

1 OPEN EXECUTIVE SESSION TO CONSIDER FAVORABLY REPORTING
2 THE NOMINATION OF KEVIN K. McALEENAN, OF HAWAII, TO BE
3 COMMISSIONER OF THE UNITED STATES CUSTOMS AND BORDER
4 PROTECTION, DEPARTMENT OF HOMELAND SECURITY
5 THURSDAY, DECEMBER 7, 2017
6 U.S. Senate, Committee
7 on Finance,
8 Washington, DC.

9 The hearing was convened, pursuant to notice, at
10 2:15 p.m., in room 215, Dirksen Senate Office Building,
11 Hon. Orrin G. Hatch (chairman of the committee)
12 presiding.

13 Also present: Senators Grassley, Thune, Toomey,
14 Heller, Cassidy, Wyden, Stabenow, Cantwell, Nelson,
15 Cardin, Brown, Bennet, Casey, and McCaskill.

16 Non-designated Staff: Joshua LeVasseur, Chief Clerk
17 and Historian.

18
19 OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR
20 FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE

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22 The Chairman. The committee will come to order. I
23 would like to welcome everyone here to this afternoon's
24 executive session.

25 Today we will consider the nomination of Mr.
26 McAleenan to be Commissioner of the U.S. Customs and
27 Border Protection, or CBP. CBP is the United States'
28 unified border agency charged with facilitating
29 legitimate trade and travel by enforcing U.S. trade laws
30 and securing our borders.

31 Trade is essential to the growth and economic
32 competitiveness of the U.S. economy. In fact, one of
33 CBP's most important responsibilities is to balance trade
34 facilitation and security, a job that requires the agency
35 to work with Congress, stakeholders in the trade
36 community, and CBP's partner government agencies to
37 achieve success.

38 This committee, by developing and passing the Trade
39 Facilitation and Trade Enforcement Act, has provided CBP
40 the tools it needs to better facilitate legitimate trade
41 and enforce U.S. trade laws. Toward those ends, CBP has
42 a lot of work ahead, particularly in trade enforcement.
43 As I stated during Mr. McAleenan's hearing in October, I

44 believe Mr. McAleenan is a well-qualified nominee with
45 the necessary experience and credentials to lead CBP as
46 it executes those missions. I hope that we can report
47 his nomination out of committee in short order.

48 With that, I will turn it over to the ranking
49 member, Senator Wyden.

50 OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM
51 OREGON

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53 Senator Wyden. Thank you very much, Mr. Chairman.
54 Of course, as soon as we have a quorum, I am sure you
55 would like to vote. I will just be very brief.

56 Colleagues, I do support Mr. McAleenan to serve as
57 Commissioner of the U.S. Customs and Border Protection.
58 I think he is a qualified nominee. It, obviously, is a
59 tough job. I think he has the right focus.

60 We all understand that the centerpiece of this job
61 is to put us in a position to aggressively deal with
62 trade cheats. No matter where you stand with respect to
63 trade policy in this country, I think we all understand
64 how important it is that we have the strongest and most
65 effective regime possible to fight cheating.

66 I think Mr. McAleenan understands how important that
67 is. Trade facilitation and trade enforcement are among
68 the agency's core functions, but too often, they have
69 been shunted to the portfolio. That is a big reason why
70 we wrote the Trade Facilitation and Trade Enforcement Act
71 which was signed into law in 2016. That law is
72 especially about making sure that enforcement no longer
73 gets short shrift and the agency is equipped to deal with
74 the modern-day trade cheats, because we all understand.

75 We have had hearings on this. We set up a dummy website
76 to catch trade cheats. It is the trade cheats, too often
77 in the past, have been one step ahead of the enforcement
78 authority.

79 Under this administration, first and foremost, they
80 have to do a lot of work to put the tools in the 2016
81 bill into effect. When you are looking at the
82 administration's priorities for this agency, it seems
83 like fighting trade cheats fall far behind this
84 boondoggle of a border wall to be overcome, apparently,
85 by the latest advancements in ladder technology. In its
86 first 11 months, the administration has done a much
87 better job of getting splashy headlines than getting
88 actual results on trade, particularly in the area of
89 trade enforcement. A whole lot of bluster does more harm
90 than good if you do not turn words into actions. I am
91 confident that Mr. McAleenan can turn that around. We
92 are going to have to be dealing with issues relating to
93 forced labor, preventing trade in illegally harvested
94 timber and wildlife, protecting the health and safety of
95 consumers who use imported products, and I think we all
96 look forward to working with the nominee on these issues.

97 One last point that I would like to make is, Mr.
98 McAleenan and I disagree on the issue of warrantless
99 searches of American technology at the borders, but he

100 has committed to working with all of us on this issue. I
101 am going to keep pushing to make sure that he adopts, on
102 a voluntary basis, nationwide the reasonable suspension
103 standard that the agency now follows in the Ninth
104 Circuit.

105 The point is, colleagues, your constitutional rights
106 should not stop at the border. The Supreme Court has
107 recognized that digital is different, and it is important
108 that we follow up on those issues.

109 Mr. Chairman, I would ask unanimous consent my full
110 remarks be entered into the record. And perhaps other
111 colleagues would like to comment while we await a quorum.

112 The Chairman. Without objection, they will.
113 [The prepared statement of Senator Wyden appears at the
114 end of transcript.]

115 The Chairman. Now, my hope is that we can move
116 this nomination quickly, and as such, I hope my
117 colleagues will opt to place their statements and
118 colloquies into the record. However, for anyone who
119 wants to give a statement at this time, please limit your
120 comments to no more than three minutes.

121 Senator Grassley. I think you only need one more
122 person.

123 The Chairman. Yes, we only need one more person.

124 So is there a Senator who wishes to make a statement
125 at this time, on either side? Anybody?

126 [No audible response.]

127 The Chairman. Well, I do not see anybody who does.
128 Well, okay.

129 We are one vote short of being able to do that --
130 voting this nominee out.

131 Senator Nelson. Can we turn up the thermometer in
132 the meantime?

133 [Laughter.]

134 Senator Nelson. It is freezing.

135 The Chairman. Yes, it is freezing in here. You
136 Floridians set the pace for us.

137 [Laughter.]

138 The Chairman. Is there one more coming?

139 Senator Wyden. Can we do it off the floor, Mr.
140 Chairman?

141 The Chairman. I do not think we are going to have
142 any more votes.

143 Senator Grassley. You do not think we will even
144 have any at 5:00?

145 The Chairman. Well, no. Are we having votes at 5:00?
146 No.

147 Senator Grassley. Well, that depends on whether
148 people require a roll call vote. If they do, then if we
149 do not get unanimity -- everybody, both Republican and
150 Democrat, then we will have a roll call vote.

151 The Chairman. Yes.

152 Senator Grassley. Well, here it is right here.

153 Senator Wyden. We have 13, do we not? We are one
154 short, I think, Mr. Chairman.

155 The Chairman. One short?

156 Senator Grassley. Can you not deem a quorum?

157 The Chairman. I would like that, Senator Grassley.

158 [Laughter.]

159 The Chairman. That is a good idea. Do we have
160 anybody on the way?

161 We will wait just a few minutes. Hopefully, we can
162 get that 14th Senator here. They tell me that Senator
163 Thune may very well come.

164 So we will just give it a few more minutes.

165 [Pause.]

166 The Chairman. They inform me that Senator Thune is
167 on his way. So if we can all wait, we will get this
168 moved ahead pretty quickly.

169 [Pause.]

170 Senator Grassley. Here he is.

171 The Chairman. Okay. We have 14 Senators as soon
172 as Senator Cantwell comes back in.

173 Senator Cantwell. Here I am.

174 Senator Stabenow. She is here.

175 The Chairman. Is she here?

176 Okay. I think -- let us see -- do we have 14 here?

177 Okay. I am informed we have 14 Senators here. At this
178 time I would entertain a motion to favorably report the
179 nomination of Kevin McAleenan to be Commissioner of U.S.
180 Customs and Border Protection.

181 Senator Wyden. I so move.

182 Senator Grassley. I second.

183 The Chairman. Thanks to both of you.

184 Does any Senator require a recorded vote?

185 [No audible response.]

186 The Chairman. Okay.

187 You do not. So let us move this. If nobody
188 requires a recorded vote, than all in favor will say
189 "aye."

190 [A chorus of ayes.]

191 The Chairman. All those opposed will say "no."

192 [No audible response.]

193 The Chairman. My gosh, the ayes have it. The
194 nomination is ordered favorably reported.

195 That will be the end of this particular markup.

196 Congratulations, Mr. McAleenan.

197 [Whereupon, at 10:24 a.m., the meeting was

198 adjourned.]

I N D E X

PAGE

STATEMENT OF:

THE HONORABLE ORRIN G. HATCH

A United States Senator

from the State of Utah

2

THE HONORABLE RON WYDEN A United States Senator

from the State of Oregon

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Senator Ron Wyden
Finance Committee Markup: McAleenan Nomination for CBP Commissioner
December 7, 2017

Today the Finance Committee will vote on the nomination of Mr. Kevin McAleenan to serve as Commissioner of U.S. Customs and Border Protection. In my judgment, Mr. McAleenan is a highly qualified nominee who will bring the right focus to a tough job.

Running CBP is one of the most significant roles in government when it comes to protecting American workers from trade cheats. And in my view, Mr. McAleenan understands how important it is to get that job done right.

Bottom line, trade facilitation and trade enforcement are among CBP's core functions, but too often they've been shunted to the side of the portfolio. That's a big reason why this committee wrote the Trade Facilitation and Trade Enforcement Act, which was signed into law in 2016. That law is especially about making sure enforcement isn't getting short shrift and that CBP is equipped with the tools it needs to keep up with modern-day trade cheats. Under this administration, however, there's a lot of work to be done to put those tools into effect.

When you're looking at this administration's priorities for CBP, it seems like fighting trade cheats falls far behind a boondoggle of a border wall that can be overcome by the latest advancements in ladder technology. And in its first eleven months, this administration has done a much better job of getting splashy headlines than getting actual results on trade. Particularly in the area of trade enforcement, a whole lot of bluster does more harm than good if you don't turn words into action.

I'm confident Mr. McAleenan can help turn that around. There's a lot of work to be done, whether it's rooting out products made with forced labor, preventing trade in illegally harvested timber and wildlife, protecting the health and safety of consumers who use imported products, and more. I look forward to working with him on those issues.

Finally there's another policy matter to discuss today. Although Mr. McAleenan and I disagree on the issue of warrantless searches of Americans' devices at the border, he has demonstrated a commitment to working with me and my staff. I will continue to push Mr. McAleenan to voluntarily adopt, nation-wide, the reasonable-suspicion standard that CBP already follows in the Ninth Circuit. And I will continue to urge my Senate colleagues to support my Protecting Data at the Border Act, which would ensure that the 4th amendment protections for our digital devices recognized by the Supreme Court in the *Riley* case extend to the border.

LISA DENNIS COURT REPORTING
410-729-0401