June 29, 2018

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

Re: Investigation Under Section 232 of the Trade Expansion Act of 1962 into Automobiles, Light Trucks, Vans, and Parts Thereof

Dear Mr. Secretary:

The Maritime Exchange for the Delaware River and Bay is the "Chamber of Commerce" of the Delaware River port industry, and it responds to your invitation of May 30, 2018 (83 *Fed. Reg*. 24735) to submit views as to whether automobiles, light trucks, vans, and parts thereof (hereinafter "auto imports") are being imported into the U.S. in such increased quantities and under such circumstances as to constitute a threat to the national security of the U.S.

For the reasons given below, we believe the increase in auto imports does not constitute a threat to our national security. The U.S. auto industry is doing well and should be left alone to continue its growth in line with the economy of the U.S. as a whole. Additionally, we urge great caution in invoking trade legislation of limited intended purposes (such as Section 232) to address broader trade considerations that this statute is ill-equipped to address. We will consider these and other issues below.

Delaware River ports and the international movement of automobiles

Investment in a deeper channel

The collective agencies and institutions comprising the Delaware River port system are in the process of completing a deepening of the Delaware River navigational channel from 40 to 45 feet — a project nearly 30 years in the making — at a cost of more than $360 million in federal, state, and local dollars. The purpose of the project is to accommodate the larger classes of vessels now transiting the Panama Canal from Asia and opening the port to more traffic from Europe, including automobiles. The port is now capable of handling large RoRo vessels used to carry automobiles, light trucks, and vans; in 2017 the port cleared more than three billion dollars in automotive cargo, making automobiles the sixth largest commodity sector in the port based on revenue impacts. A decision to impose a significant customs duty on imported cars and parts, for our port, would effectively turn back thirty years of planning, five years of construction, and millions of dollars of infrastructure improvements at marine terminals beyond those expended for the deepening itself. A substantial 232 assessment on automobiles will impair the utility of these critical infrastructure improvements and negate the value of the capital invested to create them, particularly because the auto industry is both a significant product importer and exporter and thus takes maximum use of these important, valuable, and expensive improvements.

U.S. port jobs at risk

At Delaware River ports, the public terminals handled 221,000 autos in 2017, creating a total of 835 direct jobs. Each 1,000 autos moved through the port supports nearly four family-sustaining jobs. This represents an increase of nearly 68 percent over the last seven years; however, it is important to note that this increase reflects a re-emergence of an import commodity which had previously been flailing.

Further, automobile imports through Delaware River marine terminals generated over $75 million last year to Delaware Valley residents in the form of personal income, business income, and tax revenues.

The disparity in rates of duty on automotive products entering the U.S. and entering the European Union

It has been widely reported that the reason that the Administration is proposing an increase in a rate of duty on auto imports is in response to the correspondingly high rate of duty imposed on the entry of vehicles into the EU. The U.S. rate is 2.5% and the EU rate is 10%. In an electronic statement issued on June 22, 2018,[1] President Trump indicated an intention to impose a 20% duty on all automobiles from Europe.

The comment raises a variety of concerns.

First, the President appears to have made up his mind on a certain course of action well before any recommendations to him have been made and the investigation which will form the basis of such recommendations is completed. From a legal perspective, this is disconcerting and would likely undercut the legalities of any Executive Order that might follow.

Second, while the Administration may have a legitimate objection to the disparity in rates of duty between the U.S. and Europe, the fact is that automobile rates of duty were negotiated by the U.S. with its trading partners in three different trade agreement rounds (Kennedy, Tokyo, and Uruguay) and each of those trade agreements was ratified by the Congress of the U.S. Yet the decision to increase rates of duty on imported automobiles will adversely affect both U.S. automobile retailers and the American buying public, neither of which participated in either the negotiations of the trade agreements or in their ratification. The President may have a legitimate quarrel with his predecessor's trade negotiators, but by taking these actions now, he is making the buying public and a large segment of the American economy suffer.

Third, we further note that in both the Trans-Pacific and Transatlantic Trade and Investment Partnerships, the goal of the trading partners was to bring all rates of duty to zero. Therefore, whatever rate of duty imbalances the Administration may object to (and we emphasize that those objections may be wholly legitimate), they would be eliminated if TPP and T-TIP were successfully concluded and the U.S. position of increasing our duties were not. An increase in

[1] "Based on the Tariffs and Trade Barriers long placed on the U.S. and it *(sic)* great companies and workers by the European Union, if these Tariffs and Barriers are not soon broken down and removed, we will be placing a 20% Tariff on all of their cars coming into the U.S. Build them here!" http://fortune.com/2018/06/22/trump-tariffs-european-cars/

the rate of duty on European automobiles will not sell a single new Ford Truck in Europe. An agreement to reduce all rates of duty to zero will.

Any increase in the rate of duty above the Column Two rate is Constitutionally questionable.

We note that the President has, on various occasions, discussed an increase in a rate of duty to either 20 or 25%. The current most favored nation rate is 2.5%, and the non-most favored nation rate — also known as the "column two rate" — is 10%. The column two rate was fixed by the Congress in the Smoot-Hawley Tariff Act of 1930, and the most favored nation (and the Special Column) rates were negotiated by the president pursuant to Congressional authority. Further, we note that when President Nixon imposed the 10% surcharge on all imported merchandise in August of 1971, he inserted a restriction that whenever the surcharge rate exceeded the "column two" rate (i.e., the rate fixed by the Congress), the increase in duties under the Proclamation would be limited to the column two rate. In short, he never exceeded the rate fixed by the Congress. The rates currently proposed by President Trump would.

We urge that during the pendency of this investigation, the Secretary specifically undertake an examination of the constitutionality of any assessment greater than the column two rate.

The state of the auto industry is materially different from the state of the aluminum or steel industries.

We understand that litigation has already been commenced challenging the constitutionality of the duty assessments in the steel and aluminum cases, so the Maritime Exchange will refrain from commenting on the legality of the aluminum and steel Presidential Proclamations. We will however, delineate the critical factual differences between the auto industry in the U.S. and the aluminum and steel industries, which were the most recent subjects of national security investigations. In this regard, we note:

1. The aluminum and steel industries supplied input materials that were of critical use in the production of defense articles; the automobile is a finished article and is of ancillary use in the defense industry.
2. The steel and aluminum producers were operating substantially below capacity and the below-capacity levels affected the entire industry. The U.S. auto industry is at a comfortable capacity.
3. Exports of U.S. aluminum and steel were trending substantially down. The U.S. auto industry is the largest exporter in the U.S., and the value of its exports surpasses its nearest export rival (aerospace) by an astounding $15 billion per year.
4. Low production levels of aluminum and steel were adversely affecting research and development expenditures in the industry. At its current levels of R&D expenditures, the U.S. auto industry ranks third out of forty in R&D expenditure layouts.

By whatever standard it is tested, the U.S. auto industry is in significantly better shape than either the aluminum or steel industries, and nothing in the current state of the industry implies that its health constitutes a threat to the national security of the U.S.

Conclusion

For the reasons given above, The Maritime Exchange urges the Secretary to conclude that imports of automobiles, vans, light trucks, and parts thereof do not constitute a threat to the national security within the meaning of section 232 of the Trade Expansion Act of 1962. However, it is clear that imposing additional duties on these commodities would undoubtedly jeopardize the economic security of an important sector of the transportation industry.

Sincerely,

Dennis Rochford

Dennis Rochford
President

cc: Lisa Himber, Vice President