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December 17, 2018

The Honorable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Re: Questions Regarding the Process for Product Exclusions from Section 232 Tariffs on Imported Articles of Steel and Aluminum

Dear Secretary Ross:

In a letter to you dated April 19, 2018, we requested certain improvements to the process that the Department of Commerce (“DOC”) instituted for product exclusions from the tariffs imposed on imported articles of steel and aluminum under Section 232 of the Trade Expansion Act of 1962 and Proclamations 9704 and 9705 of March 8, 2018, as amended. Since then, DOC has introduced a formal rebuttal and surrebuttal process and an opportunity for exclusions from quotas applicable to steel and aluminum products from certain countries. We commend DOC for improving the exclusion process with these and other reforms.

At the same time, as stakeholders have advanced through the product exclusion process, additional flaws have surfaced where we believe DOC needs to make improvements. As discussed below, American businesses report lengthy delays in the processing of exclusion requests; contradictory, incomplete, or ambiguous guidance when DOC denies requests on technical grounds; and slow and unresponsive replies to their inquiries to DOC. Each of these flaws undermines the fairness and timeliness of the exclusion process for American stakeholders, and we urge DOC to resolve these flaws promptly to reduce the economic hardship and uncertainty that stakeholders are experiencing.

According to the interim final rule that DOC published in the Federal Register on September 11, 2018, “[t]he review period normally will not exceed 106 days for requests that receive objections, including adjudication of objections submitted on exclusion requests and any rebuttals to objections, and surrebuttals.” However, exclusion requests that were filed and posted as long ago as early April remain pending, a period more than double the 106 days targeted by DOC. Our assessments suggest that, of more than 29,700 posted requests awaiting decision as of December 10, more than 11,700 have been pending for more than 106 days, and more than 4,900 requests have been pending for more than 150 days. Each passing day that an exclusion request sits undecided extends the uncertainty for American workers, businesses, and their suppliers and customers.

American businesses also have advised us that their requests for product exclusions have been denied on the basis that DOC deemed their requests to be “incomplete” or “not sufficient,” but without any explanation of the technical deficiency. Upon soliciting an explanation, the stakeholders report that they have received contradictory, incomplete, or ambiguous guidance from DOC, thus hindering their ability to promptly correct and resubmit a request. When DOC identifies a technical defect in a request, clearly identifying the defect would be appropriate and consistent with due process and fairness.

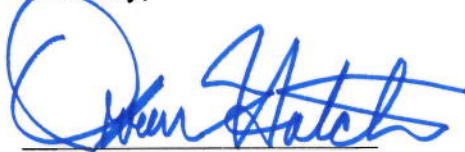
We also understand that, at present, DOC has not clearly indicated whether an exclusion request whose technical defect has been cured will retain the original submittal and posting dates for purposes of calculating a refund of Section 232 duty payments. When DOC denies a request on technical grounds, such as a formatting error or incorrect HTSUS classification, then determines that a product exclusion is justified on the merits, DOC should authorize a refund of all Section 232 duties paid during the review period, including during any interval to cure technical defects. Procedures relating to technical corrections also should be clearly disclosed to the public on the DOC website.

Finally, our stakeholders have reported several frustrations with attempts to use the designated DOC email address for inquiries about the steel product exclusion process (Steel232@bis.doc.gov). Problems have included delays of several days, at times more than a week, to receive a response while their tariff expenses continue to accrue; “form” answers from DOC that fail to address specific questions posed; and DOC redirecting questions to U.S. Customs and Border Protection, which has then redirected questions back to DOC, sending our stakeholders into a bureaucratic loop.

In light of the foregoing, we urge you to ensure that (i) DOC adheres to the time periods that DOC has indicated for normal review of exclusion requests, and that delays beyond such periods are limited to rare and extraordinary circumstances; (ii) DOC clearly identifies to stakeholders any technical defects that it perceives in product exclusion requests; (iii) in cases when technical defects are cured, DOC retains the original submittal and posting dates for purposes of calculating refunds of Section 232 duty payments; and (iv) DOC answers email inquiries with prompt and responsive information.

We look forward to hearing from you regarding further improvements to the Section 232 product exclusion process. We are prepared to assist as appropriate and request your prompt response to our concerns, with a description of your plans and actions to resolve them.

Sincerely,



Orrin G. Hatch
Chairman
Senate Committee on Finance



Ron Wyden
Ranking Member
Senate Committee on Finance

CC: Brad Botwin
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