Congress of the United States
Washington, DC 20515

May 7, 2018

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

Dear Secretary Ross,

We appreciate that, in response to Member and constituent requests, you have implemented a product exclusion process for the Section 232 steel and aluminum tariffs. However, we are concerned that over a month after the process began, the review process is moving far too slowly and that it places a significant burden on manufacturers, especially small businesses. We write today to urge you to make needed changes to that process that would improve how it functions and provide relief to small businesses.

The Department of Commerce announced the exclusion process on March 18, 2018 and began accepting applications a day later. Since then, thousands of applications have been filed. However, as of May 4, the Department has posted 1,572 steel and 129 aluminum applications. That is a far too slow of a pace given the volume and the fact that this process is over a month and a half old.

We were pleased that Department of Commerce responded to past Congressional suggestions, such as our request that Customs and Border Protection provide retroactive relief in the event of a positive product exclusion determination. It is abundantly clear, however, that more changes are needed. As such, we request that the Department:

1. Provide relief to those experiencing undue delays in the application review period by extending relief retroactive to the date of submission if the application was considered complete on the date of submission, or to the date when requested information that rendered the application complete was submitted if Commerce had notified the applicant that additional information was needed;
2. Allow exclusions covering ranges of certain dimensions with the same Harmonized Tariff Schedule (HTS) code in order to clear up confusion surrounding the form, simplify the application process for manufacturers – some of whom we understand have had to split one request into as many as 30 separate requests because of this issue – prevent duplicative requests, and reduce the time it takes the Bureau of Industry and Security (BIS) to review and vet applications;
    - In particular, both the steel and aluminum forms contain contradictory and confusing requests. Section 2.j states that "ranges…are allowed." However, section 3.b asks for "information on the single steel [or aluminum] product that is the subject of this Exclusion Request: 1) dimensional information for the single

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aluminum product and a single size – not a range of products or sizes…A separate Exclusion Request must be submitted for each steel [or aluminum] product by physical dimension." Further adding to the confusion, section 3.b at the same time asks for the minimum and maximum of various specifications.

3. Allow trade associations to apply for exclusions for an industry, again in order to save both manufacturers (particularly small businesses that otherwise might not be able to afford to apply) the time and money spent filing and BIS the time spent reviewing duplicative applications;
4. Take measures to protect sensitive information and trade secrets, including proactively informing applicants about avenues to protect sensitive information and trade secrets and excluding unnecessary application requirements such as metallurgical composition;
5. Provide timely information to companies requesting exclusions, including status and anticipated wait time, so they can plan;
6. Publish an "FAQ" page clarifying the exclusion request process in plain language, including who must file, what should be included in supplemental materials, how to protect sensitive information and trade secrets, and differences with the separate proposed Section 301 tariffs, which we understand have caused confusion due to similar timing;
7. Incorporate the concept of grandfathering existing contracts in evaluating exclusion applications in order to avoid undue disruption to the operations of U.S. companies that are already relying on qualified suppliers of needed inputs;
8. Regularly review the impact of tariffs on the economy and downstream users and implement a plan to sunset them if they prove to have a significant negative impact;
9. Consider the needs of U.S. manufacturers for custom-made and other specialized steel and aluminum inputs, many of which are not available from domestic producers and for which an advance application may be impractical due to one-off orders; and
10. Authorize all companies granted product exclusions to import tariff-free from any source country unless it is proven to be unfairly traded, given that the basis of the exclusion request is that the U.S. company cannot source the product domestically.

We stand committed to working with you and the President to find a targeted approach that will reach our shared goals while avoiding lasting negative impacts. However, we believe that significant improvements to the exclusion process are still needed to prevent unnecessary duplication, reduce the burden on small businesses, and provide certainty and relief.

Thank you for your attention to this matter.

Sincerely,

Jackie Walorski

JACKIE WALORSKI
Member of Congress

Ron Kind

RON KIND
Member of Congress

CARLOS CURBELO
Member of Congress

BILL HUIZENGA
Member of Congress

MARK WALKER
Member of Congress

MIKE BISHOP
Member of Congress

PETER J. ROSKAM
Member of Congress

A. DREW FERGUSON, IV
Member of Congress

DAVE REICHERT
Member of Congress

PETE OLSON
Member of Congress

RON ESTES
Member of Congress

FRED UPTON
Member of Congress

BRIAN FITZPATRICK
Member of Congress

SUSAN W. BROOKS
Member of Congress

F. JAMES SENSENBRENNER, JR.
Member of Congress

ROGER MARSHALL, M.D.
Member of Congress

ROB WOODALL
Member of Congress

KAREN C. HANDEL
Member of Congress

DARIN LAHOOD
Member of Congress

ADRIAN SMITH
Member of Congress

DAVID P. ROE, M.D.
Member of Congress

JEFF DUNCAN
Member of Congress

KEVIN CRAMER
Member of Congress

LYNN JENKINS, CPA
Member of Congress

BRAD WENSTRUP
Member of Congress

WILL HURD
Member of Congress

GLENN GROTHMAN
Member of Congress

JOHN MOOLENAAR
Member of Congress

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Member of Congress

WARREN DAVIDSON
Member of Congress

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JAIME HERRERA BEUTLER
Member of Congress

KEVIN YODER
Member of Congress

MARK SANFORD
Member of Congress

PETE SESSIONS
Member of Congress

SAM GRAVES
Member of Congress

JACK BERGMAN
Member of Congress

MARK MEADOWS
Member of Congress

FILEMON VELA
Member of Congress