



July 12, 2018

TO: Tristate Congressional Delegation

Re: Department of Commerce Investigation of Automobiles and Parts thereof under Section  
232 of the Trade Expansion Act of 1962

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Ladies and Gentlemen:

On June 29, 2018, in response to the Department of Commerce investigation identified above, the Maritime Exchange for the Delaware River and Bay submitted comments suggesting that a determination that imports of automobiles constitute a threat to our national security is unsupported in fact and unsustainable as a matter of law. From our review of the comments filed, the opposition to such tariffs was virtually unanimous.

Within the past few days, the public press has reported that the Congress is considering its own initiative in response to the investigation, through both a Sense of the Senate Resolution offered by Senator Flake (*Politics*, July 10, 2018) and proposed legislation, which reportedly will be introduced by Senator Hatch and taken up by the Senate Committee on Finance (*The Hill*, June 26, 2018). Similarly, we understand that, while the statutory period for the completion of the investigation is not scheduled to lapse until February of next year, the White House has “fast-tracked” this investigation, creating a time-of-the-essence element in any Congressional response.

The Congressional proposals identified above create two opportunities (predictably one faster but less binding, and the other slower but more dispositive), and we support both. We suggest however, that a legislative amendment to Section 232, which returns to the Congress some approval authority in how national security tariffs are determined, imposed, and collected, is the more productive and more prudent approach.

We note that Section 232 already contains within it, in subsection (f),<sup>1</sup> the authority of the Congress, by Joint Resolution, to block any Presidential action with which the two Houses of the

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<sup>11</sup> (f) CONGRESSIONAL DISAPPROVAL OF PRESIDENTIAL ADJUSTMENT OF IMPORTS OF PETROLEUM OR PETROLEUM PRODUCTS; DISAPPROVAL RESOLUTION

- (1) An action by the President under subsection (c) to adjust imports of petroleum or petroleum products shall cease to have force and effect upon the enactment of a disapproval resolution, provided for in paragraph (2) relating to that action.

(2)

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(B) For purposes of this subsection, the term “disapproval resolution” means only a joint resolution of either House of Congress the matter (*sic*, so in the original) after the resolving clause of which is as follows: “That the Congress disapproves the action taken under section 232 of the Trade Expansion Act of 1962 with respect to petroleum imports under \_\_\_\_\_ dated \_\_\_\_\_”; the first blank space being filled with the number of the proclamation, Executive Order or other Executive act issued under the authority of subsection (c) of this section for purposes of adjusting imports of petroleum or petroleum products and the second blank being filled with the appropriate date.

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Congress disagree, but that such resolutions can only be invoked against petroleum and petroleum products. Clearly subsection (f) intended to limit Congressional involvement only to such matters as the Congress deemed necessary at the time, but by the same token, the Congress was clearly reserving to itself the right to intervene if it concluded that the President was making an error in either the administration of the statute or the promulgation of an order under it.

The time has clearly come for the Congress to broaden subsection (f) to give itself disapproval authority over any goods, the entry of which is adjusted by Executive Order. There is simply no reason to create a level of review for a petroleum product, but to exclude all other products which are equally important to our economy. Additionally, we note that the existing language of subsection (f) effectively authorizes a “sense of the Congress” act which combines both the processes proposed by Senator Flake and the legislation suggested by Senator Hatch.

Thus, the Congress can effectively exercise the appropriate review of the Presidential action by the simplest of amendments — it need only amend existing subsection (f) to permit a Resolution of Disapproval of any subsection (c) action, not simply an action over petroleum or petroleum products. It is hard to imagine a less complicated but more necessary legislative fix.

A study recently conducted for the Delaware River ports<sup>2</sup> found that:

- 190,436 jobs are related to Delaware River trade activity, and 55,258 jobs are dependent upon such activity;
- \$77.6 billion in economic activity was generated by the port in 2017; and
- \$2.6 billion of state and local taxes are related to marine cargo in the tristate region.

What is difficult to communicate in one letter is the amount of collective commitment that was generated to create such favorable statistics, and the risk that we run if government, without very good reason, interferes with such activity.

We believe that it is time for the Congress to make its views heard and to expand its rightful authority under section 232 by enlarging Congressional authority under subsection (f).

Sincerely,

A handwritten signature in black ink that reads "Dennis Rochford". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Dennis Rochford  
President

cc: Lisa Himber, Vice President

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<sup>2</sup> Recovery Priority Assessment of Seaport Operations for Delaware River Ports: Executive Summary, Martin Associates, June 19, 2018, at 2.