

United States Senate

WASHINGTON, DC 20510

March 21, 2016

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230

Dear Secretary Pritzker:

We write to express our concerns with the Department of Commerce's implementation of the Leveling the Playing Field Act, Title V of P.L. 114-27. As you know, Congress passed this law, with your assistance, for the purpose of restoring strength to our trade remedy laws and safeguarding the Department's discretion to fight illegal dumping and subsidies that harm U.S. manufacturers and their workers. We are concerned, however, that the Department is not applying certain provisions of the law – specifically those addressing uncooperative respondents – as Congress intended. We urge the Department to comply fully with the Leveling the Playing Field Act and apply adverse facts available (AFA) in trade cases in which a foreign company or government does not cooperate.

AFA is a critical tool available to the Department to encourage foreign respondents' participation in trade investigations and prevent a lack of cooperation from further harming the U.S. industry. In recent years, however, foreign respondents have litigated the Department's use of AFA, and in turn the Department has become more reluctant to employ it in investigations. In response to these lawsuits, Congress included Section 502 of P.L. 114-27 to restore strength to the AFA provisions in statute fully consistent with our international obligations.


Section 502 clarifies the Department's obligations when it uses AFA. Specifically, it establishes that the Department is not required to try to determine what an antidumping margin or countervailing duty rate would be if a respondent had provided information in the investigation. In addition, the language explicitly states that the Department does not have to corroborate any margin or countervailing duty applied and, moreover, has the discretion to apply the highest countervailable subsidy rates or dumping margins in a proceeding. The section also makes clear that the Department is not required to prove that the margin or rate used in the investigation reflects the commercial reality of the respondent. With these changes to law, Congress intended the Department's use of AFA to be protected from legal challenge and for AFA to be applied in cases marked by a respondent's refusal to provide information in either preliminary or final determinations.


Congress passed the Leveling the Playing Field Act to strengthen our trade remedy laws and to ensure our domestic manufacturers and their employees get the relief they deserve from unfair trading practices. But the law's anticipated impact will be achieved only if the Department implements it properly. Section 502 clarifies the corroboration obligations when using AFA and safeguards the Department's ability to use AFA to

apply the highest duty rate or margin in a proceeding. With these protections in place, the strength and effectiveness of AFA have been restored, and the Department should use AFA when foreign producers or governments do not cooperate in preliminary or final investigations, including the use of dilatory tactics. Failure to use AFA in the face of uncooperative respondents allows trade cheats to get away with violating international trade law and prevents American manufacturers from competing on a level playing field. The result has been devastating for domestic production and employment.

We appreciate your support for Leveling the Playing Field Act and your commitment to U.S. manufacturers. We look forward to working with you to fully enforce U.S. trade laws. Time is of the essence on this important matter.

Sincerely,


Sherrod Brown
United States Senator

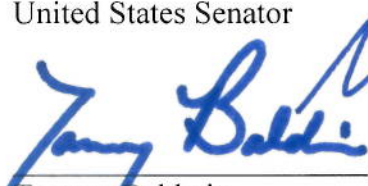

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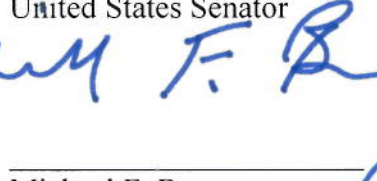

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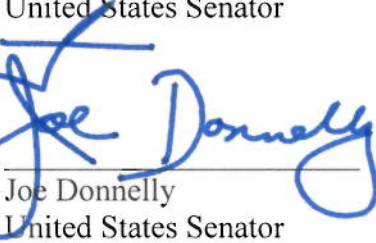

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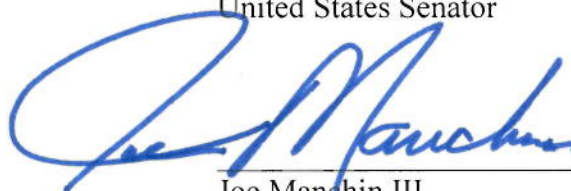

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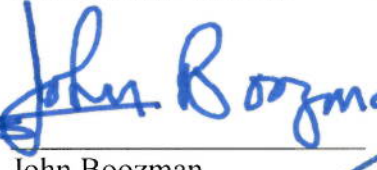

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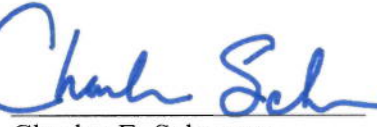

Joe Donnelly
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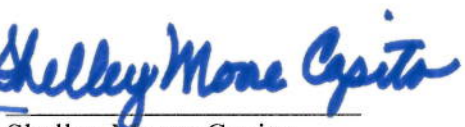

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