

United States Senate

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

CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

November 30, 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 the Administration's trade policies. In recent months, I have heard concerns from American businesses about the length of the tariff exclusion process and the ability of domestic steel companies to meet demand. I respectfully write to request further information relating to these concerns.

In August 2018, I relayed to you the plight of a Wisconsin business that had its exclusion request denied based on—in the business's view—false and misleading statements by an objector.¹ This Wisconsin business has since provided additional information regarding quantity and quality requirements within the required rebuttal deadline;² however, the Department of Commerce has not made a decision on the exclusion request after over ten weeks. This business continues to face lingering financial uncertainty caused by the Department's exclusion review process.³

Some businesses have also questioned the practicality of the Department's denials of certain exclusion requests based on objections filed by steel companies. The Department will reportedly deny an exclusion request if a steel company objects that it can supply the product "in enough quantity and quality to meet demand."⁴ With some steel companies filing thousands of objections, it is unclear how the Department is considering the companies' cumulative representation of their production capacity.

A recent study by the Mercatus Center at George Mason University analyzing the Department's data about exclusion request objections "calls into question whether U.S. steel

¹ See letter from Ron Johnson, S. Comm. on Homeland Sec. & Governmental Aff., to The Honorable Wilbur L. Ross, Sec. of U.S. Dept. of Commerce, (Aug. 9, 2018), <https://www.hsgac.senate.gov/imo/media/doc/8-9%20Johnson%20to%20Secretary%20Ross%20re%20tariff%20exclusion%20process.pdf>.

² Call to Committee staff with Wisconsin-based business (Nov. 2, 2018).

³ *Id.*

⁴ Jim Tankersley, *Steel Giants With Ties to Trump Officials Block Tariff Relief for Hundreds of Firms*, N.Y. Times, (Aug. 5, 2018), <https://www.nytimes.com/2018/08/05/us/politics/nucor-us-steel-tariff-exemptions.html>.

producers can produce what they say they can produce.”⁵ According to the study, U.S. steel companies claim they can produce about 177 percent more than what the companies produced in 2017.⁶ Specifically, the top three U.S. steel companies—Nucor, AK Steel, and U.S. Steel—claim they can produce approximately 169, 531, and 319 percent more steel, respectively, compared to last year’s production.⁷ The study’s authors conclude that the data raise questions about “whether US [*sic*] steel producers have the ability to meet the demand of US [*sic*] manufacturers.”⁸

I appreciate that the Department has begun to produce documents responsive to the Committee’s oversight and has made officials available for briefings. As the Department processes exclusion requests, it should provide certainty and timely responses to American businesses. If the Department intends to deny exclusion requests based on steel company objections, it should also ensure that the steel companies have sufficient production capacity to meet the cumulative demand and quality requirements. Accordingly, I respectfully request the following information:

1. Please provide the Department’s data on the market price of steel and aluminum, both domestic and international, from 2008 to 2018.
2. Please provide the following data about the steel and aluminum tariffs:
 - a. The cumulative amount of steel that steel companies have represented that they can produce in objections to tariff exclusion requests;
 - b. The cumulative amount of aluminum that aluminum companies have represented that they can produce in objections to tariff exclusion requests;
 - c. The current capacity utilization of domestic steel and aluminum producers; and

⁵ Christine McDaniel and Danielle Parks, *US Steel Manufacturers Claim Unrealistic Quantities of Production in Objections*, Mercatus Center, (Nov. 13, 2018), <https://www.mercatus.org/bridge/commentary/us-steel-manufacturers-claim-unrealistic-quantities-production-objections>.

⁶ According to the study, last year U.S. domestic steel companies produced 81.6 million metric tons (mmt) of steel. These companies have objected to tariff exclusions on 144.14 mmt of imported steel. Staff calculated the percentage increase by adding 81.6 mmt (last year’s production) and 144.14 mmt (total amount objected). The total amount came to 225.74 mmt. The percent increase from 81.6 mmt to 225.74 mmt is 176.64 percent. Christine McDaniel and Danielle Parks, *US Steel Manufacturers Claim Unrealistic Quantities of Production in Objections*, Mercatus Center, (Nov. 13, 2018), <https://www.mercatus.org/bridge/commentary/us-steel-manufacturers-claim-unrealistic-quantities-production-objections>.

⁷ In 2017 Nucor produced 24.39 mmt of steel. It objected to 41.20 mmt of imported steel. The total amount is 65.59 mmt of steel, a 168.92 percent increase. In 2017 AK Steel produced 5.6 mmt of steel. It objected to 29.72 mmt. The total amount is 35.32, a 530.71 percent increase. In 2017 U.S. Steel produced 14.43 mmt of steel. It objected to 45.98 mmt of imported steel. The total amount is 60.41 mmt, a 318.64 percent increase. Christine McDaniel and Danielle Parks, *US Steel Manufacturers Claim Unrealistic Quantities of Production in Objections*, Mercatus Center, (Nov. 13, 2018), <https://www.mercatus.org/bridge/commentary/us-steel-manufacturers-claim-unrealistic-quantities-production-objections>.

⁸ Christine McDaniel and Danielle Parks, *US Steel Manufacturers Claim Unrealistic Quantities of Production in Objections*, Mercatus Center, (Nov. 13, 2018), <https://www.mercatus.org/bridge/commentary/us-steel-manufacturers-claim-unrealistic-quantities-production-objections>.

- d. The economic effects of the steel and aluminum tariffs on downstream industries and consumers.
3. Please explain how the Department considers the following factors in evaluating a tariff exclusion request:
 - a. The objector's ability to produce the amount of steel specified in an exclusion request in light of the cumulative amount of steel that objector represents that it can provide in all of its filed objections;
 - b. Whether Nucor, AK Steel, and U.S. Steel have the capacity to produce approximately 169, 531, and 319 percent more steel than they produced in 2017;
 - c. Variations in product design and specification between foreign steel and domestic steel, and the potential for resulting environmental or safety consequences;⁹ and
 - d. Quality standards, including the verification and validation testing requirements, and the ability of the objector to satisfy these standards.
 4. Please provide the following information about the Department's process for evaluating tariff exclusion requests:
 - a. The average time for the Department to make a final decision on an exclusion request after a rebuttal and surebuttal have been filed;
 - b. The total number of exclusion requests, objections, rebuttals and surebutals that the Department has received to date.
 - c. Whether the Department considers a final exclusion request decision as an agency adjudication or order for purposes of the Administrative Procedure Act;¹⁰ and
 - d. The standard of review the Department uses to review exclusion requests and how the Department ensures consistency in this standard.

Please provide this material as soon as possible but no later than 5:00 p.m. on December 14, 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."¹¹ 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..."¹²

⁹ Meeting by Committee staff with U.S. based energy company (Aug. 30, 2018) (without the approval of their exclusion request, this energy company will be forced to use domestic steel pipes—which are significantly shorter than the length of the imported pipes generally used by the company—for their oil and gas pipelines). Shorter pipes require more welds, which increases the likelihood of weld failures. Weld failures can result in both public safety and environmental hazards due to the release of petroleum and natural gas products. See Pipeline & Hazardous Materials Safety Admin., *Fact Sheet: Material/Weld Failures*, <https://primis.phmsa.dot.gov/comm/FactSheets/FSMaterialWeldFailure.htm> (last visited Nov. 15, 2018).

¹⁰ Administrative Procedure Act § 1, 5 U.S.C. 551(6)-(7).

¹¹ S. R. XXV(k); see also S. Res. 445, 108th Cong. (2004).

¹² S. Res. 62, 115th Cong. § 12(e)(1)(A) (2017).

The Honorable Wilbur L. Ross
November 30, 2018
Page 4

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