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APPROACHING 25: THE ROAD AHEAD FOR THE WORLD TRADE ORGANIZATION

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

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APPROACHING 25: THE ROAD AHEAD FOR THE WORLD TRADE ORGANIZATION

TUESDAY, MARCH 12, 2019

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:35 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Chuck Grassley (chairman of the committee) presiding.

Present: Senators Roberts, Cornyn, Thune, Isakson, Portman, Toomey, Scott, Cassidy, Lankford, Daines, Young, Wyden, Stabenow, Cantwell, Carper, Cardin, Brown, Casey, Warner, Whitehouse, Hassan, and Cortez Masto.

Also present: Republican staff: Andrew Brandt, International Trade Policy Advisor; Brian Bombassaro, International Trade Counsel; and Nasim Fussel, Chief International Trade Counsel. Democratic staff: Jayme White, Chief Advisor for International Competitiveness and Innovation.

OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. I usually wait until Senator Wyden gets here before I start, but he will probably be here before I get my statement done. The reason I want to start on time is—Senator Wyden is here; okay—so everybody can plan accordingly. Ambassador Lighthizer has to leave at 12 o'clock.

I want to welcome everybody for our first trade hearing of this Congress. The subject today is the future of the World Trade Organization.

The WTO is a critically important institution. It is our responsibility on the Finance Committee to monitor the WTO, and the United States' role in that organization. Since the start of the World Trade Organization, international trade volumes have increased by 250 percent. Countries representing 98 percent of the global merchandise trade are currently members of the WTO, with 22 more countries negotiating membership.

Overall then, it is indisputable that the World Trade Organization has moved global commerce forward. The rules-based trading system that the WTO promotes and oversees has been very successful at integrating people around the world into the global economy and raising millions of people out of poverty.

One of the WTO's primary functions is to serve as a forum for trade negotiations. Although well-intended to be a forum for multilateral trade negotiations, the challenges of our modern economy

have proven this goal to be extremely and increasingly difficult. The Doha Round of negotiations started in 2001 and resulted in the successful negotiations of the Trade Facilitation Agreement of 2013. But Doha failed to deliver on other ambitious targets, such as further reduction of tariffs and farm subsidies.

Current plurilateral discussions on e-commerce and on fisheries show promise. And of course, I fully support continuing those efforts.

The second point is that the World Trade Organization is responsible for implementing and monitoring trade agreements.

Third and finally, the institution serves as a forum for settling disputes amongst its members over the meaning and application of WTO agreements.

As we approach the 25th year of operation for the WTO, it would be wise for us to acknowledge that the United States has overall been a beneficiary of WTO dispute settlement processes. But we cannot overlook the serious challenges preventing the system from working as it was intended to, and as we intended. And we must all agree that updates and reforms would improve the effectiveness of the organization.

Let us get to the Appellate Body. It soon could lose a minimum quorum needed to function. That is in particular need of reform.

The administration's concerns about systemic and procedural problems with the Appellate Body are not new, nor are they partisan. Three Presidents on both sides of the aisle have raised concerns for many years about the Appellate Body, what it does and how it functions, and tried to get reform.

The United States first refused to consent to a new Appellate Body appointment under the Obama administration. And the Trump administration has maintained the same position. So when we see both a person like President Obama and a person like President Trump claiming reform of the Appellate Body is needed, all WTO members ought to take it as a very serious issue.

It is very unfortunate that this tactic is the only way that the United States has been able to get serious attention from other WTO members. I am not necessarily endorsing this approach, but now we are here. Since we are here, we cannot waste time lamenting the tactics. WTO members must take the United States seriously and commit to meaningfully addressing our concerns. The areas of much-needed reform are not limited just to dispute settlement.

The administration is very right to point out that some WTO members consistently fail to meet their obligations to accurately notify of the subsidies they provide to domestic industries. This is simply unacceptable.

The WTO also needs to address the treatment of state-owned enterprises. State-owned enterprises are becoming more prevalent in the global economy. China is notorious for using state-owned enterprises to buy private companies around the world and has used these enterprises as a conduit for subsidizing its industries.

The ability of WTO members to self-certify as a developing country is another problem for the organization's long-term credibility. When my constituents in Iowa at my town meetings ask me why

China—which happens to be the world's second largest economy—gets to self-certify as developing, I cannot explain it.

There are other countries, including OECD members, that the administration rightly points out have advanced economies, but still declare themselves developing.

Also for sure, we cannot have a hearing on the WTO without talking about China. The fact of the matter is that China simply has not lived up to the commitments it made when it joined the WTO. This is detailed every year by the USTR's annual report on China and whether or not they comply with the World Trade Organization's decisions. And we have seen over the last decade or so that WTO rules have not effectively constrained China's mercantilist policies and their distortion of global markets.

So there is a heck of a lot of work to be done. And of course, being that the organization operates mostly under consensus, we cannot do it alone. The United States, Japan, and the European Union are discussing WTO reform options through a trilateral process that also seeks to address industrial subsidies and forced technology transfers. Partnerships such as this example are critical to showing China that the United States is not the only country complaining.

The world certainly has come a long way on trade policy in the last century. I hope to learn from history and never repeat the protectionist mistakes of beggar-thy-neighbor policies that came about as a result of the infamous Smoot-Hawley tariffs. Yet there are also many legitimate bipartisan issues that we must address with some of our trading partners and within the WTO.

To conclude, I probably do not need to remind many in this room of the following fact: the Constitution gives Congress the power to impose and collect taxes, tariffs, and duties and to regulate interstate and foreign commerce.

As chairman of this committee, working very closely with Ranking Member Wyden, I intend to assist President Trump and Ambassador Lighthizer with their efforts at the WTO and in seeking strong and enforceable trade deals. If I am not doing enough for the President or for Ambassador Lighthizer, just tell me what more to do.

However, I want you and President Trump to understand I do so with the understanding that erecting new market barriers with tariffs and quotas cannot be a long-term solution. I am looking forward to working in a bipartisan way with the members of the committee and the Trump administration to ensure the United States has a sound and constructive trade policy that benefits our country.

[The prepared statement of Chairman Grassley appears in the appendix.]

The CHAIRMAN. Senator Wyden?

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

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

Mr. Chairman, first of all, thank you for holding this hearing. I certainly share many of the views that you have articulated today. And, colleagues, I am just going to start off by saying that what we are going to be talking about this morning is one of the least-

known and biggest issues facing our country as it relates to creating more good-paying jobs and expanding markets for our country around the world.

And as the chairman indicated, I am very much interested in addressing the proposition that it is long past time to fix what is wrong with the World Trade Organization. In my view, that process has to begin with China. China became a member of the World Trade Organization in December 2001. Based on nearly 2 decades of hard evidence, it is clear that the agreements that allowed China to join the World Trade Organization have fallen far short.

The rules that underpin the WTO were crafted more than 2 decades ago when China was essentially an economic middleweight. At that time, multiple States within our country actually had economies that were larger than China's.

During the debate on China entering the World Trade Organization, many predicted that membership would drive China away from one-party control of government and economics. And the Chinese made specific commitments dealing with economic reforms as a precondition of joining the WTO. That was the basis on which the Congress granted China normalized trade relations with the United States, legislation which I supported.

Today, China is no longer a middleweight. China is an economic heavyweight, second only to the United States, and continues to grow rapidly. Much of that growth has come at our direct expense and in violation of World Trade Organization rules and World Trade Organization commitments that were made in 2001.

What I am talking about are the following: subsidized state-owned enterprises, intellectual property theft, forced tech transfers, the great Internet firewall, and government-led shakedowns of foreign investors. China has used those schemes to strong-arm American businesses, steal American innovations, and rip off American jobs. Especially under President Xi, the government has tightened its grip on power.

For our purposes in today's hearing, the Chinese government identifies weaknesses in the WTO system, and then it seizes on them to further their country's explosive growth. The U.S. and our economic allies have not done enough to crack down on those abuses. WTO rules, as I have indicated, date back to a time before the Internet was, in effect, this country's shipping lane and the center of gravity for international commerce. It was a time when smartphones were still science fiction. It should not be any surprise that those rules cannot keep up with China's modern-day trade ripoffs.

As the chairman and I have both indicated, there is bipartisan interest in addressing that problem, and today gives us a chance to accelerate the effort to find real solutions. I am hopeful that the talks currently happening with respect to digital trade rules will finally drag the WTO into this century. And I am quite certain that Ambassador Lighthizer shares that perspective.

One topic that is particularly important to the Pacific Northwest is under active discussion at the WTO, and this is the matter of unfair fishing subsidies. Senator Crapo, a senior member of this committee, and I held the Trade Subcommittee hearing on this issue dating back to 2010.

The bottom line is that an agreement that curbs fishing subsidies is going to protect jobs in our fisheries and promote sustainable oceans, and, obviously, accomplishing both of those objectives is also a bipartisan goal.

Finally, it is quite clear that our workers, and this is true from sea to shining sea—I see it in Oregon; I see it when I go elsewhere. Our workers have had enough with respect to cheating by China and other countries. And when the WTO proves too slow to stop the cheats, and when it announces decisions that clash with the founding principles, I think it is pretty obvious that lawmakers are no longer just going to grin and bear it.

It is important for our country to fight for the economic system that was created after World War II and was built on strong democratic alliances. It faced down the Soviet Union and helped to reduce violent conflict around the world.

Unfortunately, I think this administration too often signals to our allies that they are not interested in defending that system from attackers and cheats. So updating the WTO is an issue where we cannot have a bunch of tough talk and then take a pass on real action. An effective, fair, and enforceable trade system is the best defense our country can have against underhanded economic tactics by China.

Mr. Chairman, I look forward to working with you and our colleagues.

The CHAIRMAN. Thank you, Senator Wyden.

[The prepared statement of Senator Wyden appears in the appendix.]

The CHAIRMAN. Today I have the distinct pleasure of introducing Ambassador Lighthizer. He was sworn in as the 18th U.S. Trade Representative May 15, 2017, and you have not had a day off since you took that job. Since members of this committee have gotten to know Bob, and know him well over the past several months, I will dispense with further introduction.

It is a pleasure to have you here today and to remind all of my colleagues—because I have been around here a long time—you were an employee of this committee for 2 years, my first 2 years on the committee, 1981 and 1982, as I recall. Go ahead.

STATEMENT OF HON. ROBERT E. LIGHTHIZER, UNITED STATES TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT, WASHINGTON, DC

Ambassador LIGHTHIZER. Well, thank you very much.

Chairman Grassley and Ranking Member Wyden, distinguished members of the committee, it is a pleasure to be here today.

I should begin with saying that I am inspired by and agree almost completely with both your statement, Mr. Chairman, and the ranking member's statement. I think they summarize and make, in many ways, unnecessary my own statement. Nonetheless, I will read it.

Before I get in to talking about the WTO, I would like to note that, under President Trump's leadership, U.S. trade has been surging. From 2016 to 2018, total exports have grown by 12.8 percent. During that same time, imports grew by 14.8 percent. Last year we exported almost $2.5 trillion worth of goods and services.

Further, last year alone we created 264,000 manufacturing jobs, the highest figure in 21 years. And our economy is growing at a rate faster than any other country, substantially faster than any other country in the G7.

As you all know, we have had a very busy trade agenda. We renegotiated KORUS. We have been working with Congress on the newly renegotiated USMCA agreement. We are in discussions with Europe, Japan, the United Kingdom, and several other countries.

In addition, we have been very active at the WTO. We work closely with the very able Director-General Roberto Azevêdo, and we are busy on the various standing committees that do the actual day-to-day work of the organization. The WTO is a very important organization, as you say, but we believe it has significant deficiencies.

First, over the last 20 years it has migrated from a negotiation forum to a litigation forum. This development has unfortunate consequences. Developing new trade agreements has been stifled, and the commitment to the organization has been undermined.

Second, many countries have very high "bound" tariffs and other barriers, and it is difficult to see how pressure can be created to get them to reduce either.

Third, many members have gotten into the habit of not living up to their basic obligations. The requirements for subsidy notification by members are often ignored, and numerous transparency obligations go unfulfilled on a regular basis.

Another problem is the anomaly that many members self-declare themselves to be developing countries, even though they are among—in many cases—the richest in the world.

Fourth, the dispute settlement process is in need of reform. We have an Appellant Body that often does not follow its own rules. The administration has complained about this, as have previous administrations. I have some quotes and the like I will do at another time.

In spite of these challenges, the administration is working diligently to jumpstart new negotiations in the areas of digital trade, fish subsidies, and other areas. We look forward to working with the committee to solve these and other very important trade issues.

I am sorry I ran a little over, Mr. Chairman.

[The prepared statement of Ambassador Lighthizer appears in the appendix.]

The CHAIRMAN. There are two reasons I would give committee members an admonition to keep their questions short. First of all, our witness has to leave at noon. And secondly, we are soon going to have a hearing on the President's 2019 trade policy agenda where many of you will be able to ask questions at that time on trade policy as well.

I am going to start my questions with China. Like you, I agree that China has not done enough to honor its WTO commitments. Like you, I have been disappointed by China's lack of respect for commitments it made to liberalize its economy and play by the rules, exactly the same thing that Senator Wyden has referred to. And I fully agree that countries like China should not be able to self-identify.

How do you expect countries like China, India, and South Africa to agree to reassess the WTO's approach to special and differential treatment?

Ambassador LIGHTHIZER. Well thank you, Mr. Chairman. First of all, this is a major problem. It affects both ongoing obligations, but it is even more of a problem when you look at new negotiations, because, when we start off a new negotiation, everyone immediately says, "Oh, but these new rules we're going to negotiate are not going to apply to us."

And if you look at the European Union as one country, it is—about 90 percent of the organization is in this category of self-declared special and differential treatment. And it is countries like Korea and Saudi Arabia. I mean, it is rich countries and big countries, and of course as you say, China. It is a very difficult problem, because this is a consensus organization.

So what we have proposed—and we have been complaining about this for a long time—what we have proposed and we have some support for is the idea that if you do not, for example, notify your commitments, you have certain penalties in terms of budget costs and the like.

In terms of the self-declaration, we put a proposal forward where we are trying to get people to say that you cannot self-designate if you are in the OECD, if you are one of the rich countries in various criteria that are internationally recognized. Now, the problem with that is going to be that it has to be agreed to by all the members, and the people who are taking advantage of it are not going to agree to it.

So it is a fundamental problem. It is something that we are shedding light on. I think some other countries are starting also to talk about it. There has even been the suggestion that, well, maybe the United States just ought to self-designate itself as a developing country, and then we are all treated the same.

So if I knew the actual answer, I would give it to you. What we are doing now is shedding light on it, telling people what a problem there is, and we need to have new negotiations making it clear that we are not going to give people other than the truly poor nations of the world any kind of a benefit in terms of the kind of obligations that we're undertaking.

The CHAIRMAN. I have referred to this trilateral process of the United States, Japan, and the EU to address nonmarket-oriented policies and practices of third countries that lead to overcapacity and create unfair competition, while simultaneously we are negotiating bilaterally with China regarding very legitimate issues outlined in the section 301 investigation.

So explain those two coinciding processes. Do they inform each other, or should we consider them two distinct processes that will have independent outcomes?

Ambassador LIGHTHIZER. Thank you, Mr. Chairman.

First of all, I consider them to be independent, but related. So we have a trilateral group. It is the United States, Japan, and the EU. We have had five meetings now. We put out statements, and we tried to say what we are doing and get people to have a similar understanding and similar actions with respect to technology transfer, with respect to a variety of trade cases that we have, with re-

spect to investment in their country where technology is scooped up by China.

So I think it has been very successful. It has brought other people along, but the focus really has been the three of us, and we are trying to come up with specific examples.

Separate from that is the 301 action. By U.S. law, that is a separate process. We do tell the EU and Japan when we meet what we are doing, and what the developments are, and the like. But I think that it is a very serious problem. It is one that we cannot just rely on the WTO for. We cannot just rely on this trilateral group. We have to act unilaterally to the extent we can.

And so they are independent, but we do report back and forth, and we inform each other. And I think you have seen developments in Japan and in Europe that have mirrored some of the things we are doing as a result of this activity.

The CHAIRMAN. Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Ambassador Lighthizer, you were part of the Reagan administration when the theme on enforcement was "trust, but verify." And that is particularly important when it comes to any deal with China. And of course, you all are discussing a China trade deal, in effect, on tariffs. And you know that I feel very strongly that any deal with China needs to address intellectual property, technology transfer issues, and be enforceable.

So what I would like to do is have you state this morning, on enforcement of any deal with China, do you intend to lift the current tariffs, or will you condition the lifting of tariffs on demonstrable progress on technology, IP, and the major issues? I think we want to know what is going to be your measure with respect to actually having enforcement, making sure the Chinese will follow through on their commitments, and whether you are going to lift the tariffs before you see hard evidence—hard evidence, on the ground, that the Chinese are changing.

Ambassador LIGHTHIZER. Well yes, thank you very much, Senator.

I would say first of all, I am involved in the negotiation, and I am not going to talk about what we are doing in the negotiation. Although, as you know well, I do not keep any secrets from you, and I am happy to have that conversation on a private basis in terms of precisely where we are on all matters.

So I want it clear that I have you completely in my confidence, and you know that. And we talk about all these issues, but I am more reluctant to talk about them publicly, in this environment, number one.

And then number two, you put your finger on what are, to me, the key structural issues. There are some others, but these are really, really important, and that is to say technology transfer, theft of intellectual property, lack of protection of intellectual property. And then there are some others; they are subsidy issues and the like that I have talked to various members about that are also fundamental. And there are some ag and other issues that we're involved with.

But these real structural issues have to be addressed. And in our negotiations, I would say they are being addressed, and they are

being addressed with precision. That is not to say that we have come to conclusion, because we have not. But we are making headway there.

Your point is that—and you have made it to me repeatedly privately—none of it makes any difference if it is not enforceable. We are going to have an enforceable agreement, or the President will not agree to an agreement.

I should——

Senator WYDEN. Let me just ask right at that point. Is it your intent to make sure you see evidence of changes on the ground before you lift the tariffs? I am not talking about any particular item that is under discussion.

What I want to know is, what is going to be the test with respect to lifting the tariffs? And is it your intent to say we have to see evidence on the ground of real changes before we lift the tariffs?

Ambassador LIGHTHIZER. Well, I would say that is a subject of negotiation. So I am not getting into it here in public, but I do agree with you that we have to have real progress, and we have to maintain the right to be able—whatever happens to the current tariffs—to raise tariffs in situations where there are violations of the agreement. And that is the core. If we do not do that, than none of it makes any difference in terms of where we are on the specific tariffs.

That is a matter of negotiation. And once again, I am happy to talk to you about it.

Senator WYDEN. We are not talking, Mr. Ambassador, about a specific tariff, or intellectual property, or one particular area or another one. I am trying to discern—and that is what my constituents ask at home in Oregon. You are a former Staff Director for this committee, so you know we have to be responsive to our constituents.

They say, you know, we have been promised again and again that there are going to be changes with respect to China. I do not want you to have to get into a specific area right now with me, and my colleagues are going to have their own questions.

What I want to see is what the test is for lifting the tariffs. And I will tell you what my test is, just so you know: my test is you are able to see evidence of real changes on the ground, in the real world, before we lift the tariffs. And my sense is, that is sort of what Bob Lighthizer has been interested in, but we need to hear it from you. And I do not suspect I will be the only Senator asking you today about your test. But that is mine.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Roberts, and then Senator Stabenow.

Senator ROBERTS. That is the team.

Senator STABENOW. That is the team.

The CHAIRMAN. That is the Aggie team.

Senator ROBERTS. Yes.

Do not start my time until now, if you would please. [Laughter.]

Bob, it is good to have you back. Senator Grassley, when you were on this committee and were the only member of this committee at that time when Bob was the top gun for Senator Dole during those days, I was in the House. And whenever I would have

a question that I thought I could take the time of Senator Dole for, he would always say, "See Bob." So it is good to see you back, sir.

I think that I had a sanitary and phytosanitary question and a WTO question. And I think Senator Wyden put it very well. Senator Wyden gets a little wound up, but he was born in Wichita. He is a good guy.

But he said "real progress on the ground" and was talking about jobs and continuing these tariffs. But there is tariff retaliation. There is also price recovery with regards to farm country.

We are still 50 percent off from last year, for goodness sakes, in terms of farm income, farm revenue. We are still in a very bad way. And so there is a lot of feeling out in farm country, especially—and you know this forwards and backwards.

But what I want to ask is, in the last 2 years, the administration has focused on bilateral trade agreements. The United States has stepped away from major multilateral agreements, including the Trans-Pacific Partnership. That is still very popular out in farm country, if we would hitch our wagon there.

Especially as it relates to the WTO agreement on the SPS measures, do you see room for multilateral agreements to advance the U.S. trade agenda and improve market access? And I think you and I just visited about a particular country that we think we ought to really focus on as opposed to the TPP, which might be a little bit big to swallow right now.

Ambassador LIGHTHIZER. Well, thank you.

So I would say, first of all, the President is very focused on what is happening in farm country, as you know well. And we have seen an unfortunate decline in farm income with some bounce, but a basic decline for a long period of time. And it is something that has to be reversed.

You are right: there has been retaliation that has had a negative effect in farm country. But I always point out that, particularly with respect to China, no one has a bigger upside to opening up China than agriculture. We sell them, in a normal year, $18 or $19 billion worth of product, less last year for a variety of reasons.

But they import a lot of goods from a lot of other places that they ought to be importing from the United States. So it is a big, big upside for agriculture generally. And it is something we are focused on.

On the question of TPP, as you know, we are in the process of negotiating with Japan. I always tell people that there are 11 countries in TPP. We have FTAs with six of them. With respect to the other five, 95 percent of the GDP is Japan. So if we can get an agreement with Japan that is a good agreement, that will go a long way towards having essentially the same effect as being in TPP.

Personally, I did not like TPP for a lot of the same reasons the President did not, but I will not go into those now unless another member asks me to do it.

So I want to move forward on Japan. I think that is really important for farmers. It is also important that we have a deal, if we can get a good deal, with China, because that will open up a lot of agriculture sales. But also we are focusing, as you know well, very much on SPS issues, impediments to trade across the board, which there are a lot of, but particularly in China.

We are also spending a lot of time at the WTO working on these issues. This is one of those areas where you are in a committee, and you are doing the actual day-to-day work.

So it is a major focus of our activity. And if we end up with a deal on China, and if we end up with a deal—at least an agricultural deal—at an early time with Japan, I think there is a bright light on the horizon for agriculture. And that certainly is our objective, all while we are trying to take care of these SPS issues, which we do sort of one at a time, sometimes a little bit like peeling an onion, but one at a time.

And the SPS issues, I should say, have been a major focus of our discussions with China. We have gone through a whole lot of their various—I do not want to say schemes, but processes that keep U.S. agricultural products, and other agricultural products, out.

Senator ROBERTS. I appreciate your answer. I yield back.

The CHAIRMAN. Senator Stabenow?

Senator STABENOW. Thank you very much, Mr. Chairman and Ranking Member.

Ambassador, it is always good to see you, and I appreciate that you have a lot on your plate, and I appreciate the work you are involved in. I do have to, though, follow up to what my chairman in the Agriculture, Nutrition, and Forestry Committee was asking and your comment that President Trump is focused on supporting agriculture.

I know we are not in a budget hearing, but for the record, I just want to say that the budget came out yesterday. It has a 31-percent cut in farm bill programs for rural America that was overwhelmingly supported by the Senate, plus a 15-percent cut to the USDA to be able to enforce and provide the farm bill program. So I have a hard time believing that statement, with all due respect, even though I understand your reason for saying it.

Senator ROBERTS. Would the Senator yield on that?

Senator STABENOW. Yes, Mr. Chairman.

Senator ROBERTS. We are not cutting crop insurance. Get a hold of the budget——

Senator STABENOW. Which is in the President's budget.

Senator ROBERTS. We are not cutting crop insurance to the degree—they say it is reform. It is not—it would gut the program, and that is the one thing that farmers, ranchers, and growers all over the country said was the number one issue.

And I agree with the distinguished ranking member, the former chairman of the committee. Thank you.

Senator STABENOW. Thank you.

So we realize we are not in the Agriculture Committee, but that is important to say, just for the record, and to also say that nobody has had a bigger downside from the administration's actions on China than agriculture.

So let us talk about the WTO. We certainly have a lot to talk about in terms of reform. And issues like China's non-market economy status at the WTO will continue to be something that many of us care about. And I want to talk specifically about something you and I have talked a lot about related to China, and that is currency manipulation, which we know is uncompetitive and an unfair trade practice.

I also know that you know that Senator Portman and I had a bipartisan amendment to address this that almost got included in the TPA to add enforceable standards on this issue in trade negotiations. Now the U.S. negotiated currency provisions in USMCA—which is good—which were transparency and reporting obligations, as well as commitments to market-determined exchange rates.

The transparency portion has enforcement behind it, but not the other commitment. So that is another issue.

And then with South Korea, when the agreement came before us in previous Congresses, there was an understanding put in on currency manipulation, though there does not seem to be enforceability behind that.

So now we get to China. Can you shed some light for us on what exactly it means when we hear that there is a currency agreement with China? How does it compare with what has been negotiated with the USMCA, and how far does it go in terms of being enforceable?

Ambassador LIGHTHIZER. Well, yes, thank you, Senator.

First of all, I would say we do not have an agreement with China, as you know. So nothing is really done, and, as in these kinds of negotiations, nothing is ever done until everything is done.

Nonetheless, we have talked a lot about currency. I know it has been a major factor for you and a number of other Senators. Senator Schumer has also been a leader on this for a long period of time.

As you say, we have what is the farthest-reaching commitment on this ever in USMCA. And I just want to continue to point that out, because the members will consider that at some point. And that is a commitment not to have competitive devaluation.

But as you say, it is not covered by the dispute process. But the transparency provisions are. And our objective really was not to stop currency problems with Mexico and Canada, as you know, but to have it be like the model of how we are going to be going forward.

We have had discussions with China. We have come, I think, pretty close to agreement. And if we have an agreement, I believe we will have a commitment not to have competitive devaluation, and we will have a commitment to certain transparency. And the terms, the actual terms of the transparency, we will have to talk about, because they are reasonably complicated.

And the Treasury Department, as you know, is very much involved with us with advice from the Federal Reserve. But the Treasury Department is very much involved with us. But as it stands now, it is a provision. It has real commitments, and it is enforceable under the agreement as it stands right now. So——

Senator STABENOW. Let me just—my time is running out.

It is a negotiation. And so the question I would have, as just a quick follow-up is, did the United States have to provide concessions on our end to be able to get to the point of what you are talking about?

Ambassador LIGHTHIZER. So let me say first of all, with respect to the actual language, I am happy to sit down with the Senator and just show you the language and you can tell me, give me your

opinion, and I would like to have your opinion, because you are a leader in this area, number one.

Number two, yes, this is a negotiation. The focus of the negotiation from the Chinese side is the removing of 301 tariffs. If that is the concession, then that is something that is under debate. In addition, they have some specific market access provisions that we also are considering.

The CHAIRMAN. Senator Cornyn, and then Senator Cantwell.

Senator CORNYN. Mr. Ambassador, let me ask you a question about the USMCA, and then I would like to talk about the WTO briefly.

According to my calculations, the administration could send over the proposed USMCA for congressional action by mid-April. And I just, one more time, want to encourage you—first of all, to congratulate you and the administration for successfully negotiating this deal, which I support, but also to encourage you to keep working closely with us to make sure that what you send us in mid-April is something we can pass. It is very, very important, as you know, and so I look forward to working with you on that.

And that is not a question. I guess that is a statement.

Secondly, let me just ask you a broad question about the WTO. If in fact—I mean, this is like the Articles of Confederation. It is a consensus organization. We found out that did not really work very well for us, and it does not seem to me that the WTO is working very well as currently constituted.

You say it is not a negotiation forum. It is more a litigation forum. But then, once the disputes are decided, assuming we have an Appellate Body in place, then there is no real compliance with what the WTO orders.

And if someone can game the system, a country can game the system, by identifying themselves as a developing country and reduce the number of items that they need to comply with—let me just ask you the broad question. Why is the WTO still relevant?

Ambassador LIGHTHIZER. Well, thank you very much.

I mean, that is a fundamental question. Let me say first of all, thank you for your comments about USMCA. I think it is the best trade agreement we have ever negotiated, and I think that is true with respect to most of the things that members have come to me about, for a lot of reasons. And I do want to get it up here as soon as we can, consistent with the prerogatives of the House and the Senate. And we are working very hard to have that get done.

So the next question is the basic question on the WTO, because we had these conversations. What is the WTO? So it is the Council of Ministers, and then it is something called the General Council, which is like all the Ambassadors from the various countries, and it is out there. And then it has a bunch of committees. And those committees deal with everyday problems on a regular basis, and they solve some of those problems, and they interpret the negotiations, and they interpret the agreements, and they avoid problems. And this is an important function, because I think people tend to just look at the big picture.

The fact is, things are going on on a regular basis that are diffusing problems, interpreting things, and moving people towards consensus. So there are good things going on there.

The problem that I have, as you say, is because of a variety of changes that were made in the mid-1990s in the Uruguay Round, it has morphed from really a forum where we ought to be sitting down negotiating how to open up trade to a litigation forum. And so you have lots and lots and lots and lots and lots of litigation. And because of that, you find people who will not make concessions because they realize if they sue the United States, for example, they might have an Appellate Body give them something that they would have to pay for or could not otherwise get from the United States. And there are lots of examples of this.

So it is a problem. And it is made more difficult by the fact, as you say, that it is a consensus organization. How do you end up moving a consensus organization forward when the beneficiaries would have to concede their advantage? And that is a fundamental problem.

So for me, one, the dispute settlement thing has to be sorted out, and we can talk about that separately. But what we have tended to see is—and I think the way forward for the WTO is, you take small groups of countries that actually have something in common, that are willing to take on extra obligations, and those countries get together.

Like, for example, in the digital trade that the ranking member spoke about. So you have a group, in that case it is 70, and we can talk about whether it is being done properly or not. And those people get together and they say, "We will take on extra obligations, and we will just exclude the rest of these people from it." And you try to use that kind of, if you will, sort of plurilateral approach.

So I guess I would say three things. One, we are doing some real things there. It is not like it is just a waste of time. There are real things going on on an everyday basis.

Two, we have the dispute settlement process, which we have to worry about, which is quite troubling to me.

And then, three, we are probably moving more in the direction of the negotiation forum of this plurilateral thing.

And there is another thing that is troubling to me that I want to work with members on, and that is—I will be very quick about this and talk about it more if someone else cares.

There is a situation where somebody joined the WTO in 1950. They took on certain obligations. They can keep their tariffs at a certain level. We find ourselves 70 years later—the whole world has changed. They are big, they are rich, or whatever.

They still have locked in what they did in 1950, and there is no way to get them to change it, because we are in the position where we have, over a period of time, lowered our tariffs way down. And it is hard to figure out a way to put pressure on those people so that they will change their tariffs and non-tariff barriers.

The CHAIRMAN. Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

I thank you and Ranking Member Wyden for holding this hearing. I actually think this is the hard work of trade. And I think—if you ask me, we could spend a lot of time on this subject.

We should. We should spend a lot of time. In fact, I find that more important to how we move for the future. But I come from a part of the world where trade—we are one of the most trade-

dependent States, and I guarantee we were trading with China before Lewis and Clark showed up.

So we want access, and we appreciate all the things that you just said. So I think I spend every day sending you a letter about—whether it is cloud computing or agriculture, access or—I do appreciate your trilateral meetings with Japan and the European Union with the United States, because I think that is something I agree with the administration on, that you can continue to put pressure on the larger China discussion by bringing more people to the table. I would be bringing more people to the table.

On that point, I appreciate your testimony. I wanted to ask you, given this discussion, and for somebody who wants market access, and sees—I guess that is where I disagree with the administration in this context. I appreciated that the last President wanted to increase exports by 50 percent, and he set that goal. He did not reach it, but I thought it was a great goal and that we should keep doing that.

This committee pushed through that Trade Enforcement Trust Fund in part of the Customs bill, and then you have been able to use that Trade Enforcement Trust Fund to hire more lawyers to successfully challenge China's tariffs on wheat and rice at the WTO. Why is that not more the direction that we need to go?

If so much more of the economy is outside the United States, and we are very good at growing things and manufacturing things, why are we not spending more time winning the day and putting the tools towards trade to win the day?

Ambassador LIGHTHIZER. Let me see. First of all, I want to commend you for your leadership on the Trade Enforcement Trust Fund. It is extremely important to USTR. And when you look at the enforcement things we do and how much of our budget is spent on it—a small budget, but how much of the budget is spent on enforcement is a matter of debate, right? Because almost everything that I do I look upon, more or less, as enforcement, as you know.

But that trust fund is the reason we can bring so many of these cases. It is the reason we have people who speak Chinese and can read the Chinese papers and the Chinese regulations and help us interpret those and put those into legal filings and briefs. So it is a real world benefit to us.

And I guess I do not—I agree with you and the committee completely on the issue of enforcement. I do not think that the enforcement is—I think enforcement is basically opening up markets. And I think what the President has done, and what he has had me do, in using some of these tools to take actions against other countries—the real objective is to get market access. It is to get reform.

So if you look at China as the principal example, our objective is to get better access and reform in China, and really to work with reformers who are in China who want to have pressure to reform their own system. So the trust fund is extremely important. We use it, I think, very efficiently. We would be in dire straits without it, and we use it on enforcement, and most of that enforcement is really directed at getting more market access, whether it is the 301 kind of action we are talking about or all the WTO cases. They are all designed for that purpose.

I think relying solely on the WTO litigation has its flaws, because you will win cases, as you know, and in fact, you are the absolute expert on this issue of winning cases for years and years and years and years and years and not getting real outcomes. Having said that, in your particular case with Boeing, we are close. I think we are close to getting a really important outcome. But it has been a long time coming.

Senator CANTWELL. Well, I guess I would say I look at this as the first line of action. And when I look at the tariff situation, I look at it as throwing down in such a major way. This polysilicon issue with REC is a perfect example, not even started by this administration; started by the last administration. And I do not even know what year we are in, year 6 or something. And I am not sure we have made—I am sure it is on the table in your negotiations, and you are talking about it. But that is where tariffs got us. We have fewer and fewer employees at a polysilicon facility because we could not come up with a path forward.

So I am just saying, to me, if us giving you funds helps you hire the lawyers to bring up these cases and get them going, then I am all for it. Because I just think so much more of trade is going to be outside the United States, with developing countries who are not going to necessarily play by the rules. And making sure we call people out on that in the broadest possible fashion to start that discussion, I just think, is helpful in this access issue.

So thank you.

The CHAIRMAN. Senator Thune would be next, but Senator Casey will take his place, and then after Senator Casey, Senator Portman, unless Senator Thune returns.

Senator CASEY. Thank you, Mr. Chairman.

Mr. Ambassador, thank you for being here, and thanks for your service.

I appreciate the fact that, with your work, you have been leading an effort to confront China, frankly in ways that are overdue, and we are grateful for that. I am also grateful for the time you have spent with individual members of the committee, like me, to talk about these issues and to consult, especially on China and the 301 investigation.

I want to start there with regard to the scope of the negotiation so far. Based upon what you have said today—and I think this is probably a pretty good list of the issues, and if there is anything else, please add to this. In terms of the scope, you talked about intellectual property, technology transfer, agriculture, market access, currency—that is at least five. And I am assuming state-owned enterprises are also part of it, but is there anything else in terms of the scope of your negotiation so far?

Ambassador LIGHTHIZER. So I would say—just in terms of scope, I would say that we mentioned currency, we have mentioned most of the things here. One thing we have not mentioned is services. The services—there are a lot of specific access problems we have in the services. It is extremely important to the U.S. economy and an area of real genuine U.S. competitive advantage, we believe.

And I would say the final thing is non-tariff measures. And non-tariff measures are—I do not want to say this, but sort of a hodgepodge of a lot of different problems that we have. But in that cat-

egory for us is the very important issue of subsidies that China uses, right now at least, to create excess capacity in a whole variety of areas.

But there are a lot of other specific things under, particularly services and non-tariff measures. But that is kind of the universe.

Senator CASEY. And second, I guess the goal, obviously, is to enter into an enforceable agreement.

Ambassador LIGHTHIZER. Yes, sir. Absolutely.

Senator CASEY. And the basis of my question is really about what the involvement of Congress would be in that. And so I guess the question I want to ask about today with regard to your commitment is, do you commit to give Congress ample time to do three things: read, review, and evaluate this agreement before entering the United States into this legally binding agreement with China, if and when it would be in place?

Ambassador LIGHTHIZER. So I would say first of all—as you well know, Senator—this is not an agreement where we are using TPA. And I know we have talked about that and you are aware of that. So a lot of the obligations we would have under TPA, we do not have to follow.

If we have an agreement—and once again, it is a big if—this will be in the nature of settling a trade dispute that we have, which trade dispute was brought under the auspices of section 301.

So as we move forward, we will have an agreement. I am happy to consult with members. There will by no means be secrets in any of this, right? I mean, everything we have will be open and public.

And as we move forward, I am happy to sit down with members and show them. How we will make it public, I do not know yet. But it will be a public agreement. It is in no way private. When we enter into it, you know, will be when the President decides that we have a package that, in his opinion at least, is a great package.

And what I view as my obligation is to move forward with Senators who are particularly interested in this, and sit down with them on a regular basis, and tell them precisely where we are on these various positions, and the precise language, right? I mean, I cannot operate a negotiation in public, of course. But I can certainly sit down with Senators who are interested and show them exactly where we are on all these provisions, and what we expect to do.

It is fair for you to say, "Well, I want to know where you are when you are close to getting an agreement." And it is fair, and we will do that. We will undertake to make sure that you are aware of that, and I will sit down with you when we get to that point.

Senator CASEY. Would the commitment then be—and I want to characterize it the right way. But would you commit to formally consulting with Congress?

Ambassador LIGHTHIZER. I am not quite sure what that means. I do not go a day without talking to three or four Senators or members of the House, usually 10.

So I mean, I view myself as consulting on a regular basis with Congress. I think the idea of saying, should we sit down with the chairman and ranking member of this committee and Ways and Means when we get very close to the end, I think that is a very

constructive thought. And I want to think about how best to do that.

But in terms of you, personally, and your involvement, I will sit down and tell you where we are. As we get forward, as we get close, I will call you and say, "We have to sit down again." And, if you have time, we will do it, and I will go through it with you. But it may be that it makes sense to do something with the chairman and ranking member of the two committees of jurisdiction in some organized way. And I want to think about that. I think that is a very constructive thought.

The CHAIRMAN. Senator Portman, and then in 5 minutes, we will turn it over to Senator Whitehouse.

Senator CASEY. Mr. Chairman, could I make one more—not a question, just one quick statement.

The CHAIRMAN. Yes.

Senator CASEY. I want to make sure that as part of this, both committee staff—and obviously our staff are engaged directly, so I ask for your cooperation on that.

Thank you.

The CHAIRMAN. Yes. And then it will be Senator Whitehouse after Senator Portman. I will be right back.

Senator PORTMAN. Bob, thank you for being here again.

And on China, as you know, I appreciate the fact that you are so focused on that, because it is incredibly complex, incredibly important, and I strongly support us landing that plane, and I hope you have success in doing it. Tell us today what you think the timing is on China.

Ambassador LIGHTHIZER. Well, thank you very much, Senator. I appreciate the comments. I appreciate your leadership in this area, and I walk by that picture every single day, and I look at all these ugly former USTRs, and there you stand right in the middle of——

Senator PORTMAN. Yep. The ugliest of all. [Laughter.]

By the way, 13 years ago, I think I was sitting in that exact seat when Chuck Grassley was chairman of this committee talking about the WTO. So some things never change—I mean on China.

Ambassador LIGHTHIZER. So I would say we—Secretary Mnuchin and I—were on the phone with China last evening. We are going through a lot of issues—very, very complicated issues.

If we have an agreement it will be a 110/120 pages. It is very, very detailed, very specific. As I say, I am happy to sit down with members and talk it through, particularly members who have specific issues.

We are working, more or less, continuously. Our staffs are getting drafts back and forth. So this is a process that is ongoing. I will be on the phone again with them tomorrow. As I said, I was on the phone up to 9 o'clock——

Senator PORTMAN. Your thought is by the end of this month?

Ambassador LIGHTHIZER. Well, we will see. As you know probably more than most members because of your experience, you know I do not know when something is going to happen. We are going to have a good result or we are going to have a bad result before too long.

But I am not setting a specific time frame, and it is not up to me. I work as hard as I can, and the President will tell me when the time is up, or the Chinese will.

Senator PORTMAN. So I noticed—I looked at the cases I had filed in WTO when I was USTR. They were all about China. Every single one involved China. And it continues to be our number one issue on this committee.

On USMCA for a second, I think it is an improvement over NAFTA. I think you have negotiated a good agreement. I am supportive of it, as are a lot of my colleagues.

However, 232 is a problem, in two ways. One, it is tough for them to ratify with the existing 232. Second, this 232 on autos that is being considered—the President now has a report from Commerce. I know that is not your leadership, but I would hope that you would communicate back the importance of not moving ahead with a 232 on autos, in part so that we can move forward on other things like USMCA.

I cannot imagine with what I am hearing from the Canadians and Mexicans already on steel and aluminum, that if we did autos, we could have a successful completion of USMCA here on the Hill, and that they would be able to ratify it. Any response to that?

Ambassador LIGHTHIZER. Well, I would say I will certainly take back what you tell me to the President, as I always do. The 232 car thing is complicated, and you probably more than any other member know where my own position is, where I am, and how I am working through it.

It is a very serious issue, the auto industry and what has happened to the U.S. auto industry.

With respect to USMCA, and Canada and Mexico on cars, there are provisions that will take them out of it, whatever we do. But that does not in any way diminish your overall point. I just want to make that technical point.

And on steel and aluminum, as you know, we are in discussions with them and trying to find a way out of that dilemma for them and for us.

Senator PORTMAN. Finally, WTO, just quickly.

As you have expressed, there is a lot of frustration. You listed five specific issues we need to address. Again, I approve of every one of them. The reform agenda is incredibly important.

It is a rules-based body that we cannot live without. In my view, things would be even worse without having a WTO there. Having spent many, many hours 50,000 feet over the Atlantic trying to negotiate Doha, you know, back in the day—very frustrating. We could not get that done.

It does not mean we should not move forward again with these other agreements. You talked about e-commerce today. We talked about the fisheries agreement. We did do a trade facilitation agreement with China that was very positive.

Here is my question to you, and it is really a very simple one. Is it time for us to look at the consensus idea fresh and to say, "Does consensus really work?" I mean, there has always been a fear among the major trading partners, including us, that if it was not by consensus, that somehow we could be disadvantaged. On the other hand, consensus is not working.

Let us just be honest. You cannot get 98 percent of the trade in the world, all those countries, to agree on hardly anything anymore, particularly as it relates to reforming dispute settlement.

Is there any interest in looking at this issue and trying to get some allies to join us in looking at whether it should be not consensus-based, but based on some sort of a—if it is not majority, maybe it is a super-majority, to make decisions?

Ambassador LIGHTHIZER. Well, that is a huge question, and it was perfect timing. You got me to use up most of your time.

So, I mean, I am happy to get involved in that philosophical argument. I do not ever want to be in a position—to be honest, I would never recommend that we are in a position where a majority of any countries get around and say, "We are going to make rules that will have a negative effect on the United States."

It is troubling to me that other countries would use this consensus to protect—in an unfair way—their own economies. On the other hand, I would never recommend anyone to say, let us have two-thirds of the people in the world sit down and vote and make rules that would have a negative effect on the U.S.

So to me, the consensus is like a—it is a dilemma. As long as we are required to be in the consensus, well and good. I just do not like other people having it. And my guess is, they all have the same view. And so I think the solution is probably to try to do something to reform the things we can reform, and then move in the direction of, like you say, the e-commerce.

There are some things you can do on a plurilateral basis, and make real headway on. And those things we ought to do.

Fisheries is kind of trickier, because if 80 percent of the people say they are going to do something sensible on fisheries, and the other 20 percent, like China for example, go out and get—it is kind of trickier on fisheries.

But some things like digital trade are clearly a kind of thing we can move on in a plurilateral way.

Senator PORTMAN. Thank you, Chairman Grassley.

The CHAIRMAN. Senator Whitehouse?

Senator WHITEHOUSE. Mr. Lighthizer, welcome.

Since you are talking about fisheries, we are headed for a planet that will have more plastic waste in the oceans than it will have swimming fish by 2050 if we keep things up. And with the very energetic support of Senator Sullivan of Alaska, the Congress passed the Save Our Seas Act on marine plastic debris. It passed in the Senate unanimously. When we went up to the oval office for the bill signing, the President lamented what he called, I think, other countries using our beautiful oceans as their waste dumps or their landfills. I do not remember the exact words he used.

But the President was quite engaged on this. So you have bipartisanship. You have the support of the President, and I think we actually have a win-win here, because most of the plastic waste flowing into our oceans comes from five countries, five Asian countries that have been identified. And 90 percent of it comes from 10 rivers, which provides a really specific focus for various methods of trying to avoid it.

The problem appears, more than anything else, to be a failure of upland waste management in those countries. And so something

goes into the gutter, and then it goes into the creek, and then it goes into the stream, then it goes into the river, and maybe 2 years later it is in the ocean, because nobody bothered to clean it up. And we have very good waste management companies.

So because this is an overseas problem, we hope very much that, because it has the President's support we believe, we hope that you will be leaning in with these other countries in the trade discussions that you have with them. Try to get them to clean up their act on their own upland waste management, because we pay the price of plastic-fouled seas, and they get the benefit of not having to have their businesses and their people pay for cleaning up their waste the way we do.

So, could you tell me where this falls in your world? Is this something you have heard of before? Is this something that is a priority for you? Is it somewhere in between? Where are you on using your authority to try to solve this marine plastic waste problem?

Ambassador LIGHTHIZER. Well, thank you, Senator.

And thank you for your leadership too, because we have for the first time, I believe ever in a trade agreement, a provision on this in USMCA. And it——

Senator WHITEHOUSE. "To take measures to prevent and reduce marine litter" is the phrase. So I hope that that will be enforced and there will be metrics for it.

But my opening question was more generally where this falls as a priority for you.

Ambassador LIGHTHIZER. So anything that the Senators of this committee or members of the Ways and Means Committee, other members of the Congress bring to me as a priority, is a priority. So I guess I do not know quite how to rank it. It is a priority if you say it is a priority. I bring up issues that the members want me to bring up.

I have a lot of priorities, right? And I guess if I had to rank them, I would say jobs for workers, ranchers, and farmers is kind of like my first thing. And then I move—everything else kind of flows from there. Those are the things that I focus on.

Senator WHITEHOUSE. Okay. Well, we will do what we can to make sure that this stays high in the priority chain, and let me ask you more specifically——

Ambassador LIGHTHIZER. You have done a very good job.

Senator WHITEHOUSE. Well, Senator Sullivan has done a really good job. I want to give him credit, because he has access to more doorways in the administration——

Ambassador LIGHTHIZER. He has spoken to me about it.

Senator WHITEHOUSE [continuing]. And he has knocked on virtually all of them.

With respect to the U.S.-Mexico-Canada agreement and that language about the obligation of each country to take measures to prevent and reduce marine litter, what metrics are being used to facilitate and enforce this provision? As you know, we live in a world in which there is often very agreeable language thrown into these agreements, and then there is never any enforcement, never any metric, and it evaporates in practice.

What is the metric that will drive that "prevent and reduce marine litter" provision?

Ambassador LIGHTHIZER. Well, I would say first of all that it is important that we, in fact, have it in there, that we pass USMCA. So I will make that pitch, because people will be disappointed if I do not.

I would say I think realistically the way this is going to have to be enforced is like a lot of other provisions. That is to say, people for whom this is a high priority are going to have to come to me, or to the USTR, and say, "We have a problem; we have an enforcement problem." And then I am going to have to bring consultations first, and then go through the dispute settlement process with both countries.

And I certainly pledge to do that. I expect to do it, and I expect members to hold me accountable for it, you know, for doing that. I think also it is the kind of thing——

Senator WHITEHOUSE. Well, my time is expired. So I will just accept here your invitation to keep after you.

Thank you.

The CHAIRMAN. Senator Lankford?

Senator LANKFORD. Thank you, Mr. Chairman.

Well, thanks for being here again, and for the engagement on this issue. WTO has just ruled against China that they have consistently exceeded their ag subsidies that are allocated, which they have done for years. That is something the United States has worked with WTO on for several years now, have won that.

And now the challenge is, if China appeals that and it goes to the Appellate Body and we do not have enough individuals on that Appellate Body once it goes into next year, what happens then?

So my question for you is, where are we now that we have just won a ruling from the WTO on ag subsidies with China and where this goes if it goes to the Appellate Body and it extends out past next year and we do not have enough people to have a quorum there at that point?

Ambassador LIGHTHIZER. So I would say first of all, with respect to that case, it was a big case, as you know, a major win, and we have another case that is floating out there, which is also important—that is their tariff-rate quota management, which I know you also are aware of and involved with.

So it is a major win. I should also say that in the context of our discussions with China, we are trying to resolve this case in a way that we think achieves our goals and avoids the possibility of an Appellate Body decision. It is, of course, not impossible that you go to the Appellate Body and lose the case also.

So I would not necessarily assume that you are going to win just because you go to the Appellate Body.

So my hope with respect to that specific case is that we can work it out in the context of this negotiation. And we are having those discussions, and that is my objective.

In terms of the general question of what do you do, how do you get reform? That is a big question, as you know. And if you are not willing to be bold and use the only leverage you have with the WTO—which is to say that we will not approve the appointment of Appellate Body members without reform—I do not know any other way to do it.

And I could go through—I know you know well, the Appellate Body does not follow its own rules. It is creating a jurisprudence, and there was never any contemplation that this would be part of this process, right? The whole—I should take a step back for members who have not spent a lot of time with this.

The notion was, you would have specific disputes decided by a panel, and the Appellate Body would come in in 90 days and say, okay fine. Is there a crisis here? If not, the panel would decide; there would be no jurisprudence.

What has developed over time is in fact these things. The Appellate Body takes years. They have developed their own jurisprudence. So they will cite their own things. And the effect of this has been to create obligations that we never agreed to, and to take away rights that we bought.

So what you are saying is, what do you? Your creating a problem to force reform has to have a short-term impact on an important matter. I am saying I am trying to deal with that matter in the context of these negotiations.

But that does not in any way obviate your more important point.

Senator LANKFORD. But the bigger issue is, your opposition is not to the Appellate Body. It is to how it is actually operating. So the hope is to be able to get it back to operating functionally and consistently and predictably, rather than sporadically, and to be able to get it back to full functioning.

Ambassador LIGHTHIZER. Yes. I mean, we clearly need reform. And there are a whole lot of things that I could talk about at the appropriate time, whenever anybody asks me, that are major problems. Every other country, or almost every other country, has made the same point. It goes to why we are not a negotiating body anymore, the WTO, but we are a litigation—I mean, these are all sort of linked things.

I have, you know, three former WTO Directors-General who even 15 years ago were saying this is a bad trend. It is a problem, and we have to get away from it. It is a major, major change from what the WTO was supposed to do. And the result is, we do not have rounds. We are not making any real headway.

I mean, it is a very large, fundamental problem. And I think it is generally recognized to be such by the thoughtful members.

Senator LANKFORD. Right.

Ambassador LIGHTHIZER. I mean members of the organization.

Senator LANKFORD. So let me bring one thing up quickly on this, what you and I have talked about: the 301.

I do appreciate that in the first two tiers of 301 there has been an exclusion process in place, that there has been a dialogue, and you and I have discussed before that, if it moves from 10-percent tariffs to 25-percent tariffs, there will be an exclusion process at that point as well.

But I would tell you, some Oklahoma companies that do a lot of trade and manufacturing are concerned that there may be a point where the 10-percent tariffs are left in place, and there is still no exclusion process. So there has been an exclusion process for tiers 1 and 2, but there never would be for tier 3. And I would just say that is inherently inconsistent for how we have handled things in the past, and we can continue that conversation in the future.

Ambassador LIGHTHIZER. I appreciate that.

The CHAIRMAN. Senator Hassan?

Senator HASSAN. Thank you, Mr. Chairman, and thank you, Mr. Ambassador, for being here today.

The section 301 investigation undertaken by your office into China's trade practices identified several serious concerns facing American businesses and workers, to be sure. You have stated previously, and again in this hearing, that your office has made significant progress in securing an agreement with China. However, we have yet to see any draft of this agreement.

Ambassador Lighthizer, there are businesses in my State that are having to make decisions now about their upcoming investments and whether, for instance, to move their supply chains. These are critical decisions that are going to impact these businesses, their employees, and our economy for many years to come.

What would you say to the businesses in my State that are trying to make important decisions about the future of their companies with little to no indication from this administration on the status, not to mention the content, of a potential agreement with China?

Ambassador LIGHTHIZER. In the first place, I am, of course, sympathetic to people who are in the real world and have to deal with these matters. I am also sympathetic to the, in my opinion, thousands of Americans who have lost their jobs because of unfair trade practices by China. I am sympathetic to all the companies——

Senator HASSAN. I understand your sympathy. Sympathy does not go very far, though, sometimes. So I am talking about transparency in a process that would allow the American people and American businesses to understand where we are with this.

Ambassador LIGHTHIZER. So we are involved in a negotiation. It is not going to be any more transparent than it is. It is just the nature of a negotiation. It is not something you can negotiate with another country in public.

I am happy to sit down, of course, with the Senator and go over any of these matters. But I am not going to make public statements about where we are and specifically talk about terms and put text out, because I think it will make it more difficult——

Senator HASSAN. So could you at least give us a sense of timetable and framework so that people would have a sense of—I have businesses that need to make $50-million investments, or not, depending on whether this agreement gets done in the next month or not.

Ambassador LIGHTHIZER. So I am happy to do that, Senator, of course. In terms of time frame, our hope is that we are in the final weeks of having an agreement, but I am not predicting one. There still are major, major issues that have to be resolved. And if those issues are not resolved in a way that is beneficial to the United States, we will not have an agreement.

So it is one of those things. And there is nothing harder to predict than when you are going to end a trade agreement, right? These are sovereign countries that have their own interests.

Senator HASSAN. Right.

Ambassador LIGHTHIZER. So I cannot predict success at this point, but we are working hard, and we have made real progress.

Senator HASSAN. And you think you are getting towards an end point, one way or the other?

Ambassador LIGHTHIZER. Yes, I think that is correct; yes. And in terms of structure, because that is a fair statement, what we want to do is have real provisions that specifically and clearly preclude forced technology transfer. And that is complicated, as you know well, because we spoke. And then it goes down to the local level. And you know a lot about some of the horror stories that American companies have had.

We also have to have real detailed protection for U.S. intellectual—everyone, not just the U.S., but I care about the U.S. intellectual property rights. China does not really have a system to protect intellectual property. We have to have that in place. And that could—just to give you a sense—that could be what you would consider to be sort of 20 pages of statute.

Senator HASSAN. Right.

Ambassador LIGHTHIZER. I mean, it is difficult, complicated stuff.

We have currency provisions, which I expect to be in there, and I talked a little bit about that earlier. We will have specific provisions with respect to various people who have—various companies who have problems with access on services. And there is a whole variety of these that we are dealing with with members.

We will have a whole variety of issues on agriculture that we are working our way through. And then we will have what are called non-tariff barriers and non-tariff measures, which are kind of a hodgepodge of complicated things.

Senator HASSAN. Okay.

Ambassador LIGHTHIZER. And then an enforcement provision. So that is more or less the structure of it.

Senator HASSAN. Thank you. And I appreciate that, and we will likely follow up with you for a little bit more detail around that.

I want to shift gears a bit and discuss another area of negotiations where it is essential that China upholds its promises. In December, President Trump tweeted that one thing to come out of his meeting with President Xi in Buenos Aires was President Xi's "promise to me to criminalize the sale of deadly fentanyl coming into the United States."

Just last month you testified before the House Ways and Means Committee that this is "something that the President views himself as having a commitment on" and "may very well be something that we end up writing into this agreement."

I have concerns that you seem to be backtracking from the President's assurance that this would happen. Given the level of importance this has for so many, will you commit that any final agreement will include this step which the President has touted as a game changer?

Ambassador LIGHTHIZER. So let me say, Senator, first of all, I am not backtracking from anything. Fentanyl is not something that people talk about in trade agreements, right? This is something that the President in a meeting with the President of China raised, made a very big issue about. And the President of China agreed with him.

And then the question is, do we write it in the trade agreement? And my own preference would be that we do. But whether it is in

the trade agreement or not, the President of the United States views himself as having a commitment, and he views this as something that is going to happen.

Senator HASSAN. I am over time, and I understand that. I will say that it seems to me that you all are being pretty creative in your use of the 301 process here with China. Almost 500 people died in 2017 and in 2016 from overdoses of opioids in my State, most of which came from fentanyl. So I would ask you to identify this as a priority.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Daines?

Ambassador LIGHTHIZER. Could I just say, Mr. Chairman——

The CHAIRMAN. Yes.

Ambassador LIGHTHIZER. I completely agree with you as a personal matter, but more importantly, the President completely agrees with you. He has exactly the same level of concern about this as you do. I assure you, I will talk to him in the next few days, and I am going to tell him that we had this conversation.

The CHAIRMAN. Senator Daines?

Senator DAINES. Thank you, Mr. Chairman.

Bob, good to have you up here today. So you know I spent nearly 6 years working on the ground in China with Procter and Gamble back in the 90s. I ran Asia-Pacific for a software company for 5 years, most recently. I spent a lot of time working on business and trade in the region. But if I think about my home State of Montana—and there is an old saying in business, "The main thing is to keep the main thing the main thing."

Our number one economic driver in Montana is agriculture. The number one cash crop for Montana is wheat. The number one livestock is beef. The largest market for U.S. beef is Japan. Eighty percent of Montana's wheat harvest goes overseas, most of that to Japan.

So as we think about China in the moment, I applaud what you are doing; taking on the issues related to intellectual property, forced technology transfer, and so forth—that needed to be done, Bob, and I am grateful for your leadership there. My farmers and ranchers back home are very anxious, and they want to see results.

So I think about the strategy as it relates to China, and then, stepping back and thinking about TPP and Japan, I am concerned at the moment about what is going on, and losing market share in Japan specifically. TPP provided a great opportunity for us to see significant tariff reductions. As you know, moving beef tariffs, import tariffs in Japan, from 38 percent to 9 percent, to see a 45-percent reduction in tariffs on wheat in Japan over a course of 9 years for wheat—these are huge markets.

And just yesterday, I was meeting with some of my barley producers. They have now lost contracts. They have lost malt barley contracts with Japanese clients, and they are very concerned.

And so my plea is to move this to getting some results now, because the results we are seeing at the moment are losing market share. And when we lose that share to foreign competitors, it is tough to get that back.

So the question I am asking here, then, for you is, when can we expect negotiation to begin with Japan, because that is a very im-

portant market for us. Now as part of helping the efforts here to remove the beef import ban in China that had been there for 16 years—we saw that removed. That is good news.

And we need to get into the Chinese market long-term because of, certainly, the huge potential here for Montana and U.S. ag producers. But I want to come back to Japan for a moment because it is such a huge market force today, and we are starting to lose share. When can we expect to get a deal with Japan?

Ambassador LIGHTHIZER. First of all, on the broader question of China, I appreciate our conversations and your experience. It has been very helpful in terms of informing how we are operating here.

So if we get a bad result, everybody will be blaming you now because I said that. But you have been very helpful, and I do appreciate your experience. That is number one.

Number two, on the issue of Japan, that is extremely important. As you know, it is not just what is happening in the market now. It is what is going to happen when TPP is fully implemented——

Senator DAINES. Right.

Ambassador LIGHTHIZER [continuing]. Because we have a whole variety of competitors there, but also the European agreement. So we are—we have a real problem. We have a situation that is not good now, and it is going to get bad very quickly.

Senator DAINES. Yes. Well, that is the concern, Bob. As you know, we are now behind in Japan because our other allies here have signed agreements and are moving forward and receive the benefits of the tariff reductions. It is going to put U.S. producers at a significant disadvantage.

And again, my malt barley folks were in talking to me yesterday, literally showing me contracts they have lost now in Japan.

Ambassador LIGHTHIZER. Well, I would say first of all, I want to have my staff contact your staff. I want to get information on the barley situation.

Senator DAINES. Yes.

Ambassador LIGHTHIZER. That kind of helps me make my case. I would say we began the process of TPA some time ago. It takes several months before you can get to the stage where you can negotiate. We are at that stage now. We are talking to the—we have spoken with—he calls it a prenegotiating, but we have spoken a fair amount with the Japanese.

But this is a very high priority for me, and I think it is something—let me take a step back. So it will take a while to get an entire FTA, but my own view has been that we have to take care of the agricultural part of it and some other things——

Senator DAINES. Right.

Ambassador LIGHTHIZER [continuing]. So it is balanced at an earlier stage. Some Senators probably will not like that. Some will like it, but I think, because of the market situation in Japan, we have to move in that direction.

I have talked to the chairman and the ranking member and others about this, and some other Senators——

Senator DAINES. I am out of time here, Bob. I think there could be a parallel path here of continuing work with the multilateral agreement here with Japan and a bilateral agreement here in other places.

But anyway, I know you have a lot on your plate, but our farmers and ranchers are concerned with the results they are seeing here.

The CHAIRMAN. Senator Cassidy?

Senator CASSIDY. Hey, Mr. Lighthizer, you have always been so responsive, and you mentioned to Senator Portman you speak to Senators on a regular basis. I am one of those. Thank you very much.

One thing that is important to my State which has not yet been discussed is India importing shrimp. And since the EU has put phytosanitary restrictions upon Indian shrimp, they are flooding the U.S. market, which is negatively impacting domestic producers.

Now if it was fair trade, that would be fine. But they subsidize—as you know—they subsidize their aquaculture. And so that subsidy with the restrictions ends up disadvantaging our folks disproportionately. I will note that if the EU finds their shrimp unsanitary, I am a little reluctant to have that shrimp in our State for health reasons. But that is almost a side issue.

So with that kind of preamble and knowing that USTR just announced the termination of India's GSP status last week, what additional authorities would the administration consider, or feel as if it needs, to address this shrimp dumping issue?

Ambassador LIGHTHIZER. Well, I mean, I am generally aware of the problem with shrimp. We have laws in place, as the Senator knows, where you can bring cases, and this industry has availed themselves of them at the Department of Commerce on antidumping. But also more importantly, in the case of India countervailing duty cases, in the event that you can show injury—and in this case, at least, there is a history where the shrimp industry has been able to show injury.

If the Senator has specific ideas, I am happy to go forward. Generally in a situation like this, you are better off bringing litigation. As you know well, I brought a lot of this litigation over the years, and it is a very effective remedy to actual subsidies in this case.

I do not know anything about the sanitary issue. I am happy to raise that with the Department of Agriculture, which I think has jurisdiction over that. And I am happy to do that, and I will do it to see whether there is some avenue with this being overlooked.

Senator CASSIDY. Now it seems as if, going to that point, it just seems like knowing that, it is difficult to do this. But it does seem a scenario in which a kind of all-of-government response would be nice to have—FDA, for example, looking at the phytosanitary aspect of it. I do not know if a 301 tariff would be adequate to get India's attention. But India, so far, has not paid attention to this.

There are antibiotics and, allegedly, fecal material being found in the farms where these shrimp are being grown. And which, again, the EU finds objectionable. But to what degree could we hope for a coordinated response where, for example—I understand right now if there is a sanction, if the shrimp is found to be contaminated, it is a business-to-business transaction. This shipping business is then sanctioned.

On the other hand, it really should go back to the farmer, because a farmer might be supplying several export businesses. And if you just sample and find this one is bad, but you do not sample

this one, it is actually the originating farm which is the issue. Again, it is phytosanitary, not trade-related. But on the other hand, it ultimately involves trade, if you follow what I am saying.

Ambassador LIGHTHIZER. I do, Senator, and we are concerned with phytosanitary standards. Usually we are on the other side of it. We are objecting to other countries that are using them artificially as a form of protectionism.

But in this case, I am happy to look into this. I do not know what the Department of Agriculture does in this situation. I am happy to look at it, and to the extent there are countervailing duty cases, I am sure that the industry is looking at them.

We have had trouble. As you know, we have given notice that we are going to stop the GSP program for India, and it is because largely there have been a very large number of trade access problems that we have had on which they have shown really no interest in making improvement.

So the President has given them notice, and that is going to go forward unless there is some change in the situation. This is an issue that I am happy to raise in that context.

Senator CASSIDY. Sounds great.

One more thing. I have 30 seconds left. I will point out—I understand the USMCA does have something I have been interested in, which is trade-based money laundering. My understanding is the USMCA does have new provisions allowing for the two governments, Mexico and the United States, to collaborate more effectively in terms of looking at the financial aspects of it; if you will, correlating the invoice with manifest.

We would love to work with you on that, because I think that is a way cartels move billions out of our country, and it is something that, again speaking of all-of-government, seems like it will take an all-of-government approach to address.

The CHAIRMAN. Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

Thank you, Ambassador. You know we sat down a couple of weeks ago and talked about trade and its importance to South Dakota's economy, and to our State's ag producers in particular. And as you know, I strongly support the administration's efforts to correct long-standing and unfair trade practices with countries around the world, especially China.

But with two out of every three rows of South Dakota soybeans being exported, I am deeply concerned about the impact these retaliatory tariffs are having on our ag producers, which is why I firmly believe it is important for us not only to maintain the existing market access that we have, but to look at expanding market access for agricultural producers.

And new or improved trade deals that help open markets, like those that are being discussed with the EU and Japan, I think would be a welcome and positive development for American producers who continue to face low commodity prices. So we have a lot of work to do with markets around the world, but I look forward to continuing to engage with you on these and other trade-related matters.

I wanted to bring up the EU. They are notorious, as already has been alluded to, for imposing non-tariff barriers on American agri-

cultural products in an effort to protect their domestic producers, something that I know troubles both you and me. While I am hopeful that you will be able to gain significant concessions from Europe, if history tells us anything, the negotiation is not going to be easy.

So, given that ag seems to be a prerequisite for getting an EU trade deal through Congress but that EU officials continue to insist that agriculture is not on the table, tell me, just kind of handicap, what you think the prospects for success are in a deal with the European Union.

Ambassador LIGHTHIZER. Well, thank you, Senator.

I would say I met with their trade commissioner last week and went through a variety of issues. And one of the issues, of course, was this—what you say—which is the United States cannot have a trade agreement with Europe that does not deal with agriculture. And their view is that they cannot have one that does. So as you say, well, we are at a stalemate. We will see how that develops.

But from my point of view, I am completely committed that any FTA has to deal with agricultural products. We have an enormous trade deficit. We have a trade deficit of $15 billion a year in agricultural products with Europe, and it has nothing to do with economics, or competitiveness, or quality of products.

It has more to do with protectionism, in my judgment. And I think we have to have some erosion of that, of those barriers. So this is something we have talked about. From their point of view, they have no mandate, because they have a variety of member states that just will not give him a mandate. So they have no mandate. They will not talk about it.

There are some issues that we do talk about that are like in the aquatic area—nothing that would be of interest to you—that are, because of peculiarities of where tariffs are, in the industrial tariffs area. But on the basic agriculture issue, we are at a complete stalemate with them.

So we are working on other areas, with the realization that there is not going to be any FTA without agriculture, and that is just the provision. It does not even matter whether we showed—the Congress would never go along with us. So it would not make any difference whether we conceded or not. We would be a dead letter if we tried to come up here and do it. The members have made that very clear.

Senator THUNE. Thank you. I appreciate that and encourage you to continue to take the hard line in dealing with them.

Section 232 tariffs—we talked a little bit about that with, particularly, Canada and Mexico. Now that we have concluded that deal, when do you see us intending to lift those 232 tariffs on Canada and Mexico?

Ambassador LIGHTHIZER. So I am very much engaged in this issue. I realize how important it is to members, both because of the retaliatory tariffs but also because of the effects that market access has on prices of downstream items in the United States. It is something we are fully engaged on.

As you know, Senator, my view is that we have to have a solution with Canada and Mexico that protects the President's basic program, which he believes and I believe has been a very successful

program. That is on steel and aluminum. But I think there is a sweet spot there that allows us to have a solution that satisfies Canada and Mexico and also maintains the basic integrity of the program.

And it is a very high priority. I have ongoing negotiations with both of them on this subject. So you know, we are moving forward. But I find myself constantly in the position of not being able to predict when the end of negotiations is going to be. But I can assure the Senator they do eventually end, because a bunch of them have.

Senator THUNE. All right, I am out of time. I will submit a question, Mr. Chairman, for the record.

The CHAIRMAN. Senator Isakson?

Senator ISAKSON. Thank you, Mr. Chairman.

Ambassador Lighthizer, thank you so much for the 2 hours of your time you have given us and the job that you are doing.

The problem I have is, after 2 hours of listening to a bunch of members of the Senate, it is pretty hard for me to say anything that is going to be memorable for you to take home. I came up with something about five speeches ago.

I am going to talk to you about the four Cs of trade in Georgia. Are you ready for this—cars, cans, cinema in China, and chickens. Got that? Cars, cans, cinema in China, and chickens.

Cars and cans obviously are big products in our State. We are an agricultural State. A lot of food is sold, processed and sold, in cans. A lot of beverages and soft drinks are done in cans. The 232 tariffs have been tough. And you have heard me talk about this before.

Do you have any idea—I am hearing concerns that they are going to be replaced by some type of quota, or replaced by other types of burdensome expenses, or just increase themselves. Do you have any idea of the longevity of the current treatment of 232 or whether we can expect to be able to compete without that type of burden?

Ambassador LIGHTHIZER. So, thank you. The cinnamon, I have to confess that that is memorable now. But I guarantee, when I think about chickens and I think about cars, you are one of the ones I think about. So that I can guarantee, and there are a couple of others on this committee whom I also think about a lot on cars, but a couple others on chickens.

So I would say the President's view is—and I share this view—the 232 tariffs on steel and aluminum are working, are necessary. And I would say, particularly in the case of steel, we would be in dire straits if we did not have them. Those industries would be very vulnerable.

Having said that, it is a legitimate question as to what we are going to do with respect to Canada and Mexico, which I think is the core of your question. You raise this issue of quotas. So the question becomes, how do you relieve the burden of tariffs on steel and aluminum on Canada and Mexico and still maintain the integrity of the program?

So there are a variety of tools that are available. One of those tools is that you put in place a historic quota so the product can come in under the normal course, not pay a tariff, but that Mexico and Canada will not take advantage of the program in a way

where all the benefit of the program goes to them instead of to the U.S. And all I am saying is, I think there is a sweet spot there.

Quotas are not necessarily good or bad. It depends on the level of the quota, right? If the quota is at the right level, it is not troubling for your downstream people. If it is at the wrong level, it is very troubling.

So what I am trying to do is just have a practical solution to a real problem, and that is to say, get rid of the tariffs on these two. Let them maintain their historic access to the U.S. market, which I think will allow us to still maintain the benefit of the steel and aluminum program. That is more or less what I am trying to do, and it is something that we are working on very hard at this point.

Senator ISAKSON. I appreciate that, and I appreciate your attention to how much we care about chickens in Georgia. And I will add one other factoid about China and chickens. The Asian people love the feet. The Americans hate the feet. If we get those markets more open, we get a product we are not getting any money for in the United States—we will get a lot of money for it in China and Asia.

It will be a good thing to have. So that is one thing to keep in mind.

Ambassador LIGHTHIZER. I appreciate that. I was aware of it. And if we have a deal—*if* we have a deal; it is by no means certain—there are a lot of important things that will have to come into place for us.

The chicken farmers will be happy if we have a deal. That I can guarantee.

Senator ISAKSON. And lastly on China and cinema—cinema, not cinnamon. That is like movie cinema, motion pictures. Georgia is where—most of the motion pictures produced in the United States are now filmed in Georgia. It is a huge industry in our State.

In China since 2012, there has been an agreement between China and the United States that the United States would pay 25 percent to the Chinese for the movies they produce, and China gets 75 percent. I want to just see if you have heard of any talk of renegotiating our position on that or that agreement at all in terms of motion pictures.

Ambassador LIGHTHIZER. Thank you, Senator.

I apologize for mis-hearing you. Yes, I am aware that an awful lot of movies are made in Georgia. Somebody brought that to my attention. It is sort of an abnormally large number. It is a big, big industry there. And yes, we are currently in the process of renegotiating that split. What we have right now is a very unfair situation.

There are some related issues that we are working on too, but the split is probably the most important thing to the producers, to the MPAA. And it is something we are actively engaged in right now with the Chinese.

Senator ISAKSON. Thank you very much. Thanks for your service too.

The CHAIRMAN. We are almost reaching 12 o'clock. We have 15 minutes here. Could you stay 15 minutes for the three Democrats who have not asked questions? Can you do that?

Ambassador LIGHTHIZER. Absolutely.

The CHAIRMAN. Okay. Senator Cortez Masto?

Senator CORTEZ MASTO. Thank you, Ambassador. It is good to see you, and I will be quick. I actually will not use all of my time.

Specific to Nevada, 87 percent of our exports are by small and medium-sized enterprises. Can you provide greater detail of the USTR's role in opening foreign markets to the small and medium-sized enterprises like those in Nevada? Those are the companies I am hearing from, in particular, those small enterprises that have been impacted by the 301 tariffs.

Ambassador LIGHTHIZER. First of all, we have a full program on small and medium-sized enterprises, SMEs. We have it in all of our agreements. We have it in the USMCA. It is a regular part of what we do, and there are a whole lot of pieces to it.

A lot of it is trying to alleviate paperwork and all these sort of technical requirements which have a disproportionate negative effect on small and medium-sized enterprises than they do on big companies that can more easily deal with them.

I guess I did not get the question. Is the question what effect are the 301 tariffs having on them?

Senator CORTEZ MASTO. And how are we addressing them? I mean, it is the number one impact I am hearing about from the small businesses, the tariffs under 301.

Ambassador LIGHTHIZER. So well, I mean, I do not know the specific industry. I would have to hear the specific company. You know we have 10-percent tariffs. There is no particular carve-out for small and medium-sized enterprises. So those tariffs are on those products and across the board. There is, with respect at least to the 25-percent on the first $50 billion, the exclusion process.

And if small industries in your State are having problems accessing themselves to the exclusion process, I am happy to figure out a way to help them do that.

Senator CORTEZ MASTO. Thank you. I appreciate that, and we will reach out to you.

And then, one final question. I know—I think Senator Wyden had talked about this, but I have also heard the enforcement component of the U.S.-China trade negotiation is still poorly developed. I am curious. Can you identify some of the enforcement and verification mechanisms that you could envision in a final deal?

Ambassador LIGHTHIZER. So the question is, how would the enforcement mechanism work? I think what you have to envision—and once again, this is not something that is agreed to at this point.

You have to assume that you have—I would say monthly meetings at the office director level. This is what we are talking about now, quarterly meetings at a vice minister level and at least semi-annual meetings at the actual minister level—that companies come to us with specific problems and we try to work our way through those problems, hopefully at the lowest level going up.

And to the extent we get to issues that are substantial and cannot be resolved, they are to be resolved at the level of the Vice Premier and me. And if we get to the point that they still cannot be resolved, then the United States would have the right, or the reverse—any obligations they may have would have to have the right—to unilaterally act to enforce change.

So anything short of that, in my judgment, is just what we have right now. I am not foolish enough to think that we are going to have an agreement—if we have one that is going to solve all our problems, what we need to do is solve as many problems as we can and put in place a framework so that we try to have our differences within that framework on a going-forward basis. And then over time, that will lead to a good result.

So that is more or less what we are thinking. It is probably what you would have thought too if we had sat—I mean, it is a logical way to approach it, and that is what we are trying to do.

Senator CORTEZ MASTO. Thank you. I appreciate it.

Ambassador LIGHTHIZER. Thank you, Senator.

The CHAIRMAN. Ten seconds to Senator Wyden, and then Senator Brown, and then Senator Cardin.

Senator WYDEN. Mr. Chairman, I would take my 10 seconds after my colleagues, because they have been very patient.

The CHAIRMAN. Okay then, Senator Brown?

Senator BROWN. No disrespect to the ranking member, but he just took the 10 seconds. [Laughter.]

Before I get to my question, Mr. Chairman, I ask unanimous consent to insert in the record a report entitled "How the WTO Undermines U.S. Trade Remedy Enforcement." I released it last year with the Alliance for American Manufacturing. It details the extent to which the legitimate use of U.S. trade remedy laws has been attacked frequently and disproportionately by the WTO. It clearly is not fair.

The CHAIRMAN. Without objection.

[The report appears in the appendix beginning on p. 39.]

Senator BROWN. Thank you, Mr. Chairman.

We all know the elephant in the room on WTO is China. Ambassador, good to see you. Thank you.

The statistic I am going to cite is from 2014. It has probably not changed, certainly not significantly: 9 out of the top 10 Chinese steel producers are state-owned. These state-owned enterprises arguably have caused a steel global overcapacity crisis. It is what has forced thousands of steel workers to lose their jobs in the community you grew up in, in fact.

The question is, do you expect these nine state-owned enterprises to be operating "business as usual" even if an agreement is reached with China?

Ambassador LIGHTHIZER. Well, I would say first of all, I want to salute your study on trade remedy enforcement at the WTO. That is probably the biggest single area where the dispute settlement process has failed to do what it was supposed to do, where it has denied us obligations that we paid for and put in place responsibilities that we never negotiated for.

And we could go through case after case after case. It is a serious, serious problem. And there are a lot of people who are not working right now because of this overreach by the dispute settlement process.

I think the gist of your question, I believe, Senator, is will there be provisions in here that will limit subsidies that have created excess capacity and state-owned enterprises? And by the way, also

quasistate-owned enterprises, right, because there is a blurring line.

But in actual state-owned enterprises, then the answer to your question is "yes." If we have a successful agreement, there will have to be provisions in there that go directly to the question that you are raising—that is to say, subsidies which lead to excess capacity in competitive industries. And that is something that we are negotiating and that I expect to have in there.

Then the next question is—just because we are short of time—are we going to enforce it? And of course, my objective will be to enforce it. And whether or not it is as successful as you want it to be will determine entirely how——

Senator BROWN. Thank you. And as you know, as we have talked about, that structural issue is as important as anything in this relationship.

Ambassador LIGHTHIZER. To me, it is most important. It is the most important thing.

Senator BROWN. Let me shift to something else. We have seen—and you and I have talked about this too—a unique phenomenon in this country over the last few decades where companies will shut down production in Ashtabula or Mansfield. They will take tax breaks, they will move overseas and reopen factories in China, then ship their products back to American customers. It has become the business plan for thousands of American companies, again, unknown to history before a third of a century ago.

If the U.S.—my question is this. Ambassador, if the U.S. in these trade talks is trying to ease investment restrictions and strengthen IP protections in China, does it not then follow that you can end up creating more incentives for a multinational corporation to close down their American facilities, to lay off their American workers and open up new factories? Doesn't the direction we are going in just accelerate that trend?

Ambassador LIGHTHIZER. Well, I do not believe that to be the case. I think the way we are losing jobs in America is because people are going there anyway for their own reasoning, then their technology is being stolen, competitors are being created. Those competitors are then not only wiping out the U.S. industry, which went there—which happens, as you know, over and over and over again—but also then coming in and taking over the U.S. market.

So I see the other end of the stick. I hear what you are saying, but to me the problem is forced technology transfer is having a negative effect. And that is really where we are losing the jobs.

I certainly am not—I do not salute the companies that go over there. Obviously, I agree completely with you and your interpretation of that.

And I also think that one of the—and you and I talked about this many, many, many times. One of the unforeseen, but clearly unforeseeable aspects of PNTR was it certainly created the shift from the U.S. to manufacturing in China. And that is basically what happened, and then an outgrowth of it was the loss of all this technology because of these various practices.

Senator BROWN. I do not entirely agree with you. Thank you for your assessment. I do think that we have to be careful about providing more incentives for companies to invert.

My last question will be quick, and it involves a bill I have been working on with you, Chairman Grassley. A lot of this stuff has been making it easier for U.S. companies to invest in China.

We need to pay attention to Chinese investment in the U.S. The Chinese government wants U.S. market share, of course. They are using unfair trade practices to get it. They use strategic investments to capture important parts of our supply chain. We have seen this in food and transportation, especially. This should be a major defensive concern for the U.S.

Senator Grassley and I have a bill, the Foreign Investment Review Act—we have talked to you about it—to set up a process to screen Chinese investment, not just for national security—that is CFIUS—but to screen it for domestic security, if you will, for American jobs, job growth.

I have asked you and Secretary Ross to support our legislation. You have both said in this committee you will support that legislation. We have not gotten much yet in the way of actual support, and I would like your commitment today, as part of your effort to get tough on China, to make our, Senator Grassley's and my Foreign Investment Review Act a legislative priority for your administration.

The CHAIRMAN. Short answer.

Ambassador LIGHTHIZER. I do not make the priorities for the administration. I completely agree with the sentiment in the bill, as you know. But in terms of the priorities, somebody higher than me makes priorities for the administration.

Senator BROWN. But you know people invested.

Ambassador LIGHTHIZER. I know you, Senator. [Laughter.]

The CHAIRMAN. Senator Cardin?

Senator CARDIN. Mr. Ambassador, thank you very much for your service.

As we look at the WTO at 25, some of us remember the discussions leading up to WTO under GATT and the hope that we would have not only change with WTO, but an evolutionary change over time. And yet, in the last several ministerial meetings, we have not seen much progress in regards to the evolution of the WTO.

Do you expect at the next ministerial that we will have an agenda for potential improvements of the WTO when it takes place? I believe it is early next year.

Ambassador LIGHTHIZER. Yes, thank you, Senator. I mean, I would say the expectations were very high in 1994 and 1995. We went through this process. Part of what people saw was there was this view that opening up trade in this way would lead to democracy and greater growth, and we have not seen that. We have seen entirely—we have seen protectionism and the like.

But having said that, I think we should not underestimate the WTO. It has done a lot of good things. If we did not have it, we would be, at least in my judgment, worse off. And a lot of the everyday work gets overlooked that it in fact does.

What do I think the agenda will be when we have our biannual meeting? I would say my hope is that, between now and then, we tee up reform in a way that is important in the dispute settlement process, and also in the way they run the organization, that we re-

energize the committees which are involved, but we need more on that.

And then we have specific areas where—such as e-commerce—we are going to have to do that, I think, on a plurilateral basis. I do not think you are ever going to get a consensus and then hope the plurilateral basis grows.

We have a real problem with agriculture, right? And moving forward, because people do not want to commit themselves to any real reform—the United States does. But other people do not want to commit themselves to that. But that has to be a part of whatever we do moving forward.

There is fisheries. There is just a whole——

Senator CARDIN. And I hope that we deal with the problem of nonmarket economies. You have talked about that a little bit, about a level playing field. You have talked about enforcement. I could also say a level playing field in regards to our anti-dumping and countervailing duty laws that have been disrespected.

To me there is an agenda that is consistent with this administration's policies that I hope we can get in a manner where we can make progress at the next ministerial.

Clearly, most of the questions today are centered on China, and for good reasons. China is a member of the WTO, and there are now active negotiations between our two countries.

I would hope that that could become a model on how to deal with a nonmarket economy. So some of that we could take into the WTO ministerial to try to deal with it.

Congress attempted to give direction under Trade Promotion Authority with good governance issues because we were dealing, in TPP, with nonmarket economies.

Senator Isakson mentioned the bilateral issue with China in regards to motion pictures. Let me remind you Maryland is also a large State for motion pictures, and we do hope that you can resolve that conflict.

I also want to mention Mongolia for one moment and China, because Mongolia qualifies for GSP, but most of its cashmere products do not. And as a result, their cashmere usually ends up in China, which is part of our trade challenge as to how that cashmere ends up in the U.S. market.

So I would just urge you to work with us. There is some legislation pending to try to give Mongolia the benefits of GSP as it relates to cashmere.

Ambassador LIGHTHIZER. I cannot say I spent much time on that. But if it is something you are interested in, I certainly am interested in it, and I will work with you on it.

Senator CARDIN. I appreciate it.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Wyden for a short question.

Senator WYDEN. Thank you, Mr. Chairman.

Ambassador, thanks for your time.

I would like for the record—because the chairman has been correct in saying you are past the time you would give us. I would like you to get us for the record, say within 10 days, how you intend to take on the discriminatory anti-American digital services taxes that are being pursued by European countries. As you know, this

is one of our most promising economic sectors. It is okay to get that to us within 10 days?

Ambassador LIGHTHIZER. Absolutely, but I would even—if the Senator has time, I would like to sit down and talk to the Senator about it too. I think this is one of those areas where we can go down the tax, you know, OECD approach, and that is fine. But I think that this is so important we may have to find ourselves being somewhat more creative. And I would like to work with the Senator, sort of in the creative realm.

Senator WYDEN. Good enough. Thank you.

The CHAIRMAN. Questions for the record are due by March 26th. I thank you, Ambassador Lighthizer, for doing this, particularly your coming now with your plate full of so many different negotiations that are going on. It speaks about the importance of reforming the WTO. And thank you for recognizing the constitutional role of Congress in the national trade agenda.

Thank you very much for coming. Thanks to my colleagues for their attention.

[Whereupon, at 12:14 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

SUBMITTED BY HON. SHERROD BROWN, A U.S. SENATOR FROM OHIO

FEBRUARY 2017

How the WTO Undermines U.S. Trade Remedy Enforcement

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I. Introduction

On December 12, 2016, China filed a dispute at the World Trade Organization ("WTO") challenging the U.S.'s continued practice of treating China as a "non-market" economy in antidumping cases. China argues that it is entitled to be treated as a market economy as of December 11, 2016 according to the terms of China's protocol of accession to the WTO. The U.S. disagrees that such a change in treatment is required, and it has continued to find that an array of distortions in China's economy make it ineligible for market economy treatment under U.S. law. While the dispute may take a couple of years or more to reach resolution, it could have far-ranging implications. If the U.S. is required to use internal Chinese prices and costs to determine the extent of dumping that is occurring, it would result in unreliable dumping comparisons due to on-going problems such as Chinese government restrictions on currency convertibility, a lack of free bargaining over wages, and state control over firms, the allocation of resources, and price and output decisions. This would dramatically weaken the ability to effectively remedy harmful Chinese dumping in the U.S. market.

Unfortunately, the current track record of the WTO does not bode well for the outcome of this latest dispute. Since it was established in 1995, the WTO has repeatedly ruled against trade remedy enforcement, both by the U.S. and other WTO members. The WTO has found at least one violation of WTO rules in over 90 percent of the trade remedy disputes it has ruled on to date—a remarkable record of violations given that the WTO rules were negotiated by the members themselves. The U.S. has been the disproportionate focus of these disputes. Since 1995, the WTO has issued 38 separate decisions against U.S. trade remedy measures, nearly five times the number of such decisions issued against any other member.

As a result, WTO decisions are undermining the ability of the U.S. and other countries to effectively enforce their trade remedy laws, laws which provide the vital first line of defense for domestic industries and workers injured by dumped and subsidized imports. There is mounting concern that these decisions result from the failure of WTO dispute settlement panels and the Appellate Body to respect some of the key founding principles of the organization, including long-standing recognition of the legitimacy of trade remedies and limitations WTO members put on the proper role of the dispute settlement system.

This paper provides background on these founding principles and on the WTO's record in trade remedy disputes. It summarizes some of the important WTO decisions that have led the U.S. to revise its determinations, alter its administrative

practice, or amend its trade remedy laws. The paper ends with recommendations to policy makers to address these problems and help protect our trade remedy laws from additional erosion. Unless the WTO changes its approach to trade remedy disputes, it threatens to further undermine U.S. trade remedy enforcement—as well as public confidence in the WTO system itself—in the coming years.

II. The WTO's Role in Trade Remedy Disputes

The right of countries to effectively redress dumping and subsidization is part of the foundation of the international trading system. Article VI of the GATT states that dumping which injures a country's domestic industry is "to be condemned," and it permits parties to impose antidumping and countervailing duties to offset the amount of dumping and subsidization from which imports benefit. For decades, ensuring countries can remedy unfair trade practices has provided a vital relief valve as global trade has expanded and liberalized at a rapid pace.

Through successive rounds of negotiations, the GATT parties elaborated additional rules governing countries' imposition of antidumping ("AD") and countervailing duties ("CVD"). In many respects, the rules mirrored existing provisions in U.S. law. When Congress implemented the Uruguay Round of trade agreements that established the WTO, it modified U.S. trade remedy laws to ensure we would continue to be in compliance with international rules.

One important feature of the WTO was the strengthening of the GATT dispute settlement system. A standing Appellate Body was established to hear appeals from dispute settlement panels. In addition, the WTO can authorize members to take countermeasures against countries that are found to be out of compliance, a step that previously required the consent of the non-compliant party. To ensure the newly strengthened system respects the sovereignty of WTO member states, the rules also prohibit panels and the Appellate Body from adding to or diminishing the rights and obligations in the covered agreements, and the right to adopt interpretations of the agreements is reserved solely to WTO members.[1]

Members' trade remedy measures have been a disproportionate focus of WTO disputes. Of the 160 disputes on which the WTO has issued final or interim decisions since 1995, 73 of these disputes—or more than 45 percent of the total—have challenged a country's use of its trade remedy laws.[2] This focus on trade remedies is remarkable given that such measures affect only a minuscule portion of world trade.

Of the 73 decisions identified above, 42 have involved trade remedies imposed by the United States. The U.S. has been the subject of nearly five times as many trade remedy decisions as the second most frequent respondent in such cases, the EU. This number is far out of proportion to the U.S. share of global imports and its share of trade remedy measures. From 1995 to 2015, the U.S. imported 14.17 percent of global imports and imposed 12.73 percent of all trade remedy measures imposed by WTO members.[3] Yet the U.S.—one country out of the WTO's now 164

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[1] Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2 arts. 3.2 and 19.2 (April 15, 1994), 1869 U.N.T.S. 401. *See also* Marrakesh Agreement Establishing the World Trade Organization art. IX.2 (April 15, 1994), 1869 U.N.T.S. 154.

[2] A list of these 73 disputes is attached at Annex I. The list includes any WTO dispute where a panel and/or Appellate Body decision has been adopted by the Dispute Settlement Body as of the date of this writing. It also includes three disputes (DS442, DS471, and DS482) where a panel report has been issued but an appeal remains pending before the Appellate Body. The tally is based on the number of decisions issued rather than the number of disputes, as a single decision may cover a number of disputes filed regarding the same underlying measure. Other disputes never result in a decision because they are resolved in consultations or not further pursued by the complainant. Such disputes that did not result in a panel or Appellate Body decision are not included in the tally. The tally also does not include decisions by compliance panels or arbitrators. For the purposes of this white paper, disputes are included as involving trade remedies if they concern antidumping measures, countervailing duty measures, safeguard measures, and ancillary matters such as Customs enforcement of trade remedies. The tally does not include disputes regarding Section 301 of U.S. trade law or safeguards under the Agreement on Textiles and Clothing.

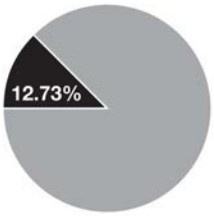
[3] Cumulatively from 1995 to 2015, the U.S. imported $34 trillion worth of goods and all countries combined imported $240 trillion worth of goods. WTO Statistics Database. From 1995 to 2015, the U.S. imposed 460 individual antidumping, countervailing duty, and safeguard measures. All WTO members combined imposed 3,611 such measures during the same period. *See* "Anti-dumping Measures: By Reporting Member 01/01/1995–31/12/2015," "Countervailing Measures: By Reporting Member 01/01/1995–31/12/2015," and "Safeguard Measures by Reporting Member," available on the WTO website at: *https://www.wto.org/english/tratop_e/adp_e/AD_MeasuresByRepMem.pdf, https://www.wto.org/english/tratop_e/scm_e/CV_MeasuresByRep*

members—was the subject of 57.5 percent of the WTO's decisions in trade remedy disputes.

Since 1995, 73 of the disputes on which the WTO has issued decisions have challenged a country's use of trade remedy measures. More than half (42) have involved remedies imposed by the United States.

The U.S. has been the subject of nearly ***five times as many trade remedy decisions*** *as the second-most frequent respondent in such cases (the European Union).*

Since 1995, the U.S. is behind ***only 12.73 percent*** *of all trade remedy measures imposed by WTO decisions.*



The WTO has found the U.S. to be in violation of at least one aspect of WTO rules in 38 of the 42 trade remedy decisions identified above, or in over 90 percent of the cases.[4] Some of the notable WTO decisions that have eroded the effectiveness of U.S. trade remedy law and practice are described in the next section.

These decisions have prompted legal scholars to criticize dispute panels, and especially the Appellate Body, for going beyond their mandate and creating new rights and obligations beyond those contained in the WTO agreements.[5] The U.S. Trade Representative and other WTO members have also repeatedly expressed concern about the Appellate Body's failure to abide by these standards and its propensity for over-reaching and gap-filling, to little avail.[6]

III. Selected WTO Decisions on U.S. Trade Remedies

1. Subsidies to Privatized Producers[7]

In response to a number of countervailing duty orders on various steel products from Europe, the EU challenged the Department of Commerce's practice of countervailing subsidies that had been provided to foreign producers prior to their privatization. Commerce countervailed such subsidy benefits as long as the pre-privatization producer and post-privatization producer were the same legal person. The Appellate Body found that the Department's privatization practice was inconsistent with WTO rules. The Appellate Body instructed that a privatization that occurred at arm's length and for fair market value should be presumed to extinguish the benefit of any pre-privatization subsidies, though the presumption could be rebutted if government distortions or other market factors prevented the establishment of an accurate market price for the transaction. Commerce revised its practice to conform

Mem.pdf, and *https://www.wto.org/english/tratop_e/safeg_e/SG-MeasuresByRepMember.pdf,* respectively.

[4] *See* Annex I. Almost all cases involve more than one issue. Of the 38 cases cited here, there are many in which the U.S. was found to be in compliance in some respects and out of compliance in others. It is beyond the scope of this white paper to provide an issue-by-issue tally for each of the disputes. There are only four trade remedy cases in which the U.S. was not found to be out of compliance with any of its WTO obligations in any respect.

[5] *See e.g.,* Terence P. Stewart, et al., "The Increasing Recognition of Problems With WTO Appellate Body Decision-Making: Will the Message Be Heard?", 8 *Global Trade and Customs Journal* 390 (2013).

[6] *See id.* at 393–394.

[7] Appellate Body Report, *United States—Countervailing Measures Concerning Certain Products From the European Communities,* WT/DS212/AB/R, adopted January 8, 2003.

to the Appellate Body's decision, making it more difficult to countervail subsidies provided prior to a privatization.[8]

2. Continued Dumping and Subsidy Offset Act[9]

In 2000, Congress passed the Continued Dumping and Subsidy Offset Act ("CDSOA"). The Act permitted domestic industries and workers who supported AD and CVD orders to receive distributions of the duties that were collected on imports that continued to be dumped and/or subsidized. The purpose of the law was to remedy continued dumping and subsidization that harmed domestic industries. In 2003, the Appellate Body ruled that the WTO agreements did not specifically permit the U.S. to distribute such duties to affected domestic industries. Congress subsequently repealed the law.[10]

3. Safeguards[11]

The WTO Agreement on Safeguards allows parties to impose temporary global import safeguards where imports are increasing in such quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry. Not one WTO member's global safeguard measure has ever been found to be in compliance with the Agreement.[12] In 1999, the U.S. imposed safeguards on imports of lamb meat, and, in 2002, the U.S. imposed safeguards on surging imports of steel products. The WTO found that the measures violated WTO rules in various respects, including through a failure to identify unforeseen developments and adequately address other conditions for the imposition of safeguards, as well as due to alleged deficiencies in the International Trade Commission's causation analysis. The U.S. ended both the lamb safeguard measure and the steel safeguards before their terms were otherwise set to expire.[13]

4. Zeroing[14]

In a series of cases, the EU, Japan, and other countries challenged an important aspect of U.S. practice in antidumping cases. Under this practice, the Department of Commerce did not give offsets or credits for sales that were not dumped against those sales that were dumped. Instead, it "zeroed" such non-dumped sales from the calculation of the total amount of dumping. The goal of the practice, long upheld

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[8] *See* Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 Fed. Reg. 37,125 (Department of Commerce, June 23, 2003). The Department's practice was also being challenged in appeals in the U.S. court system. *Id.* at 37,125.

[9] Appellate Body Report, *United States—Continued Dumping and Subsidy Offset Act of 2000,* WT/DS217/AB/R, WT/DS234/AB/R, adopted January 27, 2003.

[10] Deficit Reduction Act of 2005, Pub. L. No. 109–171, § 7601(a), 120 Stat. 4, 154 (2006).

[11] Appellate Body Report, *United States—Safeguard Measures on Imports of Fresh, Chilled, or Frozen Lamb Meat From New Zealand and Australia,* WT/DS177/AB/R, WT/DS178/AB/R, adopted May 16, 2001; Appellate Body Report, *United States—Definitive Safeguard Measures on Imports of Certain Steel Products,* WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, adopted December 10, 2003.

[12] *See* Annex I. The China-specific safeguard the U.S. imposed on passenger vehicle and light truck tires from China was found to be consistent with U.S. obligations under China's Protocol of Accession. Appellate Body Report, *United States—Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres From China,* WT/DS399/AB/R, adopted October 5, 2011.

[13] Proclamation 7502 of November 14, 2001: To Provide for the Termination of Action Taken With Regard to Imports of Lamb Meat, 66 Fed. Reg. 57,837 (November 19, 2001); Proclamation 7741 of December 4, 2003: To Provide for the Termination of Action Taken With Regard to Imports of Certain Steel Products, 68 Fed. Reg. 68,483 (December 8, 2003).

[14] *See, e.g.,* Appellate Body Report, *United States—Laws, Regulations, and Methodology for Calculating Dumping Margins ("Zeroing"),* WT/DS294/AB/R, adopted May 9, 2006; Appellate Body Report, *United States—Measures Relating to Zeroing and Sunset Reviews,* WT/DS322/AB/R, adopted January 23, 2007; Panel Report, *United States—Anti-Dumping Measure on Shrimp From Ecuador,* WT/DS335/R, adopted February 20, 2007; Appellate Body Report, *United States—Final Anti-Dumping Measures on Stainless Steel From Mexico,* WT/DS344/AB/R, adopted May 20, 2008; Appellate Body Report, *United States—Continued Existence and Application of Zeroing Methodology,* WT/DS350/AB/R, adopted February 19, 2009; Panel Report, *United States—Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice From Brazil,* WT/DS382/R, adopted June 17, 2011; Panel Report, *United States—Anti-Dumping Measures on Polyethylene Retail Carrier Bags From Thailand,* WT/DS383/R, adopted February 18, 2010; Panel Report, *United States—Use of Zeroing in Anti-Dumping Measures Involving Products From Korea,* WT/DS402/R, adopted February 24, 2011; Panel Report, *United States—Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades From China,* WT/DS422/R and Add.1, adopted July 23, 2012.

Many commentators have criticized the Appellate Body's approach to the zeroing cases. 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 and Customs Journal* 390, 395–396 n. 23 (2013) (citing articles critiquing the decisions).

by U.S. courts, was to ensure that non-dumped sales did not mask injurious dumped sales. Commerce did include such non-dumped sales in the denominator to determine the overall margin of dumping.

The WTO ruled that this practice was not allowed under WTO rules. These rulings ignored the fact that capturing 100 percent of dumping had been U.S. practice at the time the WTO agreements were negotiated, and that the U.S. and others explicitly refused to agree to negotiating proposals that would have prohibited the practice. WTO members challenged the practice in over a dozen cases involving products ranging from orange juice and shrimp to steel and bearings, requiring Commerce to revise margins and revoke orders against specific countries and companies.[15] In the end, Commerce abandoned the practice of zeroing both in investigations and in administrative reviews, and it developed an alternative set of practices in efforts to continue to unmask targeted dumping while complying with the WTO's decisions.[16]

5. Customs Bond Directive [17]

In 2004, Customs and Border Protection issued a continuous bonding directive with regard to billions of dollars of shrimp imports from six countries that were subject to preliminary antidumping findings. Importers were defaulting on hundreds of millions of dollars of duties owed on similar agriculture and aquaculture products under existing orders.[18] In order to protect the revenue, the directive required importers of shrimp from six countries to post bonds covering the full amount of their preliminary duty liability rather than the usual ten percent. The Appellate Body ruled that the directive violated WTO rules, because there was insufficient evidence establishing that the additional security was both reasonable and necessary. As a result of the WTO decision, Customs rescinded the continuous bonding directive.[19]

6. Countervailing Duty Cases Involving China [20]

In 2006, the Department of Commerce determined that China's economy had evolved sufficiently to allow the identification and measurement of subsidies, and

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[15] *See, e.g.,* Implementation of the Findings of the WTO Panel in U.S.—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 Fed. Reg. 25,261 (Department of Commerce, May 4, 2007); Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp From Ecuador: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp From Ecuador, 72 Fed. Reg. 48,257 (Department of Commerce, August 23, 2007); Implementation of the Findings of the WTO Panel in U.S.—Zeroing (EC); Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From Italy, 72 Fed. Reg. 54,640 (Department of Commerce, September 26, 2007); Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act Regarding the Antidumping Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate Products From Japan, 73 Fed. Reg. 29,109 (Department of Commerce, May 20, 2008); Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand, 75 Fed. Reg. 48,940 (Department of Commerce, August 12, 2010); Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof From the Republic of Korea, 76 Fed. Reg. 66,892 (Department of Commerce, October 28, 2011); Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Stainless Steel Plate in Coils From the Republic of Korea; and Partial Revocation of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 76 Fed. Reg. 74,771 (Department of Commerce, December 1, 2011); Certain Frozen Warmwater Shrimp From the People's Republic of China and Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders, 78 Fed. Reg. 18,958 (Department of Commerce, March 28, 2013).

[16] *See* Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 Fed. Reg. 77,722 (Department of Commerce December 27, 2006). *See also* Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 Fed. Reg. 8101 (Department of Commerce February 14, 2012).

[17] Appellate Body Report, *United States—Measures Relating to Shrimp From Thailand/United States—Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties,* WT/DS343/AB/R / WT/DS345/AB/R, adopted August 1, 2008.

[18] *See id.* at 71–72 and n. 194.

[19] Enhanced Bonding Requirement for Certain Shrimp Importers, 74 Fed. Reg. 14,809 (CBP April 1, 2009).

[20] Appellate Body Report, *United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products From China,* WT/DS379/AB/R, adopted March 25, 2011; Appellate Body Re-

Continued

thus the application of countervailing duties to imports from China. Commerce determined that China's economy was still too distorted by state intervention to be treated as a market economy in antidumping cases. China challenged dozens of Commerce determinations in a series of cases, claiming various flaws in the countervailing duty methodology and that adjustments must be made in antidumping cases for so-called "double remedies" allegedly arising from the simultaneous application of the CVD law and the non-market economy AD methodology to imports from China.

The Appellate Body found the U.S. had violated WTO rules in several respects. For example, with regard to subsidies provided by state-owned enterprises, the Appellate Body ruled that majority government ownership alone was insufficient to establish that such firms operated like government entities and thus were capable of conferring subsidies. It required Commerce to examine numerous other factors to determine whether these entities in fact exercised government authority. Commerce changed its practice to implement the decision.[21]

In addition, based on its interpretation of the word "appropriate," the Appellate Body ruled that the U.S. had to make adjustments to AD margins to account for any alleged "double remedies" that were found to exist. Congress changed the law to require Commerce to make such adjustments.[22] The Department now routinely lowers AD cash deposit rates on imports from China where it finds that some amount of the subsidies found in a parallel CVD investigation likely passed through to the Chinese export prices used in the AD calculations.

7. Cross-Cumulation in Injury Determinations[23]

For many years, the International Trade Commission has cumulated subject imports from different countries that are subject to AD and CVD cases on the same product in order to consider those imports in the aggregate to determine whether they are causing material injury, or threatening material injury, to a domestic industry. The Commission has also done so in cases where some countries are subject to only an AD investigation and/or other countries are subject only to a CVD investigation. India challenged this practice of "cross-cumulation," and the WTO found the practice was inconsistent with U.S. obligations. While the Commission did not alter its general practice, it did consider Indian imports individually in a revised injury determination in order to comply with the WTO decision.[24] The WTO ruling provides an opening for additional challenges to the practice, and at least one Commissioner has invited parties to brief the WTO decision in future cases.[25]

8. Targeted Dumping[26]

As explained above, in response to adverse WTO decisions, the Department of Commerce abandoned zeroing and adopted alternative methodologies to identify targeted dumping (as specifically authorized in the WTO Anti-Dumping Agreement) and to ensure such dumping is not masked by non-dumped sales. In 2016, the Appellate Body ruled against the U.S.'s targeted dumping methodology in a case brought by Korea. The Appellate Body found various flaws with the U.S. methodology, including the way in which Commerce combined different calculation methodologies when

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port, *United States—Countervailing Duty Measures on Certain Products From China,* WT/DS437/AB/R, adopted January 16, 2015; Appellate Body Report, *United States—Countervailing and Anti-Dumping Measures on Certain Products From China,* WT/DS449/AB/R and Corr.1, adopted July 22, 2014.

For a critique of the Appellate Body's approach in these cases from former WTO officials, *see* Michel Cartland, Gérard Depayre, and Jan Woznowski, "Is Something Going Wrong in the WTO Dispute Settlement?", *46 J. World Trade* 979 (2012).

[21] Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China, 77 Fed. Reg. 52,683 (Department of Commerce, August 30, 2012).

[22] An Act to Apply the Countervailing Duty Provisions of the Tariff Act of 1930 to Nonmarket Economy Countries, and for other Purposes, Pub. L. No. 112–99, § 2, 126 Stat. 265, 265–267 (2012).

[23] Appellate Body Report, *United States—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India,* WT/DS436/AB/R, adopted December 19, 2014.

[24] *See* U.S. International Trade Commission, Hot-Rolled Steel Products From India, Inv. No. 701–TA–405 (Section 129 Consistency Determination), USITC Pub. 4599 (March 2016).

[25] U.S. International Trade Commission, Polyethylene Terephthalate (PET) Resin from Canada, China, India, and Oman, Inv. Nos. 701–TA–531–532 and 731–TA–1270–1273 (Final), USITC Pub. 4604 (April 2016) at 35–39 (Separate Views of Commissioner F. Scott Kieff on Cross-Cumulation).

[26] Appellate Body Report, *United States—Anti-Dumping and Countervailing Measures on Large Residential Washers From Korea,* WT/DS464/AB/R, adopted September 26, 2016.

targeted dumping was found (a sub-issue never raised by Korea itself). The U.S. is now in the process of determining how it might implement the decision, whether implementation may require Congress to make changes to U.S. law, and what options may remain available to the U.S. to unmask and remedy targeted dumping going forward.

9. Non-Market Economy Antidumping Methodologies [27]

In a 2011 decision, the Appellate Body ruled that the EU was not permitted to presume that entities in China were state-controlled and require Chinese companies to demonstrate otherwise. The EU subsequently changed its practice for investigating whether such state control existed. In follow-on cases brought against the U.S. by Vietnam, Vietnam challenged the Department of Commerce's practice for dealing with entities that are not independent from the state in antidumping cases on products from non-market economies. In those cases, panels followed the earlier Appellate Body decision regarding the EU and found that the U.S. was not allowed to employ a rebuttable presumption that entities in such countries are state-controlled. In one case, the panel ruled that the U.S. had to assign even to state-controlled entities the average of dumping margins found for companies independent of the state. Those cases were settled pursuant to a mutually agreeable solution and were not implemented.

China made similar claims in a follow-on case brought against the U.S. in 2013. In 2016, the panel echoed earlier rulings regarding the impermissibility of the rebuttable presumption, but it made no findings regarding the rates Commerce was allowed to apply. China has appealed that latter finding to the Appellate Body, where it remains pending. If China is successful, Commerce will have to struggle with how to address foreign producers that are not independent from the government of China (or Vietnam) in antidumping proceedings.

10. Price Comparability and Distorted Markets [28]

As noted above, China has recently challenged the U.S.'s continued treatment of China as a non-market economy under the AD law. China filed a similar challenge against the EU on the same day. If the WTO ultimately rules in China's favor in these cases, it would strip the U.S. and the EU of an important tool they currently rely upon to address distortions in China's economy when calculating dumping margins.

An October 2016 Appellate Body ruling regarding AD measures the EU imposed on biodiesel from Argentina (which it treats as a market economy) could further limit the tools available to the U.S. if it is required to treat China as a market economy notwithstanding continued government interventions in the Chinese economy. In the biodiesel case, the EU relied on alternative production costs to determine if dumping was occurring, because Argentine producers' own production costs were artificially depressed by a differential export tax that Argentina imposed on soybeans, a key biofuel feedstock. The Appellate Body ruled that the EU had to rely on the artificially depressed soybean costs regardless of the Argentine government's distortions to those costs. This decision could greatly restrict Commerce's ability to develop alternative tools for addressing distortions in China's economy if it is required to start relying on China's internal costs and prices in its dumping determinations.

IV. Conclusion and Recommendations

For more than two decades, WTO decisions have put sustained pressure on U.S. trade remedy law. Despite the long-standing international recognition of the need for effective AD and CVD laws to remedy unfair trade, and despite the safeguards members attempted to build into the WTO dispute settlement system, the WTO has dealt numerous setbacks to U.S. trade remedy enforcement. The U.S. has been the

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[27] *See* Appellate Body Report, *European Communities—Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners From China,* WT/DS397/AB/R, adopted July 28, 2011. *See also* Panel Report, *United States—Anti-Dumping Measures on Certain Shrimp From Viet Nam,* WT/DS404/R, adopted September 2, 2011; Appellate Body Report, *United States—Anti-Dumping Measures on Certain Shrimp From Viet Nam,* WT/DS429/AB/R, adopted April 22, 2015. *See also* Panel Report, *United States—Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China,* WT/DS471/R, circulated to WTO members October 19, 2016 (appeal in progress).

[28] *See* Request for Consultations by China, *United States—Measures Related to Price Comparison Methodologies,* WT/DS515/1, G/L/1169, G/ADP/D115/1 (December 15, 2016); Request for Consultations by China, *European Union—Measures Related to Price Comparison Methodologies,* WT/DS516/1, G/L/1170, G/ADP/D116/1 (December 15, 2016). *See also* Appellate Body Report, *European Union—Anti-Dumping Measures on Biodiesel From Argentina,* WT/DS473/AB/R, adopted October 26, 2016.

subject of far more adverse trade remedy decisions than any other WTO member, and it has suffered losses in 90 percent of WTO decisions to date.

As the U.S. has implemented these adverse decisions, it has had to not only revise duties and/or revoke orders on individual products, it has also had to change its administrative policies and, in some cases, ask Congress to change domestic trade remedy laws. Legal scholars, various administrations, and members of Congress have all expressed their concern about the WTO Appellate Body's over-reaching in its rulings against trade remedy enforcement. For years, Congress has identified reining in the WTO dispute settlement system and preserving the ability of the United States to rigorously enforce its trade remedy laws as key trade negotiating objectives.[29]

Yet efforts to use WTO challenges to undermine U.S. trade remedy enforcement continue. Until and unless the WTO changes its approach to trade remedies, it will remain an inviting forum for those who wish to further weaken the enforcement of U.S. antidumping and countervailing duty laws in the years to come. The latest dispute filed at the end of last year by China against the U.S. could eviscerate our ability to effectively redress dumped Chinese imports that harm American industries and workers.

Policy makers should make it a priority to counteract these trends and protect domestic trade remedy laws from further erosion. Possible steps to consider, including both new efforts and the strengthening and expanding of existing efforts, include:

- Vigorously defending U.S. trade remedy decisions at the WTO and seriously considering whether and how to implement any adverse decisions depending on the weakening effect they may have on enforcement;
- Forming a coalition with other WTO members concerned about trends in the dispute settlement system's trade remedy decisions to mount a coordinated campaign to critique and reform the decision-making of panels and the Appellate Body;
- Investing in efforts to educate other WTO members, particularly developing countries, about the importance of trade remedies in the international system and the economic contribution they make by reducing market distortions and enabling balanced economic growth;
- Refusing to agree to the nomination or re-nomination of Appellate Body members who have failed to adhere to the standard of review and shown a willingness to overreach and "interpret" WTO agreements rather than merely apply them as negotiated by the members;
- Protest any statements by the WTO Director-General and other WTO officials that paint all trade remedy measures with a broad brush as protectionist without acknowledging the historical recognition that such measures play a key role in facilitating legitimate trade;
- Impressing on other WTO members that further expansion of WTO agreements and routine implementation of adverse decisions is at risk if the dispute settlement system is not effectively reformed to reduce overreach by panels and Appellate Body members;
- Establishing an independent Commission of legal experts to determine whether a WTO panel or the Appellate Body has exceeded its authority or deviated from the applicable standard of review in making a decision adverse to the United States, and creating procedures for Congress to respond to Commission determinations with appropriate action regarding U.S. negotiating positions and membership in the WTO;[30] and
- Working with members of Congress, the media, and academia to build strong public support for effective trade remedy enforcement that strengthens the hand of U.S. negotiators in Geneva to underscore the political importance of real reform in the WTO dispute settlement system.

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[29] *See, e.g.,* Defending Public Safety Employees' Retirement Act, Pub. L. No. 114–26, § 102(b)(16)(C) and (17), 129 Stat. 319, 330–331 (2015) (setting out Congressional negotiating objectives for dispute settlement and trade enforcement under the most recent grant of Trade Promotion Authority).

[30] Former Senator Robert Dole (R–KS) introduced legislation that would have established such a Commission in 1995, shortly after the WTO came into existence, but the legislation was not enacted. *See* S. 16, 104th Congress (1995).

The world trading system depends on countries' ability to take rapid, effective, and meaningful action against unfair dumping and subsidization that is harming their manufacturers, farmers, ranchers, and workers. That ability is currently being undermined by the WTO dispute settlement system, contrary to the system's original design. A strong and coordinated response by policy makers is needed to reverse these troubling trends, preserve our trade remedy laws, and help restore faith in the international trading system.

WTO Trade Remedy Decisions, 1995–2016

Sorted by Respondent Country

#	Dispute No.	Respondent	Complainant	Short Name	WTO Violation?	Adoption
1	121	Argentina	EU	Footwear (EC)	Yes	2000
2	189	Argentina	EU	Ceramic Tiles	Yes	2001
3	238	Argentina	Chile	Preserved Peaches	Yes	2003
4	241	Argentina	Brazil	Poultry AD Duties	Yes	2003
5	22	Brazil	Philippines	Desiccated Cocnut	No	1997
6	482	Canada	Chinese Taipei	Carbon Steel Welded Pipe	Yes	na
7	414	China	U.S.	GOES	Yes	2012
8	425	China	EU	X-Ray Equipment	Yes	2013
9	427	China	U.S.	Broiler Products	Yes	2013
10	440	China	U.S.	Autos (U.S.)	Yes	2014
11	460	China	EU	HP–SSST	Yes	2015
12	415	DR	Costa Rica, et al.	Safeguard Measures	Yes	2012
13	211	Egypt	Turkey	Steel Rebar	Yes	2002
14	141	EU	India	Bed Linen	Yes	2001
15	219	EU	Brazil	Tube or Pipe Fittings	Yes	2003
16	299	EU	Korea	CVDs on DRAM Chips	Yes	2005
17	337	EU	Norway	Salmon (Norway)	Yes	2008
18	397	EU	China	Fasteners (China)	Yes	2011
19	405	EU	China	Footwear (China)	Yes	2012
20	442	EU	Indonesia	Fatty Alcohols	Yes	na
21	473	EU	Argentina	Biodiesel	Yes	2016
22	60	Guatemala	Mexico	Cement I	No	1998
23	156	Guatemala	Mexico	Cement II	Yes	2000
24	98	Korea	EU	Dairy	Yes	2000
25	312	Korea	Indonesia	Certain Paper	Yes	2005

WTO Trade Remedy Decisions, 1995–2016—Continued

Sorted by Respondent Country

#	Dispute No.	Respondent	Complainant	Short Name	WTO Violation?	Adoption
26	132	Mexico	U.S.	Corn Syrup	Yes	2001
27	295	Mexico	U.S.	AD Measures on Rice	Yes	2005
28	331	Mexico	Guatemala	Steel Pipes and Tubes	Yes	2007
29	341	Mexico	EU	Olive Oil	Yes	2008
30	122	Thailand	Poland	H-Beams	Yes	2001
31	468	Ukraine	Japan	Certain Passenger Cars	Yes	2015
32	99	U.S.	Korea	DRAMS	Yes	1999
33	136	U.S.	EU and Japan	1916 Act	Yes	2000
34	138	U.S.	EU	Lead and Bismuth II	Yes	2000
35	166	U.S.	EU	Wheat Gluten	Yes	2001
36	177	U.S.	Australia and New Zealand	Lamb	Yes	2001
37	179	U.S.	Korea	Stainless Steel	Yes	2001
38	184	U.S.	Japan	Hot-Rolled Steel	Yes	2001
39	194	U.S.	Canada	Export Restraints	No	2001
40	202	U.S.	Korea	Line Pipe	Yes	2001
41	206	U.S.	India	Steel Plate	Yes	2002
42	212	U.S.	EU	CVD Measures on Certain EC Products	Yes	2003
43	213	U.S.	EU	Carbon Steel	Yes	2002
44	217	U.S.	Australia, et al.	Offset Act (Byrd Amendment)	Yes	2003
45	221	U.S.	Canada	Section 129(c)(1)URAA	No	2002
46	236	U.S.	Canada	Softwood Lumber III	Yes	2002
47	244	U.S.	Japan	Corrosion Resistant Steel Sunset Review	No	2004
48	248	U.S.	Brazil, et al.	Steel Safeguards	Yes	2003
49	257	U.S.	Canada	Softwood Lumber IV	Yes	2004
50	264	U.S.	Canada	Softwood Lumber V	Yes	2004

WTO Trade Remedy Decisions, 1995–2016—Continued

Sorted by Respondent Country

#	Dispute No.	Respondent	Complainant	Short Name	WTO Violation?	Adoption
51	268	U.S.	Argentina	Oil Country Tubular Goods Sunset Reviews	Yes	2004
52	277	U.S.	Canada	Softwood Lumber VI	Yes	2004
53	282	U.S.	Mexico	AD Measures on Oil Country Tubular Goods	Yes	2005
54	294	U.S.	EU	Zeroing (EC)	Yes	2006
55	296	U.S.	Korea	CVD Investigation on DRAMs	Yes	2005
56	322	U.S.	Japan	Zeroing (Japan)	Yes	2007
57	335	U.S.	Ecuador	Shrimp (Ecuador)	Yes	2007
58	343	U.S.	India and Thailand	Shrimp (Thailand), Customs Bond Directive	Yes	2008
59	344	U.S.	Mexico	Stainless Steel (Mexico)	Yes	2008
60	350	U.S.	EU	Continued Zeroing	Yes	2009
61	379	U.S.	China	AD and CVD Duties (China)	Yes	2011
62	382	U.S.	Brazil	Orange Juice (Brazil)	Yes	2011
63	383	U.S.	Thailand	AD Measures on PET Bags	Yes	2010
64	399	U.S.	China	Tyres (China)	No	2011
65	402	U.S.	Korea	Zeroing (Korea)	Yes	2011
66	404	U.S.	Vietnam	Shrimp I (Viet Nam)	Yes	2011
67	422	U.S.	China	Shrimp and Sawblades (China)	Yes	2012
68	429	U.S.	Vietnam	Shrimp II (Viet Nam)	Yes	2015
69	436	U.S.	India	Hot-Rolled Carbon Steel Flat Products	Yes	2014
70	437	U.S.	China	CVD Measures on Certain Products	Yes	2015
71	449	U.S.	China	CVD and AD Measures (China)	Yes	2014
72	464	U.S.	Korea	Washers	Yes	2016
73	471	U.S.	China	AD Proceedings Involving China	Yes	na

Note: Where a single decision involved more than one dispute number, only the first dispute number is listed.

PREPARED STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM IOWA

Current plurilateral discussions on e-commerce and on fisheries show promise, and I fully support continuing those efforts.

Next, the WTO is responsible for implementing and monitoring trade agreements.

Finally, the institution serves as a forum for settling disputes amongst its members over the meaning and application of WTO agreements. As we approach the 25th year of operation for the WTO, it would be wise to acknowledge that the United States has overall been a beneficiary of the WTO dispute settlement process.

But we cannot overlook the serious challenges preventing the system from working as we intended it to. And we can probably all agree that updates and reforms would improve the effectiveness of the organization.

The Appellate Body, which soon could lose a minimum quorum needed to function, is in particular need of reform. The administration's concerns about systemic and procedural problems with the Appellate Body are not new, nor are they partisan.

Presidents on both sides of the aisle have raised concerns for many years. The United States first refused to consent to new Appellate Body appointments under the Obama administration, and the Trump administration has maintained the same position.

It's unfortunate that this tactic is the only way the United States has been able to get serious attention from other WTO members. I'm not necessarily endorsing this approach, but now that we are here we can't waste time lamenting the tactics. WTO members must take the United States seriously and commit to meaningfully addressing our concerns.

The areas of much-needed reform are not limited just to dispute settlement. The administration is right to point out that some WTO members consistently fail to meet their obligations to accurately notify the support they provide to domestic industries. That is simply unacceptable.

The WTO also needs to address the treatment of state-owned enterprises or SOEs. SOEs are becoming more prevalent in the global economy. China is notorious for using SOEs to buy private companies around the world and has used SOEs as a conduit for subsidizing its industries.

The ability of WTO members to self-certify as a "developing country" is another problem for the organization's long-term credibility.

When my constituents ask me why China, the world's second largest economy, gets to self-certify as "developing," I can't explain it.

There are other countries, including OECD members that the administration rightly points out have advanced economies, which still declare themselves developing countries.

But we cannot have a hearing on the WTO without talking about China. The fact of the matter is that China simply has not lived up to the commitments it made when it joined the WTO. This is detailed every year in USTR's annual report on China's WTO compliance. And we have seen over the last decade or so that WTO rules have not effectively constrained China's mercantilist policies and their distortion of global markets.

So, there is a lot of work to do. And we cannot do this alone.

The U.S., Japan, and the European Union are discussing WTO reform options through a trilateral process that also seeks to address industrial subsidies and forced technology transfers.

Partnerships such as this one are critical to showing China that the United States is not the only country complaining.

The world certainly has come a long way on trade policy in the last century. I hope we learn from history and never repeat the protectionist mistakes of beggar-thy-neighbor policies like the infamous Smoot-Hawley tariffs. Yet, there are also many legitimate, bipartisan issues we must address with some of our trading partners and with the WTO.

To conclude, I probably do not need to remind many in this room of the following fact. The Constitution gives Congress the power to impose and collect taxes, tariffs,

duties, and to regulate international commerce. As chairman of this committee, I intend to assist President Trump and Ambassador Lighthizer with their efforts at the WTO and in seeking strong and enforceable trade deals. However, I do so with the understanding that erecting new market barriers with tariffs and quotas cannot be a long-term solution.

I'm looking forward to working in a bipartisan way with the members of this committee and the Trump administration to ensure the United States has sound and constructive trade policy that benefits our country.

PREPARED STATEMENT OF HON. ROBERT E. LIGHTHIZER, UNITED STATES TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT

Chairman Grassley, Ranking Member Wyden, and all the distinguished members of this great committee, I am pleased for the opportunity to testify before you this morning. You have asked me to come here today to discuss the World Trade Organization. To begin, I should say that the administration—like all members of this committee—wants an effective international trading system.

Under President Trump's leadership, U.S. trade has surged. From 2016 to 2018, total U.S. exports grew by 12.8 percent. Over the same period, total U.S. imports grew by 14.8 percent. Last year, Americans exported almost $2.5 trillion worth of goods and services—an all-time high. Meanwhile, the United States created 264,000 new manufacturing jobs last year—the largest such figure in 21 years—and we had the strongest economic growth of any country in the G7. These are encouraging figures, but of course we want to do even better. We are working with Congress on the USMCA, which should further spur production and trade in this country. We continue to seek improved trading rules with China, and we hope to make significant progress this year with Japan, the European Union, the United Kingdom, and other countries.

While we are encouraged by our bilateral activities, we would also like to see more progress at a multilateral level. The WTO is a valuable institution and offers many opportunities for the United States to advance our interests on trade. As I have said before, if we did not have the WTO, we would need to invent it.

The United States remains very active at all levels of the WTO, from the committees where much of the practical work is accomplished, to efforts to negotiate the new trade rules of the future. Last year the Senate confirmed Ambassador Dennis Shea as our representative to the WTO, and he has been tireless in advocating for U.S. interests. I remain in regular and close contact with the very able Director-General, Roberto Azevêdo, with whom I have had extensive conversations about the future of the WTO. I believe that he and his leadership team are working very hard to help the WTO succeed.

Nevertheless, we have concerns about the organization. In many ways, the WTO is not working as expected. We joined the WTO in the hope that it would help us promote stronger and more efficient markets. Unfortunately, those hopes have too often been disappointed. Let me give you a few examples of why we are concerned.

First, the negotiating process at the WTO has largely broken down. Under the old GATT system, from 1947 to 1994, there were eight negotiating rounds—each of which led to lower tariffs and fewer trade barriers among all GATT members. To this day, the basic rules that govern global trade were negotiated under the GATT. But in the 24 years since the WTO began operation, there has been no new significant multilateral market access agreement. (There have been some helpful agreements—such as the Trade Facilitation Agreement and the Information Technology Agreement—that address specific aspects of trade.)

The last major effort to reach such an agreement—the Doha Round—collapsed in 2008, and has now been dead for more than a decade. Despite all the dramatic changes that have taken place in the last quarter-century—the rise of China, the evolution of the Internet, and countless other developments—the WTO is still largely operating under the same old playbook from the early 1990s. It is now out of date.

Second, much work remains to be done in terms of lowering tariffs—primarily in countries that consider themselves developing. Numerous WTO members continue to have very high "bound" tariff rates that allow them to maintain tariffs significantly above the bound rates that apply to the United States. For example, the average bound tariff rate for all goods in the United States is 3.4 percent. In Brazil, it

is 31.4 percent. In India, it is 48.5 percent. In Indonesia, it is 37.1 percent. It is not reasonable to agree that because the United States agreed to such disparities many years ago—when economic and geo-political conditions were very different—that we are stuck with them forever. The rules on tariffs have to keep pace with the realities of the global economy.

Third, too many WTO members are not living up to current obligations. For example, members take on significant commitments to provide regular notifications of subsidy programs and other information critical to trading conditions around the world. Despite the clear obligation to make such notifications, many of our trading partners—including significant economies like China and India—have a very poor track record of providing this critical information.

WTO members also have the option of declaring themselves to be "developing countries" for purposes of obtaining special and differential treatment under WTO rules. The obvious purpose of such treatment is to help truly disadvantaged countries. Absurdly, however, many of the world's largest and richest economies—including China, India, Turkey, and South Korea—have declared themselves to be developing countries. Not only do such claims make a mockery of special and differential treatment, they also make it difficult if not impossible for members to come together on future market-opening deals.

Fourth, the dispute settlement process at the WTO is being used to create new obligations to which the United States never agreed. Article 3.2 of the Dispute Settlement Understanding plainly states that "Recommendations and rulings of the Dispute Settlement Body cannot add to or diminish the rights and obligations provided in the covered agreements." In other words, the dispute settlement process was never intended to make new rules—it was designed solely to help members resolve specific disputes between them.

These provisions were vital to the United States, because it was essential that we not be burdened with obligations that were never approved by this Congress. Over the last quarter century, however, the United States has become the chief target of litigation at the WTO—and we have lost the overwhelming majority of cases brought against us. In other words, the WTO has treated the world's freest and most open economy as the world's greatest outlaw. In so doing, the WTO's Appellate Body has repeatedly created new obligations from whole cloth. For example:

- The Appellate Body has attacked U.S. countervailing duty laws—thus making it easier for other countries to provide market-distorting subsidies.
- The Appellate Body has interpreted WTO rules in a manner that puts our tax system at an unfair and illogical disadvantage compared to that of many trading partners.
- The Appellate Body has interpreted the Agreement on Safeguards in a manner that significantly limits the ability of members to use that vital provision.
- The Appellate Body has interfered with the appropriations process by limiting Congress's ability to spend money collected through antidumping and countervailing duties.

For many years, U.S. administrations of both parties have warned our trading partners of the potential harm resulting from such judicial activism. We have also noted that in many instances, the Appellate Body fails to follow basic, critical rules of operation to which all members have agreed. Unfortunately, our concerns have been ignored. These developments have greatly undermined the negotiating process at the WTO. Why should any country negotiate with the United States if it believes it can obtain whatever outcome it wants by suing us? The administration is aggressively addressing each of these problems.

A year and a half ago in Buenos Aires, at the first WTO ministerial conference held during this administration, I clearly set out our position on all of these issues and I invited the WTO membership to join us in fixing these problems. I would like to include in the record a copy of the remarks I delivered at that meeting.

In spite of the serious challenges we face, the United States is working diligently within the body of the WTO to negotiate new rules in areas heretofore uncovered. To jump-start this negotiating process, we have pushed for important outcomes in talks on digital trade and fishing subsidies. We have highlighted the issue of unequal bound tariff rates, and continue to press other members for additional market access. We have put forward specific proposals to address the concerns resulting from lack of notification and the abuse of developing country status. And we have continued to press longstanding U.S. concerns regarding the dispute settlement

process. We have taken these steps not to hurt the WTO—but to ensure that it remains relevant to a rapidly changing world.

In sum, the WTO is an important organization that has developed some serious problems. We have to work with our trading partners to find solutions. I look forward to continuing to consult with members of this committee in this effort.

Opening Plenary Statement of USTR Robert Lighthizer at the WTO Ministerial Conference

December 11, 2017

I would like to start by thanking the government of Argentina for hosting MC11, and Minister Malcorra, Director-General Azevêdo, and their staffs for their excellent work. We appreciate all the effort over many months that go into creating a conference of this magnitude.

In the brief time I have, I would like to make a few basic points.

First, the WTO is obviously an important institution. It does an enormous amount of good and provides a helpful negotiating forum for Contracting Parties. But, in our opinion, serious challenges exist.

Second, many are concerned that the WTO is losing its essential focus on negotiation and becoming a litigation-centered organization. Too often members seem to believe they can gain concessions through lawsuits that they could never get at the negotiating table. We have to ask ourselves whether this is good for the institution and whether the current litigation structure makes sense.

Third, we need to clarify our understanding of development within the WTO. We cannot sustain a situation in which new rules can only apply to the few and that others will be given a pass in the name of self-proclaimed development status. There is something wrong, in our view, when five of the six richest countries in the world presently claim developing country status. Indeed, we should all be troubled that so many members appear to believe that they would be better off with exemptions to the rules. If, in the opinion of a vast majority of members, playing by current WTO rules makes it harder to achieve economic growth, then clearly serious reflection is needed.

Fourth, it is impossible to negotiate new rules when many of the current ones are not being followed. This is why the United States is leading a discussion on the need to correct the sad performance of many members in notifications and transparency. Some members are intentionally circumventing these obligations, and addressing these lapses will remain a top U.S. priority.

Fifth, the United States believes that much can and should be done at the WTO to help make markets more efficient. We are interested in revitalizing the standing bodies to ensure they are focused on new challenges, such as chronic overcapacity and the influence of state-owned enterprises. Further, we are working closely with many members in committee and elsewhere to address real-world problems such as SPS barriers.

We believe that all of us are here primarily to represent our own citizens to secure rules that will best help them. As President Trump said in his U.N. speech, institutions like this function best when all sovereign nations acting in their own best interest pull together and find ways that permit us all to prosper.

Finally, the United States looks forward to working with all members who share our goal of using the WTO to create rules that will lead to more efficient markets, more trade, and greater wealth for our citizens. Such outcomes will build public support not only for open markets, but for the WTO itself.

I'd like to end where I began and thank the Director-General for all his work and Minister Malcorra for their incredible work to produce a successful MC11.

QUESTIONS SUBMITTED FOR THE RECORD TO HON. ROBERT E. LIGHTHIZER

QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

Question. The original 81 charter members agreed to join the WTO, voluntarily, seeing it as an improvement over the GATT.

What aspects of the WTO and the multilateral rules based system that derived from the GATT most benefit the United States, U.S. companies, and farmers? What improvements could be made to the WTO to enhance those benefits?

Answer. The WTO provides multiple tools for the United States to counteract trade concerns that negatively impact U.S. production and jobs in manufacturing, agriculture, and services. The United States aggressively utilizes these tools in an effort to ensure U.S. exports have the same access and ability to compete on a level playing field abroad that we allow imports here in the United States.

The WTO committee system enables the United States to build coalitions or act alone to address and resolve other members' trade actions that do not comply with their WTO obligations. For example, the Sanitary and Phytosanitary (SPS) Committee is important to U.S. efforts to prevent members from establishing and maintaining non-science based measures that are inconsistent with international standards and that block imports of safe U.S. agricultural products. The Technical Barriers to Trade (TBT) Committee plays a key role in U.S. efforts to reduce regulatory and other technical barriers, such as discriminatory standards and unnecessary or duplicative testing requirements, in order to increase exports of U.S. manufactured and agricultural goods. When such efforts are not successful, and USTR assesses that a WTO member may be in breach of its WTO obligations, the United States aggressively uses the dispute settlement system to obtain a finding of WTO-inconsistency to persuade that member to remove the barrier.

In addition, the WTO provides the United States with a platform to export its views on trade policy.

That said, the WTO that we intended to create, and the WTO we seek, is in key respects not the WTO we have today. This is not a new or sudden development. For years, the United States and many other members have voiced concerns with the WTO system and the direction in which it has been headed.

First, the WTO dispute settlement system has strayed far from the system agreed to by members. It has appropriated to itself powers that WTO members never intended to give it. This includes where panels or the Appellate Body have, through their findings, sought to add to or diminish WTO rights and obligations of members in a broad range of areas.

Second, the WTO is not well equipped to handle the fundamental challenge posed by China, which continues to embrace a state-led, mercantilist approach to the economy and trade. China's actions are incompatible with the open, market-based approach expressly envisioned and followed by other WTO members and contrary to the fundamental principles of the WTO and its agreements.

Third, the WTO's negotiating arm has been unable to reach agreements that are of critical importance in the modern economy. Previous negotiations were undermined by certain members' repeated unwillingness to make contributions commensurate with their role in the global economy, and by these members' success in leveraging the WTO's flawed approach to developing-member status.

Fourth, certain members' persistent lack of transparency, including their unwillingness to meet their notification obligations, have undermined members' work in WTO committees to monitor compliance with WTO obligations. Their lack of transparency has also damaged members' ability to identify opportunities to negotiate new rules aimed at raising market efficiency, generating reciprocal benefits, and increasing wealth.

The United States is at the forefront of the reform effort in Geneva. We are working with a diverse group of members to advance a proposal aimed at improving members' compliance with their notification obligations. In February, we submitted a proposal to the General Council to promote differentiation of development status in the WTO to reflect today's realities.

We are pursuing reform-related discussions in other configurations, as well. In December 2017, Ambassador Lighthizer and the trade ministers of Japan and the EU announced new trilateral cooperation to undertake measures to combat the non-market-oriented policies of third countries. Discussions are continuing under the tri-

lateral configuration, focused on promoting market-oriented policies and practices, preventing forced technology transfer from foreign companies to domestic companies, and exploring possible new rules on industrial subsidies and state-owned entities.

Question. The U.S. just won a case at the WTO against China related to its subsidies for corn, wheat, and rice. Congratulations on that victory, it is a great example of why we need the WTO. It is also an example of how long these cases can take, as the case was initiated by the Obama administration.

Will the administration continue pushing China to change its domestic agriculture support system through the traditional WTO process or the ongoing section 301 negotiations?

Answer. A WTO panel found that China provided trade-distorting domestic support to its grain producers well in excess of its commitments under WTO rules, and we will monitor China closely going forward to ensure its compliance with panel rulings. The administration will take whatever steps are necessary to enforce its trading rights, and hold China accountable to the rules on global trade to help ensure that American farmers compete on a level playing field in the global market place.

Question. I want to commend you and your staff for U.S. leadership at the WTO on a forward-looking e-commerce agenda. We were pleased to see the United States join the announcement at the World Economic Forum in Davos that countries would initiate negotiations on trade-related aspects of e-commerce. Plurilateral negotiations have been an effective way to achieve liberalization in goods in areas such as the Information Technology Agreement (ITA).

What is the administration doing to ensure that a plurilateral path will lead to a high-standard agreement on e-commerce that includes strong rules on cross-border data flows, data localization, a moratorium on e-commerce duties and trade facilitation? What are the prospects for a high standard agreement if China is part of the negotiation?

Answer. For the WTO digital trade initiative to be successful, it will need to deliver commercially significant outcomes with the same high-standard rules applicable to all participants. Accordingly, we are advocating the high-standard rules and working closely with allies to gain support for this approach, focusing in particular on key USMCA digital trade outcomes. China's participation in any such negotiation will, of course, add challenges and complexity; we need to ensure that China's participation does not lower the level of ambition for this initiative. Our intent is to have a high-standard, quality agreement even if it means fewer countries participate.

Question. The rise of state-owned enterprises, (SOEs) has caused a number of challenges for private industry and regulators. These market participants often pursue political goals over market signals and have advantages like access to low cost capital. The rules to define SOEs are not easy to write, on top of the fact that many SOEs are opaque in their operations.

What do you think are the most important factors the WTO should consider for new rules to address the increasing role SOEs have started playing in the global economy?

Answer. Any new rules addressing the growing importance of SOEs and the market-distorting behavior of state enterprises should ensure that such entities are not advantaged by the government and act in accordance with market principles. We need to consider stronger subsidy rules that would prohibit government financing of entities unable to obtain commercial financing on their own. SOEs should also be required to act consistent with the normal commercial considerations of private entities and not to discriminate in the purchase and sale of goods and services.

QUESTIONS SUBMITTED BY HON. RON WYDEN

Question. The digital economy is a major driver of economic growth for Oregon, for the United States, and for the global economy. I believe the Internet represents the shipping lane of the 21st century.

The state-of-the-art Digital Trade chapter of the revised NAFTA was a major achievement and I think it serves as a template for the current WTO talks on e-commerce, or digital trade. Some are concerned that the inclusion of China in these talks could lead to a less ambitious outcome given that China aggressively discrimi-

nates against non-Chinese companies and manages a mass Internet censorship program known as the Great Firewall.

Can you assure us that you will not accept a watered-down agreement on e-commerce just to keep China in it?

Answer. The WTO digital trade initiative will only be successful if it can deliver commercially significant outcomes for firms and consumers in the digital sphere. We are working closely with allies to gain support for high-standard outcomes based on the USMCA Digital Trade Chapter, which we likewise view as a model for this negotiation and future agreements. China's participation in any such negotiation will, of course, add challenges and complexity; we need to ensure that China's participation does not lower the level of ambition for this initiative. Our intent is to have a high-standard, quality agreement even if it means fewer countries participate.

Question. The U.S. and Japan are like-minded on digital trade issues. Japan has worked alongside us in the WTO, in the TPP negotiations, and elsewhere to push for strong digital trade rules.

Would you agree that having a high-standard digital trade agreement with Japan—perhaps one that other like-minded countries could join over time—would send a powerful message to the EU, China, and other countries participating in the WTO e-commerce talks while also establishing strong rules on digital trade?

Answer. In USTR's detailed negotiating objectives for a U.S.-Japan Trade Agreement, released December 21, 2018, several digital trade objectives were included, on issues such as customs duties, data flows, and forced data localization. USTR's intention is to work with Japan to develop high-standard digital trade provisions in the U.S.-Japan Trade Agreement outcomes. Along with the USMCA digital trade provisions, negotiations with Japan offer an opportunity to continue to set high standards on these important issues going into WTO talks and other trade discussions.

Question. The WTO "moratorium" against imposing customs duties on electronic transmissions has helped American companies expand digital trade worldwide. This moratorium is particularly important to me because when I co-wrote the 1998 Internet Tax Freedom Act, I included a provision directing the President to seek to remove global barriers to e-commerce at the WTO, and the WTO moratorium on e-commerce duties was agreed to that same year.

Today, however, I'm concerned that more countries seem to be taking steps to reassess or undermine the moratorium at the WTO. This is a new threat to America's digital trade and digital content.

What steps will you take to ensure that the moratorium is continued at the WTO and that countries like India and Indonesia do not move forward on imposing customs duties on streaming content, digital downloads, and other content from the United States?

Answer. The WTO moratorium on imposing customs duties on electronic transmissions, including content transmitted electronically, has over the last 20 years supported the growth of the digital economy and has been replicated in numerous bilateral and regional trade agreements. The administration is working with a broad group of like-minded countries to ensure the continuation of the moratorium and to address potential challenges within the WTO membership. This moratorium also will be part of our negotiating position in the WTO e-commerce talks.

Question. A number of European countries are moving ahead with proposals to implement a tax on digital services that appears to be designed to specifically target American companies. These digital services tax proposals are discriminatory, which raises concerns about whether they are compatible with WTO obligations. In January, Chairman Grassley and I wrote to Secretary Mnuchin to let him know our concerns about countries moving forward unilaterally to implement digital services taxes.

How do you intend to take on these discriminatory, anti-American taxes that are being pursued by European countries?

Answer. The administration shares your concern that proposals by several countries to create new taxes on revenues from certain digital services, including the proposed law currently under consideration by the French legislature, are deeply flawed as a matter of policy and may be designed to target U.S. companies. We publicly flagged concerns with these taxes in our recent National Trade Estimate report. USTR is looking seriously at all of the tools available to address such potential

trade barriers. We are engaged in the research and analysis necessary to evaluate any actions that might be available under U.S. law and any applicable trade agreements.

Question. U.S. cloud service providers support thousands of American jobs and bring cutting-edge technology to markets all over the world. But, in China, U.S. cloud service providers are now facing major barriers that prevent them from operating or competing fairly.

China has proposed new regulations that would effectively require foreign cloud service providers to turn over all ownership and operations to a Chinese company. Moreover, these new restrictions would force U.S. cloud service providers to give valuable U.S. intellectual property to China. It seems to me that these are exactly the type of unfair trade practices that you identified in the recent section 301 investigation of China.

What outcomes on cloud services are you seeking in the current China discussions?

Answer. The administration places a high priority on the elimination of foreign equity limitations, discriminatory licensing requirements, and technology transfer requirements and incentives in China, including in the cloud services sector. In this sector, we are seeking commitments that permit U.S. firms to compete on a level playing field with their Chinese competitors and that also reflect the access that Chinese companies have today to offer cloud services in the United States.

Question. The EU is taking a range of actions targeted at U.S. technology companies and impeding digital trade. On March 26, 2019, the European Parliament narrowly passed a copyright directive that diverges from copyright norms. The directive may have broad economic and social consequences.

These new rules substantially threaten digitally enabled services that U.S. firms export annually to the EU, and will make it harder for small and large American businesses and startups to compete in Europe. The U.S. government's silence on this issue is deafening and there now appears to be an open door to both a 'link tax' and attacks on open platforms and the free speech they promote.

What steps will you take to ensure that implementation of ambiguous language in the copyright directive at the member state level will not result in additional barriers for U.S. service providers and online collaboration?

How do you intend to ensure that Europe's misguided approaches to copyright do not infect policy approaches by other countries, as has been the case with geographic indicators?

Answer. USTR has been closely tracking the progress of the Directive and has followed its development with great interest. We intend to monitor the implementation of the Copyright Directive in the member states of the EU, particularly with regards to provisions in the Directive that may have an impact on U.S. suppliers in those markets. We have already recognized in recent National Trade Estimate Reports that measures requiring remuneration or authorization for short excerpts of text may raise concerns. We will also be focused on ensuring a fully transparent implementation process—one with ample opportunities for all U.S. stakeholders to have opportunities to provide input, in a public manner, about their concerns regarding possible barriers to trade and any other concerns on the policy being espoused by the Directive.

Question. In February, President Trump announced that the U.S. and China had reached an agreement on currency manipulation as part of the ongoing negotiations.

How does this currency agreement with China differ from the currency chapter in the renegotiated NAFTA?

Will all of the obligations in the currency agreement be enforceable?

If so, will those obligations be enforceable by China against the United States?

Answer. The Secretary of the Treasury is responsible for evaluating the currency practices of the United States' major trading partners. With respect to the China negotiations, the talks are still underway, but address a range of issues including, currency practices. The aim is to reach agreement to refrain from competitive devaluations in currency and to agree to a certain level of transparency that would be enforceable under the agreement.

Question. Fishing and fisheries play an important role in the Pacific Northwest economy, and we need to ensure that other countries—like China—play by the rules to ensure a fair playing field for Oregon's fishing industry. Preventing overfishing and illegal fishing is also critical to protect our ocean environment. That's why I was glad to see that the new NAFTA has an environmental chapter with strong commitments to address fisheries subsidies.

At the WTO, members have been negotiating some form of a comprehensive agreement on fisheries subsidies since the Doha Ministerial Conference in 2001. Today, our coastal State economies and our environment can't afford to wait too long to achieve an enforceable fish subsidies agreement.

Do you agree that we should have an aggressive negotiating schedule to wrap up this agreement within the next year, assuming we can achieve a high-standard agreement? If so, what steps are you taking towards that goal?

Answer. The Trump administration supports strong prohibitions on harmful fisheries subsidies, including those that contribute to overfishing and overcapacity and those that support illegal fishing activities. The recently concluded USMCA Environment Chapter contains the strongest set of internationally agreed obligations to prohibit harmful fisheries subsidies, and provides an important benchmark for the WTO negotiations. Establishing these prohibitions in the WTO so that they apply to all WTO members, including the largest subsidizers, will help level the playing field for the U.S. fishing industry. To help advance the WTO negotiations, the United States recently joined Australia in tabling an innovative new proposal that would further limit and reduce the fisheries subsidy programs of some of the largest players in the seafood sector, including China and Indonesia. While there is an aggressive WTO negotiating schedule and we are making progress, we still have a long way to go to achieve meaningful disciplines on the most harmful fisheries subsidies due to intransigence on the part of some of the most problematic actors. I look forward to working with you and other members and stakeholders as we advance these negotiations.

Question. The United States has an American advantage in trade in services. The U.S. service sector supports millions of American jobs and is at the forefront of innovation, especially in digital services. Last year, I asked you whether you had a strategy to revive the "Trade in Services Agreement" negotiations in Geneva, and you responded that you were still evaluating options for expanding U.S. services exports.

What are your plans to resume these negotiations, which could complement the work in the WTO e-commerce negotiations?

Answer. The administration places a high priority on continuing to expand U.S. services exports and services trade, recognizing that services are a key driver of our economy. The USMCA includes a number of state-of-the-art provisions that will help to expand U.S. services exports, including in the area of digital trade. Those high-standard digital trade provisions serve as a template for the U.S. position in the WTO e-commerce negotiations and in future U.S. agreements. We continue to evaluate other potential negotiations to further expand U.S. services exports.

Question. Last summer (August 30, 2018), President Trump threatened to withdraw from the WTO if it doesn't "shape up."

Has the WTO shaped up since then in the President's view?

Please describe any request to you by the President to (1) examine implications or consequences of a U.S. withdrawal from the WTO and/or (2) take any actions or steps to initiate or advance U.S. withdrawal from the WTO.

Answer. The WTO that we intended to create, and the WTO we seek, is in key respects not the WTO we have today. This is not a new or sudden development. For years, the United States and many other members have voiced concerns with the WTO system and the direction in which it has been headed.

First, the WTO dispute settlement system has strayed far from the system agreed to by members. It has appropriated to itself powers that WTO members never intended to give it. This includes where panels or the Appellate Body have, through their findings, sought to add or diminish WTO rights and obligations of members in a broad range of areas.

Second, the WTO is not well equipped to handle the fundamental challenge posed by China, which continues to embrace a state-led, mercantilist approach to the economy and trade. China's actions are incompatible with the open, market-based ap-

proach expressly envisioned and followed by other WTO members and contrary to the fundamental principles of the WTO and its agreements.

Third, the WTO's negotiating arm has been unable to reach agreements that are of critical importance in the modern economy. Previous negotiations were undermined by certain members' repeated unwillingness to make contributions commensurate with their role in the global economy, and by these members' success in leveraging the WTO's flawed approach to developing-member status.

Fourth, certain members' persistent lack of transparency, including their unwillingness to meet their notification obligations, have undermined members' work in WTO committees to monitor compliance with WTO obligations. Their lack of transparency has also damaged members' ability to identify opportunities to negotiate new rules aimed at raising market efficiency, generating reciprocal benefits, and increasing wealth.

The United States is at the forefront of the reform effort in Geneva. We are working with a diverse group of members to advance a proposal aimed at improving members' compliance with their notification obligations. In February, we submitted a proposal to the General Council to promote differentiation of development status in the WTO to reflect today's realities.

We are pursuing reform-related discussions in other configurations, as well. In December 2017, Ambassador Lighthizer and the trade ministers of Japan and the EU announced new trilateral cooperation to undertake measures to combat the non-market-oriented policies of third countries. Discussions are continuing under the trilateral configuration, focused on promoting market-oriented policies and practices, preventing forced technology transfer from foreign companies to domestic companies, and exploring possible new rules on industrial subsidies and state-owned entities.

Question. Section 125 of the Uruguay Round Agreements Act states that congressional "approval" of U.S. participation in the WTO "shall cease to be effective if, and only if" a joint resolution withdrawing congressional approval is enacted by Congress.

Would you agree that, per the Uruguay Round Agreements Act, the president may not withdraw the United States from the WTO without the approval of Congress?

Answer. As noted in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), and approved by Congress along with the Act, section 125 establishes an expedited procedure permitting Congress, following the submission of every fifth annual report required by section 124, to adopt a joint resolution revoking congressional approval of the WTO Agreement. The provision creates a mechanism that will permit periodic congressional review of U.S. participation in the WTO. Section 125 specifies the procedural rules that apply to consideration of any such joint resolution, including time limits for action, automatic discharge provisions, and rules for consideration of the joint resolution in both Houses.

Question. While much has changed in the global economic scene since the inception of the WTO, the WTO's rules have not been updated to adapt to these changes. For example, the WTO does not seem to have mechanisms to address China's failures to adopt more market-oriented policies and to stop government intervention in business activities. I am glad to see you working with allies, like the EU and Japan, on some of these issues, but ultimately, the adoption of new rules will require the consensus of all WTO members.

How do you see the WTO being able to adopt these kinds of critical rule changes when the institution currently require the unanimous consent of all WTO members to adopt changes?

Answer. Our long record of leadership at the WTO makes us clear-eyed about the challenges ahead. In our assessment, members are in the early stages of grappling with our collective failure to confront problems that have been growing for years. The United States is committed to working with like-minded members to address our concerns with the functioning of the WTO. Some of this work will happen in Geneva, as we and other like-minded members put forth concrete proposals and work to build support for our ideas across the membership. Some of this work will happen in other configurations, such as our trilateral cooperation with the EU and Japan and our bilateral engagements. We of course are committed to meaningful action regardless of the WTO membership's willingness to act. Ultimately, all members must recognize it is in their self-interest to address the current issues at the WTO if the organization is to function properly.

Question. Changes to the dispute settlement process have been sought for many years by multiple administrations. While I appreciate that the U.S. has been successful in drawing attention to the need for reform, some question how the reforms can be instituted before December, when the Appellate Body will no longer have the number of panelists it needs to do its job. While I am not a fan of all of the decisions coming out of the WTO dispute settlement system, the U.S. is its biggest user—with a relatively high success rate.

What way forward do you see for these issues to be resolved so that the U.S. will agree to the appointment of new Appellate Body members?

Where will a non-functioning dispute settlement system leave the cases that the U.S. has brought, including the case brought against China concerning the protection of intellectual property rights?

In the event that the Appellate Body ceases to have the minimum number of members needed to act, what options will this leave the U.S. and others who want to ensure that other members live up to their obligations?

Answer. For many years, and in multiple Administrations, the United States has repeatedly expressed concerns with the WTO Appellate Body's activist approach, which has involved overreaching on procedural issues; interpretative approach; and findings on substantive matters. In short, the Appellate Body has failed to apply the WTO rules as written and agreed to by the United States and other WTO members.

During 2018, the United States made a series of statements at DSB meetings detailing the Appellate Body's disregard for the rules set by WTO members, and the Appellate Body's attempts to add to or diminish rights or obligations under the WTO Agreement. The issues addressed included the Appellate Body's disregard for the mandatory 90-day deadline for appeals, the Appellate Body's unauthorized review of panel findings on domestic law, the Appellate Body's issuance of advisory opinions on issues not necessary to resolve a dispute, the treatment of prior Appellate Body reports as precedent, and allowing persons to serve on appeals after their Appellate Body term has ended.

The United States also has been expressing deep concerns for many years with the Appellate Body's overreach in areas as varied as subsidies, antidumping and countervailing duties, standards under the TBT Agreement, and safeguards. Such overreach restricts the ability of the United States to regulate in the public interest or protect U.S. workers and businesses against unfair trading practices.

The responsibility to address these problems is not that of the United States alone, rather, it is the collective responsibility of all WTO members to ensure the proper functioning of the WTO dispute settlement system, including the Appellate Body.

Regardless of the progress in reforming the dispute settlement system, the United States will remain committed to fulfilling its obligations under WTO Agreement, while rejecting efforts by the WTO Appellate Body to create new obligations to which WTO members have not agreed. We likewise expect U.S. trading partners to continue to fulfill their own obligations under the WTO Agreement. In the event that a member fails to fulfill its commitments, I will continue to use existing tools under U.S. law to enforce U.S. rights under the WTO Agreement.

Question. Last November, Senator Stabenow and I sent you and Secretary Ross a letter about the economic impact of the rules of origin for autos in the revised NAFTA agreement. The president has said that this agreement will "incentivize billions of dollars in new purchases of U.S.-made automobiles" and create "far more American jobs." USTR's fact sheet says that the new rules will "transform supply chains to use more United States content." I share your support of a strong auto manufacturing sector in the United States, but I have not yet seen any quantitative analysis that backs up these assertions.

Will you commit to providing this critical analysis to members of Congress so that we can fully understand the potential impact of these changes?

Answer. Over the past months, I have frequently discussed auto rules of origin with members of Congress and explained how they will benefit U.S. autoworkers and the industry. Earlier this month, we provided Senate Finance trade staff with a white paper containing additional quantitative analysis and provided them with a briefing on the basis of our estimates.

Question. How do you square these projected positive impacts on the U.S. auto sector with the Commerce Department's investigation about how future imports of automobiles and auto parts constitute a national security threat?

Answer. The President is considering the findings of the Department of Commerce's report. As you know, at the time we signed the USMCA, we also had an exchange of letters with Mexico and Canada regarding automobiles.

Question. The revised NAFTA includes some clear improvements over the status quo, especially in the Digital Trade chapter. But I remain concerned about the deal's enforceability. The agreement does not resolve all of the flaws in the state-to-state dispute settlement chapter in the current NAFTA. This includes loopholes that allow parties accused of violating their obligations to delay or even block the formation of a panel. Under NAFTA, no dispute settlement panel has been formed since 2000, and the dispute settlement system generally has been ineffective as a tool to ensure compliance with the agreement. Without effective enforcement, American workers, farmers, and businesses will not see the benefits of this new deal.

Recent trade agreements have avoided the NAFTA loopholes with improved dispute settlement procedures. For example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) closed these loopholes, ensuring that parties cannot unreasonably delay or avoid the formation of a panel. Both Mexico and Canada have ratified the CPTPP.

Would you be opposed to clarifying that the text of Chapter 31 of the revised NAFTA is not meant to allow panel blocking?

Answer. The text of Chapter 31 of the United States-Mexico-Canada Agreement (USMCA) is not meant to allow panel blocking. Indeed, panels have been successfully formed under Chapter 20 of the NAFTA (its precursor). As we move forward with congressional consideration of the USMCA, we look forward to discussing this and any other issues related to enforcement with you and your colleagues.

Question. Many members of Congress, myself included, are concerned about Mexico's enforcement of its new labor obligations under the revised NAFTA. Under this agreement, Mexico agreed to pass key labor reform legislation to implement those commitments by January 1, 2019. As of March 26th, Mexico still has not passed this legislation.

How can we have confidence that Mexico will enforce the new labor commitments in the revised NAFTA when Mexico still has not passed the necessary legislation to put the reforms into effect?

Answer. The administration has worked very closely with the Government of Mexico to ensure that Mexico's labor legislation meets the obligations of the USMCA Labor Chapter and Annex, and is enacted before the trade agreement is considered by the U.S. Congress. On April 29, 2019, Mexico's Congress passed legislation that complies with its USMCA labor commitments, and I am committed to working with you and other members of Congress to discuss options and policy tools for monitoring the implementation of these important reforms.

Question. Recent OECD studies suggest that over half of Mexico's labor force is employed in the informal economy. Jobs in the informal economy are not formally regulated by the Mexican government. As a result, Mexico's commitments in the Labor Chapter of the new NAFTA—including its commitment to adopt regulation on acceptable minimum wages and hours of work—will not extend to workers in Mexico's informal economy.

How do you expect Mexico to fully enforce its labor laws given the high proportion of workers employed in the informal economy?

Answer. The Mexican Congress has passed labor reform legislation that provides workers with fundamental labor protections, whether they have formal employment contracts or not. For example, workers have the right to join authentic unions and engage in true collective bargaining with their employer, and Mexico's labor authorities are obligated to ensure the protection of these rights regardless of an employer's status in the formal economy. The USMCA labor obligations also include specific commitments for Mexico to create specialized administrative and judicial bodies to implement and enforce fundamental labor rights.

Question. In which ways do you expect the new NAFTA to promote and expand Mexico's formal economy?

Answer. The USMCA will increase formal sector employment by requiring the elimination of undemocratic unions and collective bargaining agreements that "protect" employers from real collective bargaining. Authentic unions and collective bargaining will allow Mexico's workers to demand that employers provide wage benefits and other formal employment benefits such as affiliation to social safety nets, which in Mexico include government sponsored pensions and health care. This will improve the respect for labor rights of Mexican workers, and level the playing field for workers in the United States who will no longer compete against exploited workers in Mexico.

Question. Please address the following inconsistencies between U.S. law and the revised NAFTA text:

Definition of a biologic: U.S. law exempts chemically synthesized polypeptide from the definition of a biologic (PHS Act § 351(i)(1)). Drugs that fall into this class are used by patients who, for example, are living with cancer and diabetes, two diseases that already cause a significant economic burden. The new NAFTA text's definition of a biologic (20.F.14.2) does not exempt drugs in this class, increasing the cost for patients.

Please explain this inconsistency and why this class of drugs would not be exempted, as they are in U.S. law.

Answer. U.S. law is fully consistent with the USMCA IP Chapter provisions, and nothing in the newly negotiated USMCA will require changing U.S. laws on pharmaceutical intellectual property rights. The plain meaning of the treaty text is that Article 20.49 of the USMCA describes biologics as including products "produced through biotechnology processes," as distinguished from "chemically synthesized" products, such as chemically synthesized polypeptides.

Question. Market vs. Data Protection: Article 20.F.14 of the revised NAFTA refers to Article 20.F.13.1 and states that a party must "provide effective market protection through the implementation" of that article. Although this provision refers to "market protection," Article 20.F.13.1 refers to data protection, and to a period of 5-year data protection. This could appear to conflict with the 4-year "data protection" period under the Biosimilars Act (PHS Act § 351(k)(7)(b)) preventing a BLA submission. Furthermore, to the extent this provision allows for a 10-year period of "data protection" prohibiting a BLA submission, it could conflict with the Biosimilars Act.

Please explain these inconsistencies.

Answer. U.S. law is fully consistent with the USMCA IP Chapter provisions, and nothing in the newly negotiated USMCA will require changing U.S. laws on pharmaceutical intellectual property rights. Articles 20.49 and 20.48 are without prejudice to a party's ability to stipulate a period of time during which an application for a follow-on biologic product that relies on the innovator's safety and efficacy data may not be submitted and do not conflict with the cited provisions of the Public Health Service Act.

Question. Expanding biologic exclusivities: The new NAFTA also has the potential to conflict with the way FDA has interpreted the transition rules under the BPCIA governing biologics approved as NDAs. Footnote 46 of the agreement includes its own transition rules for biologic products, which allows biologic applicants to seek approval on or before March 23, 2020 under the procedures set forth in Article 20.F.13.1 (and thus be eligible for, or subject to, 5-year and 3-year exclusivity) under certain circumstances. But footnote 46 does not state whether new biologic applications submitted during this period will be eligible upon approval for 5-year exclusivity under Article 20.F.13 only, or if they will also be eligible for 3-year exclusivity under Article 20.F.13, or if they will also be eligible for 10-year exclusivity under Article 20.F.14. Therefore, there is a concern that the revised NAFTA could conflict with the way FDA interprets the transition rules under section 7002(e) of the BPCIA if footnote 46 were interpreted such that a new biologic sponsor may be eligible for exclusivities available under both Article 20.F.13 and Article 20.F.14, and thus entitled to both 5-year exclusivity under one pathway and at least 10 years of exclusivity under another (though these would likely overlap), and also to 3-year exclusivity for each new indication, formulation change, or method of administration.

Please explain the inconsistency between the transitions rules as described in the BPCIA and in the revised NAFTA text.

Answer. U.S. law is fully consistent with the USMCA IP Chapter provisions, and nothing in the newly negotiated USMCA will require changing U.S. laws on pharmaceutical intellectual property rights. We have a robust interagency process, including with the Department of Health and Human Services, with respect to developing and negotiating FTA provisions. In particular, the USMCA IP Chapter is consistent with the Biologics Price Competition and Innovation Act, as well as FDA's interpretation of that act.

Question. Last week, President Trump met with President Bolsonaro of Brazil at the White House. According to a joint statement, President Trump noted his "support for Brazil initiating the accession procedure to become a full member of the OECD," and President Bolsonaro agreed that "Brazil will begin to forgo special and differential treatment in World Trade Organization negotiations." Brazil currently maintains high tariffs and restrictive trade policies. Previously, the United States withheld support for Colombia's OECD accession until Colombia agreed to remove certain trade irritants subject to enforceable dispute resolution under our bilateral free trade agreement.

Please describe any specific commitments that the United States made to Brazil with regard to Brazil's OECD accession.

Please describe what specific commitments Brazil has made to address key barriers to trade with the United States.

Answer. When President Trump and President Bolsonaro of Brazil met on March 19, 2019, President Trump welcomed Brazil's ongoing efforts regarding economic reforms, best practices, and a regulatory framework in line with the standards of the Organization for Economic Cooperation and Development (OECD). President Trump noted his support for Brazil initiating the accession process to become a full member of the OECD. Any decision by the OECD on its enlargement, including on which countries will next be invited to begin the OECD accession process, requires consensus of all 36 OECD members.

The United States has high expectations for any country seeking OECD membership. We intend to bilaterally deepen our engagement with Brazil, including through our bilateral dialogue mechanism and look forward to Brazil demonstrating in action its commitment to open its market to U.S. goods. Importantly, it should be noted that Brazil agreed to forgo seeking special and differential treatment in current and future trade negotiations, which we would expect of any aspiring OECD member.

Question. The Trade Enforcement Trust Fund (TETF) was established by Congress specifically to provide resources needed to support trade enforcement efforts. USTR's FY 2020 Budget Justification Summary notes that "USTR collaborated with OMB to propose language in the FY 2020 Budget that will fix ongoing technical issues with the TETF that prevent the Fund from functioning as intended."

Describe the challenges you face with the current approach to funding the TETF.

Answer. The proposed language fixes a minor technical issue with the TETF's execution. Congress appropriates funding from the TETF each year. As it currently operates, any unspent funding cannot be used after the year of its appropriation, but continues to count against the TETF's $30 million cap for 5 years. While the presence of unspent funding does not prevent USTR from using its FY19 appropriation, there are implementation challenges in obligating the appropriation without hitting the cap.

Describe the technical issues, as well as the proposed fixes, referenced in the Budget Justification Summary.

Answer. As noted, USTR continues to have discussions with congressional staff and OMB as to how to improve the TETF. The FY 2020 budget recommends removing investment authority from the TETF. This will allow unused funding in the account to expire preventing prior year unobligated funds from counting against the $30 million cap.

QUESTION SUBMITTED BY HON. PAT ROBERTS

Question. As we have discussed previously, agriculture faces a number of nontariff barriers to trade. Often, sanitary and phytosanitary (SPS) measures are used by other countries to conceal protectionist trade policies, ultimately, discriminating

against U.S. agriculture products and hindering market access. The WTO is one mechanism the United States has successfully used to further its SPS goals.

At this time, against the backdrop of largely dormant WTO activity on multilateral market access, how can USTR advance the United States' SPS agenda at the WTO? Is our current best option largely limited to bringing SPS cases against certain trading partners, such as the EU, when they fail to abide by sound science on issues such as pesticides and biotechnology?

Answer. The administration is pursuing an active agenda to advance U.S. interests on SPS in the WTO. In many countries, regulatory barriers lacking scientific justification block farmers' access to safe tools and technologies. We have initiated a series of joint activities with other WTO members on the safe use of biotechnology and pesticides as a means to support all farmers, including small holders. In 2018, 13 countries supported an international statement on agricultural applications of precision biotechnology to foster the use of the new tools, including genome editing. We joined with five African and Latin American countries on a WTO initiative regarding regulatory responses to the destructive pest fall armyworm. In recent years, we have built a coalition of over 30 countries to raise concerns with the EU's hazard-based approach to pesticides. We are also working with other countries to advance implementation by WTO members of regionalization measures for animal and plant health. We will continue to use the WTO in new and creative ways to advance U.S. interests on SPS.

QUESTIONS SUBMITTED BY HON. JOHNNY ISAKSON

Question. Mr. Ambassador, during the hearing, you heard me discuss my unease with the current status of the section 232 tariffs on steel and aluminum as well as my concern that the 232 tariffs will be removed in name only and replaced with a quota system. In response to my comments, you mentioned that it was your hope to remove the steel and aluminum tariffs on Canada and Mexico and replace them with a different mechanism that will protect the integrity of the program without hurting American companies downstream. I believe that import quotas often lack transparency and may run counter to the administration's monumental effort to reestablish free trade between the U.S., Canada, and Mexico.

Can you offer more details on what this future program will look like? What will USTR do beforehand to ensure that Americans aren't unduly hurt by this program?

Answer. As I noted during the hearing, our objective in discussions with Canada and Mexico is to find an alternative to the section 232 tariffs that addresses the threatened impairment of U.S. national security caused by imports of steel and aluminum. The types of issues we are considering in these discussions include the need to avoid import surges and prevent transshipment; the need to reduce excess production and capacity in overseas markets; and possible mechanisms for contributing to increased capacity utilization in the United States. From the outset, the section 232 steel and aluminum measures have been constructed in a manner that is mindful of the needs of consumers of these products. At the time he imposed the section 232 tariffs, the President authorized the Secretary of Commerce to provide exclusions from the tariffs for articles for which there is a lack of sufficient U.S. production; in August of last year, the President extended this authority to enable the Secretary to provide exclusions from steel and aluminum quotas imposed under section 232. These considerations will continue to guide the administration's approach to the program.

Question. Similarly, I have serious concerns over the administration's potential move to use section 232 to impose tariffs on U.S. automobile imports. Recently, the President was asked whether autos and auto parts pose a national security risk, and his response was simple: "Well, no."

Do you agree with that answer? If so, would you agree with me that section 232 is not an appropriate tool for imposing tariffs on autos?

Answer. The Secretary of Commerce, who helps administer section 232, has submitted his section 232 report on the national security implications of automotive imports to the President. The President is reviewing the analysis and will determine any appropriate course of action.

Question. I remain concerned that USMCA does not address an important issue affecting a large portion of Georgia's agriculture economy. Georgia's fruit and vegetable growers, as well as other seasonal growers, are constantly dealing with tar-

geted subsidized imports of fruits, vegetables, and other perishables from Mexico. Due to the seasonal nature of these businesses as well as the very short window in which they are able to sell their products, Georgia's fruit and vegetable farmers don't qualify for U.S. AD/CVD mechanisms since they're unable to demonstrate adequate injury as defined by current U.S. law. In turn, our trade deficit in fruits and vegetables with Mexico continues to widen as more and more Georgia producers are forced to shut down their operations. I have heard from growers in my State who oppose moving forward with USMCA without an effective mechanism to contest these unfair practices.

Can we count on you and the administration to address this issue in the coming months?

Answer. This issue is not addressed in existing U.S. law or the current NAFTA. However, the administration is exploring ways to assist the fresh fruit and vegetable industry and address the challenges it is facing from Mexican imports.

Question. Georgia is the second largest cotton-producing State in the country. Like many other members of the U.S. agriculture community, the Chinese government has targeted the cotton industry with retaliatory tariffs and Georgia's farmers and Georgia companies using their products are suffering the consequences. I'm happy to hear that market access for U.S. agriculture products is at the forefront of your negotiations with the Chinese Government, and I applaud your efforts to prioritize such an important sector in Georgia's economy.

To what extent has cotton been discussed in these meetings?

Answer. The U.S.-China economic relationship is very important, and the Trump administration is committed to reaching meaningful, fully-enforceable commitments to resolve structural issues and addressing our persistent trade deficit to improve trade between our countries. China has committed to resolving outstanding issues in our agricultural trade relationship, including through immediate purchases of a wide variety of U.S. agricultural products, such as cotton. The U.S. cotton industry has longstanding relationships in the Chinese market, and we are optimistic the proposed Agreement, if reached, would help maintain and strengthen these relationships for the long term.

Question. As the number one forestry State in the country, Georgia depends on fair market access for timber products and the 25-percent tariff on exports of U.S. southern yellow pine imposed by China is causing unnecessary strain for my State's foresters and the markets they supply. In the absence of a fair trade agreement, my constituents are losing market share to foreign competitors on a daily basis.

Will immediate removal of this tariff, along with other tariffs on U.S. timber exports, be part of any agreement you strike with the Chinese?

Answer. The goal of the section 301 investigation is to change China's unfair and market-distorting behavior. China should have responded to the findings in the section 301 investigation and the U.S. tariff actions by undertaking the necessary economic and policy reforms needed to end its trade-distortive practices. Instead, China retaliated with tariffs on U.S. products. The administration is pressing China to remove those retaliatory tariffs entirely.

QUESTIONS SUBMITTED BY HON. ROB PORTMAN

Question. At the hearing you noted your concerns about moving away from consensus at the World Trade Organization (WTO) because doing so could come back to haunt the United States in the future. To get philosophical for a moment:

When you think about reform how do you balance the conflicting desire for progress with the need to preserve sovereignty? What heuristics should be used to evaluate whether the present need to accomplish something outweighs the need to mitigate against future blowback?

Answer. We cannot conceive of any form of sustainable progress that would require us to relinquish sovereignty. Any attempt to identify U.S. priorities must begin with a thorough understanding of U.S. national interests and an articulated strategy to advance them, particularly where competing objectives are in play. On that foundation, the value of consensus-based or joint action can be evaluated in terms of their efficacy in advancing U.S. interests and their likelihood of success.

Question. Some provisions of the Uruguay Round commitments are very obvious. Yet, the meaning of some Uruguay Round commitments has drifted from the commitment's original—or even plain—meaning towards judicially created meaning.

Do you believe that this is because of some inherent flaw in the drafting of the Uruguay Round documents? Or is it because of human error-either intentional or not-that new meaning has been imbued to what was agreed to in the Uruguay Round? What does this mean for the ability of WTO reformers to secure new written commitments to which parties textually adhere? How do you propose Uruguay Round parties develop, or write, new commitments that are impervious to judicial drift?

Answer. Negotiating and drafting international trade agreements is certainly a difficult task that must be undertaken with great care. Reliance on certain long-standing principles can be helpful, but new commitments must be written with great precision and clarity, bearing in mind the principles of treaty interpretation that may be subsequently employed. We must also ensure, however, that those called upon to interpret written text must not add to or diminish the rights and obligations as agreed upon by the negotiating parties. Additionally, we must ensure that relevant international institutions are not empowered in a way that infringes on U.S. sovereignty.

Question. The Information Technology Agreement (ITA) provided that it would only enter into force when participants whose economy totaled 90 percent of world trade in covered products joined the agreement. Critical mass requirements that are this high can give countries like China a de facto veto over the creation of future plurilateral agreements.

Should plurilateral agreements have lower critical mass requirements? Are there other critical mass requirements—other than just a percentage of global trade—that should be considered?

Answer. As part of our effort to improve the functioning of the WTO, we are thinking carefully about a number of pertinent issues, including the requirements for plurilateral negotiations. We are interested in exploring options for WTO members that want to advance negotiated outcomes to do so. A current example of this is the WTO digital trade initiative, in which we are exploring options for moving forward in this important area on a plurilateral basis.

We note that "critical mass" requirements are often features of so-called "open" plurilateral agreements, and they are negotiated among the parties with the objective of minimizing the risk of free ridership that is inherent to such agreements.

Question. Although expired, provisions related to dark amber subsidies contained a rebuttal presumption that such subsidies caused serious prejudice.

Do you believe that the resuscitation of rules for dark amber subsidies are still relevant at today's WTO?

Answer. Bringing back the dark amber category of subsidies is an interesting idea. While a rebuttable presumption may not be a panacea, it may be helpful in identifying some of the more egregious subsidy types and providing for a more easily obtainable remedy.

Question. To be effective, any commitments reached as part of current negotiations with China must be enforceable. Now expired, section 421 was a China-specific safeguard that was created—pursuant to China's World Trade Organization (WTO) Accession Protocol—as an extraordinary trade enforcement tool designed to guard against increased imports from China. While not a panacea for enforcement, the resuscitation of section 421 may have a useful place back in our trade enforcement toolkit.

Do you believe that section 421 should be revived? Do you believe that, in order to be WTO-compliant, the revival of section 421 must be accompanied by China's consent? Do you believe section 421 can be revived unilaterally under U.S. law and without China's consent? Is section 421 currently part of the scope of talks with China?

Answer. Section 421 of the Trade Act of 1974, as amended, was created specifically to implement the anti-surge mechanism established under the Protocol of Accession of the People's Republic of China to the WTO. According to the terms of the Protocol, the anti-surge mechanism expired on December 10, 2013—12 years after the date of entry into force of the Protocol for China. Section 421 has not been part

of our current discussions with China on the enforcement mechanism. I am always interested in discussions with Congress regarding additional enforcement tools.

Question. As you know, the President has received the report pursuant to the section 232 investigation into the national security threat posed by imports of autos and auto parts.

Have you seen the report? Do you concur in its findings? Do you concur in its potential recommendations for import restrictions?

Answer. The Secretary of Commerce, who helps administer section 232, has submitted his section 232 report on the national security implications of automotive imports to the President and the President is reviewing the analysis and will determine the appropriate course of action. I am not in a position to comment on its findings and recommendations. As you know, at the time we signed the USMCA, we also had an exchange of letters with Mexico and Canada regarding automobiles.

Question. The 301 exclusion process is helpful for some companies to seek a refund of the duties paid on tariffed imports from China.

Will USTR continue to operate the exclusion process during negotiation and successful implementation of any agreement with China in order to give U.S. companies using the exclusion process a chance for retroactive relief?

Answer. We are working on exclusions for the products on the $34 billion and $16 billion tariff lists and will continue to do so. We will consult with your office if there are any new developments.

Question. China was the third largest export market for the U.S. dairy industry in 2017. However, current counter-retaliatory tariffs are squeezing dairy market access. Dairy is roughly a $10 billion market in China with most of that access going to the European Union and New Zealand because of the new tariffs faced by U.S. dairy exporters.

In current negotiations with China, is market access for dairy part of the talks, either in terms of expanding market access through reduction of tariffs and non-tariff barriers, or increasing Chinese purchases of U.S. dairy exports?

Answer. We continue to negotiate with China to achieve greater market access for U.S. exports and fair and reciprocal treatment for U.S. farmers, and businesses. We seek substantial and immediate purchases of a wide variety of U.S. agricultural products, such as dairy, as well as the removal of technical and regulatory barriers that impede such purchases.

Question. USTR proposed a welcome and bold agenda in terms of new trade negotiations, and USMCA contains a high-quality digital trade chapter. Provisions like those in USMCA are all the more important as digital protectionism increases around the world.

Is USTR prepared include digital trade within stage one talks with Japan, should negotiations with Japan take a staged approach? Do you agree that the early negotiation of high-quality digital trade provisions in a U.S.-Japan agreement would help set a needed example for subsequent WTO talks potentially commencing later in 2019, and for other discussions?

Answer. In USTR's detailed negotiating objectives for a U.S.-Japan Trade Agreement, released December 21, 2018, several digital trade objectives were included, on issues such as customs duties, data flows, and forced data localization. USTR's intention is to work with Japan to develop high-standard digital trade provisions in the U.S.-Japan Trade Agreement outcomes. Along with the USMCA digital trade provisions, negotiations with Japan offer another opportunity to set high standards on these important issues going into WTO talks and other trade discussions.

QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY

Question. In your written testimony, you stated, "if we did not have the WTO, we would need to invent it." As you know, one of the primary reasons why the United States championed the WTO as a successor to the GATT was because the GATT lacked an enforceable dispute settlement system. As a result, GATT member countries—notably the U.S.—resorted to unilateral trade actions, including liberal use of section 301 tariffs, to pry open markets and enforce global trade rules.

The Uruguay Round addressed this flaw in the GATT system by establishing a binding dispute settlement function, including the WTO Appellate Body. I am concerned that the WTO's dispute settlement mechanism will soon fail to function if the administration continues to block the appointment of judges to the WTO's appellate panel.

The Appellate Body currently has just the bare minimum of three judges required to hear an appeal. The terms for two of these judges expire on December 10, 2019. If these terms are permitted to expire without any new judges installed, any country that loses a WTO dispute settlement case could block the ruling against them by appealing to the Appellate Body. And because the winning country may not retaliate under WTO rules until after the Appellate Body has completed its review of an appeal, the entire ruling would be effectively blocked. This result would functionally take us back to the days of the GATT, when dispute settlement compliance was essentially voluntary.

Do you believe that the WTO can continue to function effectively without a binding dispute settlement system? If so, why?

I understand your concerns about Appellate Body overreach and jurisprudence. Hypothetically, if we were to eliminate all WTO judicial precedent and return to the rules as written in 1995, how would this be implemented? Would every single dispute settlement decision that has already been rendered, including for countries that have fully complied, be unwound? What happens to those rulings that have been favorable to U.S. interests?

Answer. Our position is that the WTO dispute settlement system should operate as specified in the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). These are the rules agreed to by WTO members in the Uruguay Round, and the rules which were approved by Congress in the Uruguay Round Agreements Act.

The DSU states that that panels and the Appellate Body must apply customary rules of interpretation of public international law in interpreting the WTO Agreement. Those customary rules start with the text of an agreement, and do not provide for reliance on any interpretations made by an adjudicator in a prior dispute. Furthermore, the WTO Agreement explicitly reserves authoritative interpretations to the WTO Ministerial Conference or WTO General Council. And the DSU explicitly notes that the dispute settlement system operates without prejudice to this interpretative authority.

The DSU makes clear that the dispute settlement system was created not to adopt binding interpretations, but rather to assist in resolving specific disputes between members. As envisioned by WTO members, the dispute settlement system can usefully serve this role, without any sort of binding precedent. Rather, in each dispute, a panel must make an objective assessment of the matter before it, based on the facts and arguments presented by the WTO members involved in the dispute. Of course, it is important to note that even if the United States wins a case at the WTO, countries frequently do not comply with the results.

Question. Prior to the WTO, the U.S. regularly used section 301 to enforce GATT rulings. However, as part of the "grand bargain" to set up the WTO, which included the WTO's binding dispute settlement system, the U.S. agreed not to use section 301 to address trade violations that fell within the scope of WTO commitments. In other words, the U.S. must—not may—address violations of WTO commitments through the WTO's Dispute Settlement Understanding (DSU).

This legally binding commitment is codified in the Statement of Administrative Action (SAA) that accompanied the Uruguay Round implementing legislation. The SAA states that in such cases "that involve an alleged violation of a Uruguay Round agreement or the impairment of U.S. benefits under such an agreement," the U.S. Trade Representative will "invoke DSU settlement procedures."

You have asserted that the WTO is not equipped to deal with Chinese trade policy practices. While this may be true in some cases, there are other problematic Chinese practices identified in your agency's section 301 report that do, in fact, appear to be explicitly covered by WTO disciplines.

Has USTR determined that China's IP abuse falls outside the scope of the WTO's Trade-related Aspects of Intellectual Property Rights (TRIPs) Agreement? If so, how did USTR reach this conclusion? Has USTR determined that China's practice of technology transfer falls outside the scope of its commitments in China's Accession

Protocol and the Binding Working Party Report? If so, how did USTR reach this conclusion?

Is your agency concerned about a possible domestic legal challenge to the administration's use of section 301 on the basis that 301 tariffs are being used to enforce trade commitments already covered by the WTO?

Has USTR prepared any legal memoranda to justify its unilateral use of section 301 against China's trade practices? If so, please explain how USTR justified its current use of Section 301 in such documents.

Answer. When we initiated the 301 investigation in August 2017, we had not yet determined which of the issues could be addressed through WTO dispute settlement, or rather would be addressed bilaterally under section 301 procedures.

In the course of the investigation, we received extensive public input, including in a public hearing at which U.S. stakeholders and Chinese representatives appeared. No stakeholder suggested any concrete means to address the issues under investigation through WTO proceedings. We also conducted our own research, drawing on the expertise of a wide range of government agencies.

After careful review, I determined that three of the four issues under investigation involved Chinese Government-directed conduct that could not be addressed through application of WTO rules, and thus would be addressed bilaterally. Those three issues are China's use of multiple types of government approval processes to require or pressure foreign investors to transfer technology to Chinese partners; China's government-directed or government-financed investments in U.S. firms for the purpose of obtaining cutting edge technology; and China's government-directed or government-supported cyber-theft of technology from U.S. computer networks and U.S. firms. It should not be surprising that these types of issues are not directly addressed by WTO rules. The WTO Agreement—unlike, for example, the USMCA—does not have extensive investment obligations. And with regard to cybertheft, the WTO Agreement was negotiated before the Internet era.

The fourth issue under investigation is that the Government of China interferes in the ability of U.S. firms to set market-based terms for licensing technology and intellectual property. For this issue, we identified a set of technology regulations (TIER) that apply to private parties, and discriminate against foreign owners of intellectual property. After careful review, we determined that we could address these aspects of China's TIER regulations through a WTO challenge under the TRIPs Agreement. Accordingly, we launched a WTO dispute challenging the TIER regulations in March 2018 before taking any bilateral action under section 301.

Question. Enshrined at Article 1 of the GATT is the "most-favored nation" (MFN) principle, which was also adopted by Congress in 1922 as official U.S. trade policy. MFN is a simple principle stating that WTO member countries cannot charge different countries different tariff rates for the same product. This principle helps guarantee non-discrimination against U.S. exports, has facilitated a long-term reduction in global trade barriers since the 1940s, and has promoted efficiency across the global trading system.

The administration is currently supporting legislation, the United States Reciprocal Trade Act (H.R. 764), that would upend this basic principle. Although I recognize that the ultimate goal of this legislation is to reduce tariff barriers, I have concerns that it would simply amount to "dumping rocks in our harbors because other nations have rocky coasts." In addition, it is misleading to criticize other nations for imposing high, protectionist tariffs on specific products, when the U.S. engages in the same exact practice.

Please provide some examples of specific products for which the U.S. has a "reciprocally" higher tariff than those of many of our trading partners.

Answer. We clearly do not enjoy reciprocal tariff treatment among our trading partners. The United States has more than 11,000 tariff lines in its Harmonized Tariff Schedule, and in relation to any other trading partner, it is likely that there are some U.S. tariff rates that are higher. For example, the U.S. most favored nation (MFN) duty rate for tungsten powders (HS 8101.10) is 7 percent; China's duty rate is 6 percent; the EU and India rates are both 5 percent. The U.S. duty rate for bovine carcasses (HS 0201.10) is 26.4 percent; Kenya's duty rate is 25 percent; and China's is 20 percent.

However, thanks to FTAs and preference programs such as the Generalized System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA), not

all U.S. imports of these products are actually subject to MFN tariffs. In addition, some higher duty rates are on tariff lines for goods that do not necessarily have a high demand in the United States, such as cornbrooms with a duty rate of 32 percent and cathode-ray television tubes at 15 percent.

Finally, U.S. tariffs are applied at the rates the United States bound at the World Trade Organization (WTO) as a result of the Uruguay Round in 1994, and our overall average bound and applied tariff rates are both 3.4 percent. Many of our trading partners apply tariff rates that are lower than their bound rates, which means that they can raise those tariff rates at any time and remain within their WTO commitments. For example, Brazil's average bound rate is 31.4 percent, China's is 10 percent, India's is 48.5 percent, and South Africa's is 19.2 percent. Unlike other trading partners, the United States has maintained consistent MFN tariff rates since the Uruguay Round, resulting in more predictability for traders and importers.

Question. If the United States were to enact H.R. 764 and suddenly stop ignoring its MFN commitments, what kind of retaliation would U.S. exporters face from our trading partners? Would such retaliation be justified or not on the basis of our WTO commitments under Article 1 of the GATT?

Answer. The United States Reciprocal Trade Act would provide an important tool to bring foreign countries to the negotiating table and to reduce their tariffs and non-tariff barriers on U.S. products. While the United States has one of the most open economies in the world, other countries impose high tariffs and other trade barriers that drive up our trade deficit and make it difficult for our farmers and manufacturers to do business. We would not consider retaliation for seeking fair trade deals to be justified.

Question. I have been clear in my view that the President does not have the unilateral power to terminate NAFTA without the consent of Congress. As you know, Article I, Section 8 of the Constitution explicitly vests Congress with trade responsibilities, and there is no explicit language anywhere in U.S. statute that delegates to the executive the ability to unilaterally withdraw from trade agreements.

If Congress fails to ratify USMCA, will you recommend to the President that he unilaterally withdraw from NAFTA?

If so, has your agency developed any internal legal documents to justify such a withdrawal attempt? Please provide a copy of any such memoranda.

Answer. I am optimistic that, working together with the administration, Congress will approve the USMCA, as it represents a significant improvement over the current situation. Therefore, I prefer not to speculate about what could happen under a different scenario.

QUESTIONS SUBMITTED BY HON. TIM SCOTT

Question. I want to flag an emerging concern in Canada that directly impacts our U.S. insurers and reinsurers. Despite strong concerns from the U.S. insurance industry and the Canadian insurance industry, I understand that Canada's financial regulator is moving forward with plans to severely restrict cross-border reinsurance trade. This would only make it more difficult for U.S. insurers to do business in Canada.

Not only would those measures harm the U.S. insurance industry and reduce our insurance trade surplus with Canada, it would raise concerns about inconsistency with Canada's commitment under the WTO General Agreement on Trade in Services (GATS) and best practices for insurance regulation.

Has USTR been in touch with the Canadian authorities to protest the direction Canada is headed?

Do you see a path forward for working with the Canadian authorities to make sure that insurance trade flows between the U.S. and Canada aren't adversely effected by these measures?

Answer. The administration is aware of industry concerns with respect to proposals to change aspects of insurance regulation in Canada. We are continuing to monitor the situation and for potential market access consequences for U.S. firms, and look forward to staying in touch with members of Congress on this issue.

Question. While we wait to see an outcome from the proposed President's summit with President Xi later this month, constituents in South Carolina continue to face

not only tariffs imposed by this administration, but our farmers face Chinese retaliatory tariffs on cotton and soybeans, just to name a few.

So as South Carolinians wait to see if there's a resolution, this brings me to another concern. The U.S. has two pending WTO disputes against China on ag products.

As you pursue these cases, what assurances can you give us that the U.S. will find a favorable outcome?

Because, if you are successful, China would have to vastly reduce subsidies and reform its TRQ regime to comply, in both cases creating new opportunities for U.S. farmers to export to China.

How do you expect them to comply?

Answer. On February 28, 2019, a WTO panel issued a report in favor of the United States, finding that China provided trade-distorting domestic support to its wheat and rice producers well in excess of its commitments under WTO rules. On April 18, 2019 a WTO panel issued another report in favor of the United States challenge to China's administration of its tariff-rate quotas (TRQs) for wheat, corn, and rice, finding that China is acting inconsistently with its obligations to administer TRQs on a transparent, predictable, and fair basis, using clearly specified procedures that will not inhibit the quotas from filling. In both cases, we will work bilaterally and multilaterally to ensure China respects WTO rules so that China's domestic support and TRQ administration measures no longer impede imports of U.S. commodities.

QUESTIONS SUBMITTED BY HON. DEBBIE STABENOW

Question. In the hearing, you testified that China has requested that we make some additional concessions aside from addressing the 301 tariffs, including specific market access provisions.

Can you specify what sectors or products are being considered for this additional market access?

Answer. The goal of the section 301 investigation is to change China's unfair and market-distorting behavior. The focus of our negotiations from China's perspective is dealing with the 301 tariffs. As I noted in the hearing, China has raised other market access requests, but from the U.S. perspective, our overarching focus in the negotiations is assuring that China undertakes the necessary economic and policy reforms needed to end its trade-distortive practices.

Question. Thank you for your ongoing efforts to address the challenges Michigan's cherry industry is facing with imports from Turkey. My understanding is that USTR has been pressing Turkey specifically on their export subsidies for processed agricultural products, including processed fruit.

Is USTR aware of export subsidies for processed specialty crops in other countries? Will you consider including a review of such programs in the next National Trade Estimate Report?

Answer. We are aware of four countries, which have notified to the WTO export subsidies for certain processed specialty crops: Norway, Turkey, Switzerland, and Colombia. As a result of the WTO Ministerial meeting in 2015, WTO members agreed to eliminate export subsidies for agricultural products. Developed country members were to have eliminated export subsidies in December 2015, developing country members were to have done so by December 31, 2018. That WTO decision had certain exceptions for certain countries, including for processed products where a country had a notified export subsidy for a specified period prior to 2015. Developed country members, including Norway and Switzerland, with those programs have until 2020 to eliminate the export subsidy, and developing country members, including Turkey and Colombia, have until 2022 to eliminate export subsidies for products or groups of products for which they have notified export subsidies for a specified period. USTR will carefully monitor implementation of these commitments, and will be sure to take appropriate steps to address any concerns. We welcome any specific information that the Senator or stakeholders may have as well for further investigation.

Question. As you are aware, the administration recently entered into an agreement with Qatar, where in addition to being more transparent, they also agreed

they had no plans for additional 5th freedom flights. However, Qatar purchased a 49-percent stake in Air Italy to perform 5th freedom flights into the United States using aircraft leased from Qatar Airways. I have long been concerned about unfair competition U.S. aviation workers face from carriers like Qatar Airways.

What action has the administration taken and what further action is the administration considering in order to make sure that Qatar abides by the agreement?

Answer. The administration takes seriously concerns regarding the Gulf carriers and state-support for airlines. We continue to be committed to ensuring fair competition for U.S. airlines in international markets. Last year, the Department of Transportation concluded understandings with both Qatar and the United Arab Emirates (UAE) that committed their governments to improve financial transparency of their airlines, move to arms-length dealing between state-owned enterprises, and ensure that subsidies were not providing their airlines the ability to launch new services that would not otherwise be financially viable. To follow up on those understandings, an interagency delegation led by the Department of State met with Qatari counterparts on January 10, 2019. Similar follow-up meetings with the UAE are now being scheduled to take place in June. The administration is aware of the concerns raised about Air Italy and is scrutinizing this issue.

Question. Thank you for your engagement on polysilicon market access issues with China. I want to reiterate the grave situation our U.S. polysilicon industry faces because of this long-standing issue. It is critical, for jobs in Michigan and across the country, that a resolution be reached that reopens market access for U.S. polysilicon producers.

Can you provide an update on your discussions with Chinese officials on the issue of polysilicon market access?

Answer. When President Trump announced section 201 safeguard relief for U.S. manufacturers of solar cells and modules in 2018, he committed that "[t]he U.S. Trade Representative will engage in discussions among interested parties that could lead to positive resolution of the separate antidumping and countervailing duty measures currently imposed on Chinese solar products and U.S. polysilicon. The goal of those discussions must be fair and sustainable trade throughout the whole solar energy value chain, which would benefit U.S. producers, workers, and consumers." USTR has been engaged in discussions with U.S. stakeholders in an effort to find a solution that is beneficial to both the U.S. solar industry and the U.S. polysilicon industry, and which would be acceptable to China. USTR also is pressing our concerns specifically about China's duties on U.S. polysilicon as part of the negotiations launched by Presidents Trump and Xi on December 1, 2018.

QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

Question. Ambassador Lighthizer, during the hearing you stated that USTR is hoping to obtain an enforcement mechanism that would require periodic meetings at the Office Director level, Vice-Minister level, and Minister level to work through specific problems that companies bring to USTR's attention that may be in violation of the agreement. You further stated that if the two sides cannot agree on a resolution, it is your view that the U.S. should retain the right to act unilaterally to encourage China to address the issue.

If you do reach a final agreement with the enforcement mechanism you described, how will USTR prioritize which issues to solve in a situation where multiple U.S. firms are asking the administration to address multiple different problems?

In instances where a problem cannot be resolved through these meetings, how would you decide how and when to pursue unilateral action?

How do you intend to keep Congress apprised of potential violations and enforcement actions?

How does this enforcement mechanism differ from past dialogues, such as the Joint Commission on Commerce and Trade, the Strategic and Economic Dialogue, and the Comprehensive Economic Dialogue, that also provided periodic opportunities for U.S. officials to seek resolution of troubling Chinese practices raised by U.S. firms?

Answer. If an agreement were to be reached between the United States and China, it will have to be one that is enforceable. In my testimony, I described a mechanism in which there would be monthly, quarterly, and semiannual meetings

with counterparts at China, including at the vice-premier level to address issues. To the extent that there are issues that cannot be resolved at the vice-premier level, then the United States would have the right to act unilaterally to enforce. This mechanism I described did not exist in past dialogues. I and my staff will continue to consult with Congress, as we always have, on issues related to potential violations and enforcement actions. We will prioritize issues on a case-by-case basis. We intend to monitor compliance closely and take strong enforcement measures when necessary.

Question. Ambassador Lighthizer, a key component of the U.S.-China trade talks is to have the Chinese government and Chinese firms respect the intellectual property (IP) that's been developed and patented by U.S.-based companies. And with this comes a desire from many U.S.-based companies who are engaged in the research and development of standard essential patents (SEPs) related to advanced wireless technology to have their IP properly licensed by Chinese original equipment manufacturers (OEMs) who use this American technology in the devices they sell in the U.S. and around the world. Ambassador, I'm sure you'd agree that by not paying proper license fees, Chinese OEMs are taking advantage of the work done by U.S. companies. By implementing this technology into the devices they sell to make billions of dollars of profits, these Chinese OEMs are effectively stealing U.S. technology.

What specific language are you seeking to secure in this potential trade agreement with China to protect these US-based companies and to ultimately require Chinese OEMs to sign and abide by proper license agreements for American wireless SEP technology?

If a Chinese OEM does not sign a proper license agreement with an American owner of SEP technology, how will USTR use your proposed enforcement mechanism to hold the Chinese firm accountable and to ensure that such a Chinese OEM is not allowed to sell infringing product in the U.S.?

Answer. The talks thus far have covered a wide range of issues, including the need for stronger protection and enforcement of intellectual property rights in China. For a constructive process, we will not discuss specifics or negotiate publicly. For these negotiations to be successful, China must demonstrate real structural changes across the range of unfair policies and practices that yield actual, verifiable, and enforceable results. This includes in the area of IP rights. We are encouraged by our negotiations with China and will continue to work with them in good faith. However, we will not compromise on achieving greater market access for U.S. exports and fair and reciprocal treatment for U.S. businesses.

QUESTIONS SUBMITTED BY HON. BENJAMIN L. CARDIN

Question. Mongolia describes the United States as its most important "third neighbor," but United States-Mongolia trade is substantially lower than many other bilateral trading relationships, and trade has declined in recent years. Agriculture is Mongolia's second most important sector, with its livestock sector accounting for 87 percent of the country's agricultural production and roughly one-third of the working population; however this sector has been heavily impacted by challenges associated with climate change.

Since the 1940s, the annual mean air temperature in Mongolia has risen at three times the global rate. Average precipitation is declining and extreme weather disasters are more frequent, posing acute challenges for livestock herding in the country. In 2017, an estimated 700,000 of the country's livestock population were killed due to the post-drought extreme winter phenomenon known as "dzud." This phenomenon is unique to Mongolia and has increased in frequency and severity in recent years, causing a rise in livestock mortality and diminishing livelihoods for herders, which has led to widespread rural poverty and a contraction in the national economy.

Mongolia would greatly benefit from preferential treatment for United States imports of certain Mongolian products—particularly cashmere—to help address some of the economic impacts of the dzuds. Currently, the U.S. buys nearly all of its cashmere products from China, which imports the majority of its raw cashmere from Mongolia.

Do you see an opportunity to extend to Mongolia a WTO waiver that would help address some of these impacts, similar to the waiver extended to Nepal in the wake of the April 2015 earthquake and aftershocks?

Answer. Single-country preference programs contravene rules at the WTO requiring non-discriminatory treatment of countries benefiting from preferences. As a result, with regard to Mongolian cashmere, the United States would be required to seek a waiver from its existing WTO treaty commitments. Securing approval for a WTO waiver would be challenging, as it requires consensus from the full WTO membership (164 economies). Following passage of the Nepal program, an increasing number of countries have approached USTR requesting their own single-country preference programs, based on arguments that their countries also face unique circumstances and are strategic partners of the United States.

Question. If yes, do you see an opportunity to offer trade preferences specific to Mongolia's livestock industry? To its cashmere industry in particular? If no, will you please elaborate on why you don't think Mongolia should be eligible for certain trade preferences?

Answer. As we understand it, Mongolia is not seeking trade preferences for its livestock, but rather for textile products, such as sweaters and jackets, that are made of the cashmere wool harvested from its livestock.

Mongolia is currently designated as a beneficiary developing country under the U.S. Generalized System of Preference (GSP) program, and it therefore has the right to export about 3,500 products duty-free, in addition to the 4,000 tariff lines already duty-free on a most-favored-nation basis. In 2018, Mongolia exported to the United States only 10 of the 3,500 GSP lines, with 97 percent of the $3.2 million value coming in a single product (tungsten concentrate). It would be useful to explore the reasons for Mongolia's limited current use of the GSP program and attempt to address them.

Question. How else can USTR help mitigate impacts of climate change on Mongolia's agricultural sector?

Answer. USTR does not have responsibility for climate policy. The question on climate policy more appropriately should be directed to other administration officials.

QUESTIONS SUBMITTED BY HON. SHERROD BROWN

Question. You and I share concerns about the WTO and its failure to discipline China's unfair trade practices. I am particularly troubled that the WTO has tolerated China's market-distorting state-owned enterprises.

As part of the U.S.-China trade negotiations, is the U.S. seeking commitments from China to convert its state-owned enterprises into private companies? If so, over what time frame?

Answer. Under President Trump's leadership, the United States is committed to working toward a more fair and reciprocal trade relationship with China. In the current negotiations with China, we are seeking to address a wide range of unfair trade practices, including those involving state-owned enterprises. I am committed to working with you and other members of Congress to discuss the policy tools available to address these important issues, including section 301 of the Trade Act of 1974.

Question. I'd like to know the extent to which China's WTO commitments are part of the negotiations.

Is the U.S. seeking commitments from China to drop it non-market economy case against the U.S. and the EU (DS515 and DS516)? Is the U.S. asking China to self-designate as a developed country under the WTO as part of the negotiations? Is the U.S. asking China to provide a comprehensive list of subsidy programs as part of their concessions in any agreement? Additionally, are you seeking any commitments from China to stop bringing WTO cases against our legitimate use of trade remedy laws? If the answer to any of these questions is no, why not?

Answer. Under President Trump's leadership, the United States is committed to working toward a more fair and reciprocal trade relationship with China. In the current negotiations with China, we are seeking to address a wide range of unfair trade practices, including those that create or support non-market forces. I am committed to working with you and other members of Congress to discuss the policy tools available to address these important issues, including section 301 of the Trade Act of 1974.

Question. I am concerned that there has been an emphasis on the one-time purchases of agriculture commodities in the U.S.-China trade negotiations. I want the Chinese to buy American soybeans, preferably from Ohio, but the connection between one-time agricultural purchases and ongoing intellectual property violations or unfair trade practices is unclear to me.

How did one-time agriculture purchases come to be part of the negotiations? Did the U.S. ask China to make the purchases or did China offer them as a concession? Do you believe negotiations on agricultural purchases have come at the expense of negotiations on other, more long-term changes China could make?

Answer. As President Trump and President Xi agreed in Buenos Aires on December 1, 2018 the United States and China are engaged in high-level discussions to work toward a fair and reciprocal trade relationship between our two countries. Our current discussions focus on numerous, critical structural, regulatory and technical issues, embedded in many sectors in China, including in agriculture. The discussions seek to address the tremendous imbalance in our trade relationship, which results in part from these structural issues.

Question. I understand that the Chinese government stopped using the term Made in China 2025 after criticism from the U.S., perhaps to garner good will in the talks.

Does the administration believe the Chinese government has abandoned its plans to become globally dominant in the Made in China 2025 sectors?

Answer. We see no evidence that China has abandoned the substance of the Made in China 2025 industrial plan. Addressing the market-distorting and harmful forces created by industrial plans like Made in China 2025 is a key component of our ongoing bilateral negotiations with China.

Question. China's lax labor and environmental standards amount to subsidies for any corporation who does business there. USTR's most recent report on China's WTO compliance discusses the fact that the Chinese government denies workers the right to organize and collectively bargain and, in doing so, places significant "institutional restraints," as you call them, on wage rates.

Given that China's denial of worker rights is in effect a subsidy, what commitments are you seeking from the Chinese government in the trade talks to protect workers' right to collectively bargain and to stop suppressing workers' wages?

Answer. Under President Trump's leadership, the United States is committed to working toward a more fair and reciprocal trade relationship with China. In the current negotiations with China, we are seeking to address a wide range of unfair trade practices. Although we are not currently directly addressing labor standards, I am committed to working with you and other members of Congress to discuss options and policy tools for addressing these important issues.

Question. I know you have said that you do not think an agreement between the U.S. and China will need congressional approval because it will be an Executive Agreement; however, the scope of the potential agreement you described during the hearing seems very broad.

Are you of the belief that any agreement with the Chinese will be considered an Executive Agreement, regardless of its scope? Further, will you commit to giving the members of this committee, and their staffs, the opportunity to read and review it before the U.S. enters into it?

Answer. Consultation with Congress is an important part of addressing the challenge from China. My staff and I have frequently sought input from members of both the House and the Senate during the course of the section 301 investigation and during this phase of negotiation with China. Any resulting agreement would reflect that input. The current negotiations with China are an attempt to reach an executive agreement that would be entered into under the existing authority of the President and USTR.

QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. Ambassador, the United States is not alone in concerns about China's practices, such as forced technology transfer and outright theft of intellectual property.

Can you discuss how you are engaging with our allies at the WTO and more broadly to address China's behavior?

Answer. The administration works extensively with our allies and trading partners to confront shared challenges with China at the WTO. As I noted in the hearing, I think the way forward for the WTO is to take small groups of countries that have something in common and work together. For example, I meet regularly with my counterparts in the European Union and Japan to address nonmarket-oriented policies and practices of third countries that lead to severe overcapacity, create unfair competitive conditions for their workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade, including where existing rules are not effective.

Question. Mexico has a long history of intimidation of democratic unions and union organizers. In January, 2019 José Luis Solorio Alcalá, the former General Secretary of the Union of Workers of Honda of Mexico, was arrested, as I understand, without due process. Given Mexico's long history of union intimidation, I am concerned by that these recent actions may portend Mexico's level of commitment and adherence, in spirit and in law, to labor law reforms and practices.

I would appreciate your providing any relevant information pertaining to your engagement with Mexico on their practices following this arrest.

Answer. The administration has been monitoring the case of Mr. Solorio Alcala and the U.S. Embassy in Mexico City has informed us that he was freed on bail in March, and is currently appealing the charges against him with the support of the Union of Workers of Honda. USTR will continue to monitor the situation along with the U.S. Department of Labor, and my staff and I would be happy to keep you updated on this matter as we receive more information. We are also encouraged by the progress of labor reform through the Mexican Congress.

QUESTIONS SUBMITTED BY HON. MARK R. WARNER

Question. A key pillar of the rules-based global trading system is transparency so that trading partners and their firms have predictability and certainty in another country's legal and regulatory system. Unfortunately, China's opaque and often vague regulatory system is a maze to navigate, with ambiguous legal provisions often providing a pretextual basis for sweeping enforcement measures meant to protect domestic firms or force technology transfer from U.S. firms. China's poor record of adhering to its transparency obligations as a WTO member has only exacerbated this problem.

How is China failing to obey its transparency obligations under the WTO and what are the impacts on U.S. firms and investors? Does the U.S. have a concerted strategy to respond to China invoking their anti-monopoly laws on a pretextual basis to force U.S. technology firms into unfair licensing or technology transfer agreements?

In the digital economy, China's regulatory regime is even more non-transparent—with multiple agencies with overlapping jurisdiction regulating Internet commerce and U.S. firms subject to dynamically changing edicts.

What is the effect of China's opaque and often arbitrary implementation of Internet regulations on western firms' ability to compete?

Answer. China's systematic lack of transparency continues to have wide-ranging effects on U.S. business in China. In the current negotiations with China, the United States is committed to addressing this and other structural issues and unfair trade policies and practices, including the many ways in which U.S. companies are pressured to transfer technology to Chinese companies. U.S. suppliers of Internet-based services do not receive fair and reciprocal access to China's market. China's Internet regulatory regime is restrictive and non-transparent and adversely affects a broad range of commercial services activities conducted via the Internet, including retail websites, search engines, audio-visual and computer gaming services, and electronic mail and text. Complicating matters further, this regime is overseen by multiple agencies without clear lines of jurisdiction. U.S. suppliers continue to encounter major difficulties in attempting to offer Internet-based services, both through a commercial presence and on a cross-border basis.

Question. China's trade practices threaten the U.S., our allies, and the global trading system. The administration has been trying to deal with China's unfair

trade practices through section 301 tariffs and unilateral negotiations. You have been critical of WTO as an avenue to address our problems with China. A recent USTR report stated, "It is unrealistic to expect success in any negotiation of new WTO rules that would restrict China's current approach to the economy and trade in a meaningful way." However, diplomats and trade officials say that the U.S.'s unilateral actions are also violating WTO rules because it is imposing tariffs without first adjudicating its grievances. China has consistently violated WTO rules, and its retaliation to the U.S.'s section 301 tariffs continues this trend. However, if the globe also perceives the U.S. as violating WTO rules, the WTO's value and relevance come into question.

Do you believe that negotiating with China to deal with its unfair trade practices—such as forced technology transfer—is more effective unilaterally or in concert with our allies?

Answer. I believe that combating China's unfair trade practices is something we need to do both unilaterally and in concert with our allies and trading partners. We are using section 301 enforcement tools where Chinese practices are problematic but not covered by the WTO agreements. In other instances, we have used the WTO dispute settlement system where appropriate. In addition, the administration works extensively with our allies and trading partners to confront shared challenges with China. For example, I meet regularly with my counterparts in the European Union and Japan to address non market-oriented policies and practices of third countries that lead to severe overcapacity, create unfair competitive conditions for their workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade, including where existing rules are not effective. Additionally, within the USMCA, the United States, Mexico, and Canada set forth high standards aimed at combating non-market practices such as currency manipulation and state-sponsored subsidies. The administration will continue to actively engage with our allies and trading partners on these shared challenges.

Question. In your testimony before the committee, you outlined your problems with the WTO and countries' ability to flout the rules, stating that the administration is currently "shedding light" on the WTO's issues such as those countries that self-designate as developing nations. You suggested some countries are coming around to the U.S. view that WTO reforms are needed. You also highlighted the trilateral partnership with the EU and Japan as a successful example of a multilateral approach that is dealing with China's forced technology transfer and other trade abuses.

What changes are needed to WTO rules to address the myriad ways in which China provides subsidies to its companies (whether through non-market energy sources, cheap financing, or official practices that discriminate against foreign competition)?

Can you provide an update on the status of the trilateral partnership with the EU and Japan and elaborate more specifically on actions that may have resulted from the five meetings?

Answer. It is our view that the WTO rules need to be significantly strengthened by clearly identifying particularly egregious subsidy types and establishing much tougher rules for such subsidies that will act as a deterrent and make obtaining a remedy in dispute settlement far less burdensome.

In the most recent meeting of the trilateral partnership, Ministers confirmed that market-oriented conditions are fundamental to a fair, mutually advantageous global trading system; instructed their staff to finalize trilateral text-based work in industrial subsidies; and, in the area of force technology transfer, confirmed their agreement to cooperate on enforcement, on the development of new rules, on investment review for national security purposes and on export controls.

Question. The administration has declared that "strategic engagement with like-minded trading partners" is a central part of the U.S. strategy on China. This administration has imposed section 232 steel and aluminum tariffs on our closest allies and frequently criticized them. The administration is threatening further action under section 232 on autos and auto parts, an issue of grave concern to the EU and Japan. Further, last year the President stated the EU is perhaps "as bad as China" when it comes to upholding the rules-based trading system. Our allies, including EU Trade Commissioner Cecilia Malmström, have criticized the U.S.'s steel and aluminum tariffs and warned action on autos could undermine U.S.-EU cooperation.

Meanwhile, last week, Italy became the first G7 nation to sign up for China's Belt and Road Initiative, signaling that some EU nations are moving closer to China.

Does the imposition or threat of tariffs on our allies under section 232 affect their willingness to work with the U.S. on China issues?

Answer. The President's actions under section 232 of the Trade Expansion Act of 1962 to address the threat to national security presented by certain imports are not preventing our allies from working with us in any area where our interests align. This includes allies working with us in various configurations on the fundamental challenges posed by China's array of non-market industrial policies and other unfair competitive practices aimed at promoting and supporting its domestic industries while simultaneously restricting, taking advantage of, discriminating against, or otherwise creating disadvantages for foreign companies and their goods and services.

Can you speak to the threat that China's Belt and Road Initiative poses to the U.S.'s alliances and our ability to address China's unfair trade practices?

Answer. In recent years, China also has been exporting its non-market economic model to other countries through its Belt and Road Initiative. As is now well known, China invokes this initiative and offers to build large infrastructure projects in countries throughout Asia and other parts of the world, especially in strategically located or developing countries. China claims that the Belt and Road Initiative is open to all, but virtually all projects are financed by Chinese banks, run by Chinese state-owned enterprises, and built by Chinese workers. The Belt and Road Initiative is especially important to the Chinese Communist Party, which has incorporated the Belt and Road Initiative into its Constitution and has called for using this initiative to develop relations with surrounding countries through discussion, collaboration, and unity. However, Belt and Road Initiative projects are often opaque, one-sided, and divisive. These projects generally ignore market principles and fail to adhere to internationally accepted best practices in financing, infrastructure development and government procurement. Too often, these projects also create unsustainable debt burdens for the recipient countries. For these reasons, the Belt and Road Initiative threatens to have a chilling effect on other countries' ability to speak out and challenge China's unfair trade practices.

Do you agree with the President that the EU is "as bad as China" when it comes to upholding the rules-based trading system?

Answer. Despite this significant trade volume, U.S. exporters in key sectors have been challenged by multiple tariff and non-tariff barriers for decades, leading to chronic U.S. trade imbalances with the EU. For example, in 2018, the U.S. trade deficit in goods with the EU was $169.3 billion. Further, the EU has been slow to comply with certain WTO cases where the U.S. prevailed. Following the joint statement issued by President Trump and European Commission President Jean-Claude Juncker following their July 25, 2018 meeting, the United States and the EU have been working on ways to reduce barriers, increase trade, and strengthen their trade relationship to the benefit of all American and European citizens. In its discussions with the EU, the United States seeks to support higher-paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities for trade and investment with the EU.

Question. On March 4, 2019, the administration notified Congress of their intent to terminate GSP (Generalized System of Preferences) for India and Turkey. These changes will not take effect until at last 60 days after the notification. The administration stated that India and Turkey no longer comply with the statutory eligibility criteria. The U.S. launched an eligibility review of India's compliance with the GSP market access criterion in April 2018. According to USTR, "India has implemented a wide array of trade barriers that create serious negative effects on U.S. commerce." The withdrawal of these duty concessions will mean Indian exports of eligible products to the U.S. will become more expensive. According to the Confederation of Indian Industry, U.S. importers saved $894 million in 2017 under the GSP benefits from India.

Can you explain the timing of this announcement so close to India's national election and how the administration is using the suspension of GSP preferences as leverage in our trade negotiations? Given the U.S. designation of India as a major defense partner, how does the revocation of GSP impact our larger strategic partnership with India and will this decision have repercussions for our defense partnership?

Answer. Based on a thorough United States government review of India's compliance with the GSP market access criterion, the President determined that India is not meeting the statutory criteria for GSP eligibility. Despite intensive engagement with the Government of India since April 2018, India has not assured the United States that it will provide U.S. exporters with equitable and reasonable access to its market. Nevertheless, USTR continues to press India to resolve an array of trade barriers so that it can meet the GSP eligibility criteria.

On March 4, 2019, the President notified Congress and the Government of India of his intent to terminate GSP benefits for India. By statute, India's removal from the GSP program may not take effect until at least 60 days after the notifications to Congress and the Government of India. Once the 60-day period is over, the President can implement his decision by issuing a presidential proclamation or executive order. The exact timing of India's removal from the GSP program, therefore, is for the President to determine.

As you mentioned, the United States has a strategic and defense partnership with India. I encourage you to discuss these aspects of the relationship with the Secretaries of State and Defense. In my view, it is important that we do not give trade preferences to countries that do not meet the statutory criteria set out by Congress, including the criterion to provide equitable and reasonable market access. That is unfair to U.S. workers, farmers, ranchers, and businesses.

Question. The digital economy is increasingly inseparable from the wider global economy. In the last 2 decades, there has been an exponential growth in U.S. and global e-commerce. E-commerce is one area in particular where American innovation has flourished. In 2018, the U.S. joined a group of 76 countries—including China—to announce negotiations on a set of e-commerce rules to establish a multilateral legal framework to make it easier and safer to buy, sell, and do business online.

Can you provide a status on the negotiations and the U.S.'s objectives for them? Can you also give an update of Chinese commitments to observe intellectual property protections—including against counterfeit goods sold online?

Answer. Throughout 2018, the United States participated in exploratory work at the WTO on the possibility of a plurilateral digital trade negotiation. In January 2019, the United States joined 75 other economies in confirming our intention to launch negotiations. We are now preparing for these negotiations, working closely with allies to gain support for high-standard outcomes based upon the USMCA Digital Trade chapter, which we view as a model for this negotiation and future agreements.

We are encouraged by our negotiations with China and will continue to work with them in good faith. The President promised to fix the broken trading relationship and end the theft of American innovation, and he is committed to seeing that through. We need to see China implement their commitments and create conditions for fair competition, including through structural reforms.

The state of intellectual property (IP) protection and enforcement in China, and market access for U.S. persons that rely on IP protection, reflect China's failure to implement promises to strengthen IP protection. China has failed to take decisive action to curb the widespread manufacture, domestic sale, and export of counterfeit and pirated goods. While the proportion of counterfeit and pirated goods and services is difficult to assess precisely, a Chinese government agency has reported that more than 40 percent of goods that were purchased online during a survey were "not genuine." Although some leading online sales platforms claim to have streamlined procedures to remove offerings of infringing articles, right holders report that the procedures are still burdensome and that penalties do not deter repeat infringers, including those selling compromised log-in credentials online. Given the scale, IP infringement in China's massive online markets causes deep losses for U.S. right holders involved in the distribution of a wide array of trademarked products.

Question. Fintech represents one of the most dynamic and innovative areas in the U.S. with traditional and emerging companies, alike, developing innovative new solutions to make payments faster, easier, and more mobile. China made commitments to open its electronic payments market in 2006, a commitment that was remade following a WTO ruling in 2012. However, no foreign electronic payment providers are able to operate in China to this day. At the same time, one of the largest pharmacy chains in the U.S. has just announced a deal to roll out Alipay at thousands of pharmacies across the United States.

Do you believe the U.S. is operating on a level playing field when Chinese electronic payments platforms are rolling out across the U.S. at the same time that U.S. firms are still barred from the Chinese market? Fintech innovation depends on network effects and scale. If U.S. companies cannot enter China, the world's largest market for digital payments, does this give Chinese electronic payment incumbents an advantage globally?

Answer. I agree that U.S. companies do not enjoy a level playing field in China with respect to electronic payments. The United States is fully engaged on this issue and has been working closely with relevant stakeholders to ensure a level-playing field for retail electronic payment services suppliers in China, as well as other foreign markets. It is a priority for this administration that China complies with and implements its obligations, including its WTO obligations, in the electronic payment services sector. We welcome the opportunity to stay in touch with members of Congress on this important issue.

Question. Throughout its history, U.S. strategy has involved developing closer relationships with like-minded trading partners. This approach must be part of an effort to counter China's mercantilist economic policies. With regards to the Internet, there are increasingly two versions that are being promoted. The first, led by China, centers on harnessing technology for surveillance and social control. The second model, long championed by the U.S., is based on a free and open Internet, with user trust and security included as important objectives. China's model poses significant risks for the future of the Internet. If data cannot flow freely, 21st-century commerce cannot occur.

A perceived failure to maintain sufficient data protection standards has jeopardized transatlantic data flows in the past. As we see our allies harmonize around a set of data security and privacy principles, is having consistent privacy and data security rules in the U.S. helpful in digital trade?

Might adopting a common, pragmatic set of data security and privacy commitments—the kind that free and open societies and market economies can comply with but that closed and state-driven economies would have a hard time abiding by—offer a useful basis for countering China's control of digital technologies?

Answer. The administration supports continued work with like-minded trading partners in support of high-standard rules on digital trade that facilitate the expansion of an open digital economy that serves as a key driver of U.S. and global economic growth, while also ensuring flexibility to address evolving challenges in areas such as data privacy and security. The USMCA Digital Trade Chapter serves as the strongest template to date for such rules in the WTO and in future agreements. In addition, the United States has long supported frameworks such as the NIST Cyber Security Framework and the APEC Cross-Border Privacy Rules System that offer effective approaches to ensure security and privacy in conjunction with the movement of data across national borders.

Question. Increasingly, countries are considering opportunities to enhance data protection and privacy regulations worldwide. For example, the EU recently moved forward with the General Data Protection Regulation. However, approaches like data localization requirements—while pretextually based on privacy concerns—can pose major barriers to trade.

Do you agree that countries can promote data security and privacy without imposing onerous data localization requirements?

Answer. Data localization is in no way essential to the protection of data and, in fact, onerous data localization requirements can add additional points of attack to a network, thereby reducing the level of security around data. The United States has long supported frameworks such as the NIST Cyber Security Framework and the APEC Cross-Border Privacy Rules System, which offer effective approaches to ensure security and privacy in conjunction with the movement of data across national borders.

Question. Reports suggest the WTO is expected to issue a ruling this month on the invocation of Article 21's "national security" justification relating to a Russia-Ukraine border dispute case. The U.S. position is that in a WTO dispute a claim of national security cannot be challenged. If the U.S. position wins out, it is essential to the basic functioning of the WTO that each country restrain itself in what it deems vital to its national security interest. National security cannot simply mean "the economic well-being" of the country, otherwise, the exception will swallow the rule and undermine the international framework for trade.

Do you agree that it is important for countries to demonstrate restraint in what they term vital to their national security? Do you believe that domestically, Congress should pass legislation that provides a definition for "national security"—that extends beyond simply the economic well-being of the country—so that U.S. tariffs imposed in the name of national security are not flouting international rules?

Answer. Across multiple administrations, the United States has made clear that it and other WTO members each have the right to determine what it considers in its own essential national security interests. This has been the understanding of the United States for over 70 years, since the negotiation of the General Agreement on Tariffs and Trade (GATT). That understanding has been shared by every WTO member whose national security action was the subject of complaint. Despite this understanding, certain WTO members are urging the WTO to review a member's determination of its own national security interests. Such a decision by the WTO to second-guess a member's national security determinations would threaten serious damage to the multilateral trading system.

Question. There is broad consensus that rules shielding Internet platforms from liability for user-generated content were pivotal in facilitating the innovative digital economy we now enjoy. At the same time, the speed with which these products have grown and come to dominate nearly every aspect of our social, political, and economic lives has obscured the shortcomings of their creators in anticipating the harmful effects of their use. Such protections can, in fact, limit our ability to make platforms internalize many of the negative externalities currently borne by users and society stemming from their exploitation and misuse.

At a time when there are increasingly domestic concerns with the moral hazard of broad safe harbors, is it appropriate to include similarly broad safe harbors in our trade agreements? Will you work with me and other members on the committee to ensure our trade rules balance the competing priorities of enabling innovation while at the same time ensuring platform accountability protections? Would it be possible to address concerns with the consequences of a sweeping safe harbor on platform accountability through a side letter?

Answer. The administration is committed to working with you and other members of Congress to ensure that efforts to address online harms are not constrained by trade rules. We believe that there is an important role for a (non-IP) safe harbor as part of a comprehensive set of rules on digital trade, as demonstrated by the outcome of the USMCA negotiations. But we agree that any such rules should allow for the development of domestic measures promoting platform accountability and USMCA reflects this. We would be pleased to work with you and other members of Congress as you develop ideas in this area to ensure that our trade agreement proposals are consistent with and complement your goals.

Question. In your opening statement, you highlighted the "surge in U.S. trade" under this administration, noting that total exports and imports have grown by 12.8 percent and 14.8 percent, respectively. The President has focused heavily on trade deficits as a measure to gauge our trade relationships with other countries and on shrinking U.S. trade deficits with other countries. Despite this focus, the U.S. trade deficit in goods hit an all-time record in 2018, growing by 10 percent according to recent Commerce Department data.

Can you explain why the trade deficit has grown despite the administration's efforts to decrease it? If other factors such as the U.S.'s economic growth have contributed to the growth of the trade deficit rather than the administration's trade policies, do you continue to believe that trade deficits are one of the most important metrics in measuring whether other countries' trade relationships with the U.S. are beneficial?

Answer. Trade deficits remain an important metric because in trying to shrink the deficit, we are working to ensure that American farmers and workers have places to sell their products or services, competitively. Trade rules are an important factor in our trade balance, along with issues such as currency, foreign tax regimes, and others. The administration's trade policies are contributing to the strong economy, along with other factors such as tax reform and rolling back of burdensome regulations.

QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO

INTELLECTUAL PROPERTY THEFT

Question. Finance Committee staff relayed to our team that the enforcement component of the U.S.-China trade negotiations is still poorly developed. In addition, recent public comments from Chinese government officials indicate that they are not willing to fully police IP theft issues in China.

In the current trade talks with China, what do the enforcement and verification mechanisms look like? Would you condition removing section 301 tariffs on seeing verifiable progress on IP theft?

Answer. I am happy to discuss the enforcement component in the U.S.-China negotiations as well as conditions for removing tariffs with you privately in more detail. As a general matter, enforcement of U.S. interests under a potential U.S.-China agreement will be done through intense consultations and, where necessary, unilateral action by the United States. The theft of American IP is something that needs to be addressed, and as I've indicated, we are making progress in negotiations on this and other structural issues.

SECTION 232, STEEL AND ALUMINUM TARIFFS

Question. As you know, there are a number of legislative proposals about the President's power to impose tariffs for national security reasons, including from a number of my colleagues on this committee. Chairman Grassley even called for the section 232 steel and aluminum tariffs on Canada and Mexico to be removed before Congress considers passage of the new NAFTA. Both Canada and Mexico have retaliated against the U.S. tariffs by slapping duties on U.S. farm goods and other exports. Even while calling the steel and aluminum tariffs necessary to protect national security, the President has touted them as leverage in negotiating a new NAFTA. The same could be said about using threats of 232 tariffs on autos as leverage in trade discussions with the EU and Japan.

How do you think that the President's use of section 232 tariffs has affected your negotiations with like-minded countries on WTO reform proposals?

Answer. As I testified, USTR is actively engaged at all levels of the WTO and is working with other member states to address what we see as systemic issues, such as concerns with the Appellate Body. These issues have resulted in an organization that works very differently from how it was intended to work. USTR sees the Department of Commerce's and the President's section 232 national security investigations as a separate issue and independent of our goals at the WTO.

301 TARIFFS WITH CHINA IMPACT ON SMALL AND MEDIUM-SIZED ENTERPRISES

Question. In Nevada, a significant proportion of previous foreign direct investment has come in the areas of renewable energy. I am concerned that the President's rhetoric, and decisions like pulling the United States out of the Paris Climate Agreement, have signaled to companies that the United States is less friendly to foreign direct investment, directly affecting our State economy.

Does the administration commit to continue efforts to increase foreign direct investment, including in the renewable energy sectors and small enterprises?

Answer. The administration recognizes the importance of foreign direct investment in supporting economic growth in Nevada and across the United States. The administration supports efforts to increase foreign direct investment that benefits the U.S. economy and U.S. workers, including investment in small and medium-sized enterprises and the renewable energy sectors. The Paris Climate Agreement is not related to our investment climate. Indeed, the U.S. economy is growing and many economic indicators are at all-time highs.

Question. In Nevada, 87 percent of our exports are by small and medium-sized enterprises. Can you provide greater detail of USTR's role in opening foreign markets to small and medium sized enterprises, like those in Nevada or those impacted by the 301 tariffs? Will the administration commit to continue efforts to increase foreign direct investment, including in the renewable energy sectors and small enterprises?

Answer. Small businesses are the backbone of the U.S. economy. Tariff and non-tariff barriers in foreign markets can disproportionately burden the over 280,000 U.S. small businesses exporting from across the 50 States. Across our policy activities, we are continuing to better integrate small and medium-sized enterprise (SME)

issues and priorities into U.S. trade policy activities, increase our agency outreach to small businesses, and improve coordination across U.S. trade policy and promotion activities relating to SMEs. Issues of particular interest to U.S. SMEs include SME chapters in new and modernized trade agreements such as USCMA, to help ensure that SMEs have the online tools and resources they need to navigate foreign markets, and an ongoing SME Dialogue, open to participation by SMEs to provide views and information to government officials on the implementation the agreement to help ensure that SMEs continue to benefit. USTR is also working to address SME priorities such as digital trade issues, customs and trade facilitation measures, reduction of regulatory barriers, and protection of intellectual property rights abroad with trading partners around the world. USTR also supports efforts to increase U.S. foreign direct investment that benefits the U.S. economy and U.S. workers, including investment by SMEs in the renewable energy sectors.

CHINESE INTERNET CENSORSHIP AS TRADE BARRIER

Question. In the USTR's 2016 annual report, the office listed Chinese government Internet censorship as a trade barrier for the first time. The report argued that "China's filtering of cross-border Internet traffic has posed a significant burden to foreign suppliers, hurting both Internet sites themselves, and users who often depend on them for their business." Technology companies have complained about censorship, but it is unclear whether the Trump administration is including the issue in the current trade talks with China.

Is the administration discussing Chinese Internet censorship, and the challenges it poses for U.S. businesses operating in China, as a part of the current trade talks?

Answer. The administration continues to be concerned about China's Internet-related restrictions, such as restrictions on cross-border transfers of information and restrictions on access to certain websites, among other restrictions, as is explained in USTR's 2019 National Trade Estimates Report. The administration is seeking to address many of China's Internet-related restrictions as part of the current negotiations with China.

U.S. TECHNOLOGY COMPANIES OPERATIONS IN CHINA

Question. In your conversation with Ely Ratner, he indicated U.S. technology companies have historically been resistant to incorporating "American values" of freedom of information into their operations in China.

In your trade talks with China, are you looking at how we can support American companies that seek to operate in China, but still uphold American values like freedom of speech and privacy in their global operations? Do you agree that American companies that rely on the U.S. government to enforce trade rules and protect their intellectual property should support American values like freedom of speech and privacy in their operations abroad?

Answer. Under President Trump's leadership, the United States is committed to working toward a fair and reciprocal trade relationship with China. In the current negotiations with China, we are seeking to address a wide range of unfair trade practices. The benefits of a successful agreement will ideally accrue to all U.S. companies. I would be pleased to work with you and other members of Congress to discuss how we can best promote American values in our trade agenda.

NON-BINDING AGREEMENTS ON SECTION 232 COUNTRY EXEMPTIONS

Question. Last spring, the administration announced agreements with Australia, Argentina, and Brazil that would exempt those countries from section 232 tariffs on steel and/or aluminum. As you know, under the Case-Zablocki Act, the Department of State must send Congress the text of any international agreement—including an oral agreement—to which the United States is a party no later than 60 days after the agreement enters into force. When my colleagues on this committee wrote to the State Department to request the text of these agreements, State responded that these agreements are not legally binding international agreements. Instead, they are "political or personal" agreements, and therefore the administration does not have to share the text with Congress.

Why did USTR not pursue binding agreements with these countries?

Do you anticipate that future agreements to lift section 232 tariffs on imports from specific countries will be concluded as legally binding international agreements?

If not, would you still commit to send the text of these agreements to Congress?

Answer. By statute, the Secretary of Commerce helps administer section 232. The administration will continue to act consistent with the Case-Zablocki Act in respect of any agreements concluded with foreign countries that fall within its scope.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

This morning, the Finance Committee is going to take a hard look at one of the big issues facing this country with respect to jobs and trade. It is long past time to fix what's wrong with the World Trade Organization.

In my view, that process begins with China. China became a member of the World Trade Organization in December 2001. Based on nearly 2 decades of evidence, it's clear that the agreements that allowed China to join fell far short.

The rules that underpin the WTO were crafted more than 2 decades ago, when China was an economic middleweight. At that time, multiple States within the United States had economies larger than China's. During the debate on China entering the WTO, many predicted membership would drive China further away from one-party control of government and economics. And China made specific commitments dealing with economic reforms as a precondition of WTO membership. That was the basis on which the Congress granted China normalized trade relations with the U.S. legislation I supported.

Today, China is an economic heavyweight, second only to the United States and continuing to grow rapidly. Much of that growth has come at our direct expense—and in violation of WTO rules and the commitments it made in 2001. Subsidized state-owned enterprises. Intellectual property theft. Forced tech transfers. The Great Internet Firewall. Government-led shakedowns of foreign investors. China uses those schemes and entities to strong-arm American businesses, steal American innovations, and rip off American jobs. And particularly under President Xi, the government has tightened its grip on power. For our purposes in today's hearing, the Chinese government identifies weaknesses in the WTO system, and it seizes on them to further its economy's explosive growth.

The United States and our economic allies have not done enough to crack down on those abuses. As I said a moment ago, WTO rules date back to a time before the Internet was the center of gravity for international commerce and when smartphones were still science fiction. It shouldn't be any surprise that those rules can't keep up with China's modern-day trade rip-offs.

There is bipartisan interest in addressing that problem, and today's hearing needs to advance real solutions. I'm hopeful that the talks currently happening with respect to digital trade rules will finally drag the WTO into this century. I know Ambassador Lighthizer shares that perspective.

On another topic, I'm also hopeful about reaching an agreement with respect to unfair fishing subsidies. This is a long-running battle at the WTO. Senator Crapo and I held a subcommittee hearing on the issue all the way back in 2010. The bottom line is that an agreement that curbs fishing subsidies will protect jobs in our fisheries and promote sustainable oceans, and accomplishing both of those priorities is vital.

I'll close on this. Workers in Oregon and around the United States are justifiably fed up with cheating by China and other countries. And when the WTO proves too slow to stop the cheats, or when it announces decisions that clash with its founding principles and goals, lawmakers aren't just going to grin and bear it.

At the same time, it's important for the United States to fight for the economic system that we helped create after World War II—one that built strong democratic alliances, faced down the Soviet Union, and helped reduce violent conflict around the world. Sometimes the Trump administration, and particularly the President himself, signals to our allies that they're not interested in defending that system from attackers and cheats.

That's why updating the WTO is an issue where the administration cannot fall short after a lot of tough talk, which has too often been the pattern on trade policy. An effective, fair, and enforceable trade system is our best defense against China's often underhanded economic tactics. And there are members on both sides of this

committee who are eager to make progress on this issue, so today's hearing is an opportunity to find common ground.

I want to thank Ambassador Lighthizer for being here today. I look forward to working with him on this and more.

COMMUNICATIONS

CENTER FOR FISCAL EQUITY

Statement of Michael G. Bindner

Chairman Grassley and Ranking Member Wyden, thank you for the opportunity to submit these comments for the record to the Committee on Finance. Attachment One repeats selected comments from the Ways and Means Committee's hearing on U.S. China Trade from February 27, 2019 and from this Committee's hearing on the U.S. Trade Policy Agenda from March 2018. As usual, we will preface our comments with our comprehensive four-part approach, which will provide context for our comments.

- A Value-Added Tax (VAT) to fund domestic military spending and domestic discretionary spending with a rate between 10% and 13%, which makes sure very American pays something, including Carbon and Asset Sale VATs.
- Personal income surtaxes on joint and widowed filers with net annual incomes of $100,000 and single filers earning $50,000 per year to fund net interest payments, debt retirement and overseas and strategic military spending and other international spending, with graduated rates between 5% and 25%.
- Employee contributions to Old-Age and Survivors Insurance (OASI) with a lower income cap, which allows for lower payment levels to wealthier retirees without making bend points more progressive.
- A VAT-like Net Business Receipts Tax (NBRT), which is essentially a subtraction VAT with additional tax expenditures for family support, health care and the private delivery of governmental services, to fund entitlement spending and replace income tax filing for most people (including people who file without paying), the corporate income tax, business tax filing through individual income taxes and the employer contribution to OASI, all payroll taxes for hospital insurance, disability insurance, unemployment insurance and survivors under age 60.

Regulatory capture theory is essential to explain how international trade associations work, from NAFTA to the WTO. Capture theory, which is part of the Public Choice School of economics, is associated with George Stigler and others. While it is usually associated with national and state regulation, such as the Food and Drug Administration and the late, great Interstate Commerce Commission, it is equally applicable here. It is similar to what we all learned as Iron Triangles or Issue Networks.

The gist of the theory is that, while regulation is initially promulgated for the public good, relationships between government and regulated industries grow symbiotic. This occurs because professional expertise is often industry specific. This expertise is interchangeable in regulated industries, regulatory staff, on K Street, the academy and congressional staff. Campaign contributions often grease the skids of communication. Regulation always begins with private sector resistance until relationships are established. Eventually, regulatory agencies are co-opted by industry and the resistance stops. While there is still an oppositional dynamic, by and large capture helps steer the regulatory ship.

Capture is so complete in trade that industrial panels are often the most important part of modern trade agreements. In NAFTA, these take the form of Chapter 19 Panels. These panels wield super-national authority, allowing them to over-ride governmental actions which are seen as contrary to free trade as the industry sees it. Such industrial favoritism is likely the glue that gets trade agreements past congressional approval. While treaties are part of federal supremacy in Article IV of the Constitution, ceding this authority to industry is likely beyond what the framers

would have expected—and they were often mercantilists. Of course, the U.S. Constitution may itself be an instance of regulatory capture.

The impact of capture is very real barriers to entry, both for professionals and for newer companies. Larger firms dominate small ones, who must find a link to an existing larger company in order to even function. While regulations favoring small businesses attempt to steer such relationships, especially by introducing affirmative action into such decisions, these actions are also captured by industry.

There is no need to drain the swamp. The swamp seems just fine where it is. Indeed, calls to do so under the banner of populism are likely to give temporary advantage to industry, but it will later adjust (if it is even really changed), with changes in Administration and the benching of its team of rookies.

Many would say that the status quo is unsustainable, others like it perfectly well. Progressives and Democratic Socialists call for bigger and better regulations. The far-left simply considers this an improvement of the same cage. The social democracies of northern Europe have developed a cozy relationship with their capitalists, but have no idea how to transition to true employee sovereignty, which is the ultimate goal of socialism. The answer is that you cannot do deep reform through the deep state. The obstacles are too great.

The only alternative to regulatory capture and industrial domination is not to better regulate capitalism, but to overcome it—not through revolution (which simply turns the party bureaucrats into capitalists), but to occupy capitalism from within. This starts with transforming employee-owned firms. The answer is not change to employee culture over a monthly dinner and pep rally or training line workers to read financial statements. This is also a creating a better cage.

Real change will come from matching corporate governance to corporate ownership. Hierarchical management structures from capitalism are discordant. They do not deliver on the promise of ownership. Employee ownership, to work, must embrace true democracy in both management and the decision to expand the scope of the enterprise from better production to matching production to consumption, also by democratic decision-making. This will start with how leadership is consumed as a good (leading to open auction for executive jobs with the final choice between the low bidders determined by election).

Employee ownership will continue from decisions on the cafeteria menu to local sourcing and farm ownership, building or buying apartments for younger workers, as well as single family units and abandoning outside finance for retirement and home mortgages with no interest loans. Such features will attract workers and firms to this model to something more than the monthly chicken dinner.

Currently, employee ownership is undertaken with smaller companies rather than major industries. It will not remain there when ownership is transformed. Larger enterprises will convert franchisees to managers and absorb their employees, extending union membership and board representation. Consultants paid through 1099 employment with only one client also be added to the employing firm.

The NBRT/SVAT reforms can facilitate the expansion of ownership on a fairly rapid basis, with rates set high enough to pay for obligations to current retirees and the transition to ownership. While the employee contribution to Old-Age and Survivors insurance will continue to be linked to income, the employer contribution will become part of the SVAT, with employer contributions credited to each employee without regard to wage.

Ownership rights and benefits can also be extended to overseas employees, both subsidiaries and in the supply chain, preventing international trade from being used to arbitrage wages in a race to the bottom, raising the standard of living for overseas workers and ending the need for international trade agreements. Industrial and workers interests will be identical to each other and to the national interest of all parties. International organizations could be an honest broker to estimate wages at an equivalent standard of living rather than based on currency trading. See Attachment One for more detail.

It can go even faster if employers can reduce such taxation by making current employees, former employees and retirees whole as if they had worked under the proposed system from the start. If our proposed high income and inheritance surtax is adopted (where cash from inheritances and estate asset sales are considered normal income), some of the proceeds can be used to distribute the Trust Fund to speed employee ownership, as well as ESOP loans. Note that heirs, sole proprietors and

stock holders who share to a broad-based ESOP will avoid taxation on that income, including our proposed 25% VAT on asset sales.

Expediting ownership with the assistance of tax reform will end the need for NAFTA and the WTO (unless national governments balk at allowing international employee ownership). Even then, the need for such organizations, and for government in general, will eventually fade away.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

Attachment One: Value-Added Taxes (March 2018), Employee Ownership and Trade (February 2019)

The most immediate impact on trade is our proposed goods and services tax, which will finance domestic military and civil spending. Exported products would shed the tax, *i.e.,* the tax would be zero rated, at export. Whatever VAT congress sets is an export subsidy. Seen another way, to not put as much taxation into VAT as possible is to enact an unconstitutional export tax.

The NBRT/Subtraction VAT could be made either border adjustable, like the VAT, or be included in the price. This tax is designed to benefit the families of workers, either through government services or services provided by employers in lieu of tax. As such, it is really part of compensation. While we could run all compensation through the public sector and make it all border adjustable, that would be a mockery of the concept. The tax is designed to pay for needed services. Not including the tax at the border means that services provided to employees, such as a much-needed expanded child tax credit—would be forgone. To this we respond, absolutely not—Heaven forbid—over our dead bodies. Just no.

The NBRT can have a huge long-term impact on trade policy, probably much more than trade treaties, if one of the deductions from the tax is purchase of employer voting stock (in equal dollar amounts for each worker).

For too long the mere mention of Personal Retirement Accounts has been like holding a lightning rod in a thunderstorm. Democrats forget that the attack on George W. Bush for doing so had no impact on the 2004 election. Turnout was juice by support for the war in Iraq, the defense of traditional marriage and the non-existence of the response to the Swift Boat Veterans for Truth-speak (the continuation of the Birther/Tea Party/MAGA/Russia right-wing conspiracy). The 2006 win was because of the bad management of the Iraq War and rampant Majority corruption.

Engaging in real debate rather than obstruction could have given us insured accounts holding employer voting stock voted by union proxies with equal employer tax credits funded on an uncapped payroll or consumption tax, such as the NBRT.

Personal Accounts would not be used for speculative investments or even for unaccountable index fund investments where fund managers ignore the interests of workers. Accounts invested in index funds do not have that feature, although they do serve to support American retirees who because of them have a financial interest in firms utilizing foreign labor, particularly low-wage Chinese labor.

The USA accounts proposed by President Clinton had the same feature, although as a supplement to the Social Security benefit rather than a partial replacement, although this feature would be muted by enactment of value added taxes. The flaw in using foreign investment to make up for lost worker revenue is that eventually foreign workers either radicalize or become consumers and demand their own union rights.

The tendency for consumerism to follow industrialization is why globalization is a poor substitute for expanding the domestic population, as the Center proposes with its expanded Child Tax Credit, which we propose as an offset to the NBRT.

It would be better for all concerned if American workers were already in an ownership position due to repeal of the Taft-Hartley Act prohibitions on concentrated pension fund ownership and the enactment of personal retirement accounts. We can turn the tide for workers and encourage employee-ownership (aka cooperative socialism) now through Democratic means as part of a Green New Deal.

Over a fairly short period of time, much of American industry, if not employee-owned outright (and there are other policies to accelerate this, like ESOP conversion) will give workers enough of a share to greatly impact wages, management hiring and compensation and dealing with overseas subsidiaries and the supply chain—as well as impacting certain legal provisions that limit the fiduciary impact

of management decision to improving short-term profitability (at least that is the excuse managers give for not privileging job retention).

Employee-owners will find it in their own interest to give their overseas subsidiaries and their supply chain's employees the same deal that they get as far as employee-ownership plus an equivalent standard of living. The same pay is not necessary, currency markets will adjust once worker standards of living rise.

Over time, this will change the economies of the nations we trade with, as working in employee owned companies will become the market preference and force other firms to adopt similar policies (in much the same way that, even without a tax benefit for purchasing stock, employee owned companies that become more democratic or even more socialistic, will force all other employers to adopt similar measures to compete for the best workers and professionals).

Eventually, trade will no longer be an issue. Internal company dynamics will replace the need for trade agreements as capitalists lose the ability to pit the interest of one nation's workers against the others'. This approach is also the most effective way to deal with the advance of robotics. If the workers own the robots, wages are swapped for profits with the profits going where they will enhance consumption without such devices as a guaranteed income.

STATEMENT SUBMITTED BY TERENCE P. STEWART

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Introduction

The World Trade Organization came into existence in January 1995 amidst much hope with a greatly broadened membership, a significantly broadened mandate, including services, trade-related aspects of intellectual property, the reintegration of textiles, and the start of reform in the agricultural sector, and a more binding dispute settlement system.

As of March 2019, the WTO has grown to 164 members with an additional 22 countries or customs territories undergoing a lengthy accession process. However, the WTO is now, and has been for at least a decade, in serious trouble.

In a world of rapid technological change, the WTO can be characterized as operating on rules developed in the last century where the ability to change has proven very elusive with an ever expanding membership of countries and territories with very different economic systems and various levels of development and a decision system premised on consensus.

Admittedly, there have been some successes in the 24-year history of the WTO in terms of completed negotiations, such as some sectoral successes on liberalization (*e.g.,* the Information Technology Agreement and its expansion), the creation of one new agreement (Trade Facilitation Agreement), and an agreement to the phase out of agricultural export subsidies. Yet, the organization has not been able to (1) advance broad-based liberalization, (2) address developments in technology and commercial realities over the last 24 years, (3) update the rules of the organization, (4) complete a review of the dispute settlement understanding that has been underway for more than two decades, or (5) adequately address the challenges posed by important members such as China with state directed economic systems and massive domestic subsidy programs.

While many countries have sought some forward movement through an expanding web of bilateral and regional agreements, most view the WTO's multilateral negotiating function as seriously challenged if not largely dysfunctional. The center of the system has not been able to effectively function because the negotiating arm of the WTO has been largely broken due to a changing power structure within the WTO membership and a continued lack of agreement amongst the major players on relative responsibilities to move the trading system forward.

Members have shown a relatively poor record of complying with notification requirements and providing complete information for those notifications that are made, seriously undermining the core need of transparency for members to understand the actions of others and weakening the committee work programs.

Many members view the dispute settlement system as the "jewel" of the WTO, but it is in a present crisis flowing from an inability to address long-standing concerns about the functioning of the panels and the Appellate Body (AB) versus the Dispute Settlement Understanding (DSU) and how to address concerns that the Appellate Body has created rights and obligations not agreed to by the members.

While the concerns in the dispute settlement area are long-standing for the United States and have been voiced by many others over the years, the crisis has been brought to a head by the United States over the past two years through use of the WTO's consensus requirements—the same consensus requirement that has effectively blocked reform in the past is now blocking the launch of a process to replace Appellate Body members whose terms have expired. With a DSU requirement that appeals be heard by three AB members, with the AB membership down to three at the present time, and with two of the remaining three AB members having terms that expire on December 10, 2019, the crisis is here with a clearly defined time frame to keep the dispute settlement system functioning.

The question on the table now is whether the WTO members can reform and renew the WTO rule book to address current realities.

With the current U.S. Administration determined to right what it views as a flawed system, WTO members find themselves under increased pressure to address (1) long-standing concerns with the dispute settlement system, (2) the balance and current relevance of existing bilateral and plurilateral agreements to which the U.S. is a party, and (3) the long-running concerns with the lack of progress in China's reforms and the distortions its policies are creating for the global trading system. The Trump Administration has made it clear that it will shake up the system to obtain focus and action on matters viewed as important to the United States. While this approach has upset many trading partners and much of the business community, the reality is that many pressing problems have been festering for long periods—in some cases, decades—and prior approaches have not actually achieved a change in structure or behavior.

To apply pressure on trading partners and the system, the Administration has utilized laws that have been on the books for long periods of time but seen little use or, where used, very limited application (*e.g.,* Section 232 of the Trade Expansion Act of 1962, as amended) or pursued long-standing business concerns through a detailed examination of the practices of China under Section 301 of the Trade Act of 1974, as amended. Finally, the U.S. has used one of the few levers available in the WTO to obtain the attention of other members—holding up the start of a replacement process for Appellate Body seats following the end of terms for existing AB members to get focus on the myriad problems the U.S. (and other WTO members) have raised over time about the operation of the Dispute Settlement System and, in particular, the Appellate Body.

Much has been written on the ongoing impasse in the WTO on the Appellate Body selection process and U.S. issues. The U.S. Administration has made clear that its concerns involve both procedural and substantive issues and that it wants those issues addressed before a return to starting the selection process. The U.S. has repeatedly outlined, in its 2018 and 2019 Trade Policy Agendas, the nature of its concerns and has provided detailed statements in various DSB meetings that review the serious concerns the U.S. has and its determination to see them addressed. While many members have had grievances about the system over time and some undoubtedly agree with some or all of the U.S. concerns, most WTO members have been pressing for the filling of AB vacancies first and addressing U.S. concerns (and other concerns) over time.

U.S. Concerns Regarding WTO Dispute Settlement

For more than a year, the United States has blocked the initiation of a process to replace Appellate Body members whose terms have expired. The U.S. has blocked AB appointments to focus WTO members on the need to negotiate new rules that address U.S. concerns about the AB's operations and limit the scope for judicial overreach, which the U.S. characterizes as systemic issues. The U.S. has blocked the AB appointment process until members address these systemic issues. In the most recent DSB meeting, the U.S. again said that its concerns had not yet been addressed:

> As the United States has explained at recent DSB meetings, for more than 15 years and across multiple U.S. Administrations, the United States has

> been raising serious concerns with the Appellate Body's disregard for the rules set by WTO Members.
>
> Through persistent overreaching, the WTO Appellate Body has been adding obligations that were never agreed by the United States and other WTO Members.
>
> * * *
>
> The United States has raised repeated concerns that appellate reports have gone far beyond the text setting out WTO rules in varied areas, such as subsidies, antidumping duties, anti-subsidy duties, standards and technical barriers to trade, and safeguards, all restricting the ability of the United States to regulate in the public interest or protect U.S. workers and businesses against unfair trading practices.
>
> And as we explained in recent meetings of the DSB, the Appellate Body has issued advisory opinions on issues not necessary to resolve a dispute and reviewed panel fact-finding despite appeals being limited to legal issues. Furthermore, the Appellate Body has asserted that panels must follow its reports although Members have not agreed to a system of precedent in the WTO, and continuously disregarded the 90-day mandatory deadline for appeals—all contrary to the WTO's agreed dispute settlement rules.
>
> And for more than a year, the United States has been calling for WTO Members to correct the situation where the Appellate Body acts as if it has the power to permit ex-Appellate Body members to continue to decide appeals even after their term of office—as set by the WTO Members—has expired. This so-called "Rule 15" is, on its face, another example of the Appellate Body's disregard for the WTO's rules.[1]

Thus, there currently is no consensus to even begin a process to fill the vacant AB posts.

In its 2019 Trade Agenda, the U.S. Trade Representative (USTR) states:

> Throughout 2018, USTR representatives repeatedly made clear that the dispute settlement process at the WTO has strayed far from the system agreed to by WTO Members, and has appropriated to itself powers that WTO Members never intended to give it. . . .
>
> *The key point is that the WTO Appellate Body has repeatedly sought to create new obligations not covered in the WTO agreements.* . . . The United States cannot be held responsible for obligations to which its elected officials never agreed. Thus, efforts by the Appellate Body to create new obligations are not legitimate.
>
> These concerns are not new. For many years, and in multiple Administrations, the United States has repeatedly expressed concerns with the WTO Appellate Body's activist approach and overreaching on procedural issues, interpretative approach, and substantive interpretations. This approach fails to apply the WTO rules as written and agreed to by the United States and other WTO Members.[2]

In addition to these substantive concerns with the interpretation of WTO agreements by panels and the Appellate Body and their failure to strictly apply and adhere to the text of WTO agreements as negotiated and agreed to by members, the U.S. has raised, over many years, procedural concerns with the AB' s apparent disregard of DSU rules. The 2018 Trade Policy Agenda summarized five particular areas of concern where the U.S. believes the AB has disregarded the applicable rules.[3]

1. *90-day deadline for completing appeals:* Since at least 2011, the U.S. and other members have been concerned about the AB's increasing disregard of the mandatory 90-day deadline for deciding appeals. Article 17.5 of the Understanding

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[1] *See* statements by the United States at the meeting of the WTO Dispute Settlement Body, February 25, 2019, at 12; *https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb25.DSB_.Stmt_.as-deliv.fin_.public.pdf.*

[2] *See* Office of the U.S. Trade Representative, 2019 Trade Policy Agenda at 25–26 (emphasis added); *https://ustr.gov/sites/default/files/2019_Trade_Policy_Agenda_and_2018_Annual_Report.pdf.*

[3] *See* Office of the U.S. Trade Representative, 2018 Trade Policy Agenda at 24–28; *https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20I.pdf.*

on Rules and Procedures Governing the Settlement of Disputes (DSU) requires the Appellate Body to circulate its report within 90 days of the notice of appeal. Despite the 90-day deadline, the AB has assumed the authority to take whatever time it considers appropriate. Since 2011, the AB has exceeded the 90-day limit in about 80 percent of appeals.

2. *AB members continuing to serve after their terms have expired:* The AB has taken actions to "authorize" a person who is no longer an AB member to continue hearing appeals. The U.S. contends that the AB lacks the authority to deem someone who is not an AB member to be a member. The AB has claimed that Rule 15 of its Working Procedures authorizes it to "deem" as an AB member one of its own members whose term has expired. The U.S. argues that Rule 15 is inconsistent with the requirements of the DSU.
3. *Advisory opinions on issues not necessary to resolve a dispute:* The dispute settlement system is intended to achieve a "prompt settlement" of disputes between WTO members. The U.S.'s concern is with the tendency of WTO reports to make findings that are unnecessary to resolve a dispute or on issues not presented by the parties in the dispute. Such unnecessary statements have been described as in the nature of *"obiter dicta."* Panels and the AB have, on numerous occasions, made unnecessary findings or rendered "advisory opinions" which have contributed to delays in concluding an appeal.
4. *AB review of facts and domestic law:* The U.S. is concerned about the AB's approach to reviewing facts. DSU Article 17.6 limits an appeal to "issues of law covered in the panel report and legal interpretations developed by the panel." The AB, however, has consistently reviewed panel fact-finding under different legal standards, and has reached conclusions not based on a panel's fact findings or on undisputed facts. The U.S. also objects to the AB undertaking to review, as a matter of law rather than fact, the meaning of a member's domestic (municipal) law.
5. *AB reports as precedent:* The U.S. objects to assertions that AB reports effectively serve as precedent and that panels must follow prior AB decisions absent "cogent reasons." The U.S. believes that this assertion has no foundation in the DSU and is not consistent with WTO rules. Under the WTO agreements, there is one and only one means for adopting binding interpretations of the obligations which members agreed to—WTO Agreement Article IX: 2.

WTO Reform Efforts

In addition to the U.S., a number of other countries have begun to discuss the need for WTO reform. Some seek to address the challenges of consensus decision-making in such a large group. Others are more focused on addressing new issues that have arisen over the last 24 years. Some note the need to update the WTO's rule book. And many question the need for reform at all.

Some notable initiatives aimed at reforming WTO rules include:

Trilateral Initiative by U.S., EU, and Japan

The United States, the European Union, and Japan have initiated trilateral discussions concerning the development of new trade and investment rules to deal with the economic impact of countries with state driven economic policies, such as China's. In December 2017, the U.S., EU, and Japan began a joint initiative at the Buenos Aires Ministerial. At that time, the three WTO members issued a joint statement in which they agreed to strengthen their commitment to ensure a global level playing field.[4] Their joint statement said that "severe excess capacity in key sectors exacerbated by government-financed and supported capacity expansion, unfair competitive conditions caused by large market-distorting subsidies and state owned enterprises, forced technology transfer, and local content requirements and preferences are serious concerns for the proper functioning of international trade, the creation of innovative technologies and the sustainable growth of the global economy." To address these critical concerns, the three countries "agreed to enhance trilateral cooperation in the WTO and in other forums, as appropriate, to eliminate these and other unfair market distorting and protectionist practices by third countries."

[4] *See* Joint Statement by the United States, European Union, and Japan at MCI 1, December 12, 2017; *https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/joint-statement-united-states.*

In a follow-up to their initial joint statement, on September 25, 2018, the U.S., EU, and Japan released a trilateral statement[5] addressing a range of issues, including (1) Concerns with Non-Market-Oriented Policies and Practices of Third Countries; (2) Industrial Subsidies and State Owned Enterprises; (3) Concerns with Forced Technology Transfer Policies and Practices of Third Countries; (4) Discussions on WTO Reform (*e.g.,* sponsoring transparency and notification proposals, strengthening regular committee work, and urging advanced WTO members claiming developing country status to undertake full commitments); (5) Digital Trade and E-Commerce; and (6) Cooperation on Other Issues.

EU Proposals for WTO Modernization

In September 2018, the European Commission (EC) released a concept paper[6] presenting the European Union's (EU) proposals on a comprehensive approach for WTO modernization and reform, in pursuit of making the WTO more relevant, adaptive, and effective. The EU paper focuses on three subjects: (1) rulemaking and development; (2) regular work and transparency; and (3) dispute settlement.

With respect to rulemaking and development, the EU paper states that the overall objective for modernization is to update the rules and to create the conditions for the rules to be updated.

Regarding the WTO's regular work, the EU paper's goal is to ensure transparency in member notifications, resolve specific trade matters without litigation, and incrementally adjust the WTO rulebook, where necessary.

With respect to dispute settlement, the EU paper proposes that dispute settlement reform be addressed in two stages: procedural issues first and substantive issues second. Thus, the EU proposes to first address the concerns the U.S. has raised at DSB meetings in which it has blocked Appellate Body appointments (*i.e.,* 90-day requirement; Rule 15; advisory opinions; municipal law; precedent; term of AB member), and only after that address substantive issues such as AB overreach.

Canada Discussion Paper and Ottawa Meeting

On September 25, 2018, Canada circulated a blueprint for reform titled "Strengthening and Modernizing the WTO: Discussion Paper,"[7] with the goal of seeking an alliance of like-minded countries to restore confidence in the multilateral trading system and discourage protectionist measures and countermeasures. The Canadian paper focused on three specific areas for reforming the WTO: (1) to improve the efficiency and effectiveness of the monitoring function by, for example, improving the notification and transparency of domestic measures; (2) to safeguard and strengthen the dispute settlement system by diverting some issues from adjudication, streamlining adjudicative proceedings, and updating appellate review; and (3) to modernize the trade rules for the twenty-first century by addressing such trade practices as digital trade, international investment, domestic regulations, state-owned enterprises, industrial subsidies and trade secrets, and considering the development dimension of reform.

In October 2018, trade ministers from Canada and 12 other "like-minded" WTO members met in Ottawa to discuss the issue of WTO reform and ways to strengthen and modernize the WTO, in particular the papers issued by the EU and Canada regarding WTO modernization and reform. The countries represented in Ottawa were Canada, EU, Japan, Switzerland, Norway, Australia, New Zealand, Singapore, Korea, Brazil, Chile, Mexico, and Kenya. Neither the U.S. nor China was invited to the Ottawa meeting. The meeting focused on the EU and Canadian discussion papers and addressed three issues: dispute settlement reform, the WTO's negotiating function, and WTO monitoring and transparency. Although neither the U.S. nor China was invited to the Ottawa meeting, it was noted that it will be impossible to achieve WTO renewal without support from China and the U.S.

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[5] *https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/joint-statementtrilateral.*

[6] Press release: European Commission presents comprehensive approach for the modernisation of the World Trade Organisation, September 18, 2018; *http://europa.eu/rapid/press-release_IP-18-5786_en.htm.* EU Concept Paper: *http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf.*

[7] *See* Communication from Canada, JOB/GC/201 (September 24, 2018); *http://international.gc.ca/gac-amc/campaign-campagne/wto-omc/discussion_paper-document_travail.aspx?lang=eng.*

Proposals to Improve Transparency and Strengthen Notification Requirements

In October 2017, the U.S. proposed reformed procedures to improve compliance with notification obligations by WTO members.[8] The U.S. proposed that members reaffirm existing notification obligations and recommit to providing complete and timely notifications under the WTO Agreements. On November 1, 2018, the U.S., together with Argentina, Costa Rica, the EU, and Japan, circulated a similar proposal.[9] Noting the chronic low level of compliance with notification requirements, the proposal urged members to reaffirm existing notification obligations and recommit to providing complete and timely notifications under the WTO Agreements, encouraged members to file counter-notifications in response to delinquent members, and proposed consideration of various degrees of sanctions for failing to notify according to the level of delinquency. The proposed penalties for noncompliance would range from increased financial contribution requirements, non-qualification for WTO bodies, additional reporting requirements at General Council meetings, and disregard of the member's questions at trade policy reviews. A member's severest penalty would be a designation of inactive status applied after failing to file notifications by more than two, but less than three, years. The proposal also provides for exemptions from penalties for developing members that lack the capacity to fulfill notification requirements if they request assistance and support for capacity building from the Secretariat.

Proposals to the General Council Meeting of December 12, 2018

On November 23, 2018, two documents were circulated to WTO members for consideration at the December 12, 2018 General Council meeting proposing amendments to the WTO's DSU with the intention of addressing the concerns raised by other WTO members about the functioning of the WTO's dispute settlement system.

The first document (WT/GC/W/752) was submitted by the EU, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Korea, Iceland, Singapore and Mexico and addresses a number of issues that the U.S. has raised in DSB meetings as deviating from existing WTO DSU obligations. It addressed 5 issues: (1) transitional rules for outgoing Appellate Body (AB) members; (2) the 90-day deadline for AB reports; (3) the meaning of municipal law as an issue of fact; (4) findings unnecessary for the resolution of the dispute; and (5) the issue of precedent.

The second document (WT/GC/W/753), filed by the EU, China and India addresses other issues that the EU has raised on the operation of the AB. The proposal addresses 4 procedural or institutional issues: (1) the independence of AB members (proposing to set the term of an AB member to one term of 6/8 years); (2) the AB's efficiency and capacity to deliver (proposes to increase the number of AB members from 7 to 9); (3) transitional rules for outgoing AB members (proposing to permit an expired AB member to continue up to 2 years or until replacement); and (4) the launch of the AB selection process (proposing an automatic launch).

The U.S. has rejected these proposals. U.S. Ambassador Shea noted that although these proposals to some extent acknowledged U.S. concerns, they did not effectively address them, but rather appeared to endorse changing the rules to accommodate and authorize the very approaches that have given rise to members' concerns.[10]

Proposals by Honduras and Taiwan to Break AB Impasse

Honduras recently circulated four communications for discussion a number of proposals to address various U.S. concerns about AB practices. One submission proposed various alternatives to the 90-day deadline for AB reports, limiting the length of written submissions, and permitting remand to the original panel.[11] A second submission addresses Rule 15, that is, the criteria for determining when AB members may continue serve beyond their terms and who makes that determination.[12]

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[8] *See Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements,* communication from the United States, JOB/GC/148, JOB/CTG/10 (October 30, 2017).

[9] *See Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements,* communication from Argentina, Costa Rica, the European Union, Japan, and the United States, JOB/GC/204, JOB/CTG/14 (November 1, 2018).

[10] Statements by the United States at the meeting of the WTO General Council, December 12, 2018, at 1; *https://geneva.usmission.gov/wp-content/uploads/sites/290/Dec12.GC_.Stmt_.items_.7.and_.8.as_.delivered.clean_.pdf.*

[11] *Fostering a Discussion on the Functioning of the Appellate Body,* communication from Honduras, WT/GC/W/758 (January 21, 2019).

[12] *Fostering a Discussion on the Functioning of the Appellate Body,* communication from Honduras, WT/GC/W/759 (January 21, 2019).

The third submission addresses the following AB issues: advisory opinions; *obiter dicta* in decisions; addressing questions that are not necessary to settle a dispute; addressing arguments that have not been raised by the parties; adopting an erroneous standard of review; and interpreting the covered agreements so as to add or diminish the rights and obligations of members under the DSU and other WTO agreements.[13] The fourth submission addresses possible approaches to the issue of precedent, or *"stare decisis"* in AB decisions.[14]

In February 2019, Taiwan submitted a communication[15] in which it identified a "gap" between what the members had intended the AB to be and what it actually is today. Taiwan proposed that members begin discussions immediately to develop guidelines for the AB's future functioning. These guidelines should clarify DSU provisions and any "explicit or implicit boundaries" that members intended to impose on the AB, as well as "harmonize" any potential conflicts among DSU provisions. Taiwan also proposed that, should the consensus on the guidelines be reached, members should immediately agree to initiate the AB selection processes to fill the current vacancies.

U.S. Proposal Regarding Developing Country Status

On February 15, 2019, the U.S. submitted a proposal regarding developing country status.[16] The submission proposed criteria for determining whether a member was entitled to claim developing country status. The proposal states that a WTO member "will not avail [itself] of special and differential treatment in current and future WTO negotiations" if: (1) it is a member of the Organization for Economic Cooperation and Development (OECD), or has begun the accession process to the OECD; (2) it is a member of the Group of 20 (G20); (3) it is classified as a "high income" country by the World Bank; or (4) it accounts for no less than 0.5 per cent of global merchandise trade (imports and exports). In an earlier submission, the U.S. argued that "self-declaration has severely damaged the negotiating arm of the WTO by making differentiation among Members near impossible. By demanding the same flexibilities as much smaller, poorer Members, export powerhouses and other relatively advanced Members . . . create asymmetries that ensure that ambition levels in WTO negotiations remain far too weak to sustain viable outcomes."[17]

U.S. Priorities in WTO Reform

In the 2019 Trade Policy Agenda, USTR identifies the U.S.'s priorities, noting that "WTO reform must include the following components":[18]

- **The WTO must address the unanticipated challenges of non-market economies.** The United States is working with the European Union and Japan under a trilateral process to address these challenges through the development of new multilateral rules and the use of other measures.
- **WTO dispute settlement must fully respect Members' sovereign policy choices.** The WTO's dispute settlement system, particularly the AB, has strayed extensively from original understandings; the U.S. has consistently urged the dispute settlement system to adhere to these original understandings.
- **WTO Members must be compelled to adhere to notification obligations.** Poor adherence to notification obligations has starved the WTO of vital information on the implementation of existing obligations and has contributed measurably to a lack of progress in negotiations. The United States has presented a proposal to impose consequences for failure to meet notification obligations and has been joined by a number of co-sponsors in support of this work.

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[13] *Fostering a Discussion on the Functioning of the Appellate Body: Addressing the Issue of Alleged Judicial Activism by the Appellate Body,* communication from Honduras, WT/GC/W/760 (January 29, 2019).

[14] *Fostering a Discussion on the Functioning of the Appellate Body: Addressing the Issue of Precedent,* communication from Honduras, WT/GC/W/760 (February 4, 2019).

[15] *Guideline Development Discussion,* communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu to the General Council, WT/GC/W/763 (February 13, 2019).

[16] *Draft General Council Decision—Procedures to Strengthen the Negotiating Function of the WTO,* WT/GC/W/764 (February 15, 2019).

[17] *An Undifferentiated WTO: Self-Declared Development Status Risks Institutional Irrelevance,* communication from the United States, WT/GC/W/757/Rev. 1 (February 14, 2019) at para. 4.5.

[18] *See* Office of the U.S. Trade Representative, *2018 Annual Report* at 101–102; *https://ustr.gov/sites/default/files/2019_Trade_Policy_Agenda_and_2018_Annual_Report.pdf.*

- **The WTO's treatment of development must be revamped to reflect current global trade realities.** While "least-developed countries" (LDCs) are defined in the WTO using the United Nations criteria, there are no WTO criteria for what constitutes a "developing country." Some more advanced developing countries have "self-declared" as developing countries, thus availing themselves of all "special and differential" treatment afforded to developing countries. The United States submitted a paper in January 2019 outlining the challenges this situation presents for the WTO.

Thus, USTR states that:

> If the WTO is to reclaim its credibility as a vibrant negotiating and implementing forum, Members must begin to seriously tackle these structural reform issues facing the institution. In looking ahead to the period before the Twelfth Ministerial Conference in 2020, the United States believes that Members should begin the process of identifying opportunities to achieve accomplishments, even if incremental ones, and avoid buying into the predictable, and often risky, formula of leaving everything to a package of results for Ministerial action. The United States is working through various WTO standing committees to advance reform ideas. Whether the issue is notifications, agriculture, or the digital economy, the WTO will impress capitals and stakeholders most by simply doing rather than posturing for the next Ministerial Conference (MC).
>
> To remain a viable institution that can fulfill all facets of its work, the WTO must focus its work on structural reform, find a means of achieving trade liberalization between Ministerial Conferences, and must adapt to address the challenges faced by traders today.[19]

Conclusion

As reviewed above, there is increasing discussion by various WTO members that after nearly twenty-four years of existence reform is needed if the WTO is to remain relevant to the needs of a growing membership and a rapidly changing business environment. Many substantive and procedural issues will need to be addressed to make the organization responsive to 21st century needs of the membership and to keep the dispute settlement system functioning but in the manner agreed to by members when the WTO was created. Any serious efforts to achieve a consensus on the need for reform is a positive development, and proposals put forward by any member should be viewed as an important contribution to frame the debate.

Thus, the hopeful news is that many WTO members have moved into a mode of looking for potential solutions that will permit the WTO to regain relevance, address the past quarter century of changes, renew utility of the committee process through improved transparency and restore the dispute settlement system to one that respects the balance between the rights of members and the limited role of panels and the Appellate Body.

But there are many uncertainties that could doom any reform efforts. The likelihood that the WTO membership will succeed in agreeing to any meaningful reforms is not great outside of a real crisis as consensus is required. Most agree that there is a crisis in the WTO with the possible reduction of the Appellate Body below the minimum number needed to hear appeals. Whether even that type of crisis will result in the reforms being discussed by Washington, Brussels, Ottawa and other capitals is an unknown. The large WTO membership and complexity of many issues among countries of significantly varied sizes and economic development has made forward movement at the minimum extraordinarily time consuming, if possible at all. The position staked out by China, India, South Africa, and Venezuela to the U.S. proposal to revamp developing country selection—immediate rejection—argues that the WTO will not succeed in broad reform in the short term. The potential collapse of the Appellate Body may result in a more limited resolution of the dispute settlement system challenges, although correcting for the series of WTO AB overreach issues that have created obligations never agreed to will be the most difficult challenge there. Moreover, many of the problems that have developed with the Dispute Settlement system reflect an ineffective system of checks and balances. With the WTO unable to use the tools that do exist to correct problematic actions of the

[19] *See* Office of the U.S. Trade Representative, *2018 Annual Report* at 102; *https://ustr.gov/sites/default/files/2019_Trade_Policy_Agenda_and_2018_Annual_Report.pdf.*

Appellate Body, the Appellate Body has locked in erroneous actions versus having the legislative or executive functions of the WTO to rebalance the system.

In short, 2019 will be a critical year in the multilateral trading system, with an, at best, clouded outlook for success. The U.S. deserves credit for fleshing out long-standing concerns and for helping lay out important reform initiatives to update the rulebook. Time will tell whether there is a collective desire for reform in fact to keep the WTO relevant to the world's businesses, workers and communities.

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March 12, 2019

The Honorable Charles Grassley
Chairman
U.S. Senate
Committee on Finance
219 Dirksen Senate Office
Building Washington, DC 21510

The Honorable Ron Wyden
Ranking Member
U.S. Senate
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Re: "Approaching 25: The Road Ahead for the World Trade Organization," hearing of the Senate Finance Committee on March 12, 2019

Dear Chairman Grassley,
Dear Ranking Member Wyden,

As World Trade Organization (WTO) member governments move forward this year with efforts to reform the WTO, the United States Council for International Business (USCIB) has issued recommendations on how business can support the WTO and its efforts to improve the organization. The WTO is a cornerstone of the global rules-based trading system and has helped spread growth and development for decades. The WTO's existing agreements, such as those on intellectual property rights, sanitary and phytosanitary measures, and technical barriers to trade, provide practical commercial benefits for business because they establish global frameworks of rules designed to facilitate international trade.

The continued existence and effectiveness of the WTO is vital to U.S. business. USCIB recommendations focus on addressing subsidies and other market-distorting support provided to state-owned enterprises (SOEs), the establishment of new rules for current issues such as digital trade and customs processes on electronic transmissions, and ensuring a properly functioning appellate body, among others.

Please find enclosed our submission for the record on this important issue of the future of the WTO. If you have any questions or wish to discuss the matter further, please do not hesitate to reach out.

Sincerely,

Peter Robinson
President and CEO
U.S. Council for International Business

Charles R. Johnston
Managing Director, Citi Global Government Affairs
USCIB Board Member and Chair, Trade and Investment Committee

Statement for the Record

The World Trade Organization (WTO) is a cornerstone of the global rules-based trading system and has helped spread growth and development for decades. The WTO's existing agreements, such as those on intellectual property rights, sanitary and phytosanitary measures, and technical barriers to trade, provide practical commercial benefits for business because they establish global frameworks of rules designed to facilitate international trade.

The WTO's continued existence and modernization, including an effective dispute settlement system, are necessary for American and global stability and prosperity. There are valid concerns about the adequacy of WTO rules to deal with 21st century

issues, and about the need for improvements to the WTO's dispute settlement system. These concerns should be addressed through agreements/clarifications/modifications that enhance the credibility of the WTO and strengthen it as an institution.

USCIB members strongly support the WTO and its activities that have contributed to the dynamic growth of global trade by opening markets, combatting protectionist measures, driving new agreements such as the Trade Facilitation Agreement, assisting developing countries with capacity building to better benefit from open trade, and enabling business to pursue new avenues for driving global economic growth.

Our recommendations for modernizing the WTO should not in any way be read as questioning the business support for WTO. Instead, they are intended to highlight areas for action that would strengthen the ability of the organization to more effectively meet the demands of a changing world as it deals with the rapid evolution of technology that can quickly reshape the way companies do business and operate globally.

USCIB believes that effective WTO dispute settlement is a critical part of the global rules-based trading system. And, the U.S. has been a major beneficiary—bringing and winning more cases than any other WTO member. In fact, the U.S. has prevailed in over 90% of the complaints it filed. As noted above, a first principle is that the outcome of discussions to modernize the WTO must be focused on enhancing the effectiveness of the WTO dispute settlement system, not undermining it.

USCIB urges the Member States, as they continue to discuss modernization and improvements of the WTO and its underlying agreements, to be mindful that among the WTO Member States, private entities conduct the transactions that constitute trade and investment. Therefore, the private sector has a direct stake in the rules that will be the outcome of the government-to-government discussions and, accordingly, private sector comments and recommendations should be actively solicited and given careful consideration by the Member States. With this in mind, below are USCIB recommendations for reforms and/or new negotiations at the WTO that we believe would modernize the WTO and enhance the effectiveness of the WTO rules and institution. USCIB looks forward to a continuing dialogue with the Member States, in greater detail, as the process unfolds.

More Effectively Addressing Subsidies and State-Owned Enterprises

- Improve transparency and compliance with requirements for notification of subsidies by creating incentives for Member governments to fully comply.
- Establish new rules to more effectively address subsidies and other market-distorting support provided to and through state-owned enterprises (SOEs). Examples of other market distorting support that should be covered include government waivers of permits such as for environment, construction, and labor.
- Clarify what constitutes a "public body" and how to assess whether a Member government exercises meaningful control over an enterprise. Restrict government support to SOEs used to enhance SOE economic performance.
- Make the most harmful types of subsidies that are currently permissible subject to stricter rules by expanding the list of prohibited subsidies.
- Ensure that rules for dispute actions related to subsidies and other market-distorting support provided to SOEs allow for clear and effective remedies.

Pursuing New Rules for Current Issues

- Establish new rules covering digital trade, including data flows and data localization policies, as well as a permanent ban on applying customs duties and other customs processes on electronic transmissions.
- Promote further integration of services and investment into the international trading system.
- Demonstrate leadership on emerging areas of trade practice such as regulatory cooperation.
- Address behind the border discriminatory practices by reinforcing national treatment obligations (that do not unreasonably burden foreign direct investment) and developing strong domestic regulation disciplines ensuring non-discriminatory and transparent regulatory and enforcement processes in the services and non-services sectors.

- Refocus efforts on advancing cross-border movement of people and the rules needed to maximize measures that promote an inclusive and efficient labor market.
- SOEs often get special permitting and other benefits not available to privately-owned competitors. This practice should be disciplined as a non-tariff barrier to both entry and like services.

Modernizing WTO Rules and Implementation

- Increase negotiating flexibility at the WTO by making it easier for Members to pursue plurilateral agreements. The WTO Secretariat should be given more authority to support various negotiating processes and implementation of such agreements.
- Improve transparency and notification by creating incentives for Members to provide required notifications and applying sanctions for willful and repeated noncompliance with notification rules.
- Improve effectiveness of pre-litigation problem resolution by developing rules that require Members to give substantive replies within set timeframes to written questions from other Members or trade concerns raised in a WTO Committee meeting.
- Revise rules for special and differential flexibilities to better reflect development realities while ensuring they are available to those Member countries that actually need them.
- Reach agreement on measures to ensure that the national security exception is not applied in ways that undermine the key WTO provisions for opening trade.
- Commit greater resources to the work of the most effective WTO committees while also deactivating those committees that are no longer needed or are inactive.
- Treat forced localization as a WTO-illegal performance requirement.

Ensuring Properly Functioning Appellate Body

- While the dispute settlement system has been effective, improvements are needed to ensure its continued effectiveness and support among members. Steps should be taken to improve the operation of the WTO dispute settlement process and address the member differences over the activities of the Appellate Body (AB).
- The WTO members should review and agree on rules dealing with the scope of what can be decided by the Appellate Body, the timing of cases, and the limits of actions by judges after their term has expired.
- Members should ensure that the AB has the resources, staff and financial, needed to deal with a growing number of cases being brought by member countries.

U.S. GLOBAL VALUE CHAIN COALITION

These comments are being filed on behalf of the U.S. Global Value Chain Coalition—a coalition of U.S. companies and associations—that is on a mission to educate policymakers and the public about the American jobs and the domestic economic growth our companies generate through their global value chains.

Global value chains include those jobs we traditionally associate with creation of a product—such as those in a factory or on a farm—as well as those positions involved in the conceiving of and delivery of those products—such as design, marketing, research and development, logistics, compliance, and sales. Simply put, the global value chain accounts for all the jobs that add value to the good or service sold in the global marketplace. These positions are essential to the creation or sale of a good or ser vice. Moreover, these jobs are primarily here in the United States and are usually high-paying, accounting for much of the value that is paid at the register.

Thank you for holding this important hearing on the World Trade Organization (WTO).

As the organization that helps set and enforce global trading rules, the WTO has emerged as an important enabler of international trade during the past quarter cen-

tury. Building on the work of the General Agreements on Tariffs and Trade (GATT), the WTO ushered in an unparalleled period of widespread prosperity at home and abroad as trade liberalization fostered U.S. and global job creation. Now, more than ever before, Americans reap the benefits of global trade—either through the jobs that are directly supported by these trade links or through access to the goods and services that those links now enable. Global value chains—which employ tens of millions of Americans—underpin these benefits.

Not surprisingly, the WTO (sometimes in partnership with the Organization of Economic Cooperation and Development (OECD)), has focused on global value chains to understand how they operate. As it notes:

> Today, companies divide their operations across the world, from the design of the product and manufacturing of components to assembly and marketing, creating international production chains. More and more products are "Made in the World" rather than "Made in the UK" or "Made in France." The statistical bias created by attributing the full commercial value to the last country of origin can pervert the political debate on the origin of the imbalances and lead to misguided, and hence counter-productive, decisions . The challenge is to find the right statistical bridges between the different statistical frameworks and national accounting systems to ensure that international interactions resulting from globalization are properly reflected and to facilitate cross border dialogue between national decision makers.

Through its Global Value Chain portal, the WTO now publishes a wide array of reports and a wealth of statistical resources on the positive impact of global value chains. Through these rich data and analytical tools, including the global value chain statistical profiles for each country, the OECD/WTO Trade in Global Value Added data base, and the GVC indicator data base, policy makers in the United States and throughout the world can now better understand the positive economic contributions of global value chains. For example, we now know that nearly two-thirds of traded goods are made with components from at least two different countries. In the United States, our ability to export is increasingly dependent on our ability to import and our ability to partner with other countries, including intermediate markets. Such realizations hold important ramifications to the trade policy debate we are now conducting in the United States.

The WTO's contributions are qualitative as well. Last October, WTO Director General Azevêdo led a workshop on women in global value chains. Among other things, the workshop noted that women and woman-owned businesses face many barriers in accessing and participating in global value chains. Lowering those barriers and bringing about great participation by woman—through information, technology, and access to finance—would provide tremendous gains to individuals, to communities, to nations, and the global economy.

As we build the work plan for the WTO for the next quarter century, we need to ensure that continued research into global value chains is a core element. As we become increasingly dependent upon utilization of such global value chains for our own prosperity, and look for ways to increase participation in them, it is vital that the WTO further its capacity to help us increase our own understanding.