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VIA ELECTRONIC TRANSMISSION

March 3, 2022

Ambassador Katherine Tai
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Tai:

I write to you today regarding the Administration's ongoing actions to reinstate the exclusion process for tariffs placed on products from China pursuant to Section 301 of the Trade Act of 1974. I appreciate your October announcement of a modified exclusion process. However, I want to reiterate the urgent need to establish a significantly improved exclusion process that removes the significant burden and costs placed on business owners, farmers, and families in North Carolina.

As my Senate colleagues and I expressed in our letter to you on February 7, 2022, restarting a full and comprehensive exclusion process will allow the U.S. to apply pressure on China and combat their unfair trade practices while concurrently allowing our businesses to receive relief that they desperately need and manage their bottom line and with certainty.

After exclusions are granted under the current process, importers of those granted exclusions are only eligible for a tariff refund dating back to October 12, 2021, despite their prior exclusions expiring at the start of 2021. I have heard from countless businesses in North Carolina—many of which were granted an exclusion previously—that were forced to pay tariffs for approximately ten months last year without reason. There is little reason to charge additional tariffs on covered products during the months when no exclusion process existed.

Retroactivity for those granted exclusions will help to make struggling businesses in North Carolina whole and keep them competitive, but that alone will not give them adequate certainty to operate their business and plan for the future. In July 2021, the Government Accountability Office (GAO) found in their report to Congress that the Office of the U.S. Trade Representative (USTR) executed inconsistent processes and inadequately documented internal procedures for its considerations of Section 301 exclusions. Any modified exclusion process must reflect significant improvements to the transparency and fairness of USTR's methodology in making decisions on exclusions and administering the program.

To better understand the scope of this issue and to learn more about USTR's work to reinstate any future Section 301 exclusion process, I ask that you respond to the following questions no later than March 31, 2022.

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1. If a company's exclusion is reinstated, they will have received a ruling from USTR at least three times stating that a product cannot otherwise be sourced outside of China, and it should not be subject tariffs. However, USTR is forcing these companies to pay tariffs between December 31, 2020 and October 12, 2021. What reason is there for this policy, and what is being done to make these companies whole?
2. What is USTR's expected timeline for releasing decisions for the new exclusion process? Is USTR expecting to release decisions in tranches or all at once?
3. What is USTR implementing into its modified exclusion process from the findings and recommendations from GAO's July 2021 report on the Section 301 exclusion process?

Thank you for your full and fair consideration of this request and I look forward to your response on this pressing issue for many businesses across North Carolina. I share your desire and commitment in holding China accountable for its unfair practices and I look forward to working with you and your team to ensure an expanded exclusion process is consistent with U.S. economic and national security objectives while allowing our businesses to grow and thrive.

Sincerely,



Thom Tillis
United States Senator