

**COMMERCE, JUSTICE, SCIENCE, AND RE-  
LATED AGENCIES APPROPRIATIONS FOR  
FISCAL YEAR 2019**

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**THURSDAY, SEPTEMBER 6, 2018**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 10:16 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Jerry Moran (Chairman) presiding.

Present: Senators Moran, Alexander, Murkowski, Shaheen, Reed, and Van Hollen.

**BUREAU OF INDUSTRY AND SECURITY, INTERNATIONAL  
TRADE ADMINISTRATION, AND INTERNATIONAL  
TRADE COMMISSION**

**OPENING STATEMENT OF SENATOR JERRY MORAN**

Senator MORAN. I call this subcommittee on Commerce, Justice, Science, and Related Agencies to order.

No Senator would want to be in a hearing in which they could not be heard; so I think we have solved that issue.

I will begin with an opening statement, recognize the Ranking Member, and introduce our witness panel. We will hear your testimony and then take questions.

Welcome to today's Commerce, Justice, Science, and Related Agencies subcommittee hearing. The hearing will examine the fiscal year 2019 funding requests for, and activities of, the International Trade Administration, the Bureau of Industry and Security within the Department of Commerce, and the United States International Trade Commission. I welcome and thank our witness panel for being here.

Collectively, the mission of these three agencies represented here this morning play a significant role in supporting the United States's economic prosperity, our national security, and our foreign policy through promotion and enforcement of our trade policies, laws, and agreements.

The importance of the work that these agencies perform has been recently thrust into the spotlight as the administration continues to pursue aggressive trade strategies.

In just the past few weeks, we have seen a preliminary agreement between the United States and Mexico on a revamped North America Free Trade Agreement; public hearings have been held regarding proposed tariffs on approximately \$200 billion worth of

Chinese products; and reporting is out there that the administration may soon implement these proposed \$200 billion worth of additional tariffs on those products. All of these actions have a nexus with the agencies and the work they perform.

The work of these agencies is particularly important to me, and my home State of Kansas, as trade and exports are how many Kansans make a living. Over 400,000 jobs in our State are supported by global trade. In order for these agencies to succeed, and to benefit my constituents and Americans across the country, Congress must make certain that the necessary resources are available to carry out their missions.

Despite a noted increase in trade activity, the administration has requested less funding in fiscal year 2019 than enacted levels of fiscal year 2018 for both the International Trade Administration and the U.S. International Trade Commission.

Fiscal year 2019 budget request for the Bureau of Industry and Security is \$120 million, \$7 million above the 2018 enacted level.

I hope our witnesses this morning will inform this subcommittee about their respective agencies and ongoing work, as well as shed more light on the administration's trade policies and strategy.

Before recognizing the Ranking Member for her remarks, I will briefly introduce the panel.

Ms. Nazak Nikakhtar is the Assistant Secretary for Industry and Analysis at the International Trade Administration (ITA). The Industry and Analysis Unit devises and implements international trade, investment, and export promotion strategies, and strengthens the global competitiveness of U.S. industries.

I understand ITA has been providing considerable assistance to the Bureau of Industry and Security, and the United States Trade Representative, as it relates to Section 232 and Section 301 investigations and resulting tariffs.

I look forward to hearing you elaborate on ITA's involvement in those activities.

Mr. Ashooh is the Assistant Secretary for Export Administration at the Bureau of Industry and Security, whose activities include managing U.S. export control and treaty compliance systems, and promoting U.S. strategic technology leadership.

The Bureau of Industry and Security (BIS) is responsible for investigating the effects of imports on national security under Section 232 of the Trade Expansion Act of 1963. BIS is also in charge of the exemption process for tariffs implemented as a result of Section 232 investigations. I hope that we will hear about that work today.

Lastly, Mr. David S. Johanson is the Chairman of the United States International Trade Commission. The United States International Trade Commission is an independent, quasi-judicial Federal agency that administers U.S. trade remedy laws; provides the President, the U.S. Trade Representative, and Congress with independent analysis, information and support on matters of tariffs, international trade, and U.S. competitiveness; and maintains the Harmonized Tariff Schedule of the United States.

Welcome to all of you. We look forward to your testimony today.

I now do recognize the Ranking Member, the Senator from New Hampshire, Senator Shaheen.

## STATEMENT OF SENATOR JEANNE SHAHEEN

Senator SHAHEEN. Thank you very much, Mr. Chairman.

I appreciate you organizing this important hearing to understand the budget and activities of three of our Federal trade agencies: the International Trade Administration, the Bureau of Industry and Security, and the U.S. International Trade Commission.

These agencies are critical to a free flow of commerce, international trade markets for American businesses, and to our national security. The fiscal year 2019 CJS bill funds all three at levels higher than the President's request.

Now, we did that to ensure that these agencies can continue promoting American goods and services overseas, and can take action to level the playing field for workers by holding foreign companies accountable when they engage in unfair trade practices.

Unfortunately, the administration has also used these agencies to carry out what, I believe, is an ill-advised trade war that is putting up new barriers to trade for America's small businesses.

I am particularly concerned that the administration's burdensome and opaque exemption process for steel and aluminum tariffs has created a mountain of red tape forcing small businesses to spend precious time and resources to rework their operations.

In addition, the exemption process has resulted in a dramatic shift of resources away from helping small businesses find new markets for their products. In fact, it is my understanding that many staff at the International Trade Administration and the Bureau of Industry and Security have been shifted away from small business assistance to handle tariff exemption requests.

Finally, serious questions have been raised about the legitimacy and fairness of the waiver exemption process as a result of recent reports of influence by the White House.

Now, as we discussed at our last hearing with U.S. Trade Representative Lighthizer, we have also seen the ramifications of this trade war in our home States. I noticed, Mr. Ashooh, you were, like all of the panelists, checking out the headlines there, that you recognize a number of those news outlets from New Hampshire.

A few weeks ago, I visited Hitchiner Manufacturing in Milford, New Hampshire. The company makes metal castings for the automotive and aerospace industry. Hitchiner is planning a new facility that will create 85 local jobs, but they have seen the cost of their raw materials increase precipitously since the administration implemented their steel and aluminum tariffs this year.

Now, Hitchiner already prides itself on using domestically produced steel, but even U.S. made steel has increased in price with the administration's tariffs.

I hope that the President will heed the warnings of Members of this subcommittee and end the trade war, and in particular, I urge the President to reach an agreement with Canada. Like all of us, I will be watching this issue very closely especially because Canada is New Hampshire's largest trading partner, as it is for all of the United States. Any new deal regarding NAFTA that cuts such a key ally out of the agreement will lose my support.

Thank you all very much for being here today, and I look forward to your testimony.

Senator MORAN. Senator Shaheen, thank you very much. We will begin with Mr. Johanson and work our way to his left. Sir, you are welcome and recognized.

**STATEMENT OF HON. DAVID S. JOHANSON, CHAIRMAN, UNITED STATES INTERNATIONAL TRADE COMMISSION**

Mr. JOHANSON. Thank you, Chairman Moran, Ranking Member Shaheen, and Members of the subcommittee for inviting me to participate in this hearing.

I am pleased to appear today on behalf of the U.S. International Trade Commission. The Commission is a unique agency. It is a small institution with less than 400 employees, yet its work impacts millions of Americans.

The Commission is a professional agency that produces high quality work and meets its deadlines. Perhaps most unique, the Commission is, through statute, an independent and nonpartisan agency.

I would like to thank the subcommittee for its continued support of the Commission. While the Commission has requested \$97.5 million for fiscal year 2019, both Senate and House fiscal year 2019 Commerce, Justice, and Science appropriations bills have the Commission marked at \$95 million.

The Commission received its full request of \$93.7 million in fiscal year 2018. The fiscal year 2019 request represents an increase of \$3.8 million, or 4.1 percent over the fiscal year 2018 request.

Although the Commission is a small agency, it has a large and growing workload. The Commission has recently experienced a significant increase in its three core statutory functions:

- First, administration of the trade remedy laws;
- Second, fact finding and trade policy support; and,
- Third, administration of the Harmonized Tariff Schedule.

Regarding the trade remedy laws, the number of Title VII anti-dumping and countervailing duty investigations completed by the Commission more than doubled over the past 5 years.

Last year, the Commission conducted investigations under the Section 201 Global Safeguard laws for the first time since 2001. In 2019, the Commission will begin statutorily required assessment reports for these actions. Given the success of the petitioners in these investigations, more Section 201 petitions might be forthcoming.

The number of Section 337 investigations, which examine unfair practices in import trade, remains at historically high levels. Section 337 investigations most often involve allegations of violations of intellectual property rights. These investigations can be particularly complex.

The Commission does not make trade policy. The Commission does, however, report on a wide variety of trade matters upon request from the Senate Committee on Finance, the House Committee on Ways and Means, the President, and the U.S. Trade Representative.

The Commission responds to time sensitive requests for technical expertise and information from these entities. The number of trade policy requests directed to the Commission was markedly high last

year and will likely remain at high levels. The Commission conducts fact-finding investigations for these same entities.

Last week, the U.S. Trade Representative requested that the Commission prepare a report assessing the likely impact of a trade agreement with Mexico and with Canada—if it is willing—on the U.S. economy. This will be a major project for the agency.

The Commission maintains the Harmonized Tariff Schedule (HTS), which lists tariffs applied to imports into the United States. The HTS is a valuable tool for U.S. importers and was visited by almost 2 million users last year.

Although the Commission has no role in the administration's investigations under Section 232 or Section 301, Commission resources are required to update the HTS each time a tariff level is changed. Largely due to the Section 232 and Section 301 actions, the HTS underwent 11 updates in 2018 compared to three updates in 2017. In 2018 alone, Commission staff has spent almost 2,000 hours updating the HTS.

Looking forward to fiscal year 2019, the HTS may require additional updates to reflect possible actions taken by the administration under Section 232 and Section 301, any new trade agreements, and possible passage into law of the Miscellaneous Tariff Bill, which was sent to the President this week after passing the Senate and the House. I would like to add that the Commission played a major role in the development of the Miscellaneous Tariff Bill.

Finally, the Commission's requested budget supports information technology initiatives and technology upgrades necessary for the agency's effective operation.

In conclusion, I thank the subcommittee for its consideration of the Commission's fiscal year 2019 budget request.

[The statement follows:]

#### PREPARED STATEMENT OF DAVID S. JOHANSON

The U.S. International Trade Commission (USITC or Commission) is an independent, quasi-judicial, nonpartisan Federal agency with a wide range of trade-related mandates. The Commission provides tariff, trade, and competitiveness-related analysis and information to the Senate Committee on Finance, the House Committee on Ways and Means, the President, and the U.S. Trade Representative (USTR). The USITC maintains the U.S. Harmonized Tariff Schedule (HTS). The USITC also administers certain trade remedies; specifically, the USITC investigates whether imports have injured a domestic industry in the context of antidumping and countervailing duty and safeguard investigations and whether there are unfair practices or unfair methods of competition in import trade in the context of unfair import injury investigations. The Commission does not make trade policy; however, it does provide trade policy support to the Senate Committee on Finance, the House Committee on Ways and Means, the President, and the USTR.

#### BUDGET HIGHLIGHTS

The Commission would like to thank the subcommittee for its continued support for the USITC and our mission. While the Commission has requested \$97.5 million for fiscal year 2019, both the Senate and House fiscal year 2019 Commerce, Justice, and Science Appropriations bills have the Commission marked at \$95.0 million. The Commission received its full request of \$93.7 million in fiscal year 2018. Our fiscal year 2019 request represents an increase of \$3.8 million, or 4.1 percent, over our fiscal year 2018 request.

The increased request level reflects a \$2.0 million increase in personnel costs over fiscal year 2018. This increased level of funding will allow the Commission to staff fully the Commission's Offices of Operations and the General Counsel, which are heavily impacted by historically high investigative caseloads.

The requested budget also supports several information technology initiatives and system improvements and upgrades. These include our continuous efforts to improve our cybersecurity posture and support data migration to the cloud; improve the Miscellaneous Tariff Bill Petition System (MTBPS), which is the web portal required by the American Manufacturing Competitiveness Act of 2016 for public submission of petitions and comments concerning temporary duty suspensions and/or reductions; and make significant upgrades to several of our public-facing systems, including our Electronic Document Information System (EDIS), DataWeb trade data website, HTS Data Management System, and creation of a data system to track the status of all trade remedy investigations.

#### INCREASED WORKLOAD

The recent growth in trade-related actions has increased the Commission's workload in several ways. Below, this statement discusses the different types of trade policy actions and the role of the Commission in them, emphasizing the impact of each of them on the Commission's workload.

The Commission conducts formal fact-finding investigations on a variety of tariff, trade, and competitiveness matters and provides trade policy support in response to formal and informal requests from the Senate Committee on Finance, the House Committee on Ways and Means, the President, and, by delegation from the President, to the USTR. This support assists these recipients with decisions related to trade negotiations, the enactment of legislation, or other policy actions that affect the competitiveness of U.S. industries and the overall economy. Staff resources devoted to trade policy support have increased significantly this year over previous years.

The Commission is also charged with maintaining the Harmonized Tariff Schedule of the United States (HTS), which lists tariffs applied to imports into the United States. The staff of the Commission assist Congress and the executive branch to make all legal and statistical changes to the classification of goods in the HTS. Over the last year, over 1.9 million people conducted almost 7.3 million searches of the HTS, with a 26 percent increase in searches over the last 6 months. As the subcommittee is aware, the Trump administration has initiated section 232 investigations into national security-related tariffs imposed on U.S. imports of steel, aluminum, autos and auto parts, and uranium, and section 301 investigations into whether to impose additional tariffs on U.S. imports of products from China due to violations of intellectual property rights. Although the Commission has no role in investigating or making determinations for investigations under section 232 or section 301, every time there is a change to a tariff level, Commission resources are required to update the HTS to reflect that change. The recent section 232 and section 301 actions and other changes in the tariffs have resulted in eleven revisions to the HTS this year, compared to three revisions in 2017. This is a 400 percent increase to date. Accordingly, Commission staff hours in this area have increased from 4,700 hours in 2017 to over 5,800 hours during the same period in 2018.

The Commission also provides USITC DataWeb, a valuable online trade service tool used by Commission staff, external customers, and the public to organize U.S. import and export data for analysis. This year over 465,000 users conducted more than 726,000 sessions on DataWeb.

The Commission does have a substantial role in section 201 global safeguard investigations, as described in more detail below. USITC Commissioners and staff devoted 11,270 hours to conducting investigations for last year's section 201 investigations into solar panels and large residential washing machines, the first such safeguard investigations since 2001. In fiscal year 2019, the Commission will begin the required mid-term assessment reports for both actions.

The number of import injury investigations completed by the USITC under Title VII of the Tariff Act of 1930 has more than doubled since fiscal year 2013, increasing to 68 in fiscal year 2018 from 30 in fiscal year 2013. Section 337 caseloads have remained at historically high levels in the current fiscal year, with no indication of slowing down. The Department of Commerce (Commerce) has self-initiated one Title VII case and received funding to initiate more such investigations. Self-initiated investigations not only increase the quantity of investigations the Commission reviews, but they also require additional resources as compared to investigations that begin with petitions from industry. Finally, the Commission recently completed one cycle of the Miscellaneous Tariff Bill (MTB) under the American Manufacturing Competitiveness Act of 2016 (AMCA). With regard to miscellaneous tariff bills passed in prior years, the number of individual MTBs presented to the USITC never exceeded 1,350 in any given year. As a result of the AMCA, the USITC received a total of 3,162 petitions and 2,491 comments. The USITC delivered its final MTB report

on August 8, 2017. The USITC is preparing to start the next cycle of MTBs in the fall of 2019.

ROLE OF THE U.S. INTERNATIONAL TRADE COMMISSION IN SELECTED TRADE ACTIONS

The following table briefly summarizes the Commission's role, or lack of role, with regard to various trade actions. The remainder of this statement provides more detail and clarifies responsibilities of the Commission with regard to such actions.

SUMMARY OF U.S. INTERNATIONAL TRADE COMMISSION'S ROLE IN SELECTED TRADE ACTIONS

Trade Action	Role of USITC	Relevant Statute
Title VII investigations (Antidumping/Countervailing Duty or AD/CVD).	The Department of Commerce makes determinations as to whether dumping or countervailable subsidies exist. The USITC makes determinations as to whether the domestic industry is materially injured (or threatened with material injury) by reason of subject imports. Implementation of AD/CVD tariffs requires affirmative determinations by both the USITC and Commerce.	19 USC 1671 et seq. Section 701 et seq. of the Tariff Act of 1930
Unfair Import Injury investigations (Section 337).	Section 337 investigations examine unfair practices in import trade. Most often, the USITC investigates and rules on allegations that imported goods infringe the rights of a U.S. intellectual property rights holder. If a violation is found, the USITC issues remedial relief, provided that the public interest does not preclude the issuance of such relief. Relief may take the form of exclusion orders barring entry of unfairly traded imports or "cease and desist" orders prohibiting unfair acts in the United States.	19 USC 1337 Section 337 of the Tariff Act of 1930
Global Safeguard (Section 201).	The USITC makes determinations as to whether the domestic industry is seriously injured (or threatened with serious injury) by reason of subject imports. If the USITC makes an affirmative injury determination, the USITC reports to the President a recommendation to remedy the serious injury. The President makes the final decision on whether to provide a remedy to the U.S. industry, and if so, the type and duration of the remedy. If the President puts a remedy in place, the USITC must revise the HTS to reflect the remedy and the USITC conducts a mid-point review investigation.	19 USC 2251–2254 Sections 201–204 of the Trade Act of 1974
Factfinding Investigations: —Industry and economic analysis.	Upon request from the Senate Committee on Finance; the House Committee on Ways and Means; or the President, and, by delegation, the U.S. Trade Representative (USTR); or upon its own motion, the USITC conducts fact-finding investigations and prepares reports on a wide variety of matters involving international trade and competitiveness.	19 USC 1332 Section 332 of the Tariff Act of 1930
—Probable economic effects (trade agreement).	The USITC advises the President as to the probable economic effect on domestic industries and consumers of modification of duties and other barriers to trade that may be considered for inclusion in any proposed trade agreement.	19 USC 2151 Section 131 of the Trade Act of 1974
	Once the President enters into a trade agreement, the Commission has up to 105 days to provide its report assessing the agreement's probable economic effects on the U.S. economy as a whole, on specific sectors of the economy, and on the interests of U.S. consumers.	19 USC 4201 note Section 105(c)(1) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015
—Generalized System of Preferences.	At times, certain articles may be designated as eligible for duty-free treatment when imported from designated developing countries. The USITC advises the President as to the probable economic effect on the domestic industry and on consumers of such designations.	19 U.S.C. 2151, 2163 Sections 131 and 503, Trade Act of 1974

SUMMARY OF U.S. INTERNATIONAL TRADE COMMISSION'S ROLE IN SELECTED TRADE ACTIONS—  
Continued

Trade Action	Role of USITC	Relevant Statute
—Sec. 1205 .....	The USITC is responsible for recommending to the President modifications it considers necessary or appropriate to conform the HTS with amendments to the Harmonized System Convention (maintained by the World Customs Organization), to ensure that the HTS is kept up to date, and to relieve unnecessary administrative burdens.	19 U.S.C. 3005 Section 1205, Omnibus Trade and Competitiveness Act of 1988
—Other .....	The USITC conducts other factfinding investigations under various statutes. Examples include analyses of trade preference programs that provide duty-free entry of imports of textile and apparel products from Nepal and of imports from countries covered by the Caribbean Basin Initiative.	
American Manufacturing Competitiveness Act (MTBs).	Under a process for the consideration of miscellaneous tariff bills (MTBs) instituted in 2016, the USITC accepts and analyzes petitions and public comments regarding the temporary suspension or reduction of duties on specific products. In accordance with specific statutory deadlines, the USITC submits preliminary and final reports on received petitions to the Senate Committee on Finance and the House Committee on Ways and Means for their use in developing a comprehensive MTB for consideration by Congress.	19 USC 1332 note American Manufacturing Competitiveness Act of 2016
Trade Policy Support .....	The USITC responds to rapid-response requests for technical expertise and information that trade policymakers can use to inform the development of U.S. international trade policy.	19 USC 1332 Section 332 of the Tariff Act of 1930
Section 232 investigations into trade impact on national security.	The USITC has no role in investigating or making determinations for investigations under section 232. If the President takes action under section 232 (based on a report from the Secretary of Commerce), USITC staff will revise the HTS to reflect the actions of the President.	19 USC 1862 Section 232 of the Trade Expansion Act of 1962
Section 301 investigations into trade impacts of violations of intellectual property rights.	The USITC has no role in investigating or making determinations for investigations under section 301. If the President chooses to take action under section 301 (based on a report from the US Trade Representative), USITC staff will revise the HTS to reflect the actions of the President. Under the Commission's trade policy support role, USTR can request the USITC to assist with the section 301 process.	19 USC 2411 Section 301 of the Trade Act of 1974

ANTIDUMPING/COUNTERVAILING DUTY (AD/CVD) INVESTIGATIONS AND REVIEWS

By statute, the Commission makes determinations as to whether the domestic industry is materially injured (or threatened with material injury) by reason of subject imports. The Commission conducts investigations to gather data to create a record which is used to make determinations.

The Commission conducts reviews of existing AD and/or CVD orders every 5 years that an order remains in place. Within these reviews, the Commission determines whether an order can be revoked without resulting in continued or recurrent injury to a domestic industry. If Commerce (or the USITC) determines that revocation is appropriate, Commerce will revoke the order.

Commerce also plays a role in AD/CVD cases. Commerce is the administering authority and initiates the investigations. Commerce makes determinations on whether the subject product is sold in the United States at a price that is below that producer's sales price in the country of origin (home market), or at a price that is lower than the cost of production (AD) or is unfairly subsidized by the foreign government (CVD). Commerce can also self-initiate a case (i.e., there is no petition filed by a U.S. manufacturer(s) or union). We saw a recent instance of this in December 2017, the first since 1991, with a case on common alloy aluminum sheet from China self-initiated by Commerce. Such self-initiated cases have a particular impact on the USITC because we have less information to begin our processes than we would usually receive from a petitioner.

In the event of an affirmative determination by both Commerce and the USITC, Customs and Border Patrol (CBP) enforces these decisions and collects the AD/CVD duties due on imported goods.

Another significant portion of our workload in this area is defending our AD/CVD determinations in litigation challenging these determinations. Unlike many Federal agencies, the Commission has independent litigation authority and therefore employs its own attorneys to conduct its litigation. Trade remedy litigation is conducted at the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, and binational review panels under NAFTA. In addition, our staff assists the USTR in World Trade Organization (WTO) disputes involving either our import injury determinations or injury determinations by other WTO members that affect U.S. exports.

#### GLOBAL SAFEGUARD (SECTION 201) INVESTIGATIONS

By statute, the Commission makes determinations as to whether the domestic industry is seriously injured (or threatened with serious injury) by reason of subject imports. The Commission conducts investigations to gather data to create a record which is used to make determinations. Global safeguards involve imports from all countries. The standard for injury in a global safeguard is higher (serious injury) than for AD/CVD cases (material injury), and imports must be the most important cause of injury (i.e., no other cause can be greater).

If the Commission makes an affirmative injury determination, the Commission will formulate and report to the President a recommendation to remedy the serious injury (e.g., tariffs, quota, tariff-rate quota). The President makes the final decision on whether to provide a remedy to the U.S. industry, and if so, the type and duration of the remedy. In determining whether to take action, the President takes into account the potential effects on downstream industries, consumers, and the U.S. economy.

If the President puts a remedy in place, the Commission must revise the HTS to reflect the remedy. The Commission then conducts a mid-point review investigation. (The mid-point depends on the imposed remedy—if the President imposes tariffs for 4 years, the mid-point would come after 2 years.) For the recent safeguard investigations involving washing machines and solar panels, the Commission will begin our mid-point reviews in February 2019 and July 2019, respectively.

Unlike AD/CVD investigations, Commerce does not play a role in investigating (or making determinations) in global safeguard investigations; the Commission is the sole administering authority.

#### UNFAIR IMPORT INJURY INVESTIGATIONS (SECTION 337)

The USITC is responsible for investigating alleged violations of section 337 of the Tariff Act of 1930, as amended. Section 337 prohibits certain unfair practices in the import trade. The unfair practice most frequently investigated by the Commission is patent infringement. In this context, section 337 prohibits the importation into the United States, the sale for importation, and the sale within the United States after importation of articles that infringe a valid and enforceable United States patent, provided that an industry in the United States, relating to articles protected by the patent concerned, exists or is in the process of being established. Similar requirements govern investigations involving infringement of other federally registered intellectual property rights, including registered trademarks and registered copyrights. In addition, under section 337, the Commission has general authority to investigate other unfair methods of competition and unfair acts in the importation and sale of products in the United States (such as products manufactured abroad using stolen U.S. trade secrets), the threat or effect of which is to destroy or injure a U.S. industry, to prevent the establishment of a U.S. industry, or to restrain or monopolize trade and commerce in the United States. The Commission may institute an investigation on the basis of a complaint or on its own initiative.

Section 337 complaints are typically brought by private parties alleging that certain articles are sold for importation, imported, or sold after importation into the United States by means of an unfair act or an unfair method of competition.

As set forth in the statute, the Commission, in accordance with the Administrative Procedure Act (APA), conducts proceedings to determine whether there has been a violation of section 337. The APA gives the parties the opportunity to make legal arguments before an administrative law judge (ALJ). The ALJ conducts a public hearing on the record. At the end of the evidentiary hearing, the ALJ will issue a final initial determination.

If the ALJ's determination is appealed by one of the parties, or if the Commission on its own decides to review the ALJ's determination, the Commission will issue its

own decision. If the Commission believes that a remedy may be appropriate, the Commission will request submissions from the parties, interested Federal agencies, and the public concerning the remedy in general and the public interest factors specifically. Finally, if a violation of section 337 is found, the Commission will make a finding on whether the statutory public interest factors bar relief or whether relief should be tailored to accommodate public interest concerns. While many investigations are ended by agreement of the parties or withdrawal of the complaint, those that are concluded on the merits are currently decided, on average, in 16.3 months.

If the Commission determines that a violation exists and that a remedy is appropriate, it issues an exclusion order directing CBP to block the subject imports from entry into the United States, and it can also issue cease and desist orders that direct the violating parties to stop engaging in the unlawful practices. The Commission's remedial orders enter into force unless disapproved for policy reasons by the USTR.

Appeals of the Commission decisions in section 337 investigations are made directly to the U.S. Court of Appeals for the Federal Circuit. As mentioned above, the Commission's litigation activities are conducted by its own legal counsel.

#### FACTFINDING INVESTIGATIONS

Under section 332, the Commission investigates a wide variety of trade matters. Upon request from the Senate Committee on Finance; the House Committee on Ways and Means; or the President, and, by delegation, the USTR; or upon its own motion, the Commission conducts fact-finding investigations and prepares reports on matters involving tariffs or international trade.

When the President commences negotiations on a new trade agreement, or substantial revisions to an existing trade agreement, the Commission also advises the President as to the probable economic effect on domestic industries and consumers of modification of duties and other barriers to trade being considered.

Once the President has notified Congress of his intent to enter into a trade agreement, section 105(c) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA) requires the President to request that the Commission provide a report to Congress and the President that assesses the likely impact of the agreement on the U.S. economy, specific industry sectors, and consumers. The Commission has up to 105 days to provide its report once the President enters into the agreement. In the case of a comprehensive trade agreement, this is an extensive report detailing all aspects of the agreement and providing estimates of the economic effects, an undertaking that requires significant Commission resources. On August 31, 2018, the USTR requested the Commission to prepare such a report after "the President notified Congress of his intent to enter into a trade agreement with Mexico—and with Canada if it is willing. . . ."

The Commission will base its report on the details of the agreement as made available. We note that section 106(a)(1) of the TPA requires that the President, at least 60 days before the President enters into the agreement, must publish the text of the agreement on a publicly available Internet website of the USTR.

The Commission also conducts a wide variety of other factfinding investigations, as shown in the table above. Recent reports that have garnered public attention include investigations on business jets; aluminum; digital trade; exports by small and medium size enterprises; rice; agricultural trade with Brazil, China, and India; and U.S. exports to Cuba.

#### AMERICAN MANUFACTURING COMPETITIVENESS ACT (MISCELLANEOUS TARIFF BILLS)

In May 2016, the American Manufacturing Competitiveness Act (AMCA) introduced a new process for the consideration of miscellaneous tariff bills (MTBs). The Commission is now responsible for accepting and analyzing petitions and comments regarding the temporary suspension or reduction of duties for specific products. U.S. firms typically seek this relief for imported materials that are not available from domestic manufacturers. In accordance with specific statutory deadlines, the Commission submits preliminary and final reports on received petitions to the Senate Committee on Finance and the House Committee on Ways and Means for their use in developing a comprehensive miscellaneous tariff bill for Congress to consider.

The Commission's report included certain information and determinations with respect to each petition and also categorized each petition based on whether it met the requirements of the Act without modification, met the requirements of the Act with certain types of modifications, or did not meet the requirements of the Act. It also included, with respect to each petition, the Commission's determination: (1) whether the duty suspension or reduction was available to any person that imported the article; (2) whether the duty suspension or reduction was likely able to be ad-

ministered by CBP; and (3) whether the estimated loss in revenue to the United States from the duty suspension or reduction did not exceed \$500,000 in a calendar year during which it would be in effect.

The first cycle of the Commission's MTB reporting process was from October, 15, 2016, to August 7, 2017, and the second round will begin no later than October 15, 2019. The final report for the first cycle was submitted to Congress on August 8, 2017.

If MTB legislation is passed by Congress and enacted by the President, Commission staff will need to modify the HTS to reflect the changes to those products for which a tariff reduction or suspension was granted.

Commerce and CBP also have roles defined by the AMCA statute. Commerce issues a report that provides its determinations on whether there are domestic producers and whether any domestic producer objects to the petition for reduction or suspension of the duties. CBP makes determinations on whether any technical changes to the article description are necessary for purposes of administration when articles are presented to CBP for importation.

#### TRADE POLICY SUPPORT

The Commission responds to rapid-response requests for technical expertise and information that trade policymakers (the Senate Committee on Finance, the House Committee on Ways and Means, and the USTR) can use to inform the development of U.S. international trade policy. This trade policy support, provided under section 332 of the Tariff Act of 1930, includes (1) providing information and analysis on current issues related to trade and competitiveness, (2) providing technical comments on draft legislation, (3) preparing draft tariff legislation and annexes for presidential proclamations, memoranda, executive orders, and final decisions by various agencies, (4) providing information and analysis in briefings and meetings, (5) temporarily detailing staff to our oversight committees and the USTR, and (6) assisting trade delegations, negotiating teams, and administration-led litigation teams in international dispute settlement forums.

#### SECTION 232 INVESTIGATIONS

The Commission does not have any role in investigating or making determinations for investigations under section 232. Under section 232, the administration determines the effects of imports on national security. If the President chooses to take action (based on a report from the Secretary of Commerce) under section 232, Commission staff will revise the HTS to reflect the actions of the President.

#### SECTION 301 INVESTIGATIONS

The Commission does not have any role in investigating or making determinations for investigations under section 301. Under section 301, the President may take action, including retaliation to obtain the removal of any act, policy, or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce.

The Commission does not have any role in investigating or making determinations for investigations under section 301. If the President chooses to take action under section 301 (based on a report from the USTR), Commission staff will revise the HTS to reflect the actions of the President. At its discretion, USTR can request the Commission to provide trade policy advice to assist with the section 301 process.

#### CONCLUSION

In conclusion, the Commission would like once again to thank this subcommittee for its continued support of the USITC. To meet its mission, the Commission must maintain the staff, technological tools, and other resources needed to conduct fair and efficient investigations, as well as provide high-quality and objective information and analysis on a wide array of trade issues impacting millions of domestic workers.

Senator MORAN. Ms. Nikakhtar.

**STATEMENT OF HON. NAZAK NIKAKHTAR, ASSISTANT SECRETARY  
FOR INDUSTRY AND ANALYSIS, U.S. DEPARTMENT OF COM-  
MERCE, INTERNATIONAL TRADE ADMINISTRATION**

Ms. NIKAKHTAR. Good morning, Chairman Moran, Ranking Member Shaheen, and Members of the subcommittee.

Again, my name is Nazak Nikakhtar, Assistant Secretary for Industry and Analysis. Please do not feel obligated to have to pronounce my last name; Nazak is fine.

Thank you for the opportunity to speak to you today about the role that the International Trade Administration, ITA, at the Department of Commerce, plays in helping the American economy grow through free, fair, and reciprocal trade and investment.

ITA, with its trade professionals in Washington, across the United States and around the world, is responsible for strengthening the competitiveness of U.S. industry in the global marketplace, promoting U.S. exports, increasing investment in America, monitoring compliance with U.S. trade agreements, and enforcing U.S. trade law.

I would like to thank the subcommittee for its support of ITA's efforts to combat unfair trade including our efforts to assist domestic industry by self-initiating antidumping and countervailing duty investigations.

We are mindful of the subcommittee's fiscal year 2019 mark and we look forward to providing any information you need as you finalize the 2019 appropriations.

ITA's analytical tools and sectoral intelligence help enable the administration leadership and colleagues across the U.S. Government to make informed decisions on complex trade issues based on concrete trade and industry data.

The increasing pace of trade policy activities will significantly increase demand in fiscal year 2019 for ITA's analytical and sectoral expertise. This expertise is housed in Industry and Analysis, the unit I lead, as well as in ITA's Global Markets, and Enforcement and Compliance units.

Our specialized knowledge has allowed us to provide critical analysis that the administration requires to develop policy and to respond promptly to challenges impacting U.S. industry and our national and economic security.

Some recent examples of my unit's work, Industry and Analysis, include development of Section 232 tariff economic modeling, Section 301 tariff analysis, and Section 201 safeguard analysis. In all of these cases, ITA's work has been critical to developing U.S. actions that are informed by comprehensive economic data.

As you may know, ITA has undertaken a significant role in the Section 232 exclusion process for steel and aluminum products. Because of ITA's particular expertise in steel and aluminum, we are providing technical analysis and personnel for Commerce's Bureau of Industry and Security, BIS, for product exclusion requests.

To address the surge of exclusion requests, ITA has deployed staff and hired contractors to assist with the timely evaluation of the tens of thousands of requests.

During fiscal year 2018, ITA worked with BIS to process exclusion requests without jeopardizing our ability to enforce the anti-dumping and countervailing duty law, and conduct other critical

programs that benefit U.S. industries and American workers. ITA will continue to prioritize this work next year.

Commerce's fiscal year 2019 budget requested seven positions and \$1.2 million for the Section 232 work. These seven positions will bring additional steel and aluminum industry and product expertise to help administer the exclusion program.

Further, ITA and BIS play important roles in Commerce's review for the Committee on Foreign Investment in the United States (CFIUS). The National Defense Authorization Act, which enacted the Foreign Investment Risk Review Modernization Act of 2018, FIRRMA, updates and modernizes CFIUS's authority by expanding the scope of transactions that the committee reviews to assess any national security concerns.

Through ITA's Industry and Analysis unit, which leads and coordinates the Department's CFIUS work, we bring significant and varied expertise to bear on CFIUS's national security reviews, including ITA's analysis of the market conditions underlying each transaction and its potential impact on U.S. commerce. The Department also leverages BIS's expertise on dual use and emerging technologies and the defense industrial base.

CFIUS is currently reviewing a record number of transactions. Those cases equalled 238 in 2017, up from a 5-year high of 173 in 2016. In 2018, CFIUS cases are on track to reach approximately 240 cases. With FIRRMA, we expect CFIUS's casework to continue to increase.

Commerce's fiscal year 2019 budget requests \$1.9 million and seven positions within Industry and Analysis to strengthen trade policy analysis, including CFIUS.

In sum, we are proud of ITA's trade enforcement work and our trade policy analysis where we utilize our expertise in international economics, industry sectors, foreign markets, trade negotiations, export promotion, and global competitiveness to help U.S. industries grow, and we are gearing up for a busier year next year in 2019.

I look forward to answering your questions today, and I thank you, again, for this opportunity to testify.

[The statement follows:]

PREPARED STATEMENT OF STATEMENT OF NAZAK NIKAKHTAR

Chairman Moran, Ranking Member Shaheen, and Members of the subcommittee, thank you for the opportunity to speak to you today about the role the International Trade Administration (ITA) in the Department of Commerce plays in helping the American economy grow through free, fair, and reciprocal trade and investment. ITA, with its trade professionals in Washington, across the United States and around the world, is responsible for strengthening the competitiveness of U.S. industry in the global marketplace, promoting U.S. exports, increasing investment in America, monitoring compliance with U.S. trade agreements, and enforcing U.S. trade laws.

I'd like to thank the Committee for its support of ITA's efforts to combat unfair trade, including our efforts to assist domestic industries by self-initiating anti-dumping and countervailing duty investigations. We are mindful of the Committee's fiscal year 2019 mark, and we look forward to providing any information you need as you finalize the fiscal year 2019 appropriations.

ITA's unique expertise serves a critical role in shaping and carrying out the administration's trade initiatives. Our analytical tools and sectoral intelligence help enable administration leadership and colleagues across the U.S. Government to make informed decisions on complex trade issues—for example, on trade actions and

the negotiation of free trade agreements—based on concrete trade and industry data. We do this by:

- modeling the economic impact of policy options to ensure that decisions advance the growth of U.S. companies and help American workers;
- enforcing U.S. trade laws to level the playing field for U.S. companies;
- providing the perspective of industries and trade analytics to trade negotiators;
- eliminating trade barriers; and
- advocating for U.S. businesses abroad.

In short, we help shape U.S. trade policy to support America’s industrial base.

#### ANALYSIS AND SECTORAL EXPERTISE

I lead ITA’s Industry and Analysis unit. The increasing pace of trade policy activities will significantly increase demand in fiscal year 2019 for ITA’s analytic and sectoral expertise, which is housed in Industry and Analysis. Our specialized knowledge in these areas has allowed us to provide critical analysis that the administration requires to develop policies and to respond promptly to challenges impacting U.S. industry and our national and economic security. Some recent examples of our work include ITA’s development of Section 232 tariff scenarios, Section 301 tariff analysis, and Section 201 safeguard analyses. In all these cases, ITA’s work has been critical to developing U.S. actions that are informed by the best economic analysis available.

ITA has a comprehensive ability to analyze and quantify both sectoral and global industry effects. ITA’s sector experience and economic modeling capabilities have been built over the course of decades. We have industry experts with hundreds of years of combined experience gained from helping shape U.S. policy in specific sectors, including autos, advanced manufacturing, semiconductors, digital trade, travel and tourism, and textiles. Complementing this sectoral strength is our international economics capacity. With funding provided by Congress, the Department has invested over 1 million dollars in complex, economy-wide modeling programs that allow ITA to simulate the impact of different policy options. We have also made significant investments in training our economists, as 3 to 5 years of training are required to become proficient in using the models. We are reprioritizing within existing resources to meet new demands for sectoral and economic analysis and to meet new workload.

#### SECTION 232 EXCLUSION PROCESS

ITA has undertaken a significant role in the Section 232-exclusion process for steel and aluminum products. Because of ITA’s particular expertise in steel and aluminum, we are providing technical analyses and personnel support to the Bureau of Industry and Security (BIS) for product exclusion requests. To address the surge of product exclusion requests, ITA has redeployed staff (65 staff initially) and hired contractors (41 to date, some replacing detailed staff) to assist with the timely evaluation of the tens of thousands of requests. During fiscal year 2018, we have been able to work with BIS to process exclusion requests without jeopardizing our ability to vigorously enforce the antidumping and countervailing duty (AD/CVD) laws and conduct other critical programs that benefit U.S. industries and workers. ITA will continue to prioritize this work in fiscal year 2019. Commerce’s fiscal year 2019 budget requested 7 positions and \$1.2M for Section 232 in the regular fiscal year 2019 appropriations process. These 7 positions were to focus on bringing additional steel and aluminum industry and product expertise to help administer the program.

#### CFIUS EXPANSION

The Committee on Foreign Investment in the United States (CFIUS) is an inter-agency committee that conducts national security reviews of foreign investments in U.S. business. The ITA and BIS play important roles in Commerce’s review for CFIUS. The National Defense Authorization Act also enacted the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which updates and modernizes CFIUS’s authority by expanding the scope of transactions that the committee may review to assess any national security concerns.

CFIUS transactions touch on virtually every sector of the economy. Through ITA’s Industry and Analysis unit, which leads and coordinates the Department’s CFIUS work, the Department of Commerce brings significant and varied expertise to bear on CFIUS national security reviews, including ITA’s analysis of the market conditions underlying each transaction and its potential impact on U.S. commerce, and BIS’s expertise on dual use and emerging technologies and the defense industrial base.

CFIUS is currently reviewing a record number of transactions. CFIUS cases alone totaled 238 in 2017, up from a 5-year high of 173 in 2016. In 2018, CFIUS cases are on track to reach approximately 240 cases. FIRRMA modernizes CFIUS's authority by expanding the scope of transactions that the committee may review to assess any national security concerns. And consequently, we expect CFIUS casework will continue to increase. Commerce's fiscal year 2019 budget requests \$1.9 million and 7 positions within Industry and Analysis to strengthen trade enforcement and analysis, including CFIUS.

#### CONCLUSION

In closing, ITA is called upon to analyze the economic impacts of international trade policies because of our expertise in international economics, industry sectors, foreign markets, trade negotiations, export promotion, and global competitiveness. This requires:

- robust economic analysis and careful evaluation of trade policy options;
- coordination with other government agencies, as well as diplomacy with our trading partners;
- creative thinking and problem solving; and
- capacity to respond to emerging initiatives with staff and budget.

Thank you, again, for this opportunity to testify. I look forward to answering your questions.

Senator MORAN. Thank you, ma'am.  
Mr. Ashooh.

#### **STATEMENT OF HON. RICHARD ASHOOH, ASSISTANT SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION AND THE MANAGEMENT OF THE DEPARTMENT OF COMMERCE'S NATIONAL SECURITY, NONPROLIFERATION, AND FOREIGN POLICY FUNCTIONS WITHIN THE BUREAU OF INDUSTRY AND SECURITY**

Mr. ASHOOH. Chairman Moran, Ranking Member Shaheen, and Members of the subcommittee.

I am pleased to appear before the subcommittee today to address the Bureau of Industry and Security within the Department of Commerce.

As Chairman Moran already mentioned, BIS's mission is to advance U.S. national security, foreign policy, and nonproliferation objectives by ensuring an effective export control and treaty compliance system, and by promoting U.S. strategic technology leadership.

Before I proceed, I would like to thank the subcommittee for the reprogramming authorization that has been critical to the Section 232 steel and aluminum product exclusion process. Your support has provided essential resources to assist with the demands of this activity, and we look forward to keeping the subcommittee updated on our work.

The recently enacted National Defense Authorization Act (NDAA) included the Export Control Reform Act (ECRA). Congress enacted the ECRA in part to address concerns over growing threats to sensitive U.S. technology. ECRA provides new authority to identify and appropriately control emerging critical technologies that are not currently subject to multilateral export control licensing requirements. BIS, working with other agencies, will assess whether more restrictive controls are warranted.

BIS is reexamining our personnel needs to accommodate the significant new responsibilities due to ECRA. Furthermore, BIS has requested additional full-time employees for fiscal year 2019 to deal with workload increases in other areas, which I will now discuss.

As you have heard already, the Committee on Foreign Investment in the United States is an interagency committee that conducts national security reviews of foreign investments in U.S. businesses.

The NDAA also enacted the Foreign Investment Risk Review Modernization Act, or FIRRMA, which updates and modernizes CFIUS's authority by expanding the scope of transactions to assess any national security concerns.

BIS will play an important role as we implement FIRRMA, which expands the scope of CFIUS and allows CFIUS to take into account technology identified in the emerging technology review process that I just mentioned.

The resources requested in the fiscal year 2019 budget are essential to ensure that BIS has the capacity to complete its comprehensive review of each transaction and provide expert support during CFIUS policy deliberations.

In addition to CFIUS's workload increases, BIS requested additional resources for the Section 232 steel and aluminum product exclusion process.

Since March, Commerce has been diligently working to implement its 232 exclusion process to ensure that duties and quantitative limitations protect our national security while minimizing undue impacts on downstream American industries.

While my written testimony contains many statistics in this regard, the Section 232 investigations required significant BIS staff to support all aspects of the 9-month investigations, and now the exclusion process.

On July 18, the Secretary of Commerce initiated a new Section 232 investigation into the effects of the imports of uranium on the national security. While we are still in the process of collecting public comments, the future resource impacts of the uranium investigation, and the potential for further Section 232 investigations, demonstrate the importance of the President's budget request for additional resources in fiscal year 2019.

The Bureau has also experienced an increase in requests for enhanced BIS industrial base surveys and analysis from multiple U.S. Government agencies including the Department of Defense, NASA, and the intelligence community to help support informed national defense and technology policy decisions.

BIS has requested an additional \$4.1 million in the fiscal year 2019 budget for defense industrial base studies and additional Section 232 investigations.

The range of challenges facing BIS, many driven by external or even global factors, has had a significant impact on our operation. As BIS strives to meet these challenges, I would like to reiterate the Bureau's gratitude to the subcommittee for its support.

Thank you, again, for this opportunity to testify and I look forward to answering your questions.

[The statement follows:]

PREPARED STATEMENT OF RICHARD ASHOOH

Mr. Chairman, Ranking Member Shaheen, and Members of the subcommittee:

Thank you for the opportunity to appear before the subcommittee today to address the role of the Bureau of Industry and Security (BIS) within the Department of Commerce.

BIS's mission is to advance U.S. national security, foreign policy, and non-proliferation objectives by ensuring an effective export control and treaty compliance system, and by promoting continued U.S. strategic technology leadership. As the Committee is well aware, current global realities continue to keep BIS at the forefront of supporting our national defense by protecting American technology and safeguarding the U.S. defense industrial base. BIS accomplishes this through authorities granted under the Export Control Reform Act, the Trade Expansion Act, and Defense Production Act, among others. There are significant policy initiatives underway or being planned under these authorities which I am happy to discuss this morning, especially with regard to their resource impacts on BIS.

Before I proceed, I would like to take this opportunity to thank the Committee for the reprogramming authorization that has been critical to the Section 232 steel and aluminum product exclusion process. Your support has provided essential resources to assist with the demands of this activity, and we look forward to keeping the Committee updated on our work.

#### I. EMERGING/FOUNDATIONAL TECHNOLOGIES

BIS's paramount concern is the security of the United States. Congress recently passed, and the President signed, the National Defense Authorization Act (NDAA) for fiscal year 2019, which included in Title 17 the Export Control Reform Act (ECRA) of 2018. Congress enacted the ECRA in part to address concerns over growing threats to sensitive U.S. technology. The ECRA provides permanent statutory authority to better regulate U.S. exports, thus helping to ensure that the U.S. maintains its technological advantage in science, engineering, manufacturing and other industries critical to our national and economic security.

Most notably, ECRA provides new authority to identify and appropriately control critical emerging technologies. The President is to direct the Departments of Commerce, State, Defense, Energy, and other agencies as appropriate to lead a regular, ongoing interagency process to identify "emerging" and "foundational" technologies that are essential to U.S. national security and that are not currently subject to multilateral export control licensing requirements. BIS, working with these other agencies, will assess whether more restrictive controls are warranted. Such license applications would be reviewed under the well-established interagency licensing process. In fiscal year 2017, BIS processed 4,993 classification request applications and 34,142 export license applications.

The U.S. export control system is uniquely designed to identify and classify emerging technologies. The emerging technology described in ECRA complements and augments BIS's existing authorities to control technology for national security and other reasons.

BIS is reexamining our personnel needs to accommodate the significant new responsibilities associated with the passage of ECRA. Furthermore, BIS has requested additional full-time employees for fiscal year 2019 to deal with workload increases in other areas which I will discuss.

#### II. CFIUS

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that conducts national security reviews of foreign investments in U.S. businesses. The International Trade Administration (ITA) and BIS play important roles in Commerce's review for CFIUS. The NDAA also enacted the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which updates and modernizes CFIUS's authority by expanding the scope of transactions that the committee may review to assess any national security concerns. In CFIUS cases where technology transfer is of concern, BIS, as the administrator of the export control system under the Export Administration Regulations, is historically called upon to apply its expertise in this arena. BIS will play an important role as we implement FIRRMA, which expands the scope of CFIUS review and allows CFIUS to take into account technology identified in the emerging technology review process I described earlier.

For a host of reasons, including technological advances and growing national security concerns, it comes as no surprise that in fiscal year 2017 CFIUS has experienced a 45 percent increase in caseload work compared to fiscal year 2016. The average number of CFIUS cases per BIS analyst has risen from approximately 17 cases in fiscal year 2010/fiscal year 2011 to 30 per analyst in fiscal year 2017. As of August 16, 2018, BIS has reviewed 204 CFIUS cases in fiscal year 2018. The resources requested in the fiscal year 2019 Budget are essential to ensure that BIS has the capacity to complete its comprehensive review of each transaction within

the established statutory deadlines and provide expert support during policy deliberations on complex cases and rigorous CFIUS reviews.

BIS's budget request for fiscal year 2019 includes funding for four additional employees to assist with the expanded scope and number of expected BIS CFIUS reviews. This request was based upon the increase in CFIUS case volume and complexity that existed before FIRRMA was enacted.

### III. DEFENSE INDUSTRIAL BASE & SECTION 232 INVESTIGATIONS

#### *a. Section 232 Investigations*

On March 8, 2018, President Trump issued Proclamations 9704 and 9705, imposing duties on imports of aluminum and steel. The Proclamations also authorized the Secretary of Commerce to grant exclusions from the duties if the Secretary determines the steel or aluminum article for which the exclusion is requested is not "produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality" or should be excluded "based upon specific national security considerations." On March 19, 2018, the Secretary issued an interim final rule setting forth the requirements that any directly affected party located in the United States, including U.S. businesses, must satisfy when submitting exclusion requests. In a proclamations issued on August 29, the President also authorized the Secretary to grant exclusions from the quantitative limitations on aluminum and steel applicable to countries exempted from the duties.

Since March, Commerce has been diligently working to implement its exclusion process to ensure that duties and quantitative limitations imposed by the President protect our national security while minimizing undue impacts on downstream American industries.

The Section 232 investigations required significant BIS staff to support all aspects of the 9-month investigations, which recommended that the President find that both steel and aluminum were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and to implement the product exclusion process created by the President in his proclamations imposing duties on the imports of these articles. In response to the exclusion process and surge in workload, the Commerce Department has worked to increase and organize staff. For instance, BIS has hired 15 contractors, with two more currently onboarding through the contracting process. Moreover, we have received considerable additional technical assistance and personnel support from our ITA colleagues. With this additional support we have been able to accomplish the following:

- The number of requests pending in the initial review stage decreased from 9,976 on June 25 to 1,218 on September 3.
- On a weekly basis, we have been reviewing and posting about 1,700 requests and 900 objections.
- To date, we have processed 10,380 steel applications (including decisions and rejected improper submissions) and are currently processing 25,045 active steel cases.
- To date, we have processed 784 aluminum applications (including decisions and rejected improper submissions) and are currently processing 3,610 active aluminum cases.
- To date, we have posted 4,051 steel and 222 aluminum decisions.

We anticipate that the addition of authority to provide relief from the quantitative limitations will lead to more exclusion requests, further increasing the workload on BIS and ITA.

#### *b. Defense Industrial Base Studies*

The Bureau has experienced an increase in requests for enhanced BIS industrial base surveys and analysis from multiple U.S. Government agencies including the Department of Defense, the National Aeronautics and Space Administration, and the intelligence community to help support informed national defense and technology policy decisions.

Under Section 705 of the Defense Production Act of 1950 (DPA) and Executive Order 13603, the Department of Commerce is authorized to assess the health and competitiveness of the U.S. industrial base, encompassing the various technologies and supply chains necessary to ensure military readiness, emergency preparedness, and critical defense capabilities. The Office of Technology Evaluation (OTE) within BIS carries out these assessments using mandatory data collection authority, which enables industry and government agencies to share data, monitor trends, benchmark industry performance, and raise awareness of diminishing U.S. manufacturing and technological capabilities.

BIS had requested an additional \$4.171 million in the fiscal year 2019 President's budget for Defense Industrial Base studies and additional Section 232 investigations. With these additional resources, BIS can begin to meet the growing inter-agency demand for detailed defense industrial base supply chain assessments, utilizing BIS's unique data collection authorities. This will enhance our ability to gather data and analyze the workforce, financial, production, and competitive challenges facing U.S. defense and high technology sector.

*c. Section 232 on Uranium*

On July 18, 2018, in response to a petition request, the Secretary of Commerce initiated a new Section 232 investigation into the effects of the imports of uranium on the national security. On July 25, 2018, BIS published a Federal Register notice seeking public comment on this investigation. While we are still in the process of collecting public comments, the future workload and resource impacts of the uranium investigation and the potential for further Section 232 investigations demonstrate the importance of the President's budget request for additional resources in 2019.

Thank you, again for this opportunity to testify. I look forward to answering your questions.

Senator MORAN. I thank all three of you.

I am going to begin, at least my initial question, with Mr. Ashooh.

Secretary Ross testified before this subcommittee in May. He stated at that time the Department of Commerce has received some 8,700-product exclusion requests in response to Section 232 steel and aluminum tariffs.

Recently, our subcommittee staff learned that as of August 20, the Department of Commerce was in receipt of 31,000 properly submitted exclusion requests; a more than threefold increase from May, and that the Department has only issued decisions for 2,871 or about 9 percent of those requests.

It concerns me that approximately 90 percent of the submitted exclusion requests are still awaiting a decision, which has substantial impacts on many U.S. companies, including Kansas companies who are currently operating in limbo.

First of all, I would ask you to confirm or adjust those numbers. Do we have the right numbers? And then elaborate on BIS's role in processing those exclusion requests. Then I will have a couple of other questions.

Mr. ASHOOH. Thank you, Mr. Chairman.

There is no question there has been a significant number of exclusion requests. The number we have currently is 39,000 almost 40,000. By the way, these numbers are all in my written testimony. So the subcommittee will have them.

BIS has disposed of about 10,000 of those meaning that there are about 28,000 being considered right now.

There is no question that any time spent for a company on a decision like this is too much time. So we have spent a great deal of time trying to accelerate that process and in fact, have taken a significant amount of time out of the process that needs to be considered here.

But I would say, without the subcommittee's help, we would not be able to do the work we are doing.

This requires human beings who know what they are doing and because of the reprogramming, we were able to bring on 15 additional contractors, which may not sound like a lot for a Bureau our size. It was a very significant help. It helped us increase our processing time. And then, again, with the cooperation of other agen-

cies, especially ITA, we were able to bring more people to the table here.

We are still in the midst of benefitting from that. So we think these numbers are going to improve even further because the contractors were really only fully onboard in the past 6 weeks or so.

Senator MORAN. On that topic, let me ask. You talked about taking some time out of the process and you also talked about additional resources being the reprogramming request that we approved plus moving personnel, I assume, around to address this issue.

Where is the bottleneck? Is the process the right process and you just need more resources and people to implement it? Or the process is too cumbersome and needs to be altered?

Mr. ASHOOH. The process is a complicated one in that several reviews need to occur and there really is no substitute for that. We rely on ITA to do the industry analysis when weighing objections to exclusion requests.

Just to back up a little bit. When a company requests an exclusion, if there is no objection, then the process is much quicker. But if there is an objection, we need to allow for that objection to be heard and reviewed, and we do rely on ITA to help us with that. BIS supplies the national security test as well; and again, no substitute for that.

Where I think we can do better is we are reliant on a system that utilizes HTS codes to be as specific as possible. That is an area where we do not own that system. That is one we work with Customs and Border Protection (CBP). They own the HTS codes. And so, we are very reliant on a system that is not resident in Commerce. We work very well with CBP. They work very closely with us, but it is a very cumbersome system.

We are looking at improvements to do that. Most likely, those improvements will involve some sort of IT solution, and that is underway, but it has not been implemented yet, but it is definitely one of the things in our job jar to work on.

Senator MORAN. Was the agency preparing for the change in the President or the administration's trade policy in advance of that change, or it has been playing catch up since then?

Mr. ASHOOH. Let me make sure I understand.

Senator MORAN. The question is, were you aware, or were you made aware that potential changes were coming in regard to tariffs, particularly in this case, Section 232 and therefore began ramping up your preparedness? Or has it been playing catch up since the determinations were made in regard to 232?

Mr. ASHOOH. Thank you, sir. I understand.

The 232 process that BIS manages is a very methodical process. It begins with an investigation that has actually a fairly low bar to initiate an investigation. And so, the time spent on that investigation took the full 270 days that the statute allows.

During that time, it really is more about understanding, in this case, the national security implications of imports on steel and aluminum. But this would apply in any case, that is where our attention and focus was on doing the proper study.

Once recommendations are made to the President, that is when policy, and in this case tariffs to deal with capacity issues, were im-

plemented. So I would not say that we were anticipating a remedy. All we were doing was coming up with recommendations that would then be up to the White House to determine.

Senator MORAN. I am going to fudge a bit on my time and I will try to be very generous to my colleagues.

You mentioned the objection process and if there is an objection, it becomes a slower determination. I do not know that these numbers may have changed as the numbers I have quoted earlier have already.

But the subcommittee is aware that as of August 20, the Department of Commerce had received some 15,000 industry objections, which apply to approximately 9,600 exclusion requests filed in response to Section 232 steel and aluminum tariffs.

We understand that of those 9,600 exclusion requests, as of August 20, decisions had only been issued in 376 cases or 4 percent. And of those 376 exclusion requests, for which a decision has been issued, the overwhelming majority, 356 or nearly 95 percent resulted in a denial of the exclusion.

Are those accurate statistics and is there an explanation for what, seemingly to me, seems like a biased response, if there is an objection?

Secondly, is there an opportunity the party, the corporation pursuing the exclusion to then respond to the objection or the denial of the exclusion?

Mr. ASHOOH. I am smiling because I was trying to keep up with your numbers and they differ slightly from mine which, I think, is timing. But I think the general trends are not wrong and certainly I will caucus with your staff after to make sure we get those numbers right.

Of the posted decisions that we have, which are about 4,000 posted, we do not like the processing time that it is taking. We allowed ourselves 90 days. We are within that, but that is still a long time and we understand that.

As far as what is granted versus denied, one of the things we learned through a rule making that we have just concluded where we accepted public comments, and we listened very closely to those public comments, was that the existing exclusion and objection process that we have is not adequate, and that there needed to be more of a rebuttal process built in.

Now, adding process means taking time, but we feel that the ability for companies to weigh-in in greater detail is very important. And so, we have just today issued a rule. It is on the BIS website, which is Bis.Doc.Gov that folks can review.

What that does is implement a rebuttal process that will provide far more density and clarity to the objection process. All this is something that is quite transparent. It is all public when it is done and we are hoping that will alleviate some of the concern.

Senator MORAN. Does the rebuttal process take place after the objection is entered but before BIS makes a determination?

Mr. ASHOOH. It is before BIS makes a determination.

Senator MORAN. Thank you.

Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

Assistant Secretary Ashooh, I am also going to begin with questions for you.

At our last hearing with Ambassador Lighthizer, there was, I think it is fair to say, a great deal of frustration on this subcommittee with the administration's decision to determine that Canadian and European steel and aluminum represented threats to our national security.

As you point out in your testimony, BIS is responsible for investigating the effects of imports on national security under Section 232.

Do you believe that Canada represents a national security threat to the United States?

Ms. ASHOOH. No, Senator, and if I could elaborate a little bit.

Senator SHAHEEN. Please.

Mr. ASHOOH. As you read from my testimony, BIS is a national security bureau. So outside of 232, the export control system is one we work with our allies very closely on. It would not be successful without strong partnerships with multilateral allies.

In this particular case, because of the oversupply of these metals, it is a global issue. It is not one that you can simply aim at, say, China and deal with directly. It is a global supply issue.

The remedies the administration chose are global in nature with the provision, and this goes back to earlier proclamations, to allow for special national security relationships with particular countries. Those are individual, bilateral conversations that the administration has.

From our perspective at BIS, we work diligently on the product exclusion part, although country negotiations do not occur, obviously, within BIS, but what we do is try to make the process that we own work as efficiently as possible.

Senator SHAHEEN. Can you describe the process that the administration engaged in, in making the determination that these were a national security threat?

Mr. ASHOOH. Well, again, I think the approach was when BIS made its recommendations in the wake of the investigations, we gave several options and you could legitimately go in several ways. So you could go a more narrow country by country approach or a broader approach from which you make exemptions.

It was the latter that was chosen and in particular country cases, South Korea is a good example, a negotiated arrangement was done. Those negotiations are occurring. We all know Canada and the U.S. are having conversations now. My assumption is that would include the broad picture that includes steel and aluminum as well.

Senator SHAHEEN. It is my understanding that the Department of Defense released a memorandum to Commerce, which stated, and I quote, "DoD continues to be concerned about the negative impact on our key allies regarding the recommended options within the report and recommended targeted tariffs instead of a blanket approach."

Did you disregard this memo from DoD in making the determination or did you take that into consideration?

Ms. ASHOOH. Well, certainly, any 232 investigation, not only does the statute require close consultation with DoD, but it would be wrong and insensible for us not to do that.

Having said that, the larger issue regarding country by country conversations is one that really occurs at the principal level, and I am sure those conversations occurred within the administration, and those go well beyond 232 analysis.

Senator SHAHEEN. Those are not shared with your agency?

Mr. ASHOOH. We are very focused on the methodical nature of the 232 process. We do the investigation. By the way, you consult with any agency that has equities. I mentioned uranium, close cooperation with Energy on that. So that is where our interaction occurs.

But obviously, we are dealing with some fairly global issues here that go well beyond what BIS has implemented.

Senator SHAHEEN. Well, I would point out that we had a hearing in the Foreign Relations Committee yesterday, and the subject of tariffs and trade came up. Former Ambassador Burns and Dr. Richard Haass both expressed their concern about the tariffs.

I will just quote to you what Ambassador Burns said. He said, "The E.U. is an instrument on the trade issue. It is our largest trading partner and investor. They are our competitors, the Europeans, as well as our partners. They would have been with us on a big trade action against China if we had not hit the Europeans first."

I guess the question that I have is as we look at some of these tariff decisions is whether they are actually made in the context of what is in the interest of the overall security and economic competitiveness of the United States? I would raise questions about whether those steel and aluminum tariffs against Canada and the E.U. really were done in that context. My time is over.

Mr. Chairman, I look forward to further questions.

Senator MORAN. Senator Alexander.

Senator ALEXANDER. Thank you for being here.

I would like to continue with aluminum. When Lighthizer was here, he said that he was not responsible for the decision to put tariffs on aluminum. He said you were. So let me ask you about it.

What did your Department consider when you decided that buying aluminum from Canada was a national security threat? Let me give you an example.

Arconic is a plant in Tennessee that buys aluminum to build auto parts. The majority of their imports are Canadian in origin and are produced at factories that are considered part of the U.S. defense industrial base, according to the United States statutes.

Did you consider the fact when deciding that Canada was a national security threat that we have a statute that says that the factories that produce the aluminum are part of our national defense industrial base?

Mr. ASHOOH. Certainly, Senator we—

Senator ALEXANDER. Did you consider that? Yes or no?

Mr. ASHOOH. The Bureau considered many factors.

Senator ALEXANDER. Did you consider the fact that Canada is not only our ally and our neighbor, and sells us more than one-third

of our aluminum, but by statute is part of our defense industrial base, the plants that produce the aluminum that you have now put a tariff on?

Mr. ASHOOH. Yes, indeed, they are, sir. And our role at BIS was to do an investigation and make a recommendation to the President.

Senator ALEXANDER. Did you consider that?

Mr. ASHOOH. Yes, in the investigation.

Senator ALEXANDER. You did. So you thought it was still a good idea to consider Canada a threat even though we have a statute that says this aluminum is produced at plants that are part of our industrial base?

Mr. ASHOOH. Sir, I promise you, given the number of meetings we have had with Canada that point has been reiterated. They are an important—

Senator ALEXANDER. Well, what is your answer to that?

Mr. ASHOOH. Well, no. My answer, sir, is we made several options to the President for ways to deal with—

Senator ALEXANDER. Well, let me ask you about options. Did you consider a national strategic reserve of aluminum ingots in the same way we have oil reserves?

Mr. ASHOOH. That was not part of our task.

Senator ALEXANDER. Well, you said you considered options. That would have been an obvious one.

Mr. ASHOOH. One of our options, actually, would have excluded Canada from any—

Senator ALEXANDER. No, you said you included options. Do you know how many primary aluminum smelting plants we have in the United States?

Mr. ASHOOH. Sir, I think we have heard from all of them.

Senator ALEXANDER. How many are there?

Mr. ASHOOH. How many aluminum?

Aide: Three companies.

Mr. ASHOOH. Yes, so we have three companies in the U.S.

Senator ALEXANDER. There are seven plants. Do you know how many employees work at them?

Mr. ASHOOH. Not off the top of my head but.

Senator ALEXANDER. Four thousand.

Mr. ASHOOH. Thank you.

Senator ALEXANDER. Yes, that is all the plants we have in the United States that make ingots.

Now, what you have done is then place tariffs on everything that is used to make aluminum foil, pots and pans, and all this other stuff. But the only thing that might be of any kind of a national security interest would be the ingot that is made from bauxite, an ore.

Why would you not consider a strategic reserve rather than put a tax on all the Americans who use aluminum products?

Mr. ASHOOH. Sir, our investigation found that we need a healthy, domestic industry in both steel and aluminum.

Senator ALEXANDER. I am talking about aluminum here and I am asking why you did not consider a strategic reserve when all you needed to do is make sure we have ingots?

Mr. ASHOOH. Because we do not feel that the—

First of all, I cannot tell you that that was considered or not.

Senator ALEXANDER. Well, you are in charge of that area.

Mr. ASHOOH. I understand, sir, but the global—

Senator ALEXANDER. So you do not know what you are talking about. Is that what you are saying?

Mr. ASHOOH. No, the global overcapacity issue is what we were focused on, which would not be resolved by any kind of a reserve. It would be about strengthening the U.S. industry.

Senator ALEXANDER. So you want to protect. The U.S. industry is operating seven smelting plants. Alcoa operates three of those. They produce one-half of all the aluminum produced in the United States and they are against the tariff.

Mr. ASHOOH. Yes, sir.

Senator ALEXANDER. Did you take that into account?

Mr. ASHOOH. And we heard from them.

Senator ALEXANDER. Well, what is your answer to that? That makes absolutely no sense to say Canada is an enemy of the United States.

The largest producer of aluminum in the United States is opposed to the tariff and still, you put a tax on Americans who buy aluminum foil in the name of national security, which is a real abuse of authority to begin with.

Mr. ASHOOH. A threat, they are not. They are our ally. They are important to our industry. What I am saying is the decision over whether a particular country negotiation would occur was allowed for in the proclamations on 232, but that would occur between countries, not between BIS or even the Department.

Senator ALEXANDER. You were asked to determine whether it was a national security threat. To begin with, that is farfetched and an abuse of authority.

Second, you included in it countries that we are bound to defend if they are ever attacked. Plus the fact you are including plants that are part of our national security defense system that produce the aluminum that you are putting tariffs on.

So you are putting a tax on Americans because we buy aluminum from our allies, and you did not even consider a strategic reserve.

Do you know how long it would take to start up a smelting plant if we ever needed to do that?

Mr. ASHOOH. It is very difficult.

Senator ALEXANDER. How long would it take?

Mr. ASHOOH. Well, I do not know.

Senator ALEXANDER. I am sure that was part of your investigation.

Mr. ASHOOH. Well, it was and in some cases, there are plants that have been mothballed and started from scratch.

Senator ALEXANDER. There is one plant that is mothballed.

How long would it take to reopen it?

Mr. ASHOOH. I am really not sure. Yes, at least months.

Senator ALEXANDER. At least months. Then you think a 10 percent tariff would provide the incentive for Alcoa to reopen its curtailed plant?

Mr. ASHOOH. I am sorry?

Aide: [Inaudible.]

Mr. ASHOOH. Yes, no. So we have——

Senator ALEXANDER. The answer is no because they have not reopened it.

Mr. ASHOOH. Well, but they are in the process of doing that.

Senator ALEXANDER. Are they?

Mr. ASHOOH. In fact, the target for what we are defining success as is 80 percent utilization and we do——

Senator ALEXANDER. Eighty percent?

Mr. ASHOOH. Yes.

Senator ALEXANDER. Utilization of what?

Mr. ASHOOH. Our ability to produce certain——

Senator ALEXANDER. Mr. Chairman, I am over my time, but I would like to come back with additional questions here, if there is time.

Senator MORAN. We will do that.

Senator REED.

Senator REED. Thank you, Mr. Chairman.

I am going to associate myself with the remarks of Senator Shaheen and Senator Alexander. I caught the beginning and the end.

But first, let me thank you all for your service. Mr. Ashooh, let me thank you particularly because you have been very responsive.

Mr. ASHOOH. I am sorry.

Senator REED. No, that is quite all right.

Mr. ASHOOH. I am sorry.

Senator REED. I just want to thank you, because you have been very responsive to questions that my staff has posed.

Mr. ASHOOH. Thank you.

Senator REED. I appreciate that, your skill.

But let me follow up, because I feel the same way as Senator Alexander and Senator Shaheen.

First, do you have a signed, legal opinion that you have the authority to invoke Section 232 against Canada? Do you have a signed, legal opinion? Has a lawyer given you an opinion saying that you have the authority in the Section 232 to invoke it against Canada?

Mr. ASHOOH. Our authorities from Section 232 come from a law that delegates that authority to the Secretary of Commerce. The Secretary of Commerce delegates——

Senator REED. That is fine.

Mr. ASHOOH [continuing]. The authority to conduct an investigation and make recommendations.

Senator REED. The premise of the investigation is that there is a national, at least a hypothetical national security threat.

Mr. ASHOOH. There may be.

Senator REED. There may be.

Mr. ASHOOH. Yes.

Senator REED. And that has to be validated, at least, by some factual basis. Otherwise, you could invoke this at the whim or the will of anyone.

So I am asking, do you have an opinion? Are you following the law or are you making it up as you go?

Mr. ASHOOH. No, we are absolutely following the law. The law actually creates, as I said earlier, a low bar to initiate an investiga-

tion and that is primarily our job. We could initiate an investigation and not make any recommendations at all.

Senator REED. Now, let me jump to the conclusion. Everything you have said today indicates that you feel that Canada is not a threat to the national security of the United States. That, in fact, they are integral, as Senator Alexander points out, to our national defense.

So there is only one conclusion that you will find that Section 232 does not apply to Canada.

Is that correct?

Mr. ASHOOH. Section 232, under the investigation, we concluded that this was a global problem. There was no specific country recommendation other than an exclusion for Canada.

Senator REED. At the end of your report, you are going to have to conclude if Canada is subject to these tariffs.

Correct?

Mr. ASHOOH. No, sir. We do not make conclusions. All we do is recommend what it would take to get to that 80 percent in utilization, and there are several ways to do it: specific countries or broad tariffs that are country agnostic.

Senator REED. And how is that related to national security?

If you can suggest—and you are saying it, not us—that you could impose such rigid tariffs on Canada that they provide no steel to the United States?

Mr. ASHOOH. Again, the path to that 80 percent could be done many ways.

BIS presented ways that that could be done, but ultimately that was a White House decision that differed from the recommendations that BIS made.

Senator REED. Yes, I think you are absolutely trying to do your best. I do not think you have the legal standing to invoke a national security tariff on Canada. You might have other reasons, but not national security.

Here is the position. Here is the reality. Cut to the chase.

When I go to Afghanistan, I have been there about 16 times, should I go up to one of those Canadian soldiers and say, “Why are you not helping us because you are really impairing our national security?”

That is how ludicrous your position is. Not yours personally, but the administration. You have tried to defend it as best you can, but I think it is indefensible.

The other irony, I think, is that the whole point would seem to be to reduce the trade deficit with this effort.

Correct?

Mr. ASHOOH. No, sir. This is not really a trade action, even though, certainly, tariffs and quotas are.

Senator REED. So it is for our national security. So we are going to be better off if we prevent companies in Canada that are providing critical parts to us and that are buying our equipment—excuse me, are also providing long range protection because of their radar sites for our national security from Russia or anyplace else—it is better that we invoke this investigation against Canada?

Mr. ASHOOH. Well certainly, sir, in every other thing that I do at the Bureau, we are working arm in arm with Canada. The proc-

lamations that emerged from our investigation allowed for special national security relationships and those conversations that happen between countries.

Senator REED. My final point. We do have a special national security relationship with Canada.

Mr. ASHOOH. Yes, sir.

Senator REED. Therefore, how can you use a Section 232 sanction against Canada, which is based on national security, in fact, something adverse for our national security? It makes no sense.

Mr. ASHOOH. What I can tell you is the conversations between countries is occurring at the White House level and that is still going on.

Senator REED. So your position is the President can do what he wants to do regardless of the law and regardless of the facts.

Mr. ASHOOH. Well, my position is we needed to do the best investigation we could on how to improve steel and aluminum production in the United States and that is what we did.

Senator REED. Thank you.

Senator MORAN. Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman.

Welcome to all these witnesses. I understand that both Senator Shaheen as well as Senator Reed raised the issues of national security concerns with respect to using 232 against our allies. So I am not going to go deeply into that, but I believe Senator Shaheen referenced the Secretary of Defense and DoD memorandum that was sent.

I would like to include that, Mr. Chairman, in the record.

[The information follows:]



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

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").

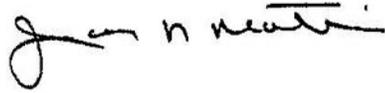
Regarding the December 15, 2017 reports on steel and aluminum, DoD believes that the systematic use of unfair trade practices to intentionally erode our innovation and manufacturing industrial base poses a risk to our national security. As such, DoD concurs with the Department of Commerce's conclusion 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.

A handwritten signature in black ink, appearing to read "James H. Mueller". The signature is written in a cursive style with a large initial "J" and a horizontal line above the "u" in "Mueller".

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

Senator VAN HOLLEN. I would just point out that the Defense Department in this memo says, "DOD continues to be concerned about the negative impact on our key allies regarding the recommended options within the report," referring to 232, and I share those concerns.

A question about NAFTA. Look, NAFTA has been around for a long time. I believe it needs to be modernized. I think some of the provisions that are reportedly been negotiated regarding autos is good news. But here is my question to you.

What is the impact of us passing the proposal, which we have not seen yet, but the President has talked about, through the Congress approving it if Canada is not included? What is the impact on U.S. trade with Canada?

Mr. ASHOOH. Sir, you are looking at me, but the Bureau of Industry and Security is not a trade bureau. So I will defer to my counterpart.

Senator VAN HOLLEN. Okay. All right.

Ms. NIKAKHTAR. Thank you, Senator. Could you clarify a little bit?

Senator VAN HOLLEN. My question is very straightforward. What happens if we pass this renegotiated deal with Mexico, and Canada is not included? What happens to U.S. trade with Canada?

Ms. NIKAKHTAR. Well, I think that the U.S. International Trade Commission is preparing their report on looking at the impact of that. But my understanding, in terms of what I know, is that as of yesterday, the U.S. team was meeting with Minister Freeland on the NAFTA. . . .

Senator VAN HOLLEN. My question is this, please. The President has said if Canada does not agree to whatever changes that we want, we should go forward without Canada. And so I have a simple question. I would hope the administration has studied the impact on U.S.-Canadian trade if that happens.

Have you done that?

Ms. NIKAKHTAR. Well, I think that that is something that the United States International Trade Commission is doing.

Senator VAN HOLLEN. Okay. Just going down the table, passing the buck, but hopefully I am in the right place now.

Mr. JOHANSON. Senator Van Hollen, the U.S. Trade Representative last Friday sent a letter to the U.S. International Trade Commission requesting that the Commission, per your Trade Priority Act, conduct an investigation on the probable economic effects of the agreement with Mexico and with Canada, if it is willing to join the agreement.

Senator VAN HOLLEN. With all due respect, you are saying if Canada agrees to join the agreement, Canada has not yet. The President's position is that the Congress should just go forward and pass this deal with Mexico without Canada.

What I am hearing from you and the others is the administration has not conducted any analysis about what the impact on U.S.-Canada trade would be under those circumstances.

Am I right?

Mr. JOHANSON. Senator Van Hollen, our report will look at the agreement as it is presented to us. The U.S. ITC is not, it is an independent agency. It is not a trade policy agency and so we will

simply look at the text of the agreement as given to us. We will evaluate that and the impact of the agreement on the U.S. economy.

Senator VAN HOLLEN. Mr. Chair, we have three witnesses here who deal with trade, and as far as I can tell, there has been no analysis about what would happen to U.S.-Canadian trade if they are not included. At the same time, the President of the United States has said that Congress should just take it or leave it.

Have we done an analysis of what would happen to the U.S. economy if we just pulled out of NAFTA entirely? And then, again, I believe there are changes that need to be made. But have we done an analysis of what would happen?

Because last year, October last year the headline of "World Trade Online," "Lighthizer says USTR has not analyzed impact of NAFTA withdrawal on the United States."

Have we done an economic impact of that since that time?

Mr. JOHANSON. The ITC has not been requested to write such a report.

Senator VAN HOLLEN. Can I ask you this? The President tweeted the other day. He had a tweet, "No political necessity to keep Canada. The new NAFTA deal. If we do not make a fair deal with the U.S. after decades of abuse, Canada will be out. Congress should not interfere with these negotiations or I will simply terminate NAFTA entirely and we will be far better off." That is the President's tweet.

Do you know any basis for the President's comments?

Mr. JOHANSON. I cannot comment on that. The U.S. ITC, once again, is not a trade policy agency. So I do not have a comment.

Senator VAN HOLLEN. Yes. I just find it astounding that the President of the United States has asked Congress to just pass this proposal that we have not even seen through here without Canada, if that is required, without having any clue as to what impact that will be on U.S.-Canada trade. And then says if we do not do that, he is going to terminate NAFTA and we will be far better off without any analysis. The administration supports that conclusion.

Do any of the three of you know of any analysis within the U.S. Government that supports the conclusion that we will be far better off if we just get out of NAFTA entirely?

Mr. ASHOOH. Again, sir, that is not the purview of BIS.

Senator VAN HOLLEN. Okay.

Mr. ASHOOH. It would not be a good answer from me.

Ms. NIKAKHTAR. I will try to be helpful here.

We have not been asked in the International Trade Administration to do that yet. It may be coming. I do not want to presume to say that it was not going to happen.

But I want to also underscore that USTR has been leading the NAFTA negotiations and the specific provisions of them. So perhaps they have done it. If they have, they have not shared that with us.

Senator VAN HOLLEN. I think you kind of answered the question. As I said, Lighthizer said last fall they have not done one and there is just zero evidence that they have. I would think that you would all know about it given your work on trade.

Thank you, Mr. Chairman.

Senator MORAN. Thank you, Senator.

This subcommittee has had—the timing may not have been as good as we have had with the witnesses today with the more recent developments in trade—but we have had Secretary Ross and then Ambassador Lighthizer in front of our subcommittee.

Let me follow up on NAFTA and first of all indicate that Mexico and Canada are Kansas's two biggest trading partners. Canada was our number one purchaser of products from our State in 2017. This is an important issue for me.

I have made clear all along that I want a NAFTA agreement and you only have a NAFTA agreement if you have three parties; the three parties that are currently engaged in NAFTA. But let me ask a timing question.

Let us assume that my desires occur and that Canada is a participant in NAFTA. This is to you, Mr. Johanson. You mentioned that you have been requested to begin the analysis of a NAFTA agreement.

Mr. JOHANSON. That is correct.

Senator MORAN. If leaders of the three countries sign a deal in November, the U.S. International Trade Commission still must complete that economic analysis before Congress can consider that agreement.

Is that true?

Mr. JOHANSON. That is per the Trade Priority Act, the TPA.

Senator MORAN. That requires you to act within 105 days after the agreement is signed.

Mr. JOHANSON. That is correct.

Senator MORAN. And then it comes to Congress for our consideration.

How long will it take you to complete that economic analysis?

Mr. JOHANSON. That is hard to say. It is a complex, I assume, it is a complex agreement and largely touches upon issues of automobiles and automobile rules of origin, which are particularly complex.

We will complete the report as soon as we can, but we, of course, have to make sure we cover all the bases and that we produce a report which is beneficial.

Senator MORAN. Let me ask, are there things that you can or are doing today that will be useful in that process and that are completed before the agreement is actually signed?

Mr. JOHANSON. We are preparing the report right now. We cannot comment extensively. We do not have the text yet.

Senator MORAN. So is your point that you really cannot analyze an agreement until you have the text of the agreement?

Mr. JOHANSON. Yes, it is. That is our point. Yes.

Senator MORAN. That makes sense to me.

[Laughter.]

Senator MORAN. Though you were hesitant, which caused me to wonder about my sense, but that does make sense to me. I was trying to determine because I think 105 days, as I understand the scenario that needs to occur for a NAFTA agreement to be approved based upon Congress's actions here and the changes in administration in Mexico, et cetera, that I was trying to figure out if there

was a way to frontload your effort so that you are well prepared if and when that agreement is signed.

But I think your answer is a commonsense answer, which is you have to have an agreement. You have to know the details before analysis can be concluded or completed. Does that make sense?

Mr. JOHANSON. Yes.

Senator MORAN. Before analysis can even begin.

Mr. JOHANSON. Yes.

Senator MORAN. I want to try to spread the burden around, Mr. Ashooh, but I have a follow up question for you.

Mr. ASHOOH. I come here so rarely.

Senator MORAN. This one, I think, is pretty straightforward. We were talking about the backlog and the number of exclusion requests that are pending.

How long do you think it will take to get those completed so that what is in the queue will have received an answer?

Mr. ASHOOH. There is not a single answer to that because there are a couple ways to go. Again, as I mentioned, whether there is an objection or not has everything to do with how long this is going to take. But we do have some numbers we can put against that for you, and I would be happy to supply those after this hearing.

Senator MORAN. I look forward to those answers.

[The information follows:]

As of September 10, 2018

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Exclusion requests submitted—40,714 total (36,243 steel; 4,471 aluminum)  
 Rejected submissions (improper submissions)—6,989 total (6,420 steel; 569 aluminum)  
 Objections submitted—20,649 total (18,823 steel; 1,826 aluminum)  
 Rejected objections (improper submission)—2,508 total (1,367 steel; 1,141 aluminum)  
 Decisions posted—4,314 total (4,091 steel; 223 aluminum)  
 Decisions granted—2,414 total (2,302 steel; 112 aluminum)  
 Decisions denied—1,900 total (1,789 steel; 111 aluminum)

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Senator MORAN. Again, Mr. Ashooh, earlier this year, this subcommittee communicated to BIS certain requirements and expectations to improve the transparency in the 232 process.

For example, we asked that BIS make several updates to its webpages for Section 232 of steel and aluminum exclusion and rejection process, and to begin providing this subcommittee with monthly reports on certain components of the Section 232 process.

I wondered if you were aware of that request. And if you are not, would you become aware and then let us know when you can meet those requests and have them fully implemented?

Mr. ASHOOH. I am aware.

Senator MORAN. So what is the status?

Mr. ASHOOH. Well, the status is I was grateful to see that I think we have a few more days to respond to you.

Where we are with that is we want to be as responsive as we can to your letter. As you might expect, we are getting similar requests and our goal—again, not to get too caught up in reporting the points—is to try to satisfy these requests in a way that is responsive to all the parties asking.

And so, they are very reasonable requests in your letter, and I do not recall them all, but the ones you just mentioned certainly, I think, we will be able to comply with and we will work very hard to get you a response.

Senator MORAN. Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

I am going to follow up on the issue of transparency in the exclusion or the exemption process because Assistant Secretary Ashooh, I was troubled to see a report from the McClatchy news organization that OMB Director Mulvaney has been lobbying on behalf of one of his former constituents for an exemption from the steel tariffs. And as the discussion has shown, there is concern about transparency in the process. You acknowledged that.

Has BIS received any communication from the White House or from Mr. Mulvaney regarding a specific exclusion application?

Mr. ASHOOH. No, not to my knowledge. I will say, as the Chairman pointed out, this is a pretty complicated process.

Senator SHAHEEN. Right.

Mr. ASHOOH. And we really are relying on the experts to do it and that is what we are doing. There is very, very little in the way of external.

Oftentimes, people will come in, and try to meet with folks who have a concern, and we will meet with those affected parties. But beyond that, we keep the external communications and influences on this to an extreme minimum.

Senator SHAHEEN. Do I understand you to say definitively that no one in your agency has heard from anyone in the White House or from Mr. Mulvaney with respect to any particular applications?

Mr. ASHOOH. It is a big agency and I do not want to say nobody has heard from anybody.

Senator SHAHEEN. Can I ask you if you would check with your agency and report back to this subcommittee?

Mr. ASHOOH. I will certainly check, but I would also reassure you that BIS has the responsibility to implement this, and I am running BIS. So I have not and I think that is the point I want to make.

Senator SHAHEEN. Thank you. I appreciate that.

The other thing that has been pointed out is that there is really a disproportionate burden placed on small businesses because this is a very arcane process.

Has there been any special outreach to small businesses or any kind of training to help them navigate this process when they have an issue?

Mr. ASHOOH. Yes, Senator, although I think we need to do more. Within BIS, we pride ourselves on that kind of outreach in everything else that we do in the export control world, et cetera. We have an office dedicated to outreach. As with everything else we need to kind of, on the exclusion process, get up to altitude.

This is a different community, so we are trying to adjust to that community. This is where partnerships have been very helpful to us, associations who are force multipliers on this. But I do not want to mislead you.

We need to do more in that.

Senator SHAHEEN. I am glad to hear you say that and then I would urge you to do everything you can because small businesses are so critical to increasing trade in this country.

Along those lines, I want to ask Assistant Secretary Nikakhtar, I understand that one of your major responsibilities, and you talk about this in your testimony, is to help small and medium sized businesses get access to international markets.

In New Hampshire, we have really benefitted from the services that have been provided from the Department of Commerce because we have seen a 46 percent increase in exports in the past 5 years, in large part due to investments that we have made at the State and Federal level into trade.

I was struck in your testimony when you talked about the number of staff that you have redeployed to help Mr. Ashooh's agency with the exclusion process. That had to be a challenge in terms of the support that you are trying to provide for small and medium sized businesses.

I know you say in your testimony that you have not jeopardized the ability to vigorously enforce antidumping and countervailing duty and conduct other critical programs. But it defies credulity here to think that you could have had 65 staff and contractors working on the exclusion process and still been able to do all of the work that the agency needs to do in other areas.

It seems to me in a time when the President is talking about increasing exports and trade to address our trade deficit that we have actually been reducing the resources that we need in order to do that.

Can you talk about what your agency needs in order to continue to support small and medium sized businesses get access to international markets?

Ms. NIKAKHTAR. I would love to do that and thank you for the very important question.

First, I want to start out with saying that we have all been working incredibly hard to manage all these competing priorities. I will tell you that a lot of us have put in extraordinarily long hours. Anytime a company wants to meet with anybody in my office to talk about how their company, how their industries are being impacted, I do not turn away a meeting. My secretary and my entire staff know to not turn away a meeting because everything we do has incredible importance to companies.

I will also tell you from a personal experience that I used to represent U.S. industries before I joined the administration and I personally know, and I represented companies in some of the most economically depressed regions in the United States, and for me, this is personal. And for me, one lost job is one lost job too many. So I take this very seriously and my staff takes it very seriously.

So we have actually stretched ourselves. I think all of us have been in the position where you just have been dealing with an onslaught of work that you just have to stretch yourself, but you make it happen. But is it sustainable in the long run? Absolutely not.

So to the issue of have we been addressing small and medium sized companies' concerns? Absolutely.

Now, sometimes the reality is that you sometimes have to shift resources, but what we have been doing very carefully, what we have been very careful to do is where can we shift resources from things that are not pressing right now. That is where we shift resources from.

We maintain priorities. We maintain interactions, and interfacing, and responsiveness to companies that need us right now and the ones who do not need us right now, we are shifting those resources to help with the 232 exclusion process and other parts of the administration's priorities.

But, as I said, this is completely not sustainable. So we do anticipate needing an increase in resources and human capital just to get all of this done. We are happy to work with you more closely on getting something implemented that alleviates some of the strain that has been put on us and enables us to do the things that we have put on hold that are not so pressing. Those are going to be important in the long run, so we can address those too.

Senator SHAHEEN. Well, thank you. I think this subcommittee agrees with you, which is why we have increased resources for your agencies despite the budget request from the administration, which would have reduced them.

Ms. NIKAKHTAR. We appreciate that.

Senator SHAHEEN. Thank you, Mr. Chairman.

Senator MORAN. Senator Murkowski.

Senator MURKOWSKI. Mr. Chairman, thank you.

Appreciate you all being here. Ms. Nikakhtar, I want to thank you for being here before the subcommittee. We are all very interested in what is going on with trade in Alaska. Our trade, number one, is seafood. So I want to shift the conversation a little bit to seafood.

The International Trade Administration is tasked with increasing trade opportunities abroad and promoting the global trade of American products, and this includes our seafood products.

Until recently, we have had a pretty good story with our trade relationship between Alaska and China. Of our salmon exports, 40 percent of those go to China; 54 percent of our cod exports go to China. In 2017, we saw roughly one-third of Alaska's seafood exports end up in China. This is about \$1 billion to us; so this is considerable.

We just recently hosted Chinese seafood buyers who want to learn more about what we are producing sustainably in our Alaskan waters.

Now, we have steep Chinese tariffs on these exports, a pretty significant trade barrier and this is on top of a loss of market share due to the Russian embargo on American seafood, which has been around since 2014. So we are dealing with that and we have challenging import quotas that currently exist in the E.U., and Japan, and South Korea.

My question to you this morning is what specific actions are the International Trade Commission taking to reduce the trade barriers that are impeding the trade of U.S. seafood, both in China and elsewhere, but really because such a significant share of the Alaskan market is with China?

Can you speak to what we are going to be doing to reduce those trade barriers? And inform me as to whether or not ITA is engaging with the National Marine Fisheries Service in this discussion about international seafood trade and the impacts?

Ms. NIKAKHTAR. I appreciate that question. I will start with saying that I used to represent the aquaculture industry for many years, and the seafood trade is near and dear to my heart.

Senator MURKOWSKI. Good, so you get it.

Ms. NIKAKHTAR. I will also say that my husband is an obsessed fisherman, so the seafood industry, in large part, is my history. It is almost, in a way, like family and I take it personally to want to do more to help that industry.

I have had some discussions with U.S. seafood producers about their challenges and to promoting their exports. I have opened the door for continued discussions.

Senator MURKOWSKI. If we have individuals within the seafood industry that need to raise concerns, you are suggesting you are one that they should come and visit with?

Ms. NIKAKHTAR. Absolutely, absolutely. And if once we understand the specific nature of their challenges, some of the data. We also work in partnership with the National Oceanic and Atmospheric Administration (NOAA), for example, and specifically with respect to trade issues. They leverage a lot of our expertise in trade.

And so, if there are areas where we can coordinate within agencies at Commerce or outside, we are happy to do that.

When you walk into the doors of Commerce, I hate to sound corny, but it says, there is a billboard that says, "Help American Economies Grow." And so what I cannot do is if industries do not come to my office or come to Commerce, and explain exactly what has happened to them so we understand with specificity where those challenges are, we cannot help them.

So we absolutely invite, what I was saying earlier, we absolutely invite industries and companies to come talk with us about issues. And what I said earlier was I have never turned an industry or a company away.

Senator MURKOWSKI. Well, I have some folks who are going to be coming to you next week. We are ready to make introductions.

Ms. NIKAKHTAR. My doors are always open. I always tell my staff, I say, "Do not worry if I need to stay late to accommodate more meetings." That is how I understand what is happening.

But I will also say that we have foreign commercial service officers who have market intelligence about how trade barriers are preventing U.S. exports. So we work with those mechanisms where we can.

But if we can actually hear from stakeholders and industry, and they can describe their specific challenges to us, that gives me more ammunition to help them out.

Senator MURKOWSKI. Let me ask, because when we had Ambassador Lighthizer before this subcommittee in July, when we were talking about some of these issues, he said that the resolution to our dispute with China is going to take time. He said China is a longer term problem, for instance, than NAFTA. The implication is that we just have to kind of wait it out.

But the seafood producers in my State, they are watching this trade dispute over technology transfer, cyber threat, and they are seeing the seafood industry losing market access for products like, again, salmon and cod, which is not an acceptable answer to them to just kind of wait it out.

And so they have asked, what you will hear from them is: what is the strategy here? Because they are not seeing that this is a winning strategy with China to just wait things out. They are asking how long they are going to have to endure the tariffs on their seafood exports before the administration acts to resolve, rather than escalate, these trade disputes. So that is what you are going to be hearing from them.

I am over my time, but if you can share with us, what that strategy is, I think, here in open testimony that would be greatly appreciated.

Ms. NIKAKHTAR. If I may just speak to that. With the administration, the U.S. is working on the China trade strategy, but we have always had the open channel to present good ideas to them, which is why the Secretary has always encouraged that. And so, I am always happy to hear from industry and develop a strategy that works for them and then present it to the administration.

Senator MURKOWSKI. Well, know that they are very anxious. That time is clearly of the essence here. I am going to take you up on your offer.

Ms. NIKAKHTAR. Please do.

Senator MURKOWSKI. And see that these folks have an opportunity to visit with you. Perhaps we might want to have further sit downs as well because this is too important and extraordinarily significant to the economy in my State.

Mr. Chairman, thank you.

Senator MORAN. Thank you, Senator.

Senator ALEXANDER.

Senator ALEXANDER. Thank you, Mr. Chair.

Mr. Ashooh—and thanks to all of you for your service to our country at difficult jobs—are you the one doing the study, the investigation that the President asked for in preparation for considering tariffs on autos and auto parts being imported into the United States?

Mr. ASHOOH. We are a contributor to that study, but it is actually being led by ITA.

Senator ALEXANDER. By whom?

Mr. ASHOOH. I will defer to Ms. Nikakhtar.

Senator ALEXANDER. You are doing it?

Ms. NIKAKHTAR. The Secretary has given our office delegation of authority.

Senator ALEXANDER. So you are doing it.

Ms. NIKAKHTAR. Yes.

Senator ALEXANDER. What is the status of it?

Ms. NIKAKHTAR. So the investigation is ongoing.

Senator ALEXANDER. And when will it be finished?

Ms. NIKAKHTAR. So we are working to expeditiously complete this investigation. However, the final survey responses from the industry are coming in this week. And so, we are analyzing those.

Senator ALEXANDER. When do you guess it will be finished?

Ms. NIKAKHTAR. The industry, and every time I talk to industries, they ask the same question.

Senator ALEXANDER. Well, a year or a month?

Ms. NIKAKHTAR. Expeditiously. We are looking forward. . . .

Senator ALEXANDER. But did the President not say in his meeting with the European Union president that he was not going to impose those tariffs?

Ms. NIKAKHTAR. This is the tough spot. The President's discussions with his counterparts are not influencing the fact that we need to conduct an investigation.

Senator ALEXANDER. But the President asked for this. The President asked you to do this, correct?

Ms. NIKAKHTAR. The President has asked us to conduct the investigation.

Senator ALEXANDER. But did he not subsequently say that he was not going to impose those tariffs on autos?

Ms. NIKAKHTAR. And I appreciate that question and what I would like to make clear—

Senator ALEXANDER. Well, he did say that.

Ms. NIKAKHTAR [continuing]. Is that the investigation is separate from the imposition of tariffs. We are just looking at what is happening to the industry.

Senator ALEXANDER. But he asked for the investigation. Right?

Ms. NIKAKHTAR. He asked for the investigation.

Senator ALEXANDER. And you did not stop your investigation when he said he had decided not to do that.

Ms. NIKAKHTAR. The investigation is ongoing.

Senator ALEXANDER. So if he changed his mind, your investigation is going to be there ready for him.

Ms. NIKAKHTAR. The investigation, what I think is incredibly worthwhile about the investigation—

Senator ALEXANDER. I do not want to hear about that. I want to know whether it is ongoing. You did not stop your investigation because the President said he was not going to impose the tariffs. Correct?

Ms. NIKAKHTAR. We did not stop the investigation—

Senator ALEXANDER. Okay, thank you.

Ms. NIKAKHTAR [continuing]. Because we are studying the industry.

Senator ALEXANDER. Mr. Ashooh, when I used to work in the Nixon administration a long time ago, and when I was a very young lawyer, I went back to Nashville and the first thing that happened was they imposed the wage and price controls.

I had only been in law practice for about 6 months and I was suddenly the most popular lawyer in town. And it was not because I was the best lawyer in Nashville. It was because somebody thought I knew somebody in the Nixon administration, and they did not know what to do about this new Soviet-style bureaucracy that was determining wage and price controls, which reminds me of the process that you have.

What I found back in the 1970's was, it was confusing. It was arbitrary. It led to politics, perhaps even the potential for fraud. People were hiring lawyers. They did not know what to do.

Now, I have heard you say you have had about 40,000 requests for exemptions from the tariffs. You have made decisions on 10,000. It will be months before you can make others.

I am hearing from Tennessee companies that say, "We buy imported steel, specialty steel, and we are going to have to lay people off if the price goes up."

I hear from our big tire companies that they buy steel cord to make their tires stronger, none of which is made in the United States.

I hear from Bush Brothers who can one-third of the beans, they buy tin-plated steel, and the U.S. does not make enough of it.

Should a Member of Congress call you about that? Is that appropriate or is that not appropriate?

Mr. ASHOOH. Well, they certainly have.

Senator ALEXANDER. They have?

Mr. ASHOOH. Well, most are in the form of letters.

Senator ALEXANDER. So you think it is appropriate for a Member of Congress to become involved in these decisions?

Mr. ASHOOH. Well, they are not involved.

Senator ALEXANDER. All would be involved, would it not?

Mr. ASHOOH. They express a concern over a particular case.

Senator ALEXANDER. So that does not affect your decision if an important Member of Congress calls you up and says, "I am really worried about my company in Tennessee and I am a good supporter of the President."

Would that help?

Mr. ASHOOH. It is only helpful to the extent they share information of a factual nature that we have not heard before, which is rare because the companies—

Senator ALEXANDER. I have known a lot of people who have gotten into trouble in Washington for calling agencies that are making independent decisions just to say, "Well, I am not calling to affect your decision. I am just calling to ask when you might make a decision. And as you know, I am really interested in this."

I do not call your agency about these decisions because I do not think they ought to be political decisions. In fact, I do not think you ought to be making them at all, which is not your opportunity to decide.

Mr. ASHOOH. Understood. There is no political influence on the decision.

Senator ALEXANDER. But you are saying that Members of Congress are calling you.

Mr. ASHOOH. We get lots of letters. We definitely get lots.

Senator ALEXANDER. Do you think that is appropriate?

Mr. ASHOOH. It is not for me to tell them not to write. Generally speaking, we take information from many, many sources.

Senator ALEXANDER. They write, but do they also call?

Mr. ASHOOH. No one has spoken to me. No one has called me.

Senator ALEXANDER. So no one has called you directly.

Mr. ASHOOH. Certainly not, no.

Senator ALEXANDER. Thank you, Mr. Chairman.

Senator MORAN. I am going to see if we can wrap up, but I will not cut anyone off. We will make certain that everybody has a chance to ask a final set of questions if they find that necessary.

Ms. Nikakhtar, let me go back to Senator Shaheen's line of questioning.

Would you reiterate for me how many staff from ITA has been assigned to BIS to help with 232 exclusions?

Ms. NIKAKHTAR. Yes, and this year 60 staff, 65 staff from ITA were deployed to E&C to assist with the exclusion process and then there are 41 contractors in addition, but 65 internal staff.

Senator MORAN. And from which units were those staff deployed?

Ms. NIKAKHTAR. From Global Markets and from Enforcement and Compliance, but the majority from Global Markets.

Senator MORAN. And so, what does the diminution of those employees do? You talked about increasing your efforts. I appreciate what you had to say, work harder.

Ms. NIKAKHTAR. Yes.

Senator MORAN. But what is not being done? You said we prioritize to things that are important today. Global Markets, what does that mean to me and Kansans who want to have access to global markets, if you are reducing the number of people who are fully engaged in their jobs there?

Ms. NIKAKHTAR. Yes, thanks for that.

So for Global Markets, the vast majority of those people, the 45 from Global Markets, they have been deployed part-time, and so what they have basically done is wear two hats. They have helped with the exclusion process where they can, but they have really tried to manage their own work, and where they are needed to, they have asked colleagues to help cover.

And so, I really do not want to leave the impression that anything is not being attended to. It is that we are stretching and we are having staff cover for each other.

For example, if you are in Global Markets and you are studying a particular market, and there is no immediate crisis in terms of dealing with that industry at that moment, then you do need to have your colleague cover in that specific sector or in that specific area. You can actually help with the exclusion process and sort of leave your normal day job for X number of hours, leave it be, attend to something else, and then come back to it.

If there is something pressing, we do not detail those people. This is just something that if you can put on the backburner and, in everybody's job we have instances where something—everything is important—but there is something that can be put on the backburner, and I will address it in a few weeks.

And so where they cannot, we ask colleagues to cover or we will not deploy those people at all.

Senator MORAN. Let me ask you this. So what you are attempting to do is to assure me that no work is not being done that needs to be done. I am particularly interested in our efforts to find opportunities for businesses across the country to perform in world markets and global markets.

I will let you have a consultation.

[Discussion.]

Ms. NIKAKHTAR. My colleague just raised a good point too. That as we have brought in contractors, we have dropped down the number of deployment.

But to your question, we are mindful of the fact that we need to also address industry's issues, and so it is really hard to, difficult to sort of communicate. The items that are pressing that need to be attended to, we are not ignoring those by any means. It's just the staff are stretched. They are trying to do a lot more in a single day. They are wearing multiple hats. They are pushing themselves a little bit more.

If there are certain things, for example, analysis of market barriers in a certain industry that you can wait a few weeks on getting back to that, you do because you have to deal with this other priority.

Senator MORAN. Will you take this into account in your, and I guess BIS, in ultimately what the administration requests in your budget in your out year planning? Would you expect to be requesting additional resources?

Ms. NIKAKHTAR. In terms of what we see in the horizon for fiscal year 2019, I think we have requested additional resources and additional resources would help immensely, because then we can have folks do what they need to do during the day to further help U.S. industries and have extra personnel.

Senator MORAN. Can you and Mr. Ashooh, if we impose Section 232 sanctions on automobile and uranium imports, this circumstance, the challenges that you already are facing in resources are additionally exacerbated? Is that true?

Ms. NIKAKHTAR. We are very mindful of the fact that any 232, if it goes into some remedy that requires exclusion is going to put an enormous strain on Department resources.

In terms of the ongoing, I cannot speak to uranium, but I can certainly speak to autos. We are not there yet.

As soon as it is on the horizon—and it is my responsibility which I take very seriously—as soon as we see something happening where we would need additional resources, of course, we are going to work through the proper channels. Because anything that is detrimental that happens to industry that is on my watch, it is my responsibility to make sure that things do not go off the rails.

Senator MORAN. I am going to come back to that, but let me ask Mr. Ashooh, anything to add to that resource out years and ultimately potential administration budget request?

Mr. ASHOOH. Well, I do and thank you for the opportunity to comment on it.

So the budget that you have before you, the fiscal year 2019 budget, includes an increase for anticipated Section 232 investigations. At the time we did this, put the budget together, as you know, several months ago, we had a request on the uranium, but we were not sure it was going to move forward. It since has. So that was a prescient request of ours because it turned into being fact.

But I would also like to just reassure the subcommittee, the relationship between BIS and ITA is one that is not just limited to 232. The industry expertise resides in ITA, and so it is not necessarily that there are large numbers of people moving and doing a job differently to get these out the door.

What it is, is that they are being asked to provide the expertise that they always do in other areas of the work we do in this case, which has seen us through.

So it is that there is a fair amount of work that did need to be added to and that is why we have the contractors. But as far as what we rely on ITA for, it is the industry expertise that they are known for and we use quite frequently.

Ms. NIKAKHTAR. And that is a good point, if I may add. We do, within the Department of Commerce, shift resources when there is a surge in one area and not a surge in another area. What we are seeing now is a surge in a bunch of areas, and so that underscores the fact that we are getting a little bit stretched.

But we do, to Assistant Secretary Ashooh's point, we do shift resources when we see a particular surge.

Senator MORAN. Well, I remain very concerned that the exclusion process is required or a circumstance in which it is necessary because of 232 actions.

So that set a stage that you have discovered that, again, you are not policymakers, but there are those who are listening who are, with unanimity on this panel, concerns with the direction that the administration is going in regard to 232, has gone in regard to 232, and is looking for further opportunities in automobiles and uranium.

So I am sorry that this exclusion process is consuming the amount of effort and resources that it is, and it exacerbates the problem at a time in which our businesses across the country need every global market they can get. Part of what you indicate is not happening, but the potential exists for us to focus on figuring out whether somebody is deserving of an exclusion, when resources should be devoted to making certain that the opportunities exist for those markets in the first place.

So I want to make certain that those, perhaps off this panel, but you do visit with people who make policy decisions, understand the challenges that I see happening for Kansas businesses. We are an export State. We live by what we sell around the globe and the exclusion process is damaging in many ways.

What I am learning in this conversation is it has the potential, if not already realized, it has the potential to be damaging in our efforts to find even more markets for those in Kansas and across the country.

Let me turn to Senator Shaheen, and then Senator Alexander, and then we will wrap up.

Senator SHAHEEN. Well, thank you, Mr. Chairman.

Just to add a point to that. The focus of the administration on reducing the trade deficit has been solely on the enacting of tariffs on goods coming into the United States.

But if we are really serious about cutting the trade deficit, we have also got to focus on American exports. We have to help about 95 percent of small and medium sized businesses who are not getting into those international markets, get into those international markets.

That is where, I think, the administration is making a mistake because, as has been pointed out in this testimony, it has reduced the resources that are needed to help those businesses. We have to

flip the formula here and make sure we can get back to helping our businesses get into those international markets.

I want to go back to an issue that Assistant Secretaries Ashooh and Nikakhtar, you both raised in your testimony, and that was about the new changes to the CFIUS legislation that was signed into law with the defense authorization bill.

Given those changes, have you had a chance to review those and do you think you are going to need additional resources as you look at enforcing the new reforms to CFIUS?

Ms. NIKAKHTAR. Thank you for that question.

Without question, we are going to see an incredibly drastic increase and we would like to work through the proper channels to communicate what resources needs will look like.

Mr. ASHOOH. Yes, our budget, again the fiscal year 2019 budget includes an increase to add positions to deal with the increasing caseload that we were already aware of.

Since that time, when we put the budget together, the law passed and includes the emerging technology review that I referenced in my statement. That will have, in addition to the normal caseload, a burden on Commerce, on BIS that we are still evaluating as far as the resource impacts.

But we greatly appreciate the working relationship we have with this subcommittee and we will continue that as we determine what those specific resources are.

Senator SHAHEEN. Do you expect to get additional funding as part of the new fee structure that is part of that change?

Mr. ASHOOH. We are told that that is the plan. Although that is a very new thing, so there is not an existing methodology to do it. That will be part of the rulemaking, but that is our understanding.

Senator SHAHEEN. Is that the case with your agency as well?

Ms. NIKAKHTAR. Well, we are working very closely with the budget folks to figure out exactly, to figure out how we implement what we need and identify with precision what we need. We have a good sense of it, but we are working closely with the budget folks at the Department.

Senator SHAHEEN. Thank you.

Thank you, Mr. Chairman.

Senator MORAN. Senator Alexander.

Senator ALEXANDER. Thank you, Mr. Chairman.

Mr. Ashooh, I am not sure I understood. You talked about 8 or 80 percent utilization. What were you saying about that? What did that mean?

Mr. ASHOOH. So the concern that appeared in our investigation was that U.S. industry is on the decline.

Senator ALEXANDER. What is?

Mr. ASHOOH. Steel and aluminum.

Senator ALEXANDER. On the decline.

Mr. ASHOOH. On the decline, right. And the concern is that we would have no domestic industry, so that action would need to be taken to raise the capacity utilization in the U.S. for both steel and aluminum. It is a similar problem. The numbers are different, but a similar problem.

Senator ALEXANDER. But what is the 8 or 80?

Mr. ASHOOH. Eighty percent was the target.

Senator ALEXANDER. Eighty?

Mr. ASHOOH. Eighty, yes, 80 percent.

Senator ALEXANDER. That you would produce 80 percent of the aluminum?

Mr. ASHOOH. No, that we would try to increase the existing capacity utilization and I may get these numbers wrong, but I can supply them for you.

But before any remedy was implemented, aluminum utilization was somewhere around 57 percent, something like that.

Senator ALEXANDER. Fifty percent of what?

Mr. ASHOOH. And we calculated this.

Senator ALEXANDER. But 50 percent of what?

Mr. ASHOOH. The existing suppliers, primary aluminum suppliers were producing about 57 percent relative to what they could present but for the market factors.

Senator ALEXANDER. Do you know how many of those existing aluminum suppliers support the tariff you have imposed?

Mr. ASHOOH. Well, certainly—

Senator ALEXANDER. I think the answer is none. I know Alcoa does not and they produce half of it.

Mr. ASHOOH. Yes. No, but we are seeing an increase in that capacity. Again, we are not there yet, but we know that several, I think Century Aluminum announced an opening of three pot lines and that is what we—

Senator ALEXANDER. Three pot lines?

Mr. ASHOOH. Yes, we want to see that production capacity go up.

Senator ALEXANDER. What did you determine was the reason for the reduction in capacity?

Mr. ASHOOH. There are several. A lot of them have to do with specific decisions made by a lot of those producers.

Senator ALEXANDER. Why do we not produce more aluminum in the United States?

Mr. ASHOOH. Ultimately, this is a global issue. I mean—

Senator ALEXANDER. No, it is not. It is one issue. Because it takes a lot of electricity to produce aluminum and the cost of electricity is much too high in the United States to make that practical, and it is cheap in other places like Canada, where they have a lot of water. That is the whole thing.

You run electricity through bauxite. You produce an ingot and from the ingot, you make everything. So all we need is the ingots to make.

So how will you have to raise the tariff to overcome the cost of electricity that is the only real problem with producing more aluminum in the United States?

Mr. ASHOOH. Well, again, we are still facing a country such as China which does not factor in the elements you just mentioned about electricity. I mean, they are willing to, at a loss, produce.

Senator ALEXANDER. China. We import 15 percent of our aluminum from China. We import about 30 percent from Canada. What is the problem with Canadian aluminum?

Mr. ASHOOH. Which is why it is a global issue; it is not just a China issue.

Senator ALEXANDER. Well, now you are talking in circles here.

If your goal is to increase capacity in the United States, how big a tariff do you have to have in order to make it profitable for companies in the United States to pay for the increased electricity? Will 10 percent do it?

Mr. ASHOOH. So the three options that we recommended to the President, you can do tariffs or quotas in order—

Senator ALEXANDER. But you did not include a strategic petroleum reserve.

Mr. ASHOOH. No, that was not. Now that you have mentioned it, it is something that—

Senator ALEXANDER. Well, I am not the only one in the world can think of a strategic petroleum reserve. I would think that would be your job.

Mr. ASHOOH. And I will admit that I was not here during that first part of these investigations, but what I will say, the lessons we have learned on things like ongoing 232's on uranium is to not automatically think in terms of import restrictions, but rather look at creative ideas.

Senator ALEXANDER. Yes, well, I do not want to get off on uranium. We will probably need a domestic supply of uranium by about 2050 and we are already funding ways to look at that. So I do not know what the sudden urgency is there.

But back to aluminum, Alcoa says that the aluminum tariffs have added \$100 million already to the cost of aluminum. You could buy a lot of ingots and put them in a strategic reserve for \$100 million and not increase the price of aluminum to aluminum users all over the country.

Mr. ASHOOH. Sir, I am going to commit to you. I am going to look at that. Again, it was not part of the investigation. It probably should have been, but I will continue to look at that.

Senator ALEXANDER. Okay. Well, I do not think the administration knew what it was doing when it put the tariff on aluminum, and I do not think the investigation made any sense.

I mean, we have seven smelters operating in the United States. My guess—guess only—is that a 10 percent tariff might produce a little bit more. I do not know what your 80 percent utilization figure is at all.

You are not going to be able to produce in the United States most of the aluminum ingots we need unless you increase the price of aluminum by a massive amount of money. It would be much cheaper for the Government just to operate its own aluminum plants because all you need is the ingot or recycled aluminum, and then you can make foil, and pots and pans, and all of that. But you have put tariffs on every aluminum thing coming into the United States.

So I hope you will, if asked to investigate this again, look at the small production of primary aluminum. Understand that almost the entire reason for it is the high cost of electricity and think of a more sensible way to address the concern.

Thank you, Mr. Chairman.

Senator MORAN. Thank you, Senator Alexander.

Mr. Johanson, I want to make sure you have an opportunity to talk about your resource needs.

You indicated in your written testimony that Section 232 and Section 301 actions taken by the administration have resulted in 11 revisions to the Harmonized Tariff Schedule. And accordingly, that is 1,000 hours increase over what you expended to accomplish that tariff schedule in 2017. It seems like a large investment of resources by ITC to support those efforts.

Looking forward, if President Trump's proposed tariffs on an additional \$200 billion of Chinese goods go in effect, does ITC have adequate resources to continue with regard to the tariff schedule?

Mr. JOHANSON. The ITC is very busy right now. Our budget request reflects what we think will be sufficient to cover our needs going into fiscal year 2019.

I will tell you my biggest concern as a commissioner is about our staff. We are operating at a very high level right now. I mentioned before that our trade remedy cases are up, have doubled in the past 5 years. This is true involving the Harmonized Tariff Schedule, which we must update frequently these days due to administrative actions, actions of the administration and otherwise.

I have walked the halls of the building talking to staff members who have announced that they are leaving. We have had a number of key people leave. They have said they are burned out. That is a situation now.

As it stands right now, they tell me that they can go to a private firm, and make much more money with the same hours. It becomes kind of easy for them, but they do tell me they enjoy working at the agency. They like the work. They are valued, but they are simply overworked at this time.

Senator MORAN. Thank you, Mr. Johanson.

I think my final set of questions is, again, for you. I want to talk just a moment about solar panels and module imports.

Earlier this year, several of my colleagues and I sent a bipartisan letter to Secretary Perry, to Secretary Ross, and Ambassador Lighthizer urging USTR to exclude 72 cell, 1,500 volt utility scale solar panels from Section 201 safeguard due to concerns that the tariffs will raise the price for these panels, jeopardizing investments on solar energy and jobs in the country, but certainly in my State of Kansas.

We are over 8 months since those duties and we still have no decision that has been in that exclusion. Although recommendation was made in an effort to protect the domestic solar industry, it appears that that recommendation also does harm to others in that sector, in that economic sector.

Is it reasonable that members of the domestic solar industry should have to wait months for a decision on their exclusion request?

Mr. JOHANSON. Yes, Senator Moran. Issues of exclusion are up to the Administration. The ITC is an independent agency and we do not address exclusions. That is not within our mandate.

Senator MORAN. Anyone else? Ma'am.

Ms. NIKAKHTAR. Yes, Chairman Moran. Thank you for that question.

We have reviewed all the exclusion requests at the International Trade Administration, and the exclusion process is an interagency process, and we have communicated our views to the USTR. Hope-

fully, we are hopeful that this can be resolved in an expeditious manner, but we have communicated our views.

Senator MORAN. Are you suggesting that I am regretful that I do not have Ambassador Lighthizer at this hearing to ask that question?

Ms. NIKAKHTAR. I think it is an interagency process too.

Senator MORAN. More than Ambassador Lighthizer.

Ms. NIKAKHTAR. Yes, it is. The Department of Energy is also involved as well. So I am happy, however, to and I will commit, too, that I will do this as soon as I get back to the office, I will call USTR and make sure we are working together to complete this expeditiously because I know that uncertainty in industry is pretty tough.

Senator MORAN. Thank you very much for that commitment.

This is a theme in part of mine and other Members of this subcommittee's questions today is the uncertainty. We are trying to increase business in the United States. We are trying to increase employment through the trade policy.

But there is a corresponding detriment that occurs in which jobs are lost, and that particularly occurs when there is uncertainty or a lapse of time before decisions are made.

Again, we talked about this from the very beginning from my first question, but I would highlight that again for the opportunity for others outside this room and you as well to know that it is a worthwhile pursuit to see that we increase employment in the United States. Decisions that are not made have the opposite effect.

Senator Shaheen has a follow up.

Senator SHAHEEN. Yes, thank you.

I would just like to follow up the conversation with Mr. Johanson about your employees and the challenges that they are facing.

I assume that the pay raise that we were hoping to give Federal employees this year would be very much appreciated by your employees who are looking at the challenges they are facing.

Mr. JOHANSON. I think it is safe to say that it would, but that, of course, is up to the administration, to Congress as well.

Senator SHAHEEN. Yes, well, I think the Congress has already spoken on that. So hopefully the administration will implement what the Congress has directed with respect to spending because that is the way the Constitution is supposed to work.

Thank you.

Senator MORAN. Senator Shaheen, thank you very much.

It is my practice to ask the witnesses in every hearing I chair if whether they have something they feel like they failed to say, want to say, something they want to clarify? Any of you would like to add something to today's record for our benefit?

Ms. NIKAKHTAR. I would like to end this on a positive note. Senator Shaheen mentioned in terms of, all of you, in terms of increasing exports. ITA has just finalized a testing method, a new to market tool which helps U.S. exporters identify new markets to export to.

So it is an algorithm new to ITA. The economists that prepared it are in our group. But you enter the product that you are going to sell. You can select regions that you want to sell to around the

world, or just globally entirely, your risk tolerance to the market, business in a market, and it will give you export markets that you can export your products to.

Once you identify these markets, you give us a call, and we will help you penetrate those markets, and make the buyer-seller connection. That is going to be launched. We are very, very proud of it and I really do hope that we get the opportunity to continue working with your staff to spread the news.

Senator MORAN. Thank you.

Senator SHAHEEN. Yes, we hope we have lots of employees at your agency who can help implement that, that they are not all working on the exclusion problem.

Ms. NIKAKHTAR. We would love to have more employees. Thank you.

Senator MORAN. Anyone else?

Mr. JOHANSON. Senator Moran, Senator Shaheen, I would simply once again like to thank the subcommittee for considering the ITC's budget for 2019. Thank you, again.

Senator MORAN. You are very welcome.

#### ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions this morning, Senators may submit additional questions for the subcommittee's official hearing record.

We would request from you, from ITA, BIS, and ITC, that there be a response within 30 days.

[The following questions were not asked at the hearing, but were submitted to the agencies for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED TO RICHARD ASHOOH

##### QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

*Question 1a.* Please provide updated numbers of total exclusion requests and objections regarding the Section 232 steel and aluminum tariffs.

*Answer.* As of April 22, 2019, BIS had received 88,044 exclusion requests: 76,807 steel and 11,237 aluminum. There are 41,965 objection, rebuttal and surrebuttal filings: 38,353 steel and 3,612 aluminum.

*Question 1b.* The total number of exclusion requests approved and denied by BIS?

*Answer.* As of April 22, 2019, BIS had approved 27,839 exclusion requests (23,483 steel and 4,356 aluminum) and denied 12,805 exclusion requests (11,443 steel and 642 aluminum). As of April 22, 2019, the number of exclusion requests that are in the BIS decision period is 3,925. The number of exclusion requests that are still undergoing the objection, rebuttal, and surrebuttal process is 15,539.

*Question 1c.* The number of objections that were approved and denied by BIS?

*Answer.* Exclusion requests with objections are granted or denied. As of April 22, 2019, the total number of exclusion requests ultimately granted following an objection: 403 (383 steel and 20 aluminum). As of April 22, 2019, the total number of exclusion requests ultimately denied following an objection: 3,747 (3,739 steel and 8 aluminum).

*Question 1d.* The average wait time before decisions are made by BIS on both exclusion and objection requests?

*Answer.* As of April 22, 2019, for steel exclusion requests it has taken an average of 123 days from the time of filing to post final decisions for requests with no objections and 271 days for those with objections. For aluminum exclusion requests, it has taken an average of 153 days from the time of filing to post final decisions for requests with no objections and 186 days for those with objections. In both cases this includes an average of 74 days that requests in the pipeline were held pending

implementation of the rebuttal process and 35 days due to the lapse in appropriations.

This time period includes the Department's review of exclusion requests, any objections, the 30-day public comment period, and coordination with U.S. Customs and Border Protection to confirm that an exclusion request is administrable.

*Question 2.* When does BIS anticipate that it will have issued a decision on all exemption and objections requests that the Department is currently in receipt of?

*Answer.* As of April 22, 2019, BIS had 34,093 active cases. Through fiscal year 2019 funded contract support and process improvements, BIS anticipates to process decisions more rapidly.

BIS accepts exclusion requests and objection submissions on a rolling basis. BIS continues to evaluate Section 232 exclusion requests efficiently and in a timely manner. We continue to make improvements to the exclusion process to ensure that requesters receive their decisions as quickly as possible. BIS's goal is to have decisions on the 34,093 active cases we are currently in receipt on by the end of Spring/early Summer 2019.

*Question 3a.* Through your testimony, we now know that the Department of Commerce originally underestimated the number of Section 232 steel and aluminum product exclusion requests that would be submitted and has received more than double the amount of exclusion requests it once expected.

Was the Department's estimation of the resources needed to process exclusion requests based on the original underestimation of the number of Section 232 steel and aluminum product exclusion requests?

*Answer.* Yes.

*Question 3b.* If so, what measures has BIS taken to ensure that staffing levels match the actual number of Section 232 product exclusion requests that have been received?

*Answer.* The Department originally requested an additional \$4.17 million and 17 positions in the fiscal year 2019 budget to support BIS's Industrial Base Survey and Assessment activity, which includes administering the Section 232 product exclusion request/objection process and conducting Section 232 investigations. The BIS fiscal year 2019 Enacted budget provided \$4.55 million specifically for contract support to administer the product exclusion process. BIS is assessing the resource implications of its ongoing Section 232 activities and will work with the Department and the Office of Management and Budget on appropriate action if funding shortfalls are identified. In addition, BIS continues to receive extensive support from the Department's International Trade Administration (ITA). ITA is analyzing requests and objections, and now rebuttals and surrebuttals, to determine whether domestic production capacity can support the product needs of exclusion requesters, and providing its recommendations to BIS, which renders the final decisions based on the facts presented to the Department.

Further, based on a collaborative effort from both ITA and BIS, the Department is implementing a dedicated 232 Exclusions Portal that will substantially streamline the exclusion process, provide transparency to all external stakeholders, and provide users with a real-time status on each of their exclusion requests. The Exclusions Portal will also provide the Department with the ability to analyze submitted data more efficiently and thereby render determinations on exclusion requests more expeditiously.

Moreover, the Exclusions Portal will further allow for better and more timely collaboration between government agencies (i.e., BIS and ITA in the Department of Commerce and Customs and Border Protection (CPB) in the Department of Homeland Security that both contribute to the processing of 232 exclusion requests). The current Section 232 exclusions process for steel and aluminum is implemented on three separate web portals: Regulations.gov, FDMS.gov, and MAX.gov. These three silo systems require BIS, ITA, and CBP to expend extra effort verifying data submitted by the public and extracting, editing, and manually sharing this data, which can lead to delays and slower adjudication of exclusion requests. The Department administered Exclusions Portal will modernize the 232 exclusion process leading to one unified system that will allow for enhanced collaboration and result in faster processing times and decisions for industry.)

BIS looks forward to launching the Exclusions Portal in Spring 2019.

[*Note:* As part of the reporting requirements of the Consolidated Appropriation Act, 2019, the Department shall provide quarterly reports to the Committees, due not later than 15 days after the end of each quarter, on the implementation of the exclusion process, which shall include: (a) the number of exclusion requests received; (b) the number of exclusion requests approved and denied; (c) the status of efforts

to assist small- and medium-sized businesses in navigating the exclusion process; (d) Department-wide staffing levels for the exclusion process, including information on any staff detailed to complete this task; and (e) Department-wide funding by source appropriation and object class for costs undertaken to process the exclusions.]

*Question 4a.* How is BIS estimating its resource needs for out-years in light of the possible need to re-examine all steel and aluminum exclusion requests and the uncertainty as to whether the ongoing 232 investigations into automobile and uranium imports will result in further tariffs?

*Answer.* The BIS fiscal year 2019 Enacted budget provided \$4.55 million specifically for contract support to implement the product exclusion process. BIS is assessing the resource implications of its ongoing Section 232 activities.

*Question 4b.* Will BIS require more resources if tariffs are implemented as a result of the ongoing Section 232 investigations into automobiles and uranium?

*Answer.* BIS will assess its need for any additional resources if and when the President takes actions on any Section 232 investigation.

*Question 4c.* Will the need to re-process Section 232 steel and aluminum exclusion requests next year require an equivalent level of resources in 2019?

*Answer.* At this time, the Department anticipates needing an equivalent level of resources in 2019 in order to have the capacity to process steel and aluminum product exclusion requests expeditiously. The Department began issuing its product exclusion decisions on June 20, 2018. It accepts new exclusion requests and issues decisions on a rolling basis.

On September 11, 2018, the Department published an interim final rule amending its March 2018 product exclusion regulation, which established procedures for rebuttals and surrebuttals. Each exclusion request requires the Department to review the entire record before it, including the exclusion request and any objections, rebuttals, and surrebuttals, along with any separately filed confidential business information. These comprehensive reviews to determine whether the product is produced in the United States in sufficient and reasonably available quantity and in a satisfactory quality necessarily take time. In addition, the Department takes national security considerations into account before issuing a decision. While these procedures produce a well-informed review and decision process, they have also increased the volume of information that must be reviewed and analyzed before a decision can be issued on an exclusion request. Again, BIS is assessing the resource implications of its ongoing Section 232 activities.

#### QUESTIONS SUBMITTED TO NAZAK NIKAKHTAR

##### QUESTIONS SUBMITTED BY SENATOR JEANNE SHAHEEN

*Question 1a.* The Miscellaneous Tariff Bill (H.R. 4318) was passed by Congress, and signed by the President this week. This will reduce tariffs for approximately 1700 different HTS Codes through the end of 2020. While many of the reductions involve intermediate products that will assist U.S. manufacturers in lowering their costs, a not insignificant number of the reductions involve finished products that will be sold directly to consumers. Footwear products are good example of this. It is critically important that importers do not misuse these tariff reductions by making slight and non-substantive changes in finished goods that compete with domestically manufactured products in order to eliminated tariffs on the imports.

What steps will the administration take to monitor the situation to make sure that the MTB legislation is not misused by allowing importers who compete with domestic manufacturers to zero out their tariffs by making meaningless modifications in their products?

*Answer.* Under the American Manufacturing Competitiveness Act (AMCA) of 2016, the Department of Commerce does not have a statutory role in monitoring the impact or use of MTB legislation following its implementation.

Section (3)(c)(2) of the AMCA strictly defines the role of the Department of Commerce in the MTB review process, including what Commerce should consider for its report. Commerce is tasked with producing a report including a determination of whether domestic production of the article exists. Domestic production is defined under the act as producing, “an article that is identical to, or like or directly competitive with, an article to which a petition for a duty suspension or reduction would apply, for which a domestic producer has demonstrated production, or imminent production, in the United States.” Slight or cosmetic differences between products would not negate the possibility that the products would be considered competing.

*Question 1b.* Is there a role that domestic manufacturers can play to notify your agencies when such activity is occurring so that timely enforcement of our trade rules is possible?

*Answer.* There is no provision in the AMCA to review MTB provisions or modify them before they expire in 2020. However, information from U.S. companies concerning potential competition with domestic manufacturers could be used to analyze any petitions for renewal of MTBs in the 2019–2020 cycle.

Also, the United States International Trade Commission (USITC) is required under the AMCA to produce a report on the impact of the MTBs no later than a year after the enactment of the MTB law. Per the AMCA, this report will contain, “a broad assessment of the economic effects of such duty suspensions and reductions on producers, purchasers, and consumers in the United States, using case studies describing such effects on selected industries or by type of article as available data permit.” We defer to the USITC with respect to whether input from domestic manufacturers could be useful. Companies can also contact Customs and Border Protection (CBP) if they believe that competitors are incorrectly or falsely claiming their products are classified under MTB provisions.

*Question 2a.* How much has ITA spent on the Section 232 exclusion process?

*Answer.* In fiscal year 2018, ITA spent approximately \$7.1 million on the Section 232 exclusion process. ITA estimates that it will spend over \$8.0 million on the Section 232 exclusion process in fiscal year 2019.

*Question 2b.* Could you provide a list of how many staff are being shifted, for how long, and what are their normal roles?

*Answer.* ITA currently has 40 DOC detailees assigned to the Section 232 product exclusion process, including 38 ITA employees, one employee from the Bureau of Economic Analysis, and one employee from the National Institute of Standards and Technology. These employees examine requests from importers seeking to have the steel or aluminum product that they import excluded from tariffs. In conducting this examination, the ITA Section 232 team reviews the initial exclusion request, all subsequent objections submitted by the domestic steel and aluminum industries, and all rebuttal and sur-rebuttal comments received. The ITA analysis focuses on whether U.S. manufacturers can produce (and deliver in a reasonable time period) a product identical to or substitutable for the imported product. ITA’s analysis of the exclusion requests involves intensive coordination and collaboration with the Bureau of Industry and Security. The length of details will be determined by the number of exclusions requests, objections, rebuttals and surrebuttals received. Before joining the Section 232 exclusion team, reassigned or detailed staff worked in import policy analysis, international trade compliance enforcement, economics, and international trade promotion.

*Question 2c.* Which company has ITA hired to assist with the process?

*Answer.* Trident Technical Solutions, LLC, from Tampa, Florida, was hired to provide a total of 52 staff “evaluators” to examine requests for exclusion from Section 232 steel and aluminum tariffs and objections to those requests. The staff is composed of research analysts/evaluators, administrative specialists and project managers.

*Question 2d.* What are the qualifications of the contractors hired to assist with the process?

*Answer.* The evaluators must be able to conduct comprehensive analysis to determine, on a product-specific level, the ability of U.S. steel producers to supply steel products required by importers requesting the exclusion. Knowledge of the U.S. steel industry and downstream markets, while not required, is beneficial. The evaluators are required to prepare reports of their findings and provide recommendations regarding the resolution of exclusion requests and objections to those requests. The minimum education requirement is a BS/BA in analytical disciplines or 2 years of working in an analytical and/or research environment. Upon joining ITA’s Section 232 exclusion team, all evaluators receive extensive training with respect to steel and aluminum products as well as instruction in how to examine and analyze exclusion requests. Evaluators and other members of ITA’s Section 232 team closely collaborate with our NIST steel and aluminum expert whose current work involves complex, multipath and high rate testing of materials such as carbon fiber composites and advanced high strength steel. ITA has also hired two consultants with a combined experience of approximately 60 years in the steel and aluminum industry and who also provide valuable input to the exclusion analyses. The NIST expert and consultants have PhDs in Material Sciences & Engineering and Metallurgy.

*Question 3a.* Commerce is losing twice as many Foreign Service Officers as it is hiring. We understand that this is the third year in which we've seen this trend, with no formal intake process offered to candidates for over 3 years.

How does Commerce intend to maintain its Foreign Service Officer corps in order to keep its operations in 76 countries adequately staffed?

*Answer.* ITA has a planning level of 260 Foreign Service Officers (FSO). With FSO rotations and mandatory training, this staffing level permits up to 7 percent reduced on-boards below planning while still maintaining the current operational tempo.

As of February 28, 2019, ITA has an FSO headcount of 226 officers. As officers retire or are separated from the Foreign Service due to time-in-class restrictions, new officers are brought on board through an assessment process. ITA has onboarded 18 new FSOs since September 2015 and plans to exhaust its current FSO candidate Rank Order Register (the culmination of the most recent assessment process) in August 2019. ITA plans to conduct a new FSO hiring assessment in Fall of 2019. Hiring from the resultant Rank Order Register is dependent upon candidates obtaining Top Secret security clearances and medical clearances, and available budget resources.

*Question 3b.* Can you provide us with clear numbers of Commerce FSOs over the years, both in aggregate and at each separate grade?

*Answer.* These staffing numbers are as of February 28, 2019 of each of the years reflected below:

2015	
CM .....	1
MC .....	10
OC .....	26
FS-01 .....	42
FS-02 .....	62
FS-03 .....	35
FS-04 .....	51
<b>Total .....</b>	<b>227</b>

2016	
CM .....	2
MC .....	13
OC .....	22
FS-01 .....	45
FS-02 .....	58
FS-03 .....	35
FS-04 .....	68
<b>Total .....</b>	<b>243</b>

2017	
CM .....	2
MC .....	15
OC .....	29
FS-01 .....	41
FS-02 .....	57
FS-03 .....	39
FS-04 .....	54
<b>Total .....</b>	<b>237</b>

2018	
CM .....	2

2018	
MC .....	13
OC .....	24
FS-01 .....	49
FS-02 .....	60
FS-03 .....	42
FS-04 .....	52
<b>Total .....</b>	<b>242</b>
2019	
CM .....	1
MC .....	11
OC .....	23
FS-01 .....	51
FS-02 .....	61
FS-03 .....	44
FS-04 .....	35
<b>Total .....</b>	<b>226</b>

*Question 3c.* If it is the case that 20 percent of Commerce FSOs are either in training or assigned within the United States, should the Department maintain a larger float of FSOs if it is to continue to be in 76 countries?

*Answer.* ITA believes the existing planning level of FSOs is sufficient. Any expansion of the FSO pool will require additional resources.

*Question 4.* Commerce has a growing number of Foreign Service Nationals (or Locally Engaged Staff) vacancies—I understand that there may be approximately 70 such vacancies worldwide. How does Commerce plan to fill these positions overseas so that when U.S. companies need assistance, they don't have to wait for months to get help?

*Answer.* As of February 28, 2019, ITA has 672 LES onboard and 68 LES vacancies. ITA assesses its ability to fill LES vacancies on an ongoing basis.

*Question 5.* Despite consistent Congressional support, Commerce has, over the past 10 years, had a steady decline in the number of U.S. field-based Trade Specialists, based in U.S. Export Assistance Centers. In any given State, that means that Commerce is only able to help approximate 10 percent or fewer U.S. export-ready companies—who need help to identify new markets, find trustworthy local partners, and overcome barriers. New technology is helpful but is no substitute for the in-depth assistance that these Trade Specialists provide, in conjunction with their overseas counterparts. How does Commerce propose to replenish its U.S. offices so that we can be confident that you can help a greater, not a smaller, number of U.S. companies?

*Answer.* While ITA's U.S. Field staffing has declined, ITA continuously reviews its network of U.S. Export Assistance Centers (USEACs) to ensure resources are deployed to best serve the evolving needs of U.S. businesses. For example, ITA pursued multiple rounds of opportunities for ITA employees to move to select domestic locations to provide coverage to critical sectors and locations in the U.S. Field.

*Question 6a.* Commercial Service operations appear to be incurring increasing administrative overhead, cutting into Commerce's ability to use appropriations to hire and retain essential trade professionals in the field.

Does Commerce believe that the increase in overhead is justified?

*Answer.* All business units of ITA, including Global Markets, are allocated a proportional level of shared agency costs. These costs are not merely administrative; they include a wide range of critical operational costs such as information technology modernization, information security, visa and passport processing, the Department's Working Capital Fund, and employee transit benefits. The activities benefit all business units. In addition, ITA's Global Markets unit also must solely fund costs levied by the Department of State for overseas operations (i.e., the overseas International Cooperative Administrative Support Services program (or ICASS), and

the overseas construction and facility maintenance program (Capital Security Cost Sharing/Maintenance Cost Sharing program, or CSCS/MCS). Each shared activity has one or more governance programs to review and manage costs. ITA will continue to engage with these governance programs to fully understand and verify ITA costs.

*Question 6b.* If not, how does Commerce propose to wring efficiencies out of this growing overhead?

*Answer.* ITA will continue to strive to be efficient in its operations to ensure resources are used in the most effective manner possible for the benefit of ITA, its customers, and the public.

*Question 6c.* If the growing overhead is justified, is Commerce planning to request additional funding in the fiscal year 2020 budget so that it can maintain staffing in the U.S. and overseas?

*Answer.* ITA will work closely with the Department to raise awareness of ITA's operational needs and work to balance those with other budget priorities of ITA, the Department, and the Federal Government.

*Question 7.* USTR Lighthizer told the Committee that the administration is pursuing new trade facilitation agreements in a number of locations. For instance, the administration plans to open up new markets in Africa for U.S. companies as a result of new bilateral agreements. Does Commerce have a plan to place staff in these posts, since it's been well-established that once an agreement is being implemented, U.S. companies need additional assistance on the ground to identify and resolve trade agreement violation, win new foreign government contracts, and find trustworthy local partners?

*Answer.* ITA is not planning on opening new posts in Africa at this time based on a combination of the expenses associated with opening new posts and limited available resources at this time. However, ITA will continue to assess where existing resources can be best allocated.

*Question 8.* The administration would like to bolster our trade finance capabilities in order to counter mercantilist policies from other countries, most particularly China. Given that Commerce has traditionally played a key role as liaison at post for the Overseas Private Investment Corporation and has played a leading role on educating U.S. companies about trade and investment finance options, what plans does Commerce have for bolstering staffing in the field to help identify new opportunities for U.S. firms and work with them to ensure that they have a level playing field?

*Answer.* ITA agrees that trade finance is a critical and much-needed resource to improve the international competitiveness of U.S. businesses, and further agrees that developing new capabilities in trade finance is imperative. To this end, ITA is participating with OPIC and the other trade agencies in an interagency process to develop an implementing plan for the new International Development Finance Corporation (IDFC). This plan will include approaches for increasing interagency capacity to deliver outreach on IDFC finance programs in support of new opportunities for U.S. firms, as well as potential IDFC support for staffing in key markets and additional training for agency staff. Training would include details on general project finance, infrastructure opportunities, and trade and investment finance options. In collaboration with industries, ITA is also assessing other viable options to improve trade finance for U.S. businesses. ITA will continue to assess where existing resources can be best allocated but it does not anticipate bolstering staffing in the field at this time based on available budget resources.

#### CONCLUSION OF HEARINGS

Senator MORAN. And with that, the subcommittee stands adjourned.

[Whereupon, at 12:04 p.m., Thursday, September 6, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]