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May 26, 2011

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce
Room 2111
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Proposed Rule; Foreign-Trade Zones in the United States; Docket Number ITA-2010-0012; RIN 0625-AA81; Comments of Globe Specialty Metals, Inc.

Dear Mr. McGilvray:

On behalf of Globe Specialty Metals, Inc. (“Globe”), we are submitting this letter in response to the request for comments published by the Foreign-Trade Zones Board (the “Board”) on December 30, 2010, and the notice extending the public comment period to May 26, 2011.¹

Globe is the largest domestic producer, and one of the world’s largest and most efficient producers, of silicon metal and silicon-based specialty alloys. The company has plants in Alloy, West Virginia; Beverly, Ohio; Bridgeport and Selma, Alabama; and Niagara Falls, New York.

The U.S. silicon metal industry has twice been devastated by onslaughts of unfairly traded imports. These dumped imports were sold at low and declining prices that undercut domestic producer prices and caused U.S. market prices to collapse. As a result, the U.S. silicon metal industry suffered plant shutdowns, declining sales revenues, lost sales, and significant operating losses. The industry obtained relief from this unfair import competition in the form of antidumping (“AD”) orders. Currently, there are AD orders in effect covering silicon metal imports from China and Russia.

As a U.S. producer that has been severely injured by unfair import competition in the past, Globe is very concerned that the effectiveness of AD and countervailing duty (“CVD”) orders be maintained, and not be undermined by the use of foreign-trade zones (“FTZs”) as a mechanism for avoiding payment of AD/CVD duties. Therefore, these comments focus on the proposed changes in the Board’s regulations that address the use of FTZs to avoid paying AD/CVD duties.

¹ *Foreign-Trade Zones in the United States*, 75 Fed. Reg. 82,341 (December 30, 2010) (“Proposed Rule”); *Foreign-Trade Zones in the United States*, 76 Fed. Reg. 12,887 (March 9, 2011).

I. Globe Strongly Supports the Requirement of Advance Board Approval for All Production Activity in Zones or Subzones Involving Foreign Articles Subject to AD/CVD Duties

The proposed regulations require advance Board approval for all production activity in a zone or subzone involving a foreign article that would be subject to an AD or CVD order, or would otherwise be subject to suspension of liquidation under AD/CVD procedures, if it were to enter U.S. customs territory.² In addition, for a production operation previously approved by the Board, the proposed regulations require advance Board approval of any production activity involving a foreign article that would be subject to AD/CVD duties or suspension of liquidation under an order not in effect at the time of the prior consideration of the article's use in the production operation.³

The preamble to the proposed regulations explains that this part of the regulations “focuses on the types of production activity that have raised public interest concerns in certain circumstances in the past, or that appear to have significant potential to raise such concerns in the future,” including the avoidance of AD/CVD duties.⁴

Under the proposed regulations, advance Board approval must be obtained through a formal application and review process.⁵ As part of that process, the applicant must provide detailed information on the proposed activity and the use of any such article.⁶ The proposed regulations also mandate publication of a notice of initiation of the review, including an invitation for public comment.⁷ Finally, under the prescribed process, directly affected parties showing good cause may request a hearing on the application.⁸

The proposed regulations also authorize fines for certain violations of the FTZ Act or the Board's regulations. The violations for which fines may be imposed include failure to obtain advance approval of production activity involving an article subject to AD or CVD duties and failure to submit timely, complete, and accurate annual reports (or the information needed to prepare such reports).

² Proposed Rule, 75 Fed. Reg. at 82,350 (§ 400.14(a)(2)).

³ *Id.* (§ 400.14(a)(4)(ii)).

⁴ *Id.* at 82,343.

⁵ *Id.* at 82,350 (§ 400.14(d)) and 82,352 (§ 400.22 (a)).

⁶ *Id.* at 82,352 (§ 400.22 (a)(3)).

⁷ *Id.* at 82,354 (§ 400.32(a)(2)).

⁸ *Id.* at 82,359 (§ 400.52(b)(1)).

Globe strongly supports the proposed requirement that advance Board approval be obtained for all production activity in a zone or subzone involving a foreign article subject to AD or CVD duties. The U.S. AD/CVD laws are intended to protect U.S. producers, their workers, and affected communities from unfair import competition.⁹ It is very important that the Board not allow the FTZ program to become a device used to undermine trade relief critical to domestic industries and workers injured by unfairly traded imports. The proposed regulations are an important step in that direction.

II. For Production Operations Previously Approved by the Board, the Board Should Require Advance Approval of Any Production Activity Involving an Article Subject to AD/CVD Duties That Was Not Previously Authorized

As Globe understands section 400.14(a)(4)(ii) of the proposed regulations (which covers production operations previously approved by the Board), approval of production activity involving an article subject to AD/CVD duties is only required when the article would be subject to duties under an order that was not in effect at the time of the prior approval of the production operation. This approach assumes that in every case where a production operation was approved in the past, all AD/CVD articles now being used in production (except those where a new AD/CVD order has been issued since the prior Board approval) were previously approved by the Board.

Instead of making this assumption, the Board should revise section 400.14(a)(4)(ii) to provide that for existing production operations, advance approval is required for any production activity involving an article subject to AD/CVD duties that the Board has not previously approved. Such a provision would cover all instances where no such approval has been obtained, including situations in which: (1) an article subject to AD/CVD duties at the time of the prior approval was not identified or was not identified as being subject to AD/CVD duties; (2) an article was identified, but was being sourced from a country not subject to AD/CVD duties, and is now being sourced from a country that is subject to AD/CVD duties; (3) a new article that is subject to AD/CVD duties is now being used that was not identified when the production operation was approved; and (4) an article identified at the time of the prior approval has become subject to AD/CVD duties as the result of an order issued after the approval.

The Board can cover all of these situations simply by requiring that advance approval be obtained for any production activity involving an AD/CVD article that has not already been

⁹ The devastating harm suffered by U.S. producers and their workers as the result of unfairly traded imports is the same regardless of whether the imports are used inside or outside of an FTZ. This fact is best illustrated by the restricted approval of the MPM Silicones subzone in 2008. In that case, the Board granted limited authority for a Globe customer to use imported silicon metal in a subzone to manufacture merchandise for export, without paying AD duties. The result was an almost complete loss of business for Globe and the loss of 80 jobs at its production facilities.

approved. If the existing language of proposed section 400.14(a)(4)(ii) is intended to achieve that objective, it should be clarified.

III. The Board Should Add Provisions to the Proposed Regulations and Make Changes in Its Practice That Will Help Ensure That the Objectives of the Advance Approval Requirement Are Met

Globe urges the Board to add certain provisions to the proposed regulations and to make certain changes in its procedures that will help ensure that the objectives of the advance approval requirement are achieved. Specifically, Globe urges the Board to do the following:

A. The Final Regulations Should Require Applicants Requesting Approval of Production Activity Involving Articles Subject to AD/CVD Duties To Demonstrate That the Proposed Activity Will Not Adversely Impact the Effectiveness of the AD/CVD Relief in Place

The proposed regulations provide that applications involving proposed production authority must describe the proposed activity, including the materials/components to be used in the activity.¹⁰ For each material/component, the application must state whether it is subject to an AD or CVD proceeding. Globe strongly supports these requirements, which apply to requests for approval of production activity using AD/CVD articles in both proposed and existing zones and subzones.¹¹

However, Globe believes that in addition to requiring that applications describe any proposed production activity involving articles subject to AD/CVD duties, the regulations should require applicants to demonstrate that the activity for which approval is requested will not adversely impact the effectiveness of the AD/CVD relief in place. As stated above, the Board has recognized in the preamble to the proposed regulations that the avoidance of AD/CVD duties raises public interest concerns.¹² To address those concerns, the Board should make clear that the burden is on the applicant to demonstrate that no such adverse impact will occur.

¹⁰ Proposed Rule, 75 Fed. Reg. at 82,352 (§ 400.22(a)(3)).

¹¹ *Id.* at 82,350 (§ 400.14(c) (“Applications for expanded production authority shall meet the requirements of § 400.22”). *See also id.* at 82,352 (§ 400.22) (prescribing the requirements for “an application involving proposed production authority under § 400.14(a)”).

¹² *Id.* at 82,343 (“Section 400.14(a) . . . focuses . . . on the types of production activity that have raised public interest concerns in certain circumstances in the past, or that appear to have significant potential to raise such concerns in the future (e.g., . . . avoidance of antidumping or countervailing duties . . .).”)

B. The Final Regulations Should Require Notification of Affected Domestic Producers If Advance Approval of Production Activity Involving Articles Subject to AD/CVD Duties Is Requested

The proposed regulations provide for publication of a notice of initiation that includes “the name of the applicant, a description of the zone project, information as to any hearing scheduled at the outset, and an invitation for public comment.”¹³ To ensure that requests for approval of production activity involving articles subject to AD/CVD duties are known to the parties affected by the requests, the final regulations should specify that the required description of the zone project shall include a statement that the application includes a request for approval of production activity involving an article subject to AD/CVD duties when that is the case. In addition, the article involved should be identified in the notice.

The Board also should require that direct notice of any such request be given to affected domestic producers. Specifically, the regulations should require applicants to provide the name and address of each known U.S. producer of the material or component subject to AD/CVD duties to be used in the proposed production activity. Such information typically is available from the record of the relevant AD/CVD proceedings before the Department of Commerce and U.S. International Trade Commission and other public sources. The applicant should also be required to send notice of the request for approval to each identified U.S. producer at its last known address.

Adequate notice to affected parties is important so that these parties will have the opportunity to participate in the proceeding before the Board involving the request for approval. Participation by these parties will assist the Board in reaching a decision that takes into account the views of those most directly affected by production activity involving articles subject to AD/CVD duties, and will allow the Board to have a more complete record based on which it can better evaluate whether the requested approval is in the public interest and, as necessary, prohibit or restrict the proposed activity.

C. The Board Should Establish Effective Means of Monitoring Compliance With the Advance Approval Requirement

In addition, to ensure compliance with the advance approval requirement and to effectuate the penalty provisions, the Board should establish effective means of monitoring compliance with the advance approval requirement.

The proposed regulations require annual reporting of all production activity in zones or subzones, in accordance with any instructions, guidelines, or forms and related documents prescribed by the Executive Secretary.¹⁴ These annual reporting requirements should include

¹³ *Id.* at 82,354 (§ 400.32(b)(2)).

¹⁴ *Id.* at 82,350 (§ 400.14(b)).

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reporting admissions of foreign articles subject AD/CVD orders into zones/subzones with production authority. In addition, they should include (1) reporting any production activity involving any foreign article subject to AD/CVD procedures and (2) providing information showing that the activity has been approved by the Board, or (3) providing a certification that there was no production activity in the zone/subzone involving such a foreign article subject to AD/CVD duties. Absent such reporting requirements, the Board will lack the ability to monitor compliance with the advance approval requirement effectively.

The Board also should work with U.S. Customs and Border Protection ("CBP") to obtain from CBP an annual report of entries of foreign articles subject to AD/CVD orders into zones or subzones with production authority. Comparing these data to the information reported to the Board in the annual reports will allow the Board to verify the accuracy and completeness of the corresponding information shown in the annual reports.

Finally, the Board should publish a report each year summarizing the reported data obtained from grantees and CBP. Doing so will enable interested parties to review the data and identify discrepancies that should be examined by the Board.

IV. Conclusion

Under the statute and the Board's regulations, the Board is charged with seeing that activities carried out in FTZs are in the public interest. The advance approval requirement of the proposed regulations will strengthen the Board's ability to fulfill this responsibility. As explained above, certain additions to the regulations, as well as changes in practice, will help ensure that the advance approval requirement achieves its intended purpose. On behalf of Globe, we urge the Board to retain the advance approval requirement in the final regulations and to take the further steps required to ensure that the objectives of that requirement are met.

Very truly yours,



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