
Hughes Hubbard & Reed

Commerce Issues Steel and Aluminum Product Exclusion Procedures

Client Advisories

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

Attorney advertising. Readers are advised that prior results do not guarantee a similar outcome. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. For information regarding the selection process of awards, please visit <https://www.hugheshubbard.com/legal-notices-methodologies>.

March 20, 2018 – On March 19, the Department of Commerce (“DOC”) published a notice in the [Federal Register](#) providing an interim final rule for companies engaged in business activities in the United States to request exclusion from the steel and aluminum duties set to take effect on Friday, March 23, 2018 (“Interim Exclusion Procedures”). The Interim Exclusion Procedures authorize DOC to grant exclusions for steel and aluminum articles (i) “not produced in the United States in a sufficient and reasonably available amount,” (ii) “not produced in the United States in a satisfactory quality,” or (iii) “for a specific national security consideration.”

Background

President Donald Trump, on March 8, 2018, signed Presidential Proclamations 9705 and 9704 imposing, respectively, 25% duties on steel articles and 10% duties on aluminum articles pursuant to Section 232 of the Trade Expansion Act of 1962, with temporary exemptions for Canadian and Mexican articles. The proclamations directed Secretary of Commerce Ross to issue procedures by March 19, 2018 to enable companies to petition for product exclusions. DOC complied by issuing the Interim Exclusion Procedures and launching dedicated [steel](#) and [aluminum](#) web portals. Companies may download fillable exclusion request forms and may also file objections to pending exclusion requests. DOC’s Bureau of Industry and Security (“BIS”), the administering unit, anticipates that it will process 4,500 steel-related exclusion requests and 1,500 aluminum-related exclusion requests per year.

We note that DOC waived the usual 30-day comment period on the interim rule, on the basis that further delaying the product exclusion process could cause “significant economic hardship that could potentially create a detrimental effect on the general U.S. economy.”

Key Terms of the Interim Exclusion Procedures

Eligibility for filing exclusion requests

Steel and aluminum exclusion request forms may be filed at *any time* on www.regulations.gov/ by identifying the relevant docket number (BIS-2018-0006 for steel articles; BIS-2018-002 for aluminum articles), whereupon BIS will make completed request forms publicly accessible. The instructions accompanying the exclusion request forms emphasize that separate exclusion requests must be filed on each distinct type and dimension of steel or aluminum product to be imported. BIS will deny all non-conforming exclusion requests.

Exclusion requests may only be filed by those “individuals or organizations using” subject steel or aluminum articles “in business activities (e.g., construction, manufacturing, or supplying to users) in the United States.” The Interim Exclusion Procedures state, on the requirement to be engaged in U.S. business activities, that “allowing individuals or organizations not engaged in business activities in the United States to seek exclusion requests could undermine the adjustment of imports that the President determined was necessary to address the threat to national security posed by the current imports” of steel and aluminum articles. Companies engaged in distribution activities in the United States should be able to file exclusion requests for subject steel and aluminum articles.

Eligibility for filing objections

Steel and aluminum objection forms must also be filed on www.regulations.gov/, with the added requirement that filers identify the relevant exclusion request.

Although the Interim Exclusion Procedures state that any “individual or organization in the United States” may file objections to posted exclusion requests, the BIS website instructions specifically invite any “organization[that] manufactures” steel or aluminum products to submit an objection. This suggests that, while any U.S.-based individual or organization may file objections with BIS, BIS may accord more weight to objections filed by manufacturers of domestic steel and aluminum articles than those filed by other entities such as labor unions and trade associations. Any objections are due within 30 days after the relevant exclusion request is publicly posted.

Importantly, there are no procedures to rebut or respond to any objections.

BIS disposition of exclusion requests and objection

BIS will issue a single response to each exclusion request that will be publicly posted on the steel or aluminum docket hosted on www.regulations.gov/. The decision will take into account information contained in the exclusion request as well as any objection(s) filed. BIS’s review of exclusion requests, including any objections to them, will “normally” not exceed 90 days. If granted, exclusions will be effective five days after publication of BIS’ favorable response on www.regulations.gov/. The Interim Exclusion Procedures state, further, that exclusions will “generally be approved for one year.”

BIS will grant exclusions on a product basis and limited to the individual or organization that submitted the request, unless BIS decides to broaden the exclusion. Should BIS opt not to broaden an exclusion, other individuals and organizations are free at any time to submit exclusion requests for a steel or aluminum article already approved for exclusion. Moreover, individuals or organizations are not precluded from submitting a request for exclusion of a steel or aluminum article that was previously denied an exclusion. However, the Interim Exclusion Procedures encourage such individuals and organizations to submit “new or different information,” particularly where the first exclusion request was deemed inadequate by BIS.

Some ambiguities with the treatment of proprietary information

All information submitted with an exclusion request will be publicly accessible. For this reason, the Interim Exclusion Procedures caution against providing personally identifiable information in an exclusion request or objection, or information that is subject to government-imposed access and dissemination controls (or other

specific national security controls). Although they provide that a filer may indicate on the form that it has relevant proprietary information for BIS to consider, they do not indicate precisely how such proprietary information will be handled by BIS.

Filing a public comment on the Exclusion Request Procedures

Although the product exclusion process begins immediately, comments on the Interim Exclusion Procedures themselves may be filed electronically, by e-mail or online at www.regulations.gov/ by May 18, 2018. These comments will be taken into consideration by BIS prior to finalizing the final rule for requesting product exclusions.

Related People



Matthew R. Nicely



Dean A. Pinkert

Related Areas of Focus

International Trade

Trade Remedies & Trade Agreements