



JAN 18 2012



The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

On December 19, 2011, the U.S. Court of Appeals for the Federal Circuit ruled that the Department of Commerce (Commerce) lacks the legal authority to impose countervailing duties (CVDs) on subsidized imports from countries with non-market economies, such as China and Vietnam (*GPX Int'l Tire Corp. v. United States*). Absent legislative or judicial action, the court's ruling will take effect shortly after February 2, 2012. Should this occur, it would have substantial adverse economic implications for our country.

Accordingly, the Administration stands ready to work with Congress to enact legislation clarifying that the CVD law can be applied to subsidized goods from non-market economies, that CVD proceedings Commerce has already initiated on products from non-market economies are to continue, and that CVD determinations Commerce has made with respect to such products are to remain in effect.

This matter is of the utmost urgency. Absent legislation, should the decision of the court become final, Commerce will be required to revoke all CVD orders and terminate all CVD proceedings involving non-market economy countries, including 24 existing CVD orders on imports from China and Vietnam, as well as five pending investigations and two recently filed petitions. This would seriously undermine the ability of the United States to remedy the harmful effects of unfairly subsidized imports, and would impair Commerce's ability to ensure that our nation's manufacturers and workers have the opportunity to compete on a level playing field with our trading partners.

The CVD proceedings placed at risk by the court's decision cover a wide range of products in which U.S. manufacturing is most competitive, including steel, aluminum, paper, chemicals, tires, and other products. The annual value of the subsidized imports covered by these CVD proceedings is \$4.7 billion. The U.S. petitioning industries that are competing against these subsidized imports include small and medium-sized enterprises and large corporations; family-owned businesses and Fortune 500 companies. These petitioning industries – representing more than 80 companies – are spread across 38 states and employ directly tens of thousands of manufacturing workers.

The Administration is fully committed to enforcing our trade laws and to addressing unfair trade practices in accordance with our statutes, regulations, and international obligations. As our staff discussed with your staff soon after the court's ruling, we are currently reviewing all options, including a request for a rehearing by the full appellate court, as we believe the court's decision misreads the CVD statute, precedent, and Congressional intent and historic bipartisan support of strong CVD laws. Notwithstanding the strength of our legal position, prompt legislative action is necessary to clarify the law and avoid harm from injurious, subsidized goods. We stand ready to work with the Congress to enact specific legislation that would remedy the court's flawed ruling.



John Bryson  
Secretary of Commerce

Sincerely,



Ron Kirk  
U.S. Trade Representative

IDENTICAL LETTERS SENT TO:

The Honorable Orrin G. Hatch  
Ranking Member  
Senate Finance Committee

The Honorable Dave Camp  
Chairman, House Ways and Means

The Honorable Sander Levin  
Ranking Member  
House Ways and Means