

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

October 10, 2018

CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

The Honorable Wilbur Ross
Secretary of Commerce
1401 Constitution Ave NW
Washington, DC 20230

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
3801 Nebraska Ave. NW
Washington, DC 20528

Dear Mr. Secretary and Madam Secretary:

I write to you today with serious concerns about the management of the exclusion process by the Department of Commerce (Commerce) and Customs and Border Protection (CBP). Specifically, Commerce and CBP have failed to provide adequate guidance at the beginning of the process and failed to provide meaningful feedback and assistance to companies seeking exclusions from the steel and aluminum tariffs under Section 232 of the Trade Act of 1964.

In recent weeks, Missouri companies have reached out to my office with concerns about denials of their exclusion applications. According to these companies, each applied for exclusions under the process laid out by Commerce, and no objections were filed to oppose the exclusion request. According to information provided to the Committee by Commerce and CBP, CBP reviews the information to ensure the product description and Harmonized Tariff Schedule of the United States (HTSUS) align.¹ If CBP cannot validate the request based on the information contained in the application, the exclusion request is denied, without contacting the company to clarify the product details or assisting the requester to correct an identified error in the application.²

The companies report that they have been unable to obtain information regarding their denials. The guidance to requesters from Commerce refers the company to CBP and does not provide any specific reasons for the denial or any meaningful assistance to correct the error. The Frequently Asked Questions on Commerce's website simply states, "If the request is denied due to an incorrect HTSUS classification, the Decision Memo [issued by Commerce] provides

¹ Department of Commerce, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Sept. 11, 2018).

² *Id.*

information how on to obtain a correct HTSUS classification from CBP.”³ However, the only reason given to the requester is inscrutable: “The requester has not sufficiently addressed the reporting requirements specified in the form. . . As a result, there is insufficient information to verify the product description and/or HTSUS code.”⁴ The only assistance offered to the requester is a mailing address for the Director of the National Commodity Specialist Division of CBP and a reference to a federal regulation.⁵

This process is unhelpful and frustrating for the companies that have sought exclusions for thousands of products that have then ostensibly been denied because of HTSUS codes. As of September 28, 2018, CBP reviewed 17,723 applications for exclusions and approved 12,667 while denying 5,056 applications.⁶ This is a nearly 30% denial rate for errors in the applications submitted by companies. Without a point-of-contact or more specific information about the error in an application, the requesters are in the dark about what to do.

I respectfully request that Commerce and CBP work together to find a way to provide additional information and direct assistance to requesters who have been denied an exclusion request as a result of an error in their product description or HTSUS code. At a minimum, I encourage you to consider whether companies should be contacted by CBP before being denied the exclusion request to allow for a correction in the application or whether companies should have a more meaningful way to receive guidance from CBP to avoid errors.

I also request a list of all of the companies that have been denied exclusion requests as a result of an error in the HTSUS code or product description. I further request that Commerce and CBP provide a joint briefing to the Committee on its proposals to improve this process. I request that you provide the list and the briefing by no later than October 31, 2018.

If you have any questions related to this request, please contact Thomas Richards at Thomas_Richards@hsgac.senate.gov or Liz Herman at Elizabeth_Herman@mccaskill.senate.gov. Please send any official correspondence relating to this request to Rina_Patel@hsgac.senate.gov.

³ Department of Commerce, Frequently Asked Questions Product Exclusions for Section 232 Steel and Aluminum Tariffs (www.bis.doc.gov/index.php/all-articles/224-232-investigations/1449-232-faq) (accessed Oct. 9, 2018).

⁴ Bureau of Industry and Security, *Decision Document – Steel Duty Exclusion Request*, (Exclusion request: BIS-2018-0006-20300) (Sept. 24, 2018).

⁵ *Id.*

⁶ Email from Customs and Border Protection to Committee Staff (Sept. 27, 2018).

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Sincerely,

A handwritten signature in blue ink, appearing to read "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" being more prominent and the last name "McCaskill" following in a similar style.

Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

The Honorable Kevin McAleenan
Commissioner
U.S Customs and Border Protection