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October 30, 2018

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

Dear Secretary Ross:

I write to express grave concern that the majority of the first batch of exemptions your Department has issued from the Trump Administration's steel tariffs have gone to subsidiaries of foreign-owned companies – even though these tariffs are purportedly in place to protect American companies. You appear to be implementing the tariff exemption program in a way that undermines American steel producers - by allowing large tariff-free imports of foreign steel - and harms American-owned steel-dependent companies instead of improving their competitive advantage over companies headquartered in China and other foreign countries.

On March 8, 2018, President Donald Trump issued a proclamation imposing a twenty-five percent tariff on steel products and a ten percent tariff on aluminum products imported into the United States under section 232 of the Trade Expansion Act of 1962.¹ President Trump claimed that as a result of these tariffs “we won't have foreign countries dumping ... steel all over the place and destroying our factories, destroying our plants, destroying our companies, and destroying our jobs.”²

At an event with industry officials the day he announced the tariffs, the President said: [T]he biggest steel companies in the United States. They used to be a lot bigger, but they're going to be a lot bigger again. And ... the big aluminum companies in the United States ... they've been very unfairly treated by bad policy, by bad trade deals, by other countries. ... [W]e're going to build our steel industry back and we're going to build our aluminum industry back.³

He said:

People have no idea how badly our country has been treated by other countries, by people representing us that didn't have a clue. ... [T]hey've destroyed the steel

¹ White House, “Presidential Proclamation on Adjusting Imports of Aluminum into the United States,” March 08, 2018, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/>.

² White House, “Remarks by President Trump on the Economy,” July 27, 2018, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-economy/>.

³ White House, “Remarks by President Trump in Listening Session with Representatives from the Steel and Aluminum Industry,” March 1, 2018, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-listening-session-representatives-steel-aluminum-industry/>.

industry, they've destroyed the aluminum industry ... So we're bringing it all back.⁴

And he promised that “you will have protection for the first time in a long while, and you're going to regrow your industries.”⁵

At the same time that President Trump announced these new tariffs, the Commerce Department revealed a process by which companies using foreign steel and aluminum could obtain exemptions from these same tariffs. According to you, this process would “ensure they protect our national security while also minimizing undue impact on downstream American industries.”⁶

A new analysis by my staff reveals what appears to be a major flaw in your implementation of this steel tariff exemption process. Rather than benefitting American companies, the majority of the tariff exemptions have gone to foreign-owned companies seeking exemptions for their U.S. subsidiaries, including hundreds of exemptions for Chinese and Japanese firms.

Key findings of this review include:

- Over eight in ten waiver requests granted by the Commerce Department were for foreign-headquartered companies, who were seeking waivers to import steel to their U.S.-based subsidiaries. Fewer than 20% of tariff waivers were granted to U.S.-owned companies.
- The majority – almost 52% – of steel tariff waivers were given to subsidiaries of Japanese-headquartered companies.
- Chinese-headquartered companies received more than one in four steel tariff waivers, and, unlike American companies, nearly all exemption requests by Chinese companies were granted.
- Companies that are headquartered in Japan and China and request tariff exemptions were over three times more likely to get the exemptions than American-owned companies that request exemptions.

This is utterly inexplicable and you owe the American people an answer for why, after President Trump promised that his tariff program would help American companies, the process appears to be favoring foreign-owned firms with U.S. subsidiaries over American-owned firms by allowing them to import foreign steel. This isn't the first problem my staff has uncovered with the waiver program— an earlier review revealed that you provided a valuable exemption to Rusal PLC, a subsidiary to a Russian company under U.S. sanctions;⁷ other reports indicated that the decision-making process is plagued by political influence and favoritism.⁸

⁴ *Id.*

⁵ *Id.*

⁶ 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>.

⁷ 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>.

⁸ Letter from Senator Elizabeth Warren to Commerce Department Inspector General Peggy Gustafson, August 29, 2018.

The remainder of this letter contains additional details on my concerns.

The Commerce Department's Aluminum and Steel Tariff Waiver Process

On March 19, 2018, 11 days after President Trump first imposed the steel and aluminum tariffs, the Commerce Department issued an interim final rule and launched a tariff waiver program, to “further hone these tariffs to ensure they protect our national security while also minimizing undue impact on downstream American industries.”⁹ The process allows businesses operating in the United States to submit exclusion requests and avoid paying tariffs for imported steel and aluminum products not “produced in the United States in a sufficient and reasonably available amount or a satisfactory quality.”¹⁰

All requests, along with all objections to those requests – which can be submitted by organizations seeking to challenge the requestor’s claims – are processed and posted to an online database. The Commerce Department’s Bureau of Industry and Security (BIS), with assistance from the International Trade Administration and other relevant agencies, reviews and grants or denies each request – and posts the decision to the online database.¹¹ Several months after the launch of this procedure, on September 11, 2018, the Commerce Department published a second interim final rule – responding to comments to the March 19 rule and adding a rebuttal and subrebuttal process – to “further improve the exclusion request and objection process.”¹²

Every organization seeking an exclusion from the steel or aluminum tariffs is required to submit a form that requires the company to list, among many things, the quantity of steel it is seeking to import, the origin country of the product, the manufacturer and supplier of the product as well as its parent organization. This information was analyzed in detail by my staff.

The Commerce Department's Decisions on Steel Exclusion Requests Largely Benefit Foreign-Headquartered Corporations

As of October 22, 2018, the Commerce Department has posted over 30,000 steel tariff exclusion requests, over 11,000 decisions approving requests, and close to 4,400 decisions denying requests.¹³ My staff analyzed all 909 decisions posted by the Department in the first 30 days that responses were made available.¹⁴ My staff continues to analyze these decisions as they come in, although this process is difficult because the online database is disorganized, and the

<https://www.warren.senate.gov/imo/media/doc/2018.08.29%20Letter%20to%20Commerce%20Department%201G%20on%20Rusal.pdf>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Department of Commerce, Federal Register Interim Final Rule, “Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum,” September 11, 2018; <https://www.federalregister.gov/documents/2018/09/11/2018-19662/submissions-of-exclusion-requests-and-objections-to-submitted-requests-for-steel-and-aluminum>.

¹³ Regulations.gov “Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the filing of Objections to Submitted Exclusion Requests for Steel and Aluminum,” accessed on October 22, 2018, <https://www.regulations.gov/docket?D=BIS-2018-0006>

¹⁴ A search of Regulations.gov for steel tariff exemption decisions posted between June 20, 2018 and July 20, 2018 returns 913 results – two of the decisions in the results are double entries (BIS-2018-0006-0225 and BIS-2018-0006-0481), and one is a triple entry (BIS-2018-0006-0226), leaving a total of 909 unique decisions.

process by which decisions can be accessed and analyzed makes timely analysis nearly impossible.¹⁵

The key findings of the staff analysis are:

- **The Commerce Department is granting hundreds of waiver requests monthly.** In the first 30 days that decisions were made available online, the Commerce Department approved over 500 requests, waiving tariffs for approximately 170 million kilograms of steel imports. The Department granted over half – close to 56% – of all requests reviewed during this time period. In total, the Department has granted over 11,000 requests as of October 22, 2018.
- **Foreign-headquartered companies received more than 80% of all exemption requests.** 81% of the granted exemptions posted by the Commerce Department in the first 30 days were filed by U.S. subsidiaries that identified a parent company outside the United States on their application form. These foreign-owned companies seeking exemption from tariffs for their U.S. subsidiaries received waivers for close to 102 million kilograms of steel imports.
- **The majority of steel tariff waivers were given to subsidiaries of Japanese-headquartered companies.** President Trump has complained about unfair trade tactics by Japanese firms, claiming during the 2016 presidential campaign that Japan is “crushing” the U.S. in trade,¹⁶ and that Prime Minister Abe believes that Japan has been “tak[ing] advantage of the United States for so long.”¹⁷ But almost 52% of the granted steel tariff exemption requests posted by the Commerce Department, in the first 30 days of its decision-making, were for companies headquartered in Japan. Overall, subsidiaries of Japanese companies seeking exemptions were successful in 84% of their requests. The largest recipient of tariff exclusions, DS Containers, Inc. – a subsidiary of Daiwa Can Company, a Japanese steel manufacturing company that claims to “represent approximately one-third of the can industry in Japan”¹⁸ – requested an exemption from importing approximately 70.8 million kilograms of steel from JFE steel – the eighth largest crude steel producing company in the world,¹⁹ which is also based in Japan. DS Containers received an exemption for each of the ten requests – avoiding paying tariffs for all 70.8 million kilograms of steel products.²⁰ In addition to DS Containers, five other

¹⁵ Most of the information provided by requesting organizations in their request forms (e.g. quantity of steel, parent company, origin country) is not made available for aggregate download; some requests have multiple decision entries on the database (e.g. – request BIS-2018-0006-0226); the Department does not indicate when it has reversed a decision on the online database; many of the downloadable entries (decisions and requests) do not adhere to the standardized entry format used by the Department (e.g. – “BIS Decision Memo – BIS-2018-0006-XXXX” is the most common format for decision document titles, but not the only format).

¹⁶ New York Times, “Misreading Trump: Ally Japan Is Spurned on Tariff Exemptions,” Motoko Rich, March 23, 2018, <https://www.nytimes.com/2018/03/23/world/asia/japan-trump-tariffs-trade-.html>.

¹⁷ *Id.*

¹⁸ DS Containers, “Where We Started,” <http://www.dscontainers.com/about.php>.

¹⁹ World Steel Association, “World Steel in Figures 2018,” <https://www.worldsteel.org/en/dam/jcr:f9359dff-9546-4d6b-bed0-996201185b12/World+Steel+in+Figures+2018.pdf>.

²⁰ Regulations.gov, Steel tariff exemptions for DS Containers from June 20, 2018 to July 25, 2018, <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&s=%22ds%2Bcontainers%22%2B%22decision%2Bmemo%3A&det=PS&pd=06%7C20%7C18-07%7C25%7C18&D=BIS-2018-0006>

companies headquartered in Japan received tariff exemptions for a cumulative 25.58 million kilograms of steel imports.

- **Chinese-headquartered companies received more than one in four tariff waivers, and nearly all exemption requests by Chinese companies were granted.** President Trump has also complained about unfair trade practices by the Chinese government and Chinese companies, claiming during the campaign that “[t]hey’re ripping us off” and that China is “rap[ing] our country ... It’s the greatest theft in the history of the world.”²¹ President Trump has said that he is “committed to enabling American companies and workers to compete on a level playing field around the world ... never allow[ing] unfair trade practices to undermine American interests.”²² And industry leaders have pointed to China’s steel dumping as uniquely responsible for global overcapacity that has devastated the industry, including in the United States.²³ But my staff review of the first 30 days of posted decisions reveals that Chinese-owned companies received 27% of all waiver approvals through their U.S. subsidiaries. Overall, Chinese-based companies seeking exemptions were successful in 94% of their requests. ARC Automotive Inc. – a subsidiary of a China-based real estate company owned by a Chinese investment holding company – received tariff exemptions for over 1.7 million kilograms of steel products it sought to import from Nippon Steel & Sumitomo Metal Corporation, two of some of the largest steel manufacturers in the world. A second organization, Greenfield Industries – a subsidiary of TDC Cutting Tools, Inc., a company based in China – received exclusions from over 250,000 kilograms of steel imports.
- **American-owned companies were significantly more likely to have their exemption requests denied than Chinese- or Japanese-owned companies.** The Commerce Department only approved 25% of the hundreds of exclusion requests submitted by American companies – a stark difference from the 94% and 84% approval rate for the subsidiaries of Chinese and Japanese companies, respectively.

Conclusion and Questions

You and President Trump promised that the steel tariffs and the tariff waivers would be considered via a “fair and transparent process” that would benefit American companies and protect national security. But this staff review appears to reveal that you have not kept these promises. President Trump has been particularly critical of trade tactics used by the governments of China and Japan. But four out of five tariff exclusions in the first batch of Commerce Department decisions were granted for the U.S. subsidiaries of companies headquartered in Japan and China, and in many cases, they are importing steel from manufacturers and suppliers based in Japan and China. This appears to be a massive loophole.

²¹ ABC News, “10 times Trump attacked China and its trade relations with the US,” Veronica Stracqualursi, November 9, 2017, <https://abcnews.go.com/Politics/10-times-trump-attacked-china-trade-relations-us/story?id=46572567>.

²² White House, Statement from President Donald J. Trump on Additional Proposed Section 301 Remedies,” April 5, 2018, <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-additional-proposed-section-301-remedies/>.

²³ CNBC, “China has conducted a ‘war’ – not trade – experts say,” Holly Ellyatt and Karen Tso, May 20, 2016, <https://www.cnbc.com/2016/05/20/china-steel-overcapacity-war.html>.

and raises questions about the implementation of this program. To address my concerns, I ask that you answer my questions about the tariff program no later than November 13, 2018.

1. What is the explanation for why the majority of steel tariff exemptions have gone to subsidiaries of foreign-owned companies rather than U.S.-headquartered firms?
2. Why are subsidiaries of foreign-headquartered corporations more likely to receive approval of a tariff exemption request than U.S.-headquartered firms?
3. How is this outcome – foreign-headquartered corporations receiving more than 80% of all exemptions allowing them to import foreign-produced steel – consistent with President Trump's claims that the tariffs and the tariff exemption process were designed to help American steel producers and users?
4. In order for us to conduct a complete analysis, please provide a searchable, electronic list of all companies that have submitted requests for steel and aluminum exemptions and received a decision, the parent company for each of those organizations, the headquarters location of the parent companies, the importer of record for each request submitted by those organization, the quantity of steel or aluminum requested and denied or granted for each organization, and the manufacturer and supplier of the steel or aluminum identified by those organizations.

I also ask that you provide my staff with a comprehensive briefing on your implementation of the tariff exemption program no later than November 13, 2018. Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator