those products receiving the most requests. However, the Secretary has yet to exercise this authority despite the same HTS codes receiving multiple requests. If a domestic

producer admits in its objection filing that it cannot fulfill an order within the “available immediately” timeline, the government cannot expect a different response in another objection to the same product.

While manufacturers do require custom metals cut to specific dimensions with certain treatments, countless American businesses use the same base material, particularly in the automotive industry and goods mass produced for end consumers. The Department is needlessly reviewing thousands of filings and wasting thousands of man hours, while putting thousands of American manufacturing jobs and plants at risk. We urge the Secretary to begin to use the discretion afforded under the rule and exclude aluminum and steel products for all exporters.

While CAMMU welcomes the opportunity to submit comments to help improve the exclusion process, we firmly believe that the Administration’s steel and aluminum tariffs help only 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 to metal manufacturers and users across the country, including the 6.5 million Americans employed in steel using jobs.

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 provide a clear, transparent, and expedited exclusion process for American manufacturers reliant on a certain level of imports to make their products in the U.S. while competing globally.

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 in these comments. If you have any questions, please feel free to contact me.

Sincerely,



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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>