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August 29, 2018

The Honorable Peggy E. Gustafson
Inspector General
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Dear Inspector General Gustafson:

I am writing to request that your office conduct an investigation of the Commerce Department's implementation of the exemption (i.e., exclusion) process for steel and aluminum tariffs imposed by President Trump under Section 232 of the Trade Expansion Act of 1962.[1] According to the Department, the Bureau of Industry and Security (BIS) is charged with evaluating requests by companies for exemptions in order to "further hone these tariffs to ensure they protect our national security while also minimizing undue impact on downstream American industries."[2]

As of August 27, 2018, Commerce has received 30,035 exemption requests for steel and aluminum imports combined. The Department has made decisions on 3,559 of those requests, approving 2,101 and denying 1,458.[3] Commerce officials claimed that the exemption process would be objective, and decisions would be made after "taking into account national security considerations … [and] whether a product is produced in the United States of a satisfactory quality or in a sufficient and reasonably available amount."[4] Secretary Ross promised that the Commerce Department would run "a fair and transparent process."[5]

But an investigation by my staff and additional public reporting have revealed the opposite: the Commerce Department process for making decisions that affect thousands of American companies subject to President Trump's tariffs is failing to protect national security; it

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[1] White House, "Presidential Proclamation on Adjusting Imports of Aluminum into the United States," March 8, 2018, https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/; White House, "Presidential Proclamation on Adjusting Imports of Steel into the United States," March 8, 2018, https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states/.

[2] Department of Commerce, "U.S. Department of Commerce Announces Steel and Aluminum Tariff Exclusion Process," press release, March 18, 2018, https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-steel-and-aluminum-tariff-exclusion.

[3] https://www.regulations.gov/docket?D=BIS-2018-0002, accessed on August 27, 2018; https://www.regulations.gov/docket?D=BIS-2018-0006, accessed on August 27, 2018.

[4] Department of Commerce, "U.S. Department of Commerce Announces Steel and Aluminum Tariff Exclusion Process," press release, March 18, 2018, https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-steel-and-aluminum-tariff-exclusion.

[5] *Id.*

is arbitrary and opaque, replete with mistakes, and subject to political favoritism. It is therefore imperative that your office investigate this matter.

The Questionable Commerce Department Exemption Process

On August 7, 2018, I sent a letter[6] to Secretary Ross regarding my staff's investigation of the July 2018 approval of a tariff exemption for the American subsidiary of the United Company RUSAL PLC (Rusal), a sanctioned Russian company controlled by "a member of the inner circle of the Russian president, Vladimir V. Putin,"[7] that allowed the company to escape tariffs on more than 6.6 million pounds (3 million kilograms) of aluminum billets.[8] The decision to grant an exemption to a sanctioned Russian company raised obvious questions about how the exemption approval process was protecting national security.

Additional details of how the Rusal exemption was approved were equally alarming. The July exemption was approved after Commerce Department officials appeared to privately inform Rusal that the company needed to provide additional information in a new submission; even though Rusal appeared to have made no effort to find alternative U.S. producers; [9] and over the objection of a domestic producer of the material sought by Rusal.[10]

However, after I sent my letter, and after media inquiries, the Commerce Department reversed its decision and immediately revoked the exemption given to Rusal. The rationale for this decision was curious: Commerce officials blamed a "clerical error" by Century Aluminum, the company that filed an objection to the Rusal exemption, and stated that upon further review, they had "considered the objection on its merits and determined it supports a denial."[11] Commerce officials provided no explanation for why a sanctioned Russian company would receive an exemption in the first place, and the Commerce and Treasury Departments provided conflicting accounts of whether the Treasury Department – which is responsible for enforcing the Rusal sanctions – had played a role in the decision.[12]

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[6] Letter from Senator Elizabeth Warren to Commerce Secretary Wilbur Ross, August 7, 2018, https://www.warren.senate.gov/imo/media/doc/2018.08.07%20Letter%20to%20Commerce%20Secretary%20on%20Rusal%20America%20Tariff%20Exemptions.pdf.

[7] New York Times, "Russian Once Tied to Trump Aide Seeks Immunity to Cooperate With Congress," Barry Meier and Jesse Drucker, May 26, 2017, https://www.nytimes.com/2017/05/26/us/politics/oleg-deripaska-paul-manafort.html.

[8] Regulations.gov, "EXCLUSION DENIED - Rusal America Corporation - Billet - HTS 7601209045," received April 30, 2018, posted May 22, 2018, https://www.regulations.gov/document?D=BIS-2018-0002-0476.

[9] *Id.*

[10] Regulations.gov, "BIS-2018-0002-0478 - Rusal America Corporation - Billet - HTS 7601209045 - Objection 1," https://www.regulations.gov/document?D=BIS-2018-0002-2082.

[11] New York Times, "How a Blacklisted Russian Firm Won (and Lost) a Break from Trump's Tariffs," Jim Tankersley, August 9, 2018, https://www.nytimes.com/2018/08/09/us/politics/rusal-tariff-exemption.html.

[12] New York Times, "How a Blacklisted Russian Firm Won (and Lost) a Break from Trump's Tariffs," Jim Tankersley, August 9, 2018, https://www.nytimes.com/2018/08/09/us/politics/rusal-tariff-exemption.html; United States Senate Committee on Banking, Housing, and Urban Affairs, "Russia Sanctions: Current Effectiveness and Potential for Next Steps," August 21, 2018, https://www.banking.senate.gov/hearings/russia-sanctions-current-effectiveness-and-potential-for-next-steps (starting at 2:13:20).

An examination of the decision memos denying and then approving the Rusal exemption raises additional questions about the analyses BIS and other relevant agencies are conducting for these request. BIS approved the Rusal exemption on July 19, 2018 after accepting "analysis provided by the International Trade Administration (ITA), and assess[ing] other interagency comments as applicable" – ultimately finding that the requested material "is not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality."[13] However, on August 8, 2018, one day after I sent my letter, BIS reversed its decision – this time concluding "that the product … is produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality."[14] It is not clear what analysis and what additional information BIS or ITA considered – outside of the objection submitted by Century Aluminum – that resulted in this complete reversal.

Additional media reports have raised questions about political interference in the exemption process, and about whether the Administration is making unbiased decisions based upon the facts and the merits of each exemption request. According to a New York Times report,

> Two of America's biggest steel manufacturers – both with deep ties to administration officials – have successfully objected to hundreds of requests by American companies that buy foreign steel to exempt themselves from President Trump's stiff metal tariffs. ... Nucor, which financed a documentary film made by a top trade adviser to Mr. Trump, and … United States Steel, which has previously employed several top administration officials, have objected to 1,600 exemption requests filed with the Commerce Department over the past several months. To date, their efforts have never failed….[15]

And last week, a report indicated that Office of Management and Budget Director Mick Mulvaney was "trying to use his influence" and "making personal pleas to administration officials" for an exemption for Element Electronics, a company whose president had contributed $5,400 to Mr. Mulvaney's congressional campaign in 2016.[16]

Request for An Inspector General Investigation

The analyses and anecdotal reports about the decisions made by the Commerce Department regarding steel and aluminum tariff exemptions are troubling. Thousands of companies are seeking exemptions worth billions of dollars and affect manufacturing and investment decisions nationwide. But this process appears to be running on an ad hoc basis, with little transparency, and bending to political pressure from well-connected lobbyists and

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[13] Regulations.gov, BIS Decision Memo - BIS-2018-0002-0476," date signed July 19, 2018, date posted July 20, 2018.

[14] Regulations.gov, BIS Decision Memo - BIS-2018-0002-0476," date signed August 8, 2018, date posted August 8, 2018, https://www.regulations.gov/document?D=BIS-2018-0002-3132.

[15] New York Times, "Steel Giants with Ties to Trump Officials Block Rellief for Hundreds of Firms," Jim Tankersley, August 5, 2018, https://www.nytimes.com/2018/08/05/us/politics/nucor-us-steel-tariff-exemptions.html.

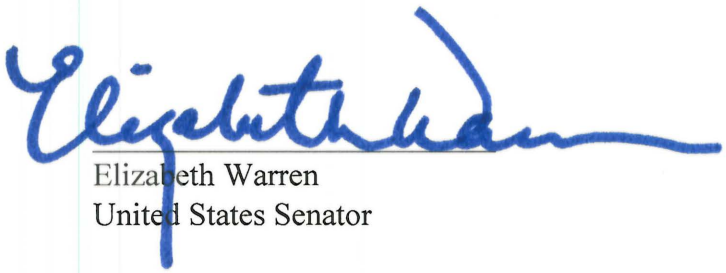
[16] McClatchy, "Trump's Budget Chief is Trying to Protect his Home State from Tariffs," Emma Dumain, August 20, 2018, https://www.mcclatchydc.com/news/politics-government/article217018380.html.

Administration officials. It is not at all clear that the exemption process is meeting its goals of "hon[ing] ... tariffs to ensure they protect our national security while also minimizing undue impact on downstream American industries."[17]

I therefore request that you conduct a thorough investigation of the Department's process for evaluating tariff exemption requests, and that this review include an analysis of:

1. The processes and procedures in place for Commerce officials to make decisions on tariff exemptions.
2. The extent to which Commerce officials are following these policies and procedures.
3. Whether Commerce officials are making decisions on a case-by-case basis, in a transparent process, based on consistent application of factual analysis, free of political interference from individuals inside or outside the Administration.
4. The steps that Commerce officials are taking to ensure that tariff exemptions meet their goal of protecting national security "while also minimizing undue impact on downstream American industries."
5. Any credible evidence that tariff exemptions granted by the Department have strengthened the national security of the United States.

Sincerely,



Elizabeth Warren
United States Senator

[17] Department of Commerce, "U.S. Department of Commerce Announces Steel and Aluminum Tariff Exclusion Process," press release, March 18, 2018, https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-steel-and-aluminum-tariff-exclusion.