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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR  
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August 9, 2018

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

Dear Secretary Ross:

The Committee on Homeland Security and Governmental Affairs is continuing to conduct oversight of this Administration's trade policies, specifically relating to the tariffs on steel and aluminum. I write to respectfully request information about the process by which businesses may apply for exclusions from the tariffs for certain products.<sup>1</sup>

On March 18, 2018, the Commerce Department released information about its exclusion process for specific steel and aluminum import products.<sup>2</sup> The Department stated that it would approve or deny a business's exclusion request based on the Department's determination of whether the "product is produced in the United States of a satisfactory quality or in a sufficient and reasonably available amount."<sup>3</sup> Other businesses or organizations wishing to object to an exclusion request could do so by submitting "specific information on the product that their company can provide that is comparable to the steel or aluminum product that is the subject of the exclusion request."<sup>4</sup> The Department expected that it would evaluate exclusion requests within 90 days.<sup>5</sup>

Although you promised that the exclusion process would be "fair and transparent,"<sup>6</sup> a number of Wisconsin business leaders have expressed concerns to me about the uncertainty and arbitrary nature of the exclusion process.<sup>7</sup> One business representative called the exclusion process a "miserable process."<sup>8</sup> He later described how the Department denied his business's exclusion request following an objection from a domestic steel producer that contained a number

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<sup>1</sup> Press Release, U.S. Dep't of Commerce, U.S. Department of Commerce Announces Steel and Aluminum Tariff Exclusion Process (Mar. 18, 2018), <https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-steel-and-aluminum-tariff-exclusion>.

<sup>2</sup> *Id.*; see also [regulations.gov](https://www.regulations.gov) for the exclusion requests and objections.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Examining the Effect of Tariffs on Wisconsin Businesses: Roundtable Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 115th Cong. (Milwaukee, WI) (July 16, 2018).

<sup>8</sup> *Id.*

of false and misleading statements.<sup>9</sup> This Wisconsin business requested an exclusion for material that it ordered in the fall of 2017—well before implementation of the tariffs—and for which the domestic steel producer represented it had no short term capacity available.<sup>10</sup> Underscoring this example, Department officials reportedly boasted that “they have not granted a single steel exclusion request that drew an objection” from domestic steel producers.<sup>11</sup>

The Department’s denial of the exclusion request has resulted in this Wisconsin business incurring an additional \$2.6 million tariff cost that cannot be used to expand production or to pay the salaries of new employees.<sup>12</sup> Across the country, many businesses share the same frustration about the difficult and time-consuming exclusion process. One steel distributor reportedly called the exclusion process “the most screwed-up process” and “a disservice to our industry and the biggest insult to our intelligence that I have ever seen from the government.”<sup>13</sup>

In light of the concerns about the Department’s exclusion process for the steel and aluminum tariffs, I respectfully request the following information:

1. Please provide the following data:
  - a. The total number of exclusion requests submitted to the Department;
  - b. The total number of exclusion requests that the Department has approved;
  - c. The total number of exclusion requests that the Department has denied;
  - d. The total number of objections the Department has received, and the number of objections from domestic steel producers;
  - e. The total number of exclusion requests that the Department ultimately approved following an objection;
  - f. The total number of exclusion requests that the Department ultimately denied following an objection; and
  - g. The average time the Department has taken to make a determination on an exclusion request.
  
2. Please explain the process by which the Department determines whether to approve or deny an exclusion request, including the following information:
  - a. The identity of the official(s) who ultimately makes or certifies the final exclusion decision;
  - b. The Department’s metrics by which it evaluates whether to approve an exclusion request; and
  - c. The Department’s process for verifying factual assertions or claims made in each exclusion request and objection.

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<sup>9</sup> Email exchange between Wisconsin business and Senate HSGAC Maj. Comm. staff (Aug. 5, 2018) (on file with staff).

<sup>10</sup> *Id.*

<sup>11</sup> Jim Tankersley, *Steel Giants with Ties to Trump Officials Block Tariff Relief for Hundreds of Firms*, The New York Times (Aug. 5, 2018), <https://www.nytimes.com/2018/08/05/us/politics/nucor-us-steel-tariff-exemptions.html>.

<sup>12</sup> Email exchange between Wisconsin business and Senate HSGAC Maj. Comm. staff (Aug. 7, 2018) (on file with staff).

<sup>13</sup> Ana Swanson and Tiffany Hsu, *Companies Get First Tariff Waivers, but Many More Are Left in Limbo*, The New York Times (June 22, 2018), <https://www.nytimes.com/2018/06/22/us/politics/trump-tariff-waivers.html>.

3. Please explain whether the Department conducted analyses examining the compliance costs of the exclusion process for businesses. If so, please provide the average and total hours and cost of compliance to businesses to submit an exclusion request.

In addition, I request that appropriate Department staff arrange a briefing with Committee staff on the Department's exclusion process. Please provide this briefing and material as soon as possible but no later than 5:00 p.m. on August 23, 2018.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."<sup>14</sup> Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine "the efficiency and economy of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices..."<sup>15</sup>

If you have any questions, please ask your staff to contact Josh McLeod or Scott Wittmann of the Committee staff at (202) 224-4751. Thank you for your attention to this matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Claire McCaskill  
Ranking Member

The Honorable Robert Lighthizer  
United States Trade Representative

Mr. Peter Navarro  
Director, National Trade Council

Enclosure

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<sup>14</sup> S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

<sup>15</sup> S. Res. 62 § 12(e)(1)(A), 115th Cong. (2017).