THE FOSTER REPORT
Independent and In-Depth Reporting on the Energy Industry

Steel Tariffs, Waiver Process Hindering Pipeline, LNG Development Success, Says EBA Panel

This article appears as published in The Foster Report No. 3222, November 2, 2018

The Trump administration's steel import tariff and trade war with China is hindering the success of increased pipeline and LNG export project development, but they do not overshadow the good news of the abundant resource case and infrastructure investment in the U.S., speakers said at a panel of the Energy Bar Association's Mid-Year Energy Forum.

The growing production and pipeline spending in the U.S., great break-even prices for domestic producers and the rise in natural gas demand globally to support LNG exports all represent a good news picture for U.S. companies, while trade disputes, tariffs on steel imports and tensions with China can hinder investment in pipeline and LNG export infrastructure, panelists said October 30.

The tariffs and trade issues are not good and may be challenged legally at some point, but they are not close to overwhelming the positive signs from other market developments, said Aaron Padilla, senior advisor on international policy at the American Petroleum Institute (API). That will be the case unless there is a very long trade war or a deepening trade war with China, Padilla said.

The oil and gas industry is still in a pretty good place overall, agreed Kevin Book, managing director at ClearView Energy Partners, and David Lang, partner at Baker McKenzie LLP.

Even so, there is plenty of angst about the administration's trade position with China, the way the process for seeking exclusions from the steel import tariffs is working and the best way to seek relief, all three speakers said. Lang noted that LNG Limited recently delayed a final investment decision (FID) on its Magnolia LNG project in Louisiana and pointed to problems lining up Chinese buyers due to the U.S./China trade dispute. The development shows how trade issues can stall investment by U.S. companies, he and Book said.

The steel tariff and quotas are putting U.S. energy companies at a disadvantage, and the retaliatory actions with China are making LNG purchasing deals more costly and harder to reach, Padilla said. API has been telling the Trump administration that it has trade policies and energy policies with opposite agendas, he said.

The Commerce Department is overseeing the management of the tariffs and the process for seeking exclusions to allow steel imports without a tariff. But that process is flawed and has produced mixed results for API members, some of whom are in the steel business, the panelists said. Energy companies or other businesses looking to import steel can seek exclusions based on factors such as if the type of steel needed is not produced in the U.S. in sufficient quantity or quality, and those requests can be challenged by domestic steel manufacturers.

There have been more than 37,000 petitions for exclusions, with about 6,000 rejected for errors in their applications, less than 2,000 being approved and smaller number that have been denied, said Lang. The Commerce Department has been "overwhelmed" by the number of requests for exclusions, he said.

Of the 600 or so requests for exclusions from API members, there have been about 90 decisions, with roughly 40 being granted and 50 denied, Padilla said. U.S. steel companies can object to an exclusion request and there is no requirement that the steel companies have to prove they could produce the steel to meet energy companies' needs. "Whenever there is an objection, the petition is denied," and when there is no objection, the petition for an exclusion has been granted, Padilla said.

The petitions for exclusion and decisions from the Commerce Department are company specific, with some companies using the exact same wording, and the rulings from the agency can differ without explanation, according to Lang. That inconsistency and subjectivity in the exclusion process is frustrating to energy companies, Padilla and the other panelists said.

One of the first companies to have its request for an exclusion denied was Plains All American, which noted that it purchased the steel pipe for its Cactus II oil pipeline from a steel mill in Greece in late 2017, before the 25% tariff on imported steel was announced in March 2018. The company in July said it is reviewing its options to challenge the decision.[1]

It is still a bit early for legal challenges, but companies have some options. Those include a broad challenge on the trade policy that is being carried out by the executive branch, exceeding the authority granted to it by Congress, said Lang. Another option would be that the exclusion process is flawed, with an inadequate review of the economic data or reasoning for denying exclusions, he said.

The panel, which included Alex Whittington of Cheniere Energy Inc. as moderator, agreed that steel tariffs will likely be difficult to avoid, with the constitutional challenge of the executive branch exceeding its authority a tougher road due to deference given to federal agencies.

U.S. Trade Representative Robert Lighthizer is the driving force in the administration's positions, with his views and imprints reflected in speeches by President Donald Trump and the emphasis on China, the speakers said. Compared with energy policy or other domestic issues, a smaller group of officials has formulated the administration's trade policy, with Lighthizer leading the way, Padilla said. "We could be in for a very long, cold war with China," he said.

If Democrats regain a majority in the House of Representatives in the midterm elections, they could try to reassert congressional authority on trade policy issues, said Lang. They might be able to convince some Republicans to support such plans, he said.

Other options for energy companies to seek relief include going through the World Trade Organization, but that is a very slow process, noted Book. "If you're waiting for the cavalry to ride in, it's on turtles," he joked of the WTO process.

Because trade policies are not resolved in weeks but months or longer, Book quipped that for energy companies hindered by the steel tariffs of the Trump administration, their position should be "it's the art of the deal with it."

[1] For a past story, see, *Industry Not Pleased With Commerce Dept. Denying Tariff Exclusion to Plains*, FR No. 3208, pp. 8-9.

On the same day the speakers were addressing the EBA forum, Sen. Elizabeth Warren (D-Mass.) wrote to Secretary of Commerce Wilbur Ross that a majority of the exemptions granted to the tariffs thus far have been to subsidiaries of foreign-based companies.

More than 80% of the exemption requests granted by the Commerce Department were for foreign-headquartered companies seeking tariff waivers to import steel to their U.S.-based subsidiaries. Nearly 52% of the exemptions granted were given to companies headquartered in Japan and almost 25% went to companies headquartered in China, Warren said in the October 30 letter.

The analysis conducted by Warren's staff showed flaws in the steel tariff exemption process that has hindered U.S. companies by rejecting their requests while granting requests from foreign companies, which is "utterly inexplicable" and the opposite of what Trump said would happen when the tariffs were announced, Warren said

"You appear to be implementing the tariff exemption program in a way that undermines American steel producers . . . and harms American-owned steel-dependent companies instead of improving their competitive advantage" over companies based in foreign countries, the lawmaker told Ross.

She asked for a response to questions and briefing with her staff by November 13. Besides seeking an explanation on the exemptions granted to so many foreign companies, Warren asked for an electronic list of all companies that have submitted requests for exemptions and received a decision; the parent company of each firm; the headquarters of those parent companies; the importer of record for each request and other information.

By Tom Tiernan TTiernan@fosterreport.com

Published by Concentric Energy Publications, Inc.,
a Concentric Energy Advisors, Inc. Company