



To Honorable Ron Johnson, U. S. Senator and Chair, Committee on Homeland Security and Government Affairs, U. S. Senate  
cc Senator Claire McCaskill, Ranking Member,  
Senator James Risch, Chair, Senate Small Business Committee, and Senator Ben Cardin (Ranking Member), and Chairman Steve Chabot, House Small Business Committee and Rep. Nydia Velazquez (Ranking Member) and Ms. Rosalyn C. Steward; Counsel, Office of Advocacy, U. S. Small Business Administration (SBA) (international trade) and to Mr. Richard Theroux, OIRA Branch Chief (Trade), Ms. Neomi Rao and Mr. Dominic Mancini, OIRA/ Office of Management and Budget.

Re **TARIFF RELIEF PROCESS AT DEPARTMENT OF COMMERCE(DOC)-(STEEL/ALUMINUM – SEC. 232<sup>1</sup>**

Date August 10, 2018  
From Theresa Pugh, Theresa Pugh Consulting, LLC  
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I have read about the new steel and aluminum tariffs over the last two months. I have NO clients who have asked me to spend time or reach out to you. I undertook an exercise to review the first 400 applications on the [www.regulations.gov](http://www.regulations.gov) for Section 232 tariff relief out of curiosity. Here are some observations that I hope will be helpful to you and your staff as you conduct oversight of this process.

**Background:** I have 35 years' experience in filing regulatory comments on behalf of many industries—mostly as a trade association manager in energy, environmental and OSHA regulations. I also have experience in manufacturing and worked on NAFTA in 1992-1993 (side agreements and on corrections to incorrect classification of electronics products). **These comments do not attempt to reflect the views of any present or former client or employer<sup>2</sup>.**

We have serious trade problems meriting policy to resolve Intellectual Property and patent/trademark violations (especially from China) and internet sales not following U. S. commercial rules or subsidized product dumping, these steel and aluminum tariffs will not resolve those problems.

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<sup>1</sup> <https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-steel-and-aluminum-tariff-exclusion> and Federal Register notice [https://www.commerce.gov/sites/commerce.gov/files/federal\\_register\\_vol\\_83\\_no\\_53\\_monday\\_march\\_19\\_2018\\_12106-12112.pdf](https://www.commerce.gov/sites/commerce.gov/files/federal_register_vol_83_no_53_monday_march_19_2018_12106-12112.pdf)

<sup>2</sup> Former employers disclosed on company's website

I don't profess to be an expert on tariffs or trade law but know enough to read most of the submittals that this week's quieter August days allowed. I am also familiar with OMB's survey requirements under Paperwork Reduction Act (and burden box) to minimize regulatory burden on pre-regulatory or regulatory filings. It is with this background that I offer these observations.

- 1) The Dept. of Commerce (DOC) stated that applications for tariff relief should take only approximately 4 hours. I have looked at what the companies submitted and find it hard to believe that they could **collect, analyze and submit** in only 4 hours. Perhaps they meant 4 hours per individual product—in which case many steel or aluminum manufacturing or assembling companies have hundreds of separate product applications in the docket as of today.

Comparable EPA and OSHA regulatory surveys or Notice of Data Availability (NODA) inquiries to this take at least 20 hours or two days of Full-time Equivalents (FTE). Most NODAs are announced with 30-60 days for preparation and with no automatic imposition of regulatory impacts as is the case with the imposition of tariffs. **It is hard to believe that OMB/OIRA did a complete "burden box" review of the DOC requirements for information from the companies seeking tariff relief.** Further, normally when an agency asks comparable questions it also asks the size of the companies—meaning size in employees or about the percentage of its product sales related to the questions. The fact that the solicitation does **not** help small businesses self-identify those most negatively affected might lead DOC to make a **distortionary decision** on classes of products or companies. Clearly, smaller companies with only one or a few product lines suffer differently from a large company with hundreds of products that may be able to absorb a 25% steel tariff.

Another failure in the call for justification for lifting the import tariffs by DOC is that **they did not ask about any loss of tax revenue or impacts for Unfunded Mandates Reform Act of 1995 (PL 104-4) or as mandated under Executive Orders.** This means that the U. S. Department of Commerce did **not** offer any general opportunity for comments to be filed by local governmental jurisdictions such as port authorities that derive income from the transport of products imported (and exported) through the ports. **Nor did DOC call for any comments on general loss of tax revenue to state and local governments that will have a negative effect from the tax or for import restrictions.**

- 2) **Tariff relief process is NOT Fair and Transparent:** Your August 9 letter to the Secretary of Commerce suggested that companies contacted you and said the posting portal within [www.regulations.gov](http://www.regulations.gov) is a mess. This is absolutely true. I file through this portal for other agencies at least once a month. I have never seen such a complete mess in function, operation or in design in my 30 years of filing comments.

The [www.regulations.gov](http://www.regulations.gov) portal into the many thousands of tariff relief applications is **confusing and reliable—hardly transparent and fair**<sup>3</sup>. The portal bounces out submitters in the middle of either reading or filing. I lost track of how many times I was bounced out on Wed. August 8 during my process of reviewing applications and responding. (I filed comments supporting tariff relief for approximately 300 of the 400 product applications that I read). I use [www.regulations.gov](http://www.regulations.gov) daily and am experienced with filing comments. Imagine the confusion for a small business that does not normally work with this system. In reviewing some of the first 400 applications, I found that other company submittals appeared within a docket folder placed with

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<sup>3</sup> U. S. Department of Commerce Press statement, March 19, 2018 <https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-steel-and-aluminum-tariff-exclusion>

the wrong companies. At first, I wondered if the two companies were related— either joint ventures or orders timed for local port delivery efficiency. But after studying, it simply looks as though several dozen tariff relief petitions had other company attachments (spreadsheets or cover letters) **that were misfiled in the docket folders**. I wonder if DOC staff will see full applications if some of the attachments were misfiled or attached to the other company docket folders. Perhaps this was an error only found in the first 400 submittals. Time did not allow me to review more than 400 of the submittals (pages 1-34 of the docket). **The docket's auto text or auto fill is full of "bugs"** that inserted someone else's telephone number into my applications many dozens of times. Fortunately, I think I caught these auto fill telephone number errors for my own submittals. Sometimes "autofill" mechanism inserted *United Kingdom or Australia* instead of United States for my own submittals (linked with Virginia). This is not a normal problem with [www.regulations.gov](http://www.regulations.gov)

I fear that if others (especially small businesses or those unfamiliar with filing through a web-based system) had the same auto fill problem and didn't catch wrong phone numbers—that the Commerce Department's staff (or contractors) will have difficulty in reaching the tariff waiver submitters. Or perhaps the DOC staff or contractors would think the companies were from United Kingdom or Australia and confuse the tariff appeal matter even more.

- 3) Historically, similar solicitations for tariff relief or reclassification under GATT, NAFTA and other bilateral agreements could be submitted **by a company or a group of companies or trade association**. The fact that the requirements now force individual product filings—making at least 3,500 visible on [www.regulations.gov](http://www.regulations.gov) ridiculous. **Making companies file individually for each product is arbitrary and capricious and is especially harmful to small businesses trying to file for more than one product with far smaller staff. There is no pressing national emergency that mandated that in this instance companies could not apply through their trade associations, business societies, accountants, attorneys, or local Chamber of Commerce, economic development agency or port authority.** This system requiring individual product request is unfairly time consuming. It is arbitrary and capricious. Further, it probably advantages larger corporations that have staff to file individual requests.
- 4) The Dept. of Commerce' process for solicitation of comments, time for comments, and the very narrow time allowed for requesting relief of import taxes is **not consistent with President Trump's Executive Order 13777 or Executive Order 13771's** pay-go approach to regulation (or so-called 2:1 regulatory relief) and the **Regulatory Flexibility Act** (5 USC Section 601).

5) **Left Hand v. Right Hand:**

DOC should know from its October 6, 2017 report<sup>4</sup> why so many steel products are imported. In 2017 following President Trump's Executive Order on Regulatory Reform, DOC called for comments on causes for difficulties in getting permit approvals. **I commend DOC for this action.**

**It is rather incredible that DOC would both cite reasons that industry could not build new factories or modernize older factories in its own report in 2017 and only five months later place arbitrary tariffs on steel and aluminum imports**

Many companies filed comments explaining why they have not either built new factories or modified their existing manufacturing plants. DOC received many hundreds of examples in their request for comments. **DOC's report included nine examples for "steel" in its 55-page report.**

EPA's New Source Review or NSR was the third most frequently cited cause for not modernizing factories—and in some cases presumably sending manufacturing offshore. This NSR policy prevented major steel and aluminum manufacturing plants from building new facilities over the last twenty years. Although not specifically referenced, EPA's modeling system projected theoretical emissions from the plants that prevented any serious consideration by EPA even after many states had expressed their desire to obtain permits for new mini steel mills or aluminum smelting. DOC's own report stated that NSR was the third most significant cause identified by 40 commenters why new factories were not built or modified<sup>5</sup>. **The DOC report further offers eight steel industry concerns and three examples from the aluminum industry in its permitting report<sup>6</sup>.**

6) **What does DOC mean by "national security"?** Of the first 400 applications that I reviewed (simply by reading the first 400 submittals in the docket), I found a significant number of the applicants produced products for the **oil and gas** sector. While none of my oil/gas clients use my services on trade or tax/tariff matters, I am sufficiently familiar with tubular goods

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<sup>4</sup> Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, October 6, 2017 <https://www.commerce.gov/page/streamlining-permitting-and-reducing-regulatory-burdens-domestic-manufacturing>

<sup>5</sup> ID, DOC Report, page 9. [https://www.commerce.gov/sites/commerce.gov/files/streamlining\\_permitting\\_and\\_reducing\\_regulatory\\_burdens\\_for\\_domestic\\_manufacturing.pdf](https://www.commerce.gov/sites/commerce.gov/files/streamlining_permitting_and_reducing_regulatory_burdens_for_domestic_manufacturing.pdf)

<sup>6</sup> See DOC report's pages 11,31,32,34,37,52 53 for steel examples and pages 1,2 and 52 for the aluminum industry [https://www.commerce.gov/sites/commerce.gov/files/streamlining\\_permitting\\_and\\_reducing\\_regulatory\\_burdens\\_for\\_domestic\\_manufacturing.pdf](https://www.commerce.gov/sites/commerce.gov/files/streamlining_permitting_and_reducing_regulatory_burdens_for_domestic_manufacturing.pdf)

manufactured by steel makers to produce oil and gas transmission pipelines, refinery piping and refinery valves for replacement parts. There are public safety implications if those products are not easily available due to (a) drop in productivity because of import taxes or tariffs (b) drop in availability because of non-tariff import restrictions. Further, it troubles me that while DOC offers companies an option to request relief from tariff on National Security grounds—**there is no clear definition of National Security provided in the announcement (or when the import limitation if a tariff is waived)**. Since there is no clear national security definition, I assert that the government should give deference to products (by general classification not by individual product) for critical infrastructure industries or there are implications for public safety or health protection. In the case of oil and gas pipelines, both are true. While I did not see import product references for shipping or aviation, this same tariff and import limitation waiver should apply as well. I am not an expert on the U. S. government’s broader definition of “critical infrastructure” and defer to your committee on Congressional oversight on this matter.

- 7) DOC’s call for thoroughness in application process calls for companies to provide what would, under other government agencies, be called submittal of **Confidential Business Information** (CBI) or providing competitor companies (and nations) to see company’s the manufacturing process through the tariff release request disclosure. I noted that some companies did not complete that portion of the application. I wonder if DOC will arbitrarily reject those requests simply because the companies did not want to provide that information.
- 8) **Unfunded Mandates and regional economic effects:** Can the Dept. of Commerce’s system for tariffs have unexpected impacts upon both profits and taxes on other businesses or residential taxes? *One should be careful to make statistical assumptions based upon anecdotal observations.* But based upon the first 400 applications that I reviewed, assuming they were not filed by companies that tended to have a disproportionate number of factories in key states, there is a disproportionate impact upon manufacturing companies or distributors in **Texas, Wisconsin, Ohio, and Missouri** and **six port authorities**. While it is not a surprise that these are heavy manufacturing states—it may be a surprise to our unified government agencies if tariffs (or related import restrictions on products) if those states see a bigger impact. As a non-attorney I am not sufficiently well versed on the Commerce Clause but do know that U. S. regulatory policies are not supposed to create “winners and losers” amongst states. Even as a non-lawyer, I am reminded of the West Lynn Creamery case where the Supreme Court found that a state tax on milk products functioned as a discriminatory act against Massachusetts dairy products and preferred dairy products produced in other states. **One would assume that some U. S. ports would be advantaged over other ports where import tariffs and import limits would be imposed since the current steel/aluminum tariffs do not apply to all countries equally.** I defer to your staff and other committees on the Commerce Clause but point out that many U. S. ports are arms of local economic trade zones or have local taxing authority and participants in international commerce. ***If local port authorities (or rail lines) lose revenue, one should naturally inquire whether those local townships, cities and county governments will be forced to increase taxes on other parties.***
- 9) **There appears to be no system for these indirect effects to be considered by U. S. Department of Commerce or other Federal Agencies and Council on Economic Advisors (CEA).** This is very unwise and inconsistent with the Administration’s call for regulatory reform and cost-benefit analysis.

10) **There is no national emergency requiring tariffs to take effect before companies could submit requests for release from tariffs (or release from import limitations).** Laws and regulations are not supposed to be retroactive. But for companies with manufacturing orders (especially batch manufacturers) these companies may well find that they are hit with some manufacturing orders and not others due to the timing of the imposition of the tariffs. While I have a general policy skepticism about the merits of the broad sweep of tariffs on steel and aluminum products, at a minimum the tariffs announcement should have given all U. S. manufacturers and distributors at least six months to appeal **before** the tariffs took effect.

11) **Tariff relief process missed asking applicants about transportation justifications for importation:** For *some* very large manufactured goods import via large shipping containers is the only practical and affordable way to receive that product. For example, some electric utilities purchase large manufactured goods from overseas countries (Japan, South Korea) because the product is too large or too heavy to travel by small or medium barges, rail, or surface trucking. Some of these products cannot pass through underpasses, over bridges or under bridges or make the turns on long-haul shipping and importation through a port is actually the easiest or cheaper way to get the product to the U. S. user. (Examples of this include but are not restricted to nuclear power equipment parts imported from Japan and South Korea or major transformer parts). I saw no easy way for tariff relief applicants to address logistical challenges of transport as an explanation for importing the steel or aluminum product rather than to manufacture the product in the U. S. While this is usually not as common of a reason to import—it is a legitimate reason to import a product to a nearby port from Asia to, say Seattle-Tacoma, New Orleans, Jacksonville, or Philadelphia rather than to transport the product across 900 miles overland. As the U. S. produces more product exported via LNG out of many new LNG ports, this steel or aluminum import need may become more critical for some essential parts at LNG facilities. It is also possible that Ultra Super Critical (USC) coal-fired power plants may need specialty steel products made in Japan or servicing Japanese power sector since ultra-super critical power generation is not common in the U. S. Like nuclear power, sometimes the sheer size or turning radius of components dictates moving by barge or ocean tankers.

12) **Who is watching for small business?** Small business issues have been mentioned in several examples above. It is my hope that your committee along with other committees will review the many issues at stake. I also hope that the U. S. Small Business Administration (SBA) will undertake the impacts on small businesses that do not have the advantage of multiple products and multiple factories with revenue to draw upon. I rather fear that we have completely ignored the impacts on small businesses. The *Wall Street Journal* article on August 8, 2018 was most persuasive that we have a significant problem for small businesses. That *WSJ* article can be obtained at <https://www.wsj.com/articles/we-are-at-the-limit-trumps-tariffs-turn-small-businesses-upside-down-1533660467?mod=djemCapitalJournalDaybreak>

Attached is a copy of the general letter that I have filed for approximately 300 individual products—many of them for tubular goods, oil and gas repair equipment, major construction, defense, or other critical infrastructure products. I have no clients who have requested that I provide this information to you or advocate on their behalf. I am submitting this because I have always supported trade and believe this policy has MANY unintended consequences. But I am a U. S. citizen concerned about these policies imposing tariffs and importation restrictions by categories that appear arbitrary. Regrettably, some of these trade consequences appear to be swift and perhaps cause companies to lay off hard-working

Americans. *In some cases, the implications might affect the manufacture of goods needed to ensure public safety, energy delivery, and ensure protection of national security.*

*Perhaps we may have created new regulatory costs and taxes that were completely avoidable counterbalancing many good regulatory reform efforts made at federal agencies in the last 18 months.*

Thank you for reading my imperfect comments reflecting analysis and experience with the tariff relief process portal. These comments reflect two days of uncompensated work inspired by proverbial “unintended consequences”.



August 8, 2018

**To:** Department of Commerce (via [www.regulations.gov](http://www.regulations.gov))

**From** Theresa Pugh, Theresa Pugh Consulting, LLC

**Docket Number:** All individual docket numbers for steel/aluminum tariffs (Section 232)

Please exempt this company from arbitrary steel/aluminum tariffs. We have a problem with China over Intellectual Property or dumping of products and we need to address the problem with China or other international trading organizations. Arbitrary tariffs on U. S. companies using imported steel/aluminum is foolhardy. Worse, it will ultimately simply hurt those employees at the companies seeking to manufacture or assemble in the U. S. as profits are lost and employees are laid off.

The threat to our national security is to arbitrarily impose tariffs on U. S. companies, limiting their profits and risking the staff to be laid off, and reducing local tax revenue to cities, counties and other Federal governmental agencies. The government's definition of national security is vague and thus this general risk is a valid reason to exempt this company from tariffs.

I am not a paid consultant for this company. **I simply oppose the policy of categorical trade sanctions or tariffs (taxes) with no legitimate national security or trade rationale.**

Please act quickly. The imposition of tariffs on products made with thin profit margins and those made by U. S. small businesses are at the most risk as there are no other product lines or factories to rely upon for those profits.

Article from today's Wall Street Journal that documents jobs lost due to this policy:

<https://www.wsj.com/articles/we-are-at-the-limit-trumps-tariffs-turn-small-businesses-upside-down-1533660467?mod=djemCapitalJournalDaybreak>

Thank you for considering this letter.