Congress of the United States
Washington, DC 20515

March 14, 2018

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

Dear Secretary Ross:

We write today with an urgent implementation issue regarding President Trump's proclamations on steel and aluminum pursuant to the Commerce Department's Section 232 investigations. Specifically, we urge you to provide retroactive relief for U.S. companies that successfully petition for product exclusions, as requiring companies to pay the tariff even if the exclusion is granted serves no policy purpose.

The steel and aluminum proclamations direct the Commerce Department to, within ten days, detail a process in which American companies may apply for an exclusion on a steel or aluminum article if it is "determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality" or "based upon specific national security considerations." We understand that the process will provide for a 90-day period for Commerce to review the petition and make an exclusion determination.

We strongly urge that the rules for product exclusions from the 232 tariffs provide for retroactive relief, similar to antidumping and countervailing duty (AD/CVD) cases, if an exclusion is granted. In the absence of such relief, the government would essentially be levying an unnecessary tax either on manufacturers who cannot obtain a product domestically or on products that are vital for our national security. A lack of retroactive relief would also have a chilling effect on commerce and jobs. Manufacturers would be forced to choose between two bad options: pay an unnecessary tax or hold off on importing essential inputs until a determination is made.

Such retroactive relief can be easily administered. A company petitioning for an exclusion could be required to post a bond or a cash deposit for the tariff – 25% on a steel article and 10% on an aluminum article – while awaiting a determination. Indeed, importers in AD/CVD cases face such a requirement to post a bond, but they are not assessed final AD/CVD duties until a final determination is made. The advantage of the bonding requirement is that the revenue to the government is protected if an exclusion is not granted, while the bond can be harmlessly released if an exclusion is awarded.

Given that regulations will be released soon, we ask for your assurances that retroactive relief will be provided for companies who receive an affirmative decision on a product exclusion. Without it, we are deeply concerned that manufacturing jobs in our districts and across the country will be jeopardized without contributing to the policy objective of the 232 actions.

Thank you for your attention to this urgent matter.

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Sincerely,

JACKIE WALORSKI
Member of Congress

DAVE REICHERT
Member of Congress

DAVID SCHWEIKERT
Member of Congress

SAM JOHNSON
Member of Congress

DIANE BLACK
Member of Congress

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