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Secretary of Commerce
Attention: Import Administration
APO/Dockets Unit, Room 18022
U.S. Department of Commerce
Pennsylvania Ave. & 15th St., NW
Washington, DC 20230

Public Version

Re: Oil Country Tubular Goods from Korea – Comments on
March 2, 2017, Email from Director of National Trade Council

Dear Mr. Secretary:

We are writing in response to the Department's March 13 memorandum inviting comments on the email dated March 2, 2017, from the Director of the National Trade Council ("NTC") to the Secretary of Commerce.¹

The attempt by the NTC Director to interfere in an ongoing investigation is plainly improper. Decisions in antidumping proceedings are assigned by law to the Secretary of

¹ The Department has also invited comments on a March 10 email from a low-level official in the Korean embassy to one of the Department's case analysts for this proceeding, which requested information on the impact of the NTC Director's intervention on the Department's position on the "particular market situation" issue. That inquiry is hardly comparable to the attempt by the NTC Director to instruct the Secretary how to decide that issue.

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Commerce — and delegated by him to the Assistant Secretary for Enforcement and Compliance. *See* 19 U.S.C. § 1677(1). The statute describes a process for the Department to build a factual record and make a decision based solely on the evidence contained in that record. *See* 19 U.S.C. § 1677m. It does not permit a role for instructions or unsupported factual representations by non-Departmental officials.²

It is apparent from the NTC Director's email that his unlawful intervention was made at the behest of Tenaris, S.A. Indeed, the NTC Director's email explicitly identifies Tenaris S.A. as an entity that “produces oil country tubular goods (OCTG)” and “has a case pending before the Department of Commerce alleging dumping by South Korea” — and, it purports to instruct the Department on the “logical setting of margin in the Tenaris case.”³ We will not repeat our previous and extensive objections to the attempt by Tenaris, which is not an “interested party” within the meaning of the statute, to participate in this proceeding. We will simply note that, were it not for the obvious impropriety of the NTC Director's intervention, we would appreciate his apparent confirmation of our argument that the participation of Wiley Rein in this proceeding has been as the representative of Tenaris, and not as counsel to Maverick Tube Corporation.

The NTC Director's email contains new factual assertions (regarding, for example, the alleged plans of various non-U.S. subsidiaries of Tenaris) that are not part of the record, have not been certified to be accurate (as required by the Department's regulations), and are of dubious

² In this regard, an attempt to dictate a decision by a government official who is not an “Officer of the United States” that has been appointed with “the Advice and Consent of the Senate” also raises Constitutional concerns. *See Buckley v. Valeo*, 424 U.S. 1, 126 (“any appointee exercising significant authority pursuant to the laws of the United States is an ‘Officer of the United States,’ and must, therefore, be appointed in the manner prescribed by § 2, cl. 2, of {Article II}”).

³ *See* NTC Director Email (March 2, 2017) at 1.

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validity. Those assertions appear to be based on one-sided allegations presented to the NTC Director by Tenaris. In order to provide a fair opportunity for the other parties to respond, the Department must obtain and place on the record of this proceeding any documents or other materials presented to the NTC (including the Director and its staff) concerning this matter, as well as memoranda describing any *ex parte* meetings held with the NTC, its Director or its staff regarding this matter. Respondents should then be provided an appropriate opportunity to submit a response to any of the materials that were provided to the NTC.

Finally, we note that the NTC Director's email is based on an obvious misunderstanding of the relevant facts (which is hardly surprising for someone who has been briefed only by Tenaris and its counsel). Among other things, its calculation of the "logical setting of margin in the Tenaris" is based on the assertion that "the US has a successful case against Chinese dumping of hot rolled coil with a roughly 60% margin."⁴ But it provides no evidence for that assertion, which significantly overstates the dumping margins applicable to major Chinese producers.⁵ And it provides no support whatsoever for the assumption that the alleged dumping margin for Chinese sales into the United States in any way describes the pricing for Chinese sales of hot-rolled coils to SeAH in Korea.

⁴ See NTC Director's Email at 1.

⁵ According to the Department's most recent sunset review, the dumping margins in the Chinese Hot-Rolled case were 12.34 percent for the Baoshan group, 31.09 percent for the Anshan group, 57.19 percent for the Bengxi group, 65.59 percent for the Panzhihua and Wuhan groups, and 90.83 percent for "all others." See *Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine; Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 78 Fed. Reg., 15703, 15704 (March 12, 2013).

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As we have noted previously, SeAH purchased the hot-rolled coils it used in the production of OCTG during the review period from several suppliers, including POSCO, the Japanese-producer [], and three Chinese producers ([]). The largest single source was the Japanese producer [], which supplied [] percent of the hot-rolled coil purchased by SeAH during the review period. POSCO supplied only [] percent of the hot-rolled coil purchased by SeAH, while the three Chinese suppliers in total supplied the remaining [] percent.⁶ The prices paid by [

].⁷ This evidence fully refutes the suggestion by the NTC Director that the prices that POSCO and the Chinese suppliers charged SeAH were lower than the prices a market-economy supplier would charge.

Significantly, the NTC Director's email does not even try to explain how SeAH's purchases of coils from Japan could have been affected by the alleged "particular market situation" affecting Chinese suppliers. It also provides no allegation or evidence that the prices SeAH paid its Japanese suppliers for those coils "do not accurately reflect the cost of production in the ordinary course of trade," as the statutory provisions he relies on would require. In fact, since the prices paid by [

⁶ See, e.g., SeAH's March 31, 2016, Section D Response, Appendix D-4-D.

⁷ According to the information presented in Appendix D-4-D, the average price for SeAH's purchases of the relevant hot-rolled coils from POSCO during the review period was [] Korean Won per metric ton; the average price for purchases from the Japanese producer [] was [] Korean Won per metric ton; and, the average prices for purchases of HRC from the Chinese suppliers ranged from [] to [] Korean Won per metric ton. *Id.* See also SeAH's November 14, 2016, Rebuttal Comments at 4; SeAH's March 7 "Particular Market Situation" Rebuttal Brief at 8-9.

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], the email's

argument for finding a "particular market situation" simply collapses.

It is unfortunate that the NTC Director decided to rush to intervene in this proceeding without knowing all of the facts, based on a one-sided and inaccurate presentation by a group whose primary interests appear to lie in the production of OCTG outside the United States. His actions have contaminated this entire proceeding. Any decisions the Department may make that are adverse to the Korean respondents — on the "particular market situation" allegation or any other issue — will necessarily now fall under suspicion that they are a reaction to improper political interference by the NTC Director, and not a fair, good-faith result based solely on the facts and the law. We have previously explained why Tenaris's submissions in this case should be disregarded and removed from the record. Tenaris's decision to circumvent the Department's established procedures and appeal to the NTC Director to overturn the Department's well-reasoned preliminary decision on the "particular market situation" issue provides yet another reason for disqualifying them.

* * *

We request confidential treatment for this submission, which contains highly-sensitive business proprietary information, the release of which could cause substantial harm to SeAH. We agree to the release of this information under an appropriately-drawn administrative protective order, and am serving the proprietary version on the parties that have been granted access under the administrative protective order in this proceeding. A public version of this submission is also being filed separately with the Department, and served on the parties listed on the Department's public service list.

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Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

/s/ Jeffrey M. Winton

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U.S. DEPARTMENT OF COMMERCE
PUBLIC CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing submission is being served on this 16th day of March, 2017, by first-class mail, postage pre-paid, on the following parties:

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