

**Congress of the United States**  
Washington, DC 20510

November 19, 2020

The Honorable Robert E. Lighthizer  
United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

Dear Ambassador Lighthizer:

While we appreciate the President's concerns with unfair trade practices between our nation and our trading partners, for more than two years, many Wisconsin businesses and farmers alerted me to the supply chain disruptions, increased compliance burdens, decreased international competitiveness, lost market access, and other unintended consequences resulting from this trade war. We write to you today about the Section 301 tariff exclusion process, as a number of Wisconsin businesses expressed concerns and frustration with this process carried out by your office. We write to request information regarding the exclusions filed by these businesses.

On July 6, 2018, the Office of the United States Trade Representative (USTR) imposed a 25 percent tariff on \$34 billion worth of goods from China.<sup>1</sup> USTR issued a notice on July 11, 2018 establishing a process for businesses to request an exclusion for particular products,<sup>2</sup> describing factors that a business seeking an exclusion would need to demonstrate for an exclusion to be granted. After receiving the exclusion request, USTR would determine whether the exclusion would undermine the objective of the Section 301 investigation.<sup>3</sup>

On May 14, 2019, USTR announced a number of granted product exclusions to apply retroactively to July 6, 2018.<sup>4</sup> These exclusions included a number of products under Heading 9903.88.08, including water filtration and purification products.<sup>5</sup> One such exclusion was for an "apparatus, including pitchers, bottles, and unites designed for incorporation into refrigerators, appliances or sink faucets, the foregoing fitted with filters for filtering or purifying water."<sup>6</sup> However, following this one year exclusion period, a Wisconsin manufacturer requested USTR

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<sup>1</sup> Off. of the U.S. Trade Rep., Notice of Product Exclusions: China's Act's Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 248 (Dec. 28, 2018), *available at* <https://ustr.gov/sites/default/files/enforcement/301Investigations/2018-28277.pdf>.

<sup>2</sup> Procedures To Consider Requests for Exclusion of Particular Products From the Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 32,181 (July 11, 2018).

<sup>3</sup> *Id.*

<sup>4</sup> Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 21,389 (May 14, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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for an extension of the exclusion.<sup>7</sup> On May 15, 2020, USTR issued a notice of product exclusions in the Federal Register that did not include an extension for this particular exclusion for a water filtration apparatus for drinking water but did grant extension requests for exclusion for a water filtration apparatus for waste water.<sup>8</sup>

This Wisconsin manufacturer is frustrated by what appears to be a completely arbitrary process at USTR, given that an extension was granted for another water filtration apparatus. Moreover, the manufacturer questioned how USTR could make a determination that the product is only available from China or the tariff would cause severe economic harm in May of 2019, and one year later, come to a completely different decision despite no additional suppliers entering the market or no less severity in the costs resulting from the tariff.

Unfortunately, other Wisconsin manufacturers are facing the same arbitrary and opaque process as well. One outboard marine engine manufacturer received an exclusion in 2018, but USTR denied its exclusion extension request one year later.<sup>9</sup> USTR granted exclusions for other Wisconsin manufacturers of medical devices, auto parts and other goods, only to deny exclusion extension requests despite the manufacturers still being subject to the same factors for which USTR granted the exclusions.<sup>10</sup> These manufacturers are now facing increased costs from Section 301 tariffs that their international competitors do not suffer.<sup>11</sup>

Despite months of requests from my staff to your office,<sup>12</sup> it is still unclear what factors allowed USTR to make two distinctly different determinations on these and other exclusion extension requests. For instance, did alternative suppliers enter the market, or do the tariffs no longer cause severe economic harm to the businesses? Additionally, the process chosen by USTR—to post notices on the Federal Register—provides no context or justification for the denial to U.S. businesses. This system presents due process concerns as businesses are not being told why their exclusion extension requests are denied.

To better understand the exclusion extension denials by USTR for requests from Wisconsin businesses, please provide the specific justification for each denial of an exclusion extension

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<sup>7</sup> Email from Wis. Bus. Owner to Majority Staff, S. Comm. on Homeland Security and Governmental Affairs (July 22, 2020, 10:37 EDT) (on file with Committee staff).

<sup>8</sup> Notice of Product Exclusion Extensions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 85 Fed. Reg. 29,503 (May 15, 2020).

<sup>9</sup> Email from Wis. Bus. Owner to Majority Staff, S. Comm. on Homeland Security and Governmental Affairs (Mar. 20, 2020, 12:49 EDT) (on file with Committee staff).

<sup>10</sup> Email from Wis. Bus. Owner to Majority Staff, S. Comm. on Homeland Security and Governmental Affairs (Sep. 01, 2020, 10:45 EDT) (on file with Committee staff); Email from Wis. Bus. Owner to Majority Staff, S. Comm. on Homeland Security and Governmental Affairs (Aug. 12, 2020, 10:11 EDT) (on file with Committee staff); Email from Wis. Bus. Owner to Majority Staff, S. Comm. on Homeland Security and Governmental Affairs (Aug. 18, 2020, 6:57 EDT) (on file with Committee staff).

<sup>11</sup> *Id.*

<sup>12</sup> Phone Call from Majority Staff, S. Comm. on Homeland Security and Governmental Affairs Staff to Off. of the U.S. Trade Rep. (Mar. 19, 2020); Email from Majority Staff, S. Comm. on Homeland Security and Governmental Affairs to Off. of the U.S. Trade Rep. (May 19, 2020, 17:11 EDT) (on file with Committee staff); Phone Call from Majority Staff, S. Comm. on Homeland Security and Governmental Affairs to Off. of the U.S. Trade Rep. (May 29, 2020).

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request from Section 301 tariffs submitted by an entity incorporated or headquartered in Wisconsin. We respectfully request this information as soon as possible, but no later than 5 p.m. on December 4, 2020.

As we have repeatedly warned, the trade war places U.S. manufacturers and businesses at a competitive disadvantage to businesses in other countries. The winners from the trade war are Washington lobbyists, trade lawyers, and politically connected businesses and industries while hard-working and earnest businesses in Wisconsin and across the country suffer the negative economic consequences. We urge the Administration to listen to the stories of these businesses, and end the self-inflicted harm from the trade war.

Respectfully,

Ron Johnson  
United States Senator

Bryan Steil  
U.S. Representative

cc: Mr. Lawrence Kudlow  
Director, National Economic Council

Mr. Tyler Goodspeed  
Acting Chairman, Council of Economic Advisors

Dr. Peter Navarro  
Director, National Trade Council