VIA CERTIFIED MAIL

Departmental Freedom of Information Officer
Office of Privacy and Open Government
14th and Constitution Avenue NW
Mail Stop 52010FB
Washington, DC 20230

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Cause of Action Institute (“CoA Institute”), a 501(c)(3) nonpartisan government oversight organization that uses investigative, legal, and communications tools to educate the public about how government accountability, transparency, and the rule of law protect individual liberty and economic opportunity.¹

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C.§ 552, CoA Institute hereby requests:

1. The notification letter sent to the Department of Defense (“DOD”) regarding the initiation of the Section 232 National Security Investigation: Imports of Automobiles and Automotive Parts.²

2. The DOD response letter to the Section 232 National Security Investigation: Imports of Automobiles and Automotive Parts.³

3. All e-mail communications between the Department of Commerce and DOD regarding the Section 232 National Security Investigation: Imports of Automobiles and Automotive Parts.⁴

¹ See CAUSE OF ACTION INSTITUTE, About, www.causeofaction.org/about/.
² The Department of Commerce May 23, 2018 announcement of the 232 investigation into imported autos states that “Secretary Ross sent a letter to Secretary of Defense James Mattis informing him of the investigation.” That letter has not been made publicly available, but the steel and aluminum tariff notification letter can be found on the Department of Commerce website here: https://www.commerce.gov/sites/default/files/media/files/2017/2017-04-19_2.pdf
³ See Exhibit 1 attached for the DOD Memorandum for Secretary of Commerce with regards to steel and aluminum tariffs. We seek the same memorandum for the auto investigation.
⁴ The Department of Commerce May 23, 2018 announcement of the 232 investigation into imported autos states that “Secretary Ross sent a letter to Secretary of Defense James Mattis informing him of the investigation.” That letter has not been made publicly available, but the steel and aluminum tariff notification letter
The time period for this request is May 1, 2018 to the present.\(^5\)

**Request for a Public Interest Fee Waiver**

CoA Institute requests a waiver of any and all applicable fees. FOIA and applicable regulations provide that the agency shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”\(^6\) In this case, the requested records unquestionably shed light on the “operations or activities of the government,” as they reveal the reasoning behind a potential tax increase on American consumers through auto tariffs. And because they have not yet been made public, their contents would contribute significantly to public understanding of the Administration’s efforts to impose tariffs under Section 232.

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has significant experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through the Institute’s regularly published online newsletter, memoranda, reports, or press releases.\(^7\) In addition, as CoA Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in making this request.

**Request To Be Classified as a Representative of the News Media**

As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.\(^8\) CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.

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\(^5\) For purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. See Pub. Citizen v. Dep’t of State, 276 F.3d 634 (D.C. Cir. 2002). The term “record” means the entirety of the record any portion of which contains responsive information. See Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review, 830 F.3d 667, 677-78 (D.C. Cir. 2016) (admonishing agency for withholding information as “non-responsive” because “nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields that information from disclosure”).


\(^7\) See also Cause of Action, 799 F.3d at 1125-26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

\(^8\) See id. at 1121.
Although it is not required by the statute, CoA Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. It does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record. These distinct works are distributed to the public through various media, including CoA Institute’s website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.” In light of the foregoing, numerous federal agencies have appropriately recognized the Institute’s news media status in connection with its FOIA requests.

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11 See, e.g., FOIA Request No. HQ-2019-00123-F, Dep’t of Energy (Nov. 26, 2018); FOIA Request No. OS-2019-00118, Dep’t of the Interior (Oct. 31, 2018); FOIA Request No. 2018-HQFO-01215, Dep’t of Homeland Sec. (July 10, 2018); FOIA Request No. CFA2018-05, U.S. Comm’n for Fine Arts (June 25, 2018); FOIA
Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.12

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (202) 499-2422 or by e-mail at kevin.schmidt@causeofaction.org. Thank you for your attention to this matter.

Kevin Schmidt
DIRECTOR OF INVESTIGATIONS

12 See 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); Chambers v. Dept’ of the Interior, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); Judicial Watch, Inc. v. Dept’ of Commerce, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).
EXHIBIT

1
MEMORANDUM FOR SECRETARY OF COMMERCE

SUBJECT: Response to Steel and Aluminum Policy Recommendations

This memo provides a consolidated position from the DoD on the investigation of the effect of steel mill imports and the effects of imports of aluminum on national security, conducted by the Department of Commerce under Section 232 of the Trade Expansion Act of 1962 (hereinafter “Section 232 Report”).

Regarding the December 15, 2017 reports on steel and aluminum, DoD believes that the systematic use of unfair trade practices to intentionally erode our innovation and manufacturing industrial base poses a risk to our national security. As such, DoD concurs with the Department of Commerce’s conclusion that imports of foreign steel and aluminum based on unfair trading practices impair the national security. As noted in both Section 232 reports, however, the U.S. military requirements for steel and aluminum each only represent about three percent of U.S. production. Therefore, DoD does not believe that the findings in the reports impact the ability of DoD programs to acquire the steel or aluminum necessary to meet national defense requirements.

DoD continues to be concerned about the negative impact on our key allies regarding the recommended options within the reports. However, DoD recognizes that among these reports’ alternatives, targeted tariffs are more preferable than a global quota or global tariff. In addition, we recommend an inter-agency group further refine the targeted tariffs, so as to create incentives for trade partners to work with the U.S. on addressing the underlying issue of Chinese transshipment.

If the Administration moves forward with targeted tariffs or quotas on steel, DoD recommends that the management and labor leaders of the respective industries be convened by the President, so that they may understand that these tariffs and quotas are conditional. Moreover, if the Administration takes action on steel, DoD recommends waiting before taking further steps on aluminum. The prospect of trade action on aluminum may be sufficient to coerce improved behavior of bad actors. In either case, it remains important for the President to continue to communicate the negative consequences of unfair trade practices.

This is an opportunity to set clear expectations domestically regarding competitiveness and rebuild economic strength at home while preserving a fair and reciprocal international economic system as outlined in the National Security Strategy. It is critical that we reinforce to
our key allies that these actions are focused on correcting Chinese overproduction and countering their attempts to circumvent existing antidumping tariffs — not the bilateral U.S. relationship.

cc:
Secretary of the Treasury
Secretary of State
Chief of Staff to the President
Assistant to the President for National Security Affairs
Chairman, National Economic Council
United States Trade Representative