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ADVANCING THE U.S. TRADE AGENDA: THE WORLD TRADE ORGANIZATION

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

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ADVANCING THE U.S. TRADE AGENDA: THE WORLD TRADE ORGANIZATION

WEDNESDAY, JULY 16, 2014

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:00 a.m., in Room 1100, Longworth House Office Building, the Honorable Devin Nunes, [chairman of the subcommittee] presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
July 9, 2014
No. TR-06

CONTACT: (202) 225-3625

Chairman Nunes Announces Hearing on Advancing the U.S. Trade Agenda: The World Trade Organization

House Ways and Means Trade Subcommittee Chairman Devin Nunes (R-CA) today announced that the Subcommittee will hold a hearing on the U.S. trade agenda and the World Trade Organization with Deputy U.S. Trade Representative Michael Punke. **The hearing will take place on Wednesday, July 16, 2014, in 1100 Longworth House Office Building, beginning at 10:00 A.M.**

In view of the limited time available to hear from the witness, oral testimony at this hearing will be from the invited witness only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:
The World Trade Organization's (WTO) 160 members cover 97 percent of world trade. The WTO, with the assistance of its secretariat, oversees a series of multilateral trade agreements covering goods, services, and intellectual property; provides a venue for new negotiations; reviews and monitors trade patterns, policies and practices; and provides procedures to resolve trade disputes between members.

Last December, at the WTO's 9th Ministerial Meeting, WTO members agreed to a package of commitments, including a Trade Facilitation Agreement that experts estimate could add as much as $1 trillion to global GDP. The agreement incorporates many key requirements to reduce barriers at the border and improve trade flows, such as publication of rules and laws, harmonization and simplification of documents, advanced rulings, enhanced rights of appeal, and use of automated processes, among others. This is the first multilateral trade agreement concluded by WTO members since the WTO was formed in 1994, and its successful implementation will make it easier for U.S. businesses of all sizes to participate in international trade. WTO members are now working to implement the agreement, with a key deadline of July 31.

Negotiations continue in other important areas, including expansion of the Information Technology Agreement (ITA) and the launch of environmental goods negotiations. In addition,

some WTO members have suggested restarting broad, Doha-round discussions that cover many sectors, but others, including the United States, are exploring other, more focused negotiating options with like-minded trading partners. For example, negotiation of the Trade in Services Agreement (TiSA) is ongoing in Geneva among those WTO members willing and able to meet the agreement's high standards, but it is not being negotiated under the auspices of the WTO.

The WTO Agreements include a dispute settlement chapter to provide neutral arbitration of disputes between members. Nearly 500 cases have been filed at the WTO, including more than 100 filed by the United States.

Finally, the WTO plays an important role in reviewing and monitoring trade trends and their impact on the multilateral trading system. The WTO Agreements require members to regularly report on measures affecting trade. In addition, the WTO Secretariat periodically reviews and catalogs trade measures of all WTO members and WTO members regularly conduct peer-reviews of other members to identify policies that they view as trade distorting.

In announcing this hearing, Chairman Nunes said, **"The World Trade Organization had been instrumental in liberalizing world trade. But many of its efforts have focused on twentieth-century issues such as reducing and eliminating tariffs. We'd like to explore ways the WTO could more effectively address today's behind-the-border barriers to trade and continue to address remaining tariff and non-tariff barriers, including sanitary and phytosanitary barriers to agriculture trade that are not based on sound science."**

FOCUS OF THE HEARING:
The focus of the hearing is on U.S. trade policy and the World Trade Organization. The hearing focus will include: (1) implementation of the Trade Facilitation Agreement and opportunities created by the agreement; (2) the potential benefits of an ambitious agreement to expand the Information Technology Agreement; (3) the launch of the recently notified environmental goods agreement; (4) the important role of ongoing monitoring and enforcement activities; and (5) future work of the WTO.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:
Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, http://waysandmeans.house.gov, select "Hearings." Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, by the close of business on Wednesday, July 30, 2014. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721 or (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web athttp://www.waysandmeans.house.gov/.

Mr. NUNES. Good morning and welcome to today's hearing on advancing our trade agenda and the World Trade Organization. Before hearing from Ambassador Punke, I would like to make three points.

First, after years of inaction, we now have an active agenda at the WTO which can create new opportunities for U.S. exports and support American jobs. Our first order of business is ensuring that last year's trade facilitation agreement is fully adopted and implemented. We have an important deadline later this month, and I am closely watching to see if the WTO can still function as an institution for negotiating—and implementing—new trade liberalization agreements. Implementing the trade facilitation agreement helps developing countries become more attractive for trade and investment.

We are also trying to conclude negotiations to expand the Information Technology Agreement, but I am frustrated by China's intransigence. Any final agreement must include key U.S. products. Failure to reach an ambitious agreement would reflect a serious failure in China's leadership as it hosts APEC this year.

The Environmental Goods Agreement negotiations formally launched last week could cover nearly ninety percent of trade in environmental goods and provide an enormous boost to U.S. high tech exports. And of course, we must continue our crucial enforcement and compliance work.

Second, beyond our current agenda, we must strengthen and improve the WTO, particularly by eliminating behind the border barriers. The WTO has been successful in reducing tariff barriers. For the organization to be relevant in the 21st Century, however, it must address non-tariff barriers more effectively. These include, among others, government-induced border delays, unjustified regulatory rules, domestic content requirements, and sanitary and phytosanitary measures that impede U.S. agricultural exports.

Continued work is also needed to ensure that countries meet their WTO obligations and to improve the WTO's dispute settlement system. At the same time, we cannot take up where we left off on the Doha round. Emerging market nations must take on meaningful obligations befitting their level of development. I look forward to hearing from Ambassador Punke about the Administration's efforts to strengthen the WTO in each of these areas.

Third, we must pass Trade Promotion Authority without delay to ensure that our negotiators have the strongest negotiating hand possible. The Bipartisan Congressional Trade Priorities Act I cosponsored earlier this year with Chairman Camp includes robust provisions on the WTO as well as multilateral, plurilateral and bilateral negotiations, providing clear guidance to the Administration about the type of agreements Congress will accept. I call on the Administration to focus on passing Trade Promotion Authority as soon as possible—and to immediately work to lay the groundwork with their Democratic colleagues.

We are going to wait on Mr. Rangel. He is on his way, to give his opening statement, and I think we will go right to you, Ambassador Punke.

Before recognizing you, you know that you are limited to five minutes. Your written statement will be made part of the record, and you are now recognized.

STATEMENT OF MICHAEL PUNKE, AMBASSADOR, DEPUTY UNITED STATES TRADE REPRESENTATIVE AND U.S. AMBASSADOR AND PERMANENT REPRESENTATIVE TO THE WORLD TRADE ORGANIZATION, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Ambassador PUNKE. Thank you very much, Mr. Chairman. Chairman Nunes, Ranking Member Rangel—I am anticipating his arrival—and members of the Trade Subcommittee, thank you for the opportunity to testify on the Obama Administration's priorities and recent developments at the World Trade Organization.

The core of the Obama Administration's economic strategy is to create jobs, to promote growth, and to strengthen the middle class. The WTO is a critical part of that strategy. It sets the rules that govern the global trading system, and we believe it has the potential to do much more.

That is why the United States led the charge at the WTO's Ninth Ministerial Conference last December in Bali to complete the Trade Facilitation Agreement, or TFA; the first successful conclusion of a multilateral trade negotiation in the two decade history of the WTO. It is why we are working on other major initiatives in Geneva, including a group of key plurilateral agreements which have the potential to reinvigorate the multilateral trading system and to help the WTO meet its potential.

In Bali, WTO members concluded a package of significant results that include the TFA and important outcomes on agriculture and development. We are now actively engaged in implementing all of the Bali outcomes in keeping with the very specific timelines and procedures agreed to unanimously by all WTO members.

The TFA is a huge accomplishment for the WTO, reestablishing that its members can reach significant multilateral outcomes. The rest of the Doha round remains a challenge. We are working to develop a post Bali work program by the end of this year. This will help to determine whether conclusion of the Doha Round is possible.

The worst case scenario for the WTO after the Bali success would be renewed drift. The time has come for the WTO to conclude Doha, move forward, and take up new areas of trade. A final Doha agreement must address key U.S. priorities, including agriculture, and industrial market access and services. There will be no Doha result without balance across all of these areas and across all of the major trading countries. For Doha to succeed, as we have emphasized consistently, the emerging developing countries must carry their weight as well.

In parallel with the Bali results and post Bali work, we have created other opportunities by leading regional and plurilateral negotiations with like-minded trade partners. The Trade in Services Agreement, or TiSA, represents a unique opportunity among 23 participants representing 50 WTO members to build a new agreement that incorporates the best of what the United States has been achieving in this sector in our free trade agreements.

We have high expectations for TiSA to provide increased market access and potential rules to support expansion of services trade into the future.

Just last week we launched negotiations on the new Environmental Goods Agreement with 13 other WTO members representing 86 percent of global trade in environmental goods. Elimination of tariffs on environmental technologies will make these goods more available and boost U.S. jobs.

ITA expansion holds out similar promise for boosting simultaneously the WTO's credibility and exports of high quality American technology. If we are successful, and there is more work to do with our Chinese colleagues as you noted, Mr. Chairman, the ITA will be the first tariff cutting agreement at the WTO in 17 years.

From day one, the Obama Administration has made enforcement a key priority to ensure that American stakeholders get the full benefits of the market opportunities we have negotiated. When direct engagement with the trading partner is not successful, we do not hesitate to use WTO dispute settlement. The United States has brought 18 WTO complaints since 2009. We have brought disputes in areas such as trade distorting subsidies, export restraints, import licensing barriers, local content requirements, retaliatory use of trade remedies, and non-science based SPS measures. Those disputes involve major trading partners, such as China, India, Indonesia and Argentina, and we have had significant successes.

We will continue to prosecute and defend these disputes, launch new disputes as appropriate, and insist that WTO members live up to their obligations.

To conclude, certainly we see challenges ahead, but also great potential for using WTO in other negotiations to promote opportunities for American workers, farmers, ranchers, businesses of all sizes, and most importantly, American families.

In this regard, let me say something about trade promotion authority. To actively and effectively pursue these initiatives and bring benefits home to Americans, we will need TPA. TPA is the mechanism by which Congress has worked with Presidents since 1974 to give the Executive its marching orders about what to negotiate, how to work with Congress before and during negotiations, and how Congress will take up and approve or disapprove the final agreement.

We agree with those that say that TPA needs to be updated, and we look forward to working with this Committee and Congress as a whole to secure a TPA that has as broad bipartisan support as possible.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Punke follows:]

Testimony of Michael Punke
Deputy U.S. Trade Representative

Before the House Committee on Ways & Means Subcommittee on Trade
July 16, 2014

Chairman Nunes, Ranking Member Rangel, and Members of the Trade Subcommittee, thank you for the opportunity to testify on the Obama Administration's priorities and recent developments at the World Trade Organization (WTO).

The core of the Obama Administration's economic strategy is to create jobs, promote growth, and strengthen the middle class. Our trade and investment policy contributes significantly to that strategy by opening markets for Made-in-America exports, leveling the playing field by raising standards around the world, unlocking opportunities for our workers, and enforcing our trade laws and our trade rights.

The WTO is a critical aspect of the Administration's trade and investment policy, given its important function in setting the rules that govern the global trading system. As important a role as the WTO plays, the Administration believes that the organization has the potential to do much more in defining the global standard for free and open trade policy. That is why the United States must continue to play a leading role. We want to shape international trading rules, not be shaped by them. Moreover, we want to ensure that the rules reflect our values. And once the rules have been agreed to, we want to make sure that our global trading partners abide by them.

All of this helps to explain why the United States led the charge at the WTO's 9th Ministerial Conference last December in Bali to complete the Trade Facilitation Agreement (TFA) – the first successful conclusion of multilateral trade negotiations in the two-decade history of the WTO. And it is why we are working on several other major initiatives in Geneva, including a Trade in Services Agreement (TiSA), expansion of the Information Technology Agreement (ITA), and a just-launched Environmental Goods Agreement (EGA). We believe that these plurilateral agreements have the potential to reinvigorate the multilateral trading system and help the WTO meet its potential.

Bali

In Bali, WTO Members made major strides towards reestablishing the WTO's credibility by delivering a package of significant results. The new TFA was the cornerstone of the package, which also included important results on agriculture and development issues. We are now actively engaged with our WTO trading partners in ensuring implementation of all the Bali outcomes in a manner that is in keeping with the specific timelines and procedures agreed to by WTO ministers.

The TFA is designed to speed trade flows by addressing the most basic forms of friction in the global marketplace – the movement of goods across borders. Once fully implemented, the TFA will ensure that all WTO Members reduce paperwork associated with trade, cut clearance times for goods, de-link the release of goods from final customs clearance, promote rapid clearance of expedited shipments, and implement many other modern customs reforms.

The OECD estimates that the TFA will reduce the costs of trading by as much as 10 percent for developed countries, and 13 to 15 percent for developing countries. All WTO Members will benefit – this is a win, win, win – for trade, for development, and for global economic growth.

WTO Members are now working on the specifics of how we bring the TFA into force and implement its provisions. In this regard, we are confronting efforts by a small minority to change the conditions for implementation, as agreed in Bali. I want to assure you that the United States is insisting that TFA implementation takes place in strict accordance with the procedures and timelines agreed by all ministers in Bali.

Post-Bali Work Program

The TFA, in and of itself, is a huge accomplishment for the WTO, re-establishing that its Members can reach significant outcomes on a multilateral basis. Admittedly, the rest of the Doha agenda, which was launched more than a decade ago, remains a challenge, and new tests are on the horizon. Looking to the post-Doha era, the WTO is moving to develop a Post-Bali Work Program by the end of this year. This Work Program should go a long way towards determining whether a rapid conclusion of the Doha Round is possible.

The worst-case scenario for the WTO after the Bali success would be renewed drift in the Doha Round negotiations. The time has come for the WTO to position itself to conclude Doha, move forward, and take up new areas of trade.

And, while we support a definitive conclusion of the Doha chapter – which has gone on far too long – we cannot support just any deal. A final Doha agreement, if there is to be one, must address key U.S. priorities not addressed in the Bali Package, including in agriculture, industrial market access, and services. There will be no Doha result without balance across all of these areas, as well as a balance of commitments across all of the major trading countries. The United States will not sign on to a Doha package that requires us to provide new market opening commitments, but provides nothing substantial from our major trading partners.

It is clear that for Doha to succeed, the emerging developing countries – those with large and growing economies that have benefited so much from increased global trade – must contribute appropriately to any outcome. This question of the responsibilities of emerging markets has been the core reality and stumbling block of the Doha Round for years now, and until it is resolved in a satisfactory way, the WTO will not live up to its full potential.

The Potential for Plurilateral Negotiations to Spur Future Negotiations in the WTO

While we have been working on the Doha round, we have also created other opportunities by leading regional and plurilateral negotiations with like-minded trade partners. In fact, the new plurilateral WTO Government Procurement Agreement entered into force earlier this year, adding to the value of foreign procurement opportunities available to U.S. exporters.

We are approaching these sectoral plurilateral negotiations, such as the TiSA, ITA, and the EGA, with a can-do spirit and a long-term vision of spurring the next generation of Geneva agreements.

These negotiations can produce more immediate results by reducing trade barriers in the short-term and establishing rules for 21st century trade issues. Once concluded, we believe they will become platforms for other WTO Members to join.

Let me touch on each of these agreements in turn.

TiSA is a unique initiative – outside the WTO, but under negotiation in Geneva and with capitals and Geneva ambassadors directly involved. We have the opportunity among 23 participants representing 50 WTO Members to build a new agreement that incorporates the best of what the United States has been achieving in this sector in our free trade agreements.

We have high expectations for TiSA, not just in terms of the increased market access it will provide, but also in its ability to include rules that will support the expansion of services trade well into the future. TiSA participants have declared that they are ready to move now to open their entire markets, rather than follow the WTO process of successive rounds of negotiations, adding a few subsectors at a time. TiSA participants are also ready to tackle 21st century issues affecting trade, like those related to data flows and the Internet, which are issues not on the Doha agenda.

TiSA will address real-world challenges facing our service suppliers. Not everyone in the WTO is ready for this, at least not right now. But by working with those who are ready – almost one-third of the membership and 75 percent of global services trade – we can set the course for future WTO work on services.

Trade in environmental goods is another sector where we can achieve twin goals of promoting our values and spurring economic growth. Just last week we launched negotiations on the EGA together with 13 other WTO Members, representing 86 percent of global trade in environmental goods. The EGA negotiations will build on a list of 54 environmental goods on which APEC Leaders agreed to reduce tariffs to five percent or less by the end of 2015. By eliminating tariffs on environmental technologies, such as wind turbines, water treatment filters, and solar water heaters, we will make these goods more available and boost U.S. jobs in a sector that exported $106 billion of goods last year.

ITA expansion holds out similar promise for boosting simultaneously the WTO's credibility – and exports of high-quality American technology. If we are successful – we still have more work to do with our Chinese colleagues – the ITA will be the first tariff-cutting agreement at the WTO in 17 years.

Enforcement

From day one, the Obama Administration has made enforcement of existing trade agreements a key priority to ensure that American workers and businesses get the full benefit of the market

opportunities we have already negotiated. Unfortunately, we have challenges in opening certain foreign markets to American goods and services. And many of the problems exist despite the existence of WTO rules in these areas – whether it's technical barriers to trade, or import licensing systems, or sanitary and phytosanitary (SPS) measures.

Our front line of offense in addressing these barriers is direct engagement with our trading partners – and WTO committees and councils provide a unique vehicle for shining a light on problematic trade barriers and policies, and seeking their modification or removal.

For example, we have aggressively used WTO rules to prompt China to be more transparent regarding its industrial subsidy regime. When China was not forthcoming, we submitted to the WTO Subsidies Committee nearly 200 Chinese measures in the first subsidy "counter notification" ever submitted by the United States.

When direct engagement with a trading partner is not successful, we do not hesitate to use WTO dispute settlement to help preserve and support American jobs threatened by WTO-inconsistent practices wherever they may occur.

The United States has brought 18 WTO complaints since 2009, with a focus on opening large, strategic markets, and combatting policies and practices of concern to American workers, farmers, ranchers, and businesses.

We have brought disputes in areas such as trade-distorting subsidies, export restraints on raw materials, import licensing barriers for industrial and agricultural products, local content requirements, retaliatory use of trade remedies, and non-science-based SPS measures. Those disputes involve major trading partners and markets such as China, India, Indonesia, and Argentina.

As a result, we have had significant successes, obtaining WTO findings on China's misuse of trade remedies on autos, chicken broiler products, and specialty steel; Chinese export duties and quotas on key raw materials; and China's market access barriers to U.S. electronic payment services suppliers.

Looking forward, we will continue to prosecute and defend these disputes, launch new disputes as appropriate, and insist that WTO Members live up to their obligations so that American workers, manufacturers, service providers, farmers, ranchers, and innovators can compete on a level playing field. And just as we vigorously enforce our WTO rights and insist that others play by the rules, with the help of this Committee the United States will seek to live up to its end of the bargain.

Conclusion

My colleagues in Geneva often tell me how envious they are of America's economic position in the world. We have a big market, strong rule of law, an entrepreneurial culture, a skilled work force, and abundant sources of clean and affordable energy. When we complete the Trans-Pacific Partnership and the Trans-Atlantic Trade and Investment Partnership agreements, we will

have free trade with two-thirds of the global economy. Finally, we are in a position to write the global rules for how trade will be conducted for this century through our trade negotiations and our work at the WTO. In the WTO, we're working to make the institution a place where negotiations can succeed – a forum for solving the problems that traders face in the world as it exists today.

The overarching goal of President Obama's trade policy is to strengthen the American middle class and support jobs by selling more Made-in-America exports to the world. Through our efforts at the WTO and in other contexts, we are working around the clock to make that vision a reality and deliver tangible benefits to American workers, farmers, ranchers, businesses of all sizes, and – most importantly – American families.

Finally, let me say something on TPA. To actively and effectively pursue these initiatives, and to bring these benefits home to Americans, we will need Trade Promotion Authority.

TPA is the mechanism by which Congress has worked with Presidents since 1974 to give the Executive branch its marching orders about what to negotiate, how to work with Congress before and during the negotiations, and how Congress will take up and approve or disapprove the final agreement. There is no other area of policy that reflects closer coordination between the Executive branch and Congress than trade policy.

We have heard from many that TPA needs to be updated. We agree. The Administration welcomed the introduction of bipartisan TPA legislation in January, and looks forward to working with this Committee and Congress as a whole to secure a TPA that has as broad bipartisan support as possible.

Thank you again for the opportunity to appear here today.

Mr. NUNES. Thank you, Ambassador.

I will now recognize the Ranking Member, Mr. Rangel, for the purpose of offering an opening statement.

Mr. RANGEL. I will be brief and I thank you, Mr. Chairman, and I congratulate you for assuming this great responsibility, Ambassador. I congratulate the work that the World Trade Organization is doing and you guiding America for fairness and equity.

I know that your job is to enforce the cases or to study the cases that are brought to you, but there are certain challenges that we have with cyber, with Internet theft, with intellectual property, and perhaps the WTO can issue guidelines so that countries will know that they should not have to wait until the offended country brings an action.

Another problem that we face with the trade agreements as well as the President's authority is that it is hard to give the President authority to do or not to do when you have no clue as to what is going to be in the agreement. You know, it would be great if you had a TPA telling the President to do the right thing, but recognizing that there is a need for the negotiations not to be public and at the same time not know what authority to restrict or expand of the President legislatively is a very, very difficult job.

But we value and welcome advice that you can give us as legislators so that we can be supportive of the Executive Branch, recognizing that trade does not involve 535 of us in order to reach a conclusion.

But thanks for the work that you do, and I am very concerned about China's violation of the principles of fair trade, which she agreed to do and seemingly it is up to the United States to bring the allegations to the WTO instead of having some way of making certain that countries fulfill their obligations to the organization without a country having to come forward and make the accusation.

Thank you, Mr. Chairman.

Mr. NUNES. Thank you, Mr. Rangel.

I am now going to yield to the former chairman of the Trade Committee and our current chairman of the Health Committee on Ways and Means, Mr. Brady.

Mr. BRADY. Chairman Nunes, first, thanks for your leadership and all the new energy you bring to the trade agenda in Congress.

Ambassador Punke, you are doing a terrific job, not merely in representing U.S. negotiating agreements so critical to our economy, but the time you take in consulting with both parties in the House and Senate on the nuances, the politics, the dynamics, the details of these agreements, and I am not complimenting you merely because your wife and daughter are in the audience today, but they do need to hear that you have very broad support in the House, and we appreciate your work.

Let me ask a broader question. You know, the Doha Round has lapsed now for nearly six years. There is real progress on 21st Century issues such as trade facilitation; moving these goods quicker, faster, cheaper across the borders for the benefit of consumers around the world. We are seeing progress in information technology, in services agreement, and environmental goods area.

There are some who, because of the Bali Round, seem to believe the focus now should really go back to Doha, and this is not a good analogy, but it seems to me that after a dozen years, the Doha garden for various reasons simply is not producing.

But in services and facilitation and information technology and others, I think we are seeing real growth, real results in those areas.

I would like to see you and we as a country continue to focus on the garden that is growing, the results that are producing for the economy we have today. I would like to hear your thoughts on whether you agree on that approach or whether we ought to shift focus back to the Doha round.

Ambassador PUNKE. Well, thanks very much, Congressman Brady, and I very much appreciated the opportunity I have had to consult with you and your colleagues in the time that I am back in Washington. It has very much informed our positions across a whole range of issues.

But to answer your question directly about sort of the interplay between some of these plurilateral discussions in Geneva, like the ITA, TiSA, and environmental goods and the broader Doha agenda, I very much agree that the place where we have vitality and energy in the room and a sense of like-mindedness among negotiating partners has been in the plurilateral discussions, and quite honestly, it is very refreshing after a long day in deadlocked discussions to step into some of these plurilateral negotiations and recognize that even if you are negotiating with people who might have a slightly different perspective, all of you are working towards the ultimate goal of a result in liberalizing trade.

And so those plurilateral discussions are on their own track, and they will continue, and we will push them and lead in those discussions as we move forward.

I do think that there is the potential for us to make progress on Doha despite the fact that we are now 14 years into that negotiation. But I think one of the points that you made is really critical there, and I think Chairman Nunes made a similar point. We cannot simply keep going back to things that have not worked in the past. I think about the Einstein maxim that, you know, the definition of insanity is to do the same thing over and over and expect a different result. There has been too much of that in Geneva.

So Bali has given us a puff of wind in our sails, the first one in a long time in terms of a broad, multilateral discussion. We have an opportunity this year if we are willing, all of the members of the WTO, to wrestle with difficult questions like the appropriate role of emerging economies to make progress on Doha, but we can only make progress if we address those issues very directly.

Mr. BRADY. And I am not trying to downplay Doha. In fact, having broader agreements obviously, I think, would be better for the global economy. It just seems to me the work that is being done in the other areas actually builds confidence, creates a better environment and provides some time where we can go back with more agreement on trying to grow that garden that is Doha.

But right now I guess my point is I think the progress we are seeing is important in those agreements. I think they help build the type of dynamics that allow us to tackle Doha in the future.

I do not want to shift focus at this point where we are seeing that growth.

Ambassador PUNKE. Well, we agree with you that premise, and the worst case scenario from our standpoint is for Doha to continue to drift. We think there needs to be resolution with Doha, and we are pushing for that pointed discussion now.

And I agree with you on another point, which I think that the plurilateral discussions have actually had a very virtuous impact on Doha because they have demonstrated very clearly to the small number of countries that do not want anything to happen in Geneva that there are options there for those that are seeking to use the institution in a productive way.

Mr. BRADY. Right. Thanks, Ambassador.

Thank you, Chairman.

Mr. NUNES. Thank you, Chairman Brady.

I now recognize the gentleman from Massachusetts, Mr. Neal for five minutes.

Mr. NEAL. Thank you, Mr. Chairman.

Just a quick thought on Mr. Brady's comments. The committee has been pretty bipartisan on trade, but just to pick up on something that Kevin said, I do think that the collapse of Doha aided the bilaterals and moved them up on the agenda. So I think there was that sort of benefit. If we cannot do the big, then let us proceed with the smaller bilaterals where we actually have had some success.

But let me talk a little bit about the suggestion I made to President Obama at the White House about a month ago. I suggested that we really focus the European trade proposal, T–TIP, and suggested that I thought that was easier for all of us to do, and I thought that the Pacific proposal is a longer climb, to be very candid, and I thought that an effort to build some confidence, Mr. Ambassador, that we might be able to focus on what is now almost 30 percent of the world's trade and investment.

And it strikes me that the relationship that we have with Europe, given the difficulty it would be that we would make the argument that we were somehow trading down with countries that have a very similar quality of life and enjoy similar economic success, that we might embrace with more vigor that whole notion.

I had a chance the other night at the Italian Embassy to once again make the case for moving T–TIP along, but there are some non-tariff barriers that remain important to U.S. exports to European Union, and the EU regulatory and legislative processes also do not typically provide essential and meaningful opportunities for WTO members and their stakeholders to comment on regulatory proposals.

Could you speak to what could be done in T–TIP or at WTO to otherwise help coax our European counterparts to provide more meaningful opportunities to comment on regulatory proposals so that Americans, American small and medium size businesses are not at an economic disadvantage?

Ambassador PUNKE. Thank you very much, Congressman Neal. That is one of the central goals for us in the T–TIP negotiations.

But I want to step back for just one minute. I do think, you know, USTR is a small agency as the people on this Committee

know very well, but I do think we very much have the capacity to pursue multiple discussions at the same time.

I work more on WTO and T–TIP issues. My colleagues back in the Winder Building work on TPP, but I do see us as having the capacity to pursue all of these things simultaneously.

But with regard to T–TIP specifically and especially with regard to the regulatory issue that you have mentioned, one of our biggest goals has been to pursue the so-called horizontal regulatory issues, which is to say exactly the types of issues that you are raising.

In the U.S. system, through our notice and comment process, all interested parties, foreign and domestic, have the opportunity to see draft regulations and to comment on them and to have those comments taken into account by regulators in making decisions about the final shape that regulations should take.

We do not have those same opportunities in the European system, and that is something that we think is enormously important for our stakeholders to have. Transparency in terms of making regulations, access in terms of an opportunity to provide input at critical junctures, and then accountability on the part of European regulators to respond to those comments that they hear.

Now, we are not seeking a guaranteed outcome, but we believe that that process in and of itself results in much better regulatory outcomes, and in a transatlantic context, it creates the opportunity for there being fewer impediments to trade as a result of unnecessary regulatory differences.

So that is an issue that I appreciate your support on because it is something where we are working very hard.

Mr. NEAL. Thank you, Mr. Ambassador.

Thank you, Mr. Chairman.

Mr. NUNES. Thank you, Mr. Neal.

Mr. Reichert is recognized for five minutes.

Mr. REICHERT. Thank you, Mr. Chairman.

Welcome, Ambassador. So your wife and your daughter are in the audience. Is your brother here, too?

Ambassador PUNKE. You know, he is in town, and he did not come today. So I guess I should be very offended.

Mr. REICHERT. Yes, he is off the Christmas list.

First of all, I just want to thank you for recognizing in your opening comments the importance of TPA. I think most members here recognize TPA is critical to any agreement associated with TPP, and we made it very clear on our side of the aisle that if an agreement comes to this Congress without TPA, it is dead on arrival.

So I look forward to working with you and other members of our USTR, Ambassador Froman, et cetera, and the Administration on moving Mr. Camp's initiative forward for Trade Promotion Authority. It is bipartisan. It is bicameral. A lot of work has been done on it, and we need some help to move that forward here.

I would also like to just thank you and your colleagues for the work at WTO in challenging Indonesia's import restrictions on agricultural products. Indonesia, as you know, is a top market for Washington's high quality apples, and it was very critical for them, and we appreciate your fighting for our growers in Washington State.

I have got a couple of questions. I am happy to see that you have launched negotiations for a plurilateral agreement on environmental goods. This is a significant opportunity, I think, to increase our exports in environmental goods and lower prices for consumers.

Are there major global traders in environmental goods that are not currently a part or a party to the negotiation?

And what is your plan to bring them into the process?

Ambassador PUNKE. Well, let me address that very specifically. We have faced this question in other plurilateral discussions about whether or not to sort of actively seek countries' participation in plurilateral negotiations, and I think the viewpoint that we have landed upon is that what makes the plurilaterals work is the fact that the countries that are there are like-minded and want to get a result.

And as I mentioned earlier, that does not mean we do not have disagreements within the group. It does not mean we do not argue with each other and negotiate very hard for national interests, but there is a common desire to reach an agreement and to be ambitious.

And so we have not done work; we have deliberately not done work to solicit members to come into the various plurilateral discussions, whether it is TiSA or the Environmental Goods Agreement, because our experience, and this is a metaphor that only works in Washington so I am very happy to be able to use it here; this does not work in Geneva. It is Tom Sawyer and the picket fence. We want people who want to paint the picket fence on their own. We do not want people negotiating before they come into the negotiation about whether they should be there.

And we have had good success with that dynamic in the context of TiSA. We started the TiSA negotiation, for example, with 15 members, and we have had eight join that discussion without doing any recruiting. You asked if there are countries outside of the Environmental Goods Agreement that we would like to see in. There certainly are, and I would expect that we will have more that will see it as being in their own interest to be a part of that discussion.

We are already hearing inquiries in Geneva, and so I think you will see that grow over time, but frankly, we already have a good set that. I think currently about 86 percent of global environmental goods trade.

Mr. REICHERT. All right. Thank you.

I am sure you have a timeline for negotiations, but could you elaborate on your plan to avoid a free rider problem?

Ambassador PUNKE. There is a free rider problem that is built into plurilaterals that are based on goods trade because of the MFN principle in the WTO. In TiSA we have a very unique situation where the existing WTO rules explicitly allow us to have a plurilateral negotiation whose benefits are not provided on a MFN basis to the rest of the organization.

Unfortunately, we do not have that same benefit when it comes to goods trade. And so whether it is ITA or environmental goods, whatever benefits the members decide among themselves, they have to share with the rest of the membership, and as you point out, that creates a free rider problem.

What that means is that we really will not be in a position to conclude a deal if key players are not a part of it because there are certain players, for example, China, that we would never allow to be a free rider on something like the Information Technology Agreement or the Environmental Goods Agreement.

Fortunately, China is a part of both of those discussions, although in the context of ITA, with mixed results to date, but that is the challenge of having key players inside of the negotiation so that they take on obligations and are not able to free ride.

Mr. REICHERT. Thank you, Mr. Chairman.

Mr. NUNES. The time of the gentleman has expired.

I will now recognize the gentleman from Florida, Mr. Buchanan, for five minutes.

Mr. BUCHANAN. Thank you, Mr. Chairman.

I also want to thank the Ambassador for your service.

Let me just start out on a general question. I get asked quite a bit about the effectiveness of WTO. I know it is the rulemaking body. It is the body, and you are the main interface. What is your general feeling about how effective it is in general as it impacts the world and then as it relates to the U.S.?

Ambassador PUNKE. Well, it is something I spend a lot of time thinking about, and I have had the privilege of being in this job for about four and a half years now, and so I have seen this unfold over a little bit of a time frame here now.

I guess to me there are a couple of lessons that I have drawn out of that, and the starting point, I think, is that a very frank acknowledgement that especially when it comes to its negotiating arm, the institution needs to do a lot better because the notion that we are 14 years into a negotiation is not a good way of advertising the WTO as a place for doing serious business.

But I think in terms of lessons learned that one of the most important ones is the importance of creative approaches, and that is something that I think the U.S. has pushed very hard in the WTO context, is not falling into this trap of trying the same thing over and over again and expecting a different result.

That is one of the reasons why we have pushed plurilaterals, for example, so aggressively over the course of the last four years. I think it is critical that we make the WTO relevant for our stakeholders today, and that goes back in some ways to, for example, addressing the issue of emerging economies. It is impossible to have a meaningful discussion about an issue like agricultural subsidies, for example, if two of the four largest agricultural subsidizers in the world, namely, India and China, are not a part of that discussion.

Mr. BUCHANAN. Let me get a couple more questions here.

Ambassador PUNKE. Sorry.

Mr. BUCHANAN. Let me just jump to just in terms of the TF agreement. What I have read is there is a trillion dollars in benefit to the global economy, 21 million jobs. It could impact not only a lot of U.S. companies, but others.

It seems like the countries that would benefit the most are the ones that are in terms of India and Africa, I guess, half of the benefit would ideally go to them. What is the holdup? Why are they not supportive, and what are we doing about it?

Ambassador PUNKE. Well, that is a very important question. You know, we had a very important agreement at Bali with trade facilitation, as you mentioned, and the agreement is very explicit about the timelines for implementing trade facilitation and for implementing other parts of our work plan in Geneva.

We have been concerned about statements by a handful of WTO members indicating that they intend somehow to link these already agreed implementation deadlines to issues that are not a part of trade facilitation and that have different deadlines.

There has been a lot of mixed signals on that front over the course of the last several weeks, including with regard specifically to India, and so we are hoping that by the time that we have this meeting in Geneva next week in the General Counsel that we will be able to move forward and all of us do what we committed to do, which is implement, adopt the protocol of accession on the timeline that we agreed.

Mr. BUCHANAN. Yes. And let me just close with this one point. Many of us were in Tokyo a month or so ago, and as relates, you touched on TPA. You know, a lot of at least the comments that I got back, everybody was concerned that we should put that in place. The Administration should have. The TPA should get passed.

People are concerned as it related to our ongoing relationships. They are afraid that they would get something negotiated and it would not get done. What is your sense of where we are at and what we have got to do to get it done?

Ambassador PUNKE. Well, Congressman, we are very committed to getting TPA. I think Ambassador Froman has practically camped up here over the course of the last six weeks in terms of the outreach that he has done personally.

Other members of the cabinet have been involved in this, whether it is Secretary Kerry, Secretary Lew, Secretary of Commerce, Secretary of Agriculture. The President has indicated, including in the State of the Union Address, his commitment to seeking and achieving a trade promotion authority agreement.

We are looking for an agreement that has the broadest bipartisan support possible. At the same time, as you mentioned, we are committed to ambitious outcomes in all of the negotiations that we are working on, and I think it is possible and it has been possible based on our experience at the table for those two tracks to proceed at the same time.

Mr. BUCHANAN. Thank you.

Mr. NUNES. The time of the gentleman has expired.

I now recognize Mr. Smith for five minutes.

Mr. SMITH. Thank you, Mr. Chairman.

I thank you, Ambassador, for your presence here today and your service. I think obviously you have got an important job, and we appreciate your service.

We know that the WTO rules-based talked about enforcement and dispute settlement and the ways to truly level the playing field on international trade, and we know that tariff elimination is a high priority, but it seems that the non-tariff trade barriers are becoming more and more of an issue, and obviously that creates in-

creases in costs and uncertainty, and they are often at the borders of countries which can least afford it.

Last year the subcommittee held a hearing on India, as you know. At the time I provided an example of a Nebraska company faced with inconsistent tariff rates and unreasonable regulatory requirements in India. Even though the market does exist for the product, and this was a common theme throughout the hearing.

While India is not the only WTO partner unfairly blocking imports through non-tariff barriers, this does reflect on the overarching fact that a number of our global trading partners, even those with the large markets and a huge trading presence continue to unfairly block U.S. goods and most notably in agriculture.

So for this reason and many others, we here on the panel were encouraged by the WTO Trade Facilitation Agreement announced last year in Bali, and while the goal is to have non-tariff barriers addressed completely, this agreement is designed to address the cost and time associated with clearing customs, and customs facilitation would be a very positive step, especially the perishable goods such as agricultural products.

And now we are hearing reports certain countries, like I said India, for example, are backing out of commitments to meet the agreement. The one thing I hear again and again in the trade arena is the importance of this accountability, and I am just wondering if you could reflect a bit on the time line.

We know that the interim deadline is quickly approaching, and can you discuss the timeline that is involved here?

Ambassador PUNKE. Well, with regard to trade facilitation specifically, the Bali agreement is crystal clear on the time line. By July 31st, which is to say in two weeks, the members of the WTO are to have concluded this so-called protocol of accession, which is a very short agreement that essentially is the launching document for everyone to go seek domestic ratification.

Also by the 31st of July developing countries are to submit their first report about the time lines that they anticipate with regard to the implementation of some of the specific obligations in the trade facilitation agreement. So that deadline is crystal clear.

Now, you mentioned as did others that there have been some inconsistent signals from India, and we are extremely concerned about that. We are working very hard in the Obama Administration to get off to a good start with the new Indian government. At Bali when we concluded the Trade Facilitation Agreement, we worked very closely; we negotiated very hard with India. They negotiated very hard with us, but we reached an agreement, and obviously we have an expectation, as you pointed out that our trading partners will live up to their commitments.

It also is critical to the WTO and the credibility of the WTO that this one agreement that we have been able to achieve in its 20-year history not evaporate six months after it was concluded.

So for all of those reasons, this is a source of an awful lot of work on our part in trying to make sure that everyone sticks to what was agreed and implements the agreement starting with July 31st.

Mr. SMITH. Would you agree that perhaps failure of reaching an agreement here actually negatively impacts consumers not only here at home but abroad?

Ambassador PUNKE. There is no question in my mind that the Trade Facilitation Agreement has enormous benefits for every member of the WTO, and there is overwhelming academic evidence that the biggest benefits of trade facilitation accrues in developing economies that are less integrated into the global economy.

So I believe that the single most important development outcome that we achieved in Bali was the Trade Facilitation Agreement, despite the fact that we did not call it a development agreement.

Mr. SMITH. Right. Okay. Switching gears just a bit before I run out of time, we know that Mexico and Hong Kong have lifted their remaining age-based restrictions on U.S. beef, and I was just wondering. You know, there are several other countries that have not lifted those age-based restrictions even though scientific evidence abounds relating to that.

Is the Administration considering pursuing some WTO action on that topic?

Well, congressman, my home town is in Torrington, Wyoming, which is about eight miles from the Nebraska border, and right on the border is a feedlot. So this is an issue that I understand perhaps from a similar perspective of you, despite being slightly across the border.

We are dedicated in this Administration and at USTR that international rules on trade be based on science, and we are pursuing that principle across numerous issues, including our efforts to promote beef exports, and we will very much continue to do that.

Mr. SMITH. Okay. Very well. Thank you very much.

Mr. NUNES. I thank the gentleman.

The gentlelady from Kansas, Ms. Jenkins, is recognized for five minutes.

Ms. JENKINS. Thank you, Mr. Chairman. Thank you for holding this important hearing, and we thank you, Ambassador, for being here and for your good work.

My home State of Kansas is a major producer of beef and pork, and as was shown in this Committee's last hearing, the U.S. livestock industry is very frustrated with difficulties of opening the Japanese market, and I can assure you that my constituents share that frustration.

But the truth is the European Union has never come into compliance with the WTO findings in the beef hormones and biotech cases, sanitary and phytosanitary cases in which the U.S. has prevailed. Do you have any suggestions on how the U.S. should manage the EU's failure to respect its obligations under the WTO SPS agreement? Do you believe that ultimately a Transatlantic Trade Investment Partnership offers a better opportunity to get the EU into compliance?

Ambassador PUNKE. Well, I think what is critical with regard to all of these difficult issues, and certainly the issues that you cited are among some of the more difficult issues that we have bilaterally, whether it is Japan or the European Union, is that we use all of the tools in our toolbox to promote our interests.

And so you mentioned WTO rules and WTO litigation, and as you pointed out, those are tools that we are applying and have applied in the context of Europe. Europe, in fact, is paying compensation having lost a case on beef hormones.

Now, that being said, as you point out, we are not yet satisfied in terms of our efforts to ensure that our bilateral trade is conducted on the basis of science. I think that T–TIP does provide an opportunity, another opportunity, for us to pursue this conversation with Europe. We are doing that.

In fact, as we speak USTR has a team of negotiators in Brussels who are engaged in the sixth round of T–TIP negotiations. There is a specific interaction over the course of this week on SPS issues, and part of that discussion includes issues like beef hormones. Part of that discussion includes issues by biotech.

And so we are not where we need to be yet in terms of results, but we are at the table literally today and using every one of the tools that we have at our capacity to try and achieve a science-based result.

Ms. JENKINS. Okay. Thank you, Mr. Ambassador.

I yield back.

Mr. NUNES. I thank the gentlelady for yielding.

The gentleman from Louisiana, Mr. Boustany, is recognized for five minutes.

Mr. BOUSTANY. Thank you, Mr. Chairman.

And, Ambassador Punke, congratulations on Bali, and thank you for the outstanding work you are doing along with your team.

I want to revisit the Trade Facilitation Agreement because of the recent hurdles that have emerged, and given the importance of this, first multilateral since the formation of the WTO in 1994. This is really important, and all the nations will benefit, especially the African countries, India, Brazil and so forth.

And yet everything seemed to be a go. We were just two weeks away from the deadline for the protocol of accession, and now India has created this difficulty by trying to merge some food security issues which should be dealt with in 2017, and I am trying to understand what exactly is going on with that because we have a new Indian government under Prime Minister Modi who has touted themselves as a pro business individual, somebody who wants to engage more not only in opening up the business atmosphere within India, but also internationally. This is baffling to me, and so I was hoping you might shed a little more light on that.

Second, the members of the African Union who have also raised a separate issue, I think it is with funding or to help build capacity for the facilitation agreement. Are the Indians and Africans collaborating on this or are these two separate developments?

Ambassador PUNKE. Well, I do not know the degree to which there is interplay between the Indians and Africans in terms of their discussions. They are raising in some cases slightly different issues, and so maybe I will address them separately.

With regard to India, as you pointed out, there have been conflicting signals even in the last 24 hours as to where India intends to come down on fulfilling its obligation under the Trade Facilitation Agreement, and we are certainly hopeful that the more positive signals that we have heard are the ones that will prevail in Geneva at the General Counsel meeting next week.

Ambassador Froman left Washington yesterday for a meeting of G–20 ministers in Sydney. I will be joining him there on Saturday, and this is an issue that we will be raising along with other G–

20 members very directly with India in an effort to get clarity on exactly where the Indians stand.

I do remain hopeful that the positive signals will be the ones that prevail.

With regard to Africa, you point out I think one of the most perplexing aspects of this, which is that what every African country is doing domestically is seeking to improve its trade facilitation systems. What the Africans are doing regionally is regional cooperative efforts to improve trade facilitation.

And so the notion that we would not also cooperate on this issue multilaterally in the WTO is perplexing, and that being said, we were able to reach an agreement, and the more recent signals from most of the Africans have been positive in terms of following through on their obligations.

There are a couple of outlier signals from a very small handful of African countries, but obviously we're hopeful that they will also respect their obligations by the time we get to the key moment next week

Mr. BOUSTANY. Yes, I hope so. I know the Administration put forth this Power Africa initiative. Mike Froman has been very much involved in it. That ought to be a clear signal that the United States is committed, but given the fact that trade facilitation will help these countries immensely, it is truly perplexing that they have taken this initial step. I hope we can get through it because earlier, as you said, this Trade Facilitation Agreement has basically the impact of creating a virtual cycle with regard to Doha, and the actions of India and Africa, these African countries threaten to take us back to where we were with the impasse on Doha, and that is a big concern I have.

Finally, I just want to quickly ask you about China and the ITA. I was in China in March, as you know, and we pushed them really hard. I think the whole of government we are pushing. Do you think we will get a breakthrough at APEC with President Xi?

Ambassador PUNKE. Well, I am extremely hopeful we will have an agreement, but we are not there yet. As you pointed out, China is hosting APEC this year, and we had been without even dialogue with China for almost six months prior to the APEC meeting in Chengdu.

There was incremental but positive progress on ITA on the margins of the Chengdu meeting in May. I was in Beijing last week with Ambassador Froman and with a number of members of the President's cabinet in the context of the S&ED discussions. We pushed this issue very hard, not just Ambassador Froman, but also Secretary Kerry, also Secretary Lew, and we made more incremental progress.

But we still are not where we need to be in, I think, achieving what the chairman referred to as a sufficiently long list where China is making an appropriate contribution to the overall agreement.

We are going to keep pushing, and I think we can get there, but we are not there yet.

Mr. BOUSTANY. Mr. Chairman, I think we need to send a strong signal to the Chinese to reach that level of ambition on ITA. I mean, they are one of the world's largest exporters of technology

products, and for them to really in effect wreck this deal is not good.

This is an opportunity for the new leadership in China to step up internationally and to provide leadership and do the right thing for the international community.

Thank you. I yield back.

Mr. NUNES. I thank the gentleman.

The gentleman from Illinois, Mr. Roskam, is recognized for five minutes.

Mr. ROSKAM. Thank you, Mr. Chairman.

Ambassador, I want to shift gears if I could and move from the details and on the ground sort of insights that you have been able to provide, and I have learned a great deal from this morning and I thank you for that, to a little bit more of a philosophical question, and so let me lay a premise out, and I would be interested if you think my premise is right, and what your observations are as somebody that is driving U.S. trade policy and really having an impact all around the globe.

And here is what I have observed. I think that there is a palpable ambiguity in the United States on what the U.S. role should be in the world today. On the political left, and I do not want to over-characterize it, but you will get my drift; on the political left there is this feeling, and it kind of a hangover from Vietnam, a hangover from the debate about Iraq and weapons of mass destruction, and so forth, and there is this natural reluctance to assert American power around the world.

On my side of the aisle, in my party, there is a growing isolationism that is now becoming manifest in our debates and so forth, and it is shrouded in budget talk. You know, we cannot afford this, and so forth.

And so here is my question. So what have you observed as somebody who is really uniquely on the global scene and interacting all around the world literally? How does trade fit into the assertion of American influence?

And I am not talking sharp elbowed "have it our way," but I am of the view that the United States and our presence around the world is a good thing.

An Asian Ambassador yesterday put it very elegantly to me in my office, and he said, "We miss you more than ever," meaning the United States.

Can you give me your observations about how trade fits into this overall influence that we are trying to have, you know, as the Navy puts it, as a global force for good? It sounds like a bumper sticker, but it is a very apt way of trying to describe this.

How does trade fit into this whole milieu?

Ambassador PUNKE. Well, I think it is a very interesting question and a very interesting premise. I would disagree with the Asian Ambassador who would indicate in any way that the U.S. has been missing, and I think in listening to your question what I thought of was actually just the opposite in the following sense.

One of the things that I think is unique about this moment historically in terms of U.S. leadership is the degree to which we have put ourselves really at the center pivot of critical discussions. We are at the center pivot of a discussion about Asian trade through

TPP. We are at the center pivot of a discussion about Atlantic Trade in T–TIP. We are at the center pivot of an effort to make the WTO a more productive place through leadership in TSA and ITA and environmental goods.

So I really see us as being very well positioned right now if we can consummate those agreements, and that is the question that I think from a philosophical standpoint is the challenging one, is how do we build a bipartisan coalition that is supportive of trade and those agreements that I just described because the key thing from my perspective is that those agreements are the way that we have an opportunity to not only create economic opportunities for U.S. stakeholders, but also to promote our values globally.

And the thing that is frustrating to me sometimes is I think that sometimes opponents of these agreements forget that this is not happening in the abstract. Our rivals are out there very actively seeking to put their own systems in place, and for example, in the context of TPP, we can be very certain that if TPP did not succeed that the Chinese would be quite happy to fill that vacuum with their RCEP agreement, and I can guarantee you that values and concerns that we have about things like environmental protection, consumer protection, labor rights will be far better served under TPP than they would be under Chinese leadership.

Mr. ROSKAM. It seems that one of the areas where we can all work together, the Administration and this Committee, in particular, and you sense a strong bipartisan commitment to free trade is to articulate at home how this is a winner for us, how this is a winner for our consumers, how this is a winner for our producers, and we need to shun the sort of thinking that says, "No, this is a zero sum game, and the only way somebody else benefits is at our expense."

And so to the extent that we can be actively participating with you in that debate, I would be honored to play that role.

Mr. NUNES. The gentleman yields back.

And I recognize the gentleman from Connecticut, Mr. Larson for five minutes.

Mr. LARSON. Thank you, Mr. Chairman, and thank you, Ambassador for your service.

Following along with a number of the concerns that my colleagues have addressed, I always like to try to take it back to my district and to a place called Augie & Ray's. I do not know that you have been there, Ambassador, but if you ever get the chance, I highly recommend it. Larson's special is not bad.

But it is at Augie & Ray's that you hear the unfiltered opinion of the community, and I am talking about everybody from the Chamber of Commerce to the insurance industry to the machinists at Pratt & Whitney, and it is there that we see this growing skepticism and divide about trade, and it is a great irony coming from a State that is primarily an export State that relies on trade.

I think a lot of the angst comes from both the implementation of trade agreements with unenforceable provisions, aka such as the labor provisions in NAFTA, and also the enforceable provisions that while useful, often require years of deliberation and considerable amounts of money before the enforcement actually takes place.

While the Administration clearly has been aggressive in utilizing the enforcement mechanisms available in the WTO, it is clear that more must be done to ensure that nations are living up to the standards that they agreed on, Mr. Roskam's point, I think, that that would better have the public have a stronger feeling about it.

So I have three questions that I want to pose to you, short ones, but what more is the Administration doing to ensure that American businesses, manufacturers and laborers are playing on a level playing field?

And that is the whole gist at Augie & Ray's, is that they are not. They feel that we write tax policies that make it easier for people to go overseas, and then we end up in trade agreements that further hurt labor here at home.

So what are we doing further to level the playing field with their competitors?

Also, and again, this is something that Mr. Boustany raised as well, and I think it is generally held on the committee, our overarching concerns with China who consistently retaliates when the United States brings an issue to the WTO for enforcement. It seems that these types of retaliatory actions have in many ways stalled the United States' ability to move forward on issues like addressing currency manipulation, which again has broad bipartisan support here in Congress and would have a real beneficial impact on the American workforce and send a clear message that, yes, we are staunchly persistent in wanting to enforce this.

And last, because it is at that same place and because it is, again, an export State and a lot of small businesses and major manufacturers, they rely heavily on the Import-Export Bank.

Has the USTR taken a position on the Import-Export Bank? It faces expiration this fall, and yet it is a vital tool, again, in terms of leveling that playing field.

Ambassador PUNKE. Well, thank you, Congressman. Let me try and work my way through those starting with the initial observation you made about the importance of labor and environment provisions being fully enforceable.

We agree with that, and one of the things that we have made a hallmark of our efforts to negotiate in TPP and T–TIP is to seek labor and environment provisions that are not only fully enforceable but also subject to dispute resolution the same as any other obligation in the agreement, including in the instance where a party prevails in dispute resolution and the losing party does not come into compliance, that there would even be the potential of trade sanctions to enforce those obligations.

So we agree with you that that needs to be a central part of the way that trade agreements are negotiated in the 21st Century.

To touch briefly on the other specific issues that you raised, what are we doing about leveling the playing field? Part of that, I think, is a very aggressive and constant effort with all of our major trading partners to open up new opportunities so that there is not the ongoing situation where the U.S. market is more open than the market of our most important competitors.

You know, the truth of the matter, and this is something that I think is relevant to the philosophical question that was raised by Congressman Roskam, is that the U.S. market is largely already

open. We made that decision beginning 60 years ago at the end of World War II.

So we are more open than a lot of the countries that we are most worried about, and the only way that I know of to bring that into better alignment is to negotiate trade agreements where we lower the barriers that our competitors still maintain. But that requires us to engage and specifically to engage in trade negotiations and bring back trade agreements.

The other aspect of that, I think is enforcement and demonstrating that we do not just negotiate the agreements and then they go away, but rather that there is vigilance there and that we will ensure that other countries live up to their obligations.

I think enforcement has been a hallmark of this Administration just in the WTO context alone. We have brought 18 WTO enforcement cases.

One of the things you mentioned is concern about the Chinese using inappropriate retaliatory litigation when we brought legitimate cases. That is something we have pushed back against explicitly, and I might add also successfully in terms of their misuse of their domestic anti-dumping laws. So that is a place where we are very focused.

The last point you raised, which I will just . . . though very briefly . . . because my position will not surprise you, is our position with regard to Export-Import Bank. Of course, USTR is strongly in line with the position of the Administration about the importance of extending the Ex-Im Bank and maybe the additional perspective that we bring to that is to see what our competitors are doing.

And we know what we are up against, and I think the Ex-Im Bank is one of the things that helps to level the playing field in exactly the way that you were talking about.

Mr. LARSON. Thank you.

Thanks for the latitude, Mr. Chairman, also.

Mr. NUNES. No problem. The time of the gentleman has expired.

I now recognize the gentleman from Wisconsin, Mr. Kind, for five minutes.

Mr. KIND. Thank you, Mr. Chairman. Thanks for holding this very important hearing.

Ambassador Punke, it is very good to see you again, and thanks for your service to our country.

Let me ask you, Ambassador Punke, while I have got you here, a resources issue. I mean, right now we are engaged in TPP negotiations, T–TIP negotiations going on, trying to figure out a way to salvage and resurrect the Doha Round, the potential for plurilateral negotiations to help spur Doha. You have directly been involved in the ITA negotiations, especially with China. We have got the Environmental Goods Agreement that is pending, Trade in Services Agreement, Trade Facilitation Agreement coming out of the Bali Ministerial Round.

Is our team in Geneva and is our USTR team being stretched to the limit right now in regards to our negotiating capacity, given all of these different items, which are tremendously important in their own right, but how are we doing as a Congress in making sure that

you and the entire USTR team have the resources that you need in order to do an adequate job of representing this country with so many balls up in the air at the same time?

Ambassador PUNKE. Well, Congressman, thank you very much for that. We certainly are very grateful for the support that we have had from you specifically, but from the committee more broadly in terms of resources for the Office of the U.S. Trade Representative.

Look. We pride ourselves on being lean and mean at USTR, and we will always make do with whatever resources we are given and life off the land or do whatever else is necessary to make sure that we are fulfilling our mission.

I think Ambassador Froman was asked this question a couple of months ago and noted the fact that there had been recent months particularly during the sequester when we were perhaps a little bit leaner than we wanted to be. I think we are in a slightly better position as of the last couple of months, and it has been gratifying, I think, to have the ability to field the teams in the places that we need to field them in order to engage robustly in all of the negotiations that you described.

So we appreciate your support. We will make the most of the resources that we are given, and we know that in the type of budget environment that we are in, that all of us have to be very accountable in terms of how we spend scarce resources, but we will continue the conversation with you about resources and USTR.

Mr. KIND. All right. I gave you a softball. I gave you a chance to ask for more, but I am not hearing a specific list of concerns right now.

What about retention? Obviously you have been in place for about four and a half years, a little over four years. Obviously a lot of this requires a lot of experience, background, relationship building, too. How are we doing in keeping the team constitutes?

Ambassador PUNKE. We are doing pretty well, given the fact that USTR's very talented staff has lots of opportunities. I think one of the things that I love about the agency that I work at is that people are very dedicated to their mission. They genuinely love their work, and so people tend to stick around.

That is not true across the board, and there are areas where, you know, we always would hope for a longer retention, but I think as a general matter we are doing okay.

Mr. KIND. What is your assessment of where Doha is at the current state? Obviously we have a new General-Director Azevedo, who has tried to resurrect and breathe new life into it and that, but to say it has been disappointing as far as lack of progress would be an understatement. Here I think you appreciate that, too.

But this was the opportunity of being able to bring those developing and emerging economies into the global trading system, and it just seems to be a disappointment so far.

Ambassador PUNKE. Well, we are at a critical juncture just over the next two weeks because Bali gave us a chance, but over the next two weeks we will find out whether or not WTO members are sticking to their Bali commitments. If they stick to their Bali commitments and we can continue to point to trade facilitation and the other Bali agreements as areas where it worked, that gives us a

chance of grappling with the bigger issues like the one that you pointed out of the appropriate role of the emerging economies.

If Bali falls apart, it is very difficult to imagine that we are going to be able to have that conversation about post Bali in any kind of a credible way.

Mr. KIND. Geographic indicators at EU, is this insurmountable or do we have tools with WTO to help?

Ambassador PUNKE. Well, it is a huge issue with the EU, as I know you know well coming from where you come from, and I will say very clearly in the context of T–TIP that we will not be bringing the European system of geographic indications to the United States.

At the same time, we will be pressing very hard for access for our agricultural products in the geographic indication domain into the European market, and that is a conversation that is difficult and very significantly different viewpoints obviously between us and the European.

But I have discovered something quite interesting in my time in Europe over the last four and a half years that we are injecting into that conversation, and this will be of interest to you, I think, Congressman, and that is I have discovered the phenomena of something called German feta cheese, and I have also discovered the phenomena of something called French gruyere, and I am not an expert on cheese the way that people form your State might be, but I do know that gruyere is not in France, and so that is the type of anomaly that we are pointing out to our European colleagues in trying to address this issue of geographic indications in the context of T–TIP.

Mr. KIND. All right. Thank you, Mr. Ambassador.

Thank you, Mr. Chairman.

Mr. NUNES. Thank the gentleman.

The gentleman from Minnesota is recognized for five minutes.

Mr. PAULSEN. Thank you, Mr. Chairman.

And, Ambassador, just I want to reiterate just a thank you for your daunting and continued efforts in leadership in advancing the trade agenda.

A couple of things I want to just touch on real quick. As you well know, health care is playing a very increasing role in the U.S. and global economies, and there is no doubt it is the largest private sector employer in the United States. It is one of the largest and fastest growing sectors in the world economy. It is also one of America's key economic drivers of innovation and cutting edge research.

And it is not just pharmaceuticals or medical devices that a lot of folks just think of. We are actually talking about opportunities in our health care service delivery now in terms of express delivery, hospital design, doctors, nurses, insurance companies, health IT systems, as well as logistics.

You know, my colleague on the committee, Ron Kind, who was just speaking a minute ago, and I have even gone so far as to ask Ambassador Froman to consider adding a position that would have USTR dedicate a position on health care trade. Can you just comment or add some thoughts about the role or the importance that you see right now that this sector has in your work in Geneva or in trade negotiations?

Ambassador PUNKE. Well, thank you for that question, Congressman Paulsen.

There is no question that we see health care as being an enormously important sector in all of the manifestations that you described. You know, just last week in Beijing we were pressing the Chinese specifically on the information technology agreement with regard to tariffs on things like MRI machines, CAT scans, implantable medical devices.

But we are also very aware, as you point out that health care is not just goods. It is also significantly services, and one of the, I think, most helpful or most hopeful fora for seeking to promote those type of opportunities in terms of U.S. services is through TiSA.

You mentioned insurance. You mentioned health IT logistics. You mentioned, you know, the provision of health care services themselves. All of those are issues that are under discussion in the TiSA context right now, and we see enormous potential.

Obviously those are also part of the various bilateral and regional agreements. So we are very focused on that issue set.

Mr. PAULSEN. Good. And let me follow up with sort of a different topic here. When the TRIPS agreement was negotiated 20 years ago, there was some disagreement whether intellectual property was truly a trade issue, and developments since then have certainly answered the question. The answer is yes, and IPR is now actively traded whether it is in the form of cross-border licensing agreements or sales of IPR portfolios or a cloud computing services and other services that allow foreign clients to have access to U.S. companies' intellectual property rights.

In fact, IPR now accounts for the major portion of the value of many of U.S. exports. If you take the iPod, for example, the value of Apple's IPR accounts now are far more than the value of the final product in terms of shipping and distribution and assembly.

Yet there are a lot of countries within the WTO that continue to question intellectual property rights, especially copyrights and patents for innovative medicines.

What are you doing to ensure that WTO members comply with those TRIPS obligations to help build greater understanding within the WTO of the importance of IPR?

Ambassador PUNKE. Well, it is an ongoing focal point for us in terms of enforcement. And I talked earlier about the premium that this Administration has placed on enforcement and specifically on intellectual property enforcement, whether it is with regard to the TRIPS agreement and our opportunities in the WTO to pursue this multilaterally; whether it is with regard to a new negotiation like T–TIP where we have another country in the form of the European Union that actually has quite high standards with regard to intellectual property, and we see the potential to work together to create a standard that can be pointed to in future negotiations with other parties, whether it is with regard to a country like China or India, which was mentioned, as places where we have significant concerns about intellectual property compliance and we are pursuing enforcement; whether it is through bilateral discussions or litigation.

We are using the whole toolbox across the whole range of issues precisely because I think we recognize that what intellectual property is about is innovation and protecting innovators, and we obviously want to continue to be an innovation society.

Mr. PAULSEN. Thank you, Mr. Chairman. I yield back.

Mr. NUNES. I thank the gentleman.

Ambassador, I would like to thank you for your testimony today. Our record will remain open until July 30th, and I urge interested parties to submit statements to inform the committee's consideration of the issues discussed today.

This hearing is now adjourned.

[Whereupon, at 11:17 a.m., the subcommittee was adjourned.]

[Questions for the record follow:]

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Questions from Rep. Boustany

1) Trade in Services Agreement

The Trade in Services Agreement, or TiSA, has massive commercial potential, and could be a major source of job creation for U.S. firms. And if you look at our economy, we have a competitive advantage in this area, with 75 percent of the U.S. GDP being in services, 80 percent of the private sector employment, and currently 30 percent of our exports.

As I look at TISA, 70 percent of the world market is represented with those countries, and while TiSA negotiations are making good progress, I understand that delegations in the WTO are trying to frame the post Bali work plan for the remaining subjects from the stalled Doha agenda, which also includes services.

Can you give us the assurance that the United States will not agree to any post-Bali work plan that would prejudice or impede the TiSA negotiations as a separate plurilateral services agreement?

As I've mentioned in the past, I believe that TiSA is a way to empower even the smallest nations to develop and grow. What do you see as the next step for TiSA?

Response:

The Trade in Services Agreement (TiSA) is an initiative that is separate and distinct from the post-Bali work program and we will continue to work on that basis going forward.

As the negotiations continue, we hope that TiSA will establish global best practices that support economic development and international competitiveness. We are working to accelerate the pace of negotiations to bring TiSA toward completion as quickly as possible. Over time, we hope that others will adopt these practices, whether that is by joining TiSA, applying them unilaterally in their domestic regime, or incorporating them into the multilateral trade framework.

2) Transatlantic Trade Investment Partnership

The United States has always sought ways that the WTO could more effectively tackle trade barriers, including sanitary and phytosanitary barriers to agriculture trade not based on sound science.

The European Union's (EU) regulatory framework for plant protection products – specifically, the hazard based approach to pesticide registration articulated by EU Regulation 1107/2009 (DG Environment) – appears to run afoul of the WTO Sanitary and Phytosanitary Agreement to which the EU and the United States are a signatories. Unfortunately, the EU-DG Environment is proposing to increase its regulatory

divergence from the US and other developed nations by including endocrine disruption as another basis for "categorization" within this regulation.

The EU has never come into compliance with the WTO findings in the beef hormones and biotech cases – SPS cases in which the U.S. prevailed – and the settlements we have reached don't put the EU in compliance with its obligations. Ambassador Punke, do you have any suggestions as to how we should manage the EU's failure to respect its obligations under the WTO SPS Agreement?

Response:

The U.S. trade and investment relationship with the EU is the largest and most complex economic relationship in the world. Resolving unwarranted barriers with the European Union is a high priority for the Administration to improve access to this important market. We use a variety of venues and mechanisms to seek resolution of unwarranted measures and to ensure that such measures be grounded in science. For example, we raise concerns in bilateral meetings, at the WTO, and in parallel to negotiations of the Transatlantic Trade and Investment Partnership (T-TIP). We will continue to use all tools available to advance with the EU science-based measures.

3) Transatlantic Trade Investment Partnership

According to a European Commission spokesperson, U.S. and European Union trade officials held stocktaking and political meetings in the early fall as the next step in major trade talks between the two sides. The U.S. hosted the seventh round of Transatlantic Trade and Investment Partnership (TTIP) negotiations in October. The two sides are working for progress on opening more agricultural access in the EU and deepening access to the U.S. government procurement market.

Given the EU's spotty track record of compliance with its obligations under a WTO Agreement, what can we do to ensure that the EU respects its obligations under a TTIP agreement?

Response:

The Transatlantic Trade and Investment Partnership (T-TIP) negotiating teams have been making steady progress over the course of seven negotiating rounds, starting in July 2013. We are working to eliminate tariffs on trade in goods, including agricultural and industrial products, increase market access for services and investment, eliminate unnecessary regulatory barriers to trade, and negotiate other disciplines aimed at increasing our bilateral trade and investment and at addressing global issues of common concern. We are also seeking to include in the agreement binding obligations, subject to dispute settlement, that are aimed at supplementing and improving implementation of WTO commitments, including those in the WTO Sanitary and Phytosanitary (SPS) Agreement and the Technical Barriers to Trade (TBT) Agreement. In addition, we are

seeking to establish mechanisms, such as joint committees, that will closely monitor implementation of the T-TIP agreement, particularly in the areas of SPS and TBT, and will provide a forum to address issues that may arise with regard to specific obligations after entry into force. We believe these T-TIP obligations can reinforce the EU's adherence to its WTO obligations.

4) Transatlantic Trade Investment Partnership

The EU is currently considering new regulations for endocrine disruptors that are not consistent with requirements of the WTO SPS Agreement. The EU approach will impact not only on trade in pesticides – current and future – but also will impact trade in food, feed and seed products produced using these pesticides. The import tolerance specified by the EU for "categorized" compounds is typically effectively zero, so even trace amounts of a compound that becomes "categorized" as an endocrine disruptor or potential endocrine disruptor will likely prevent the food, feed or seed product from entering the EU.

U.S. exports of raw agricultural commodities to the E.U. could be reduced by approximately US$3.9 billion as a result of this policy change for endocrine classification. The largest effects would be felt in exports of tree nuts and fruits (US$1.58 billion); soybeans and peanuts (US$1.52 billion); and grains (US$0.59 billion). Including food and feed products processed from these commodities would increase the potential effect to US$4.6 billion.

What is USTR doing to assure that this does not happen?

Response:

We support approaches that ensure health and safety measures are based in science and that protect the public. USTR is working closely with the Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA) and others to provide input into the EU's public consultation process to help ensure that the EU considers the relevant science.

5) Commodity Specific: Rice

U.S. rice producers and exporters are being disadvantaged by excessive support programs in foreign countries like Thailand, Vietnam and India. These programs are supporting rice production that ends up on the world market, putting downward pressure on global prices and providing unfair competition to U.S. farmers. There is evidence that these programs are providing amber box support well in excess of these countries' WTO commitments.

What steps is the Administration taking in Geneva to hold these countries to their WTO domestic support obligations?

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Response:

USTR continues to work to level the playing field for U.S. farmers, including U.S. rice producers, around the world. We are actively pressing countries on their domestic support and other agricultural policies in the WTO Committee on Agriculture (COA). At the most recent COA meeting on November 13, 2014, for example, the United States, with other WTO Members' support, questioned Thailand and India on their domestic support programs. We will continue efforts to ensure both that WTO Members provide all required transparency to their programs and comply with subsidy disciplines.

6) Commodity Specific: Rice

Many advanced developing countries are woefully behind in their reporting to the WTO of domestic supports to their agricultural sector. India comes to mind as a prime violator. Timely and comprehensive reporting of domestic support levels is critical to an assessment of whether countries are adhering to their WTO obligations.

What steps is the Administration taking to insure compliance with this basic WTO reporting requirement? Absent timely reporting, what is being done to estimate domestic support levels in advanced developing countries?

Response:

USTR continues to actively press countries to comply with transparency obligations at every opportunity, including most recently at the WTO Committee on Agriculture meeting on November 13. And we have had results. For example, India in September 2014 finally notified its domestic support for the years 2005-2011. USTR and the U.S. Department of Agriculture (USDA) work in partnership to monitor and analyze domestic support being provided by other WTO Members. I also raised the issue of China's compliance with its transparency requirements at an Agriculture Committee Special Session meeting on November 27.

7) Commodity Specific: Sugar

India's export subsidies for sugar appear inconsistent with WTO rules. For example, India introduced export subsidies for raw sugar earlier this year and, despite criticism by other WTO members, has refused to withdraw them.

These subsidies appear to be in contravention of WTO rules. What is the Administration doing about it?

Response:

USTR and the U.S. Department of Agriculture (USDA) work in partnership to monitor and analyze domestic support programs being provided by other WTO Members, including India's

policies supporting various commodities. For example, at the most recent WTO Committee on Agriculture meeting on November 13, the United States and other countries questioned India's support policies for several commodities, including on sugar. India's domestic programs will also be a focal point of discussions in the coming months concerning the Doha Development Agenda.

Questions from Rep. Roskam

1) Agriculture Exports

I appreciate your testimony on the WTO and efforts to eliminate unscientific barriers to trade posed by restrictions that violate the SPS agreement. The United States has benefited tremendously from free trade, and it is essential that we work to create an open trade system that allows American companies to flourish.

I have significant concerns that the USDA catfish program would create the same type of barriers to trade that we have asked other countries not to do to us. USDA has stated that catfish is a low risk food and the ability for USDA to improve the food safety of catfish is "unknown." The New York Times reported last month that 10 ASEAN Ambassadors wrote to Ambassador Froman opposing this program, and some have already hired WTO lawyers to bring a suit against the US if the USDA catfish program is implemented

The USDA catfish program and an impending WTO suit would have an immediate and significant impact on Illinois as seafood processors will become subject to duplicative regulation by FDA and USDA and Illinois agriculture exports could be subject to WTO retaliation based on this program.

I understand that the USDA catfish program final rule is currently pending at OMB for final review. What is USTR doing to address potential WTO issues concerning the USDA catfish program?

Response:

I understand your concerns about the issues related to the new Farm Bill. The final rule is currently being reviewed by the Office of Management and Budget (OMB), including for consistency with international obligations.

Questions from Rep. Reed

1) Geographical Indications

As you noted in your remarks, the EU's approach to geographical indications (GI) poses a serious concern. Of most far-ranging concern is the advanced effort by many EU countries to use the World Intellectual Property Organization (WIPO) as an end-run around long-

running WTO discussions regarding GIs. The effort to expand the WIPO agreement on GIs poses a very serious concern regarding existing WTO obligations given the fact that there do not appear to be efforts underway to minimize the trade impacts that will occur from the expansion of this WIPO agreement.

What is USTR doing in Geneva to address this concern and ensure that the EU will not be able to successfully use a newly expanded and redrafted international-level agreement on GIs to unfairly block U.S. exports?

Response:

We share your concerns about the EU's approach to GIs that block U.S. exports to the European market and efforts to expand the WIPO-administered Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, to which the U.S. is not a party, to cover GIs generally. USTR, in close coordination with the United States Patent and Trademark Office and the U.S. State Department – the lead U.S. agencies in WIPO – as well as other relevant agencies, is engaging intensively in Geneva as well as bilaterally with numerous trading partners to address our serious concerns with the Lisbon Agreement negotiations.

Questions from Rep. Jenkins

1) WTO Enforcement

Since the creation of the WTO, the United States has been involved in nearly half of the disputes brought under the agreement. In many cases these disputes have been settled favorably, however, in some instances where the United States has prevailed, the offending country has failed to remedy the wrong, sometimes for many years. One glaring example is China, which has still not come into its compliance in the electronic payment services case. In addition, it is well documented that certain exporters in that country try to evade US antidumping and countervailing duties by transshipping products through third countries. Please explain what the Administration is doing to address transshipment. And what more can be done to ensure that WTO members are complying with their obligations?

Response:

As you noted, USTR vigorously enforces U.S. rights under international trade agreements. At the WTO, USTR uses WTO committees to raise issues of concern and build coalitions and, whenever necessary, uses the dispute settlement system to vindicate U.S. rights. Since 2009, USTR has brought 18 WTO complaints against large and strategic trading partners, such as China, India, Indonesia, and Argentina. We have achieved significant successes in these disputes, and just this year USTR has announced four significant WTO victories, including on China's unjustified extra duties on American cars and sport utility vehicles (SUVs); on China's export duties and quotas on exports of rare earths, tungsten, and molybdenum; on Argentina's

import licensing requirement and other import restrictions; and on India's ban on various U.S. agricultural products, such as poultry meat, eggs, and live pigs, allegedly to protect against avian influenza. In each of these significant disputes, USTR has obtained WTO findings that our trading partners have breached WTO rules, and we will continue to pursue a number of active WTO disputes and may bring additional disputes as appropriate to ensure that America's workers and businesses are able to seize all of the job-supporting opportunities available under U.S. trade agreements.

Once we have obtained favorable WTO findings, USTR uses a variety of approaches to ensure that our trading partners comply with WTO rules, including pressing for full compliance in bilateral and multilateral fora, as in the electronic payment services dispute with China, or pursuing further WTO litigation, as in the case of China's continuation of duties on specialty steel. With respect to the former dispute, China's State Council recently announced that it would open the electronic payment services market to qualified foreign and domestic companies. We continue to press China to issue the regulations that would permit companies access to the market on fair and open terms. These approaches are not mutually exclusive, and we continually assess each situation to determine the optimal step.

This Administration is also committed to the vigorous enforcement of our trade remedy laws to protect U.S. workers and businesses from unfair competition and allow them to compete on a level playing field. U.S. Customs and Border Protection (CBP), as well as Homeland Security Investigations (HSI) and other entities within the U.S. Department of Homeland Security (DHS) are critical to our efforts to ensure that we have a meaningful system in place to protect U.S. workers and businesses from unfair trade actions or actions to circumvent our laws. We are working with our interagency partners at the U.S. Department of Commerce, DHS, and CBP to help ensure the vigorous enforcement of our antidumping duty (AD) and countervailing duty (CVD) laws, and we will continue to hold other WTO Members accountable for their international obligations.

Questions from Rep. Reichert

1) Environmental Goods Agreement

The WTO Environmental Goods Agreement has the potential to lower costs and promote widespread usage by consumers and industries around the world for energy-efficient products and technologies. To maximize the potential benefits, I believe that negotiators should be creative and consider products that achieve their intended use in a variety of applications in an energy-efficient way. Such a list could include ceiling fans for heating and cooling and light bulbs and fixtures for lighting. Are negotiators thinking in these terms? How can we work with you to promote a robust list of products?

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Response:

The WTO Environmental Goods Agreement (EGA) represents an important opportunity to advance our trade and environmental objectives. We have reviewed the comments that we have received from businesses, environmental groups, U.S. government agencies, and Congress, and are taking these into account as we develop U.S. product proposals and positions in the EGA negotiations, including input on ceiling fans and lighting. We will continue to work closely with you and your colleagues to achieve an EGA that is both environmentally credible and commercially significant.

2) Information Technology Agreement

To follow-up on an issue raised by several of my colleagues, now is a critical time to push for an ambitious expansion of the ITA. Some priority products for this expansion include digital displays, set-top boxes, speakers, GPS systems, music players, and video cameras. How are you keeping up pressure on China and other countries to keep these products in the negotiations and final agreement? Are our European counterparts working with us to maintain a robust outcome?

Response:

An ambitious expansion of the Information Technology Agreement (ITA) is a U.S. trade policy priority. We are working intensively with our global partners to conclude this important trade objective. At the recent Asia-Pacific Economic Cooperation (APEC) leaders meeting, President Obama announced that the United States and China had reached an understanding to expand the scope of goods covered by the ITA. This understanding provided the basis for the resumption of plurilateral negotiations in Geneva in December 2014. We will continue to work closely with key participants to bring about the successful conclusion of this plurilateral negotiation in Geneva.

Questions from Rep. Sander Levin and Rep. Charles Rangel:

1) WTO Secretariat's Criticism of WTO-Consistent Measures

The WTO Secretariat has developed a "trade monitoring" program where, among other things, it identifies "trade-restrictive" measures. These measures include U.S. laws enacted by the Congress, as well as U.S. regulations and administrative programs and investigations. For example, the Secretariat identifies the extension of the National Dairy Promotion and Research Program, which, according to the Secretariat, introduced a fee that "applies to both imports and domestic production." It also identifies all investigations into whether imports into the U.S. are being dumped or unfairly subsidized and causing material injury to a U.S. industry. The Director General of the WTO has expressed concern over these measures – regardless of whether the measures are fully consistent with the agreements reached by the sovereign members of the WTO.

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The concern expressed about antidumping measures is particularly disturbing. The sovereign members of the WTO have agreed that dumping "is to be condemned" and have explicitly authorized the investigations criticized by the Secretariat, as well as the application of antidumping duties, as the appropriate response. Similarly, countervailing duties are applied to address trade-distorting subsidies that cause material injury to domestic industries. If the Secretariat of this member-driven organization has any role to play in expressing concerns, it should be expressing concerns over the dumping and unfair subsidization of products on the world markets, not over measures taken to address those unfair trade practices.

The Secretariat also categorically praises "trade-facilitating measures," despite the fact that some trade-facilitating measures are trade-distortive, and some are inconsistent with the rules agreed to by the WTO members.

Do you agree that the Secretariat's criticisms of these measures are disturbing? Is it appropriate for the WTO to be making overarching statements condemning trade-restrictive measures and praising trade-facilitative measures? What does USTR believe to be the appropriate role for the WTO to play with regard to labeling "trade-restrictive" or "protectionist" measures? What is the United States doing to address this issue at the WTO?

The Secretariat also describes the main function of the WTO as seeking "to ensure that trade flows as smoothly, predictably and freely as possible." What, in your view, is the main function of the WTO? Should a central function of the WTO be to ensure that trade flows as *fairly* as possible (i.e., in accordance with the rules established by the WTO members themselves)?

Response:

We have noted in past discussions on the WTO Secretariat's report, which generally performs a useful function related to implementation of G-20 pledges to avoid protectionism, that it is not appropriate to consider trade remedy actions as trade restrictive measures or to characterize them as protectionist. WTO rules are clear in this regard. That said, the Secretariat's report plays no role in assessing compliance with WTO obligations and it will not change our vigilance in holding our trading partners accountable.

2) Appellate Body Overreach

There is widespread and growing concern among WTO members, Members of Congress, and legal scholars that on too many occasions the Appellate Body has gone beyond interpreting agreements. In some instances the Appellate Body has established new obligations that the WTO members never agreed to accept. These decisions make negotiating new agreements at the WTO even more difficult as countries are often unsure

how the Appellate Body will interpret the text of a new agreement. In your view, what can be done to address Appellate Body "overreach"?

Response:

We share the concern about Appellate Body overreaching in certain reports, recognizing that the Appellate Body has in some cases reversed strong panel reports, particularly in the area of trade remedies. The United States is an active user of the WTO dispute settlement system to enforce its rights and we want and need a system that understands and respects its role. We seek, through our advocacy in particular disputes, our participation in the Dispute Settlement Body, and our engagement with other WTO Members, to ensure that the Appellate Body exercises only its role as set out in the Dispute Settlement Understanding and the WTO Agreement. We have also introduced for discussion potential guidance that WTO Members could provide to panels and the Appellate Body to clarify their role in resolving disputes. We will continue to work with the Committee on this important issue.

3) Enforcement

An important part of our WTO trade agenda needs to be enforcement of the rules that are already in place. Enforcement and enforceability are what give meaning to the existing rules and our efforts to create new rules. Please describe the areas where the Administration sees the most meaningful opportunities for bringing offensive cases at the WTO in the future. Further, please discuss the role the Interagency Trade Enforcement Center has played thus far and the role you see it playing in the future in enhancing the ability of USTR's litigators to pursue and defend U.S. trade interests through enforcement actions at the WTO. What more can Congress do to support USTR's enforcement efforts to level the playing field for our companies and workers?

Response:

Vigilant monitoring and rigorous enforcement of U.S. trade rights is necessary to ensure that America's working families are able to seize all of the job-supporting opportunities available under U.S. trade agreements. Under this Administration, USTR has vigorously enforced U.S. rights at the WTO, bringing 18 WTO complaints since 2009 against major trading partners, such as China, India, Indonesia, and Argentina. These complaints have covered practices such as trade-distorting subsidies, export restraints on raw materials, import licensing barriers for industrial and agricultural products, local content requirements, retaliatory use of trade remedies, and non-science-based measures.

These restrictions have affected or had the potential to affect significant amounts of trade. For example, the United States recently prevailed in a dispute finding that China breached WTO rules by imposing unjustified extra duties on American cars and SUVs; in 2013, an estimated $5.1 billion of U.S. auto exports were covered by those duties. In another recent dispute, the WTO found that China breached WTO rules by imposing duties and quotas on exports of rare

earths, tungsten, and molybdenum. Those export restraints promote China's own industry and discriminate against U.S. companies using those materials, which are key inputs by American manufacturing sectors, including hybrid car batteries, wind turbines, energy efficient lighting, steel, advanced electronics, automobiles, petroleum, and chemicals. And over recent years, we have seen that similar restrictions have been adopted by different WTO Members while other restrictions have been repeated by the same Member. These developments make it all the more important that USTR have the focus and ability to bring resource-intensive enforcement actions in the WTO, as necessary, to vindicate U.S. rights.

USTR will continue its enforcement efforts with a focus on opening large, strategic markets, and combatting policies and practices of concern. Operationally housed at USTR, ITEC is a partner and enhances enforcement efforts using expertise from across the federal government. With its interagency team of multi-lingual researchers, subject matter experts, and economic analysts, ITEC leverages and mobilizes federal government resources and expertise to address unfair foreign trade practices and increase engagement with foreign trade partners. Examples of some of the issues ITEC is currently examining include various types of subsidies in a number of countries, intellectual property rights issues, and assorted tax issues that could provide export subsidies or benefit locally produced goods over imported goods.

Question from Rep. Sander Levin:

1) Environmental Goods Agreement

Negotiations of the Environmental Goods Agreement (EGA) recently began. These negotiations have the potential to make it more cost effective to address a wide range of environmental issues and increase U.S. exports. Of course, there are a number of difficult issues that will need to be resolved. For instance, the scope of the EGA is uncertain at this stage, both in terms of product coverage and obligations. What is USTR's approach to determining which goods should be covered under the EGA? Further, what is USTR's approach to addressing non-tariff barriers (NTBs) in the EGA?

Response:

The WTO Environmental Goods Agreement (EGA) represents an important opportunity to advance our trade and environmental objectives.

We have taken a pragmatic, step-by-step approach on environmental goods over the past several years, building a coalition of countries committed to liberalizing trade in these important technologies, first in APEC and now in the WTO. The next step is to secure agreement to eliminate tariffs on a broad range of environmental goods through the newly launched EGA negotiations. We also recognize the critical importance of addressing non-tariff barriers in this and other sectors, and will work closely with stakeholders to address them in the WTO and other fora. Successful, timely completion of the EGA will require a focused effort among WTO Members.

Questions for the Record
Ambassador Michael Punke
July 16, 2014 Hearing
Advancing the U.S. Trade Agenda: The World Trade Organization

We have reviewed the comments that we have received from businesses and environmental groups, including through consultations with our cleared advisors and the public hearing we held on the issue, and are taking this input into account to develop U.S. product proposals and positions in the EGA negotiations. We will continue to work closely with Members of Congress to achieve an EGA that is both environmentally credible and commercially significant.

Question from Rep. Richard Neal:

1) SOEs in TiSA

I was pleased to see that TiSA negotiations are progressing, and I appreciate the update Ambassador Punke provided. I'm interested in one particular area of the TiSA negotiations: state-owned enterprises (SOEs). What is USTR's plan for addressing SOEs in TiSA? Does USTR plan on proposing SOE disciplines where each country would be required to make horizontal commitments?

Response:

We believe that unfair competition with state-owned enterprises (SOEs) can pose a serious challenge for U.S. service suppliers. We are working with stakeholders and other agencies in order to assess whether to develop horizontal disciplines on SOEs, and will consult with you as our thinking evolves.

Questions from Rep. Richard Neal and Rep. Ron Kind:

1) China in TiSA

Ambassador Punke, I appreciate your previous statements expressing concern over China joining the TiSA negotiations. China has been a difficult party to negotiate with in the past, such as in the Doha Round, and we have continued to struggle with China in current negotiations, including ITA. China also lacks transparency, which can make it extremely difficult to know whether it is implementing its obligations. Do the other TiSA parties believe that China should join the TiSA negotiations? Under what circumstances would you be willing to include China in the TiSA negotiations?

Response:

The United States and other Trade in Services Agreement (TiSA) participants have committed to meeting the high standards we are pursuing in TiSA. These standards include providing a high degree of market access for key service sectors and the adoption of new rules to address emerging trade issues, including in particular in areas related to the supply of services over the Internet. As with previous new entrants, we would need to have strong assurances that China is

ready to move forward in these areas before the United States would join any consensus to allow China to join the TiSA negotiations.

Question from Rep. John Larson:

1) China as a 'Responsible Stakeholder'

I am concerned about the impact China has had on the WTO as an institution and the multilateral trading system. We have come to assume that China will retaliate against the United States or U.S. companies if the United States or its companies seek to enforce the rights afforded by the WTO Agreements. In your view, what are the consequences of tolerating this type of behavior by a WTO member? Are there any rules in the WTO that prohibit this kind of unilateral retaliation, which has not been authorized by the WTO? What are the options the United States and others have to push back on China both formally and informally at the WTO? What has USTR done so far and what would USTR consider doing if this type of behavior doesn't change?

Is it your view that China is stepping up to being a 'responsible stakeholder' in the WTO system in a manner commensurate with the size and growing importance of its economy in the world?

I am also very concerned about the longstanding problem of China's lack of transparency in its laws and regulations affecting international trade and investment – which not only creates challenging conditions for U.S. companies on the ground but also for the United States and other governments trying to assess whether China is acting consistently with its WTO obligations. Is China meeting its transparency obligations under the WTO rules? Are there particular areas where China's lack of transparency is particularly harmful to U.S. interests or particularly out of line with its obligations? What has USTR done, and what is USTR doing to address this issue?

Response:

China plays an increasingly active role in the WTO. Over the past year, China has taken steps to play a constructive role in the completion of the historic Bali Package, adopted at the 9th WTO Ministerial Conference in December 2013, and the negotiations for an Information Technology Agreement (ITA) and the Environmental Goods Agreement (EGA). China clearly was not supportive of efforts by India and a few other WTO Members to block implementation of the Trade Facilitation Agreement in July and generally worked to move the deal forward. We also were pleased to finally reach bilateral agreement with China on the ITA on the margins of the APEC Leaders' Meeting in Beijing, and China is actively engaged in the WTO EGA negotiations.

At the same time, the United States has not hesitated to vigilantly enforce U.S. rights against China in the WTO. When China takes retaliatory trade actions, we have responded by

challenging those actions at the WTO. For example, we have successfully challenged China's improper use of antidumping and countervailing duty remedies on imports of U.S. grain-oriented electrical steel, poultry products and automobiles. More broadly, we discuss the issue of retaliatory trade actions with like-minded trading partners in Geneva with the goal of trying to curtail such practices, and have raised serious concerns about China's actions in WTO committee meetings and during China's biannual Trade Policy Reviews at the WTO.

With respect to transparency, while China has taken substantive steps to improve transparency since its accession to the WTO in 2001, China still has some ways to go to provide all required information about its policies and practices. For example, China committed to adopt a single official journal and publish within it all trade-related laws, regulations, and other measures. Although it established the official journal, it is not as comprehensive as it should be. China also does not consistently publish draft measures of trade-related laws, regulations, and other measures for public comment, nor does it frequently make translations available in one or more WTO languages or consistently provide regular and complete WTO notifications, including in the area of subsidies, despite its commitments to do so. As recently as a November 28th meeting of the Committee on Agriculture Special Session, the United States pressed China for tardy notifications with regard to its agricultural subsidies.

The Administration is pushing China hard to improve its transparency practices in all of these areas. We regularly use bilateral mechanisms, such as the U.S.-China Joint Commission on Commerce and Trade and the economic track of the U.S-China Strategic and Economic Dialogue, to press China to meet its transparency commitments and to secure needed progress from China. In addition, we have been and will continue to be leaders in the WTO in raising concerns about China's policies and practices in relevant committees. We have now counter-notified over 300 Chinese subsidy measures and provided full translations of these measures accessible to all WTO Members and the general public. Most recently, we filed counter-notifications in the WTO Committee on Subsidies and Countervailing Measures and the Working Party on State Trading Enterprises. Our counter notification of state trading enterprises identified 153 Chinese entities, including 44 entities not previously notified by China, and provided detailed information regarding the legal establishment and functioning for all of the entities.

[Submissions for the record follow:]

Alexan International, Letter

ALEXAN
INTERNATIONAL

Will Molina
Executive Director, Alexan International, Inc.
850 Iron Point Road
Folsom CA, 95630

Rep. Devin Nunes
Chairman, U.S. House of Representatives Subcommittee on Trade
1102 Longworth House Office Building
Washington D.C. 20515

Dear Chairman Nunes,

As the Executive Director of Alexan International, a California-based consultancy that specializes in large-scale technology projects for both domestic and international clients, I write to express my concerns about a matter that your subcommittee should explore as it focuses on advancing the U.S. trade agenda and WTO related issues. Though private patent trolls may be dominating the Washington's attention, foreign government controlled patent trolls also pose a tremendous risk to American businesses like Alexan that rely on the ability to compete on a level playing field against foreign companies.

Though Alexan is concerned with threats from traditional, domestic patent trolls and their ability to increase our costs dramatically, we are keeping a close eye on actions to curb the further growth of these entities and the threats they pose. We often view their host nations as trading allies, yet they are founding and financing patent trolls that target companies operating internationally, such as Alexan, as a means of advancing their economic interests.

Countries like Japan with its government troll called IP Bridge are already purchasing patents in bulk with the goal to assert them against whomever they view as a hindrance to Japan's economic success, interests, and corporations. IP Bridge, a project of the even larger government-owned Innovation Network Corporation of Japan, received initial funding of nearly $275 million dollars and has already acquired 5,000 patents it can use to assert against companies who compete with Japanese businesses. Companies like Alexan already face enough challenges to address threats from traditional trolls that don't involve foreign governments getting into trolling. In facing the deep pockets and vast resources of a foreign government, we would likely not stand a chance.

However, Japan is not the only government that has founded patent trolls. Taiwan calls their troll the Industrial Technology Research Institute and it has already targeted companies in U.S. courts But this isn't just an Asian country trade-related issue. One of the best knowing and most aggressive government controlled patent troll belongs to the French government and is called France Brevets. Unless something is done, more foreign governments will likely found their own trolls rather than risk disadvantage in a global market.

ALEXAN
INTERNATIONAL

The U.S. looks to California to take leadership not only in the fast moving globalized technological economy but also to help shape the policy which allows our economy to thrive and compete fairly against foreign companies. Government sponsored patent trolls not only hurt the U.S. economy, but they threaten individual businesses like Alexan International that operate in other countries. Thank you for your subcommittee's attention to this matter and your service to the State of California.

Very truly yours,

Alexan International, Inc.

By: _____

Will Molina

Chief Executive Officer

www.alexan.com | 850 Iron Point Road Suite #114, Folsom, CA. 95630 | Office: (916) 365-4906 Fax: (208) 246-4374

Ambassador Glassman, Letter

Ambassador James K. Glassman, 5824 Madaket Rd., Bethesda, MD 20816

Ways and Means Committee
1102 Longworth House Office Building
Washington, D.C. 20515

July 24, 2014

Dear Members of the Committee:

As you move forward with the Committee's review of the United States trade agenda, I write to urge you to investigate World Trade Organization members whose governments control and finance their own Patent Assertion Entities (PAEs), often referred to as government sponsored patent "trolls."

State-sponsored PAEs are becoming more common. They have already been established in France, Korea, Japan, and China. These government-controlled PAEs openly favor their country's businesses and economic interests by pursuing infringement threats and suits against foreign industrial rivals. Examples of these offenders include Intellectual Discovery (Korea), France Brevets (France), the Innovation Network Corporation of Japan, and the Chinese Government's Ruichuan IPR Funds , which was established just this spring.

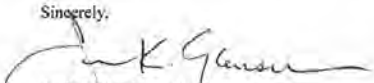
These entities threaten to complicate efforts to improve global cooperation on our trade priorities such as software piracy and cyber security. Further, WTO members who operate and finance state-sponsored PAEs may violate several WTO agreements including; the Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the General Agreement on Tariffs and Trade (GATT), and the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Foreign abuses of the patent system can have dramatic impact on U.S. trade, as I outline in the attached piece for *Bloomberg BNA* titled, "Time to Fix the Patent System." I strongly encourage the Ways and Means Committee to further investigate WTO members who operate state-sponsored PAEs and the negative impact entities like the aforementioned can have on WTO related issues.

Thank you for your work on this important issue and for allowing public comment on the topic.

Please understand that, in this letter, I am speaking for myself and not for the policy institute with which I am affiliated.

Sincerely,



Ambassador James K. Glassman
Visiting Fellow
American Enterprise Institute

Statement of the American Farm Bureau Federation

TO THE HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE

REGARDING THE HEARING ON ADVANCING THE U.S. TRADE AGENDA: THE WORLD TRADE ORGANIZATION

JULY 16, 2014

600 Maryland Ave. SW | Suite 1000W | Washington, DC 20024 | p. 202.406.3600 | f. 202.406.3606 | www.fb.org

DRAFT

The American Farm Bureau Federation, a U.S. general farm organization, supports efforts to increase agricultural trade through comprehensive trade agreements that reduce and eliminate government-imposed barriers to agricultural trade. A successful trade agenda in the World Trade Organization (WTO) should include: a strengthened WTO Sanitary and Phytosanitary (SPS) Agreement, implementation of the Trade Facilitation agreement, and a forward looking post-Bali work plan.

While elimination of traditional tariff barriers remains a priority, we must make greater strides to eliminate non-tariff barriers, which have grown to be the primary form of trade disruption. Non-tariff trade barriers often take the form of 'standards' that are not based on science but are used to manage trade. In order to resolve issues related to non-tariff barriers, the WTO SPS Agreement must be strengthened to bring the world's agricultural and food trade fully into the realm of science-based decision making.

The Trade Facilitation Agreement finalized during the WTO Bali Ministerial in December 2013 included commitments that must be implemented. Trade Facilitation also involves SPS standards as it is necessary for many countries to improve their handling of sanitary and phytosanitary measures at ports.

The WTO is also engaged in an effort this year to formulate a post-Bali work plan to guide future trade negotiations. Future WTO trade negotiations must focus on current and future challenges to the growth of international agricultural trade, such as SPS barriers, instead of resurrecting past negotiating failures.

SPS Improvements

For U.S. agriculture, changes to the SPS Agreement must include improving the use of science-based decision making and removing non-science based approaches to risk assessment. In particular, the European Union's use of the 'precautionary principle' as a reason to restrict certain U.S. agricultural products highlights the need to reform the areas of the SPS Agreement that allow for the use of precaution instead of science. We support a science-based approach to risk management, the use of science-based international standards and oppose the precautionary principle as a basis for regulatory decision making.

Trade in agricultural products between the U.S. and the EU is an excellent example of how regulatory barriers can become a significant impediment to growth.

The U.S. and the EU are major international trading partners in agriculture. U.S. farmers and ranchers exported more than $11.5 billion worth of agricultural and food products to the EU in 2013, while the EU exported more than $17 billion worth of agricultural products to the U.S. last year.

Despite these large numbers, just 10 years ago the EU was the third-largest destination for U.S. agricultural exports. Today, it has fallen to our fifth-largest export market.

Over the last decade, growth of U.S. agricultural exports to the EU has been the slowest among our top 10 export destinations.

If U.S. farmers and ranchers were provided an opportunity to compete, the EU market could be a growth market for them. This is why U.S. agriculture has been insistent that the Transatlantic Trade and Investment Partnership (TTIP) negotiations between the U.S. and the EU must deal with the many substantive issues that impede U.S.-EU agricultural trade, such as long-standing barriers against conventionally raised U.S. beef, ongoing restrictions against U.S. poultry and pork, and actions that limit U.S. exports of goods produced using biotechnology.

Unless these trade barriers are properly addressed within the TTIP negotiations, they will continue to limit the potential for agricultural trade. It is imperative that TTIP be a high-standard trade agreement that covers all significant barriers in a single, comprehensive agreement. Enforceable scientific standards are the only basis for resolving these issues.

A successful SPS agreement in the TTIP agreement would set the stage for higher SPS standards worldwide, an incredibly worthy goal.

Trade Facilitation and Food Stockpiling

The Trade Facilitation Agreement that was achieved at the WTO's December 2013 Ministerial meeting must now be implemented. The reduction of custom and border barriers will support all types of international trade, including trade in agricultural goods. Especially for perishable agricultural items, time spent waiting

at the border can result in a substantial decline in quality and a direct economic loss to U.S. producers.

The difficulties in achieving the Trade Facilitation Agreement last year were exacerbated by certain developing countries' insistence on an unrelated issue of food stockpiling. India and other countries are now allowed to exceed their WTO Agriculture Agreement subsidy limits for four years without a WTO dispute case.

Refusing to implement the Trade Facilitation Agreement is not compatible with the commitment of the Bali Ministerial.

Post-Bali Work Plan

Any future WTO negotiation on agriculture must be dedicated to trade liberalization for all countries, must not reduce the opportunities for trade and must be designed to work on the issues currently important to agricultural trade. We do not believe that revisiting the failed agriculture draft of 2008 will yield benefits for agricultural trade. Focusing our efforts on improving science-based decision making in the SPS Agreement and expanding market access through the elimination of tariff and non-tariff trade barriers will yield real benefits for agricultural trade for all countries.

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Institute for Liberty, Letter

Chairman Devin Nunes
Subcommittee on Trade
House Ways and Means Committee
1102 Longworth House Office Building
Washington, D.C. 20515

July 30, 2014

Chairman Nunes:

The Institute for Liberty is a not-for-profit advocacy organization based here in Washington, DC, focusing on federal public policy. Two of our areas of expertise are private property rights (including intellectual property rights), and global trade policy. We believe in a rational, common-sense approach to trade (and the protection of intellectual property rights), and as such, appreciate the time you are taking to examine the U.S. trade agenda and our relationship and membership in the World Trade Organization (WTO).

Part and parcel of a rational, common-sense approach to trade policy is the recognition of the WTO's important role in resolving disputes regarding international trade agreements. Further, we share the mission of seeking to reduce or unwieldy tariffs. But not all tariffs that harm free trade principles are simply affixed to the price of imports. Foreign countries like China, France, Japan, and Taiwan have taken an offensive footing into the intellectual property arena by erecting government-sponsored "patent trolls" (GSPTs) which raise the price of goods from would-be commercial competitors outside their borders. Further, it is our belief that WTO member states that control entities like these are likely in violation of numerous trade obligations under the WTO.

The offensive actions of GSPTs are akin to the protectionist industrial policies of many 19th-century regimes. Exacerbating the problem, because national governments are tasked with regulating intellectual property rights; GSPTs create a tremendous inherent conflict as the regulators and lawmakers then become the shareholders as well. Foreign governments cannot both be authoritarian regulatory agents ***and*** market actors at the same time. Otherwise, they are placed at an unfair advantage relative to their competitors, and become the very essence of crony capitalist states (or crony communist states).

Consider China's Ruichuan IPR Funds, France Brevets, the Innovation Network Corporation of Japan, or Taiwan's Industrial Technology Research Institute. These quasi-governmental/quasi-market actor entites are setting a dangerous precedent that could set off an international "race to the bottom" which encourages other nations to either start their own GSPT or risk falling behind in a globalized marketplace. France Brevets has openly and proudly asserted that they will be using their acquired patents to the benefit of only companies within their borders, while taking offensive legal action exclusively against foreign companies.

In the past, Chairman Nunes, you have previously taken leadership by presenting draft legislation designed to reign in foreign abuse of the Tariff Act of 1930, 19 U.S.C. § 1337, known as "Section 337," with particular focus on foreign entities which lack actual domestic industry through significant expenditures in plant, equipment, labor, or capital. GSPTs like those listed above serve as the epitome of these abuses. France Brevets and Taiwan's Industrial Technology Research Institute have already taken infringement actions in the U.S. District Court for the Eastern District of Texas, which has a well-known reputation for siding with patent infringement plaintiffs (as we are certain you are well-aware, the Eastern District of Texas is the epicenter of America's domestic patent troll problem, plaguing entrepreneurs throughout the nation).

Never has it been more imperative that the U.S. demonstrate vigilance in foreign trade policy and priorities, particularly in the face of protectionist foreign governments who choose to abuse the system on which we rely. We must push back against the cronyism of other nations. Foreign governments which fund and control GSPTs are colluding with their country's corporate assets. This massive subsidization by nations who host GSPTs tips the scales of the free market and serves to undermine our nation's economic interests and role in global trade

Thank you for the committee's attention to these and other vital trade related concerns. If you have any questions or require additional information from the Institute for Liberty, do not hesitate to contact me at (202) 261-6592 or via email at Andrew.Langer@InstituteForLiberty.org
.

Respectfully,

Andrew Langer, President
Institute for Liberty

Stewart and Stewart, Statement

House Ways and Means Trade Subcommittee Hearing
On Advancing the U.S. Trade Agenda: The World Trade Organization

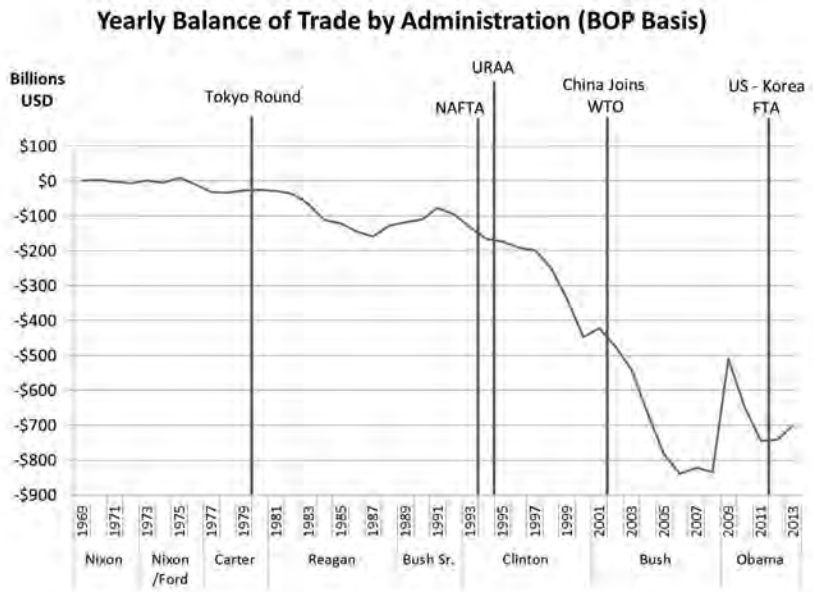
Written Statement of Terence P. Stewart
Managing Partner, Law Offices of Stewart and Stewart
2100 M Street, N.W.
Washington, D.C. 20037
Phone: (202) 785-4185
Fax: (202) 466-1286
Email: tstewart@stewartlaw.com

The Subcommittee's hearing on the World Trade Organization is timely with the recent launch of the environmental goods sectoral negotiations amongst fourteen WTO Members, the ongoing Trade in Services Agreement ("TISA") negotiations amongst the willing, the efforts to reach agreement on implementing the Trade Facilitation Agreement ("TFA") reached in Bali last December (end of July deadline), the efforts to get movement in the stalled expansion of the Information Technology Agreement ("ITA II"), and the agreement of the WTO Members to outline the path forward for the remaining elements of the Doha Development Agenda ("Doha Round") by the end of the year. The WTO also provides the basic standards for bilateral and plurilateral free trade agreements ("FTAs") or customs unions and so is relevant for the important plurilateral talks that the United States has ongoing in the Trans-Pacific Partnership ("TPP") and Transatlantic Trade and Investment Partnership ("T-TIP") negotiations.

These written comments are submitted on behalf of our firm and do not necessarily reflect the views of any of our current or past clients. I have followed developments in the WTO and the predecessor GATT for many years and have published extensively on all aspects of the organization and its various agreements. The comments hence reflect my perspective from observing the organization and various rounds of negotiations over the last thirty-five years.

The United States will need to continue pursuing alternative approaches to trade liberalization

The Doha Round, started at the end of 2001, has been largely stalemated for the last six years, movement to the Bali package being the sole beacon of hope in an organization where the change in economic power has not been accompanied by a comparable change in the level of responsibility for moving the organization forward. The United States has run a huge and largely growing trade deficit for most of the last forty years, as shown in the graph below.



See "Will the United States Pursue Trade Agreements in 2014 to Address Our Huge and Persistent Trade Deficit," Jan. 14, 2014, http://www.stewartlaw.com/Article/ViewArticle/978.

The United States, as part of the WTO Doha negotiations, has expected major beneficiaries of the system like China, Brazil, and India to carry a greater share of responsibility for global liberalization. Those countries have simply disagreed. The result has been an inability to achieve agreement on a road forward at the multilateral level.

As recent events in Geneva on the seemingly simply task of getting the TFA ready for implementation or the more than year delay in moving ITA II forward demonstrate, the major emerging economies are unlikely to accept a level of commitments consistent with their role in the global economy, reducing the likelihood that multilateral negotiations will result in market opening that meets U.S. needs or expectations. Despite the efforts of the United States and others in Bali to address India's concerns on food security and the agreement to have the issue addressed in the coming years on a permanent basis, India has basically threatened to block consensus on adopting the TFA in recent weeks. *See* "TF Agreement Under Threat As July 31 Deadline Looms For WTO Amendment," Inside U.S. Trade, July 11, 2014, at 27. Similarly, despite China being the largest trading nation in the world and a major beneficiary of the existing ITA, China has brought the ITA II negotiations to a standstill by limiting its willingness to accept a wide range of products of interest to the other ITA participants or demanding

unreasonable phase out periods for tariffs. While the recently concluded 6th U.S.-China Strategic and Economic Dialogue talks resulted in an apparent agreement for China to continue talking to the United States on ITA II, the problems flow from a different perspective on relative responsibility, calling into question even plurilateral talks where China, India, or Brazil are participants.

Thus, as important as the WTO is and should be, the United States will need to pursue not only multilateral but also plurilateral and bilateral approaches until there is agreement amongst the major trading nations on the relative level of responsibility and a common vision of the objectives and time horizons.

What areas are most likely to succeed in the short term?

After Bali, one would have thought that the technical work to get the text of the TFA ready for signing and the work within individual countries and with the WTO to prepare lists of commitments would have been priority one and would have been doable. But there is now a cloud on whether the TFA will be implemented on time, will be implemented provisionally, or could be subject to changes. It may prove to simply be last minute posturing by some seeking advantages elsewhere. But the challenges in implementing an agreement that generally has been seen as a win-win for all parties demonstrate the paralysis that has afflicted the WTO in an increasing manner over the last nineteen and a half years. Even if implemented by the end of July, the value of the agreement to all Members will really depend on the ambition of the Members undertaking commitments and whether financing is in fact available for commitments dependent on donor funding. Thus, the benefits in the early years of implementation are likely to be relatively modest, with the broader benefits for the global economy not realized for a number of years.

While there are challenges in all negotiations, those among like-minded countries are likely to see the most progress in the shortest time periods:

(1) The Information Technology Agreement is the most successful plurilateral in the history of the WTO, presently consisting of 78 WTO Members – up from 28 Members at the start in 1996 – including Russia, which joined on September 13, 2013, and covering 97% of trade in the global trade of the covered goods. Expansion of coverage of the ITA (the so called ITA II talks), which started several years ago, should be doable this year but only if China changes its position significantly on exclusions and phase out periods it is seeking. Considering the eighteen years of experience of the first ITA, it is a significant loss to global economic expansion that this agreement has not been possible. In 2011, the WTO put out a publication titled "15 Years of the Information Technology Agreement". In its forward (page 3), then Director General Pascal Lamy wrote,

> The 21st century is the era of information and communication technology, and the ITA has played a vital role in promoting affordable access to those technologies. This sector is crucial for the world economy – not only due to its considerable size, but also because it is an important driver of productivity, innovation

> and, ultimately, economic growth. Over the past 15 years, world exports of IT products have almost tripled in value since 1996, and reached an estimated US$ 1.4 trillion in 2010, accounting for 9.5 per cent of world merchandise trade. Together, ITA participants account for 96 per cent of world trade in IT products. And because they provide duty-free treatment to imports on a most-favoured-nation basis, they have created opportunities for exporters in all WTO members, including those in least-developed countries.

Because sectoral deals in goods are not doable under a free trade agreement approach, the challenge to concluding sectoral deals, like the ITA and the Environmental Goods Agreement (discussed below), is the need to get a critical mass, making inclusion of China often necessary as benefits cannot be limited to just the willing.

(2) The largest part of global GDP around the world comes from services. During the Doha Round, service negotiations have largely been held hostage by developing countries interested in resolution of agriculture issues before permitting significant movement on services. The result has been the launch of negotiations by the willing of the TISA with the hope of a high level of ambition. A working paper from two members of the WTO's Economic Research and Statistics Division from late 2013 provides a good summary of the start of the talks:

> The dynamism and importance of trade in services contrast sharply with the sluggishness of WTO negotiations in this area, where the latest serious attempt to move things forward dates back to mid-2008, on the occasion of the so-called services 'signalling conference'. Faced with that state of affairs, and against the background of a proliferation of preferential trade agreements (PTAs) covering services, a group of WTO Members, the so-called 'Really Good Friends of Services' (RGFs) agreed on 5 July 2012, to start preparing negotiations on an International Services Agreement to reinforce and strengthen the global services market. As of end October 2013, 23 WTO Members are participating in the discussions: Australia; Canada; Chile; Colombia; Costa Rica; the European Union; Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; Mexico; New Zealand; Norway; Pakistan; Panama; Paraguay; Peru; Switzerland; Chinese Taipei; Turkey; and the United States. It has been reported that China and Uruguay have formally asked to join the negotiating group.

Juan A. Marchetti & Martin Roy, "The TISA Initiative: An Overview of Market Access Issues," at 3-4 (Nov. 27, 2013) (footnotes omitted).

Based on the challenges of ITA II and the general difficulties achieving consensus in the WTO on major areas where China is an active participant, the United States and other TISA members should be reluctant to accept China's or any other country's participation where a high level of ambition is not committed to in advance. As the House Ways and Means Trade Subcommittee is well aware, even advanced "commitments" to accept high levels of ambition can be quickly forgotten by countries joining plurilateral talks. Our problems with Japan in the TPP talks in both the agriculture and automotive sectors are a current reminder of that challenge. Advances in the TISA talks may progress best without further participants but with the opportunity to join at a later date after the current group of WTO Members completes negotiations.

(3) The recently launched Environmental Goods Agreement, presently involving fourteen WTO Members – the United States, EU, China, Australia, Canada, Costa Rica, Chinese Taipei, Hong Kong, Japan, Korea, New Zealand, Norway, Switzerland, and Singapore – has the potential to be an important sectoral agreement but will likely suffer from the same problem that ITA II does – China is a participant and may not bring a similar level of ambition as other participants. Moreover, while there was agreement to use the APEC leader's list of 54 products as a starting point, we are likely to see significant delays in reaching agreement on the total package of goods and on how to ensure expansion of the product coverage over time. While it appears that Members may be willing to see issues on services and non-tariff barriers addressed in a phase two of the negotiations, there are a lot of complications if the negotiations address more than market access. Finally, the fourteen WTO Members account for 86% of the trade of the 54 product categories that are the starting point. Critical mass for sectorals has often been viewed as at least 90%, meaning additional Members to the talks may be viewed as essential before a final agreement is acceptable to the current fourteen.[1]

Other WTO negotiations and functions

At Bali last December, Ministers agreed to various measures related to the Doha Round topics. Some were temporary. *See generally* 9th WTO Ministerial Conference, Bali, 2013, *Bali Ministerial Declaration and decisions*, http://wto.org/english/thewto_e/minist_e/mc9_e/balipackage_e.htm; "Saved at the Bell – The WTO Ministerial Provides Hope that Multilateralism Can Survive and Provides a Needed Boost to Global Economic Growth," Dec. 7, 2013, http://www.stewartlaw.com/Article/ViewArticle/974. They also agreed to develop a work program to bring the Doha Round to a close. In particular, paragraph 1.11 of the Bali Ministerial Declaration states:

[1] For additional information see "Will New Environmental Goods Negotiations Increase U.S. Exports and Help Create a Greener Planet?," Feb. 3, 2014, http://www.stewartlaw.com/Article/ViewArticle/982; "Environmental Goods Trade Talks – The Challenges and the Opportunities," April 2, 2014, http://www.stewartlaw.com/Article/ViewArticle/992.

> 1.11 To further demonstrate this commitment, we instruct the Trade Negotiations Committee to prepare within the next 12 months a clearly defined work program on the remaining Doha Development Agenda issues. This will build on the decisions taken at this Ministerial Conference, particularly on agriculture, development and LDC issues, as well as all other issues under the Doha mandate that are central to concluding the Round. Issues in the Bali Package where legally binding outcomes could not be achieved will be prioritised. Work on issues in the package that have not been fully addressed at this Conference will resume in the relevant Committees or Negotiating Groups of the WTO.

World Trade Organization, Ministerial Declaration of 7 December 2013, WT/MIN(13)/DEC at 3.

While the United States and other WTO Members are engaged in the process of meetings within negotiating groups, the landscape is significantly blurred at present because of the problems with implementation of the TFA. As Deputy USTR Michael Punke noted at the June 25, 2014, Trade Negotiations Committee meeting in Geneva:

> If the Trade Facilitation Agreement unravels, it's hard to imagine a post-Bali work plan proceeding. Why? Because Members of this organization will have demonstrated to the world that WTO negotiations, even when they are successful, are simply not taken seriously by all WTO Members. This would devastate our collective credibility to negotiate in areas that all of us know are far more difficult than trade facilitation.

Moreover, even if the TFA is successfully implemented on time, the major differences that exist in expected contributions by major WTO Members promise to leave the organization hamstrung in terms of its ability to actually find solutions in the remaining Doha areas of negotiation. Ambassador Punke noted some of the challenges in his statement at the Trade Negotiations Committee meeting on June 25. Imagine the largest trading nation in the system – China – arguing that thirteen years after becoming a Member of the WTO and after having become the largest trading nation, it needs special treatment as a recently acceding Member!

Thus, the likelihood of a successful path to concluding the Doha Round is not high, which is unfortunate both for the market access our producers will not achieve and because of the loss of the opportunity to address other challenges posed by the current structure and operation of the WTO – whether correcting periodic problems of serious WTO Appellate Body overreach[2] in the ongoing Dispute Settlement Understanding ("DSU") negotiations or clarification of rights and obligations under the Antidumping Agreement and Subsidies and Countervailing Measures Agreement or new disciplines on fishery subsidies. Moreover, without clearing the agenda of the Doha Round, the WTO seems unable and/or unwilling to address evolving trading challenges.

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[2] *See* Terence P. Stewart et al., *The Increasing Recognition of Problems with WTO Appellate Body Decision-Making: Will the Message Be Heard?*, 8 GLOBAL TRADE & CUSTOMS J. 390 (2013).

I am not arguing for a cessation of engagement at the WTO, just a caution that as we try to move the process forward within the WTO, we need to continue to explore avenues that can lead to advances even if less robust than might be possible within the multilateral context.

Sectorals can be successful if a critical mass of participation can be found (as measured by trade in the sectors), but typically will require participation by at least one or more of the major emerging economies. ITA is a successful model; the inability to move China has delayed progress in achieving ITA II. The Environmental Goods Agreement talks now underway is another promising area. Medical devices may be an area of interest as well, although there are many regulatory challenges U.S. medical device manufacturers face around the world. Historically, chemicals was an area of interest, but would presumably require China and India to participate to achieve critical mass, making further liberalization more likely to be tied to multilateral negotiations or to FTAs.

Plurilateral agreements that limit benefits to the participants can be structured in some areas (e.g., TISA) and offer the carrot of significant market access for participants with the opportunity for others to join when they are ready to seek the same level of ambition.

And, of course, FTAs with important trading partners willing to commit to a high level of ambition and that address all major concerns of U.S. constituencies and establish reciprocal access in fact can be important tools. With the lack of transparency in the current TPP and T-TIP negotiations, it is unknown whether the ongoing negotiations will achieve what the United States actually needs to achieve truly reciprocal market access. Obviously, hopes are high that we will achieve such success. Unfortunately, past FTAs have a mixed history of accomplishments in fact.

Other WTO functions

The WTO has a number of important, if not high profile, functions in addition to housing negotiations. Every WTO Committee meets at least twice a year to review developments, to permit Members to raise questions and obtain answers and gain a better understanding of the trading system of trading partners. These Committees have been less active in recent years because of the energy put into the Doha Round. Nonetheless, the Committees can serve an important function in improving compliance with procedural requirements and the evaluation of steps trading partners may accept to clarify or address outstanding issues. There are few levers to actually force Members to comply with notification requirements, other than peer pressure and public disclosure. The United States has flagged the problems with inadequate notifications from China and India in areas like subsidies. While that puts pressure on the trading partner to comply with notification requirements, in fact it has made no difference as neither country has improved the quality of their notifications. Thus, as important as transparency is in the WTO Committee process, at the end of the day, a determined failure to comply by Members has proven elusive to resolve.

A second transparency aspect of the WTO is the Trade Policy Review Mechanism ("TPRM"), which requires Members to be reviewed periodically in terms of their trade policies. A great deal of information can be developed through the TPRM process. A challenge for the United States and other Members is the failure of some countries, China being the most recent example,

to provide complete information, hence making an understanding of their trading systems unclear or incomplete. The review process depends on good faith actions by each WTO Member. While the United States can raise concerns and provide counter-submissions of programs that should be reported, the array of views on obligations is problematic for the proper functioning of the WTO.

The most obvious major function of the WTO, which is receiving a lot of attention, is the dispute settlement system. The House Ways and Means Trade Subcommittee advisory notes that there have been some 500 cases and that the United States has brought about 100 cases. It is certainly the case that binding dispute settlement in the WTO is a major development within intergovernmental organizations and can be a positive force for U.S. businesses. But there have been widely noticed problems. At the time of the 2002 Trade Act to provide trade promotion authority, Congress mandated that the Administration identify how it would proceed to address a pattern of WTO Appellate Body overreaching – essentially a problem of the Appellate Body ignoring the limitations of the DSU and creating obligations on Members that were never agreed to. It has been particularly problematic in trade remedy situations, but goes beyond that. The problem flagged by Congress in 2002 continues to be of concern in a number of cases.

A fundamental problem with the WTO dispute settlement system is the lack of reasonable opportunity for the "legislative arm" (WTO Members acting in the General Council or through negotiations) to address perceived erroneous decisions of the Appellate Body. The negative consensus approach to dispute settlement basically ensures that the winning party cannot be deprived of implementation of a decision from the dispute settlement system. The general use of consensus for decision making ensures that erroneous decisions will not be modified without the consent of the victor. Thus, there is effectively no ability to clarify rights and obligations when a dispute settlement panel or the Appellate Body makes an erroneous decision. This is much different than what Members face within their national system. That courts will render an occasional decision that deviates from the legislature's intent is well understood. For example, in the United States, a construction of the reach of U.S. countervailing duty law in 2012 by the U.S. Court of Appeals for the Federal Circuit led Congress to pass legislation clarifying the underlying statute. *See* Pub. L. No. 112-99, 126 Stat. 265 (2012) (codified as amended in 19 U.S.C. §§ 1671, 1677f-1).

While the United States has pushed for changes to the DSU as part of the ongoing Doha Round, it is important that Congress and the Administration continue to pursue modifications in the operation of the DSU so that all Members retain the rights not specifically limited by existing agreements. The following articles provide an overview of some of the more disturbing aspects of the Appellate Body overreach phenomenon: Terence P. Stewart et al., *The Increasing Recognition of Problems with WTO Appellate Body Decision-Making: Will the Message Be Heard?*, 8 GLOBAL TRADE & CUSTOMS J. 390 (2013); Michel Cartland et al., *Is Something Going Wrong in the WTO Dispute Settlement?*, 46 J. WORLD TRADE 979 (2012).

Issues that need to be addressed to achieve true reciprocity

In a write-up done back in January, I identified a number of the issues that have led to the structural imbalance in our trade relationships with other nations. Most of these need to be

addressed in the WTO, although some have proven intractable for as many as fifty years. The following excerpt lays out issues that we as a nation urgently need to address:

> One can certainly identify a range of factors that have contributed to the loss of jobs and the swollen deficit.
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> 1. Energy imports and the distortions in global markets caused by the oil cartel have been one example. Since energy imports constitute the largest single category in our trade deficit with the world, finding a multilateral solution to the cartel problem has been and continues to be an unresolved problem. Recent oil and gas production in the United States has bolstered domestic production and is reducing the import reliance for the first time in many decades (the deficit in petrochemical products is down $53 billion in 2013 for the first 11 months. However, that deficit is still running at $230 billion for 2013 for the year).
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> 2. The inability of the political parties to resolve the large distortions caused by the differential treatment of direct and indirect subsidies under GATT and now WTO rules places U.S. manufacturers and agricultural producers at severe disadvantages because of export subsidies, which are not addressable within the United States on imported product, and a double taxation on U.S. exports when entering the some 160 countries with indirect tax systems (e.g., value added tax). It affects service providers as well. This is an example of an issue that Congress has understood and has included in every fast track/trade promotion bill since 1974 and that the Johnson Administration worked hard to get addressed in the 1960s. The peculiar discrimination against U.S. companies and their workers from the inability of the United States to get trading partners to address the issue or of Congress to agree on an approach that would convert our tax structure to one that more closely resembles many of our trading partners seriously handicaps U.S. companies and their workers.
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> 3. Market access commitments made by trading partners at the WTO and/or in FTAs should have improved reciprocity for U.S. companies and workers. However, the inability to obtain compliance with existing obligations has been a perennial problem for U.S. exports.
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> a. For example, Japan's automobile market and barriers to participation in the motor vehicle and motor vehicle parts sector is as closed today in fact as it has been since the 1960s.
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> b. U.S. agriculture is blocked for many improper reasons around the world, whether in the EU, Asia, or elsewhere. China's continued refusal to open its market to U.S. beef is one classic example.
>
> c. Many academics and sectors of the U.S. economy have been complaining for years about currency manipulation that distorts trade

by encouraging exports and limiting imports – Japan, Korea, and China have been frequently cited by the private sector as posing major concerns. For example, in a recent study, C. Fred Bergsten and Joseph Gagnon of the Institute for International Economics estimate that $200-500 billion of the U.S. current account deficit is caused by currency manipulation, most of that by China.

d. And the list of problems U.S. exporters and companies face with China not complying with its WTO commitments is stunning as the 2013 USTR report to Congress on China's WTO Compliance (159 pages) reveals. The role of state-owned and state-invested enterprises, the interference with investment decisions through the requirements of technology transfer and local content requirements, the use of WTO-illegal export restraints, the retaliatory use of trade remedies by China—the list goes on and on. While U.S. exports to China have grown, the ratio of U.S. imports from China versus U.S. exports to China remains at 4 to 1, with China accounting for a huge part of our overall trade deficit—43.3% in 2012 (U.S. International Trade Commission website, total exports – U.S. general imports) and 46.2% in 2013 (1st eleven months). **Every year that the United States is not able to get the benefit of the bargain from China's accession our deficit grows. We are now running an annual deficit with China of more than $300 billion, meaning a loss of manufacturing jobs of more than 1.6 million.**

So the problems are many and the current approach of a slightly modified trade promotion bill, which at least attempts to begin to address some issues (currency manipulation and state-owned enterprises for example) and provide some better Congressional oversight, is likely not sufficient to change the trajectory of our trading relationship with the world. That suggests that the Congress and the Administration need to use 2014 to in fact ensure that the path forward is not simply a continuation of the path on which we have been. * * * We cannot continue to run trade deficits of $700-800 billion per year. Many of the issues that need to be addressed may be in the trade policy arena. Other issues that need to be addressed may be in the domestic policy arena to prevent the continued loss of jobs, businesses, and the tax base in communities across the country. But you cannot address the core problems if you are not open to an honest debate on what has and has not happened under the trade policy direction of the last four decades and what is actually needed to turn our trade policy into a reality of balanced opportunities for our companies and workers.

"Will the United States Pursue Trade Agreements in 2014 to Address Our Huge and Persistent Trade Deficit", Jan. 14, 2014, http://www.stewartlaw.com/Article/ViewArticle/978.

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