

United States Senate

WASHINGTON, DC 20510

November 8, 2019

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

The Honorable Richard Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Secretary Ross and Assistant Secretary Ashooh:

We write to express our serious concern regarding the Department of Commerce Office of Inspector General's (OIG) findings that a lack of transparency has contributed to the "appearance of improper influence" in decision-making for Section 232 tariff exclusion requests.

According to the management alert published on October 28, 2019, in the course of an audit of the Section 232 tariff exclusion process, the OIG uncovered issues that it believes requires the immediate attention of Bureau of Industry and Security (BIS) leadership to ensure a transparent and objective review process. Alarming, the OIG found that following off-the-record conversations with certain interested parties, Department officials took action to benefit those parties at the expense of others that did not enjoy such access. Specifically, the OIG found evidence of:

- An unofficial appeals process that led BIS officials to reconsider approved and posted exclusion requests at the request of an objector;
- Communications between BIS staff and objectors that prompted a change to internal review criteria, likely resulting in a greater number of exclusion requests rejected during the pre-clearance stage; and,
- Undocumented, off-the-record discussions between Department of Commerce officials and interested parties to tariff exclusions that took place prior to the official implementation of the exclusion request review process.

All of these actions took place behind closed doors without giving other impacted parties – those without the resources and political connections to weigh in unofficially – the opportunity to respond.

We have long been concerned about the lack of transparency and consistency in the Department of Commerce's Section 232 tariff exclusion process. As we wrote in our November 26, 2018 letter to the Government Accountability Office (GAO) requesting a review of the Department's process, "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." The OIG's findings released on October 28, 2019 confirms that these concerns are well-founded.

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The federal government should not be in the business of picking winners and losers through our trade policy. There should be clear rules of the road so that businesses in our states and across the country can be confident that their applications for tariff relief will be reviewed fairly and on the merits of their case. It is unacceptable that the current Section 232 tariff exclusion process is set up for only a select few to succeed. Our hard-working manufacturers and small businesses are disadvantaged by these types of unofficial processes identified by the OIG, and they deserve better.

In its management alert, the OIG recommends three specific actions that BIS should take to make the Section 232 exclusion request review process more transparent:

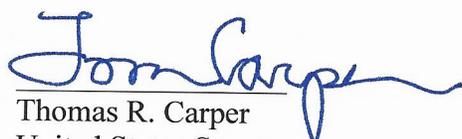
- Either regard all decisions as final once posted online, or amend the rules to allow appeals;
- Create a formal process to modify internal review criteria; and,
- Document all discussions with interested parties and ensure that all relevant correspondence becomes part of the official record.

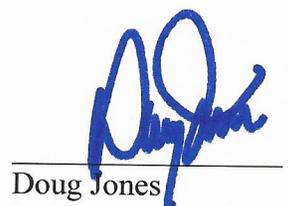
Given the serious implications of the OIG’s findings for the credibility of the Department of Commerce’s tariff exclusion review process and the significant impact of exclusion decisions on the economy of our states, we respectfully request a briefing and written response by November 22, 2019 that includes the following items:

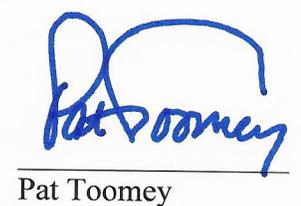
1. Whether BIS plans to implement the actions recommended by the OIG’s management alert, and if so, the specific steps BIS plans to take and the timeline for implementation;
2. Any other actions BIS plans to take to ensure greater transparency, consistency, and fairness in the tariff exclusion review and adjudication process; and,
3. Any actions BIS plans to take to address exclusion requests that may have been unfairly rejected due to the issues raised in the OIG’s management alert.

Thank you for your attention to this important matter. We look forward to your prompt response.

Sincerely,


Thomas R. Carper
United States Senator


Doug Jones
United States Senator


Pat Toomey
United States Senator