

United States Senate

WASHINGTON, DC 20510

November 26, 2018

The Honorable Gene L. Dodaro
Comptroller General of the United States
United States Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Dodaro:

We write today to request a review of the process by which the Department of Commerce (Commerce) has been granting tariff exclusion requests for steel and aluminum imports that would otherwise be subject to additional duties under section 232 of the Trade Expansion Act of 1962.

In April 2017, the Secretary of Commerce initiated a section 232 investigation to examine whether steel and aluminum imports impair U.S. national security. On the basis of a positive determination from this investigation, President Trump invoked his authority under section 232 to proclaim 25% tariffs on steel imports and 10% tariffs on aluminum imports. These tariffs went into effect for most countries on March 23, 2018. Although Mexico and Canada were initially excluded from the tariffs, President Trump announced on May 31, 2018 that both countries would be included. In 2017, the U.S. imported approximately \$29 billion in foreign steel and \$17 billion in foreign aluminum.

As a result of the section 232 actions, U.S. trading partners have levied retaliatory tariffs on billions of dollars of American exports. In addition, several countries, including U.S. allies like Canada, Mexico, and the European Union (EU), have filed disputes against the United States using the World Trade Organization (WTO) dispute mechanism.

Since the tariffs went into effect, Commerce has been processing on a rolling basis thousands of petitions from U.S. importers of foreign steel and aluminum products seeking tariff relief. As of October 29, 2018, Commerce had received 49,301 exclusion petitions (including resubmissions), and had issued decisions in 16,567 cases (34%). Of these, 12,044 requests were approved and 4,523 were denied. In Congressional testimony on September 9, 2018, Commerce officials reported that the agency had redeployed staff from other Commerce offices and was in the process of hiring 55 contractors to handle the backlog of exclusion petitions.

Members of Congress and U.S. businesses have repeatedly raised concerns about the pace, transparency, and fairness of the section 232 steel and aluminum exclusion process. For example, the Senate Finance Committee and industry groups have called on Commerce to clarify the criteria it uses to determine whether to grant an exclusion from the tariffs. In July 2018, at a House Ways and Means subcommittee hearing, businesses vocalized concerns about the backlog

of exclusion applications and the challenges small businesses have faced in accessing adequate resources to navigate the exclusion process.

To ensure that Congress has a better understanding of this issue and possible actions that the federal government can take to address it, we request that the Comptroller General initiate a review that evaluates the following questions:

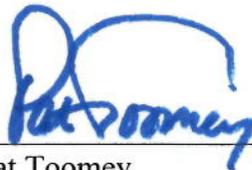
1. How has Commerce incorporated feedback from petitioners, members of Congress, and other stakeholders to develop and improve upon its exclusion process?
2. What criteria does Commerce use to make a determination to approve or deny an exclusion petition? How does Commerce adjudicate rebuttals?
3. What steps has Commerce taken to ensure the timely processing of exclusion petitions, including additional staffing and resources? What steps could Commerce take to improve the pace of its exclusion process?
4. How has Commerce trained staff to properly evaluate petitions?
5. What is the average amount of time Commerce takes to issue a decision on a petition? How does the rebuttal and surrebuttal process for opposition comments increase this timeline?
6. What has been the cost to date of the 232 exclusion process, including the costs of increased staffing to evaluate petitions?
7. How does Commerce ensure transparency and adequate communication with petitioners? How frequently does Commerce contact petitioners for additional information, if needed? How quickly does Commerce correct any mistakes in the administration of the exclusion petition process?
8. What degree of technical support has Commerce provided to assist petitioners, particularly small businesses, in filing exclusion petitions?

Please consider including recommendations for agency or congressional action in your evaluation. If you have any questions regarding this request, please contact Mark Libell (Jones) at 202-224-4124, Halie Craig (Toomey) at 202-224-4254, or Jan Beukelman (Carper) at 202-224-2441.

Sincerely,



Doug Jones
United States Senator



Pat Toomey
United States Senator



Thomas R. Carper
United States Senator