

**IMPLEMENTATION AND ENFORCEMENT OF THE
UNITED STATES-MEXICO-CANADA AGREEMENT:
ONE YEAR AFTER ENTRY INTO FORCE**

HEARING

BEFORE THE

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

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JULY 27, 2021
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Printed for the use of the Committee on Finance

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U.S. GOVERNMENT PUBLISHING OFFICE

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TUESDAY, JULY 27, 2021

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

The hearing was convened, pursuant to notice, at 9:41 a.m., via Webex, in Room SD-215, Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the committee) presiding.

Present: Senators Stabenow, Cantwell, Menendez, Carper, Brown, Bennet, Casey, Whitehouse, Hassan, Cortez Masto, Warren, Crapo, Grassley, Cornyn, Thune, Toomey, Cassidy, Young, and Sasse.

Also present: Democratic staff: Sally Laing, Senior International Trade Counsel; and Joshua Sheinkman, Staff Director. Republican staff: John O'Hara, Trade Policy Director and Counsel; Mayur Patel, Chief International Trade Counsel; Gregg Richard, Staff Director; and Jeffrey Wrase, Deputy Staff Director and Chief Economist.

The CHAIRMAN. The Senate Committee on Finance will come to order, and we have obviously had horrible news in the last 24 hours. A member of the Finance family has passed.

You just could not find a more decent and caring person on earth than Mike Enzi. And he had policy ideas; he always talked about the 80-percent rule getting everybody together. Early this morning, I was looking at a text he sent me earlier this year, inviting the Wyden family to Wyoming and all the great places that we would go.

This is going to be a very, very hard day. I am going to let colleagues speak, and I know the Senator from Idaho would like to speak. He and I were both so fond of Mike. And then I will recognize colleagues and go to our hearing when colleagues have had a chance to talk about Mike and their stories.

I was just reminded, the Enzis always brought Christmas cookies for the staff, and we all enjoyed them. We just so appreciated them. So, at the end of colleagues' remarks, we will have a moment of silence.

Senator Crapo?

Senator CRAPO. Well, thank you, Mr. Chairman. I also do want to say a few words about the passing of our good friend Mike Enzi.

He was a long-time valued member of this committee, as you know, and all of us have our own personal stories with regard to him. I know we have all been praying for him in the last couple of days since his accident.

You know, I got to—actually, just to show the character of Mike Enzi, I got an email from him a couple of weeks ago, telling me that he was praying for us because of the very difficult issues that we are working on right now. What a thoughtful thing for Mike, from Wyoming, to share those words.

For over 2 decades, Senator Enzi passionately served the people of Wyoming as a thoughtful conservative leader. He brought his experience as an accountant and small businessman to Washington, to tirelessly fight for the Federal Government's broken budget process, and he never wavered in those efforts.

We had a shared philosophy when it comes to compromise, which is to focus on the things you can agree on and worry about the rest later. And I valued Mike's judgment and friendship, and I will close with this. He said that he tried to live by his mother's advice: "Do what is right, do your best, treat others as they want to be treated." And he certainly did that. We will miss him.

The CHAIRMAN. Thank you, friend.

Senator Stabenow?

Senator STABENOW. Thank you, Mr. Chairman, Ranking Member. In walking in this morning, I looked up. We have a large picture of the Finance Committee members from last session, and in the front row is Mike Enzi. A big smile—and I have worked, I worked with Mike for 20 years since coming to the Senate, both on the Finance Committee and also on the Budget Committee.

I loved his sense of humor, and I loved his fairness. I will never forget a couple of years ago when he was working to make major changes in the budget resolution process and he called me, knowing actually he was going to be showing me something that he knew I did not agree with.

But he called me anyway. He called me—it was in August. He called me, he walked through everything and listened to my concerns and was very respectful, and he said, "I look forward to working with you when we get back into session in September."

So, he was a gentleman. He loved the Senate. He was somebody who cared deeply about being fair to everyone, and I am just so deeply saddened and sending a lot of prayers for his family.

The CHAIRMAN. Senator Cornyn?

Senator CORNYN. Well, thank you, Mr. Chairman. I too have many memories of serving with Mike Enzi, and it is not possible to think—I cannot think of a nicer human being whom I served with in the Senate.

When I first got here, he worked on the HELP Committee with Teddy Kennedy, and Mike was one of the most conservative members of the Senate, as you know. But he and Senator Kennedy were enormously productive on the HELP Committee as chairman and ranking member. They switched that out from time to time, and I asked Mike about it.

He said, "Well, it seems it is the 80–20 rule." He said you can agree on the 80 percent you can agree on; you leave the 20 percent you cannot for another day and another fight. It seemed so obvious,

but that was his attitude, and that was one reason why he was so productive.

There are a lot of other things I could say, and I will not. I am going to talk about Mike a little bit on the floor. But the other thing I remember about Mike is just his attitude was always so positive. He was a little bit of an introvert, as we all know, and he blamed that on his being an accountant.

He said, "An extroverted accountant, I think, is somebody who does not look you in the eye but stares at his shoes," or something along that line. I will get that right.

But he talked about having an attitude of gratitude, and how important attitude is in framing the way we live our lives and how we think about the world we live in. So I will, we will all say our prayers for Diana and the family as we remember a great human being and a great Senator.

The CHAIRMAN. Senator Cantwell?

Senator CANTWELL. I too want to make some comments about our colleague and his amiable attitude towards working together on legislation, and his representation of Wyoming. I worked with him on several health-care issues, several tax policy issues, several workforce issues.

At one point in time he said to me, "You know, I actually wrote software code." I thought, "You know, you are the original high-tech guy here in the Senate." It was that part of him that we all loved, because he looked at policy issues kind of straight up from how he looked at them. He did not add an over-layer of politics on top of it.

If he could be with you, he told you, and if he could not, he told you, and he told you why. But I loved the way Mike Enzi got around in his State. We talked about this, and he said, "I just call somebody in a county and I tell them I am coming, and then they tell all the people to come over and bring the food. We have a pot-luck, and we just sit here and talk about the issues."

I thought, "What a great way to really communicate to your constituents." I think that is what Mike boiled it down to: just the simplicity of the process.

I worry sometimes that the art of this is being lost, that just that basic communication with our friends and neighbors and people that we love is getting all stripped away and sanitized down to an Internet meme or something, when in reality, the face-to-face contact is really very important.

And I will just add this last point. We had a major breakthrough on STELAR legislation, which is all about how we reach our rural neighbors and communication, and the fact that Mike Enzi and several of his colleagues were adamant about not moving forward until we fixed it really gave us the impetus to fix that last year. So I am really, really thankful for him.

My heart goes out to his family and the people who worked with him so closely. This is not what we wanted for a colleague who went into retirement to enjoy a little down time. This is not, but our prayers are with all of them, and thank you for giving us all this time to remember somebody who contributed so much—in a very quiet way—but was a very, very big contributor to this committee. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cassidy?

Senator CASSIDY. You know, Mike loved to serve. He loved to serve, and of course you know how he served our country. But I once had a conversation with him. He had gone to Africa, and he had seen how AIDS was devastating Africa.

Not an issue you would expect a fellow from Wyoming to be interested in, but he saw the death. He recognized, frankly, this is an opportunity for the U.S. to do something really good, and that there would be the chance to extend U.S. influence. But his primary motivation was people dying of AIDS.

He worked with George W. Bush for the PEPFAR program, and of course, in typical fashion, did it in a financially responsible way, saved millions of lives, turned the corner for the continent of Africa, and it is one of the things that may not be mentioned in his obituary, but is one of the things that he was most proud of.

And two more things that just come to mind of a fellow who was all about service. He was supposed to be HELP chair last year. He actually had the seniority over Lamar Alexander. But he thought Lamar was so capable, and he just thought Lamar should be chair even though he, Mike Enzi, would have been, by years. I keep on hoping that my two senior members feel that about me on Finance. [Laughter.]

And then lastly, I said, "Mike, why are you leaving, man, because you still have a lot to offer?" He said, "You know, I can do it next year. I am not sure I can do it for 6. It is important to have somebody here who can do it for 6." I just join you all in our prayers for Diana and our great memories of Mike.

The CHAIRMAN. Thank you, Senator Cassidy. This is going to be a very hard day.

Senator HASSAN?

Senator HASSAN. Yes, it sure is, because my heart is heavy this morning, as all of ours are. I got to know Mike a little bit, first in our kind of get-to-know-you conversation just after I got here, and I was just remarking to Catherine that our staff actually had to break us up after an hour. You know, they were like, "You do not have time to sit here and just keep talking."

But we did, and we discovered a number of things in common. My grandfather was a shoe salesman and Mike had owned a shoe store, and we talked about the shoe business. But we also had a couple of other things in common, one of which was having children who had very difficult starts in life: his daughter, my son.

There was never really a time when Mike did not see me where he did not ask after Ben, after the family, after how we were managing, having shared the experience of welcoming a child into the world in really harrowing circumstances. Mike never forgot how fragile things can be, but how great the possibilities of inclusion are.

He was just always kind of giving me an "atta girl" when things were going rough at home with Ben. And a couple of other things. One is that Mike also is—was the prayer breakfast pinch hitter. When somebody could not speak at prayer breakfast at the eleventh hour, Mike had always told the organizers, "You can call on me," because he always had something to share about attitude.

More than anything, prayer and faith are about attitude, I think, from Mike Enzi's point of view, and he really spoke about that beautifully and movingly and gave us kind of "how-tos" on days when things might be rough.

He was just on Zoom at a prayer breakfast last week, and we were all just reveling in the fact that one of the gifts of Zoom was that we could still see our retired colleagues and they could join us. He was one of the kindest people I know. He and I were trying to get this bill through to change the composition of our coins so we could save about \$10 million, so I will just leave that out there.

I think Mike would want us to keep pushing on that, because it was a very practical, common-sense thing that we could all agree on and get done. And my thoughts too go to Diana and the family. They were such a part of Mike's service, and he never failed to mention them either.

So my thanks go to them, and my heart goes out to them.

The CHAIRMAN. Thanks.

My colleague, Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. Similarly—as you can see, there is a common theme here about who Mike really was, his values, his principles, his priorities for his family, his love of his family, but also his love of this process. I do not think any of us have a different story. I do not care how long you had worked with him or how new you were to the Senate.

To me, that says a lot about Mike, because when I first got here, he treated me with respect. I think one of my second opportunities to really get to know him—we traveled back to my home State, to Las Vegas, to Nellis Air Force Base. It was a codel. John, you were with us, and I think I was the only Democrat on the codel at the time.

I have to tell you, he was just so gracious and, as western Senators, we really had the opportunity to sit and talk to one another, get to know one another, and just really understood his commitment, most everything that you all have said.

And then after we got back, I was able to work with him on legislation and really figure out how we could move the ball forward on some of the issues that were important for this country and the public. So I echo everything that everyone has said.

My heart goes out to his family. He will be missed. I, as someone who lost my father early in retirement, I think we were all hoping he would enjoy his retirement with his family and get the time finally to do just that.

So I am thinking of him. Like Maggie, my heart is sad today, and I will not forget my opportunity just to get to know him in the short time that I was able to work with him here in the Senate.

The CHAIRMAN. This is going to be a day of swapping Mike Enzi stories, whether it is shoe stores or the love of beef; the list is going to go on and on. I like to think his graciousness and thoughtfulness are going to continue to be expressed in this room in the days ahead.

Let us have a moment of silence, and then we will go on. A moment of silence for our special friend Mike Enzi.

[Moment of silence.]

**OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR
FROM OREGON, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. Thank you all very much, and the business of this morning is the U.S.-Mexico-Canada trade agreement. And we welcome our guests, and I wish they were here on a day that was not so sad.

When a child turns one, you give them a birthday party. When a trade agreement turns one, it seems appropriate to have an oversight hearing in the committee. So today we will discuss USMCA, which of course is the lingo for the U.S.-Mexico-Canada Agreement. The timeline is pretty clear. Three years ago, the Trump administration agreed to a rewrite of the North American Free Trade Agreement, and the feeling up here was that it was too weak on key issues to pass.

The Democrats got down to work improving it, and as a result of those efforts, the text of it was the strongest trade agreement ever for worker rights, environmental protections, and particularly for trade law enforcement.

The Congress passed it, and it was up to the Trump administration to carry it out early in 2020. Now you have to have strong trade enforcement, because countries do not comply with trade agreements by osmosis. They have to be held to their commitments. They have to be held to their commitments.

And what is critical—and not much understood about all this—is the time when you have the most leverage is before an agreement goes into effect. So that is why Senator Grassley and I, on a bipartisan basis, strongly urged the Trump administration not to rush the process.

Unfortunately, the administration would not listen. It was the middle of the year, and in effect they decided that a cake was baked before it was ready to come out of the oven. Only a few months were given to carry out the agreement, not anywhere near enough time to protect workers and businesses by holding Canada and Mexico to their commitments.

Now it is up to the Biden administration to clean up the messes that I am going to outline now, that the Trump administration left behind.

For example, Canada has unfairly blocked American dairy products for decades. Under USMCA, Canada agreed to give our dairy products more access to the Canadian market. The Canadians then undermined that commitment with new regulatory barriers before USMCA went officially into effect last July. The Trump administration hardly lifted a finger to do anything about it. Now the Biden administration will have to work to make sure that our dairy farmers finally get the access that they were promised.

Another example: Mexico made commitments to improve the rights and conditions for its workers. It is moving too slowly on the implementation of those key reforms to labor laws. To enforce some of those commitments, the Biden administration has had to hit back, using what is called a rapid response mechanism.

Senator Brown deserves enormous credit for his leadership on this. I was pleased to partner with him. It is an important tool, a rapid response mechanism. But the previous administration should have done more to push Mexico to raise the bar for labor rights

prior to last summer. That would have helped protect more American workers.

With the Trump administration coming up short and trade enforcement looking weak, it is no surprise that Canada and Mexico issued new laws and regulations that were inconsistent with the text of USMCA, even walking back some of the core commitments.

For example, Mexico is refusing to approve innovative American ag products, including corn and soybeans, without any scientific justification. It is also threatening to ban agricultural products that have been previously approved. Ambassador Tai and the administration are working hard now to knock down those barriers as soon as possible.

Canada is joining a list of countries that are unfairly targeting and discriminating against innovative American employers with digital service taxes. Make no mistake about it. These unfair digital daggers are just knifing American firms and the prospects for creating all of the high-scale, high-wage jobs that we want.

It is a big setback to our trade relationship with Canada. It goes against the spirit of USMCA and the global minimum tax agreement that is in the works. I hope—and I press this case to the Canadians—that they change course on the issue. Otherwise, the United States will need to consider all options for our response.

So, we have a lot to talk about. I come from a State where one out of four jobs revolves around international trade. Oregon has always been about just growing things, designing things, innovating breakthroughs, adding value to them, and then shipping them to Oregon lovers around the world.

In Oregon we talk about getting trade done right by protecting workers and companies, creating high-wage jobs. We want to raise the bar on issues like labor and environmental protection. We want vigorous enforcement. It means not cutting corners the way the previous administration did on USMCA. Fortunately, the Biden administration is addressing all the outstanding issues so that USMCA lives up to all its promise about the challenges ahead.

I want to thank our witness panel for joining the committee. I look forward to question and answers. In the Pacific Northwest, we always try to find common ground on trade policy. We will again.

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

The CHAIRMAN. Senator Crapo?

**OPENING STATEMENT OF HON. MIKE CRAPO,
A U.S. SENATOR FROM IDAHO**

Senator CRAPO. Thank you, Mr. Chairman, and I appreciate you giving us an opportunity to remember Mike Enzi before beginning the hearing.

But returning to work as Mike would have wanted, I also appreciate our witnesses taking the time to discuss issues critically important to the work of this committee. I specifically welcome Allan Huttema, chairman of the Northwest Dairy Association and Daringold board of directors, who is joining us from Parma, ID. Thank you all for taking the time to discuss these issues that are critical to us. Today's hearing marks the 1-year anniversary of the United States-Mexico-Canada Agreement, or USMCA as we all describe it.

Mexico and Canada are two of our most important trading partners, and we cannot take these relationships for granted. To take one example, the United States exported \$1.4 billion and \$731 million worth of dairy products to Mexico and Canada, respectively, in 2018. But just a generation ago, nearly all of the dairy products produced in the United States stayed in the United States. Today the Idaho dairy industry, which represents 6 percent of the State's GDP, produces more than 15 times the production necessary for our State's needs. Opening markets have fed our neighbors and created jobs at home.

However, our dairy industry faces a number of new barriers, including attempts by trading partners to prevent our farmers from using common cheese names by claiming that they are geographic indications. The potato industry has also faced its share of challenges, with the Mexican Supreme Court only recently ruling that potato growers can sell fresh potatoes into all of Mexico, consistent with its obligations under the USMCA.

Now I have recently met with the President of Mexico and the Ambassador from Mexico and the Minister in charge of the economy in Mexico, and they have all assured me that they are proceeding to implement that trade agreement and that Supreme Court ruling, to get the potatoes, finally after years, into Mexico. However, I will not consider the matter finished until Idaho's farmers are able to sell high-quality potatoes to every family in Mexico.

Likewise, when the North American Free Trade Agreement, or NAFTA, was negotiated, we did not fully appreciate the potential of digital trade, which my colleague Senator Wyden has referenced, which now contributes over \$2 trillion annually to our GDP. That is why I support a number of USMCA innovations to help us meet the challenges of the 21st-century economy and drive economic prosperity in North America. These include Canada allocating new tariff rate quotas for dairy products, Mexico agreeing to protect 33 common cheese names, a cutting-edge digital trade chapter, and better protection for copyright.

This committee had a role in developing them, and it is appropriate to examine whether these innovations are delivering. That cannot be said for the last-minute changes added through the USMCA protocol amendment at the behest of the House Democrat working group.

This committee had no opportunity to vet those changes or even see the text of these changes before they were finalized. I am concerned that some of our Democratic House colleagues now want to push their changes that allegedly strengthen labor and environmental standards, but almost certainly weaken our intellectual property rights, into new agreements before we even have a complete understanding of their full implications. I will not accept that.

That is why this hearing is so important. If we are going to unlock the promise of the USMCA and also understand its shortcomings, we need to press for effective implementation and enforcement. To date, the administration's efforts on that front are fairly disappointing, and I will highlight three examples.

First, the USMCA contains commitments that should facilitate cooperation on agricultural biotechnology, including that decisions regarding the approval of such technology be based on science. This

technology not only increases farmer's yields, but allows them to grow crops more sustainably, including by using less pesticide and reducing tillage. Unfortunately, Mexico has refused to approve any biotechnology food or feed products since May of 2018. Despite the clear economic and environmental benefits, the administration has yet to take any enforcement action on this important issue.

Second, Mexico is proceeding with new discriminatory actions, such as measures favoring its own state-owned electricity and petroleum companies. Mexico previously prioritized dispatch on its electrical grid on the basis of cost, which allowed private producers, including wind and solar energy providers, to compete. Instead, Mexico intends to give preference to its state-owned electricity company. The administration needs to be engaged now before barriers like this are fully in place.

Finally, where the administration is taking enforcement actions, it fails to do so transparently or in appropriate consultation with Congress. I am referring to the use of the USMCA rapid response labor mechanism. As I noted in our hearing on the President's trade agenda, I am committed to ensuring that our workers can compete on a level playing field. That effort requires transparency. Otherwise, how would Congress, the affected parties, and civil society know if the mechanism is being used appropriately and effectively? Accordingly, the USTR must explain what potential actions, in its view, may or may not constitute a denial of rights. The USTR has failed to do so with respect to its recent use of the mechanism with respect to Tridonex's Mexico facility.

This hearing is a good opportunity for the committee to examine whether USMCA's commitments are delivering on their promise. This discussion will also help in developing a future trade agenda, and I look forward to hearing what our knowledgeable witnesses have to say in this effort.

Mr. Chairman, thank you again for organizing this hearing, and again thank you to our witnesses for appearing today.

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

The CHAIRMAN. Thank you, Senator Crapo, and I think it is very important that we work to find common ground on this issue so important to American workers and American businesses.

Let me give a brief introduction to our guests. Mr. Ben Davis of Pittsburgh, PA is the director of international affairs for the United Steelworkers. He also chairs the Independent Mexico Labor Expert Board established by the Congress to monitor implementation of the labor provisions of USMCA. He has decades of experience in this field, and we appreciate him.

Mr. Allan Huttema of Parma, ID—a guest of Senator Crapo's—is a dairy farmer and owner of Almar Dairy, a member of the Northwest Dairy Association since 2003. Mr. Huttema farmed in Whatcom County, WA for several years before moving to his current dairy farm in Idaho with his wife and four children. He too has decades of experience in the field and is on the Northwest Dairy Association Darigold board.

Dr. Michelle McMurry-Heath of Washington, DC is the president and CEO of Biotechnology Innovation Organization, which represents 1,000 life sciences companies and organizations that are in-

volved in research and development of health care, agricultural, industrial, and environmental biotechnology products. She is a medical doctor, and members of this committee, both Democrats and Republicans, have worked closely with her organization for many years.

Finally, online today will be Ms. Beth Lowell of Washington, DC, who serves as the deputy vice president for U.S. campaigns at Oceana. Ms. Lowell oversees Oceana's campaigns related to ocean conservation, illegal fishing, seafood farms, and other issues. She has 20 years-plus of working on these issues and joined Oceana in 2005.

So let us go now to hear from our witnesses. We will make your prepared remarks a part of the record, and if you can take 5 minutes or so to summarize your views, that would be helpful.

We will begin with you, Mr. Davis.

STATEMENT OF BENJAMIN DAVIS, DIRECTOR OF INTERNATIONAL AFFAIRS, UNITED STEELWORKERS, PITTSBURGH, PA

Mr. DAVIS. Chairman Wyden, Ranking Member Crapo, members of the committee, thank you very much for the opportunity to testify on the implementation of the USMCA, and specifically labor provisions which are so important to workers in the U.S., Canada, and Mexico. I am Ben Davis, director of international affairs for the United Steelworkers, and also Chair of the Independent Mexico Labor Expert Board, an entity created by the USMCA implementing bill passed by this committee and signed into law.

The USMCA passed Congress with a large bipartisan majority. The Steelworkers, along with the AFL-CIO, supported the final agreement after the Congress improved upon the text negotiated by the prior administration. Most critical to our support was the emphasis on labor rights improvements in Mexican law, backed up by the rapid response mechanism initially developed by you, Chairman Wyden, and Senator Brown. The focus of the labor law changes was to disrupt the protection union system in Mexico, under which most workers have no real voice in choosing their union representatives, and often have no knowledge of the contract that determines their wages and working conditions.

This system has maintained artificially low wages. For example, at the GM Silao plant, the starting wage is \$1.35 per hour. Workers' rights to democratic unions and collective bargaining have been denied in Mexico for many years, and the jury is still out as to whether Mexico's new laws and the USMCA will make a difference.

Let me briefly summarize the key conclusions and recommendations of the Board's report of July 7th, which is in the record. While there has been some significant progress on USMCA implementation in some areas, the Board raised concerns about transparency, the contract legitimation process, budget and staffing of Mexico's new labor institutions, and U.S. technical cooperation.

On transparency, almost 27 months after Mexico's labor law reform was approved, most workers covered by union contracts still do not have a copy of that contract or their union statutes, including the workers at Tridonex in Matamoros which is, as has been

mentioned, the subject of a rapid response mechanism case under the USMCA.

The 2019 labor law requires employers and unions to give workers copies of their contracts. But these provisions will not be fully implemented for several years. Online access, which is already available for contracts in some jurisdictions, should be accelerated and should not require workers to submit individual requests.

On contract legitimation, the Board raised significant concerns about the effectiveness of the contract legitimation process. As of today, Mexico reports that 1,378 legitimation votes have been held, covering 797,587 workers, which is about 18 percent of the estimated unionized workforce. Government officials have stated that they ultimately expect at least 80,000 contracts to be voted on. This would require about 120 legitimation votes per day every day from now until May 1st, 2023. That clearly exceeds the capacity of the government institutions and may require them to rely on private notaries hired by the incumbent unions. As we have seen in the GM Silao case initiated by USTR, putting the incumbent union in charge of the vote creates an inherent conflict of interest and potentially disastrous consequences.

On budget and staffing, the Board raised concerns about staff shortages at the Labor Secretariat and the Federal Conciliation and Labor Registration Center, which have faced a huge challenge of implementing the reforms under pandemic conditions. For example, the Federal Center currently has only 29 staff responsible for monitoring legitimation votes. Clearly, there is not enough money to support timely and effective implementation of the reforms. The Inter-American Development Bank gave Mexico an \$800-billion unsecured loan to support the labor reform, but it appears that none of these funds have been used for this purpose.

Finally on U.S. technical assistance, the Board raised significant concerns about the pace and focus of U.S. assistance to support Mexico's labor reforms. Of the \$180 million appropriated by Congress, only 50 million has been allocated and only 10 million of that directly supports efforts by Mexican workers to establish democratic unions. Strangely, this initial allocation of USMCA funds excluded the auto and auto parts sector from labor capacity building. The Board referenced the recommendation of Ways and Means Democrats that IMLEB should spend at least \$30 million annually of USMCA appropriated funds on worker organizing and union capacity building. I personally believe this funding will be essential to achieve our goals.

Without a fundamental shift from protection unions like the ones at GM and Tridonex towards democratic labor organizations, no amount of government oversight will result in a trade union movement that can organize and bargain for higher wages for Mexican workers to address the structural inequality in the USMCA region that drives both migration and loss of good manufacturing jobs.

Thank you, and I will be happy to answer any questions.

[The prepared statement of Mr. Davis appears in the appendix.]

The CHAIRMAN. Thank you, Mr. Davis.

Mr. Huttema, welcome.

STATEMENT OF ALLAN HUTTEMA, CHAIR, BOARD OF DIRECTORS, DARIGOLD AND NORTHWEST DAIRY ASSOCIATION, PARMA, ID

Mr. HUTTEMA. Good morning and thank you, Chairman Wyden and Ranking Member Crapo. It is truly an honor for a farmer from Parma, ID to be here today, so thank you. I am Allan Huttema, and I am here today to discuss the critical role of trade policy in supporting U.S. dairy farmers. I started milking cows in Chilliwack, British Columbia in 1991. Twelve years later, I moved to Everson, WA, where I started a 500-cow dairy. In 2010, along with my wife Mary Jo and our two sons Christopher and Jeremy, we relocated to Parma, ID, where we currently operate an 800-cow dairy and farm 500 acres of corn and triticale for silage.

I also serve as the chairman of the board at Darigold and Northwest Dairymen's Association, and I am also on the board of the National Milk Producers Federation. The American dairy industry is an economic force employing almost a million Americans. The industry contributes \$64 billion in tax revenue, and almost ten times that amount to the U.S. economy. Trade opportunities are an integral part of that story.

Despite last year's difficulties, U.S. dairy upheld its reputation as suppliers of a variety of high-quality dairy products to the world. Around one in every six gallons of milk produced here was exported to foreign markets to meet global demand. When on a level playing field, American dairy products are highly sought after in international markets. Unfortunately, without sufficient market access opportunities to provide us with tariff parity, or better, in key markets when compared to our trade competitors, American dairy farmers are left feeling the effects.

Today I will discuss three primary trade topics of great importance to the American dairy industry. First, the importance of USMCA as a catalyst to pursuing new market-opening trade agreements. Second, the subsequent enforcement of existing agreements. And last but certainly not least, the chronic misuse of non-trade tariff barriers, specifically the European Union's continued desire to lay claim to geographical indications.

It has been a very long time since Congress passed a new trade agreement aside from USMCA, for which we are very grateful. Our industry needs new trade agreements with key export markets to counter our competitors, namely the EU and New Zealand. As our competition continues to ink new trade deals, the U.S. is increasingly left in the dust. We are the only country in the G7 or G10 that has such an incredibly difficult time understanding that trade is a good thing. We just need to work in a bipartisan manner and drop the extreme positions that have not been conducive to new market opportunities. We must focus on concluding comprehensive agreements with the United Kingdom, Vietnam, and Japan, as well as seeking new opportunities in China and Southeast Asia.

On USMCA, we look at the agreement as an important accomplishment. As we like to say on the farm, a deal is a deal, which is why our industry appreciates the decision by the U.S. Trade Representative Katherine Tai to initiate a dispute settlement proceeding with Canada over its government's administration of the dairy tariff rate quota system. We are grateful for this committee's

support and advocacy in securing that step. I am Canadian-born, and I have worked in that system, so I know that the government will do all they can to avoid fulfilling their dairy commitments.

The U.S. should not tolerate trading partners not living up to their obligations, so we also must encourage this committee and Ambassador Tai to keep a careful eye on milk protein isolate and skim milk powder blend exports out of Canada. We are concerned that they may be increasing production to circumvent milk protein export caps, undermining the spirit of USMCA.

Our other USMCA partner, Mexico, warrants greater integration and collaboration. A surge of newly devised Customs and regulatory requirements have been in the works or instituted, including new documentation requirements for milk powder for U.S. exports that differ from requirements for domestic Mexican companies. In addition, several unwarranted regulatory barriers appear to have a more political connotation than a scientific background.

Let me now turn to a topic that would be amusing if it were not so serious: the EU's non-stop campaign on attacking names like parmesan, feta, and asiago through GI provisions. I urge Congress to remind the Biden administration of the letter signed by 61 Senators supporting the protection of common food names as a formal trade policy objective of all future trade agreements.

Again, Chairman Wyden and Ranking Member Crapo, thank you so very much for the opportunity to testify to this committee on the importance of global trade to all American dairy farm families, including my own.

[The prepared statement of Mr. Huttema appears in the appendix.]

The CHAIRMAN. Thank you, Mr. Huttema. We are glad you are here.

Dr. Michelle McMurry-Heath.

**STATEMENT OF MICHELLE McMURRY-HEATH, M.D., Ph.D.,
PRESIDENT AND CEO, BIOTECHNOLOGY INNOVATION ORGANIZATION,
WASHINGTON, DC**

Dr. McMURRY-HEATH. Chairman Wyden, Ranking Member Crapo, members of the committee, my name is Dr. Michelle McMurry-Heath, and I am the president and CEO of the Biotechnology Innovation Organization. I am honored to testify before you regarding the 1-year anniversary of USMCA's entry into force, and how the agreement has impacted the biotech sector, particularly as it relates to agricultural biotechnology.

BIO represents over 1,000 members, and our central mission is to advance public policy that supports the application of biology and technology in energy, agriculture, manufacturing, and health. Our members work every day to cure patients, protect our climate, and nourish humanity.

As the U.S. biotechnology industry demonstrated with our response to COVID-19, our Nation can lead the world in developing technologies that will solve critical health and economic challenges. American innovation in biosciences, coupled with government leadership, can address growing crises such as climate change and malnutrition. Executing thoughtful and creative trade strategies is among the most effective means to strengthen the U.S. bioeconomy

and enhance global science-based collaboration to effectively confront these and other public health, environmental, and nutritional issues.

The enhanced provisions for agricultural biotechnology in USMCA represented a significant improvement on NAFTA for the industry. As a result, BIO applauded the inclusion of these provisions. Unfortunately, what exists on paper is a far cry from reality.

The Government of Mexico's treatment of agricultural biotechnology clearly demonstrates how trade barriers still actively restrict the development of new biotechnologies. Mexico's regulatory authority, COFEPRIS, has not granted a single new agricultural product application in more than 3 years, and its backlog of pending approvals has grown to 23. This bottleneck affects all of BIO's agricultural members, covering a wide range of commodities: apples, canola, corn, cotton, potatoes, and soybeans. Compounding matters, on December 31st of last year, Mexico issued a decree announcing its intention to phase out the use of important agricultural technologies, including biotech corn, from human consumption by 2024.

There are numerous consequences to Mexico's actions. For one, they are impeding global research and development, and jeopardizing the potential for biotechnology to address the many challenges that I previously mentioned. Take climate change and nutrition. According to the International Service for the Acquisition of Agro-Biotech Applications, biotech crops reduced carbon dioxide emissions by 27.1 billion kilograms in 2016. These crops also helped to maintain yields in the face of drought, which has direct bearing on food security and poverty alleviation.

Unfortunately, provisions in the USMCA intended to invigorate investment and development of these technologies is now threatened by the obstruction of one of the agreement's key signatories. BIO appreciates the U.S. Government for being a consistent champion for biotechnology, defending it against scientifically unjustified regulatory practices. However, with little indication from Mexico that it will adhere to USMCA's commitments, BIO strongly urges the administration to begin taking enforcement action against Mexico's unjust treatment of agricultural biotechnology. Without enforcement, BIO and its members fear the Government of Mexico will continue the status quo and possibly even broaden the scope of its infringement to additional agricultural products.

In closing, United States global leadership in biotech innovation is vital to the Nation's security, climate policy, pandemic preparedness, and international diplomacy. Yet our biotech sector is faced with tremendous uncertainty. Companies are making decisions today about whether to proceed with launch plans or delay, potentially costing them billions of dollars in revenue and future investment. Similarly, U.S. farmers are facing increasing challenges related to climate change and sustainability. Doing so without cutting-edge biotechnology tools at their disposal is like fighting with one hand tied behind their back.

I submitted a more in-depth statement for the record on the need for industry and government to work together to leverage American strengths and remove barriers that restrict the development of the global biotech ecosystem.

Thank you, and I look forward to your questions.
 [The prepared statement of Dr. McMurry-Heath appears in the appendix.]

The CHAIRMAN. Thank you very much, Dr. McMurry-Heath.
 So let us go now online to Ms. Beth Lowell.

**STATEMENT OF BETH LOWELL, DEPUTY VICE PRESIDENT,
 U.S. CAMPAIGNS, OCEANA, WASHINGTON, DC**

Ms. LOWELL. Good morning and, first of all, my condolences on the loss of your colleague and friend. My name is Beth Lowell, deputy vice president for U.S. Campaigns at Oceana, an international conservation organization dedicated to protecting the world's oceans.

After 1 year in force, Oceana has identified some ways to improve the implementation of the USMCA, and we have some outstanding questions. While the environmental chapter covers a wide range of issues, my testimony is focused just on fisheries.

Seafood is a highly traded commodity, with domestic and international fisheries management; high prevalence of illegal, unreported, and unregulated, or IUU fishing; opaque supply chains; and links to forced labor and other human rights abuses. IUU fishing undermines the legal seafood trade, destabilizes coastal States with limited resources to enforce and protect their waters, and impacts national security. The International Trade Commission estimated the U.S. imported \$2.4 billion worth of IUU seafood products in 2019 alone, and 25 percent of the imports from Mexico were products of IUU fishing.

IUU fishing, paired with fishery subsidies, puts U.S. fishermen at a disadvantage, forcing them to compete with highly subsidized fleets and those that fish outside the boundaries of the law. The world's top industrial fishing nations are providing subsidies that make distant-water fishing more profitable, drive over-capacity, and shift the risk of overfishing to the waters of other countries. Some distant-water fleets subsidize as much as 20 to 40 percent of the value of their catch. We were happy to see subsidies included in the agreement, and the USMCA requires the parties to notify each other of their fisheries subsidies within a year. This information is now overdue.

The IUU fishing provisions include requirements to implement stronger measures including Port State controls, improved monitoring control, and surveillance to deter IUU fishing. The USMCA also helps promote transparency through better documentation of vessels, and it requires each country to develop a publicly available and easily accessible registry of flag vessels.

Earlier this month, Oceana in Mexico released a report reviewing compliance with the USMCA. Our team in Mexico recommends that the government require more documentation, transparency, and traceability for seafood to comply with the terms of the USMCA, but also to comply with the requirements under NOAA's Seafood Import Monitoring Program, or SIMP, and other trade requirements on fisheries like the use of turtle excluder devices in shrimp fishing nets.

Multiple Federal agencies under various authorities address international fisheries, trade, IUU fishing, and forced labor. It is

critical that these programs are coordinated, including sharing information and capacity. The USMCA is one of these tools. Oceana wants to thank the committee for the inclusion of language to address forced labor in seafood in the U.S. Innovation and Competition Act. This directed Customs and Border Protection to work with NOAA's SIMP program to inform implementation of the Tariff Act. This is the type of government-coordinated approach that is needed and can be achieved through leadership in the administration and direction from Congress.

So, after 1 year, Oceana still has outstanding questions on how the U.S., Mexico, and Canada are implementing the USMCA, specifically on fishery subsidies. It appears that the U.S. and Canada have reported some of their subsidies information under the requirements of the WTO's Subsidies and Countervailing Measures Agreement. But the USMCA requires additional reporting that it does not look like any of the countries have complied with yet.

Second, the IUU provisions call for more transparency on fishing. So, when and how is NOAA going to improve the transparency of our vessel documentation, including providing that publicly available and easily accessible registry of vessels?

Third, NOAA was provided additional resources in the implementation legislation for USMCA for addressing IUU, including SIMP implementation. Specifically, they received \$8 million. NOAA needs to report how that money is being spent, and if it is not spent yet, what is the spending plan?

In a recent report by NOAA about SIMP implementation, the agency discussed how the lack of resources is hamstringing the implementation of the SIMP program. So this \$8 million should allow NOAA to prioritize expanding the program to all seafood, ensuring that information collected can help identify shipments of the high risk of IUU fishing, seafood fraud, forced labor, and other human rights abuses.

Lastly, how does the U.S. plan to work with the other parties when it identifies areas of non-compliance with the measures of the USMCA? Illegally caught or produced products give bad actors an advantage over those that follow the law. Trade agreements like the USMCA and trade programs like SIMP help set the minimum standards that seafood must meet to enter the legal seafood market. The White House, Federal agencies, and Congress should work together to ensure that all seafood is safe, legally caught, responsibly sourced, and honestly labeled.

Thank you.

[The prepared statement of Ms. Lowell appears in the appendix.]

The CHAIRMAN. Great; thank you very much, Ms. Lowell.

So let us begin with you, Mr. Davis. From Day 1, it was important that USMCA was a game changer in terms of trade law enforcement. American workers and American companies win when they are not being undercut by trade cheats. So, to cut off the opportunities for the trade rip-off artists, Senator Brown and I came together to create what has been called the Brown-Wyden rapid response mechanism, a faster, tougher labor enforcement tool that is directly responsive to American workers and American businesses, and Mexican workers and Mexican businesses.

So the rapid response mechanism, Mr. Davis, is pretty new. So far the reviews are good, and my question to you to begin our discussion is—I think you are going to have a number of colleagues ask about this—are there additional steps so as to be able to make the rapid response mechanism even stronger, particularly to help address facility-specific labor violations?

Mr. DAVIS. Thank you, Chairman Wyden. Rapid response is something that we fought very hard for in the labor movement. It is a very important mechanism, and we are very pleased that USTR is putting this into effect in a pretty emphatic way initially.

We think it—and in the report, the Board pointed to some of the difficulties that have occurred in the implementation, in the specific cases, by Mexico of its labor law reforms, and that is certainly complicated a little bit. I am thinking particularly of the Silao case, which is a complicated case.

So we need to have the mechanism. We need to be using the mechanism regularly and effectively, but we also need to look beyond this to other aspects of USMCA and other aspects of the Mexican labor law reform, which they are committed to implementing.

So for example, in the General Motors case, we have a contract legitimation vote, which is the focus, the focal point of the alleged denial of rights, and that vote initially took place on April 20th. There was documented fraud and ballot tampering by the incumbent union which was, as I pointed out previously, under the procedure actually in charge of conducting the vote. The authorities intervened, but they did not—they stopped the vote, but then they allowed the incumbent union to rerun the vote, still in control of the process. The incumbent union from the CTM said, “No, we are not going to do that.” So now USTR has taken action, and there is an agreement that that vote will finally take place on August 20th, but that is 4 months after the original vote took place.

Our experience from anti-union campaigns in the U.S. is that you may start out with a good, strong group of workers who want a union, but after they have been pressured and intimidated and all the things that happen in these circumstances for 4 months, there is often not a whole lot left.

So we are very pleased with the fact that USTR is going forward with this, but there are definitely concerns about the capacity of the Mexican institute.

The CHAIRMAN. We will want to follow up with you, Mr. Davis, on that, because you have years of expertise, because we need to know about the next steps, and I appreciate that.

Just because time is short, a question for you, Dr. McMurry-Heath. We looked to USMCA—updated obligations, new enforceable chapters on labor, environment, digital trade—and it took a long time to negotiate. But the administration seemed so eager with respect to actually going during this election season. They were so eager to close on the house, they did not wait for the inspections to be done.

So here we are. We are still talking about some basic implementation on a host of issues that relate to your members for example, that relate to the digital sector—you know, hugely important areas.

Could you tell us what kind of compliance and implementation actions, in your view, should have been taken before the agreement went into effect to make sure that our innovators, our workers, and our businesses could get the bargain that was written in the text? Your thoughts.

Dr. McMURRY-HEATH. Well, thank you, Chairman Wyden, for the question, and you are absolutely right. Our innovators deserve and need our protection under these trade agreements.

It would have been prudent—given the fact that we knew that COFEPRIS, the Mexican regulator, had ceased new approvals back in May of 2018—to insist upon their resumption before the trade agreement went into effect. Given that that was not the case, it now really behooves us to make sure that we double back and hold them to their agreement.

We feel that this can best be done by the appointment of an Agricultural Negotiator for USTR. This is critically important to do because it affects not just our relationship with Mexico, but it has the potential to creep or seep into our other trade agreements and with trading partners. So it is very important that we address it at this stage.

The CHAIRMAN. Thank you. We will work closely with you. My time has expired. What is so important about this area is, having worked with you all for years, you are on the cutting edge with your members in so many fields of innovation. When there is a delay on, particularly updating the kinds of rules that are a way to green-light opportunities for them, our workers and our companies suffer. So I appreciate your answer.

Senator CRAPO?

Senator CRAPO. Thank you, Mr. Chairman.

And, Mr. Huttema, as you well know, we have had issues with Canada over dairy for years and years and years. And finally, one day when NAFTA was renegotiated, we thought we had achieved some resolution of those dairy issues in the USMCA. Your testimony, as I understand it, is that Canada may be attempting to, or is attempting to, circumvent the agreement, particularly as it relates to how Canada has handled the application of its tariff rate quota commitments. Could you elaborate on that in a little more detail?

Mr. HUTTEMA. Yes, absolutely. When it comes to TRQs and access into Canada, the way they administer the TRQs or the access to Canada is mostly through processors who really do not have any intent of importing product. Not only that, it really leaves a lot of the low-value product coming into Canada, when it was our intention to get branded product into Canada, especially for Darigold with close proximity to the Canadian border. We thought we could get higher-value products into Canada.

Another bigger part, just as big a part though, is they are continuing to export milk proteins all over the world. We see them in markets. It is as big an issue from the exports we see leaving Canada as it is access to their market when it comes to the TRQs.

Senator CRAPO. And I assume that if we can get those issues resolved, the actual terms of the USMCA with regard to dairy, for example, would result in significant benefits to American dairy producers. Is that correct, and could you elaborate on that a little bit?

Mr. HUTTEMA. Absolutely. So getting products into Canada would create more demand for our products, which in turn would raise prices. The spirit of the agreement was great. We got access; we got what we wanted. Canada got to keep some of the markets they stole. In return, they gave us access to their country, which was all good. But the spirit of the agreement is not being upheld. It is definitely very advantageous for American dairy farmers to access markets. When we are held out, it hurts dairy farm families.

Senator CRAPO. Thank you.

And, Dr. McMurry-Heath, as you have testified—and as I indicated in my opening statement—Mexico has not approved an application for biotech crops since 2018. The economic environment for U.S. businesses seeking access to the Mexican market deteriorated significantly, in my opinion, in the last year. And their law requires that they approve these applications within 6 months, correct?

Dr. MCMURRY-HEATH. Correct.

Senator CRAPO. So the question I have for you is, is there a scientific basis behind Mexico's treatment of our biotech crops?

Dr. MCMURRY-HEATH. As a former regulator, I can assure you, Ranking Member Crapo, that there is not. This is particularly disturbing to not only our innovative agricultural businesses, but also to the investors that really support their work and make sure that the innovation continues.

The behavior of COFEPRIS is very unusual on the global stage. Not only have they not approved an agricultural technology in that time frame, but they have not approved a biopharmaceutical product in that time frame as well, and that backlog is numbering up around 100.

So this is incredibly disturbing. It disrupts the global marketplace, and because Mexico is such an important trade partner for us in our agricultural products, it hampers our innovators from developing new technologies not just for use in Mexico, but for use at home and for use around the world, and their potential impact to help stem the tide of climate change is being impacted by this slowdown. So we greatly appreciate the committee's attention to this.

Senator CRAPO. Well, thank you. And have we received any indication from Mexico's regulator as to why they have not made these approvals?

Dr. MCMURRY-HEATH. No. We know that this behavior started with the new presidential administration in Mexico. But our companies have received mysterious silence from the Mexican regulators since this backlog began.

Senator CRAPO. And then one final question; I am running out of time here. But I would just like you to state on the record—my understanding is these technologies that we are talking about are good both for the farmers and for the environment.

This is not something where there is some kind of a negative environmental impact that Mexico is trying to protect against. What we are asking is that they approve applications for products that would actually help us boost the economy and strengthen the environment. Am I right?

Dr. MCMURRY-HEATH. Absolutely. These crops bring undeniable benefits to nutrition and to climate change, and they are accepted here and around the world.

Senator CRAPO. Thank you.

The CHAIRMAN. Thank you, Senator Crapo.

Senator Stabenow?

Senator STABENOW. Well, thank you, Mr. Chairman. And of course, in listening to our leader's questions, I think you are going to hear a pattern today of things that we are very concerned about and issues that we share, and I appreciate all of you being here today.

Mr. Davis, rather than a question, I just want to say "amen" to what you said, and I want to thank Chairman Wyden and Senator Brown for leading our efforts to get us to a spot where we can have a level playing field for workers. We certainly need that in Michigan. We need that across the country. I was listening very closely to your concerns about the effectiveness and the funding needs of the contract legitimization process. And so we need to be working together, and, Mr. Chairman, I look forward to working with you to make sure things are being done the way that we anticipated when this passed.

Mr. Huttema, I also come from a dairy State. This is our number one commodity in Michigan, and I very much appreciate your comments about upholding both Canada's and Mexico's dairy commitments. We fought very hard for that. That was a top priority for me as a leader on the Agriculture Committee.

I am so glad that we are seeing a dispute settlement panel that was put together in May, and I know how important the dairy tariff rate quotas are. But I wonder if more broadly, in addition to our focus there, which is critical, in terms of export markets, when you look at the USMCA, what are some of the most important pieces to replicate when we look at future trade agreements?

Mr. HUTTEMA. Yes; great question. So, when you look at it, number one is market access, especially when it comes to Mexico. The zero tariff on our imported products there was a great thing to go after. Number two is, there is a resolution process put in place, which we have, and we will see how that plays out. Thirdly, I would say, when it comes to Mexico, protecting cheese names, common cheese names. I mean, we got side letters agreeing to that, and now it is just a matter of staying on top of it and working with the Mexican Government to make sure these things play out well.

So those three things, I think, are important moving forward.

Senator STABENOW. Thank you very much.

And, Dr. McMurry-Heath, good to see you. Biotechnology certainly has the potential to help us increase our productivity while helping farmers address the climate crisis, certainly. If we want to make the most of that potential and provide certainty for farmers and consumers and trading partners, I agree we need regulatory systems that are effective, science-based, and transparent, both here and abroad. I also agree that we need an Agricultural Negotiator as soon as possible to help with this.

I have long raised concerns with China's opaque biotechnology approval process, and it is now concerning to see Mexico making decisions that do not seem to be grounded in science and causing

long delays in biotechnology approvals. So I wonder if you might just speak a little bit more about the real-world consequences that decisions like these by our trading partners can have, and the impact on producers and future innovation.

Dr. MCMURRY-HEATH. Thank you so much, Senator Stabenow, and thank you for your continued efforts to really demonstrate how biotechnology can lead to improvements toward climate change and pest resilience. So China's opaque trade practices have been a very difficult path for our biotechnology companies for quite some time. On average, it takes our companies 7 years to get their products approved through China, and we estimate that this has cost over \$50 billion just in the 5-year period recently for U.S. farmers. So this is incredibly important to address, and we have every reason to believe that a similar analysis that we are conducting now will show similar results in Mexico.

So our innovators need certainty, and they need a path open to science that is sound. That is all we are asking for, and we think that will aid not just our farmers, but it will help us address hunger and reduce climate change.

Senator STABENOW. Thank you. I agree.

The CHAIRMAN. Thank you, Senator Stabenow.

We are going to go at least through a reading of everyone, and I believe we will be able to accommodate everyone quickly. The next person is Senator Grassley. I believe he is not available. After Senator Grassley, Senator Cantwell. I believe she is not available now, which means Senator Cornyn, who is available.

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

Mr. Huttema, when you say that, in farm country, a deal is a deal, apparently that does not necessarily apply to international trade agreements like the USMCA. I think we can all agree about the importance that the chairman and others have placed on enforcement, and certainly I would say that we ought to ask the U.S. Trade Representative to prioritize all these dispute resolutions and discussions with our Mexican and Canadian counterparts, and not just rely on the USMCA, what it says.

Former Justice Scalia used to point out that the Soviet Union had one of the most highfalutin-sounding constitutions in the world. But because they did not have an enforcement mechanism through an independent judiciary, it did not really mean much. So I agree with all my colleagues that we need to get the USTR to emphasize the dispute resolution and enforcement provisions.

I particularly want to state my concerns about how Mexico is favoring state-owned oil companies, which eliminates really the intent of the USMCA in dealing with these companies on a level playing field. I was one of 19 Senators who wrote a bipartisan letter to President López-Obrador, and he basically blew us off, which unfortunately reinforces what I said a moment ago. We need these enforcement mechanisms rather than just the rhetoric and language that people use when we pass these trade agreements.

I also want to associate myself with the comments of Senator Crapo when it came to the process by which the USMCA passed into law. Basically the Senate Finance Committee, the primary committee that was responsible for trade agreements in Congress, was excluded from the process by the then-USTR. I think that ex-

clusion jeopardizes the integrity and future of Trade Promotion Authority, which has delegated constitutional authority.

So let me get to something more specific, Mr. Davis. I know that labor had significant concerns that were addressed by proposals made by the chairman and Senator Brown.

I was a party to an op-ed piece with Senator Carper—who is the chairman of the Trade Subcommittee in the Finance Committee—that encouraged the administration to revisit the Trans-Pacific Partnership in some form. As everybody knows, our competition with China looms large for our country, and one thing we have that China does not have is friends.

I do believe that we would have more leverage dealing with China if we worked with our friends and partners in the region. But specifically what I wanted you to answer, Mr. Davis, is what would it take for organized labor to support a multilateral regional and comprehensive trade agreement in the Asia-Pacific?

Mr. DAVIS. Thank you, Senator. I think, from labor's point of view, we are a long way from there.

Senator CORNYN. Give me something specific on how we can get closer.

Mr. DAVIS. We have the first steps of a worker-centered trade policy, as Ambassador Tai frames it, and we are very supportive of that approach. That is going to take very strong enforcement, and frankly much stronger when we get outside of places like Mexico, where we have long, historic relationships. They are not always easy ones, but they are there. Where we get into countries that have non-market economies that are hurting American workers, countries that are dumping steel and aluminum today into our market, we are going to have to have a lot more enforcement, as has been mentioned a couple of times, and we are going to have to have a much more critical approach to folks who define themselves as our friends but then want to take money out of our bank account.

Senator CORNYN. Well, I know when China became part of the WTO, there was a hope that they would join the rules-based international order and actually comply with their agreements. Unfortunately, they have a history of not complying with their agreements and stealing our intellectual property and committing other violations of norms and laws.

Thank you very much.

The CHAIRMAN. Thank you very much, Senator Cornyn.

Senator Grassley?

Senator GRASSLEY. Thank you, Mr. Chairman. A very important hearing. We had a chance to discuss some of this last night when a few of us met with the Ambassador from Canada in their embassy downtown. I am going to start with Dr. McMurry-Heath.

Two months ago at the Finance Committee hearing, I asked Ambassador Tai about Mexico's failure to adhere to the USMCA commitments to issue broad biotech import approvals, and its recent decree to phase out GMO corn. I was pleased to see Ambassador Tai follow through with her commitment and raise the issue in meetings earlier this month in Mexico City.

Unfortunately, it looks like Mexico will not work with the U.S. in a good faith effort to resolve the issue and ensure Iowa farmers

full access to Mexican markets. What steps should USTR take in regard to enforcement actions for Mexico's treatment of agricultural biotechnology?

Dr. MCMURRY-HEATH. Thank you, Senator Grassley, for the question, and thank you so much for your leadership and your urging to Ambassador Tai to address the issue. This was a very important first step. However, as you know, more is needed.

And we really think it is time for the USTR to begin taking enforcement action by appointing an Agricultural Negotiator. We greatly appreciate Ambassador Tai's and Secretary Vilsack's efforts to date to try to engage and address this issue with the Mexican Government. However, an enforcement case would, at the minimum, give us a framework and a timeline to resolve the COFEPRIS-regulated delays in biotechnology approvals, and the December 31, 2020 decree against biotech crops. So it is incredibly important that we address this now with the Government of Mexico, so that a bad problem does not go from bad to worse.

Senator GRASSLEY. Well, there is an Iowan, Dr. Norman Borlaug, who passed away at age 95. But he did a lot of agricultural biotech research, and he did a lot of it in Mexico. He won the Nobel Peace Prize, presumably for his research saving over a billion people from starvation.

For those who do not know much about agriculture, could you share some other benefits of using genetically modified crops?

Dr. MCMURRY-HEATH. Certainly. We are facing hunger and nutritional shortages globally. Our technologies are able to use biotech to create pest-resistant crops. This cuts down on the need for pesticides. It increases crop yields. It makes agriculture a lot more sensitive to impacting the climate, and all of this helps us get more crops out to more people.

If you look at short stature corn, that is a crop that is designed to resist windstorms and make the crops much more high-yield when it comes to withstanding the weather changes that we are witnessing to date. So these technologies are incredibly important. We use science in almost every other setting to improve our lives, and this is just another area where science can lead to huge benefits.

Senator GRASSLEY. Mr. Huttema, USMCA found a way to change Canada's trade-distorting policies and reform Canada's dairy pricing system, including by eliminating its Class 7 program. However, we know that these changes only take place when they are fully enforced.

I was glad to see that in May, USTR announced that the agency will request a dispute settlement panel be established to consider Canada's failure to comply with tariff rate quota provisions. Does USMCA adequately protect American-made dairy products?

Mr. HUTTEMA. If the spirit of the trade deal is upheld, yes it could. But the way the Canadian Government and industry up there are behaving, it circumvents what we put in place. So as of today, no. So enforcement is needed.

Senator GRASSLEY. Also for you, are there other areas besides Canada's dairy TRQ provisions where you would like to see USTR take action?

Mr. HUTTEMA. Absolutely. When it comes to exports of product out of Canada—specifically milk protein isolates and skim milk powders—action is needed there as well. There were caps put in place, and they are creating products to circumvent that agreement as well.

Senator GRASSLEY. Yes.

Mr. Chairman, could I have one more question, please?

The CHAIRMAN. Sure.

Senator GRASSLEY. Okay. To Mr. Davis, do you think closing down the Enbridge Line 5 pipeline would do the same damage to U.S.-Canadian relations and cause Americans to lose their jobs?

Mr. DAVIS. Yes sir. We very much support keeping that pipeline open. Our members have been fighting hard for that.

Senator GRASSLEY. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Okay. I thank my colleague. The next three in order are Senator Menendez, Senator Thune, and Senator Carper, and then we have been joined by additional colleagues.

Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman.

If the United States is going to successfully diversify away from China, we need to continue to deepen our trading relationships with our neighbors in the western hemisphere. When it comes to addressing the challenges of migration in Central America, it is critical that we use all the tools at our disposal, including trade and economic development.

So taking a fresh look at CAFTA-DR is a natural part of both of those efforts, I believe. So, while we still need time to judge the effectiveness of all the changes, are there any USMCA provisions that you believe should be included or expanded upon in an updated CAFTA-DR?

Mr. DAVIS. Thank you, Senator Menendez. It is a very important question, and obviously a lot of people are thinking about, is this a model? Is it the floor, is it the ceiling? We think that USMCA, as we understand it right now, is a floor for enforcement.

But certainly, the kinds of programs that are being talked about for Central America should be addressing the serious violations of worker rights that exist throughout that region. So it does concern us a little bit, that sort of pitch to bring in private investment, recognizing that Central American countries have weak labor enforcement capacity and weak laws in many cases. Those raise a lot of concerns about whether this is really going to be effective in either improving living standards or as any kind of deterrent to migration. We need a lot more work.

Senator MENENDEZ. Dr. McMurry-Heath?

Dr. MCMURRY-HEATH. It is very important that we get CAFTA to focus on provisions that enhance cooperation with biotech. We really need to see our biotech innovations sent around the globe and have open access to markets around the globe.

Senator MENENDEZ. Let me ask you. As you may know, Nicaragua is a CAFTA-DR country. In recent months, Nicaragua's Ortega regime has arrested six presidential candidates and over a dozen prominent leaders from the private sector and civil society. We have not seen an authoritarian crackdown of this nature in our hemisphere in decades.

When Congress passed CAFTA-DR, I do not think anyone expected that it would end up with the United States extending trade benefits to an authoritarian regime. So do any of you believe that when we are faced with this kind of situation, when we have a trade agreement partner that makes a sharp authoritarian turn, they should continue to receive all the benefits of that agreement?

Mr. DAVIS. Senator, I think any kind of violation of human rights, including labor rights, is something that we have to take very seriously. We have to look at the mechanisms, whether that is Nicaragua or whether that is Guatemala or El Salvador, where there have been very serious labor rights violations and human rights violations as well, and Honduras, where human rights defenders have been killed.

So that has to be the frame through which we look at all of these agreements.

Senator MENENDEZ. All of you, either from a labor or from a business perspective, want to deal with countries that not only observe the rule of law, but if there is a dispute on intellectual property or a dispute on a contract, you can believe that you have a good opportunity to actually have that dispute fairly litigated in a court.

But when you have authoritarian rule, courts are not a question of the due process and the rule of law. So I personally believe the United States has to incorporate standards into future trade agreements to safeguard against the deterioration of democratic governance and the proliferation of corruption and human rights abuses.

Dr. McMurry-Heath, I know your organization has been closely watching the administration's work on the TRIPS waiver. Details on the scope, time frame, and other factors are going to be critical to make sure we get the outcome we all want: more vaccines distributed to those who need them, but of course with the appropriate safeguards. Can you describe your interactions with the administration on this issue? Have you been consulted as USTR develops their negotiating posture?

Dr. MCMURRY-HEATH. Thank you, Senator. We have met with USTR, but in doing so we made it clear that, while well-intentioned, the TRIPS waiver actually will not solve the issue of getting more COVID vaccines into more people around the globe. We completely agree that it is a humanitarian priority, an imperative that we do so, and no one is safe until everyone is safe from COVID.

But IP is not the right limiting step. Rather, our global SHARE initiative, which we can submit into the record, outlines really pragmatic steps we can take today to not have the 3- to 5-year delay it would take to actually build new manufacturing facilities that do not already exist.

But it would allow our companies to fully use the 70 global manufacturing partnerships that they have in place today, and give them the supplies and raw materials to manufacture really compliant vaccines and safe vaccines for patients around the globe tomorrow.

Senator MENENDEZ. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Menendez.

Of the next two, Senator Thune is with us, and Senator Carper will be online. The way the order is now, we have Senator Thune, Senator Carper, Senator Toomey, Senator Brown, Senator Cassidy, and what we are doing is just calling through in order of appearance.

Senator THUNE. I was here at gavel down.

The CHAIRMAN. You were here at gavel down. Well, this is in order of appearance, but let me follow it up with you and let us just keep moving, okay? All right.

Senator Thune then Senator Carper.

Senator THUNE. Good morning. Thank you, Mr. Chairman, and thank you for holding this important hearing.

While the focus of this hearing is on USMCA, I want to reiterate my concern that it is almost August and there is still not a nominee for Chief Ag Negotiator at USTR. It is an issue I have raised with Ambassador Tai and more recently with other USTR nominees. The lack of an Ag Negotiator is deeply concerning to farmers and ranchers in South Dakota and across the country. I strongly encourage the administration to fill this role as soon as possible.

In that vein, I would like to ask you, Dr. McMurry-Heath, can you tell us about the importance of having a Chief Ag Negotiator to better engage with Mexico and Canada? And beyond the USMCA, how would having a Chief Ag Negotiator benefit U.S. workers and businesses?

Dr. MCMURRY-HEATH. Well, it is very important that we hold all of our trade partners to our trade agreements, and USMCA is really setting the gold standard for science-based trade policies and making sure that our regulators are paying attention to the science, rather than misplaced concerns, when judging our biotechnology crops.

An Ag Negotiator, a Chief Ag Negotiator at USTR, would be our point person on this and would have the most pivotal influence to make sure that these points are made with all of our important trading partners. But even in the absence of a USTR Chief Negotiator, it is an imperative that we act now to try to right some of the missteps that we are seeing so far in the implementation of USMCA.

Senator THUNE. So, as a number of my colleagues I think have mentioned, Trade Promotion Authority expired less than a month ago. TPA is critical to opening markets and expanding opportunities for American workers, businesses, farmers, and consumers. TPA was instrumental in the successful passage of USMCA, and it keeps the U.S. leading in trade, which is why its renewal is so important.

Dr. McMurry-Heath, how significant is renewing TPA to your industry and, more broadly, to our economy?

Dr. MCMURRY-HEATH. It is critically important, and BIO is fully supportive of renewing TPA. One of the things that we desperately need in both our multilateral and bilateral trade agreements is that we modernize U.S. trade policy and pay close attention to intellectual property.

BIO represents a lot of small companies as well as large companies, and for many of our small companies their intellectual property, their ingenuity, is perhaps their most valuable resource. Until

our trade policies fully recognize and protect that around the globe, then all of our businesses and the investors that support them are at risk.

Senator THUNE. There are a number of cheese producers in South Dakota that rely on generic names like asiago and parmesan to market their product, not only in Mexico and Canada, but around the world. In a side letter to USMCA, there was a list of common cheese names to be protected from the EU's abuse of geographical indications.

Mr. Huttema, could you share insight into how the EU goes about utilizing or seizing these common names and how much of a concern this is to U.S. producers?

Mr. HUTTEMA. Yes Senator, it is a very important issue for American producers and processors. The EU goes about this not only when it comes to cheese, but meat and wine and a host of other products. They essentially do it to have the consumers in those countries not be able to recognize what truly is a cheese that is exactly the same.

So, when it comes to producers in South Dakota that export some of these cheeses, they would have to relabel, remarket, and consumers would be totally unaware of what they would be buying. So the EU definitely does do this as a practice to try to withhold us from certain markets.

In the case of USMCA and Mexico, those side letters were very helpful.

Senator THUNE. Thank you.

And finally, Dr. McMurry-Heath, Mexico was consistently the top market for U.S. corn exports, valued at \$3 billion last year. Our farmers and ranchers were some of the strongest advocates for passage of USMCA. However, farmers in my State are concerned that Mexico is backsliding on its USMCA commitments, because they have not approved any new biotech crops since the treaty was ratified last year. In fact, Mexico has not approved any biotech crop traits since May of 2018. So can you speak to this issue and what impact it may have on U.S. corn farmers when it comes to trade with Mexico?

Dr. MCMURRY-HEATH. Certainly, Senator. This is an incredibly important issue. To see the breakdown of an important global regulator like COFEPRIS, to the point where they are not approving, not only biotechnology agricultural crops, but also biopharmaceutical products, is almost unheard of, and it creates such uncertainty in this very interlinked and interrelated global marketplace.

When we see a breakdown in our ability to innovate in corn crops in the U.S. to export to Mexico, that also impacts our ability to innovate for almost all other markets, including our own. We need certainty and we need action to make sure these innovations have a path forward, as long as they are proved safe and effective.

Senator THUNE. Thank you.

The CHAIRMAN. Our next three will be—Senator Carper will go next and then Toomey, Brown, and Cassidy in order of appearance. Senator Carper?

Senator CARPER. Before I ask questions, could I say a word about Mike Enzi?

The CHAIRMAN. Of course.

Senator CARPER. Yes. I remember well when I was a brand new member of the Senate, oh gosh, 20 years or so ago, that I ended up presiding over the Senate. One of the people who asked for recognition was Mike Enzi, whom I really did not know.

He spoke for what I—he was the senior Republican on the Health, Education, Labor, and Pensions Committee, and the senior Democrat was Ted Kennedy. He talked that day about how the two of them were able to get a lot done and accomplish a lot by working together, and he mentioned—in his remarks, he mentioned the 80–20 rule.

I did not know—I had heard of the 80–20 rule in other contexts, but I did not know what he was talking about. So I gave a note to a page and asked him to come and talk to me when he finished, before he left the floor, and he did. And while somebody else was speaking, I said, “What is the 80–20 rule?” And he said, “It is the rule that guides Ted Kennedy and me.” I said, “Well, what is it?”

He said, “Ted and I agree on about 80 percent of the stuff before our committee, and we disagree on maybe 20 percent of the stuff. What we decided to do is focus on the 80 percent where we agree, and the 20 percent where we disagree, we will come back and deal with that another day.” When I mourn, along with our colleagues, seeing the people who are mourning the passing of Mike Enzi, I always think about the 80–20 rule. It is something that has guided me for, oh, the past 20 years. It is something that, as we try to come to a conclusion and a good resolution with respect to infrastructure, different kinds of proposals that are put forth, maybe we should remember Mike Enzi and that 80–20 rule. So thank you. Thank you for letting me say that.

The CHAIRMAN. Thank you.

Senator CARPER. I want to thank our witnesses today for joining us. About a year since the USMCA treaty went into force, as chairman of the Environment and Public Works Committee today, protecting the air, protecting the water, the land that we all share is of the utmost priority to me and the members of our committee, and I think the members of the Senate.

I was proud to work with many of our colleagues in the House and Senate to help develop the environmental provisions in the USMCA, which are the most comprehensive of any U.S. trade agreement and which, I think, will serve as a model for negotiations on other trade agreements as we go forward.

I believe trade policy is one of the best tools to protect our environment and work with our allies on shared environmental goals. However, in order for these environmental provisions to be more than just words on a piece of paper, they must be enforced.

Ms. Lowell, could you take a moment to share with us some of the areas of progress between the U.S., Canada, and Mexico when it comes to addressing these environmental commitments, please?

Ms. LOWELL. Sure. Well, we were certainly happy to see environment have its own chapter in the USMCA, and really believe that enforcement of trade measures is important because, without enforcement, we just have a wish list of what we would like to see rather than what is a binding commitment to real change happening, either on the water, on land, or with the environment.

So, just some items that have happened since the USMCA has been implemented for the past year. There have been two places where the public has actually raised a submission to the committee. The USMCA provides a mechanism for the general public to take action if they believe an environmental law is not being effectively enforced by the U.S., Canada, or Mexico.

And so anyone can file a submission on enforcement matters when they see something that is not happening. So just a couple of examples that have happened since 2020—there have been two submissions following this process.

The first was in Mexico, highlighting where the Mexican Government was not following its rules to protect loggerhead sea turtles in the Atlantic and Pacific. So that is an example of someone raising, “You need to do more, Mexican Government.” Secondly in Canada, there was a submission regarding the port authority, that they were not following their process similar to our NEPA process, the Canadian Environmental Assessment Act, on taking in the impacts of expanding a port in British Columbia.

So I think both of these examples show that the mechanisms can work, where the general public can raise areas where they see that the countries need to do better.

I really encourage the Senate Finance Committee and others in the Senate and in Congress to really help push the U.S. to do better in our own areas, as well as identify ways that we can push our trade partners to ensure that they are enforcing our laws because, again, we do not want the environmental chapter just to be a wish list of things that would be nice to do but actual commitments, binding commitments that the countries are doing.

Senator CARPER. Thank you. Thank you for that response. Just a quick follow-up if I could, Ms. Lowell. The USMCA Implementation Act included significant funding, as you will recall, for environmental monitoring and enforcement. However, some stakeholders have raised concerns about transparency on the use of these funds.

Could you just take a moment and discuss what additional transparency is needed, to give us recommendations on where we should enhance our focus when it comes to the use of these funds?

Ms. LOWELL. Sure. So specifically for NOAA, with that money for implementation of the Seafood Import Monitoring Program and addressing IUU provisions, we have yet to see how that money has been spent. So we would love to have NOAA report to you all and the public on how they have used those resources toward implementation of the USMCA’s IUU provisions, and including the money to build capacity in Mexico as well.

The resources were definitely needed. NOAA outlines in its own report in June that it was limited in resources on the implementation of that program to help keep illegal product out of the U.S. So we feel like that \$8 million should have given them a significant investment in the infrastructure to make the program successful, but we have not seen to date how that has been spent.

Senator CARPER. Okay, and one more quick one. Mr. Davis, would you please share with us thoughts on how the labor and environmental reporting mechanisms have functioned since the USMCA entered into force, as well as the opportunity for their continued improvement, please? Just briefly.

Mr. DAVIS. Yes. It is a big improvement. I would say we are still having difficulty getting data on a lot of metrics from Mexico, and that is a concern that the Board raised in its report. So we need to do some more work in that area.

Senator CARPER. Okay. And, Ms. Lowell, I will follow up with you with a question for the record on the same question, if I could. Thanks a lot; very, very much. This is important stuff, and we are grateful. Thank you.

The CHAIRMAN. Thank you, Senator Carper.
Senator Cassidy?

Senator CASSIDY. Mr. Davis, I am going to ask you a couple of questions that may seem far afield and are questions I do not have the answer to, which will make it more interesting. I read that there was a problem of China sending steel and aluminum through Mexico, as if it was being made in Mexico, but merely it was a pass-through to our Nation circumventing, if you will, the rules. Did I remember that correctly?

Mr. DAVIS. Yes sir.

Senator CASSIDY. And how does USMCA address that?

Mr. DAVIS. Actually, we have been trying to address that through a number of pieces of legislation which have been proposed, and through the government's enforcement of current anti-dumping and circumvention rules. We are very pleased that the administration has been with us fighting steel dumping, aluminum dumping, which affects our members directly, affects members in other manufacturing unions and our critical supply chains.

Senator CASSIDY. Can I ask you, is there any evidence of complicity in the Mexico Government, that they would be turning a blind eye towards Chinese aluminum and steel being dumped into our Nation passing through Mexico? Or are they cooperating in determining this?

Mr. DAVIS. I am not sure I have the details to give you a direct answer to that.

Senator CASSIDY. Okay.

The other thing—again this seems far afield, and I may ask Ms. Lowell this as well—we speak of Mexico's compliance with labor laws and with environmental regulations. There is a certain cost associated with that. We know that; that is okay. But China does not enforce such regulations. The absence of enforcement therefore results in, effectively, a subsidy given to people who wish to locate their manufacturing plants there. Again, they do not have the cost of compliance with labor or environmental laws.

But in turn, China seems to violate both with seeming impunity. Any thoughts on that?

Mr. DAVIS. We do not have a level playing field with non-market economies, and we have supported legislation that would address that more directly.

Senator CASSIDY. How can we address the absence of environmental enforcement and/or labor law enforcement in China, again thereby giving the playing field an advantage tilted towards them vis-à-vis Mexico, us, and others?

Mr. DAVIS. We have to keep those, those subsidies, direct and indirect, from filtering into our market, sometimes through our legiti-

mate trading partners. But we cannot, cannot let China get away with that.

Senator CASSIDY. Ms. Lowell, any thoughts on that which I just asked Mr. Davis?

Ms. LOWELL. Yes, absolutely. I mean, I think China is really putting our U.S. fishermen at a disadvantage, and it comes down to putting import controls in place that ensure that any seafood coming into the U.S. is legally caught and produced legally, which means not using forced labor or other human rights abuses.

Oceana strongly believes that more transparency and documentation on seafood products coming in can help just ensure that an import is legal. So the Seafood Import Monitoring Program right now only applies to 13 types of seafood, which are not some of the ones that are also—

Senator CASSIDY. Let me stop—let me stop you.

Ms. LOWELL. Sure.

Senator CASSIDY. Because I think we are in total agreement on most things. I represent a bunch of shrimpers in Louisiana. Now one thing I will say though, practically speaking, shrimp is what, 80 percent of what we import.

If we are going to put in systems—and you initially aspire to do everything—it seems like you are going to overwhelm your system, as opposed to starting with that which is highest volume/most problematic and then growing in capability. Would you agree or disagree?

Ms. LOWELL. I disagree with that. I think the information flow should apply to everything, and when you target resources—

Senator CASSIDY. Yes, but it is not that we should not. It is just—do we have the capability to start and immediately go to scale on everything?

Ms. LOWELL. That information allows you to target the shipments at the highest—

Senator CASSIDY. You are missing my point. The question is, how rapidly can we scale? Not that ideally we would not do it, but rather—I will move on, just because I am not sure it is worth belaboring.

Dr. McMurry-Heath, I am not sure that—you have probably already been asked this. I apologize; I have been in another committee hearing. How has Mexico complied with respecting IP vis-à-vis our biologics, if you will, pharmaceuticals?

Dr. MCMURRY-HEATH. I wish I had the answer to that question, Senator, but because they have not so far actually approved our agricultural biotech crops, it has been difficult to see with really some of our cutting-edge innovations. So far, that is an area of concern, and we keep watching it.

But we would love to see more innovations going into Mexico so that we can then safeguard the intellectual property.

Senator CASSIDY. But under the terms of the treaty, they are supposed to approve that; correct?

Dr. MCMURRY-HEATH. Yes.

Senator CASSIDY. Okay. With that, I yield back. Thank you.

The CHAIRMAN. I thank my colleague. The next two are Senator Bennet and then Senator Young, who I believe is online, and then Senator Casey.

Senator Young, are you online?

Senator YOUNG. I am, Mr. Chairman. Thank you.

The CHAIRMAN. Go ahead.

Senator YOUNG. Well, I welcome our panelists. The USMCA is a landmark agreement, critical to our economic success in the State of Indiana. We are the most manufacturing-intensive State in the country, and also one of the Nation's top 10 States for ag exports.

In looking at corn and soybean production, 87 percent of this year's corn acreage was planted with biotech varieties in Indiana, and 91 percent of soybean acres were planted using biotech varieties. Ultimately, Mexico has taken steps that threaten the market reliability for ag products.

No biotech approvals have been issued in over 2 years. Executive decrees also attempt to phase out the use of genetically engineered foods, and in case anyone is in need of a reminder, biotech allows crops to withstand drought, pests, flooding, all while increasing yields and therefore reducing the prices of these important commodities and reducing the need for herbicide application. So it leads to a healthier environment and also a healthier product.

Dr. McMurry-Heath, given what the science says about the benefits of biotech, what is at stake for our farmers and innovators should Mexico's decrees be implemented?

Dr. MCMURRY-HEATH. Thank you so much, Senator, for the question, and yes, there is a lot at stake. Biotechnology really allows our agricultural innovators to develop new crops that can withstand the global warming that we see to date and prevent future global warming going forward.

We have seen so far that there has been impact from this kind of uncertainty, in terms of trying to get the investment needed to really speed those innovations—and those innovations are critical. We have a company called Benson Hill that is trying to use CRISPR, a technology that just won the Nobel Prize in science, to engineer very specific, high-nutrition crops that can be grown in almost any hydroponics setting in any small neighborhood or low-income area.

This could allow us to address hunger. It could allow us to get more nutritious foods to inner-city and poor communities in the U.S. But the hampering of this technology at the international trade level is also hampering our domestic ability to use these technologies to help Americans and others around the globe.

Senator YOUNG. Well, that is incredibly compelling testimony at a time when there is much discussion here in Washington, across the country, and back home in Indiana about the price of our food. Inflation is among the greatest concerns for my constituents, and we are talking about something that actually could increase the cost of food—is increasing the cost of food.

How might these delays be impacting—we will move beyond the consumer level to the ag sector more generally. How are the delays impacting the ag sector, particularly for States in the Corn Belt?

Dr. MCMURRY-HEATH. Yes, so we started to look deeply into this question with Mexico, but we can use China as an example. In 2018, BIO and our international partners conducted an extensive economic analysis on the impact of regulatory delays in China, where it takes an average 7 years for our new agricultural crops

to get approved. This has cost the U.S. nearly 34,000 jobs between 2011 and 2016.

So we can see that these trade agreements have a real-world impact on Americans' earning capabilities and job opportunities, not to mention global warming, nutrition, and hunger.

Senator YOUNG. And hunger, something that is being exacerbated by the COVID pandemic, with supply chain challenges and even some challenges at the production level. We see the number of people across the world on the verge of starvation spiking.

How can Congress be helpful to Ambassador Tai, in her role over at USTR, in seeking a resolution to this issue before irreversible harm is caused?

Dr. MCMURRY-HEATH. We appreciate the bipartisan efforts to really support Ambassador Tai in her efforts to try to negotiate with the Mexican Government. But it is critically important that we see movements like the appointment of a Chief Agricultural Negotiator for USTR, so that we can enhance our efforts and show the Mexican Government that we are serious about these concerns, and that they must be addressed urgently.

Senator YOUNG. Thank you, Doctor. I am out of time.

The CHAIRMAN. I thank my colleague.

We are going to try and see if we can get Senator Casey, Senator Whitehouse, Senator Hassan, and Senator Cortez Masto in before we have to go vote.

Senator Casey?

Senator CASEY. Mr. Chairman, thanks very much. I want to join a lot of our colleagues across the Senate in noting the passing of Senator Mike Enzi. I had a longer commentary in the HELP Committee just a few minutes ago, but I did want to say how saddened we were about the accident that he suffered and then the terrible and tragic passing of Mike Enzi.

Probably the best way to describe Mike Enzi is, he was a paragon of decency in a town where that quality is in short supply. We are just thinking of his family and praying for Mike. We will miss him more, I guess, as a human being than anything else, but of course as a colleague as well.

I also want to commend the chairman for, not only calling this hearing to focus on USMCA and its implementation, but also to commend Chairman Wyden's work to get this agreement done. I realize it was work done by the previous administration, but that agreement would be well short of what I could have supported were it not for the work of Chairman Wyden and Senator Brown and others in the House and the Senate. So I want to commend them.

Mr. Davis, I will start with you. I will be introducing soon the Market Economy Sourcing Act, and that will be with Senators Brown and Warren. This legislation establishes a supplemental rule of origin for non-market economies like China that can ensure that countries like China cannot free ride on trade agreements.

As you know, half of all content under existing rules of origin can come from countries outside of those participating in a trade agreement. This means a significant share of content for goods receiving preferential market access under a trade agreement can come from Communist countries like China, half of the content. That is not only counterproductive but it can further enmesh our supply

chains, including critical supply chains, with those of the Chinese Communist Party.

So, Mr. Davis, my question for you is, can you discuss how implementation of policy like that embedded in the bill I am introducing will help, number one, secure critical supply chains, and number two, contribute to high standards, and number three, curb free-riding from Communist countries on trade agreements?

Mr. DAVIS. Thank you, Senator. And the Steelworkers are very proud to have endorsed this legislation that you are sponsoring. In fact, I think under TPP, it would actually have allowed up to 60 percent of an automobile's content to come from outside member countries, including non-market economies, as you stated.

So this is really fundamental towards reinvesting in the American workforce and in our critical supply chains, so that we are prepared for the next pandemic or the next ship shortage or all the things that are really weighing down on the growth of our economy and the possibility of expanding the income of our workers at this point.

Senator CASEY. I want to thank you, and thanks for your work on this and your scholarship in this area, as well as your service to the country. Also, the last thing I wanted to ask you about was if you could discuss how you are working to ensure that the work you are doing in the context of both labor and labor rights is being employed to support all workers, including women and historically disadvantaged communities?

How are you ensuring that women are included at the table from the outset with regard to both the engagement and consultation process? Senator Cortez Masto and I have worked on this with a number of our colleagues, and I just wanted to get your comments on that, and I will be done after that.

Mr. DAVIS. Thank you, Senator. That is a fundamental issue. That is something that the whole labor movement is 100-percent behind, and I think in the USMCA case specifically, there are some interesting things.

For example, Mexican labor law now requires that there be a gender proportionality in the elected leadership of trade unions. That is more progressive than what we have in the U.S., although we are trying to get there on our own.

Making sure that there is compliance with that and making sure that other legislation that prohibits pregnancy testing, particularly in the Maquiladoras—this is a problem that has been going on for decades. It is well-documented, but we know it is still happening, and we look forward to using this mechanism to push back on that.

Senator CASEY. Thanks very much.

Thanks, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Casey, and I remember coming to Pennsylvania to listen to working families on these issues, and you and Senator Cortez Masto both have been wonderful advocates.

Here is where we are. We are going to try to get everybody in and still make this vote. I think Senator Whitehouse may be online, is that right? Okay. Senator Hassan, are you online? Senator Cortez Masto is here. And, colleagues, what we are going to do for

those who are here and were listening, Senator Crapo should be arriving soon. Then I will go vote, and we will just keep it going.

Senator CORTEZ MASTO?

Senator CORTEZ MASTO. Thank you, Mr. Chair, and thank you to the panelists. Thank you for being here today.

Mr. Huttema—did I pronounce that right? Close enough; all right. Farming and ranching is the lifeblood of—I mentioned the rural economy in my home State of Nevada. It is actually responsible for about \$1.5 billion in economic output and over 8,000 jobs across the State of Nevada. It is critical that we ensure that our USMCA partners adhere to the dairy provisions they agreed to, as USTR did in initiating a dispute settlement over Canada's tariff rate quotas.

My question to you is, what additional steps should we take to work with USTR to ensure that Canada is abiding by the protections for U.S. dairy farmers provided for in the USMCA?

Mr. HUTTEMA. Yes, thank you, Senator. So a big part of what needs to be done is just oversight and monitoring. So, when it comes to them skirting issues, I do not believe that will ever stop. So organizations like National Milk Producers, IDFA, are in that arena and see what is going on.

So it is a matter of constant monitoring of what is going on. So USTR is a small group. They do not have a large workforce that can go out and do this. I think we have to count on the organizations in place to provide that information.

Senator CORTEZ MASTO. Okay; thank you.

Mr. Davis, you mentioned in your testimony that the Independent Mexico Labor Expert Board's July 7th report on the USMCA implementation raised concerns about four areas: transparency, the contract legitimation process, budgeting and staffing of Mexico's new labor institutions, and U.S. technical cooperation.

I am curious. Of these four concerns, which would you say is the most crucial to focus on in order to facilitate the shift which you have identified from protection unions towards democratic labor organizations?

Mr. DAVIS. It is a really hard question, Senator, so let me try to answer it this way. I think there are three key things that we need. We need strong enforcement, and Brown-Wyden sets the floor. We need to be going up from that floor and making sure that that works effectively. We need to support the process that Mexico has started of creating new labor market institutions and new domestic enforcement mechanisms, and we need to help workers build their own capacity, because a democratic labor movement in Mexico has been repressed for 50 years at least.

You know, they do not just come out—there are some great folks, but they do not come out overnight with the ability to come and use the rapid response mechanism and other tools or even the domestic laws. So I cannot really say which one is more important than the other because if we do not do all three, it is going to be an unbalanced stool, and it is going to fall over. But I am confident that we can do all three things.

Senator CORTEZ MASTO. Thank you. Again, thank you to the panel members. I appreciate the conversation today. I yield the remainder of my time.

The CHAIRMAN. I thank my colleague.

So, calling again in order of appearance: Senator Sasse, Senator Scott—and Senator Warren is here. Senator Warren, you and I both have to vote. Where is Senator Brown? All right. Senator Brown, have you voted? All right.

What I will do is, Senator Warren is going to go next. Let us have Senator Warren go next for 5 minutes, then Senator Brown, and I will meanwhile go vote and get back so my colleagues can vote.

Senator Warren, and then Senator Brown.

Senator WARREN. Thank you, Mr. Chairman. So, for too long our trade rules have undercut workers, promoting offshoring and a global race to the bottom in labor and environmental standards. Rules get written this way because our trade process is rigged in favor of corporate interests. But it is not just the negotiation of new deals that puts corporate profits ahead of workers; it is also the enforcement of existing rules.

Mr. Davis, our trade officials have not bothered to put many enforceable labor protections in our trade agreements, but they also do not have a good track record of enforcing the few labor standards that we do have. The U.S. Trade Rep and the Department of Labor—the agencies that share responsibility here—have historically been very slow and very hesitant to bring any labor cases. So let me start with this, Mr. Davis. I want to focus for a minute on the track record prior to the USMCA, the trade deal that we are discussing today.

Before the USMCA, how many times had the U.S. brought a labor violation case under a trade agreement?

Mr. DAVIS. Once.

Senator WARREN. One. Only one labor case ever among the hundred-plus trade disputes that the U.S. has ever initiated, and that one labor case happened more than 2 years after the AFL-CIO complaint was filed in 2008. It then took another 5 years after the case was finally brought to get a final ruling which, by the way, was that the union and the workers were right all those years ago. Guatemala had failed to enforce its labor law, but it could get away with it on a technicality.

Mr. Davis, I think it is fair to say that this is a very, very poor rate of enforcement actions. Is it because there are not many complaints about labor violations in the first place—is that the reason that we have such a bad record here?

Mr. DAVIS. No.

Senator WARREN. No. So numerous labor issues have languished for years, with only one enforcement action. Which brings me to the USMCA. A key improvement, secured with leadership from Chairman Wyden and Senator Brown, is the rapid response labor mechanism, which ensures that workers get relief in months, not years or never. Under this mechanism, when the U.S. Government receives a complaint that workers' rights are being violated, in a Mexican factory for example, it has 30 days to determine whether there is sufficient, credible evidence of a violation. If there is, USTR must initiate a complaint with Mexico.

USTR has already done this once, so they have already matched the standard of the previous years under the earlier trade agree-

ment, and it has done this based on a complaint from American and Mexican unions. This piece of USMCA is a step in the right direction. But enforcing the rules should not be limited to just one part of one trade deal.

So, Mr. Davis, would it help if the U.S. Government committed to reviewing and acting upon any complaint that a trading partner is violating any labor commitment, within say, months instead of years or never?

Mr. DAVIS. Senator, I think that is certainly the direction that we would like to see. I would just say we could go further in the case of Xinjiang, you know. We are using withhold release orders. That is for forced labor, and forced labor clearly has to be immediately addressed.

But why is violation of freedom of association, firing hundreds or thousands of workers, or gender discrimination—I think forced labor is worse, but that does not mean that those others do not deserve a similarly rapid and effective response.

Senator WARREN. Well, I appreciate that very much, Mr. Davis. You know, any future trade agreements must include strong protections with automatic enforcement and automatic deadlines. But USTR and the Labor Department could decide right now to update their own rules, to make sure that the Labor Department is responsive and fair in how they handle all labor complaints, not just those under the USMCA. If we want trade policy to actually start working for workers, we need to make the structural changes that ensure that workers' concerns are addressed.

So thank you very much. Thank you, Mr. Acting Chairman.

Senator CRAPO [presiding]. Thank you, Senator.

Senator Brown?

Senator BROWN. Thank you, Senator Crapo, and thanks to you and Senator Wyden for holding this hearing. Senator Warren, thank you for the comments that you made. Thanks all of you for shining a light on the Brown-Wyden rapid response mechanism that many on this committee in both parties worked on, one step to reforming our country's approach to trade policy, a departure from where we have been. We are now looking at trade as worker-centered—and Mr. Huttema might say farmer-centered—rather than corporate-centered trade policy, and that is important.

Ohioans know that in my entire career, I never voted for a single trade agreement until USMCA. Since NAFTA was enacted, thousands of workers, Dayton to Lordstown, Lorraine to Fremont to Mansfield, where I grew up, saw \$30-an-hour manufacturing jobs move to Mexico, where workers made no more than a couple of dollars an hour for the same work.

Independent economists at the Economic Policy Institute noted that in the first 11 years of the agreement, we lost 1 million jobs across the country. Mr. Davis certainly knows, studies have confirmed the agreement had only a modest impact overall on GDP.

The Mexican media pays attention to this hearing. We know that. I want to speak directly to workers there and in the U.S. The Brown-Wyden rapid response mechanism labor enforcement provisions were put in place to empower all workers to exercise their right to form a union, to alert us of any interference or strong-arm tactics of their labor rights. We frankly have seen that in both

countries. And in the United States—and maybe in a bigger way in Mexico—every worker should have a copy of their union contract. The success of this agreement depends on enforcement and implementation.

So, Mr. Davis, my question is to you, and I enjoyed meeting you early, briefly this morning. You raised concerns about implementation. Can you elaborate on the Independent Mexico Labor Expert Board's recommendations and what will need to take place to address them?

Mr. DAVIS. Senator, I would answer it this way, to do it quickly. You remember that we had a problem with Goodyear, and workers were fired for trying to start an independent union. They have not gotten their jobs back, although some of them are still trying.

The same protection union that was at that Goodyear plant is the protection union that is at the General Motors plant in Silao. And it may be that the workers, despite the company having 4 months and then the union having a 4-month period to carry out this legitimation vote, they might still vote that contract down.

But it is going to be really hard. They do not have a union, so even if they vote the contract down, Medina or another CTM union can come back the next day and try and get it. So this is—we are making progress here, but we have to do a lot more to push back on the protection union czars like Medina and some others, who still control the Mexican labor force.

Senator BROWN. Thank you, Mr. Davis. I want to make clear, as we continue—and as Senator Menendez said, building on his comment/question, most of us on this committee see USMCA as the minimum standard for trade agreements going forward, especially with countries we do not have a longstanding relationship with.

We will need more, we will need much more robust enforcement of labor rights. Brown-Wyden is the basic position. It is so important. Speak to why this committee, Mr. Davis, should view USMCA as the floor not the ceiling for trade agreements around the world.

Mr. DAVIS. Just because of the risks that workers face on a daily basis: firing, blacklisting, a black list, pregnancy discrimination—which we mentioned—threats, beatings, murder. In Mexico, there are still nine cases of trade unionists who have been killed, including an American, that are unresolved, some of these going back 10 or 15 years.

Employers, whether it is in the U.S. or Mexico, know that it is quicker and cheaper to fire the union leaders and drag out the legal process rather than agreeing. And we want to change that balance. There are a lot of workers—not just in Mexico but in Central America, Colombia, another place with a terrible labor rights record—who share that vision and that ideal. Until now, they have not had the tools to do it. We think that we are starting to get some of those tools, and we want to get to work and build on it.

Senator BROWN. Thank you. One final point, Senator Crapo. It is vital to my State. Our trade policy only works for American industries if we take enforcement of dumping and over-capacity issues seriously. That is why I have introduced our bipartisan bill Leveling the Playing Field 2.0 to update our trade remedy laws, to make sure we are enforcing our trade laws against trade cheats around the world, including those who try to get around our laws.

Senator Cassidy brought up this point earlier. I thank the United Steelworkers for endorsing this bill. Thank you, sir.

Senator CRAPO. Thank you, Senator Brown. Next we have Senator Toomey with us remotely, I believe.

Senator Toomey?

Senator TOOMEY. That is right. Thank you, Senator Crapo.

The hearing today is about USMCA enforcement 1 year in, and several witnesses have alluded to the importance of what the Biden administration calls “worker-centered trade policy.”

So let us take a look at the impact of this new USMCA and enforcement upon workers. USMCA’s and NAFTA’s biggest benefit to workers clearly comes from its trade liberalizing provisions. The American economy and the American workforce indisputably benefited enormously from NAFTA. U.S. exports to Mexico grew five-fold. Under NAFTA, the U.S. consistently set new records year after year as the world’s number one manufacturer. Currently, 14 million U.S. jobs rely on trade with Canada and Mexico. There are over 500,000 such jobs in Pennsylvania alone.

These jobs pay on average 15 to 20 percent more than jobs that were lost. NAFTA already substantively liberalized almost all North American trade. There was complete reciprocity. We had zero tariff on 100 percent of manufactured goods, zero tariff on 97.5 percent of agricultural goods.

Now USMCA contains some narrow improvements upon NAFTA like improved digital trade provisions and a very slightly expanded access to the Canadian dairy markets. But most of the USMCA’s new provisions moved us away from free trade and towards managed trade instead.

Hundreds of millions of dollars of U.S. taxpayer money are set to be spent in Mexico to monitor their environmental and labor practices. This is an egregious misuse of hard-earned taxpayer funds, footing the bill for a foreign country’s enforcement of its own domestic laws. Now for all this investment, what has been the impact? Well, the jobs impact that is projected is basically negligible. In 2019, the ITC report projecting the impacts of USMCA stated that on balance, if we put aside, leave out the positive effects of the digital trade provisions that increase certainty, the rest of the USMCA will restrict trade and cause employment in the United States to decline by 54,000 jobs.

The primary reason for negotiating NAFTA was to reduce our trade deficit with Mexico by restricting free trade in autos. USMCA represents a misguided attempt to diminish Mexico’s comparative advantage in some categories of auto production. So are auto manufacturers flocking back to the U.S. after USMCA passed? Not really, and the U.S. trade deficit in goods with Mexico has gone up since USMCA passed. An ITC report written this year on the impact of the trade agreement finds that on balance, there is simply no clear evidence of USMCA causing any overall shift in auto production in the U.S., and that is despite an extremely aggressive interpretation of the enhanced auto rules of origin and new “labor value content” provisions designed specifically to shift production to the U.S.

Are any U.S. jobs gained from the rapid response labor mechanism or the environmental provisions? Not yet, unless you include

the bureaucrats hired by the government for enforcement. In fact, the rapid response labor mechanism's only confirmed impact on American workers thus far is arguably negative. In my State, constituent jobs are at stake as an investigation continues into one of my constituent's Mexican subsidiary. The firm is given no details about the investigation and no recourse to defend themselves, caught up in a fight between the Mexican and U.S. Governments in which they face substantial financial impact if the mechanism allows the U.S. to block their components at the border.

Outside of the digital trade provisions, there is really very little evidence that USMCA's new provisions will be good for U.S. workers. What we do know is that trade liberalization helps workers. It creates high-paying jobs. It gives high-quality low-cost choices to consumers. If the Biden administration wants to truly pursue a work-centered trade policy, they should focus on pursuing new FTAs, lowering tariff and non-tariff barriers to trade, and expanding export markets. These are the policies that demonstrably increase high-quality job opportunities for U.S. workers.

Free trade is the best mechanism that we know of to give the highest standard of living for the largest number of people. Over 39 million U.S. jobs, one out of every five, exist thanks to foreign trade. The Biden administration should seek to expand that number by pursuing new trade liberalizing policies.

Thank you, Mr. Chairman.

The CHAIRMAN. All right.

Senator Whitehouse, I believe, is online. Is that correct?

Senator WHITEHOUSE. Yes, I am here and online, and my questions are for Beth Lowell. So we are having a double online here: online Senator and online witness. I am very happy that Oceana is a part of this hearing, and I want to particularly thank Chairman Wyden for making sure that Oceana was a part of this hearing.

Very often—in fact, almost without exception—on occasions in which we get environmental conditions into trade agreements, the enforcement somehow manages never to appear. I think the focus of this committee on the oceans provisions of the USMCA is very helpful, and I am grateful to the chairman for doing that and grateful to you, Ms. Lowell, for testifying today.

Your testimony focuses primarily on fisheries, and I would like to get to that in a moment. But the USMCA also has a provision on marine litter, which is the language for marine plastic waste. By the way, I gather Paulita Bennet-Martin has just moved up to a plastics position at Oceana, which I am very happy about, so, congratulations.

In Oceana's view, what has actually been accomplished pursuant to the marine litter provisions of the USMCA? Is there a place where we can identify a reduced pound of marine plastic waste as a result of this agreement and the enforcement provisions of it, or is most of that work ahead of us?

Ms. LOWELL. Thanks; it is good to see you today. I would say that we are very thankful for the investments that the USMCA implementing language had on marine debris, an investment of \$8 million to help address the problem. We hope that Canada and Mexico are mirroring that with additional investments in their own

countries. As we know, marine debris, marine litter, is a huge problem. The flow of plastics into our oceans is just creating a storm out there.

You know, we have not—the latest studies that we have seen on some of the clean-ups have been since 2019. So I really cannot see what happened in 2020, but in 2019 from the coastal clean-ups around the world, the most prominent items on the beach, the top ten found were things like single use plastics like chip wrappers, bottle caps, stirrers, straws, lids, plates.

That type of single use plastic is really something that our countries could focus on to reduce the flow of pollution in the water. We really need to reduce the production and use of single use plastics. And you know, the provisions in the USMCA do not require that, but it is something our countries could work on collaboratively to address a problem that impacts not only our countries, but the health of the oceans.

Senator WHITEHOUSE. Yes. Well, thank you. I think it is good that the USMCA mentioned marine litter, and it is good that there is funding, but I do not think we are at a point yet where we can identify a single pound of plastic that has been kept out of the oceans as a result of anything that has been done yet. So I think we continue to have a call to action as our oceans fill more and more and more with plastic waste that tends not to biodegrade.

So over to your issue of fisheries. We have been focusing in the National Defense Authorization Act on trying to improve the information flow to those who are trying to combat IUU fishing, and we are having, I would say, only moderate success. The Navy was not interested at all. The Coast Guard is somewhat interested.

But as you know, there is quite a robust, private, and non-governmental network out there, led in many respects by Vulcan, to help provide information to people who are doing IUU enforcement. We would like to do what we can to strengthen that, if you have any advice on that.

Second, we see China as a very significant abuser of fisheries all around the world. I traveled a lot with Senator McCain, and we went at various times to the Philippines, Indonesia, Vietnam, Thailand, and in every one of those countries, when we raised the issue of fishing, they were very upset at the way Chinese fishing vessels were behaving in their fishing waters, and the extent to which Chinese military and Coast Guard vessels provided physical protection for vessels that were fishing illegally—and that there were actually encounters between their sovereign vessels and Chinese sovereign vessels trying to interfere with enforcement in their waters. There are other countries like East Timor that have communicated with us those same concerns.

Could you comment a little bit on what we need to do next on IUU fishing?

Ms. LOWELL. Yes. So really I think transparency and documentation of fish products is primary. We really need to get, for every fish coming into the U.S., reporting on who caught it, where they caught it, how they caught it, their authorization, to ensure that legality is a condition of import. And then also transparency, so that we can see where those vessels are, verify the information that comes in, that only fish that is legally caught and produced

without using forced labor or other human rights abuses actually makes it into the U.S.

And you know, on the China issue, I really do think fishery subsidies are a way to get to the Chinese fleet as well. We were happy to see the subsidies language in the USMCA, and really encourage the U.S. to continue negotiations at the WTO to put stronger disciplines on fishery subsidies.

That is really driving the over-capacity of the distant water fishing fleets that are fishing right outside of coastal nations that do not have the ability to enforce their own waters. Some are IUU fishing, and it really undermines U.S. fishermen that are very heavily regulated, that have some of the strongest management measures in the world, to have to compete in a marketplace with IUU fishing and the subsidized distant water fishing fleets.

Senator WHITEHOUSE. Yes, it is just not fair. Thank you very much.

Thank you Mr. Chairman.

The CHAIRMAN. I thank my colleagues.

Senator HASSAN is here.

Senator HASSAN. Thank you, Senator Wyden.

The CHAIRMAN. I want to tell all our guests, this has been a hectic day, even by Senate standards.

Senator HASSAN, you voted, so you can—

Senator HASSAN. Actually I have not voted, but I had two other hearings. So I am going to quickly go, and then we are going to go vote.

The CHAIRMAN. Go; great.

Senator HASSAN. So I appreciate all of you very much, and I wanted to start with a couple of questions to you, Mr. Huttema. The USMCA expanded New Hampshire dairy farmers' access to the Canadian market by reforming its milk supply management system and dairy trade policies. In implementing this agreement, the U.S. also needs to monitor whether Canada responds to increased U.S. exports by selling below-cost milk into other markets, which would undercut competition. How do you expect Canada to respond to increased U.S. dairy exports, especially given the issues you raised in your testimony about Canadian progress in implementing dairy reforms?

Mr. HUTTEMA. History repeats itself. I would expect them to just continue to continue to export. I do not believe that the dairy system in Canada is very regulated, and we are not against Canadian dairy farmers per se. We are more about just maintaining their market and not interfering with ours. But they have had a history of trying to push more product.

Senator HASSAN. Thank you. In addition to increasing access to the Canadian dairy market, New Hampshire dairy farmers have also highlighted the importance of the USMCA for boosting U.S. dairy exports to Mexico. Before the USMCA, trade tensions and retaliatory cheese tariffs from Mexico were costing U.S. dairy jobs and making it harder for our dairy farmers to compete.

How did the passage of the USMCA and deescalation of trade tensions help U.S. dairy exports to Mexico, and how have the concerning trade restrictions you mentioned in your testimony affected U.S. dairy exports since passage of the deal?

Mr. HUTTEMA. So the trade tensions before the deal were definitely hindering our exports and hurting our farmers. Since then, with the implementation of USMCA, it has definitely helped and helped raise prices as well. I think when it comes to Mexico, we can get a handle on it. We just have to be proactive and make sure that it happens.

Senator HASSAN. I would look forward to working with you on that.

And then, Ms. Lowell, I just have one additional question, kind of building on what Senator Whitehouse was just talking about. Marine debris is a critical issue for humans, for wildlife.

I too live in a coastal State, where organizations like the Blue Ocean Society for Marine Conservation collected more than 6,000 pounds of litter from New Hampshire's beaches in 2019 alone. I will just note that we have about 18 miles of coastline. So that is 6,000 pounds of litter from 18 miles of coastline in 2019.

I am grateful to Senators Whitehouse and Carper as champions of addressing this issue, and I am glad that there was additional funding in the USMCA Implementation Act to support efforts to prevent, reduce, and remove marine debris across the country. But are there things in addition to what you talked about in your answer to Senator Whitehouse, things we can do, efforts to encourage cooperation with our partners like Canada, to ensure that we are adequately addressing marine debris in New Hampshire and all across the country?

Ms. LOWELL. Yes; thanks for that question. I really think the way to address plastics and marine debris in our oceans is, we really need to turn off the tap and slow the flow of single use plastic production and use. From those coastal clean-ups, as I mentioned before, you know the top ten items found were food wrappers, so candy and chip bags, cigarette butts, plastic beverage bottles, plastic bottle caps, straws and stirrers, plastic cups and plates, plastic grocery bags, plastic takeout containers, and other plastic bags and lids.

So these are the items that are making up the bulk of marine litter on beaches around the world. So really, one of the keys to reduce the flow of plastics into our oceans is to reduce the use of single use plastic, reduce the production of that, and transition into more sustainable products that can both protect our oceans and reduce waste so you do not need a beach clean-up on your beaches. That is a crazy amount of litter in just a small New Hampshire-sized coastline.

Senator HASSAN. Well, thank you for that, and thank you, Mr. Chair. It is something we can work on with our partners globally too. Thanks.

The CHAIRMAN. All right. I thank my colleague, and let me just tell our guests we so appreciate your coming, because as we said something like 3 hours ago, this was a chance to really review where we are with respect to USMCA at 1 year old.

And the reality—and I see this in my home State, because we are so trade-sensitive and the trade jobs often pay better than do the non-trade jobs. The very first thing people say is, “Hey, you talk about new trade agreements. How about enforcing the laws

that are on the books today?" And that is what caused Senator Brown and I to write the rapid response provision.

Mr. Davis, we thank you. We are going to be looking for, as I asked in my questions, your suggestions on how to take a strong provision and strengthen it, because the failure to enforce trade rules has real consequences.

And in particular, the point that you made, Dr. McMurry-Heath, is, when they basically said let's go ahead with this new agreement without really getting these new obligations in place, to use your words, that had real consequences for innovators in terms of agriculture and health care, biotech and technology.

So I think the message that the three of you have given us—and of course, as Mr. Huttema knows, dairy is hugely important in my State, where we share many of the concerns that you have outlined today. It just doubles our effort now with an administration that really wants to tackle these problems in an aggressive way to get at it.

You have given us a lot of good, good suggestions, and I particularly appreciate your outlining the real-world consequences of the failure to have aggressive trade law enforcement. Coming from my State which is, of course, nearly always thinking about trade as it relates to Asia, to have citizens in Oregon say the first thing that Washington has to do is enforce the laws on the books, the trade laws on the books, it sends a very powerful message which you all have helped—the word of the day—to reinforce. So, thank you all.

And for members, the questions for the record are due August 3rd.

And with that, the Finance Committee is adjourned.

[Whereupon, at 12:11 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. MIKE CRAPO,
A U.S. SENATOR FROM IDAHO

Thank you, Mr. Chairman. Returning to our work as Mike would have wanted, I appreciate our witnesses taking the time to discuss issues critically important to the work of our committee.

Welcome to Allan Huttema, chairman of the Northwest Dairy Association and Darigold board of directors, who is joining us from Parma, ID. Thank you for taking the time to discuss how these issues are important to our State.

Today's hearing marks the 1-year anniversary of the United States-Mexico-Canada Agreement, or USMCA, coming into force. Mexico and Canada are two of our most important trading partners. We cannot take these relationships for granted. To take one example, the United States exported \$1.4 billion and \$731 million worth of dairy products to Mexico and Canada, respectively, in 2018. But just a generation ago, nearly all of the dairy products produced in the United States stayed in the United States.

Today, the Idaho dairy industry—which represents 6 percent of the State's GDP—produces more than 15 times the production necessary for the State's needs. Opening markets has fed our neighbors and created jobs at home. However, our dairy industry faces a number of new barriers, including attempts by trading partners to prevent our farmers from using common cheese names by claiming they are geographic indications.

The potato industry has also faced its share of challenges, with the Mexican Supreme Court only recently ruling that potato growers can sell fresh potatoes into all of Mexico, consistent with its obligations under the USMCA. However, I will not consider the matter finished until Idaho's farmers are able to sell high-quality potatoes to every family in Mexico.

Likewise, when the North American Free Trade Agreement, or NAFTA, was negotiated, we did not fully appreciate the potential of digital trade, which now contributes over \$2 trillion to annual GDP. That is why I support a number of USMCA innovations to help us meet the challenges of the 21st-century economy and drive economic prosperity in North America. These include Canada allocating new tariff rate quotas for dairy products, Mexico agreeing to protect 33 common cheese names, a cutting-edge digital trade chapter, and better protection for copyright.

This committee had a role in developing them, and it is appropriate to examine whether these innovations are delivering. That cannot be said for last-minute changes added through a USMCA Protocol of Amendment at the behest of the House Democrat Working Group. This committee had no opportunity to vet those changes, or even see the text of those changes before they were finalized.

I am concerned that some of our Democrat House colleagues now want to push their changes—that allegedly strengthen labor and environment standards, but most certainly weaken our intellectual property rights—into new agreements before we even have a complete understanding of their full implications. I will not accept that. That is why this hearing is so important. If we are going to unlock the promise of USMCA, and also understand its shortcomings, we need to press for effective implementation and enforcement.

To date, the administration's efforts on that front are fairly disappointing. I will highlight three examples. First, USMCA contains commitments that should facilitate cooperation on agricultural biotechnology, including that decisions regarding the approval of such technology be based on science. This technology not only increases farmers' yields but allows them to grow crops more sustainably, including by using less pesticide and reduced tillage. Unfortunately, Mexico has refused to approve any biotechnology food or feed products since May 2018. Despite the clear economic and environmental benefits, the administration has yet to take any enforcement action on this important issue.

Second, Mexico is proceeding with new discriminatory actions, such as measures favoring its state-owned electricity and petroleum companies. Mexico previously prioritized dispatch on its electrical grid on the basis of cost, which allowed private producers, including wind and solar energy providers, to compete. Instead, Mexico intends to give preference to its state-owned electricity company. The administration needs to be engaged now before barriers like this are fully in place.

Finally, where the administration is taking enforcement actions, it fails to do so transparently, or in appropriate consultation with Congress. I am referring to the use of the USMCA rapid response labor mechanism. As I noted at our hearing on the President's trade agenda, I am committed to ensuring our workers can compete on a level playing field. That effort requires transparency. Otherwise, how would Congress, the affected parties, and civil society know if the mechanism is being used appropriately and effectively?

Accordingly, USTR must explain what potential actions, in its view, may or may not constitute a denial of rights. USTR has failed to do so with respect to its recent use of the mechanism with respect to Tridonex's facility in Mexico. This hearing is a good opportunity for the committee to examine whether USMCA's commitments are delivering on their promise. This discussion will also help in developing a future trade agenda. I look forward to hearing what our knowledgeable witnesses have to say to help us in this effort.

Mr. Chairman, thank you again for organizing this hearing, and thank you again to our witnesses for appearing today.

PREPARED STATEMENT OF BENJAMIN DAVIS, DIRECTOR OF
INTERNATIONAL AFFAIRS, UNITED STEELWORKERS

Chairman Wyden, Ranking Member Crapo, members of the committee, thank you very much for the opportunity to testify on the implementation of the USMCA, and specifically the labor provisions which are so important to workers in the U.S., Canada, and Mexico.

I am Benjamin Davis, director of international affairs for the United Steelworkers, and also the chair of the Independent Mexico Labor Expert Board, an entity created by the USMCA implementing bill passed by this committee and signed into law.

NAFTA, and the generation of trade agreements that followed it, did tremendous damage to the American middle class and, in many ways, sowed the seeds of our current political crisis. The argument that trade improves the general welfare, without taking account of its differential impact across all sectors of the population—particularly, manufacturing workers—has been questioned in theory and clearly refuted in reality.

In order to effectively assess the value of a good or a service, we must analyze not only its price, but the conditions under which it was produced—specifically, whether technology and skills are subject to democratic regulation, and whether the fundamental rights of workers are respected in the production process. The failure to address these issues effectively and systematically has done tremendous damage to workers—both here and abroad—and to industries and supply chains that are critical to our national security.

As the Chair of the International Trade Commission recently noted in a comprehensive report on “Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures”:

trade agreements today do not simply reduce or eliminate (“liberalize”) trade barriers and expand trade, and not every domestic rule or regulation should be viewed as an “unnecessary obstacle to trade.” Trade policymakers

today are often just as interested in negotiating provisions that require trading partners to adopt and implement rules and regulations concerning, for example, intellectual property rights, consumer protections on the Internet, labor standards, and environmental protections. All of these rules can create winners and losers in our economy. But the distributional effects of trade agreements are not fully accounted for in most models, particularly when economies are not fully employed (and economies are rarely fully employed).¹

In the specific case of NAFTA, “the ever-present threat of offshoring production to Mexico in the absence of enforceable labor provisions combined with tariff reductions on Mexican imports likely weakened U.S. manufacturing workers’ ability to bargain for higher wages; but standard models cannot account for that.”² The Report pointed to evidence that Mexico’s labor costs in key export industries were declining prior to USMCA, leading to an increase in the wage gap in motor vehicles, for example, of nearly 60 percent (see table below).³

Table 4.2 Hourly Compensation Costs in Three Major Industries in the United States and Mexico, 2008 and 2016

Industry	Country	2008 (U.S.\$)	2016 (U.S.\$)	CAGR, 2008–2016 (%)
Computer, electronic, and optical products	United States	45.42	54.28	2.3
Computer, electronic, and optical products	Mexico	5.11	4.13	–2.6
Motor vehicle and other transportation equipment	United States	41.91	48.97	2.0
Motor vehicle and other transportation equipment	Mexico	6.39	4.68	–3.8
Primary and fabricated metals	United States	30.21	35.87	2.2
Primary and fabricated metals	Mexico	5.04	4.17	–2.3

Source: The Conference Board, *International Labor Comparisons program*, April 2018.
CAGR = compound annual growth rate.

The ITC report also provides an update on the impact of automotive rules of origin in USMCA. This analysis shows some relocation of global production towards the North American region. Whether production within the region will shift towards the U.S. remains to be seen.⁴ The agreement has only been in effect for a year and is still in its infancy; moreover, recent decisions call this shift into question.⁵ But there is no doubt that such a shift cannot be sustained without strong enforcement of the automotive rules of origin provisions of USMCA. Reported recent attempts by Canada and Mexico to weaken these provisions threaten to roll back a commitment made to U.S. autoworkers and must be rejected.⁶

¹ United States International Trade Commission, *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2021 Report*, p. 219.

² *Id.*, p. 220.

³ *Id.*, p. 152. We are concerned that the International Labor Comparisons program, which was a major source of data for the ITC study, was discontinued by the Bureau of Labor Statistics in 2013 and, although a successor program is maintained by The Conference Board, key data on hourly compensation costs in manufacturing have not been updated since 2016. The lack of current information complicates efforts to measure the effectiveness of USMCA enforcement measures. See Information Technology and Innovation Foundation, *Federal Statistical Needs for a National Advanced Industry and Technology Strategy* (July 2021), p. 3; Josh Wright, “Why Jobs Reports Are Less Useful for Business,” *Fortune*, May 6, 2016.

⁴ United States International Trade Commission, *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2021 Report*, p. 125.

⁵ “Slap in the face’ UAW says of GM’s move to build EVs in Mexico,” *Detroit Free Press*, April 21, 2021.

⁶ “U.S., Mexico fail to resolve dispute on trade rules for cars,” *The Spokesman-Review*, July 23, 2021.

Likewise, the continuing drumbeat of plant closings and relocations to Mexico⁷ underscores the urgent need for reauthorization of Trade Adjustment Assistance⁸ as well as reform of the WARN Act.

The USMCA passed Congress with a large bipartisan majority. The Steelworkers, along with the AFL–CIO, supported the final agreement after Congress improved upon the text negotiated by the prior administration. We pushed for changes in rules of origin for steel. We advocated for changes to provisions that would limit patients’ access to medicines. Environmental provisions needed to be enhanced. All of the provisions of the Agreement require oversight to ensure their proper implementation, monitoring and enforcement.

Most critical to our support was the emphasis on labor rights improvements in Mexican law, backed up by the rapid response mechanism initially developed by you, Chairman Wyden, and Senator Brown.

The focus of the labor law changes was to disrupt the protection union system in Mexico under which most workers have had no real voice in choosing their union representatives and often have no knowledge of the contract that determines their wages and working conditions. This system has maintained artificially low wages: for example, at the GM Silao plant—the subject of a USTR-initiated filing under the rapid response mechanism—the starting wage is \$1.35 per hour.

Workers’ rights to secure democratic unions and collective bargaining have been denied in Mexico for many years and the jury is still out as to whether Mexico’s new laws and the USCMA will make a difference.

Let me briefly summarize the key conclusions and recommendations of the Board’s report of July 7th, which is included as an attachment to this testimony. While there has been significant progress on USMCA implementation in some areas, the Board raised concerns about (1) transparency, (2) the contract legitimization process, (3) budget and staffing of Mexico’s new labor institutions, and (4) U.S. technical cooperation.

TRANSPARENCY

Almost 27 months after Mexico’s labor law reform was approved, most workers covered by a union contract still don’t have a copy of their contract or their union statutes—including the workers at Tridonex in Matamoros, which is the subject of a rapid response mechanism case under the USMCA. The 2019 labor law requires employers and unions to give workers copies of their contracts, but these provisions won’t be fully implemented for several years. Online access—which is already available for contracts in some jurisdictions—should be accelerated and should not require workers to submit individual requests.

CONTRACT LEGITIMATION

The Board raised significant concerns about the effectiveness of the contract legitimization process. As of today, Mexico reports that 1,378 legitimization votes have been held, covering 797,587 workers (about 18 percent of the estimated unionized workforce). Government officials have stated that they ultimately expect at least 80,000 contracts to be voted on. This would require about 120 legitimization votes per day, every day, from now until May 1, 2023. That clearly exceeds the capacity of the government institutions, and may require them to rely on private notaries hired by the incumbent unions. As we have seen in the GM Silao case, putting the incumbent union in charge of the vote creates an inherent conflict of interest and potentially disastrous consequences.

BUDGET AND STAFFING

The Board raised concerns about staff shortages at the Labor Secretariat and the Federal Center for Conciliation and Labor Registration, which have faced a huge challenge of implementing the reforms under pandemic conditions. For example, the Federal Center currently has only 29 staff responsible for monitoring contract legitimization votes. Clearly, there is not enough money to support timely and effective implementation of the reforms. The Inter-American Development Bank gave

⁷“Wisconsin workers fight factory move to Mexico: ‘Anxiety is through the roof,’” *Guardian*, July 18, 2021; “FreightCar America got a \$10 million PPP loan, then closed its plant and moved manufacturing jobs to Mexico,” *Roanoke Times*, July 17, 2021; “Fair Lawn Nabisco Plant to Bake Last Cookies Friday. What’s Next?,” *Patch*, July 15, 2021.

⁸Tom Conway, *A Life-Saving Program*, July 16, 2021.

Mexico an \$800-million unsecured loan to support the labor reform, but it appears that none of those funds have been used for this purpose.

U.S. TECHNICAL ASSISTANCE

Finally, the Board raised significant concerns about the pace and focus of U.S. technical assistance to support Mexico's labor reforms. Of the \$180 million appropriated by Congress, only \$50 million has been allocated, and only \$10 million of that directly supports efforts by Mexican workers to establish democratic unions. Strangely, this initial allocation of USMCA funds excluded the auto and auto parts sector from labor capacity building.

The Board referenced the recommendation of Ways and Means Democrats that "ILAB should spend at least \$30 million annually of USMCA Appropriated Funds on worker organizing and union capacity building in Mexico," and I believe this funding is the minimum level needed to achieve our goals.

Without a fundamental shift from protection unions like the ones at GM and Tridonex towards democratic labor organizations, no amount of government oversight will result in a trade union movement that can organize and bargain for higher wages for Mexican workers to address the structural inequality in the USMCA region that drives both migration and loss of good manufacturing jobs.

Thank you, and I will be happy to answer any questions.

Attachment 1—July 7, 2021 report of the Independent Mexico Labor Expert Board and Separate Statement of Members Fortson et al., <https://www.maquilasolidarity.org/sites/default/files/attachment/IMLEB%20Report%20and%20Separate%20Stm%20of%20Members%20Fortson%20et%20al.%202021.07.7.pdf>.

QUESTIONS SUBMITTED FOR THE RECORD TO BENJAMIN DAVIS

QUESTION SUBMITTED BY HON. RON WYDEN

Question. One of the game changers in the USMCA was the rapid response mechanism. It presents an opportunity to respond quickly and efficiently to facility level violations, and has the potential to turn the tide for workers in Mexico and the United States. USTR has now twice engaged the rapid response mechanism to address facility-level labor violations.

Recognizing that the USMCA parties are still working to understand what role the rapid response mechanism can and will play in labor obligation enforcement, what aspects of the rapid response mechanism should we as the Finance Committee pay attention to when thinking about how to make the mechanism as effective as possible or how it may need to be improved in the future?

Answer. The rapid response mechanism (RRM) is a critical element of USMCA enforcement that should be incorporated—with improvements—into other trade agreements. To fulfill its potential as a means of empowering Mexican workers to democratize their unions and increase their wages, it is essential that the RRM be used regularly and effectively, and that it be complemented by capacity building for workers and government institutions.

In the initial cases, we have seen the need for extensive documentation of worker rights violations. But in Mexico, currently only about 1 percent of the workforce is represented by democratic unions, and these unions in most cases have limited resources and capacity to document violations. In addition, there are only a small number of labor lawyers who represent democratic unions, and in many parts of the country it can be difficult or impossible for workers to find representation. Capacity building to enable workers to exercise their rights to organize and bargain is therefore essential. The IMLEB report of July 7, 2021 recommended that "ILAB should immediately direct at least \$100 million of the unallocated USMCA funding to building worker capacity for organizing and bargaining, including legal and research support."

The capacity of Mexican government institutions, including the STPS and the CFCRL, also needs reinforcement. As the IMLEB report points out, these institutions face both immediate challenges, including a backlog of at least 80,000 contract legitimation votes and the requirement to ensure workers' access to their union contracts and other documents, as well as a long-term need to recruit, train and deploy inspectors to enforce the new labor laws. While Mexico has invested significant re-

sources in creating and staffing these institutions, they will likely require both political and financial support to become truly effective.

The early cases under the RRM will help us understand what is working, and what needs improvement. The entrenched protection union system in Mexico will seek to protect its interests and continue to degrade workers' rights. We must be willing to update and reform the mechanism if need be.

QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

Question. During consideration of the U.S.-Mexico-Canada Agreement (USMCA), I pushed for \$240 million in U.S. technical assistance for capacity building through the U.S. Department of Labor to support reforms of the Mexican labor justice system, worker-focused capacity building, and efforts to reduce child labor, forced labor, and human trafficking in Mexico.

This assistance was aimed at educating Mexican judges and labor officials about worker rights, digitizing and reviewing collective bargaining agreements, and strengthening mechanism for monitoring and enforcement.

Capacity building and enforcement go hand in hand. The COVID pandemic has slowed everything down around the world, but efforts to improve labor law and labor rights in Mexico must continue.

From your perspective, where do we stand on U.S. assistance to improve Mexican labor conditions and protection of labor rights?

Answer. Of the \$130 million appropriated by Congress for USMCA implementation, only \$50 million has been allocated and only \$10 million of that goes directly to increase workers' capacity to use the new laws and mechanisms. Given the challenges noted in the IMLEB report, the disbursement of the remaining funds should be stepped up and focused on worker capacity building. While ILAB has issued additional notifications in the past month,¹ none of these appears to be focused on building worker capacity to achieve union democracy and genuine collective bargaining.

Question. How much has the COVID-19 pandemic slowed down efforts to implement labor law reforms in Mexico?

Answer. The pandemic has had a severe impact on employment and wages, with the greatest effect on informal and contingent workers. In terms of labor reform implementation, there have been multiple delays of the deadline for unions to reform their statutes to comply with the democracy and transparency requirements of the law. Contract legitimation votes may also have been affected. And it has hampered the ability to collect facts at a number of facilities where there have been allegations of workers' rights violations.

Question. What should the Biden administration be doing now to help the Mexican Government stay on track to follow through on reforms and efforts to improve workers' rights? What should the priority areas of focus be?

Answer. Priority areas should be:

1. Reform of the contract legitimation process.
2. Ensure that workers have access to their collective bargaining agreements, union statutes, and financial reports as quickly as possible.
3. Hire and train additional enforcement personnel.
4. End the widespread and legal practice of employer payments to officials of protection unions and consider adopting a requirement that any U.S. employer or contractor operating in Mexico publicly disclose payments to officials of protection unions.

Question. In 2020, ALCOA idled its Intalco aluminum plant in Ferndale, WA, costing about 700 jobs. The U.S. has had to compete with global overcapacity and subsidized steel and aluminum for many years, putting extreme pressure on U.S. producers.

In June, President Biden agreed with the European Union to try to resolve differences on steel and aluminum by the end of the year. USTR Ambassador Tai is in the process of holding talks to try to reach an agreement.

¹See FOA-ILAB-21-09, July 16, 2021; NOI-ILAB-21-13, July 30, 2021; NOI-ILAB-21-14, July 30, 2021; NOI-ILAB-21-15, August 5, 2021.

Should the United States bring Canada into any agreement with the European Union on steel and aluminum?

Answer. There are unique considerations between Canada and U.S. related to defense and a preexisting agreement. U.S. negotiators will have their hands full focusing on the importance of maintaining domestic employment and production capabilities of the domestic industry to ensure our national defense and critical infrastructure, which should be priority in negotiations with the EU.

Question. Could an agreement among allies on steel and aluminum help to bring them together to address overcapacity and subsidies in other countries like Russia, India, and China?

Answer. For the union a focus on maintaining domestic employment is a priority in any agreement between countries to address overcapacity in steel and aluminum. Russia, India, and China have compounded overcapacity issues and we should work with our allies to contain overcapacity or subsidies but will need to carefully navigate economic competition even with our allies. So far, efforts to limit global overcapacity (*e.g.*, Global Forum on Steel Excess Capacity, OECD steel committee) have not produced results, because many of our trading partners refused to really work for a solution. Strong, multilateral enforceable disciplines are the goal, but we must not unilaterally disarm and jeopardize our national and economic security interests in the interim.

PREPARED STATEMENT OF ALLAN HUTTEMA, CHAIR, BOARD OF DIRECTORS,
DARIGOLD AND NORTHWEST DAIRY ASSOCIATION

Chairman Wyden, Ranking Member Crapo, and members of the committee, thank you for inviting me to testify on “Implementation and Enforcement of the United States-Mexico-Canada Agreement: One Year After Entry Into Force.” My name is Allan Huttema, and I am a dairy farmer from Parma, ID. My dairy career started in 1991 in Chilliwack, British Columbia under the Canadian supply management system. I moved to Everson, WA in 2003, where I started a 500-cow dairy, and then to our current location in Parma in 2010. Together with my wife Mary Jo and two sons, Christopher and Jeremy, we operate an 800-cow dairy and crop approximately 500 acres of corn and triticale for silage. I currently serve as chair of the Darigold and Northwest Dairy Association board, as well as board member for the National Milk Producers Federation (NMPF), the latter of which develops and carries out policies that advance the well-being of dairy producers like myself and the cooperatives we own.

NMPF’s member cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 32,000 dairy producers on national issues. International trade is one of those issues and in recent years it has been one of the most important to our industry. NMPF works closely on international trade issues with the U.S. Dairy Export Council whose partnership between producers, proprietary companies, trading companies and others interested in supporting U.S. dairy exports has contributed greatly to the success of the industry and the thousands of workers who are supported by dairy exports throughout the supply chain.

TESTIMONY SUMMARY

Maintaining our trade relationships and expanding market access for U.S. dairy products is vital to the strength of the domestic dairy industry and the economic health of rural America. USMCA made tremendous strides to modernize trade rules and facilitate the smooth flow of U.S. dairy products throughout North America, but the benefits of USMCA will only flow if Canada and Mexico properly implement the agreement. This will require proactive monitoring and enforcement of USMCA implementation, including through enforcement actions such as that taken against Canada’s administration of its tariff rate quotas for dairy products.

While the U.S. Trade Representative’s recent initiation of USMCA dispute settlement proceedings over Canada’s allocation of dairy tariff-rate quotas (TRQs) is a welcome step, additional monitoring and enforcement efforts must also focus on Canada’s implementation of its commitments on Class 7 pricing and export surcharges on Canada’s dairy protein exports, as well as on Mexico’s proliferation of ill-intended regulations that are aimed at disrupting trade. Close attention must also be paid to Mexico’s implementation of USMCA provisions on geographical indications (GIs).

USMCA's GI provisions can and should serve as a valuable foundation to respond to the threat posed by the EU's efforts in various markets to restrict U.S. dairy competition by denying U.S. producers the right to use common food names.

While USMCA represents an important step in maintaining and expanding export opportunities for U.S. dairy, it should be followed by active negotiation of additional trade agreements with key export markets and aggressive efforts to level the playing field for dairy exports.

USMCA

The U.S.-Mexico-Canada Agreement builds on the most important trade agreement—the North America Free Trade Agreement (NAFTA)—for America's dairy farmers and businesses. NAFTA resulted in U.S. agriculture's strongest and most important trade relationship, growing to over \$40 billion in exports, including \$1.9 billion in U.S. dairy exports. Canada and Mexico now take 27 percent of all U.S. agricultural exports and over 30 percent of U.S. dairy exports, providing critical farm income to America's farmers and ranchers.

In 2017, the prior administration threatened to withdraw from NAFTA, putting at significant risk the economic viability of U.S. agricultural and dairy exports. That threat, which resulted in a public outcry from U.S. agriculture, was able to be turned into a negotiation to improve on NAFTA and to address remaining market access barriers.

For example, NAFTA had failed to provide preferential access for U.S. dairy exports into Canada. Dairy is the most protected and one of the politically strongest sectors in Canada. In the USMCA, the United States prioritized getting improved access for U.S. dairy into Canada and to fixing distortions in Canada's milk pricing policies that undermined U.S. dairy exports to Canada and other countries. The results included Canada establishing tariff rate quotas (TRQs) solely for U.S. exports, worth an estimated \$300 million as well as important changes to Canada's distortions in its milk class pricing system. This was the first time U.S. dairy exports received preferential access into the Canadian market.

Mexico was also negotiating with the European Union in 2017, which could have completely prohibited certain cheese sales into Mexico. The EU was demanding that Mexico protect certain geographical indications for cheeses even though U.S. exporters sold those cheeses (*e.g.*, "feta," "parmesan," etc.) into Mexico. The United States used its leverage in USMCA negotiations to minimize the negative impact of any EU-Mexico agreement on GIs, obtaining Mexico's commitment to allow certain common cheese names to continue to be used in the Mexican market.

Negotiations with Mexico and Canada on dairy were some of the hardest issues to tackle. The close coordination between the U.S. dairy industry and U.S. negotiators enabled outcomes that benefit America's dairy farmers and exporters. While the results may not be everything that the U.S. dairy industry sought, USMCA's improvements over NAFTA are important, providing opportunities for new markets in Canada and protecting U.S. access into Mexico. The U.S. dairy industry welcomes the hard work of U.S. negotiators and the broad bipartisan support from Congress in supporting U.S. dairy interests and passing USMCA.

IMPORTANCE OF TRADE TO U.S. DAIRY

America's dairy industry is an economic force that employs nearly 1 million Americans, contributes more than \$64 billion in tax revenue, and adds about \$620 billion to the U.S. economy.¹

Trade is essential to the health of the dairy industry. America's dairy farmers and processors have established themselves as the world's preeminent suppliers of high-quality dairy products, exporting more than \$6.5 billion in dairy products in 2020 to customers around the world. Approximately 16 percent of U.S. milk production last year was exported overseas in the form of a wide variety of dairy products from cheese to ice cream to milk powder.

Our industry manufactures high-quality Made-in-America products that are beloved by consumers across the globe. In fact, in 2019, a cheese from the U.S. won "Best in the World" at the World Cheese Awards for the first time ever. It is clear that our dairy products can compete toe-to-toe and win against any country.

¹<https://medium.com/dairy-exports-mean-jobs>.

Importantly, these exports drive growth across the U.S. economy. Dairy exports alone create more than 85,000 U.S. jobs and have a nearly \$12 billion economic impact.¹

Unfortunately, trade disputes and uncertainty in the global marketplace have exacerbated the prolonged rural recession that has gripped the heartland and America's dairy industry has been among the hardest hit. Dairy farmers and processors have found their livelihoods under threat and the communities and economies that depend on these producers are at risk. The U.S. Department of Agriculture reports that the U.S. lost more than 6,000 dairy farms from 2017 to 2019, representing a 15-percent decline in dairy farm numbers over that period.²

When our exports increase, all dairy producers benefit. And when our exports are impeded or we give up market share, the effect is ultimately felt by the farmer in the prices they receive.

Free trade agreements have played an indispensable role in increasing U.S. exports. For example, before NAFTA was implemented in 1993, the United States exported just \$618 million worth of dairy products, less than 10 percent of the current figure. Dairy product exports to countries with which we have an FTA have grown by \$2.14 billion in total since their respective implementations. In terms of volume, that is equivalent to 1.4 billion gallons of milk, greater than what Michigan, the 6th largest U.S. milk producing State, produces in 1 year.

USMCA built on this success, making tremendous strides to modernize trade rules and facilitate the smooth flow of U.S. dairy products throughout North America. America's dairy farmers, manufacturers and exporters are grateful for this new agreement that we hope will bring increased certainty to the U.S. dairy industry by preserving access to our largest export market (Mexico), addressing Canada's discriminatory Class 7 dairy pricing policy, expanding critical market access, and defending common cheese names, among other accomplishments.

If Canada and Mexico implement USMCA in keeping with the expectations established during negotiations, it will strengthen exports of high-quality U.S. dairy products and secure real benefits for our industry. Under USMCA, U.S. dairy exports will ultimately increase by more than \$314 million a year, according to the U.S. International Trade Commission. These dairy sales will have a positive effect on American farmers, bolstering dairy farm revenue by an additional \$548 million over the first 6 years of implementation.

However, these benefits will only be fully realized if our trading partners adhere faithfully not just to the letter of their commitments under USMCA, but to their spirit as well.

CANADA

In this regard, NMPF and USDEC applaud U.S. Trade Representative Katherine Tai's May 25th decision to initiate USMCA dispute settlement proceedings over Canada's dairy TRQ administration. We also wish to express our appreciation to the Finance Committee for its support of this critically important step.

Canada has not administered its TRQs fairly, as required by its USMCA obligations. Unfortunately, this is consistent with Canada's long history of undermining its market access commitments to protect its tightly controlled dairy market. Canada's TRQ system discourages full utilization and valuation of agreed upon quantities. For example, the system allocates up to 85 percent of each TRQ to Canadian processors who have little incentive to import and fails to allocate TRQs in the quantities that applicants request. Further, up to only 15 percent of the TRQs are allocated to distributors and zero is administered to retailers. USMCA dispute settlement is the right course of action to address these unfair restrictions.

The decision to pursue dispute settlement also delivers a strong message against the erection of future barriers in Canada and other markets as well. Our trading partners need to know that failure to meet their agricultural trade commitments with the United States will result in robust action to defend U.S. rights.

In this connection, we urge Congress to work proactively with USTR and USDA as they monitor Canada's implementation of other dairy related USMCA provisions, such as those eliminating Canada's discriminatory Class 7 dairy pricing policy and

²USDA's National Agricultural Statistics Service reports there were 40,199 licensed dairy herds in 2017 and 34,187 in 2019. The average 2-year loss rate prior to 2017 was less than 8 percent, starting in 2003.

requiring export surcharges on dairy protein exports like skim milk powder, milk protein concentrate, and infant formula. Here as well, Canada's actions have given cause for concern. Canadian exports of milk protein isolates (MPI) and certain skim milk blends manufactured under the new Class 4a have been increasing in a manner that seems designed to evade USMCA disciplines. USTR and USDA should move quickly to deploy the dairy consultation tools laid out in USMCA's Agriculture Chapter to address this concern and to ensure that Canada's other policies comply with USMCA disciplines affecting trade in milk proteins.

MEXICO

Vigilant monitoring and aggressive enforcement will also be necessary with our other USMCA partner, Mexico. Mexico is the largest export market for U.S. dairy products, and the U.S. trade relationship with Mexico is of the utmost importance. Unfortunately, of late there has been a proliferation of poorly designed Mexican regulations that have been disrupting trade, eroding the U.S.'s role as a reliable supplier.

For example, Mexico has introduced new standards for milk powder (NOM-222) and cheese (NOM-223) in January 2020. Despite being in force for less than a year, a rule making process to amend these regulations will begin later this year for both. From the outset, an update of these regulations so close to their entry into force with the purpose of adding additional obligations for the industry is against the good regulatory practices provided for under the USMCA.

There are many concerns with the proposed amendments to the milk powder standard (NOM-222), which has a huge potential to disrupt trade. A prohibition on using milk powder as raw material for fluid milk, as well as limitations on a certain class of milk powder for production of dairy products (*e.g.*, yogurt, cream, or cheese) will not only make dairy products extremely expensive for Mexican consumers but will discourage significant number of exports into Mexico. Additionally, the proposal includes new requirements for additional information not related to the product discriminates against U.S. product.

Similarly, there are a number of concerns with proposed amendments to the cheese standard (NOM-223) that not only will make imports of cheese from the United States more difficult but will also create an issue with national treatment since our products will be treated differently than the Mexican products.

The U.S. should pursue discussions with Mexico treating this surge in regulatory and customs enforcement issues as a collective concern, and not simply as one-off issues. We need to restore smooth and predictable trading conditions with Mexico to ensure that the U.S. and Mexico remain an integrated market and the promise of USMCA is fulfilled.

Another area bearing close monitoring and, if necessary, enforcement is Mexico's implementation of USMCA provisions on common cheese names and geographical indications (GIs). Regrettably, Mexico has acceded to the European demands to prevent the use of common food names through the imposition of illegitimate GIs. Living in Idaho, I recognize the importance of defending the rights of specific regions like Idaho to protect compound names like "Idaho potatoes." However, common cheese names like "parmesan," in addition to certain meat and wine terms that indicate a type or method of production, have been in the public domain for centuries and are considered as generic. GIs were not meant to restrict the generic names by which millions of consumers recognize some of their favorite foods; use of GIs to create this result must be firmly rejected as the protectionist and anti-trade policy that it is.

Mexico undertook important commitments to the United States through USMCA side letters on cheese common names³ and prior users,⁴ to protect from the abusive and illegitimate actions from the European Union during the Mexico-EU free trade agreement negotiations. We need to ensure that Mexico implements these provisions in a manner that fulfills and recognizes the market access gains in NAFTA and USMCA.

³ https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/MX-US_Side_Letter_on_Cheeses.pdf.

⁴ https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/MX-US_Side_Letter_on_Prior_Users.pdf.

MISUSING GEOGRAPHICAL INDICATIONS TO ERECT BARRIERS TO TRADE

To provide some perspective, I live in Parma, ID. According to the EU Commission, I could never call anything Parma despite that my town has had that name since 1904 when it was incorporated. The United States needs to stop Mexico's deteriorating approach to GIs. It is symptomatic of broader efforts that the EU has been pursuing for some time to limit U.S. competition through imposition of GI provisions in EU FTAs with U.S. trading partners. As stated above, the U.S. dairy industry does not object to the protection of proper GIs, such as "Parmigiano Reggiano." However, the EU has been aggressively seeking to confiscate generic terms that derive from part of the protected name or are otherwise in common usage—such as "parmesan," "feta," and "asiago." The threat to common food names is not constrained to dairy but extends to other products as well, such as generic meat terms like "black forest ham" and "bologna," as well as common descriptive terms for wine such as "vintage" and "chateau," or the use of common wine grape varietal terms.

The EU's GI campaign is as deliberate as it is destructive. If the EU is successful in blocking U.S. exports of common food names, U.S. food producers will be severely harmed, and consumers will no longer recognize familiar products. We appreciate the actions the U.S. has taken so far to protect American jobs as well as the legitimate rights of our food manufacturers, farmers, and exporters; however, combating the EU will require continued vigilance, a coordinated U.S. interagency effort focused on preserving U.S. market access opportunities, and a pragmatic, results-oriented approach to combating the EU's trade-distorting approach to this topic.

The USMCA side letters on common names and prior users offer a potential bulwark against EU efforts by listing specific cheese names that the United States will be permitted to continue to use and by ensuring that U.S. companies will be recognized as "prior users" of common food names and therefore entitled to continue to use them. The U.S. government must make it a policy objective to further expand upon this successful framework in other trade negotiations to ensure that safeguards for American-made common food name products are strengthened, cloaked barriers to trade are rejected, and legitimate IP protections preserved. The alternative would be continued erosion of U.S. market access as the EU continues efforts to erect barriers to our products in third markets.

BUILDING ON USMCA IN KEY MARKETS

While USMCA is a significant step forward towards continued dairy export growth, by itself it cannot achieve this goal. That will require a forward-leaning posture by the U.S. Government and active negotiation of additional trade agreements with key export markets, both to level the playing field for American dairy products and to allow our industry to grow exports and invest in expanding dairy jobs. The United Kingdom, Southeast Asia, Japan, and even China present valuable opportunities.

UNITED KINGDOM

The UK dairy market is a prosperous one with a significant segment of its dairy consumption coming from imports, representing strong potential to expand U.S. market share. However, numerous tariff and non-tariff barriers imposed by the EU have long hindered U.S. dairy exports to the UK. These include bans on the use of several common cheese names due to EU geographical indication policies and certification-related challenges that overly complicate our industry's ability to ship product consistently and simply to Europe. The UK's exit from the EU presents an opportunity to move beyond the EU's complex trade policies which act as major disincentives to U.S. exports.

SOUTHEAST ASIA

U.S. dairy producers and businesses have worked hard to make advancements in Southeast Asia and believe increased sales throughout Asia are key to the industry's future success.

Unfortunately, America's biggest dairy export competitors—Europe, New Zealand, and Australia—have negotiated FTAs with partners in Southeast Asia or are in the process of doing so, leaving the U.S. as the only major supplier that will be left without an FTA. The tariff advantages provided by these FTAs may in some cases price alternate suppliers out of the market, including the U.S. This has put the U.S. dairy industry at a distinct disadvantage, and we are at risk of seeing our competitiveness erode in this important market region, particularly as our tariff disadvantage exacerbates with ongoing dairy tariff phase-outs our competitors enjoy.

U.S. focus would be most effectively invested in expanding American inroads into key and growing markets throughout Southeast Asia, particularly Vietnam. Vietnam was the 8th largest U.S. dairy export destination in 2019. A developing economy and changing food trends in Vietnam have fueled a demand for dairy that cannot be met by their domestic industry alone.

JAPAN

U.S. dairy farmers applauded the strides made for dairy in the Phase One U.S.-Japan Trade Agreement as they will help stem the erosion of U.S. market share in this key market, especially for cheese, whey, and lactose products. However, more remains to be done to maximize opportunities in this top five U.S. dairy export market for U.S. dairy farmers and processors. The dairy industry is urging U.S. trade negotiators to build upon the Phase One deal and deliver the complete range of market access opening and assurances necessary to ensure that U.S. dairy products can best compete. A 2019 U.S. Dairy Export Council study found that if the U.S. has at least the same market access as its competitors, the U.S. could roughly double its share of the Japanese market over the next 10 years.

CHINA

China is the world's second largest importer of dairy products and a critical market for the U.S. dairy industry. The Phase One trade agreement with China made important advances on nontariff issues and regulatory restrictions harming U.S. dairy trade.⁵ However, the U.S. Government's work with China is not complete until the retaliatory tariffs against all U.S. dairy exports are fully lifted.

Prior to the imposition of retaliatory tariffs, the U.S. had been expanding its market share of China's rapidly growing import market, growing by 10 percent a year over the past decade. Although the dairy market in China continues a strong trajectory of growth with tremendous potential, recent gains for U.S. dairy exports have been reversed by the waves of retaliatory tariffs imposed by China. Once hard-earned market access is lost, it will be difficult to recover or find another market as pivotal for U.S. dairy exports as China. We therefore urge that Congress work with the administration to press for removal of all retaliatory tariffs on dairy.

ENFORCEMENT

Just as new trade agreements will be critical to expanding export opportunities and jobs for U.S. dairy farmers, insisting on a level playing field across the board, including through enforcement of existing agreements, will be essential to securing and maintaining market access for U.S. dairy. The decision to pursue dispute settlement with Canada over its TRQ administration sends exactly the right message, but other trading partners need to get that message as well. Notably, the EU's misuse of GIs is just one of the many barriers the EU is constantly erecting to our products, all while benefitting from wide-open market access here in the United States. This imbalance of opportunities is not right, and it cannot continue.

CONCLUSION

The U.S. dairy industry recognizes the importance of expanding overseas market opportunities in order to bolster our farmers, processors, and manufacturers here at home. We have worked hard to establish the U.S. as a reliable supplier of safe and nutritious products to meet growing foreign demand for high-quality American dairy products, and we want to be able to capitalize on these extensive efforts through improved access to these markets.

USMCA represents an indispensable step towards maintaining and expanding export opportunities for U.S. dairy, albeit one requiring vigilant monitoring and aggressive enforcement. USMCA also represents a foundation that should be built upon through efforts to pursue additional trade agreements in key markets and to dismantle trade barriers including GIs, in order to ensure continued growth and economic security for the domestic dairy industry and, in turn, my family business.

I appreciate the opportunity to provide comments on these important issues to this committee. Thank you.

⁵ Summary of dairy-related results: https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Phase_One_Agreement-Commodity_Fact_Sheet-Dairy_and_Infant_Formula.pdf.

QUESTIONS SUBMITTED FOR THE RECORD TO ALLAN HUTTEMA

QUESTION SUBMITTED BY HON. RON WYDEN

Question. Dairy producers have faced significant issues getting their products into the Canadian market, and even greater issues competing with underpriced dairy ingredients in Canada and third markets. Essentially, Canada's supply management system is distorting the dairy market at home and abroad.

I was pleased to see that USTR initiated dispute resolution on Canada's tariff rate quota (TRQ) system. But what other issues should we be watching with regard to Canada's dairy obligations? In particular, do you think Canada has fully eliminated the Class 6 and 7 ingredient prices that were distorting the market for dairy ingredients?

Answer. While Canada has eliminated Class 6 and 7 pricing categories in accordance with the USMCA, there are outstanding concerns that it may be attempting to circumvent export surcharges imposed on dairy protein exports, including skim milk powder (SMP), milk protein concentrate (MPC) and infant formula. The fundamental problem with Class 7 was Canada's use of global markets to export increasingly large volumes of its dairy protein at artificially low prices—an issue that was addressed in the agreement. However, Canadian exports of milk protein isolates (MPI) and certain SMP blends manufactured under the new Class 4a have been increasing in a manner that seems designed to evade these USMCA disciplines.

We ask that Congress and USTR closely monitor these milk protein exports and move quickly to deploy the dairy consultation tools laid out in USMCA's Agriculture Chapter to address this concern, as these attempts to circumvent export caps are inconsistent with the spirit of the agreement.

QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

Question. The dairy industry is important to the economy of Washington State and that of the Pacific Northwest. In Washington alone, there are around 400 dairy farms that support more than 50,000 jobs. Dairy exports alone contributed almost \$170 million to my home State's economy last year.

Given its strategic location, Washington State is a significant dairy exporter, supplying customers all over the world.

However, the dairy industry continues to face challenges when it comes to trading with our U.S.-Mexico-Canada Agreement (USMCA) partners. Canada has been holding back U.S. dairy imports through its unfair allocation of dairy tariff-rate quotas. Mexico, the United States' top market for dairy exports, has proposed several costly regulations on dairy imports that are contrary to our agreement as outlined by the USMCA.

The main purpose of the USMCA is to promote trade while reducing barriers and other regulatory burdens. We must press Canada and Mexico to adhere to these principles and hold them accountable to their trade commitments.

From your perspective, why do we continue to have challenges with Canada on dairy? What is behind these challenges? What will it take to get the Canadians to live up to their commitments and to remove barriers to U.S. dairy imports?

Answer. Having operated a dairy farm under the supply management system in British Columbia, I can attest to Canada's long history of undermining its market access commitments to protect its tightly controlled dairy market. Consequently, it is not surprising that we are now seeing Canada's attempts to circumvent its obligations under the USMCA regarding dairy TRQ allocations and the diversion of milk protein production to avoid export surcharges. The Canadian dairy supply management system has not been challenged in the past, largely due to the sizable support supply management groups receive from their own government. Persistent intervention from the United States will send the message that it takes the issue seriously and will continue to press for changes, which, at the very least, will deter new investment by Canadian processors.

To that end, close monitoring and strong enforcement is necessary to ensure Canada adheres to its commitments in the agreement. We were pleased to see Ambassador Tai initiate formal dispute settlement proceedings over Canada's dairy TRQ allocations that discourage imports from the United States. Further enforcement is necessary to ensure that Canadian milk protein exports do not violate the spirit of

the agreement and replicate the issues associated with Class 7 and the offloading of dairy proteins on the global market. Left unchecked, I am certain Canada will not hesitate to recreate the same issues that persisted prior to the USMCA. We appreciate your attention to this important issue and encourage careful scrutiny of Canada's implementation of all its dairy provisions in the trade deal.

Question. Thank you for noting the issues with the side letters with Mexico pertaining to common cheese names and prior users. Could you elaborate on how the implementation of these provisions benefits Washington State and your cooperative?

You mentioned that there are regulatory issues cropping up in that market that appear to be politically driven. Could you talk a bit more about the impacts that these regulations have on your farm?

Answer. Mexico is the U.S. dairy industry's largest export market, so trade disruptions with Mexico ripple throughout the industry on down to the farm level. If we're unable to send our dairy products to Mexico, the repercussions for milk pricing in the U.S. would be devastating for the producers in my co-op and around the country. With feed prices competitive now due to rising commodity prices, it is key for dairy farmers that the U.S. maintains and expands its export markets, especially Mexico. We ask Congress and the administration to pursue discussions with Mexico to maintain a cordial relationship and manage the trade barrier issues surging in the regulatory and Customs enforcement area.

PREPARED STATEMENT OF BETH LOWELL,
DEPUTY VICE PRESIDENT, U.S. CAMPAIGNS, OCEANA

My name is Beth Lowell, deputy vice president for U.S. Campaigns at Oceana. Oceana is an international ocean conservation organization dedicated to protecting the world's oceans. We work in North, Central, and South America; the European Union; and the Philippines to promote responsible fisheries management and thereby save the oceans and feed the world.

Oceana thanks the committee for the invitation to testify on these matters. After one year in force, Oceana has some outstanding questions and recommendations on how to improve implementation of the United States-Mexico-Canada Agreement (USMCA). While the environment chapter addresses a wide range of issues, my testimony today is focused on fisheries issues.

Seafood is the most highly traded food commodity internationally with vastly complex and often opaque supply chains, requiring governments to use a number of tools to improve fisheries conservation and management, combat IUU fishing, protect those most vulnerable and level the playing field for legal fishermen and trade. The United States should advance a one-government approach, especially in addressing illegal, unreported and unregulated (IUU) fishing, that uses all its tools, including trade agreements like the USMCA.

The USMCA must be paired with other agency-driven actions like the National Oceanic and Atmospheric Administration's Seafood Import Monitoring Program, other international trade programs, and Custom and Border Protection's enforcement of the Tariff Act, especially with respect to IUU fishing and forced labor. Working also with the State Department, Department of Defense, Labor, and other agencies, the United States government can forge a unified, coordinated effort to become a global leader in the fight against IUU fishing, forced labor and other human rights abuses. These illegal practices undermine U.S. fishermen, unfairly disadvantage legal fishers who follow the rules, and put seafood tainted by forced labor on the plates of American consumers.

Trade measures, such as the USMCA, can drive positive change for ocean conservation and fisheries management in both importing and source countries. As discussed in this testimony, Oceana in Mexico identified ways that the Mexican government must improve management of their fisheries by adopting documentation and traceability to comply with the requirements of the USMCA as well as other U.S. import requirements like Seafood Import Monitoring Program and bycatch reductions measures.

Overall, the White House, Federal agencies and Congress should work together to advance policies to ensure that all seafood is safe, legally caught, responsibly sourced and honestly labeled. Setting the minimum standard that seafood must meet to enter and be sold in the U.S. market will level the playing field for legal fishermen and help drive change in both source and market states.

FISHERIES SUBSIDIES

The environment chapter of the USMCA commendably includes a provision intended to reduce fisheries subsidies. Article 24.20 opens with this statement:

The Parties recognize that the implementation of a fisheries management system that is designed to prevent overfishing and overcapacity and to promote the recovery of overfished stocks must include the control, reduction, and eventual elimination of all subsidies that contribute to overfishing and overcapacity.

This provision takes a step in the right direction toward reducing harmful fisheries subsidies in the United States, Mexico, and Canada and establishes a floor for disciplining these subsidies in future trade agreements.

Many fisheries subsidies—such as tax breaks and fuel subsidies—are concerning from a sustainability perspective because they artificially increase profits and encourage more fishing. These payments are known as harmful subsidies, to distinguish them from government spending on beneficial or ambiguous programs, such as fisheries management or vessel buybacks.

A recent report¹ released by Oceana shows that the world's top industrial fishing nations are providing subsidies that make distant-water fishing more profitable, drive overcapacity, and shift the risk of overfishing to the waters of other countries. For the first time, harmful subsidies worth billions of dollars from wealthy nations can now be tracked to destinations around the world, including to least developed countries (LDCs) and the high seas.

Distant-water fishing fleets often receive subsidies worth 20 to 40 percent of the catch's value, making it highly probable that they would not be profitable without fisheries subsidies and unfettered access to waters of other nations, including LDCs that can least afford it and where management capacity is often most lacking. The top 10 providers of harmful fisheries subsidies in 2018 are China, Japan, Korea, Russia, the United States, Thailand, Taiwan, Spain, Indonesia and Norway, for a total of \$15.4 billion. Of that total, these nations spent more than \$5.3 billion per year in harmful subsidies for fishing in the waters of 116 other nations.

The United States ranked fifth in the world in 2018, providing \$1.1 billion in harmful fisheries subsidies. These findings show that our country has work to do to comply with the spirit and letter of our commitments in the USMCA on fisheries subsidies. While Oceana's recent report did not include Canada and Mexico, research is underway to analyze subsidies from other maritime nations.

The USMCA requires the parties to notify each other of their fisheries subsidies—within 1 year of the date of entry into force and every 2 years thereafter—and specifies the information to be provided regarding the subsidies. To the extent that notification under the WTO Subsidies and Countervailing Measures Agreement partially meets this USMCA requirement,² the United States and Canada reported some of the required information on fisheries subsidies as of July 2021; however, the last notification from Mexico is from September 2019.³ The USMCA also requires the parties to notify each other on an annual basis of any list of vessels and operators engaged in IUU fishing. Since the USMCA entered into force on July 1, 2020, complete information on fisheries subsidies and IUU fishing appears to be overdue; Oceana would like to know whether the parties have submitted the information and when it will be available to the public.

The USMCA also states, “The Parties shall work in the WTO towards strengthening international rules on the provision of subsidies to the fisheries sector and enhancing the transparency of fishing subsidies.” It is discouraging that the negotiations in the WTO on fisheries subsidies have lingered for more than 20 years without resolution. Oceana urges the U.S. government to push on the WTO negotiations to:

¹Skerritt, Daniel J. and Sumaila, U. Rashid. (2021) *Assessing the spatial burden of harmful fisheries*. Oceana, <https://oceana.org/reports/tracking-harmful-fisheries-subsidies/>.

²WTO. *Subsidies and countervailing measures*, https://www.wto.org/english/tratop_e/scm_e/scm_e.htm#dol.

³From the WTO website, the latest notification on subsidies from the United States as of July 14, 2021: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N372USA.pdf&Open=True>. From Canada as of July 8, 2021: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N372CAN.pdf&Open=True>. From Mexico as of September 24, 2019: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N315MEX.pdf&Open=True>.

- Prohibit harmful subsidies to all fishing and related support activities outside of each member state's own jurisdiction;
- Call on the largest providers of subsidies to take the largest share of responsibility to eliminate and redirect harmful subsidies into beneficial areas;
- Develop a framework to mitigate harmful fisheries subsidies that is transparent, time bound, performance-based, and has clear standards for reporting data across member states.

THE CRISIS OF ILLEGAL, UNREPORTED, AND UNREGULATED (IUU) FISHING

The world's oceans face a dire threat: illegal, unreported, and unregulated fishing. Across the globe, IUU fishing depletes marine resources, destroys habitats, undermines food security, and frequently drives forced labor and human rights abuses. IUU fishing is off the books and outside the rule of law, compromising responsible and effective fisheries management. IUU fishing hides in the shadows and beyond the horizon, and it thrives on a lack of transparency, limited enforcement, and a complex global supply chain. IUU fishing costs the global seafood industry as much as \$26 billion to \$50 billion every year.

IUU fishing includes fishing without authorization, ignoring quotas, fishing in closed areas or with prohibited gear, catching unmanaged species or failure to report catch to proper authorities. The potential for IUU fishing is especially great on the high seas where fisheries management and enforcement are often insufficient and sometimes inconsistent.^{4,5} The same conditions that make the high seas vulnerable to IUU fishing also make it susceptible to other forms of transnational organized crime. IUU fishing has been linked to a range of illicit activities, including document forgery; money laundering; forced labor; and human, drug and wildlife trafficking.^{6,7}

IUU fishing vessels are already evading laws, regulations and oversight to gain higher profits and, in some cases, are more willing to further drive down costs by exploiting workers through forced labor.^{8,9} The seafood supply chain is complex, opaque and difficult to trace. It starts at sea and follows a winding path from fishing vessel to reefer, from reefer to reefer, from vessel to factories, from factories to processing, out to market, and then onward for global distribution. Human trafficking and forced labor can occur at every step in the supply chain. Human trafficking in fisheries entails the transfer and containment of persons on board vessels, where they are forced to work as crew by means of violence, threat or debt. Human trafficking is the fastest growing transnational criminal enterprise in the world, generating \$150 billion dollars annually and enslaving an estimated 21.9 million people.¹⁰ IUU fishing practices threaten food security, compromise the health of the oceans and fisheries, and undermine fishermen and seafood businesses that play by the rules. Until the government takes stronger measures to keep IUU products out of the United States, our dollars will continue to support the pillaging of the ocean through the seafood we buy. All seafood should be safe, legally caught, responsibly sourced, and honestly labeled.

In February of this year, the U.S. International Trade Commission (ITC) issued an important report on IUU fishing.¹¹ The ITC economists analyzed the amount of seafood obtained via IUU fishing that is imported into the U.S. and estimated the economic impact of those imports on U.S. commercial fisheries.

The ITC report found that the U.S. imported an estimated \$2.4 billion worth of seafood derived from IUU fishing in 2019—which is almost 11 percent of total U.S.

⁴National Intelligence Council. (2016) *Global Implications of Illegal, Unreported, and Unregulated Fishing*.

⁵Bondaroff P. (2015) *The illegal fishing and organized crime nexus: Illegal fishing as transnational organized crime*. The Global Initiative Against Transnational Organized Crime.

⁶*Ibid.*

⁷Haenlein C. (2017) *Below the Surface. How Illegal, Unreported and Unregulated Fishing Threatens our Security*. Royal United Services Institute.

⁸United Nations Office on Drugs and Crime. (2011) *Transnational Organized Crime in the Fishing Industry*.

⁹Environmental Justice Foundation. (2010) *All at Sea—The Abuse of Human Rights Aboard Illegal Fishing Vessels*. London.

¹⁰International Labour Organization. (2014) *Profits and poverty: The economics of forced labour*.

¹¹United States International Trade Commission. (2021) *Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries*, Publication Number 5168, Investigation Number 332–575, <https://www.usitc.gov/publications/332/pub5168.pdf>.

seafood imports and more than 13 percent of U.S. imports caught at sea (“wild caught”). Confirming that IUU imports are undermining U.S. fishers, the analysis found that preventing IUU imports from entering the U.S. market “would have a positive effect on U.S. commercial fishers, with estimated increases in U.S. prices, landings (catches of fish), and operating income.”¹² The ITC’s figures include not only wild caught seafood but also catch that is used as feed in aquaculture operations. The ITC used a definition of IUU that includes labor violations as well as factors relating to fisheries management and conservation.¹³

Regarding our partners in the USMCA, the analysis identified Mexico as one of the countries with relatively substantial exports of wild caught IUU seafood to the U.S.¹⁴ The ITC estimated that 25.1 percent of seafood imports from Mexico to the U.S. were products of IUU fishing. Canada, on the other hand, had one of the lowest estimated IUU shares of imports into the U.S. at 3.4 percent (wild caught seafood).¹⁵

SEAFOOD FRAUD UNDERMINES RESPONSIBLE FISHERIES MANAGEMENT AND U.S. FISHERS

Seafood fraud further undermines U.S. fishermen, hinders ocean conservation efforts and cheats consumers. Seafood fraud comes in different forms, including species substitution, improper labeling, hiding the true origin of the product to avoid tariffs, or other forms of economic fraud like adding extra breading, water or glazing to the product.

Species substitution is found around the world. In a review of more than 200 seafood fraud studies by non-government organizations, governments, academic institutions, and journalists, overall one in five fish of the more than 25,000 samples tested worldwide were mislabeled.¹⁶ The reviewed studies found seafood mislabeling in every sector of the seafood supply chain: retail, wholesale distribution, import/export, packaging/processing and landing.¹⁷

Oceana investigated seafood fraud in the United States, and overall approximately one-third of the more than 1900 seafood samples that we tested were mislabeled. We often found farmed seafood sold as wild caught, imported fish sold as local favorites, less sustainable fish sold as more sustainable options and cheaper fish sold as more expensive selections. For example, Oceana found farmed shrimp sold as wild Gulf shrimp in the Gulf of Mexico region, Asian imported crab inside crab cakes sold as local Chesapeake Bay blue crab and fish imported from Asia and Europe sold as local Great Lakes favorites, like walleye and lake perch.

In Oceana’s 2013 nationwide survey, we tested 120 samples of red snapper, and only seven were actually red snapper. That means that U.S. fishermen are selling their red snapper in a market flooded with imposters. They should be getting more for their catch, and consumers are getting ripped off when buying a cheaper substitute like tilapia for red snapper prices.

Seafood fraud can happen anywhere in the seafood supply chain. While Oceana tested at the retail level, the Food and Drug Administration (FDA) found 15 percent of the 174 lots tested at the wholesale level were mislabeled, and the Department of Justice has convicted over a dozen U.S. businesses of importing and distributing 10 million pounds of mislabeled Asian catfish to defraud consumers and avoid tariffs. More recently, a Virginia supplier was convicted of selling millions of dollars of expired foreign crab as fresh local blue crab, putting honest businesses and consumer’s health at risk.

IUU fishing and seafood fraud are complex problems that cut across many Federal agencies with no clear indication of leadership. Recognizing the need to coordinate the Federal Government response, the Task Force on Combating IUU Fishing and Seafood Fraud was established in 2014, bringing together 11 Federal agencies to develop recommendations to address these issues. The 15 recommendations in-

¹² United States International Trade Commission. (2021) *News Release: Illegal, Unreported, and Unregulated Fishing Accounts for More Than \$2 billion of U.S. Seafood Imports*, Reports USITC, News Release 21-040.

¹³ United States International Trade Commission. (2021) February 2021, USITC, *Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries*, p. 17.

¹⁴ ITC report, p. 15.

¹⁵ ITC report, p. 17.

¹⁶ Warner K, Mustain P, Lowell B, Geren S, Talmage S. (2016) *Deceptive dishes: Seafood swaps found worldwide*. Oceana.

¹⁷ *Ibid.*

cluded international, national, state and local measures, including a traceability program to track seafood from the point of catch to entry into U.S. commerce.

The Seafood Import Monitoring Program (SIMP) requires some imported seafood at risk of illegal fishing and seafood fraud to be accompanied by catch documentation that provides key information about the fish, including who caught it, where it was caught, how it was caught and what specific species it is. This information is used to establish that it was caught in a legal fishery. The seafood must also have documentation that allows it to be traced back to the original point of catch or farm if requested.

The SIMP allowed the United States to enact import controls to help ensure that seafood imported into the United States was legally caught and properly labeled. However, this risk-based program only includes 13 species and species groups—abalone, Atlantic cod, blue crab (Atlantic), dolphinfish (mahi mahi), grouper, king crab (red), Pacific cod, red snapper, sea cucumber, sharks, shrimp, swordfish, tunas (albacore, bigeye, skipjack, yellowfin, and bluefin)—and stops at the U.S. border. Seafood mislabeling can happen to all types of seafood and can occur at any stage from the point of catch to the final consumer. To truly stop seafood fraud, all seafood must be traced from boat to plate.

THE U.S. NEEDS STRONGER MECHANISMS TO MOTIVATE OTHER COUNTRIES TO ADDRESS IUU FISHING

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) is the primary law governing Federal fisheries management in the United States. When properly and fully implemented, the MSA is one of the most effective fishery laws in the world today. Since it was first passed in 1976, and through subsequent reauthorizations in 1996 and 2006, the law has helped stop overfishing, protect essential fish habitats and rebuild depleted stocks.

In addition to the domestic fisheries management provisions, the High Seas Driftnet Fishing Moratorium Protection Act (HSDMPA) outlines international actions specifically on IUU fishing, bycatch of protected living marine resources and sharks. Under the HSDMPA, NOAA identifies nations with problematic practices in the biennial report to Congress. NOAA then enters a two-year consultation process with the Nation to address the issues for which it was identified. At the end of the 2 years, a Nation is either negatively or positively certified. A positive certification indicates that the Nation has addressed the issue. A negative certification may result in import restrictions or denial of port access for fishing vessels.

In the 2019 Biennial Report to Congress,¹⁸ NOAA identified Mexico for having vessels fishing illegally in the Gulf of Mexico. Mexico was also identified for this same issue in 2015 and 2017. Despite being repeatedly identified in the biennial reports, Mexico yet to resolve IUU fishing activity by Mexican vessels. Mexico is a key example of how the HSDMPA does not have the teeth that it needs to lead to real, systematic improvement to a country's management regime.

In contrast, the European Union's IUU regulations empower authorities to issue warnings (yellow cards) that can lead to sanctions (red cards) including banning seafood imports. This rigorous system has improved fisheries management and enforcement¹⁹ in several countries, including South Korea and the Philippines.²⁰ To be successful, the U.S. must be willing to use sanctions to drive change. The USMCA offers another mechanism for the U.S. to engage with Mexico to compel the government to address IUU fishing in the Gulf of Mexico and in other fisheries.

OCEANA REPORT ON USMCA IMPLEMENTATION IN MEXICO

Oceana in Mexico released a report earlier this month outlining USMCA implementation in Mexico. Oceana recommended that Mexico prioritize and execute the necessary changes to the legal framework and implement the necessary tools to ensure compliance with commitments made at the international level to guarantee a sustainable and competitive fishing sector with practices in accordance with the law.

Since signing the USMCA, the U.S. has imposed measures restricting imports of fish caught in Mexico by Mexican flagged vessels. The first measure was imposed in March 2021, restricting the importation of certain fishery products from the

¹⁸ NOAA Fisheries. (2019) *Improving International Fisheries Management*. Report to Congress.

¹⁹ IUU Watch. (2015) *EU Regulation to combat illegal fishing: Third country carding process*.

²⁰ IUU Watch, EU Carding Decisions, <http://www.iuuwatch.eu/map-of-eu-carding-decisions/>, accessed July 25, 2021.

Upper Gulf of California by determining that comparability requirements are absent in contrast to those implemented by the United States to ensure protection of endangered species during fishing activities, specifically the vaquita porpoise, a species endemic to the Upper Gulf.²¹

The second trade restriction imposed after the entry into force of the USMCA was also by the United States and applies to the export of wild shrimp from Mexico. This measure was ordered on April 1, 2021. The United States determined that provisions to protect sea turtles in shrimp fisheries, and their enforcement, are not comparable to those applicable in the United States, since an inspection carried out by the U.S. government found numerous shrimp fishing vessels that were not using Turtle Excluder Devices (TEDs). Therefore, for the time being, Mexico has lost its certification to export wild shrimp to the United States.²²

In addition to the U.S. shrimp export requirement of using TEDs, the use of such devices is also mandatory under rule NOM-061-SAGPESC/SEMARNAT-2016. The Mexican government has announced measures to regain certification for shrimp exports, including training in the use of TEDs and the use of the Satellite Monitoring System for Fishing Vessels (SISMEP) to concentrate inspection and surveillance actions.²³

Despite the measures announced by the Mexican government to eliminate restrictions on the export of fish species, it is important to strengthen inspection and surveillance actions carried out by Mexican authorities to ensure compliance with conservation measures for endangered species. Likewise, the Mexican government must ensure that the fishing sector that complies with conservation measures has the necessary tools to continue marketing its products. In Article 24.17, the parties undertake the obligation to promote and facilitate trade in sustainably managed and legally harvested fish and fish products. Mexico must enforce traceability as its main tool to comply with this provision and prevent trade restrictions from extending to sustainable and legal products. A traceability standard providing information about each stage of the value chain, from vessel to the final point of sale, would allow verification of which fishery products effectively comply with provisions of species conservation and exclude from the market only those that violate these provisions. Thus, the objective of promoting commercialization of legal and sustainable fishing is achieved.²⁴

Lastly, Article 2 of the Environment Cooperation and Customs Verification Agreement commits the parties to trade, import and export only goods and services produced in compliance with Chapter 24. Therefore, Mexico, the United States and Canada must ensure that the products they trade comply with conservation efforts for vulnerable and endangered species, as well as fishery products that are not derived from illegal fishing.²⁵

To verify this, Mexico must implement a traceability system for fishery products that collects and provides information along the whole value chain, from capture to commercialization. Today, Mexico lacks this tool even though Article 119 Bis 9 of the General Law of Sustainable Fisheries and Aquaculture (LGPAS) mandates implementation of a traceability system for fishery resources for human consumption, from point of origin to the final destination.²⁶

Oceana outlined specific measures that the Mexican government must adopt to allow for continued trade with the U.S. and avoid of commercial sanctions, such as the one imposed on the Upper Gulf of California and on Mexican shrimp. Among these measures is the adoption of traceability standards providing information about each stage of the value chain, from vessel to the ultimate selling point. This would allow verification of which fishery products effectively comply with provisions of species conservation and exclude from the market only those that violate these provisions. Thus, the objective of promoting commercialization of legal and sustainable

²¹ Oceana Mexico, *El T-MEC Y La Pesca: Reporte Sobre el Cumplimiento de las Obligaciones que Asume el Estado Mexicano en Materia Pesquera* at 3, n. 2, n. 3 (July 1, 2021), https://mx.oceana.org/sites/default/files/la_pesca_y_el_t-mec.pdf (*The USMCA and Fishing: Report on Compliance with Obligations Assumed by the Mexican State in Fishing-Related Matters*; English translation available upon request) [hereinafter “Oceana Mexico USMCA and Fishing Report”].

²² Oceana Mexico USMCA and Fishing Report at 4, n. 5, n. 6.

²³ Oceana Mexico USMCA and Fishing Report at 4, n. 7.

²⁴ Oceana Mexico USMCA and Fishing Report at 5.

²⁵ Oceana Mexico USMCA and Fishing Report at 5.

²⁶ Oceana Mexico USMCA and Fishing Report at 5.

fishing is achieved and prevents trade restrictions from extending to sustainable and legal products.²⁷

Specifically, to fully comply with the USMCA, Mexico should:

- **Approve a traceability standard** that allows government authorities and the fishing sector to verify the legal origin of products and prevent market entry to illegal fishing, caught in violation of the rules for protection of vulnerable species, without a permit or in prohibited areas.
- **Promote transparency of fishing vessel data** as a tool to combat illegal fishing, so that the data are understandable and publicly accessible through Global Fishing Watch.
- **Have updated, public, and coincident information and data** on fishing vessels that have fishing permits and carry out such activities.
- **Sign and ratify the Agreement on Port State Measures** or incorporate into the regulatory framework provisions that incorporate the obligations set forth in the PSMA to combat illegal fishing.
- **Reform the General Law of Fisheries and Aquaculture** integrating provisions that contemplate restoration of overexploited fisheries and require the fishing authority to implement actions for conservation and restoration of fish species.
- **Ensure that subsidies granted to the fishing sector do not contribute to the overexploitation of fisheries** or are directed to vessels that have engaged in illegal fishing activities. Also, direct the subsidies granted to strengthen the fishing sector, encourage sustainable fishing practices and adequate management of existing fisheries.
- **Conduct an evidence-based analysis** of percentages in fisheries where this practice represents a risk, establish maximum bycatch percentages, as well as ensure the use of fishing gear and devices that minimize bycatch of endangered species.²⁸

PUTTING THE USMCA AGREEMENT TO WORK

The Environment Chapter of the USMCA includes articles on Marine Wild Capture Fisheries; Sustainable Fisheries Management; Conservation of Marine Species; Fisheries Subsidies; Illegal, Unreported, and Unregulated (IUU) Fishing; and Conservation and Trade. Together these provisions, if fully implemented, would improve fisheries management systems to prevent overfishing and overcapacity, reduce bycatch of non-target species and marine wildlife, and protect habitat. The agreement also outlines that the U.S., Mexico, and Canada shall adopt or maintain measures to prohibit the practice of shark finning. The agreement prevents subsidies to IUU fishing vessels or for fishing on an overfished stock.

The IUU fishing provisions includes requirements to implement port state measures; support monitoring, control, surveillance and enforcement including deterring nationals and flagged vessels from engaging in IUU fishing and addressing transshipments. Each Party shall maintain a vessel documentation scheme and promote the use of International Maritime Organization numbers or comparable unique vessel identifiers for vessels operating outside of its national waters to enhance transparency of fleets and traceability of fishing vessels. The U.S., Canada, and Mexico are also to develop and maintain publicly available an easily accessible registry data of vessels flying its flag and support a Global Registry of Vessels, among other measures.

The USMCA provides a mechanism for the general public to take action if they believe an environmental law is not being effectively enforced by the United States, Mexico, or Canada. The USMCA includes provisions (Articles 24.27 and 24.28) allowing anyone in one of the three countries to file a Submission on Enforcement Matters with the Secretariat of the Commission for Environmental Cooperation.²⁹ While this mechanism existed under NAFTA, under the USMCA, the time frames for the process have been shortened, the scope of environmental laws has been narrowed to those enacted, promulgated, or enforced by the central level of government (so, state, provincial, or local laws are not included), and the scope of eligible submitters is no longer limited to residents or NGOs in the territory of one of the three countries; instead, *anyone* in any of the three countries can file a Submission on Enforcement Matters.

²⁷ *Oceana Mexico USMCA and Fishing Report* at 5.

²⁸ *Oceana Mexico USMCA and Fishing Report* at 16.

²⁹ SMCA, arts. 24.27 and 24.28.

If adequately substantiated, Submissions on Enforcement Matters about government failures to enforce environmental laws require responses from relevant government agencies and can result in a factual record that government representatives from all three countries must review and consider. Such Submissions under NAFTA have proven successful in getting governments to take necessary actions to protect the environment.³⁰ Since the USMCA went into effect on July 1, 2020, two submissions have been made: the first, filed in December 2020, asserts that the Mexican Ministry of Environment and Natural Resources and other environmental agencies are failing to effectively enforce provisions to protect loggerhead turtles in both the Atlantic and Pacific oceans,³¹ and the second, filed in February 2021, asserts that a Port Authority in Canada failed to effectively enforce the Canadian Environmental Assessment Act when considering expansion of a marine port on the Pacific Coast of British Columbia.³² As these examples demonstrate, this USMCA mechanism offers the public a viable way to gain leverage to advance policies for protecting marine life and our oceans.

Oceana is considering how we can use this process to ensure the United States, Mexico and Canada are enforcing their own environmental laws.

FUNDING FOR NOAA FOR USMCA IMPLEMENTATION

As part of the USMCA Supplemental Appropriations Act, NOAA received an additional \$16 million to implement the agreement. Specifically, NOAA was provided \$8 million for engagement with the Government of Mexico to combat illegal, unreported and unregulated fishing and to enhance implementation of the Seafood Import Monitoring Program. The other \$8 million was to carry out section 3 of the Marine Debris Act. The funds for both are available until September 30, 2023. Oceana recommends that there be more reporting and transparency in how that money has been spent to date and how NOAA plans to spend the remaining funds.

In June, NOAA issued a report on the implementation of SIMP and outlined limited progress with the program and highlighted limited investment of resources and dedicated staff for the program. Oceana remains concerned that NOAA is not building the SIMP program effectively and efficiently to allow the U.S. to stop imports of illegal seafood. It is not clear how NOAA has spent the \$8 million dedicated to enhance implementation of SIMP or increase engagement with the Government of Mexico. If money remains, NOAA should prioritize expanding SIMP to all seafood and ensuring the information collection by SIMP is the right information in a format that allows for data analysis to identify shipments of high risk of IUU fishing, seafood fraud, forced labor and other human rights abuses to guide risk-based targeting for inspections, audits, and enforcement.

COLLABORATION AND CAPACITY BUILDING

The United States established via regulations the Seafood Import Monitoring Program in 2016. SIMP requires catch documentation and traceability requirements for some species at risk of IUU fishing and seafood fraud. Since SIMP, both Canada and Mexico have begun work on establishing similar documentation and traceability requirements for seafood. As parties to the agreement and major seafood producing and importing nations, the USMCA should incentivize all three governments to work together to harmonize requirements for catch documentation and traceability. The United States could help advise Mexico and Canada on how best to establish their programs and provide lessons learned from the creation of SIMP. And the United States, Mexico, and Canada should work with other major market states to align programs and harmonize requirements. For example, the USMCA countries should harmonize our programs with the European Union's IUU regulation that requires catch documentation and traceability for all seafood and has been in force for over a decade. Japan recently passed legislation and is working to develop their IUU programs as well.

³⁰ See, e.g., Sumidero Canyon II Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/sumidero-canyon-ii/> (resulting in the closure of a limestone quarry damaging the Sumidero Canyon National Park in Chiapas, Mexico); BC Mining Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/bc-mining/> (resulting in greater public participation and transparency regarding the protection of fish and fish habitat from the impacts of mining in British Columbia).

³¹ Loggerhead Turtle Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/loggerhead-turtle/>.

³² Fairview Terminal Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/fairview-terminal/>.

U.S. GOVERNMENT ACTION ON IUU FISHING

The transparency provisions, specifically on developing a publicly available registry, requiring IMO or other unique vessel numbers and supporting a Global Record of Vessels, is an area where the U.S. has made little progress. NOAA should push to advance transparency in our own vessel registries, including by requiring that U.S. vessels secure IMO numbers when available, so we can then ask our trading partners to do the same.

Technology tools provide additional cost-effective measures to improve monitoring and transparency of fishing vessels. The U.S., Canada and Mexico should increase transparency by requiring fishing vessels to carry and continuously transmit Automatic Identification System (AIS) devices. AIS provides vessel identity, location and course data that allows for greater maritime domain awareness and visibility in behavior at sea. AIS data allows for management authorities to use the data in verification of catch documentation and for identifying shipments at high risk of IUU fishing, forced labor and other human rights abuses for further inspections, audits, and enforcement.

The USMCA is one tool that the U.S. government can use to combat IUU fishing and USTR is one agency. The Biden administration should take a one-government approach on IUU fishing, building upon a foundation of the SIMP and other measures to ensure that all seafood sold in the U.S. is safe, legally caught, responsibly sourced and honestly labeled. This requires:

- Expanding SIMP to all species so that all seafood entering the U.S. provides catch documentation and can be traced back to a legal source.
- Extending traceability requirement through the full supply chain. This can be accomplished by finalizing the Food and Drug Administration's pending rule on food traceability that includes almost all seafood.
- Increasing transparency requirements for fishing vessels and making transparency a condition of import.
- Using the information collected via the various trade programs, including SIMP, more efficiently and effectively to better target shipments with the highest risk for screening, audits and enforcement and close our market to illegal products.
- Improving coordination, collaboration and information-sharing across the Federal agencies to better target countries and shipments with the highest risk of illegal fishing, seafood fraud and forced labor.
- Building into the programs that address IUU fishing measures to allow the U.S. to also identify and block shipments of products produced using forced labor and other human rights abuses.
- Reduce harmful fishing subsidies in the U.S., discipline fisheries subsidies in all future trade agreements, and push for an agreement in the WTO to end harmful fishery subsidies.

CONCLUSION

After 1 year, there has been some progress in the implementation of the USMCA, but more needs to be done. USMCA countries should take a hard look to ensure that we are all implementing the agreement. For example, Mexico can improve documentation and traceability of fisheries to both comply with the SIMP and improve market access. Canada can advance their seafood traceability requirements.

Trade agreements like the USMCA and trade programs like SIMP help level the playing field for U.S. fishermen. The United States must ensure that legality is a condition of import. SIMP is first step in that direction, but more needs to be done to close loopholes in that program and integrate other efforts within the Federal Government.

The Biden administration and Congress have an opportunity to craft a one-government approach to combating IUU fishing which includes trade agreements, import controls—including requiring catch documentation and traceability for all seafood, expanded transparency of fishing, enhancing our nation-based efforts to drive change and building in tools that allow the U.S. to identify shipments produced using forced labor. Overall, these programs can help ensure that all seafood sold in the U.S. is safe, legally caught, responsibly sourced, and honestly labeled.

QUESTIONS SUBMITTED FOR THE RECORD TO BETH LOWELL

QUESTION SUBMITTED BY HON. RON WYDEN

Question. One of the biggest reasons why the original NAFTA hurt American workers and did little to protect our environment was that its enforcement system was ineffective, and it pushed labor and environmental protection off into unenforceable side letters.

USMCA included improvements on both counts. Labor and environment were moved from unenforceable side letters straight into the core agreement. They are also subject to the full dispute settlement mechanism that Democrats worked to include in the agreement.

Can you speak to why this enforceability is critical for environmental provisions? What tools does this give parties and the environmental community to demand compliance with the environmental rules set out in USMCA?

Answer. Environmental provisions without enforcement merely create a bunch of text that sounds good on paper, but without enforcement is meaningless. The ability to hold a country accountable to their environmental commitments in the USMCA is a key improvement over NAFTA. Two separate mechanisms give the public/environmental community and State Parties the ability to demand compliance with national environmental laws and regulations and the environmental rules in the USMCA. Each is addressed below.

MECHANISM FOR THE PUBLIC/ENVIRONMENTAL COMMUNITY TO DEMAND COMPLIANCE, IMPLEMENTATION, AND/OR ENFORCEMENT OF NATIONAL ENVIRONMENTAL LAWS AND REGULATIONS

The Environment Chapter of the USMCA provides a mechanism for the general public, including the environmental community, to take action if they believe a national environmental law or regulation is not being effectively enforced by the United States, Mexico, or Canada. The USMCA includes provisions (Articles 24.27 and 24.28) allowing anyone in one of the three countries to file a Submission on Enforcement Matters with the Secretariat of the Commission for Environmental Cooperation.¹ While this mechanism existed under NAFTA, under the USMCA, the timeframes for the process have been shortened, the scope of environmental laws has been narrowed to those enacted, promulgated, or enforced by the central level of government (so, State, provincial, or local laws are not included), and the scope of eligible submitters is no longer limited to residents or NGOs in the territory of one of the three countries; instead, *anyone* in any of the three countries can file a Submission on Enforcement Matters.

If adequately substantiated, Submissions on Enforcement Matters about government failures to enforce environmental laws require responses from relevant government agencies and can result in a Factual Record that government representatives from all three countries must review and consider. Such Submissions under NAFTA have proven successful in getting governments to take necessary actions to protect the environment.² Since the USMCA went into effect on July 1, 2020, three Submissions have been made: the first, filed in December 2020, asserts that the Mexican Ministry of Environment and Natural Resources and other environmental agencies are failing to effectively enforce provisions to protect loggerhead turtles in both the Atlantic and Pacific oceans;³ the second, filed in February 2021, asserts that a Port Authority in Canada failed to effectively enforce the Canadian Environmental Assessment Act when considering expansion of a marine port on the Pacific Coast of British Columbia;⁴ and the third, filed in August 2021, alleges that the Mexican government has failed to effectively enforce its laws to protect the endangered

¹ USMCA, arts. 24.27 and 24.28.

² See, e.g., Sumidero Canyon II Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/sumidero-canyon-ii/> (resulting in the closure of a limestone quarry damaging the Sumidero Canyon National Park in Chiapas, Mexico); BC Mining Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/bc-mining/> (resulting in greater public participation and transparency regarding the protection of fish and fish habitat from the impacts of mining in British Columbia).

³ Loggerhead Turtle Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/loggerhead-turtle/>.

⁴ Fairview Terminal Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/fairview-terminal/>.

vaquita porpoise.⁵ As these examples demonstrate, this USMCA mechanism offers the public a viable way to gain leverage to advance policies for protecting marine life and our oceans.

MECHANISM FOR USMCA STATE PARTIES TO HOLD EACH OTHER ACCOUNTABLE FOR COMPLIANCE WITH ENVIRONMENTAL COMMITMENTS IN THE AGREEMENT

The Environment Chapter also provides a mechanism that allows any of the three State Parties to hold each other accountable for complying with environmental commitments in the USMCA. The first phase is consultations, which must escalate through three tiers;⁶ failing resolution via consultations, the next phase is dispute resolution before a State-to-State arbitral panel.⁷ In the consultation phase, one State Party requests consultations with another regarding any matter arising under the Environment Chapter; a third State Party with a substantial interest in the matter may participate. Consultations must begin within 30 days of the receipt of the request. If initial consultations do not resolve the matter, consultations among the USMCA Environment Committee Senior Representatives⁸ may be requested.⁹ Failing resolution at this second level of consultations, the State Party may escalate the matter once more to relevant Ministers of the State Parties for resolution.¹⁰ Failing resolution via the three tiers of consultations within 30 days of receipt of the request, the requesting State Party may then move to the next phase to request establishment of a panel of arbitrators to resolve the issue in accordance with procedures set out in the Chapter 31 for dispute resolution under the USMCA.¹¹

Since the USMCA went into effect on July 1, 2020, Oceana is not aware of any State Party consultations or dispute resolution proceedings related to non-compliance with provisions of the Environment Chapter. We are aware, however, of a recent petition filed on August 11, 2021 by several environmental groups requesting that the United States Trade Representative and other members of the Interagency Environment Committee for Monitoring and Enforcement initiate State-to-State consultations with Mexico under the USMCA due to failures of enforcement of environmental provisions leading to the near extinction of the vaquita porpoise.¹²

Transparency is lacking for this State-to-State mechanism. Unfortunately, neither the fact that consultations or dispute resolution is occurring nor any documentation is made public, nor is public participation allowed;¹³ as a result, the public may not be apprised until a final report is issued by an arbitral panel.¹⁴ While certain periodic reporting to Congress is required (annually until 2025 and biennially thereafter),¹⁵ more frequent congressional inquiry with relevant executive branch agency stakeholders (*e.g.*, the Interagency Environment Committee for Monitoring and Enforcement) to specifically inquire about consultations and/or dispute resolution related to environmental matters may shed further light on this important topic. Should the opportunity present itself, provisions requiring greater public transparency in the State-to-State environmental accountability processes would be important additions to the text of the USMCA and/or the implementing legislation.¹⁶

⁵ Center for Biological Diversity, USMCA Commission Urged to Investigate Mexico's Failure to Protect Vaquita Porpoise (August 11, 2021), <https://biologicaldiversity.org/w/news/press-releases/usmca-commission-urged-to-investigate-mexicos-failure-to-protect-vaquita-porpoise-2021-08-11/>.

⁶ USMCA, arts. 24.29, 24, 30, 24.31.

⁷ USMCA, art. 24.32.

⁸ USMCA, art. 24.26 (laying out how the Environment Committee is to be established and its purpose).

⁹ USMCA, art. 24.30.

¹⁰ USMCA, art. 24.31.

¹¹ USMCA, art. 24.32; *see generally* USMCA Chapter 31.

¹² Center for Biological Diversity, USMCA Commission Urged to Investigate Mexico's Failure to Protect Vaquita Porpoise (August 11, 2021), <https://biologicaldiversity.org/w/news/press-releases/usmca-commission-urged-to-investigate-mexicos-failure-to-protect-vaquita-porpoise-2021-08-11/>.

¹³ USMCA, arts. 24.29, 24, 30, 24.31; *see generally* USMCA Chapter 31.

¹⁴ USMCA, art. 31.17(6).

¹⁵ 19 U.S.C. § 4716 (requiring regular reports (annually for first 5 years and biennially thereafter) to Congress on "efforts of the USMCA countries to implement their environmental obligations"; and "additional efforts to be taken with respect to USMCA countries that are failing to implement their environmental obligations.") At a minimum, it would be most helpful if these reports to Congress were made publicly available.

¹⁶ 19 U.S.C. § 4501 et seq.

QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

Question. The USMCA Environment Chapter outlined what each country must do to ensure sustainable management of fisheries. Mexican poaching of red snapper in U.S. waters in the Gulf of Mexico is a significant challenge that impacts the livelihood of American fishermen, as well as harming red snapper stocks and damaging the marine ecosystem. The red snapper fishery is an important economic engine in the Gulf of Mexico and is currently overfished.

In the USMCA, Congress directed \$8 million to NOAA for cooperating with Mexico to combat illegal, unreported, and unregulated fishing.

In your view, has this funding and the USMCA reduced illegal fishing by Mexico?

Are these provisions improving sustainable fisheries management in the Gulf of Mexico and other regions?

Answer. Oceana appreciates the funding the Congress provided to NOAA for combating illegal, unreported, and unregulated fishing. This money was intended both for implementation of the Seafood Import Monitoring Program and to work with Mexico on compliance with SIMP. Oceana remains concerned that NOAA has not outlined how it has spent or will spend the balance of these funds to enhance implementation of SIMP or increase engagement with the Government of Mexico. If money remains, NOAA should prioritize expanding SIMP to all seafood and ensuring the information collection by SIMP is the right information in a format that allows for data analysis to identify shipments of high risk of IUU fishing, seafood fraud, forced labor and other human rights abuses to guide risk-based targeting for inspections, audits, and enforcement.

The USMCA's impact in Mexico is still a work in progress. Oceana in Mexico has pointed out that the government is still far from complying with the obligations established in fishing matters in the USMCA, including that of combating IUU fishing. To this day there is no public tool to ensure the legal origin of fishing products all along the supply chain. Traceability of fishery products and transparency of fishing activities are also tools that benefit a lawful fishing sector. By only allowing marketing, importing, and exporting of products whose legal origin can be proven and providing the necessary mechanisms to make this verification possible, the Mexican State can close the door to illegal fishing, while encouraging, favoring, and strengthening the fishing sector's compliance with national and international standards. For this, it is fundamental for the Mexican Government to approve a traceability standard that allows government authorities and the fishing sector to verify the legal origin of products and prevent market entry to IUU products, caught in violation of the rules for the protection of vulnerable species, without a permit or in prohibited areas.

Overall, the USMCA provides tools and a framework to improve sustainable fisheries management in the Gulf of Mexico and other regions, but implementation needs to improve. The Environment Chapter of the USMCA includes articles on Marine Wild Capture Fisheries; Sustainable Fisheries Management; Conservation of Marine Species; Fisheries Subsidies; Illegal, Unreported, and Unregulated (IUU) Fishing; and Conservation and Trade. Together these provisions, if fully implemented, would improve fisheries management systems to prevent overfishing and overcapacity, reduce bycatch of non-target species and marine wildlife, and protect habitat. The agreement also outlines that the U.S., Mexico, and Canada shall adopt or maintain measures to prohibit the practice of shark finning. The agreement prevents subsidies to IUU fishing vessels or for fishing on an overfished stock.

The IUU fishing provisions includes requirements to implement Port State measures; support monitoring, control, surveillance and enforcement including deterring nationals and flagged vessels from engaging in IUU fishing and addressing transshipments. Each Party shall maintain a vessel documentation scheme and promote the use of International Maritime Organization numbers or comparable unique vessel identifiers for vessels operating outside of its national waters to enhance transparency of fleets and traceability of fishing vessels. The U.S., Canada, and Mexico are also to develop and maintain publicly available an easily accessible registry data of vessels flying its flag and support a Global Registry of Vessels, among other measures. We have yet to see most of these provisions implemented by the U.S., Canada, or Mexico.

The transparency provisions, specifically on developing a publicly available registry, requiring IMO or other unique vessel numbers and supporting a Global Record of Vessels, is an area where the U.S. has made little progress. NOAA should

push to advance transparency in our own vessel registries, including by requiring that US vessels secure IMO numbers when available, so we can then ask our trading partners to do the same.

Technology tools provide additional cost-effective measures to improve monitoring and transparency of fishing vessels. The U.S., Canada, and Mexico should increase transparency by requiring fishing vessels to carry and continuously transmit Automatic Identification System (AIS) devices. AIS provides vessel identity, location and course data that allows for greater maritime domain awareness and visibility in behavior at sea. AIS data allows for management authorities to use the data in verification of catch documentation and for identifying shipments at high risk of IUU fishing, forced labor and other human rights abuses for further inspections, audits and enforcement.

In addition to the Environment Chapter, the Labor Chapter requires the U.S., Canada, and Mexico to take measures to prohibit the importation of goods produced by forced labor, among other provisions. In the U.S., section 307 of the Tariff Act already prohibits importation of goods produced by forced labor. It would be good for the U.S. to get a report from Canada and Mexico on whether they have equivalent prohibitions and if not, their plan to prohibit such goods. Strong prohibitions across North America are needed to ensure we are not continuing to import products that put workers at risk and undermine basic human rights.

The USMCA is one tool that the US government can use to combat IUU fishing and USTR is one agency. The Biden administration should take a one-government approach on IUU fishing, building upon a foundation of the SIMP and other measures to ensure that all seafood sold in the U.S. is safe, legally caught, responsibly sourced and honestly labeled. This requires:

- Expanding SIMP to all species so that all seafood entering the U.S. provides catch documentation and can be traced back to a legal source.
- Extending traceability requirement through the full supply chain. This can be accomplished by finalizing the Food and Drug Administration's pending rule on food traceability that includes almost all seafood.
- Increasing transparency requirements for fishing vessels and making transparency a condition of import.
- Using the information collected via the various trade programs, including SIMP, more efficiently and effectively to better target shipments with the highest risk for screening, audits and enforcement and close our market to illegal products.
- Improving coordination, collaboration and information-sharing across the Federal agencies to better target countries and shipments with the highest risk of illegal fishing, seafood fraud, and forced labor.
- Building into the programs that address IUU fishing measures to allow the U.S. to also identify and block shipments of products produced using forced labor and other human rights abuses.
- Reduce harmful fishing subsidies in the U.S., discipline fisheries subsidies in all future trade agreements, and push for an agreement in the WTO to end harmful fishery subsidies.

QUESTIONS SUBMITTED BY HON. THOMAS R. CARPER

Question. The USMCA includes new enforcement tools to give labor and environmental stakeholders a direct role in trade enforcement matters. These new tools ensure that the obligations in this trade agreement are enforced and that those who break the rules can be held accountable.

Would you please share some thoughts on how the environmental reporting mechanisms have functioned since the USMCA entered into force, as well as some opportunities for their continued improvement?

Answer. The USMCA requires the parties to notify each other of their fisheries subsidies—within 1 year of the date of entry into force and every 2 years thereafter—and specifies the information to be provided regarding the subsidies.¹⁷ Specifically, Article 24.20(5)–(7) of the USMCA States:

5. Each Party shall notify the other Parties, within 1 year of the date of entry into force of this agreement and every 2 years thereafter, of any subsidy

¹⁷USMCA, art. 24.20(5)–(7).

within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement, that the Party grants or maintains to persons engaged in fishing or fishing related activities.

6. These notifications shall cover subsidies provided within the previous 2-year period and shall include the information required under Article 25.3 of the SCM Agreement and, to the extent possible, the following information:²³
 - (a) program name;
 - (b) legal authority for the program;
 - (c) catch data by species in the fishery for which the subsidy is provided;
 - (d) status, whether overfished, fully fished, or underfished, of the fish stocks in the fishery for which the subsidy is provided;
 - (e) fleet capacity in the fishery for which the subsidy is provided;
 - (f) conservation and management measures in place for the relevant fish stock; and
 - (g) total imports and exports per species.
7. Each Party shall also provide, to the extent possible, information in relation to other subsidies that the Party grants or maintains to persons engaged in fishing or fishing related activities that are not covered by paragraph 1, in particular fuel subsidies.

To the extent that notification under the WTO Subsidies and Countervailing Measures Agreement partially meets this USMCA requirement,¹⁸ the United States and Canada reported some, but not all, of the required information on fisheries subsidies as of July 2021; however, the last notification from Mexico to the WTO is from September 2019.¹⁹ Notifications regarding fisheries subsidies from each of the State Parties with the full list of information required under Article 24.20(5)–(7) should be made publicly available.

The USMCA also requires the parties to notify each other on an annual basis of any list of vessels and operators engaged in IUU fishing.²⁰ Article 24.20(10) states:

10. Each Party shall notify the other Parties on an annual basis of any list of vessels and operators identified as having engaged in IUU fishing.

It is unclear whether this notification has occurred. If it has, then the information should be made publicly available.

In addition, the USMCA requires the State Parties to develop and maintain a publicly available and easily accessible registry data of fishing vessels flying its flag. Article 24.21(2)(f) includes this obligation:

2. In support of international efforts to combat IUU fishing and to help deter trade in products from IUU fishing, each Party shall: . . .
 - (f) develop and maintain publicly available and easily accessible registry data of fishing vessels flying its flag; promote efforts by non-Parties to develop and maintain publicly available and easily accessible registry data of such vessels flying its flag; and support efforts to complete a Global Record of Fishing Vessels, Refrigerated Transport Vessels, and Supply Vessels; and

In short, since the USMCA entered into force on July 1, 2020, complete information on fisheries subsidies and IUU fishing appears to be overdue; Oceana would like to know whether the parties have submitted the information and when it will be available to the public. In addition, Oceana would like to know when the registry of fishing vessels flying each State's flag will be made publicly available.

¹⁸ WTO. *Subsidies and countervailing measures*, https://www.wto.org/english/tratop_e/scm_e/scm_e.htm#dol.

¹⁹ From the WTO website, the latest notification on subsidies from the United States as of July 14, 2021: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N372USA.pdf&Open=True>. From Canada as of July 8, 2021: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N372CAN.pdf&Open=True>. From Mexico as of September 24, 2019: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N315MEX.pdf&Open=True>.

²⁰ USMCA, art. 24.20(9).

Question. It is my hope that future U.S. agreements will build upon much of the progress in the USMCA, including its environmental provisions.

With that said, I've long believed that if it isn't perfect that we should work to make it better. I certainly believe this approach applies to U.S. trade policy.

What are one or two key issues of importance that Congress should focus on in the months and years ahead when it comes to overseeing the enforcement of the USMCA's environmental provisions?

Answer. When it comes to overseeing the enforcement of the USMCA's environmental provisions, in the months and years ahead, Congress should make regular inquiries with relevant Federal Government agency stakeholders and ensure public transparency about State-to-State consultations and dispute resolution related to environmental matters. Should the opportunity present itself, provisions requiring greater public transparency about the State-to-State environmental accountability processes would be important additions to the text of the USMCA and/or the implementing legislation.

To better ensure enforcement of environmental provisions, in the public mechanism outlined in USMCA Articles 24.27 and 24.28, Congress should significantly reduce the time frames for review and response to public submissions, remove opportunities for State Parties to thwart or stall the review process, require that all Factual Records be published, and outline repercussions for State Parties found in a Factual Record to have failed to effectively enforce national environmental laws and regulations that will serve as true deterrents. In the State-to-State mechanism outlined at USMCA Articles 24.29–32 and in Chapter 31, Congress should reduce the three-tier consultation process to, at most, one consultation phase followed by referral to a dispute resolution panel to allow failures to enforce environmental provisions to move more quickly to resolution. Better yet, akin to the highly effective rapid response mechanism for labor enforcement issues in the USMCA, Congress should consider developing a rapid response mechanism for environmental enforcement issues in the USMCA as well as in other existing and future free trade agreements. Congress should also insist that the State-to-State dispute resolution process for environmental matters allow for timely public review of government submissions, citizen submissions (akin to amicus briefs), and webcasting of arbitral panel hearings.

Last but certainly not least, Congress should consider amending the USMCA and other existing as well as future free trade agreements to ensure that more provisions in the Environment Chapter are binding obligations rather than hortatory statements.²¹ One binding obligation that is completely missing from the USMCA Environment Chapter is the obligation to address climate change. At a bare minimum, among the Multilateral Environmental Agreements (MEAs) that should be added to Article 24.8(4) of the USMCA Environment Chapter are the United Nations Framework Convention on Climate Change and the Paris Agreement. Current language in the USMCA allows the State Parties to amend the agreement to add any other relevant environmental or conservation agreement to the list of MEAs that must be adopted, maintained, and implemented.²² Congress should insist on this amendment. As the Intergovernmental Panel on Climate Change's recent Sixth Assessment Report makes abundantly clear, human activities are responsible for climate change impacts, including the warming, acidification and rise of our oceans—to the detriment of marine species and coastal communities.²³ Governments must take action immediately to mitigate as well as to adapt to climate change.²⁴ In light of the urgent need for government action, provisions that address climate change in free trade agreements are an excellent addition to Congress's legislative toolbox to tackle this major existential crisis facing humanity and our blue planet.

²¹See, e.g., USMCA, art. 24.11 (Air Quality); art. 24.15 (Trade and Biodiversity); art. 24.16 (Invasive Alien Species).

²²USMCA, art. 24.8(5); art. 34.3.

²³IPCC, *Sixth Assessment Report—Summary for Policy Makers*, <https://www.ipcc.ch/report/ar6/wg1/#SPM>.

²⁴IPCC, *Sixth Assessment Report—Summary for Policy Makers*, <https://www.ipcc.ch/report/ar6/wg1/#SPM>.

PREPARED STATEMENT OF MICHELLE MCMURRY-HEATH, M.D., PH.D.,
PRESIDENT AND CEO, BIOTECHNOLOGY INNOVATION ORGANIZATION

Chairman Wyden, Ranking Member Crapo, members of the committee, my name is Dr. Michelle McMurry-Heath. I am the president and CEO of the Biotechnology Innovation Organization (BIO). I am honored to testify before you for today's hearing, "Implementation and Enforcement of the United States-Mexico-Canada Agreement: One Year After Entry Into Force," and address our industry's concerns around the implementation of the agricultural biotechnology provisions of the United States-Mexico-Canada Agreement or USMCA.

INTRODUCTION

BIO¹ represents 1,000 members in a biotech ecosystem with a central mission—to advance public policy that supports a wide range of companies and academic research centers that are working to apply biology and technology in the energy, agriculture, manufacturing, and health sectors to improve the lives of people and the health of the planet. BIO is committed to speaking up for the millions of families around the globe who depend upon our success. We will drive a revolution that aims to cure patients, protect our climate, and nourish humanity.

BIOTECH AND TRADE POLICY

United States leadership in biotech innovation represents the cornerstone of the U.S. economy. Our industry is vital to U.S. national security, climate policy, pandemic preparedness, and provides a platform from which to exercise global leadership on key issues.

As the U.S. biotechnology industry has demonstrated in our response to COVID-19, the U.S. can lead the world in developing technologies that will solve health and economic crises. In record time, the U.S. biotechnology industry and its global partners launched highly effective vaccines and therapeutics to help the world begin to turn the corner on the pandemic. Like with COVID, American innovation in biosciences, coupled with the U.S. Government's leadership, can similarly be unleashed to help address several other crises, including climate change and malnutrition.

Executing thoughtful and creative trade strategies is among the most effective means to enhance global science-based collaboration while growing the U.S. bioeconomy. An open, global trading and investment system benefits innovators, researchers, patients, farmers, and consumers everywhere by establishing a level playing field for all. Trade agreements help to establish science-based regulatory systems that can promote the development of and access to disruptive and transformative biotechnologies that will be required to effectively confront serious public health, environmental, and nutritional challenges.

The U.S. must reassert its influence within the global trading system by leading efforts to place science and technology at the core of its global economic and strategic interests. This will require maintaining long-standing U.S. trade policy commitments to intellectual property (IP), which is critical to risk-taking and investment in pre-profit companies, who are at the heart of BIO's membership. It will also require modernizing U.S. trade policy to address novel issues such as the need to ensure enforceable digital trade rules that minimize restrictions on cross-border data flows and enable the international transfer of data needed to advance global biotechnology R&D efforts. It is also essential that we enhance our ability to proactively confront regulatory barriers in other countries that stifle the trade of transformative biotech innovations—barriers that not only do a disservice to global society by delaying their adoption but also have a chilling effect on future biotechnology investment.

Leveraging U.S. leadership in global trade to address these concerns will boost the American bioeconomy revolution, creating high-quality jobs and better position the United States to effectively confront and lead on big global challenges. We have an obligation—industry and government—to leverage American strengths and work collectively to remove barriers that restrict the development of the global biotech ecosystem.

AGRICULTURAL BIOTECHNOLOGY IN THE UNITED STATES

The United States is the world's largest producer of biotechnology crops. With over 90 percent of corn, soybean, and cotton acres produced with biotechnology

¹<https://www.bio.org/>.

crops,² this technology is ubiquitous in American agriculture. The United States is also a major exporter of these crops. In the case of corn, Mexico is the United States largest international market, representing nearly 30 percent of total U.S. corn exports in 2020. If Mexico does not approve a new corn biotechnology product, U.S. corn farmers are reluctant to plant the product for fear of disrupting trade to Mexico. This means, in effect, that Mexico determines which technology U.S. farmers can use.

Biotechnology companies plan their commercial launches years in advance, preparing regulatory submissions in export markets, and consulting with value chain customers. When regulatory authorities in export destinations cease to function and shut off communication with companies, as in the current case of Mexico, it is impossible to predict with certainty when to launch a product in the United States. As a result, biotechnology companies often delay, affecting investments and future R&D.

In 2018, BIO and international partners conducted an extensive economic analysis of the impact of regulatory delays in China.³ Like Mexico, China is a major importer of U.S. soybeans and corn. Without Chinese approval, the same scenario applies. The analysis showed that delays in China decreased U.S. farm income by \$5 billion and cost nearly 34,000 jobs between 2011 and 2016. Today China remains a major challenge, with approvals delayed by 7 years on average, but through the U.S.-China Phase One agreement there are continued efforts to address these systemic challenges.

USMCA

For agricultural biotechnology, USMCA represented a significant improvement on NAFTA for the agricultural biotechnology industry and the constituents it seeks to serve. Enhanced provisions for agricultural biotechnology set it apart from previous trade agreements. For these reasons BIO applauded the USMCA as a major step forward and as the basis for future agreements. Over the past year, however, we have noted both practical barriers to seamless implementation of USMCA as well as missed opportunities that stemmed from the process leading to U.S. approval of the agreement. Today, I hope to highlight these barriers and missed opportunities for your consideration in future discussions with our allies.

With respect to agricultural biotechnology, what exists on paper is a far cry from reality. USMCA is the first agreement to address agricultural biotechnology specifically. All three parties confirmed the importance of encouraging agricultural innovation and facilitating trade in products of agricultural biotechnology.⁴ The provisions focus on ensuring trading partners have functional regulatory systems that promote transparency and cooperation. The intent of the provisions is to supplement the requirements of the Sanitary and Phytosanitary (SPS) Agreement, facilitate trade, and to proactively avoid unnecessary and costly trade disruption that can occur when regulatory approvals are delayed. Furthermore, the agreement established a committee to enhance cooperation and regulatory consistency on current and emerging agricultural biotechnologies, including genome editing. Unfortunately, the Government of Mexico's treatment of agricultural biotechnology is a stark example of how it has strayed in a matter of 3 years and how trade barriers actively restrict the development of new technologies.

REGULATORY CHALLENGES FOR INNOVATIVE AGRICULTURAL BIOTECHNOLOGY PRODUCTS IN MEXICO

Failure to Issue Biotech Import Approvals

Even before USMCA negotiations were completed, problems began to emerge. While Mexico never fully embraced the cultivation of agricultural biotechnology, it was a model trading partner. The Government of Mexico's food and drug regulatory authority (COFEPRIS) routinely processed new product applications within Mexico's statutory limit of 6 months. The process was largely transparent, science-based, and predictable. Since the election of President Andrés Manuel López Obrador, however, COFEPRIS has effectively shut down and Mexico's regulatory system has become nonfunctional.

² <https://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us.aspx>.

³ <https://croplife.org/wp-content/uploads/2018/05/Impact-of-Delays-in-Chinese-Approvals-of-Biotech-Crops-05-18-FINAL-1.pdf>.

⁴ https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/03_Agriculture.pdf.

For agricultural biotechnology specifically, Mexico has not granted a single approval since May 2018; meanwhile, the backlog of pending approvals has grown to 23. This affects all of BIO's agricultural members, covering a wide range of commodities: apples, canola, corn, cotton, potatoes, and soybeans. Twenty of these have now exceeded the 6-month statutory time limit for COFEPRIS to determine whether to issue a biotech import approval. During this time, Mexican regulators have provided no substantive communications with companies on the delays. It is also important to highlight that the products pending approval in Mexico are legal to grow in the United States as well as many other countries.

It is worth noting, these challenges are not unique to agricultural biotechnology. Similarly, for biopharmaceutical products, COFEPRIS has not issued a new approval since early 2019. The queue of pending approvals for new treatments and formulations, as well as pending applications to initiate clinical studies, number in the hundreds. There are dozens of new drugs that have been favorably reviewed by the New Molecules Committee and are awaiting approval. These pending applications have also exceeded the statutory time limit for COFEPRIS to issue a decision. Likewise, companies are still unable to meet directly with the regulator.

Decree to Ban Biotech Corn

Compounding the uncertainty caused by COFEPRIS's failure to issue a biotech import approval in over 3 years, the Government of Mexico published a decree on December 31, 2020, announcing the intention to phase-out the use of important agricultural technologies, including use of biotech corn for human consumption by 2024. In 2020, the U.S. exported \$2.7 billion of corn to Mexico. As a result, this decree could have a major impact on the U.S. agriculture industry and producers across the country. It is another unfortunate example of Mexico's waning adherence to our trade agreements.

Further, the decree raises the potential for existing biotech authorizations to be revoked and signals the government's intention to not grant approvals for future biotech corn products. The announcements of these policy changes, which have far-reaching implications for North American agriculture, were issued with neither industry or trading partner consultation nor any demonstrable scientific rationale. They also incorrectly allege that biotech corn and modern agricultural practices harm the environment.

Economic impacts from the decree would not stop at the U.S. border. To date, the decree's application to imports of biotech corn for use as animal feed remains ambiguous. While the decree does not specify if the ban will apply to imports for animal feed, Mexican officials have issued competing statements. Regardless, the practicality of separating corn for feed from corn for human consumption is costly and creates supply chain challenges, not to mention increased risk of shipment rejections. Such uncertainty risks longstanding cross-border commercial relationships between suppliers in the United States and Mexican livestock producers who have mounting questions about their supply chains, economic well-being, and future of their domestic industries. What is more, enactment of the decree will be in direct violation of Mexico's commitments under USMCA and the World Trade Organization (WTO), as the decree is neither science nor risk-based and is out of step with international standards and norms.

Mexico's Lack of Regulatory Framework for Gene Edited Products

As existing biotechnology products await action in Mexico, we are highly concerned about the implications for emerging biotechnologies such as genome editing and synthetic biology. BIO members are actively leveraging genome editing techniques to help plants, animals, and microbes become more resilient to pests, diseases, and extreme weather, and reduce usage of agricultural inputs. While the global regulatory landscape is emerging, several agricultural producing countries, including most of the Western Hemisphere, have established regulatory pathways for products derived through genome editing. Mexico stands out as the major exception.

USMCA's goal to enhance cooperation in emerging technologies among the three parties aimed to facilitate commercial availability and acceptance of biotech products. Lack of progress by Mexico is forcing biotechnology companies with robust pipelines of gene-edited products to make unenviable decisions move forward with product development without the benefit of regulatory clarity in Mexico, or cease developing gene edited products that may be produced in, or traded with, Mexico.

Impact on Addressing Global Challenges

Mexico's actions are impeding global research and development, jeopardizing the potential of biotechnology to address myriad challenges related to climate change, sustainability, human nutrition, animal welfare, and worker safety. What was intended in USMCA to invigorate investment in, and development of these technologies, is now threatened by the obstruction of one of its key signatories. Biotechnology crops positively impact food security, sustainability, and climate change solutions. For example, biotechnology crops:

- Reduced carbon dioxide emissions in 2016 by 27.1 billion kg, equivalent to taking 16.7 million cars off the road for one year.⁵
- Maintain yields in the face of drought, which has a direct bearing on improved food security and poverty alleviation.
- Combat global hunger and malnutrition by increasing the vitamin and mineral contents of plants. They also address the lack of fresh fruits and vegetables in food deserts in urban and rural communities. (Additional information available in the *New York Times Magazine* article, "Learning to Love GMOs."⁶)
- Extend the shelf life of produce, cutting down on food waste, which creates 8 percent of all global emissions.⁷

To learn more about how biotechnology can enable agriculture to be solution to climate change please see BIO's Biotech Solutions for Climate Report (https://www.bio.org/sites/default/files/2021-04/Climate%20Report_FINAL.pdf) and BIO's response to U.S. Department of Agriculture's (USDA) Request for Public Comment on the Executive Order on Tackling the Climate Crisis at Home and Abroad.⁸

RESOLVING MEXICO'S AG BIOTECH REGULATORY CHALLENGES

Mexico's failure to perform scientific regulatory assessments in over 3 years, its disregard for due process and transparency, and its decree to arbitrarily ban key technologies is a direct violation of both the letter and spirit of USMCA and commitments to the WTO. These actions require a strong response from the U.S. Government.

Mexico must resume the approval process for all agricultural biotechnology products and implement a science-based and predictable regulatory process going forward. It must immediately rescind its anti-USMCA decree banning the import of biotech corn and begin creating a gene editing framework that conforms with international norms and trade agreement commitments.

BIO appreciates the work of the U.S. Trade Representative (USTR) and USDA to date. Specifically, USTR Ambassador Katherine Tai calling for the immediate resumption of agricultural biotechnology product approvals in Mexico in her recent meetings with Mexico's Secretary of Economy, Tatiana Clouthier and Secretary of Agriculture and Rural Development, Victor Villalobos, and for USDA Secretary Tom Vilsack's efforts to engage and reinforce this message. This engagement builds on numerous attempts by former USTR Ambassador Robert Lighthizer and USDA Secretary Sonny Perdue.

However, with little indication from Mexico that it will adhere to its USMCA commitments, BIO strongly urges USTR to begin taking enforcement action on Mexico's treatment of agriculture biotechnology. An enforcement case would at a minimum provide a framework and timeline to resolve the COFEPRIS-related delays in biotechnology approvals and the December 31, 2020, decree. Without a process, BIO and its members fear the Government of Mexico will continue the status quo, and possibly broaden the scope of the decree to additional agricultural products, which would compound the impact on U.S. trade and future innovation.

More broadly, if the United States does not enforce against Mexico's practices, BIO is concerned about the message this sends to current and future trading partners. The biotech sector has faced a host of challenges with Europe and China. Each time the U.S. government has aggressively engaged to protect American interests in advancing this critical technology. Taking enforcement action with Mexico on this

⁵ <https://www.isaaa.org/resources/publications/briefs/54/executivesummary/default.asp>.

⁶ <https://www.nytimes.com/2021/07/20/magazine/gmos.html>.

⁷ http://www.fao.org/fileadmin/templates/nr/sustainability_pathways/docs/FWF_and_climate_change.pdf.

⁸ <https://www.federalregister.gov/documents/2021/03/16/2021-05287/notice-of-request-for-public-comment-on-the-executive-order-on-tackling-the-climate-crisis-at-home>.

issue is critical to protect economic growth and job creation and ensure science and American innovation can continue to thrive to solve society's biggest and most pressing challenges.

MISSED OPPORTUNITY FOR BIOPHARMACEUTICAL INNOVATION INCENTIVES IN USMCA

As negotiated, the USMCA represented a significant step towards advancing rules for intellectual property rights to support the modern biotechnology sector. However, while the final text advanced helpful rules for trade secrets, copyrights, and trademarks generally, important IP provisions for biopharmaceuticals that had been agreed to by Canada and Mexico were ultimately stripped from the agreement at the insistence of U.S. lawmakers.

Specifically, the removal of the agreement on 10 years of Regulatory Data Protection, as well as the elimination of patent and regulatory incentives for the study of important product improvements to existing medicines, represents an important, even historic lost opportunity to raise IP standards in key markets and create high-quality U.S. jobs at no cost to North American patients and consumers. More importantly, stripping these provisions sent a global signal that the U.S. Government no longer appears willing to protect leading American innovation in the biopharmaceutical sector against appropriation by foreign competitors.

A more recent manifestation of such misguided antagonism to biopharmaceutical IP is the U.S. government's support for a global waiver of intellectual property rights relating to COVID-19 vaccines, which, however well-intentioned, will only serve as a harmful distraction from the urgent work that must be done to ameliorate global vaccine inequity.

BIO urges the U.S. Government to rethink its support for the proposed global waiver of IP rights that is currently pending in the WTO, and to increase its focus on effective policies to maximize the global availability and equitable distribution of COVID-19 vaccines and therapeutics. BIO's COVID Global Strategy for Harnessing Access Reaching Everyone (SHARE) Program (<https://www.bio.org/letters-testimony-comments/bio-outlines-share-blueprint-global-cooperation>) and a Declaration from members of the World's Biotechnology Sector (<https://www.bio.org/letters-testimony-comments/declaration-members-worlds-biotechnology-sector-global-access-covid>) provide solutions to ensure vaccines and treatments get to the patients in the world who most need them without undermining innovation.

CONCLUSION

In closing, a year after the United States, Mexico, and Canada confirmed their commitment to North American trade, the biotech sector is faced with tremendous uncertainty. Companies are making decisions today about whether to proceed with launch plans or delay, potentially costing technology companies billions of dollars in foregone revenue and future investment. Similarly, U.S. farmers are facing increasing challenges related to climate change and sustainability, potentially without cutting edge biotechnology tools.

The U.S. Government has been a consistent champion for this technology, defending against scientifically unjustified regulatory practices in Europe and China for decades. As one of the United States longest and most significant export markets, Mexico's dramatic policy reversal creates significant risk to the trade of U.S. agricultural products and the ability to leverage biotechnology going forward.

QUESTIONS SUBMITTED FOR THE RECORD TO MICHELLE McMURRY-HEATH, M.D., PH.D.

QUESTION SUBMITTED BY HON. RON WYDEN

Question. One of the achievements of USMCA was to bring NAFTA into the 21st century. Neither digital trade, nor the products of biotechnology were contemplated by the original agreement and both are now critical parts of our trading relationship.

It can be difficult to understand what something like the sanitary and phytosanitary chapter or the customs facilitation chapters described in your testimony mean for people on the ground in the United States or Mexico and how that translates into jobs.

Can you describe how operating from a framework of increased transparency and a principle of science-based decision as required by the SPS Chapter of USMCA could—if fully implemented—increase trade and support good-paying jobs in the United States, Mexico, and Canada?

Answer. As crafted, USMCA's provision on agricultural biotechnology was intended to supplement the SPS Agreement, with the goal of facilitating trade, and to proactively avoid unnecessary and costly trade disruptions that can occur when regulatory approvals are delayed.

Unfortunately, despite these provisions within USMCA, Mexico has moved forward with actions that are neither science-based, nor risk-based. As a result U.S. farmers are reluctant to plant a product for fear of disrupting trade to Mexico. This means, in effect, that Mexico determines which technology U.S. farmers can use. If these barriers are left unaddressed, we risk longstanding cross-border commercial relationships and the economic well-being U.S. farmers and technology producers.

Full implementation of the SPS commitments, specifically transparency and science-based decision making, will provide the necessary predictability to enable biotechnology companies and U.S. farmers to plan for the introduction of a new biotechnology product in a manner that does not disrupt trade. Timely and predictable regulatory decisions in Mexico enables biotechnology companies to continue to invest in innovative technologies which supports job growth and enables trade to flow between the United States and Mexico.

QUESTION SUBMITTED BY HON. THOMAS R. CARPER

Question. I understand from your testimony that Mexico's barriers to biotechnology could impede innovations in agriculture that help reduce greenhouse gas emissions and adapt crops to climate change.

Could you provide examples of how these barriers are preventing producers from sustainably increasing production and adapting to climate change?

Answer. Biotech crops have already allowed farmers to reduce greenhouse gas emissions in their production practices. For example, the use of ag biotech has led to greater adoption of no-till farming practices, which reduce the amount of carbon released from the soil during planting, while also curtailing emissions from farm equipment. The development and deployment of new technology will play a vital role in making crops and livestock more resilient to pests, disease, and extreme weather variabilities caused by climate change.

Unfortunately, Mexico's practices will ultimately limit what technology will be available for U.S. producers.

One of the cotton applications pending for approval in Mexico has an insect resistant trait, which could reduce greenhouse gas emissions with producers needing to use less insecticide and in turn making fewer trips across the field.

Another example is how last summer's derecho flattened corn crops across the Midwest.

Developers are already developing a short stature corn which could help farmers be more resilient to future extreme weather events brought on by climate change.

Because short stature corn grows lower to the ground, it is sturdier and less likely to break in high winds than traditional corn. Short stature corn varieties can potentially better withstand drought.

Multiple varieties of short stature corn leveraging the latest innovations in biology—including biotech and gene editing—are currently under development.

However, Mexico's delays in import approvals and the potential decree phasing out the import of biotech corn could keep this technology from coming to market.

QUESTIONS SUBMITTED BY HON. TODD YOUNG

Question. The digital trade chapter within USMCA contains a number of provisions that promote integrity, hold bad actors accountable, and facilitate robust e-commerce. These provisions are crucial to combat localization requirements and favoritism to state-owned enterprises that we frequently see with China.

The purpose of trade agreements, generally, is to promote the free movement of goods, not to prop up bureaucracy and act as a bank for communist governments. As such, these groundbreaking chapters on state owned enterprises are absolutely critical to allowing our businesses to operate on a level playing field with our closest neighbors.

How are the digital trade provisions with USMCA helping us combat the rising influence of China globally, and particularly closest to American soil?

How will these digital trade provisions continue to support businesses and consumers in the future?

Answer. The digital trade provisions of the USMCA are critical to promoting U.S. innovation and competitiveness across a range of sectors, including biotech.

Life science researchers around the world require a robust and reliable global ecosystem for data, an ecosystem that allows for timely and efficient cross-border transfers of information.

Restrictions on the flow of data and policies requiring localization of data hampers biotech R&D, which is increasingly globalized and heavily data driven. The USMCA provisions on cross-border data flows and data localization address these key issues.

However, more can be done, and in terms of responding to China's influence. We need to ensure that we have a strong relationship with our allies, like the European Union.

Strengthening the transatlantic data relationship and the data flows on both sides of the Atlantic is in the interest of U.S. biotech researchers and more broadly is for the benefit of science and the global biotech research community.

QUESTIONS SUBMITTED BY HON. BEN SASSE

Question. Mexico is consistently the top market for U.S. corn exports, valued at \$3 billion last year. Our farmers and ranchers were one of the loudest advocates for passage of USMCA. However, farmers in Nebraska are concerned that Mexico is backsliding on its USMCA commitments because they have not approved any new applications for biotech crops since May 2018. Then most recently in December the Mexican President issued a decree banning glyphosate and biotech corn in Mexican diets—both by 2024.

Can you speak to this issue further and what impact it may have on U.S. and Nebraska corn farmers when it comes to trade with Mexico?

Answer. The United States is the world's largest producer of biotechnology crops. With over 90 percent of corn, soybean and cotton acres produced with biotechnology crops, this technology is ubiquitous in American agriculture.

The United States is also a major exporter of these crops. In the case of corn, Mexico is the United States largest international market, representing nearly 30 percent of total U.S. corn exports in 2020.

If Mexico does not approve a new corn biotechnology product, U.S. corn farmers are reluctant to plant the product for fear of disrupting trade to Mexico. This means, in effect, that Mexico determines which technology U.S. farmers can use.

Further, biotechnology companies plan their commercial launches years in advance, preparing regulatory submissions in export markets, and consulting with value chain customers.

When regulatory authorities in export destinations cease to function and shut off communication with companies, as in the current case of Mexico, it is impossible to predict with certainty when to launch a product in the United States. As a result, biotechnology companies often delay, affecting investments and future R&D.

Question. President López Obrador's recent decree, more specifically, would phase-out the use of biotech corn for human consumption no later than January 31, 2024. Most of Nebraska's corn exports to Mexico are used in livestock feed but there is concern an expansion of this decree could create additional trade barriers for farmers.

Can you please expand on the likelihood that Mexico will expand this decree to include GMO corn used for livestock feed?

How would such a change impact agriculture in places like my home state of Nebraska?

Answer. Mexico's decree compounds the uncertainty caused by COFEPRIS's failure to issue a biotech import approval in over 3 years. As a result, this decree further erodes the trading relationship between the United States and Mexico and if implemented will reduce U.S. exports.

To date, the decree's application to imports of biotech corn for use as animal feed remains ambiguous. While the decree does not specify if the ban will apply to imports for animal feed, Mexican officials have issued competing statements.

Regardless, the practicality of separating corn for feed from corn for human consumption is costly and creates supply chain challenges, not to mention increased risk of shipment rejections.

Such uncertainty risks longstanding cross-border commercial relationships between suppliers in Nebraska and throughout the United States and Mexican livestock producers who have mounting questions about their supply chains, economic well-being, and future of their domestic industries.

Question. USMCA modernized our trade relationships with Mexico and Canada and increased business for Nebraska agriculture. The United States should build on the benefits of this multilateral agreement but also apply the lessons learned from implementation and enforcement when pursuing new trade agreements.

As we look towards future trade agreement frameworks, what preemptive steps can Congress take to prevent some of the current issues regarding enforcement—specifically regarding biotechnology?

Answer. For agricultural biotechnology, USMCA represented a significant improvement on NAFTA for the agricultural biotechnology industry and the constituents it seeks to serve. Enhanced provisions for agricultural biotechnology set it apart from previous trade agreements.

USMCA is the first agreement to address agricultural biotechnology specifically. All three parties confirmed the importance of encouraging agricultural innovation and facilitating trade in products of agricultural biotechnology.

This provision supplements the requirements of SPS Agreement to facilitate trade, and to proactively avoid unnecessary and costly trade disruption that can occur when regulatory approvals are delayed. Furthermore, the agreement established a committee to enhance cooperation and regulatory consistency on current and emerging agricultural biotechnologies, including genome editing.

However, given that Mexico had ceased approval of agricultural biotechnology products back in May of 2018, it would have been prudent for the U.S. to have sought some specific commitments from the Government of Mexico on how they would come into compliance prior to certifying the agreement.

Looking forward, the biotechnology and SPS provisions of USMCA provide a good framework to facilitate the trade of innovative technologies. Although the USMCA does not mandate the approval of products, it assures trading partners that a regulatory system is in place and process to cooperate exists. Prior to certifying the agreement, an assessment should have been conducted to ensure the regulatory process was functional, and to address any issues and secure commitments to ensure compliance with USMCA's SPS and biotechnology provisions.

As for Mexico and USMCA, moving forward USTR can and should use all the tools afforded to it under USMCA to get Mexico to resume the approval process for all agricultural biotechnology products and implement a science-based and predictable regulatory process going forward.

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

Colleagues, we got some tragic news last night. Former Senator Enzi, who served on the Finance Committee with many of us, passed away yesterday. When he served with us in the Senate, Mike Enzi advocated for what he called the 80-percent rule, which urged Senators to find common ground on the 80 percent of the issues we agreed on and not the 20 percent we disagreed on. It's sound advice, and I hope we'll remember Mike's 80-percent rule as we work together on this committee and in the Senate for the American people. I would like to offer my sincere condolences

to Mike's family and friends, Senator Barrasso, and his colleagues in the Wyoming delegation.

When a youngster turns one, they get a birthday party. When a trade agreement turns one, it gets an oversight hearing in the Senate Finance Committee. The committee meets to discuss USMCA today.

I'll begin with the timeline of the USMCA. Three years ago, the Trump administration agreed to a NAFTA rewrite that was too weak on key issues to pass. Democrats got down to work improving it.

USMCA became the strongest trade agreement ever for worker rights, for environmental protections, and for enforcement overall. Congress passed it in early 2020. Then it was up to the Trump administration to implement the agreement—and enforce, enforce, enforce—because countries don't comply with trade agreements by osmosis. You have to hold them to their commitments. You ought to do that when the U.S. holds the most leverage, which is before an agreement enters into effect.

That's why Senator Grassley and I strongly urged the Trump administration not to rush the process, but the Trump administration just would not listen. It was the middle of an election year, and they decided the cake was baked before it was ready to come out of the oven. Only a few months were given to implement the agreement—not nearly enough time to protect American workers and businesses by holding Canada and Mexico to their commitments.

Now it's up to the Biden administration to clean up the messes the Trump administration left behind. For example, Canada has unfairly blocked American dairy products for decades. Under USMCA, Canada agreed to give our dairy products more access to the Canadian market.

Canada then undermined that commitment with new regulatory barriers before USMCA went officially into effect last July. The Trump administration barely lifted a finger to do anything about it. Now the Biden administration will have to work to make sure our dairy farmers have the access they were promised.

Another example: Mexico made commitments to improve the rights and conditions for its workers, but it's moving too slowly on the implementation of key reforms to its labor laws. To enforce some of those commitments, the Biden administration has had to act using what's called the new rapid response mechanism that Senator Brown and I created. That's an important tool, but the previous administration should have done more to push Mexico to raise the bar for labor rights prior to last summer. That would have helped to protect more American workers.

With the Trump administration looking weak on trade enforcement, it's no surprise that Canada and Mexico issued new laws and regulations that were inconsistent with USMCA, even walking back some of their core commitments. For instance, Mexico is refusing to approve innovative American agricultural products, including corn and soybeans, without any scientific justification.

It's also threatening to ban agricultural products that have previously been approved. Ambassador Tai and the administration are working to knock down those barriers as soon as possible.

Another example: Canada is joining a list of countries that are unfairly targeting and discriminating against innovative American employers with digital services taxes. These taxes are unfair digital daggers that are knifing American firms. It's a big setback to our trade relationship with Canada that goes against the spirit of USMCA and the global minimum tax agreement that's in the works. I hope the Canadian Government changes course on this issue, otherwise the U.S. will need to consider all options for its response.

So there's a lot for the committee to talk about today regarding USMCA. I come from a State where one out of four jobs revolves around international trade. Oregonians know how to grow things and design things, add value to them, and ship them to Oregon lovers around the world.

In Oregon, we talk about getting trade done right as a way to protect our workers and create high-wage, high-skill jobs. It means raising the bar on issues like labor and environmental protections. It means vigorous enforcement. It means never cutting corners the way the previous administration did on USMCA. Fortunately, the Biden administration has already begun addressing all these outstanding issues so that USMCA lives up to its promise.

There are still a lot of challenges ahead. I want to thank our witness panel for joining the committee today, and I look forward to Q&A.

COMMUNICATIONS

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Statement of Zippy Duvall, President

The American Farm Bureau Federation, the nation's largest general farm organization, submits this statement for the Senate Finance Committee hearing on the enforcement of the U.S.-Mexico-Canada Agreement (USMCA). Trade is critically important to the current welfare and future prosperity of U.S. agriculture. America's farmers and ranchers depend on stable export markets and expanded opportunities for the success of their businesses.

Enforcement of trade agreements is necessary to ensure all the benefits that were agreed to at the negotiating table. The dispute settlement mechanisms included in trade agreements are critical for the future success of any agreement, including USMCA, which went into force on July 1, 2020.

Canada and Mexico are two of our nation's most important food and agriculture trade partners, thanks to achievements first seen through the North American Free Trade Agreement (NAFTA), and the USMCA promises to build upon those gains. Farmers continue to face several unresolved issues with both Canada and Mexico, however, and these matters need continued attention by the U.S. government through the USMCA.

The implementation of expanded access for U.S. dairy products by Canada through negotiated tariff-rate quotas (TRQ) is of importance and concern to our dairy producers and needs to be resolved. Canada is limiting access to the dairy TRQ's which impacts the exports of U.S. dairy products. On May 25, 2021, the U.S. Trade Representative started a proceeding challenging Canada's administration of its dairy TRQ's. This is the first dispute settlement case brought under USMCA.

On December 31, 2020, the Mexican government issued a Presidential Decree stating the intention to phase out the use of glyphosate and use of genetically modified (GM) corn for human consumption. While the standing of the Decree is unclear and the scope is vague, the Decree creates a significant risk and uncertainty to exports of corn and corn products. Mexico is the largest importer of corn and corn products from the U.S., and the Decree has the potential to negatively impact a significant portion of U.S. agricultural exports.

The Government of Mexico has created significant uncertainty for agricultural biotechnology, ceasing review and approval of any biotechnology applications since May 2018. As a result, Mexico has become a significant barrier to launching new biotechnology products within North America, potentially restricting U.S. farmer access to new technologies that help us achieve sustainability goals.

In 2002, the U.S. and Mexican governments announced that both sides would resolve two longstanding market access issues: the U.S. agreed to expand market access for Mexican avocados and Mexico agreed to open their market for U.S. fresh potatoes. Today, the U.S. imports \$2 billion worth of Mexican avocados while Mexico remains almost entirely closed to U.S. fresh potatoes. In 2014, after losing several phytosanitary rulings before international bodies, the Mexican government agreed to allow U.S. fresh potatoes full market access. The Mexican Supreme Court has recently decided that U.S. fresh potatoes can be sold in Mexico. Now it is time for action on the nearly decade-old promise.

Seasonal produce imports from Mexico have a direct impact on U.S. growers. Monitoring investigations by the International Trade Commission continue regarding imports of strawberries, bell peppers, squash and cucumbers.

Trade agreements can create a level playing field for U.S. farmers and ranchers by reducing and eliminating tariffs and addressing non-tariff barriers. Those benefits can only be realized across North America, however, when the U.S.-Mexico-Canada Agreement is fully enforced. We look forward to a focused effort by all three countries to ensure USMCA achieves its full potential.

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Statement of Dr. Inu Manak, Research Fellow

Chairman Wyden, Ranking Member Crapo, I appreciate the opportunity to share my thoughts for this hearing on the implementation and enforcement of the United States-Mexico-Canada Agreement (USMCA). We are just over a year into the implementation of the USMCA, and the three countries have faced unique circumstances as we each try to address the pandemic brought on by COVID-19. This context should not be downplayed, and the resultant delays and challenges met with patience. Despite the hardships we have faced over the course of the last year, we have still managed to work towards implementation of the USMCA. Of course, this should not come as a great surprise, as the content of USMCA is very close to its predecessor, the North American Free Trade Agreement (NAFTA).

But not everything stayed the same. There were some areas in which we saw adjustments from NAFTA to USMCA. Some of these areas warrant additional scrutiny, if not concern, surrounding how they are being implemented, or what the overall goals are, or the form that implementation or enforcement takes. To that end, I lay out some lingering issues that I hope the Committee will take up in this hearing and continue to monitor in the coming years. I think it is fair to say that we all want a robust and competitive North American trading relationship that is equipped to deal with both current and future challenges. The USMCA is the focal institution in that relationship, and we must ensure that it is fit for purpose if we are to meet our shared goals.

IMPLEMENTATION

As I have previously noted, the greatest benefit of USMCA is that it mostly continued rules that already existed under NAFTA. The impact from the changes in the agreement are small. The overall effect of these changes, including more stringent rules of origin on automobiles, is negative: a -0.12% decrease in real GDP, or approximately a loss of US\$22.6 billion, according to estimates put forward by the U.S. International Trade Commission (USITC).¹ Analysis from others corroborates this finding.² The topline positive figures put forward by the USITC are mainly due to “reduced uncertainty” from the inclusion of new rules on digital trade, but as I and others have noted, this modeling choice raises more questions than answers, and the baseline model does not address the fact that Canada and Mexico have already implemented many of those rules through their participation in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) agreement, from which the United States withdrew.³

Since most of the rules from NAFTA carried over to USMCA, implementation has proceeded swiftly, despite a pandemic, and far beyond what could be reasonably expected for any trade agreement that created an entirely new set of rules. Trade between Canada, Mexico, and the United States has been fairly resilient in the face

¹ U.S. International Trade Commission, “U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors,” Publication Number: 4889 (April 2019), <https://www.usitc.gov/publications/332/pub4889.pdf>.

² Ciuriak, Dan, Ali Dadkhah, and Jingliang Xiao. “Quantifying CUSMA: The Economic Consequences of the New North American Trade Regime.” Trade and International Policy Working Paper, CD Howe Institute 21 (2020), https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/WorkingPaper_Ciuriak-Dadkhah-Xiao_2020_0.pdf.

³ Inu Manak, “Canada Evaluates USMCA, Raises More Questions than Answers,” Cato Institute Blog (February 28, 2020), <https://www.cato.org/blog/canada-evaluates-usmca-raises-more-questions-answers>; Jeffrey J. Schott, “Five Flaws in the USMCA and How to Fix Them,” Peterson Institute for International Economics (August 6, 2019), <https://www.piie.com/blogs/trade-and-investment-policy-watch/five-flaws-usmca-and-how-fix-them>.

of the numerous challenges we faced over the last year. However, the pandemic did reveal that the same institutional deficits⁴ surrounding governance and cooperation that were identified during the NAFTA continue to be a problem under the USMCA.

Institutional Gaps

For instance, consultations on border crossing were woefully lacking at the start of the pandemic, leading to confusion and delays. Subsequent decisions on border restrictions have been ad hoc, adding to the already large cloud of uncertainty hanging over people's lives. We should have learned from the border closures that occurred after 9/11 that communication, coordination, and clear and consistent guidelines for safe and efficient crossings are necessary to maintain the flow of trade. And it's not just *things* that cross our borders, but *people*. People whose lives exist on both sides of that border, most clearly seen in our border communities, such as Point Roberts, WA.⁵ These communities rely on a predictable border infrastructure, which has been lacking. And even as Canada has recently announced that it is opening its borders to American tourists, the United States has not reciprocated with either Canada or Mexico. These announcements should be coordinated, as our tourism industries continue to struggle, impacting countless workers in each of our countries.

The institutional deficit carried over from NAFTA could persist in other ways that impact our trading relationship as well. As Andrew Rudman and Christopher Sands from the Wilson Center explain, the work of the numerous committees created by the USMCA to oversee the implementation of the agreement will be critical to its success and growth over time.⁶ Under NAFTA, the committees quickly became defunct, not least because there was a lack of high level guidance and interest from the executive branch. It is this day to day work by civil servants working on the technical issues related to our trading relationship that is vital and requires support.

Another of the major lessons from NAFTA was assuring that there was active stakeholder engagement on cross-border issues so that initiatives could be better targeted to address real, on the ground problems. Amb. Earl Anthony Wayne, former career Ambassador to Afghanistan, Argentina and Mexico, now at the Wilson Center, writes that "an effective stakeholder process could increase public understanding of the value of trade across North America and would surface valuable ideas for improvements and problem solving."⁷ One avenue for doing this is through the Competitiveness Committee created in Chapter 26, which could serve as a forum for discussion about North American competitiveness, including addressing issues surrounding supply chains, bottlenecks, and regulatory challenges. The committee's mandate is broad: "The Competitiveness Committee shall discuss and develop cooperative activities in support of a strong economic environment that incentivizes production in North America, facilitates regional trade and investment, enhances a predictable and transparent regulatory environment, encourages the swift movement of goods and the provision of services throughout the region, and responds to market developments and emerging technologies."⁸ Our experience throughout the pandemic should reinforce the importance of such a committee to identify policy areas in need of development. The knowledge of businesses on the ground is indispensable in crafting smart responses to shared trade challenges, as the pandemic has well shown.⁹

An area where input from business would be particularly useful is in the automotive sector, which has faced substantive rule changes in the USMCA as compared to NAFTA. In the USMCA, the rules of origin for autos (our most integrated supply

⁴ Simon Lester and Inu Manak, "Fixing NAFTA's Institutional Deficit," International Centre for Trade and Sustainable Development (March 7, 2018), <https://www.cato.org/commentary/fixing-naftas-institutional-deficit>.

⁵ Alexander Panetta, "How border restrictions have left a U.S. community stranded and surrounded by Canada," CBC News (July 8, 2021), <https://www.cbc.ca/amp/1.6093133>.

⁶ Andrew Rudman and Christopher Sands, "A Winning Bet: USMCA at Year One," Wilson Center (2021), https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/WWC_USMCA_Winning%20Bet.pdf.

⁷ Earl Anthony Wayne, "USMCA and North America: Year One," Wilson Center (July 2021), <https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/USMCA%20and%20North%20America-%20Year%20One.pdf>.

⁸ USMCA Article 26.4.

⁹ Scott Lincicome, "The Pandemic Does Not Demand Government Micromanagement of Global Supply Chains," *Pandemics and Policy*, Cato Institute (February 24, 2021), <https://www.cato.org/pandemics-policy/pandemic-does-not-demand-government-micromanagement-global-supply-chains#summary>.

chain) were made more stringent. Rules of origin are the rules that determine whether a product can cross duty free across the border. In NAFTA, passenger vehicles were required to have 62.5% North American content, and in the USMCA that has been increased to 75%. This means that auto producers will need to source more components from the region, in addition to ensuring that 70% of the steel and aluminum used in production also comes from Canada, Mexico or the United States. On top of this—a first ever in a trade agreement—a new labor value content requirement was added that requires auto makers to have 40–45% of their auto content made by workers making at least \$16 an hour.

There is currently a disagreement about how the auto rules of origin are calculated, which was raised by Canada and Mexico at the first meeting of the USMCA Free Trade Commission in May 2021.¹⁰ As reported by Maria Curi at Inside U.S. Trade, “Auto industry representatives in all three countries, as well as the governments of Canada and Mexico, agree that the Office of the U.S. Trade Representative and CBP under the Trump administration interpreted a USMCA auto rule of origin differently than what was originally negotiated.”¹¹ The Biden administration has so far indicated support for the Trump administration’s more stringent interpretation, which could have serious economic repercussions for the auto industry. As Curi explains:

At issue is a so-called “roll-up provision” designed to incentivize increased regional content. USMCA requires that 75 percent of a car’s core parts, like engines, be regionally sourced for that vehicle to qualify for duty-free treatment. “Principal” parts, like tires, are subjected to a 70 percent regional content rule.

If a part meets the regional content threshold and is incorporated into a larger car component, 100 percent of the initial part will count as originating, according to the industry’s interpretation.

However, USTR and CBP say that if the initial part contains any foreign content, it must be subtracted from the regional-value content calculation. The U.S. agencies’ approach makes it more difficult for automakers to get components to the threshold needed for duty-free treatment, according to the auto industry.¹²

As Eric Martin and Keith Laing recently reported in *Bloomberg*, Flavio Volpe, president of Canada’s Automotive Parts Manufacturers’ Association suggested that tighter rules of origin requirements could make preferential treatment under USMCA “irrelevant,” and lead to automakers simply paying MFN tariffs instead, which would raise costs.¹³ Furthermore, they report that after a meeting between U.S. Trade Representative Katherine Tai and Mexican Economy Minister Tatiana Clouthier on July 22, 2021, the Mexican Economy Ministry released a statement, which on the U.S. position on rules of origin says that “Not abiding by USMCA rules may potentially disrupt the operations of the North America automotive industry.”

Congress should request an explanation from the Biden administration as to why it supports the same, more stringent interpretation of the auto rules as the previous administration, and what the economic costs of that interpretation are compared to how the auto industry, Canada and Mexico see it. The auto industry could offer insight into this issue through the Competitiveness Committee, for instance. Congress could also request that USTR provide an update on the impact of changes made on the auto rules through USMCA to the North American auto sector, which would help with an assessment of whether further rule changes may be required once USMCA is up for review.

Transparency

Since the USMCA includes a sunset clause that requires the review of the agreement within six years, transparency on the day to day implementation is essential.

¹⁰ José Avila, “Los temas controversiales del TMEC resurgen, tras reunión de ministras,” *Expansion* (May 18, 2021), <https://expansion.mx/economia/2021/05/18/mexico-eu-se-comprometen-cumplir-conjunta-t-mec>.

¹¹ Maria Curi, “CBP official: USMCA auto rules will be enforced amid confusion over interpretation,” *Inside U.S. Trade* (March 30, 2021), <https://insidetrade.com/daily-news/cbp-official-usmca-auto-rules-will-be-enforced-amid-confusion-over-interpretation>.

¹² Maria Curi, “Clouthier: Mexico, U.S. working to mesh USMCA auto rule interpretations,” *Inside U.S. Trade* (May 21, 2021), <https://insidetrade.com/daily-news/clouthier-mexico-us-working-mesh-usmca-auto-rule-interpretations>.

¹³ Eric Martin and Keith Laing, “U.S., Mexico Fail to Resolve Dispute on Trade Rules for Cars,” *Bloomberg* (July 23, 2021), <https://www.bloomberg.com/news/articles/2021-07-23/u-s-and-mexico-fail-to-resolve-dispute-on-trade-rules-for-cars?sref=EROITBzT>.

This will allow us to identify problems early, and correct them when the review process begins, and avoid the biggest pitfall of NAFTA, which was to lock in rules that quickly became out of date. For USMCA to avoid this, it must learn to adapt. Congress should request that the U.S. Trade Representative regularly provide an update on the work of the committees, and the challenges they identify with regard to implementation, as well as other trade issues that arise. Reports on the committee work will not only help Congress keep on top of North American trade issues, but also help researchers that study this to reflect on how we can improve the institutional design of trade agreements in this case, and more broadly.

A further concern with transparency involves the newly created “Rapid Response Mechanism” for labor enforcement, which was put into place to ensure remediation of a denial of collective bargaining rights. As Kathleen Claussen, Associate Professor of Law at the University of Miami School of Law explains, “the RRM is not so much a claims process but rather a quick way to deal with a ‘belief’ by a government that there is some denial of rights underway.”¹⁴ As an untested mechanism, we must proceed with utmost caution and ensure that the process by which complaints are raised through the RRM are transparent and provide the firms affected adequate time to respond. The RRM is a complex process, best summarized by a recent flow-chart created by the U.S. Chamber of Commerce.¹⁵

Further complicating it is the fact that the final procedural guidelines for petitions to the USMCA have not yet been published (interim guidelines were released in June 2020). Despite this, labor disputes have already begun. This not only creates a lot of uncertainty surrounding how this new mechanism is supposed to function, but also raises serious questions about due process. The U.S. Chamber of Commerce has stated “The Labor Committee should not be acting on petitions without the final procedural guidance being published,” and also that “the Labor Committee is acting on petitions that allege a denial of rights occurred, in part, before July 1, 2020,” which is before the USMCA entered into force.¹⁶ We must be cognizant of the fact that the procedural guidelines need to be published before further actions are taken, otherwise the executive branch could use broad discretion in their interpretation and application, which could further serve to harm already strained relations between the United States and Mexico. Also, the final guidelines should take comments and concerns from the relevant stakeholders into account.

Relatedly, clarity should be provided on the content of discussions in the Interagency Labor Committee, with documents available online, to the public. Some light should also be shed on the interactions between stakeholders, the Interagency Labor Committee and the executive branch more broadly.

Another issue is that the RRM is unbalanced in its focus. As Desirée LeClercq, Proskauer Employment and Labor Law Assistant Professor at the ILR school at Cornell writes, “Specifically, the Rapid Response Mechanism requires respect for U.S. domestic processes (*i.e.*, after an enforced order) but allows the U.S. to interfere with ongoing domestic processes in other countries. More generally, the disparate scope of the Rapid Response Mechanism makes it possible for facilities like GM to be held accountable when they are located *across* from Brownsville, Texas but shields those facilities when they are located *in* Brownsville, Texas.”¹⁷ In regard to the specific concern raised by LeClercq, it should be emphasized that Mexico must be allowed the time necessary to complete its labor reforms (a domestic process that was already underway before USMCA went into effect), and the United States should offer assistance, if requested, in the form of technical capacity. However, the United States has begun parallel efforts under the RRM, perhaps under the hope

¹⁴ Kathleen Claussen, “A First Look at the New Labor Provisions in the USMCA Protocol of Amendment,” *International Economic Law and Policy Blog* (December 12, 2019), <https://ielp.worldtradelaw.net/2019/12/a-first-look-at-the-new-labor-provisions-in-the-usmca-protocol.html>.

¹⁵ USMCA Rapid Response Labor Mechanism Flow Chart, https://www.uschamber.com/sites/default/files/final_rrlm_flow_chart.pdf.

¹⁶ U.S. Chamber of Commerce, Comments on USMCA Interagency Labor Committee for Monitoring and Enforcement Interim Procedural Guidelines for Petitions (June 22, 2021), <https://www.uschamber.com/comment/comments-usmca-interagency-labor-committee-monitoring-and-enforcement-interim-procedural>.

¹⁷ Desirée LeClercq, “Biden’s Worker-Centered Trade Policy: Whose Workers?,” *International Economic Law and Policy Blog* (May 16, 2021), <https://ielp.worldtradelaw.net/2021/05/bidens-worker-centered-trade-policy-whose-workers.html>.

that this will “speed up” the reforms in Mexico or nudge them along.¹⁸ But this is a precarious gamble. As LeClercq elaborates, “USTR is invoking the Rapid Response Mechanism process before Mexico’s domestic processes have been exhausted, leading to potential fragmentation.” This should be of concern to those interested in the success of Mexico’s domestic reform efforts.

On a broader point, the inclusion of the Rapid Response Mechanism raises serious questions about the role of the United States in actively interfering with labor issues in other countries. There is ample debate over whether we should be doing this at all. If the United States thinks it should have a role to play here through trade agreements, then it should invite reciprocal scrutiny of its own domestic labor practices as well.

ENFORCEMENT

Enforcing international agreements is critical to securing the outcomes of what was agreed among the parties. Yet, enforcement is often incorrectly made synonymous with litigation. While trade disputes garner a lot of media attention, and policy makers pursue disputes in order to signal to their own public that they are taking some kind of action, or to compel another party to adjust its behavior, disputes on their own are an escalation of matters where diplomacy has either failed, or not been tried. It is, in fact, the regular, day to day work of implementation that can avoid the escalation of conflicts into disputes.

Energy should therefore be spent on dispute avoidance and prevention not only because disputes are costly and take many years to resolve, but also because they can disrupt trust and amicable relations between trading partners. The rhetoric of enforcement must therefore be used cautiously and surgically. As the last four years of the previous administration has shown us, treating your allies like your rivals only serves to diminish our relationships and reduce the United States’ image in the world. To the extent that we can cooperate on solutions diplomatically instead of racing to “enforce” through legal means can therefore serve to neutralize tensions and produce mutually beneficial outcomes.

As noted above, the Labor chapter’s Rapid Response Mechanism should be utilized with caution, and should also be carefully scrutinized by Congress to ensure that it meets the goals laid out in Trade Promotion Authority. This could assist Congress in crafting new guidelines in any future Trade Promotion Authority bill.

There are also two disputes under Chapter 31, the state-to-state dispute settlement chapter. The first is a dispute raised by the United States (consultations began under the previous administration) on the allocation of Canada’s tariff rate quotas (TRQ) for dairy. Canada and the United States should work to resolve this issue as soon as possible, and Canada should ensure that its implementation of the dairy TRQ is not in violation of the USMCA. The second is a dispute raised by Canada against the United States regarding actions by the Trump administration to levy safeguard tariffs of 18% under Section 201 of the Trade Act of 1974 on imports of crystalline silicon photovoltaic cells and modules. Given the Biden administration’s commitment to green energy, it would be puzzling if tariffs on imports of solar products from our closest ally would continue to be imposed, considering that tariffs are born by consumers, and increasing the price of solar products will simply decrease Americans’ access to these technologies. On the latter dispute, Congress should encourage the Biden administration to lift the tariffs on Canada and to look for opportunities to further integrate the North American energy market so that it can become globally competitive.

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¹⁸In fact, Esteban Martínez Mejía, Head of the Liaison Unit for the Reform of the Labor Justice System in Mexico, stated in the public virtual session of the USMCA Labor Council on June 29, 2021 that Mexico wouldn’t be speeding up its timeline for reform because the schedule was originally laid out to give every state ample time to plan for implementation with the federal government, and moving states ahead of schedule would disrupt those plans.

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July 27, 2021

Hon. Ron Wyden
 Chair
 Hon. Mike Crapo
 Ranking Member
 U.S. Senate
 Committee on Finance
 Washington, DC 20210

Regarding: Implementation and Enforcement of the United States-Mexico-Canada Agreement: One Year After Entry Into Force—Comment for the record

Dear Senators:

Just a quick note to remind you that Mexico and Canada have consumption taxes and the United States does not. This complicates our trade policy and makes such agreements a complicated mess favoring some industries over others. Please see our usual analysis on consumption taxes and trade.

Regarding Mexico, if we had the same arrangements with Canada on temporary visas, agricultural workers could come in easily, send money home and eventually return (as many do). These visas should also have an overt path to residency after three renewals.

Best wishes,

Michael G. Bindner
 Principal Consultant

Attachment—Trade Policy and Value-Added Taxes

Consumption taxes could have a big impact on workers, industry and consumers. Enacting an I-VAT is far superior to a tariff. The more government costs are loaded onto an I-VAT the better.

If the employer portion of Old-Age and Survivors Insurance, as well as all of disability and hospital insurance are decoupled from income and credited equally and personal retirement accounts are not used, there is no reason not to load them onto an I-VAT. This tax is zero rated at export and fully burdens imports.

Seen another way, to not put as much taxation into VAT as possible is to enact an unconstitutional export tax. Adopting an I-VAT is superior to its weak sister, the Destination Based Cash Flow Tax that was contemplated for inclusion in the TCJA. It would have run afoul of WTO rules on taxing corporate income. I-VAT, which taxes both labor and profit, does not.

The second tax applicable to trade is a Subtraction VAT or S-VAT. This tax is designed to benefit the families of workers through direct subsidies, such as an enlarged child tax credit, or indirect subsidies used by employers to provide health insurance or tuition reimbursement, even including direct medical care and elementary school tuition. As such, S-VAT cannot be border adjustable. Doing so would take away needed family benefits. As such, it is really part of compensation. While we could run all compensation through the public sector.

The S-VAT could have a huge impact on long term 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). 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, ownership 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).

In the long run, 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.

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Statement of Chris Novak, President and CEO

Thank you for the opportunity to provide written testimony to the Senate Committee on Finance's hearing on "Implementation and Enforcement of the United States-Mexico-Canada Agreement: One Year After Entry Into Force." CropLife America (CLA) represents the manufacturers, formulators, and distributors of pesticides in the United States. Our member companies produce, sell, and distribute virtually all the vital and necessary crop protection products used by farmers, ranchers, and landowners in every state. Our mission is to help ensure growers and consumers have the technologies they need to protect crops, communities, and ecosystems from the threat of pests, weeds, and diseases in an environmentally sustainable way to support healthy food, healthy people, and a healthy planet.

American farmers utilize pesticides to grow healthy and safe row crops, tree nuts, fruits, and vegetables that are used as food, as well as other farm products, including animal feed, fibers, lumber, and fuel for Americans and consumers around the world. Without today's pesticide technology, insect pests, weeds, and crop diseases would devastate crop yields and quality, directly impacting the ability to feed consumers in the U.S. and around the world. Moreover, pesticides protect public health by helping control harmful insects such as rodents, mosquitos and ticks.

Pesticides, in combination with tillage management and other conservation practices, are necessary to meet our nation's nutritional goals while simultaneously sequestering carbon and reducing greenhouse gas emissions. We support a strong, science-based risk/benefit regulatory system that ensures access to safe and effective tools while also preserving and promoting biodiversity in the landscape.

USMCA

In 2019, Mexico was the second largest overall export destination for U.S. agricultural products. It is a top-three export destination for corn, soybeans, wheat, rice, dried beans, fruits, peanuts, sorghum, vegetables, and crop seed. The previous North American Free Trade Agreement (NAFTA) eliminated tariff barriers and allowed market access with Canada and Mexico for U.S. agricultural goods. The United States-Mexico-Canada Agreement (USMCA) created an opportunity to update the 25-year-old agreement, making important improvements to sanitary and phytosanitary (SPS) measures, dispute settlement mechanisms, and other areas impacting agriculture. Before and since the signing of USMCA, however, we have seen a fundamental shift in the regulation of pesticides in Mexico.

The Mexican government has moved away from a science- and risk-based regulatory approach, invoked the precautionary principle as justification for lack of scientific analysis, and ignored commitments to their trading partners and the concerns of Mexico growers. It is our belief that Mexico's actions violate both the letter and the intent of the USMCA agreement.

Registration and Re-Registration of Pesticide Products

The Federal Commission for Protection against Sanitary Risk, known as COFEPRIS, is the agency responsible for pesticide registrations in Mexico. Over the past several years, even pre-dating USMCA negotiations, the processing of applica-

tions for registration of new pesticide products and renewal of existing registrations has virtually ceased, causing serious disruptions. There are currently more than 2,000 applications pending. These delays have impacted the ability for new innovations to be registered, directly impacting growers in Mexico, and have cost CLA member companies a projected \$492 million from 2015 through March of 2020. This is prejudicial to potential markets in Mexico for crop protection innovations developed by U.S. companies and delays or prevents the introduction of new lower risk products.

While some of the more recent delays can be attributed in-part to understaffing and a focus on COVID response, there are indications that many of the problems at COFEPRIS are further evidence of a fundamental shift in Mexico's regulatory approach. Following a recent executive decree in Mexico, discussed below, the agency has a lack of clarity regarding the López Obrador Administration's policy principles for the regulatory process. In addition, a government reorganization in 2020 placed the former independent agency COFEPRIS under the supervision of the Undersecretary of Prevention and Health Promotion in the Health Ministry. This move heightens concerns that the agency's scientific work could be further politicized.

Mexico Decree

In addition to these concerning shifts in the COFEPRIS registration processes, the Mexican government has taken further action to move away from a science and risk-based regulatory approach. In November 2019, the Mexican Ministry of Environment and Natural Resources, known as SEMARNAT, began denying import permits for the herbicide glyphosate. SEMARNAT cited the precautionary principle, but offered no new scientific evidence that would justify this de facto ban. In August 2020, the Mexican government requested comment on a draft presidential decree that would mandate a four-year study of glyphosate. Ultimately, however, the final presidential decree promulgated December 31, 2020 bans the importation, distribution, and use of glyphosate on a timeline that is phased in by early 2024. The concept of a study and any further scientific justification were abandoned in the final rule. This action sets a dangerous precedent and leaves many unanswered questions regarding implementation of the final decree.

The decree's use of the precautionary principle as justification for the action is troubling and disregards Mexico's Sanitary and Phytosanitary and Technical Barriers to Trade commitments under both the USMCA and the WTO. The risk-based regulatory system that has been a foundation for trade between the U.S., Mexico, and Canada relies upon an understanding of how a product will be used in the environment. This system is predicated on the idea that exposure, or the lack thereof, to a product is just as critical in determining the safe use of this product as any potential hazard associated with that product (e.g., the toxicity of a chemical substance). The European Union's use of a hazard-based approach is central to ongoing trade disputes between the U.S. and the EU. Similar steps by Mexico could significantly imperil exports of U.S. agricultural products to Mexico through unwarranted and unjustified restrictions on allowable pesticide residues.

The decree asserts that "different scientific investigations" have warned of harmful effects, yet only specifically mentions the 2015 monograph of the International Agency for Research on Cancer (IARC) that designates glyphosate a "probable carcinogen." The Mexican government has not performed any new comprehensive risk assessment to justify its import ban and glyphosate continues to be registered for domestic sale and use in Mexico. The decree is not only contrary to the reviews of Mexico's own regulatory body, but ignores the clear weight of scientific evidence from regulatory bodies around the world, including USMCA trading partners (Canada and United States), the European Union, and others. In formulating the final decree, the Mexican government ignored public comments from the Mexican grower community describing the devastating impact on agriculture and food production in Mexico that would result from a ban on glyphosate. The decree not only threatens this important trading partnership, but also undermines the integrity of scientific standards as the foundation of the USMCA and as a foundation for global trade.

Other Concerns

Our concerns go beyond just this one chemical. As the former Secretary of SEMARNAT stepped down from his position in 2020, his final speech foreshadowed another decree that would ban imports of another 80 unspecified pesticides. While this potential decree has yet to appear, we are concerned that the actions taken against glyphosate could be used as a model for restricting other chemicals. SEMARNAT officials have cited a list of 183 "highly hazardous pesticides" compiled by the Pesticide Action Network as a likely list of the products to be banned. That

list includes many compounds that are commonly used by U.S. producers, such as atrazine, 2,4D, neonic insecticides, pyrethroid insecticides and triaconazole fungicides. The crop protection industry is continually innovating and improving the safety of our products. Innovative products approved through a risk-based regulation processes should be available to producers in all the markets that supply U.S. grocers and families, to support continuous improvements in food safety and food security.

The decree raises several other concerns around worker safety, environmental safety, and human health. In justifying the decree, the President of Mexico suggested that farmers could hire more field laborers to battle weeds with machetes, rather than rely on glyphosate. This response not only demonstrates a profound disrespect for farmworker safety, but also a lack of serious thought on the part of Mexican authorities regarding viable alternatives for controlling pests and protecting the health and safety of Mexico's food crops.

Another unintended consequence of removing regulated pesticide products from farmers could be the aiding and abetting of counterfeit markets for these pesticide products. In other markets that have banned pesticides, such as the European Union, an illegal counterfeit market has developed that is creating serious problems. For example, in Italy, several regulated pesticide products were banned in 2009. Since then, organized crime has moved in to fill the void with illegal counterfeit products that are in use on some farms and have been seized by authorities.

In Mexico this illegal activity is already taking place with certain goods and services. According to a U.S. State Department report,¹ "the involvement of transnational criminal organizations, which control the piracy and counterfeiting markets in parts of Mexico and engage in trade-based money laundering by importing counterfeit goods, continue to impede federal government efforts to improve Intellectual Property Rights enforcement." The potential for counterfeit pesticide products of unknown content and quality to replace glyphosate or other regulated chemistries would risk the health and safety of workers and farmers in Mexico. Equally important, the potential use of counterfeit products could jeopardize the safety of agricultural goods flowing from Mexico into the U.S. The U.S. and Mexico should have a common interest in ensuring food safety, worker safety, fair trade, and sound regulatory policy. Mexico's actions not only undermine progress promised under USMCA but jeopardize real progress in all of these crucial areas.

Summary

The radical shifts in regulatory approach by Mexican authorities should be concerning to the U.S., Canada and other countries who support innovation in agriculture. If these issues go unchallenged, we fear it will not only disrupt trade in agricultural chemicals, but could lead to new restrictions on imports of agricultural products treated with the banned substances. By moving away from a risk-based regulatory system, innovation in agriculture is stifled—reducing farmer yields, contributing to food loss, and impacting food security. This would also impact the U.S. jobs that develop and manufacture innovative high-quality agricultural inputs that support agricultural production at home and around the world.

For a successful USMCA implementation, Mexico needs to be held accountable to their trade commitments. We believe these recent actions violate terms of the USMCA and WTO agreements and we are hopeful that these issues will be resolved before going even farther in the direction of similar policies that we've seen negatively impact U.S. agriculture exports.

Thank you for this opportunity to comment on USMCA implementation and enforcement.

NATIONAL AUTOMOBILE DEALERS ASSOCIATION, NATIONAL INDEPENDENT
AUTOMOBILE DEALERS ASSOCIATION, AND NATIONAL ASSOCIATION OF AUTO AUCTIONS

The National Automobile Dealers Association (NADA), the National Independent Automobile Dealers Association (NIADA) and the National Association of Auto Auctions (NAAA) appreciate the opportunity to provide this written testimony to supplement the record of the Finance Committee's hearing to examine the implementation and enforcement of the United States-Mexico-Canada Agreement (USMCA) and to

¹U.S. State Department, 2021 Investment Climate Statements: Mexico, Section 5. Protection of Property Rights.

highlight an issue of interpretation that is disrupting used motor vehicle commerce to the detriment of consumers in the United States.

NADA,¹ NIADA,² and NAAA³ are uniquely positioned to speak definitively about used motor vehicle commerce in the United States. NADA represents approximately 90 percent of the nation's 18,144 franchised new car and truck dealerships, which retail both new *and* used motor vehicles and engage in motor vehicle service, repair and parts sales. NADA's members collectively employ more than one million individuals and in 2020 sold or leased 14.87 million new vehicles and 13.93 million used vehicles. NIADA represents approximately 14,000 of the nation's independent used vehicle dealers. The independent dealers retailed approximately 13.2 million used vehicles in 2020. NAAA's membership consists of approximately 350 domestic and international auctions with combined sales of 9.9 million vehicles and wholesale revenue of more than \$107 billion annually. New and used automobile dealers, manufacturers, fleet operators, companies and financial institutions all buy and sell at NAAA member auctions worldwide.

NADA, NIADA, and NAAA commend the Finance Committee for conducting an oversight hearing on the implementation of USMCA and wish to highlight an unwarranted interpretation that is resulting in the unexpected and problematic broad-based imposition of tariffs on certain used motor vehicle imports. In general, the following tariffs are imposed on imported *new* vehicles: 2.5% on light-duty passenger vehicles, 25% on light-duty trucks, and 4% on commercial vehicles. Prior to the USMCA entry-into-force date, a used motor vehicle that was manufactured in North America received tariff-free treatment under the North American Free Trade Agreement (NAFTA) so long as it complied with the rules of origin (ROOs) and other requirements in NAFTA when first produced and sold as a new vehicle.

The implementation of USMCA has drastically changed the treatment of imported used vehicles. The U.S. Trade Representative (USTR) and Customs and Border Protection (CBP) are refusing to recognize the duty-free treatment of NAFTA-compliant imported used vehicles. Instead, USTR and CBP are interpreting USMCA to require the assessment of tariffs on *used vehicles manufactured before July 1, 2020*, unless those vehicles meet the new and significantly increased requirements of the USMCA. This interpretation conflicts with the proper application of USMCA's rules of origin and labor content value rules, which were clearly designed to apply to only *newly manufactured motor vehicles*. Moreover, there is no evidence to suggest that the parties to the agreement intended to apply the USMCA rules to vehicles manufactured before and imported after July 1, 2020. This improper interpretation is resulting in an untenable, retroactive enforcement policy that defies the plain meaning of USMCA.

Additionally, in practice, USTR's and CBP's retroactive application of this purported standard is literally impossible to meet. Compliance with ROOs under a trade agreement is a document-intensive process that, of necessity, requires the prospective application of a standard. The ROOs of NAFTA dictated the document production and record retention regime that governed the import and export of vehicles while NAFTA was in force, and the NAFTA ROOs differ significantly from the ROOs imposed under USMCA. In addition to heightening the standards for ROO compliance, the USMCA added novel requirements for labor value content and regional metal which did not exist under NAFTA. As a result, the documentation importers relied upon to comply with NAFTA is virtually useless to comply with USMCA.

Under NAFTA, an importer could determine the duty status of a used car by referring to the Vehicle Identification Number (VIN) to demonstrate that the vehicle was manufactured in North America, but importers are powerless to show that these NAFTA-compliant vehicles also comply with the tariff preferences of USMCA. The necessary information simply does not exist anywhere today and would be virtually impossible to create. When NAFTA was in force, manufacturers used many second and third tier suppliers that certified compliance with the then-current NAFTA ROOs, but it is completely unrealistic to assume that even the manufacturers could obtain an accurate, retroactive certification to the significantly altered ROOs of USMCA that did not exist when the vehicles were manufactured. The drafters of the USMCA could not possibly have intended for motor vehicle manufacturers or

¹National Automobile Dealers Association, 8484 Westpark Dr., Suite 500, Tysons, VA 22102.

²National Independent Automobile Dealers Association, 4621 S. Cooper St., Suite 131-524, Arlington, TX 76017.

³National Auto Auction Association, 5320 Spectrum Drive, Suite D, Frederick, MD 21703.

third-party importers to retroactively create records to demonstrate that NAFTA-compliant used vehicles manufactured before July 1, 2020, are also compliant with USMCA.

This unexpected and illogical interpretation is impacting the time-honored used vehicle commerce between the United States, Mexico, and Canada which has been a valuable source of supply for American consumers. Historically, hundreds of thousands of used motor vehicles manufactured in North America for the North American marketplace have been imported or exported to the United States, Canada, and Mexico each year. Applying tariffs on pre-USMCA, NAFTA-compliant used motor vehicles will unnecessarily constrain legitimate importation and unfortunately subject U.S. consumers to higher used motor vehicle prices when the market for new and used motor vehicles already is significantly supply constrained. Importantly, since many imported used motor vehicles are purchased by lower income customers, the adverse impact of these tariffs is unduly regressive.

To resolve this matter, USTR should be encouraged to expeditiously reach an understanding with Canada for the tariff-free importation of used motor vehicles manufactured in North America in compliance with NAFTA before July 1, 2020. Alternatively, the USTR should be encouraged to work with CBP to adopt a reasonable interpretation that, with respect to used motor vehicles, the USMCA allows the dutiable status of these vehicles to be determined based on only the ROOs and other requirements that were in force as of the date they were manufactured. Either result would eliminate the threat to consumers of exacerbated supply constraints or increased prices.

Thank you for your consideration of our views on this important issue.

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Dear Chairman Ron Wyden, Ranking Member Mike Crapo, and Members of the Committee:

The Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA) appreciates this opportunity to present this statement to the U.S. Senate Committee on Finance regarding its July 27, 2021 hearing on *Implementation and Enforcement of the United States-Mexico-Canada Agreement: One Year After Entry Into Force*.

R-CALF USA is the largest U.S. trade association that exclusively represents United States cattle farmers and ranchers within the multi-segmented beef supply chain. Its thousands of members reside in 45 states and include cow-calf operators, cattle backgrounders and stockers, and feedlot owners. R-CALF USA also represents U.S. sheep producers.

While several sectors of the U.S. economy report benefits arising from the renegotiated U.S.-Mexico-Canada Agreement (USMCA), the agreement has failed the United States cattle industry. More than any other multilateral free trade agreement, the USMCA and its North American Free Trade Agreement (NAFTA) predecessor have severely weakened the United States' single largest segment of American agriculture—America's family farm and ranch system of cattle raising.¹

The manifest proof of this claim is revealed by the three charts below. Chart 1 shows the United States' value-based trade deficit in the trade of cattle, beef, beef

¹See Annual cash receipts by commodity, U.S. and States, 2008-2021F, Farm Income and Wealth Statistics, U.S. Department of Agriculture (USDA) Economic Research Service (ERS), available at <https://data.ers.usda.gov/reports.aspx?ID=17845> (cash receipts from cattle and calves (\$66 billion in 2019) are higher than any other single commodity).

variety meat and processed beef with Mexico and Canada.² The U.S. value-based trade deficit has worsened considerably since NAFTA, with the cumulative deficit since 1994 now at \$40.1 billion. During the past seven years, while the relationship between the value of domestic cattle and the value of retail beef has severed, causing severe strain on U.S. cattle producers, the U.S. trade deficit with Mexico and Canada increased to historically high levels. Since 2014, the U.S. sold on average less than \$2 billion in cattle and beef to Canada and Mexico, while it purchased over \$4.4 billion on average of the very same products from those two countries. In other words, the U.S. imports from Canada and Mexico about two and one-half times the value of beef and cattle that it exports to those countries.

Chart 1

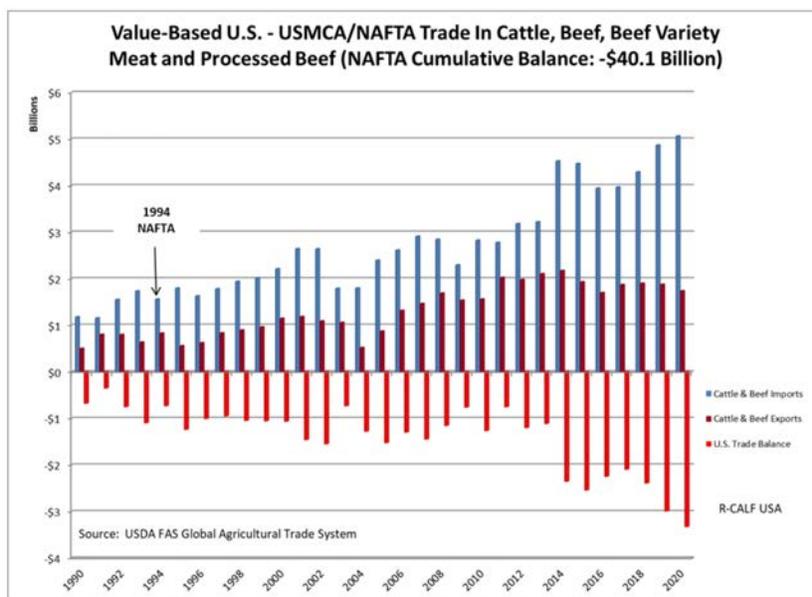
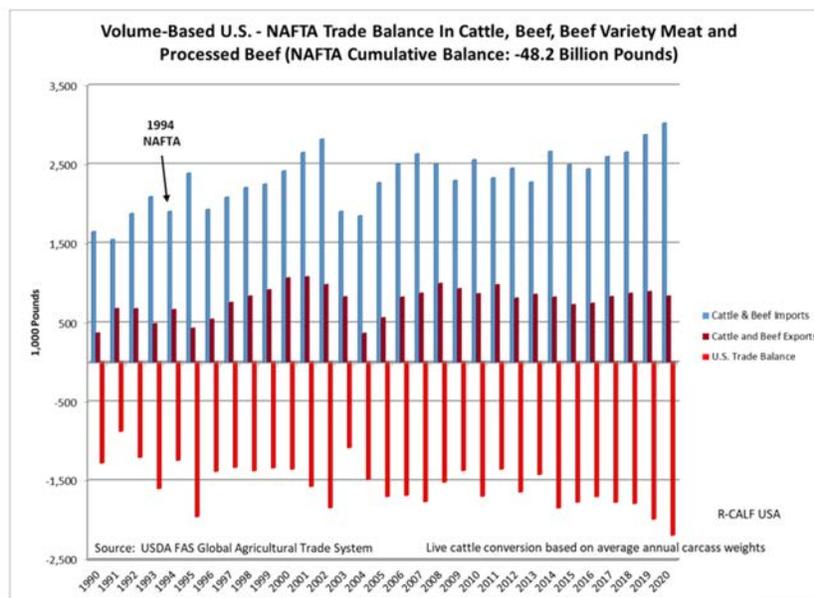


Chart 2 below depicts volume-based trade with Mexico and Canada using the same cattle and beef commodities contained in Chart 1 above. Chart 2 likewise reveals a horrendous volume-based deficit in the trade of cattle and beef with Canada and Mexico, amounting to a cumulative 48.2-billion-pound deficit since NAFTA and a marked worsening during the past several years. It shows that during the past seven years the U.S. imported on average 2.7 billion pounds of cattle and beef from Canada and Mexico while exporting less than 1 billion pounds of the same products to those countries. In other words, the U.S. imports from Canada and Mexico about three and one-half times the quantity of beef and cattle that it exports to those countries.

² Charts 1 and 2 were produced using the USDA Foreign Agriculture Service's (FAS's) Global Agriculture Trade System (GATS) data incorporating the six-digit harmonized tariff code sub-headings identified by the U.S. International Trade Commission (USITC) as accounting for trade in beef, and subheadings for live cattle were then added to this list. See *Global Beef Trade: Effects of Animal Health, Sanitary, Food Safety, and Other Measures on U.S. Beef Exports*, USITC Publication 4033, September 2008, at 1-4, 1-5.

Chart 2

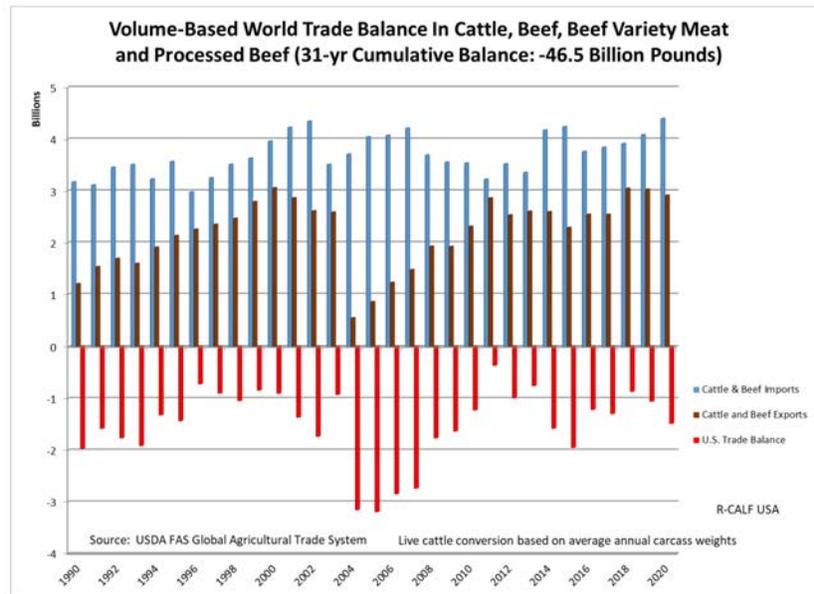


From 2012 to 2016, Australia was the largest exporter of beef and veal to the United States, but from 2017 to the present, Canada surpassed Australia as the largest exporter of beef and veal to the United States.³ This means the United States' largest beef importer is now a country that produces beef of comparable quality to U.S.-produced beef—grain fed beef—which is a direct and indistinguishable substitute for U.S.-produced beef.

The trade in cattle and beef under the USMCA is so out of balance that the United States cattle industry cannot benefit from beef exports to Asia or other parts of the world. This is because the United States' world beef and cattle exports are insufficient in both value and volume to overcome the horrendous USMCA trade deficit. As depicted in Chart 3 below, the United States' world beef trade merely helps to mitigate (*i.e.*, reduce) the USMCA deficit, but does not overcome it.

³See Beef and veal: Annual and cumulative year-to-date U.S. trade (carcass weight, 1,000 pounds), USDA-ERS, available at <https://www.ers.usda.gov/data-products/livestock-and-meat-international-trade-data/>.

Chart 3



Using 2020 as a comparative example, Chart 3 above reveals the United States' volume-based world trade balance was a negative 1.5 billion pounds. But Chart 2 above reveals that the United States' volume based USMCA trade balance alone was a negative 2.2 billion pounds. Thus, the United States is unable to overcome its USMCA-based trade deficit by trading with the rest of the world. This means, at best, the United States engages in beef and cattle trade with the rest of the world to help mitigate its USMCA trade deficit.

Also using 2020 as a comparative example, but this time to determine if the USMCA's value-based trade deficit likewise surpasses the value of the United States' world beef trade, data generated by the U.S. Department of Agriculture Foreign Agricultural Service's Global Agricultural Trade System show the United States' value-based world trade balance was a negative \$1.1 billion in 2020. But, again, as revealed above in Chart 1, the United States' value based USMCA trade balance alone that year was a negative \$3.3 billion. Thus, in 2020 the United States merely reduced its \$3.3 billion USMCA trade deficit to a \$1.1 billion world trade deficit by trading with the rest of the world.

The U.S. live cattle supply chain—consisting of America's three-quarters of a million family cattle farmers and ranchers—cannot be expected to prosper when multinational beef packers, processors and importers continually source greater quantities of undifferentiated beef and cattle from Mexico and Canada. Yes, the multinational beef packers, processors and importers are benefiting greatly from sourcing more and more cattle and undifferentiated beef from Mexico and Canada—as those imports are direct substitutes for U.S. cattle and beef and act to leverage down domestic cattle prices. Thus, the multinational companies' benefits come at considerable expense to United States cattle producers.

Due to the cattle industry's inability to respond quickly to changes in supply—a direct function of cattle having the longest biological cycle of any farmed animal⁴ and the perishable nature of both fed cattle and beef itself—imports of both beef and cattle effectively increase supplies in the domestic market (and are direct, undifferentiated substitutes for domestic production) and have a lasting impact on domestic herd size, production potential, and economic opportunities for participants in

⁴ Economic Models of Cattle Prices, How USDA Can Act to Improve Models to Explain Cattle Prices, U.S. Government Accountability Office (formally the General Accounting Office) (GAO-020246, March 2002), at 30.

the domestic live cattle supply chain (*i.e.*, for independent cattle farmers and ranchers).

That undifferentiated beef and cattle imports from Canada and Mexico function as direct substitutes for U.S. cattle and beef and cause the exodus of U.S. beef cattle operations, shrinkage of the U.S. cattle herd, and elimination of opportunities for aspiring cattle farmers and ranchers was evidenced in the 2018 U.S. International Trade Commission (USITC) investigation into the USMCA.

During the investigation, the North American Meat Institute (NAMI) testified that, “The Northwest region imports 227,000 head of Canadian fat cattle per year representing approximately 19 percent of processing capacity in the region. Additionally, another 55,000 of Canadian feeder cattle are imported annually into Oregon, Washington, and Idaho, representing 8 percent of the one-time [packing] capacity [in that region].”⁵

The National Cattlemen’s Beef Association (NCBA) testified that “especially in the Pacific Northwest,” imports of Canadian and Mexican cattle “have supplemented seasonal shortages in our herd and helped our feed yards and packing facilities run at optimal levels.”⁶

Data show the number of beef cattle operations in the states of Washington, Oregon, and Idaho (the Pacific Northwest or Northwest), declined from 38,500 beef cattle farms in 1994, the year NAFTA was implemented,⁷ to just 28,992 beef cattle farms by 2017, the latest available census data.⁸ This represents a 25% decline in the number of Pacific Northwest beef cattle farms and ranches under NAFTA.

Data also show the total number of beef cows in those same states declined from 1.46 million head in 1994⁹ to only 1.22 million head in 2021,¹⁰ representing a 16% decline in the number of beef cows in the states of Washington, Oregon, and Idaho under NAFTA.

Thus, while the U.S. was importing 282,000 head of both fat cattle and feeder cattle from Canada and/or Mexico into the Pacific Northwest (this according to the NAMI testimony cited above), and producing undifferentiated beef from those imported cattle, the domestic beef cow herd in the Pacific Northwest shrank by about 240,000 head of cattle and over 9,500 beef cattle farms and ranches exited the U.S. cattle supply chain.

These data and admissions by both the NAMI and NCBA fully support R–CALF USA’s position that increased imports of cattle from which undifferentiated beef is produced has substantively harmed the U.S. cattle supply chain by displacing U.S. cattle operations and U.S. cattle. While these empirical data provide specific evidence for the Pacific Northwest, nationwide evidence of the shrinking numbers of cattle farms and ranches and the declining number of cattle in the U.S. herd provides every indication that this same import-related harm is being exacted in every state.

This outcome of the USMCA—an agreement that facilitates unlimited and undifferentiated imports of beef and cattle from Canada and Mexico—is opposite of what needs to occur to strengthen the United States beef supply chain. Only by making meaningful reforms to the USMCA can the United States expect to begin rebuilding its continually shrinking U.S. cattle and beef supply chain.

The imbalanced trade with Canada and Mexico under the USMCA is contributing significantly to the inability of U.S. cattle producers to expand production, or to remain profitable even in the wake of increasing domestic beef demand, increasing beef consumption, and increasing wholesale and retail beef prices. As a direct result,

⁵ United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors, November 16, 2018, Investigation No. TPA–105–003, United States International Trade Commission, Hearing Transcript, at 499–500.

⁶ *Id.*, at 504.

⁷ See Cattle, USDA–National Agricultural Statistics Service (NASS), February 1995, at 13, available at <https://downloads.usda.library.cornell.edu/usda-esmis/files/h702q636h/wm117r357/bc386m73s/Catt-02-03-1995.pdf>.

⁸ See Table 12, Cattle and Calves—Inventory, 2017 and 2012, State Level Data, available for WA, OR, and ID, at https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Census_by_State/index.php.

⁹ See Cattle, USDA–National Agricultural Statistics Service (NASS), February 1995, at 5, available at <https://downloads.usda.library.cornell.edu/usda-esmis/files/h702q636h/wm117r357/bc386m73s/Catt-02-03-1995.pdf>.

¹⁰ See Cattle, USDA–NASS, January 2021, at 6, available at <https://downloads.usda.library.cornell.edu/usda-esmis/files/h702q636h/n009ww19g/9880wj45t/catl0121.pdf>.

U.S. cattle producers, their domestic live cattle supply chain, and the rural communities they support are being irreparably harmed.

More recently—soon after the March 2020 outset of the COVID–19 pandemic—U.S. cattle producers, with perishable, slaughter-ready cattle that needed to be marketed, could not get a bid for their cattle from domestic beef packers for as long as seven weeks.¹¹ Meanwhile, the multinational beef packers continued importing tens of thousands of head of slaughter-ready cattle from Canada,¹² prompting R–CALF USA to issue the warning that imports are displacing U.S. cattle producers’ access to their own domestic markets.¹³

But issuing warnings do little for America’s cattle producers unless decision makers respond, which has not yet been the case. R–CALF USA urges the U.S. Senate Committee on Finance to take decisive action to rebalance the untenable cattle and beef trade imbalance memorialized under the USMCA. At the very least, and as a first step, we urge you to take steps to assist America’s cattle farmers and ranchers by giving them the ability to compete in their own domestic market by differentiating their USA-produced beef from foreign beef and beef from foreign cattle.

Congress should move quickly and decisively to accomplish this by introducing and passing new mandatory country-of-origin labeling (mCOOL) legislation to require all beef in U.S. commerce to be conspicuously labeled as to where the animal from which the beef was derived was born, raised, and harvested.

Again, thank you for this opportunity and please let me know what additional information you might need as you investigate this systemic failure of the USMCA.

Sincerely,

Bill Bullard, CEO



¹¹See We’re fighting for a way of life: Pandemic causes Iowa cattle farmers to lose money while consumers pay more, Donnelle Eller, *Des Moines Register* (November 12, 2020), available at <https://www.desmoinesregister.com/story/money/business/2020/11/12/covid-19-exposes-dysfunction-cattle-industry-why-cattle-producers-losing-money-when-consumers-paying/6076820002/>.

¹²Canadian cattle imported into the U.S. for immediate slaughter at U.S. beef packing plants after the March 2020 onset of COVID–19 included 41.9 thousand in April, 47.7 thousand in May, 46.5 thousand in June, 36 thousand in July, 32.3 thousand in August, 41.8 thousand in September, and 47.4 thousand in October. See Cattle: Monthly U.S. trade (head), Data Set, USDA ERS, available at <https://www.ers.usda.gov/data-products/livestock-and-meat-international-trade-data/livestock-and-meat-international-trade-data/#Monthly%20U.S.%20Livestock%20and%20Meat%20Trade%20by%20Country>.

¹³R–CALF USA: Imports Are Displacing U.S. Cattle Producers’ Access to American Markets, R–CALF USA, Tri-State Livestock News (April 25, 2020), available at <https://www.tsln.com/news/r-calf-usa-imports-are-displacing-u-s-cattle-producers-access-to-american-markets/#:~:text=While%20widespread%20reports%20abound%20of%20American%20cattle%20producers,cattle%20producers%E2%80%99%20access%20to%20their%20own%20domestic%20market.>