

**THE PROMISE AND CHALLENGE OF
STRATEGIC TRADE ENGAGEMENT
IN THE INDO-PACIFIC REGION**

HEARING

BEFORE THE

**COMMITTEE ON FINANCE
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THE PROMISE AND CHALLENGE OF STRATEGIC TRADE ENGAGEMENT IN THE INDO-PACIFIC REGION

TUESDAY, MARCH 15, 2022

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

The hearing was convened, pursuant to notice, at 10 a.m., via Webex, in Room SD-215, Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the committee) presiding.

Present: Senators Cantwell, Menendez, Carper, Cardin, Brown, Bennet, Warner, Hassan, Cortez Masto, Warren, Crapo, Grassley, Cornyn, Thune, Portman, Cassidy, Lankford, Daines, Young, and Barrasso.

Also present: Democratic staff: Sally Laing, Chief International Trade Counsel; and Joshua Sheinkman, Staff Director. Republican staff: James Guiliano, Policy Advisor; John O'Hara, Trade Policy Director and Counsel; Mayur Patel, Chief International Trade Counsel; and Gregg Richard, Staff Director.

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

The CHAIRMAN. The Finance Committee will come to order. The committee meets this morning to discuss the challenges and opportunities in stepping up our economic ties with countries in Asia and the Pacific.

The Indo-Pacific region accounts for half of the world's population. It is full of like-minded democracies and growing economies. As one of the gateways to the Pacific, Oregon has a lot to gain from this opportunity. One in five jobs in Oregon is trade-related, and those jobs often pay better than do non-trade jobs.

When you look across the Pacific, there are big markets for everything, from Oregon blueberries and alfalfa, to manufactured goods, to services. Raising environmental standards and ensuring robust labor rights in the region could also give us the opportunity to level the playing field for American workers.

Last fall the Biden administration kicked off an effort to develop a wide-ranging economic framework with several countries in the region. There is a long way to go before any such framework comes together, so today's hearing gives the committee an opportunity to discuss key issues and priorities at the outset of the process.

First, the United States must fight, and fight hard, for a free and open Internet. The U.S. sees the Internet as a venue for free

speech and commerce. Authoritarian governments like China's do not. The competition between those two visions is a fight we have to win. Otherwise, Americans get hit with a one-two punch. First, authoritarian regimes block our exports, and then they export their censorship laws to us.

The most significant example is the Chinese Government and its Great Firewall. When the Internet began to take off decades ago, Americans were the first out of the gate, launching companies with big, innovative ideas. The Chinese Government decided it could not compete on that level. Instead, it blocked our firms, ripped off our ideas, and started clone companies under tight censorship rules. As those Chinese tech firms have grown, the reach of their censorship has grown also, with repressive effects on the American people.

The Chinese Government is still not a part of the Indo-Pacific discussions, nor should it be. Even still, winning the fight for a free and open Internet requires the United States to push for digital rules that lock in freedom and openness with our allies at each opportunity. We know—and Senator Crapo and I have talked about this—there is bipartisan interest in fighting this censorship. So our committee is going to watchdog this issue very, very closely in the days ahead.

Second, our country has to raise the bar on labor rights. Democrats in Congress fought to make sure that the recent USMCA would be the strongest agreement in history when it comes to worker protections. We have to build on that progress, with enforceable labor obligations that fit the region and the task. That includes combating the scourge of forced labor, which has been a priority for the committee. The truth is, forced labor and economic oppression overall are part of the Chinese economic model. It is not only morally repugnant, it is a threat to American workers and jobs.

Senator Brown and I closed a major loophole in our forced labor law in 2015. Now we have to make sure that the law is fully enforced. While the United States continues to fight against forced labor in China, it's also essential to prevent a race to the bottom on labor rights in other countries also.

Labor rights and environmental protections often go hand in hand. For example, there is a big need for strong new rules on subsidized fisheries. In some parts of the world, highly subsidized and poorly regulated fleets are abusing workers and massively overfishing. It is not sustainable. Everybody loses, including the abused workers and Oregon fishing families who should never have to compete with forced labor.

Third, in all areas of trade policy, we believe here that sunshine is the best disinfectant. In 2015, this committee raised the bar for transparency in trade negotiations, because the American people expect it. That means consultations with Congress and access to the text of any agreement before it is signed. Senator Crapo and I have talked about this. We are Westerners, and for years we go home, we have town hall meetings, and people would ask about trade agreements, and nobody in the Congress knew what was in them. So we have to make sure that the public has access to texts of agreements before they are signed.

These new discussions in the Indo-Pacific region have to meet that transparency standard.

Let me close on one final and very important point. While the committee meets for this hearing, there is a horrible war happening about 5,000 miles to the east. The events of the last few weeks show the importance of our economic alliances, as well as the power they generate for the United States and our friends around the world.

In this unprovoked, unjustifiable war, Vladimir Putin has killed thousands of Ukrainians, displaced millions, and decimated cities. Our country has marshaled the collective strength of our economic allies to hit Russia with the most severe economic sanctions in history. Russia's economy is now in free fall. The country is isolated. Vladimir Putin is the head of a pariah state.

This is proof that strong economic alliances add up to a whole lot more than "soft" power. The United States is putting that power to work, punishing Russia's government and helping in the fight for democracy. The more economic allies America has, the better.

We thank our witnesses for joining the committee today. There are lots of issues for us to discuss, major challenges ahead, and let me recognize my friend, Senator Crapo.

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

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

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

First of all, I appreciate your holding this hearing today, and we are in agreement on the importance of strengthening our economic and trade ties, particularly in the Indo-Pacific area, but also across the world. Vibrant economic and trade links are an essential part of building confidence, trust, and cooperation in different areas of the world and at different levels of geo-political engagement.

Putin's invasion of Ukraine makes it abundantly clear that the United States must increase its focus on strategic trade engagement and, as part of that, reestablish its leadership on trade relations in the Indo-Pacific region.

For the first time, in January of 2022, the United States exported more liquefied natural gas, LNG, to Europe than Russia did. Although there is much more we can do to expedite U.S. energy exports, our increased trade strengthened our allies' ability to withstand Russian aggression.

Critically, the Department of Energy must still sign off on any LNG export to any country with which we lack a free trade agreement, causing uncertainty for many of our partners. This is just one example of why we need more trade agreements with our partners—and the Indo-Pacific is one region, maybe "the" one region, where we need them ASAP.

The Indo-Pacific is a dynamic region, perhaps the key to U.S. economic prosperity. Over two-thirds of all global economic growth in the last 5 years took place in the Indo-Pacific. The GDP of just the 11 countries in the Comprehensive and Progressive Trans-Pacific Partnership, or what we call the CPTPP, is over \$10 trillion.

Regrettably, we are losing ground in the Indo-Pacific. Behind me are two maps comparing whether China or the United States is the more important trade partner for a particular country. The 2002 map shows the United States as the more significant trading partner for most Indo-Pacific countries. The 2018 map shows the relationship turned upside down, in China's favor.

Even more regrettably, the situation with China in the Indo-Pacific region is likely to become worse—if not entrenched—unless we change course. The Biden administration failed to initiate any new trade negotiations last year, but China helped finalize the trade agreement that it backs. Known as the Regional Comprehensive Economic Partnership, or RCEP, it lacks any disciplines on state-owned enterprises, labor, or the environment, and worse, it essentially endorses China's limited intellectual property protections. With RCEP having only entered into force this January, China is already better positioned than the United States in most of our Asian partners' markets.

On top of that, China is now pushing to join CPTPP, which would leave the United States even further behind in the Indo-Pacific region. To reestablish the U.S. economic momentum right now, the Biden administration must reverse course and chart an ambitious trade policy.

Although the administration announced that it seeks to pursue an Indo-Pacific Economic Framework, or IPEF, it unfortunately indicated that this framework will not include any market access component. Certain aspects of what I am hearing about IPEF are troubling—including the notion that it could be used to advance the tax deal the administration negotiated at the OECD that would make the U.S. less competitive, even before Congress agrees to accept such an outcome for the United States.

The administration's present position of leaving out a market access outcome makes no sense. Economically, our workers, businesses, and farmers will lose out on important opportunities if we stay on the sidelines. America's leading innovators will also be undermined if we do not lay down a foundation for a strong intellectual property rights system. In fact, one way to redress the economic impact of the administration's current misguided inflationary policies is to promote market access.

Export-oriented jobs typically pay 16 percent more on average in the manufacturing industries and 15.5 percent on average in the services industries. We must strategically deepen our trade ties to ensure we and our allies have secure access to energy, critical minerals, and sensitive technologies. We must also develop rules for digital trade that enshrine openness and freedom. If we do not write the rules, China will.

Accordingly, this hearing is an excellent opportunity for the Finance Committee to help chart the course that the United States must take to have a strategic and sensible trade policy in the Indo-Pacific.

Mr. Chairman, once again I thank you for organizing this hearing, and I look forward to hearing the testimony from our witnesses.

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

The CHAIRMAN. Thank you, Senator Crapo. And I know this is another area where we have an opportunity to bring this committee together and proceed in a bipartisan way.

Ms. Sharon Bomer Lauritsen of Washington is the founder of AgTrade Strategies LLC, a specialty consulting service on U.S. agriculture trade policies, focusing on expanding exports of American agricultural products, food, and beverages. And she has extensive experience in government as well.

Ms. Emma Llansó from Washington is director of the Center for Democracy and Technology's Free Expression Project, where she has been doing good work to promote law and policy that promotes Internet freedom.

Ms. Kelly Ann Shaw of Washington is a partner at Hogan Lovells; a lecturer at Columbia Law School; and she has deep knowledge of international trade, investment, economic law, and policy drawn from her service at the White House, the Ways and Means Committee, and the U.S. Trade Representative's office.

And Mike Wessel, who is well-known to this committee, is president of the Wessel Group, a public affairs consulting program, and advisor to the USTR and the Department of Labor. He also serves as an original member of the U.S. China Economic and Security Review Commission, and we have known each other for many years, going back to his days on the staff of House Democratic leader Richard Gephardt.

So we have a terrific panel.

Let's start with you, Ms. Lauritsen.

**STATEMENT OF SHARON BOMER LAURITSEN, PRINCIPAL,
AGTRADE STRATEGIES LLC, WASHINGTON, DC**

Ms. LAURITSEN. Chairman Wyden, Ranking Minority Member Crapo, and distinguished members of the committee, thank you for the opportunity to appear before you today to share my thoughts on the challenges and opportunities for America's farmers and ranchers in the Indo-Pacific region. I appreciate you making my full written statement part of the record.

One key element to enhancing the sustainability of American farms and ranches is investing time, energy, and ambition to negotiate new trade agreements to increase our competitiveness and open export markets. And there is no better place than to focus on the Indo-Pacific region.

But the unfair barriers to U.S. agricultural exports in the region are many—both regulatory and tariff. Even if non-tariff barriers are resolved, U.S. agricultural exports, including to countries such as China, Thailand, and Vietnam, are often at a disadvantage when our products face higher tariffs in countries that already have preferential tariff agreements with U.S. competitors.

We know that preferential trade agreements benefit our farmers and ranchers. One quick example: U.S. agricultural exports to South Korea have increased 54 percent with implementation of our FTA in 2012. We are celebrating its 10-year anniversary this week.

The administration's recently announced Indo-Pacific Economic Framework provides an opportunity to create a fair and level playing field for our exports in the region. But to have meaningful impact for fair and resilient trade for U.S. food and agricultural prod-

ucts, I believe the following elements need to be considered for what I call IPEF.

First, the administration has already identified science-based agricultural regulation as one pillar of IPEF. We need disciplines to ensure food, animal, and plant health and safety measures, known as SPS, and those in the standards area like labeling, known as TBT, are backed by science or international standards and are not disguised protectionism. Consideration, however, should be given to providing least-developed countries assistance to meet SPS and TBT-plus rules. Another element of this pillar would be to gain commitments from trading partners to not create new unwarranted trade barriers in the future.

Second, establishing strong SPS, TBT, and other rules such as import licensing, however, is not enough. Using IPEF to actually resolve unwarranted, nontariff barriers is important up front so that U.S. farmers and ranchers can actually realize improved trading conditions in the near term.

Third, many of the Indo-Pacific countries have high most-favored nation agricultural tariffs compared to the U.S. average applied tariff of about 5 percent. I recognize the legal limits that the administration may have in negotiating U.S. tariffs without Trade Promotion Authority. But even if Congress does not pass TPA in the near term, opportunities exist to negotiate with our trading partners to lower MFN tariffs, including to U.S. levels, to help level the playing field.

Fourth, IPEF can define a common vision on agricultural sustainability, sustainable food systems, and food security. And to advance sustainability, supporting the use of new agricultural technologies with appropriate regulatory systems would be of benefit to farmers throughout the Indo-Pacific region.

Fifth, international trade is obviously one element in building stronger foreign relations in the Indo-Pacific region. IPEF should bring as many countries together as possible, since the more inclusive the IPEF is, the stronger our economic ties and foreign policy objectives will be in the region.

And finally, sixth, our traditional congressionally approved FTAs have dispute settlement mechanisms built into them. To have any meaningful or real results, IPEF provisions also need to be enforceable, and of course USTR will then need to do the follow-on work to enforce them.

With more than 20 percent of agricultural production being exported, our rural communities in all 50 States depend on finding strong, stable, and predictable markets. The U.S. trade agreements do just that, and I believe that with creative thinking and ambition, the IPEF can also have economically meaningful results for a sustainable future.

Thank you.

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

The CHAIRMAN. Thank you very much.

Ms. Llansó?

STATEMENT OF EMMA LLANSÓ, DIRECTOR, FREE EXPRESSION PROJECT, CENTER FOR DEMOCRACY AND TECHNOLOGY, WASHINGTON, DC

Ms. LLANSÓ. Chairman Wyden, Ranking Member Crapo, and members of the committee, thank you for the opportunity to testify before you today. My name is Emma Llansó, and I am the director of the Free Expression Project at the Center for Democracy and Technology, a nonpartisan, nonprofit 501(c)(3) charitable organization dedicated to advancing civil rights and civil liberties in the digital world.

At CDT, I have worked for more than 12 years to promote law and policy that support Internet users' rights to freedom of expression, access to information, and privacy in the U.S., Europe, and around the world. So I am grateful for the committee's focus on the promises and challenges in the digital sphere that will arise as the United States pursues closer trade relationships in the Indo-Pacific.

Over half of the world's young population lives in the Indo-Pacific region, and the region accounts for a little over half of the world's Internet users. Internet use in the Indo-Pacific region is expected to grow to up to 3.1 billion users by 2023. As Chairman Wyden noted, there is an urgent need to counter the authoritarian model of Internet regulation promoted by the Chinese Government.

China's use of Internet shutdowns, its decades-long project to build a Great Firewall that blocks outside information sources, and its mass and discriminatory surveillance of its population threaten human rights and impede the development of an open digital economy. A lack of respect for human rights and weak rule of law in China means that it is extremely difficult for U.S. companies to operate responsibly in the country, which has only further cemented the Chinese Government's grip on its domestic communications network.

The past 3 weeks have also provided a stark example of the threats to human rights from digital authoritarianism in the context of the Russian Government's invasion of Ukraine. The Russian Government has blocked access to social media services that dare to attach fact checks to state propaganda, and has passed a new "fake news" law that prohibits anyone from knowingly disseminating false information about Russia's military—which includes referring to its actions in Ukraine as "an invasion."

As a result, many media outlets have left the country, and many online service providers have shuttered their services or are blocking access by Russian users, leaving the Russian people with few information alternatives to state propaganda and strengthening the government's control.

Unfortunately, there are an alarming number of recent laws and legislative proposals across the Indo-Pacific region that also seek to control speech and access to information, subjecting Internet users to surveillance, and giving state authorities control over Internet infrastructure. The Indian Government has imposed more Internet shutdowns than any country in the world, with 109 shutdowns recorded in 2020 alone, often in response to military crackdowns or protests. And the 2021 Information Technology Rules in India put

employees at risk of being jailed if companies do not respond promptly to take-down orders.

The IT rules are likely to serve as a model for other legislation in the region. Bangladesh, for example, has already proposed similar guidelines, and Myanmar is currently preventing the staff of telecom provider Telenor from leaving the country while it considers the sale of the company.

The U.S. has the opportunity, including through the Indo-Pacific Economic Framework discussions, to promote an alternative model of Internet regulation and advancement of rights respecting a multi-stakeholder approach to Internet governance that ensures the participation of civil society and technical experts in the development of technology policy, and that prioritizes maintaining an open, interconnected Internet in the region and worldwide.

It is vital that the U.S. promote the rule of law and seek commitments to uphold international human rights, which are essential at countering digital censorship and surveillance practices, and which in turn benefit the economy. Online service providers and other businesses need the legal certainty that comes from the rule of law in order to operate globally. And, when national regulations comply with international human rights' obligations, they both protect people's rights and bring economic benefits by more closely harmonizing regulations across borders.

To be clear, this does not mean that the U.S. Government should go easy on U.S. tech companies, or that they should challenge every regulation passed by another country as a trade barrier. In order to be a credible leader on Internet policy issues worldwide, the U.S. must get its own house in order, including by passing comprehensive Federal privacy legislation, reforming its intelligence surveillance practices, and by addressing competition and concentration within the tech industry.

For the U.S. to successfully promote the free flow of data and to reject overly restrictive national data protection or intermediary liability laws that can serve as vehicles for censorship and surveillance, the U.S. must model a rights-respecting vision for the Internet. And other nations must be able to have confidence that, for example, their citizens' data will be protected from government and corporate abuses when sent to the U.S.

Globally, the U.S. should seek to build on existing commitments to digital rights, including through the Freedom Online Coalition, which was launched 11 years ago and which the U.S. was a founding member of. The U.S. should seek additional commitments from governments in the region to refrain from imposing Internet shutdowns or general monitoring obligations, to reject extra-legal censorship, to limit the use of surveillance technologies, and to ensure access to end-to-end encrypted services.

The U.S. should also promote opportunities for shared learning across governments and with the involvement of human rights advocates, technical experts, and other civil society representatives, especially around emerging issues such as artificial intelligence. The IPEF process should coordinate with a variety of such learning and information-sharing forums that already exist across the U.S. Government, including the EU Technology Trade Council, and the Freedom Online Coalition. And the IPEF process could develop co-

operation mechanisms on specific topics between the U.S. and governments in the region—for example, supporting increased information sharing on ransomware and other emerging cyber-threats modeled after the U.S.-EU joint initiative on ransomware.

In short, there are a great many opportunities to defend human rights through engagement on digital trade issues, and a powerful need for the United States to advance a vision for how to do so.

Thank you for the opportunity to speak before you today, and I look forward to your questions.

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

The CHAIRMAN. Thank you very much.

Let's go on to Ms. Shaw.

STATEMENT OF KELLY ANN SHAW, FORMER DEPUTY ASSISTANT TO THE PRESIDENT FOR INTERNATIONAL ECONOMIC AFFAIRS (2018–2019); AND PARTNER, HOGAN LOVELLS, WASHINGTON, DC

Ms. SHAW. Mr. Chairman, Ranking Member Crapo, distinguished members of the committee, thank you for the opportunity to discuss U.S. trade and economic engagement in the Indo-Pacific, which is the world's most dynamic region.

Prior to my current role in private practice, I was privileged to spend a decade in government service, negotiating with our trading partners in the Indo-Pacific. So, while I draw upon these experiences, the testimony I provide this morning is solely my own.

How we structure and nurture our economic relationships in Asia today will go far in determining whether the United States remains the world's leading economic power. But the stakes are about more than just whether the United States will continue to be number one. Democracy itself is under threat, not just in Europe, but in Latin America, Africa, Asia, and the Pacific. The rise of autocracy and state capitalism threatens our economic values and freedoms every bit as much as the political freedoms that undergird successful democracies.

Historically, trade has been one of our most important tools for pushing back against authoritarianism. The United States led in creating a postwar global trading system that, for many years, helped drive U.S. jobs and growth and widen the circle of freedom and prosperity.

Now, at a critical moment when democracy is under threat, we have retreated from our leadership role and abandoned our longstanding view that countries that trade together are less likely to go to war against each other. Trade is a difficult issue for democracy, but rather than take the lead in defining a new approach for today's challenges—one that strengthens U.S. manufacturing, unleashes innovation, protects our workers, and advances our values abroad—the United States has given up saying anything at all. We have become mired in our own domestic politics.

As a result, today the United States has no meaningful offensive trade strategy. In no place is this current lack of strategy and leadership vacuum more dangerous to long-term U.S. strategic, economic, and commercial interests than in the Indo-Pacific.

The Indo-Pacific is our backyard, filled with military allies and important trading partners. Two-way trade with the region totals

upward of \$1.75 trillion. But when it comes to our economic vision, the concept of a free and open Indo-Pacific has turned into something we say, rather than something we do.

This year, as the ranking member pointed out, the largest trade agreement in history, RCEP, encompassing one-third of global GDP, 15 Indo-Pacific countries, 53 percent of world exports, and 2.3 billion people, entered into force with China, and not the United States, at its helm. Moving forward, Beijing and not Washington will have outside influence in setting future standards and regulations for Asia and the Pacific. Lower tariffs, common rules of origin, and eased customs procedures will help China lock in regional supply chains, attract new foreign investment, and expand its Belt and Road Initiative.

U.S. manufacturers, workers, and farmers all stand to lose from the deal. And if China manages to accede to the other major regional trading bloc, the CPTPP, the results for U.S. economic interests will be catastrophic.

Multilateralism will not save us. The World Trade Organization is on the brink of irrelevance, after 2 decades of atrophy. Regionalism, and regional trade rules, are now king. Even before RCEP, more than 50 percent of global trade occurred outside the WTO system through more than 300 bilateral and regional trade agreements. Seventy-five percent of the EU's trade, for example, is governed under these preferential agreements, which means the world is moving on without us.

The recently announced Indo-Pacific Economic Framework is a modest step in the right direction but risks turning into another failed exercise. Few details have been announced regarding participating countries, the scope of modular commitments, or how the project will be more robust than CPTPP without any significant trade components.

It is difficult to imagine IPEF having a meaningful impact on long-term U.S. economic interests without enforceable commitments on market access, rules of origin, technical barriers to trade, services, IP investment, or state-owned enterprises, to name a few. A trade pillar focused exclusively on digital trade, forced labor, or trade facilitation is not enough to extract meaningful concessions from our trading partners or shape the region moving forward.

Congress should push the administration to broaden its ambition so that we are setting rules, not merely making suggestions. Instead of starting from scratch, the United States should also seriously consider rejoining the CPTPP, and to do so quickly. Despite some of the deep fundamental flaws of its predecessor, the TPP, many of the provisions in the original deal were groundbreaking. It would be straightforward enough for the United States to return to the negotiating table to harvest the provisions that work, jettison those that do not, and ultimately keep China out of the deal.

To conclude, we need a trade strategy for the Indo-Pacific that works for Americans and works for democracy—one that serves both our economic and commercial interests, as well as our strategic ones. Above all, we need to be bold, and we need to act quickly.

Thank you.

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

The CHAIRMAN. Thank you very much.

Let's go to Mr. Wessel. He is out in cyberspace somewhere, I believe.

STATEMENT OF MICHAEL WESSEL, STAFF CHAIR, LABOR ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS AND TRADE POLICY; AND PRESIDENT, THE WESSEL GROUP INC., WASHINGTON, DC

Mr. WESSEL. I am, and am now unmuted.

Mr. Chairman, Ranking Member Crapo, members of the committee, it is an honor to be here. It is an honor to be here before you today.

My name is Michael Wessel, and I am here on behalf of organized labor, as the staff chair of the Labor Advisory Committee for Trade Negotiations and Trade Policy. Labor appreciates the seat you are providing at the committee's table. A disclaimer, however: my comments are my own.

While some are posturing that we need to advance the IPEF as a way of being engaged in the region, we already are engaged. We have free trade agreements with three countries, and a separate trade agreement with Japan.

We engage in hundreds of billions of dollars in trade with the region. Last year, we had a trade deficit of \$33 billion with India, more than \$60 billion with Japan, and \$90 billion with Vietnam. We have more than \$1 trillion in foreign direct investment in the Indo-Pacific. So, the real question is not whether we should be engaged, but what the future architecture of that economic engagement should be.

Others want to know what the impact of the IPEF will be on them and their families. They want—they deserve—a better idea of how the IPEF will advance rather than undermine their economic interests.

Let me focus quickly on three issues: workers' rights and corporate accountability, digital trade, and resilient supply chains.

The number one concern for organized labor is how workers' rights will be protected, enforced, and promoted in the region. Workers' rights are key to ensuring that trade will promote growth and opportunity for workers, rather than driving a race to the bottom.

Administration officials have indicated that workers' rights will be part of the IPEF, but how broad that coverage is, what standards will be applied, and what enforcement mechanisms will be included, is an open question. This, coupled with enforceable corporate accountability measures, must cut across all of the separate modules in the IPEF.

On digital trade, there are highly complex issues that will require enormous study and evaluation. Rushing about new digital trade measures could have serious adverse consequences for U.S. economic and national security interests. Congress must be broadly engaged, along with other stakeholders, in assessing what the road ahead should look like. Digital trade is a worker issue. More and more jobs are susceptible to outsourcing over digital platforms. Digital platforms are being used to surveil workers. They are vehicles

for misclassification, and they are jeopardizing their privacy and security.

Creative artists see their very livelihood under attack, and their livelihoods depend even more on strong safeguards. One website in the Philippines advertised that it provides health-care business services for savings of up to 75 percent over what a U.S. employer would have to pay. Yes, that is already happening. But a digital trade agreement can accelerate that offshoring, or with proper enforceable workers' rights, corporate accountability, and other measures, it can help rebalance the playing field.

Digital trade cannot be the only component of the IPEF and should not be part of an early harvest strategy. Digital trade is a real focus of organized labor.

Supply chains are no longer just discussed in board rooms, but at kitchen tables as well. Our citizens have had to confront where to get COVID tests, PPE, toilet paper, and other goods. Auto workers wonder where the semiconductors will come from so that they can return to their jobs. Other assembly lines have been slowed or idled by other supply chain bottlenecks. What will a resilient supply chain module in the IPEF mean for them?

For many workers, the best supply chain is one that is here in America. We know that we live in a global marketplace where we buy and sell products around the world—preferably, we would sell more, a lot more. Resilient supply chains must be about more than simply shifting supplies from China into other countries in the Indo-Pacific. That will have only limited benefits and will continue our reliance and dependence on others for our products.

Any approach on supply chains must support the efforts of this and the last President to address our critical needs.

Mr. Chairman, Ranking Member Crapo, organized labor supports international engagement and strengthening our relations around the globe. Engaging in the world is an imperative. Foreign policy, however, has been more a driver of trade agreements than the economic results they produce. The public rejects that approach.

A properly designed IPEF, along with other provisions in the broader Indo-Pacific strategy, can truly be a course for progress. That must be our goal. We look forward to working with the committee and the Congress in the coming days.

Thank you.

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

The CHAIRMAN. Thank you, Mr. Wessel. We have appreciated all your assistance.

Also, for people who are paying attention to this discussion right now, they are being introduced to some new acronyms, some new lingo in the foreign policy and trade area. An Indo-Pacific Economic Framework is what we are talking about when you hear Senators talking about IPEF.

Okay, let's go now to you, Ms. Llansó, because China keeps building the Great Firewall higher and higher and higher each year. And in doing so, they suppress political dissent, which is really a human rights disaster, and it is no coincidence that the same laws that crush free speech in China also prevent American companies from competing fairly in the largest country on earth. And I

think what is ominous is this repressive model is starting to spread like dominoes throughout the Indo-Pacific region.

So we obviously want to push back against censorship in China and elsewhere, and we also want to begin to flesh out the trade rules of the road as relates to the digital sector. The Internet is the shipping lane of the 21st century, as we have come to define it here in this committee. So my first question to you, Ms. Llansó, is, we want to get other countries, particularly ones that might be interested in joining this Indo-Pacific Economic Framework—perhaps India, Vietnam, and others—to join with us. Because, if we have a bigger coalition, we are stronger in pressing back against China’s censorship. How do we go about doing that?

Ms. LLANSÓ. Thank you very much for the question, Senator Wyden. I think it is going to involve a mix of various strategies.

I think one of the most important things to do in the Indo-Pacific region is to understand what are some of the motivations behind some of the more concerning tactics that we have seen, or concerning elements of the legal frameworks. For example, in my testimony I talk a lot about this issue of personnel localization, or local presence rules. These are proliferating across the region for various reasons.

By requiring local presence in a country, it gives that nation jurisdiction over a U.S. tech company. That can be abused in certain ways. And we have certainly seen it be abused in China, for example, to threaten to jail or fine employees who are in country in order to make a company comply with censorship demands or provide access to user data. But there are also reasons, for example legitimate law enforcement needs to access user data, or concerns about the security and privacy of user data if U.S. tech companies are not confined by the laws in a particular country.

So that is where I think the United States could really kind of look at addressing those underlying impacts, including through whatever updates are needed to the laws in the United States, which I do hope include passing Federal privacy legislation and updating the U.S. foreign surveillance laws.

Being able to kind of come to the table willing to talk about addressing those core needs will also give room to the U.S. to set some really clear bright lines around human rights and the rule of law in the region, to reject issues like Internet shutdowns or general monitoring and filtering obligations in the country, and to push for limits to surveillance laws.

The CHAIRMAN. I know we are going to call on you frequently in this area, particularly because of your work focusing on the intersection of human rights and technology that is especially important right now. I recently got asked by the press what the importance of encryption is because I kept talking about it in the context of Ukraine and Russia, and I said, “Let me be really blunt about this. Encryption there is literally a matter of life and death. It is just that simple. If you do not protect people’s data with strong encryption, you can have a threat to their lives.” So, thank you for your good work.

A question for you, Mr. Wessel, as I wrap up my first round. What do you think the lessons are, Mr. Wessel, as it relates to what we learned with the USMCA, the U.S.-Canada-Mexico Agree-

ment, as it related to protecting workers? And we want to make sure that workers are protected on both sides of the ocean. We want to make sure that we use the innovative steps that we have recently put together with respect to worker protection and see if there are some lessons learned for going forward in the Indo-Pacific region.

You were instrumental in working with us on what came to be known—and I am proud to be associated with Senator Brown on this—as the Brown-Wyden rapid response mechanism to respond to labor violations at the facility level in Mexico. What are the lessons from USMCA that we can employ to protect workers, both in the Indo-Pacific region and our workers who are counting on those good-paying jobs?

Mr. WESSEL. Thank you for the question, and thank you for your leadership, along with Senator Brown and others, in bringing us the rapid response mechanism. It was an innovative and groundbreaking approach in terms of labor rights enforcement, coupled with what the USMCA had as part of its definition of what the rights should be to be enforced. It ensured for the first time facility-level enforcement mechanisms, replacing essentially state-to-state, so that we knew that the bad actors would pay the price for any abuses of labor rights.

There has been an evolution, as you know, of labor rights over the last 40 years, from simple unilateral approaches to enforce your own laws, to new standards. The USMCA was groundbreaking in terms of its labor chapter. We need to include a similar concept in any IPEF that defines the rights, and couple it with an enforcement mechanism that is accessible, timely, and as much as possible, facility-specific.

The CHAIRMAN. Thank you again for your innovative thinking on this, and we will be working with you, I know.

Senator Crapo?

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

Ms. Llansó, I am not going to ask you a question because Senator Wyden really covered the issue. I just want to highlight that the points you raise show how critical it is that we deal with our digital policy globally in an effective way. This is not just an issue of freedom and human rights, it is an issue of economics and trade and, frankly, national security. So I just want to highlight that I agree with your testimony.

I want to go first to Ms. Lauritsen. You already answered this question, but I want to ask it again and ask you to just briefly restate your position here, because it is so important.

I am glad that the administration's proposed IPEF may include what it describes as "binding rules," particularly if they extend to the digital trade and agriculture market access and so forth. But to ensure that our free trade agreement rules are binding, because we can enforce them through dispute settlement provisions, is key, in my opinion.

Are binding rules possible in IPEF if it lacks a dispute resolution mechanism?

Ms. LAURITSEN. I guess what I would suggest in response, Senator, is that there are different types of dispute resolution mechanisms. Clearly, having something that is binding, such as what

Congress has already approved in USMCA, is very helpful. But other mechanisms can also be through mediation, or actually forcing your trade and your agriculture officials to sit down and hash out how to fix particular problems. But clearly, having a binding agreement is critical in the end if all else fails.

Senator CRAPO. I agree with you, because we can force them to hash it out, which they do very well and very long, and they never get to a resolution sometimes.

Ms. Shaw, could I ask you, quickly, to answer the same question? Because I have another question for you.

Ms. SHAW. Sure. Absolutely. And thank you, Senator. You need a stick. And there are a lot of different ways to organize an enforceable mechanism. But at the end of the day, you need a stick. And traditionally we have done that through the threat of removing preferential market access, or through tariffs. It is difficult to see, absent that, what could really enforce the agreement, but it is important not only to ensure that other countries abide by the rules that they negotiated but also to incentivize investment by the private sector to make sure that industry has sufficient certainty that those rules will remain in place.

Senator CRAPO. All right; thank you very much. And, Ms. Shaw, your expertise is quite unique. You were a former negotiator at the Trans-Pacific Partnership talks, also a key Trump administration official with responsibility for managing the U.S. economic relationship with China.

TPP is now claimed to be outdated with respect to China because it was negotiated during the Obama administration—so long ago.

Every witness, as I understood your testimony, agreed that we have to get engaged. We have to get off the sidelines and back in the game. But it is not clear that there is agreement among the witnesses as to what that engagement should look like.

We have the IPEF—and we have heard some discussion about that—which appears to be the current approach that the administration is pursuing. We have the TPP, or maybe now it is the CPTPP. It is kind of unclear whether that is one or two different things. But I was always discouraged that we stepped off to the sidelines and did not get back to reengage.

So my question to you is, given that we need to be engaged and get off the sidelines, what is the vehicle? What do we need to do?

Ms. SHAW. Thank you for the question. If IPEF is a modest step forward, joining CPTPP would be a giant leap. But that still does not get us all the way. There is a lot of work to be done.

First and foremost, we need strong enforceable commitments on trade. We are losing with respect to market access in China, the European Union, and other countries that are out there negotiating the rules without us. CPTPP is a flawed agreement. There is a reason why it did not have the votes in Congress. There is a reason why both major presidential candidates came out against it. But with that said, it is fixable.

As I noted in my opening remarks, there were a lot of provisions that were groundbreaking, specifically for the region—provisions on telecommunications, on services and, at the time, provisions on labor and the environment as well. But we can go further. And negotiating strong provisions on SOEs, labor, environment, going fur-

ther in agriculture and market access, are things that we can do because our CPTPP partners would be open to doing that. But I think we need to do so, and we need to do so quickly before the opportunity closes.

Senator CRAPO. Well, thank you. I appreciate it, and I agree with your answer. As I noted in my introductory remarks, China is seeking to join. They see it. Even though they just got their broader agreement agreed to in January, they understand where the game is and are getting engaged. I think the United States needs to do the same.

The CHAIRMAN. Thank you, Senator Crapo, and I know we are going to be working together on these issues.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman. I thank you and I thank Senator Crapo, and if anything, I see a Northwest delegation here who should know, and does know, how important trade is. And I definitely think we think about it a little differently maybe than some parts of the world. I get so challenged sometimes talking about it. I just say, "You need to know that we were trading with China before Lewis and Clark showed up."

So that means we are going to want to continue to open market access. And when you think about the Northwest economy, whether it is apples or airplanes or software, more than 50 percent of each of those markets are, you know, international trade—or I should say wheat is 90 percent.

Okay, so my question is—I agreed with a lot that you said, Ms. Shaw, because dissecting trade as an avenue against authoritarianism is something I care immensely about. It took a 20-year-old staffer on my team to just say "trade changes culture." Like, yes, of course, but I think people somehow have forgotten that trade changes culture. And part of what we are trying to do is open up and have more stable democracies around the world. And that is why we engage in trade.

So I agree with you that we need to use our leadership. If you are not there—I remember a trip to Egypt and the change after the riots that took place, and we said to the embassy, "Let's go talk about wheat," because this was all about the price of bread. And they said, "Oh, no, no, no, let's not." I said, "What do you mean?" "Oh well, we have already lost too much market share to the Canadians. They do not want to hear from us."

So, losing market share is an irreplaceable problem, and if you are not at the table, you are not in the current negotiations. Losing market share is not just losing imports or our exports, it is losing, ultimately, in the competitive game

So my one thing is that—you know, I know your past role in the administration—I would characterize the Trump administration's as a tariff-first approach, and I felt very challenged by that, given the impacts that we saw. We had apples face a 70-percent tariff. India used to be the second-largest export market for Washington apples before the Trump administration's trade war. And now there is a huge decrease from last year.

What should the U.S. be doing to end retaliatory tariffs in India and elsewhere in the Indo-Pacific?

Ms. SHAW. Well, thank you so much for the question, Senator, and I should say I was born and raised in the great State of Washington, so I think you will find my views on trade are quite similar to yours, just given the importance of trade that I saw growing up.

The first step is to be engaged. It is difficult to extract meaningful concessions from our trading partners unless we are at the table talking to them about these issues. And unfortunately, there was retaliation imposed as a result of some of the trade actions that we took.

But at this point in time, we need to talk about how we can advance our mutual interests. So I would encourage the administration to be as bold as possible, and Congress, in your role, to continue instructing them in what we need to move forward on these issues. But certainly, we have a number of challenges related to India. It is the world's largest democracy and a partner that we want to work with strategically in the region. So we are just going to have to roll up our sleeves and figure it out.

Senator CANTWELL. Do you think we should get rid of these retaliatory tariffs?

Ms. SHAW. In terms of India's tariffs on us, or—

Senator CANTWELL. The fact that—yes—the fact that—listen, I think what you have learned when you grow up in the Northwest is that if you start this fight, it is going to have consequences. And so, we are in disputes on the solar stuff, and it is 10 years later—10 years later, and nothing has happened. So, we basically slowed things down.

So I do agree with your viewpoint, which is, if you want to define the debate, you have to be in the debate. And I personally believe we should be defining this debate all over the place. If you are in the debate, you can say, this is what countries need to do on the digital side. This is what you need to do if you want to adhere to democracy. This is what you want to do if you want to adhere to improving and enforcing as we did with Mexico, building capacity so you actually have enforcement of the laws; not just agreements, but actual enforcement. So I just think right now that we have to end these retaliatory tariffs. The retaliatory tariff issue is costing us, to say nothing of the supply chain problems that we have.

So farmers are really taking it right squarely on the nose, and we need to help.

Ms. SHAW. I certainly agree with that. Our struggles with India are longstanding and deep. They have a lot of challenges in terms of the broader landscape of trade issues. But we are going to have to figure out a way to use the leverage we have to get them to peel back some of the trade barriers they impose against us.

But I agree with you. I think they are a strategic partner, and I think we need to be at the table.

Senator CANTWELL. Thank you, Mr. Chairman.

The CHAIRMAN. Well said, as always, Senator Cantwell.

The next three are Senator Grassley, Senator Menendez, and Senator Cornyn.

Senator Grassley?

Senator GRASSLEY. Thank you, Mr. Chairman, and thank you for bringing some trade issues to this committee, because it is not

being discussed much in this town at all, and I am disappointed in that.

So I am going to start with Ms. Lauritsen. The Indo-Pacific strategy mentions several ways to improve trade in this region, yet agriculture was not mentioned once. I have serious concerns——

[Cell phone rings.]

Senator GRASSLEY. I'd better put this on quiet.

I have serious concerns about U.S. agriculture producers being left behind in this economic framework. We also see this administration falling behind on confirming nominees to key trading posts. USTR still does not have a Chief Agricultural Negotiator, and USDA does not have an Under Secretary for Trade and Foreign Affairs.

Considering your experience at both USDA and USTR, can you tell me what the administration is losing by not having Senate-confirmed leadership in these positions?

Ms. LAURITSEN. Well, thank you, Senator, and I agree with your sentiments. I was a civil servant heading up the Agriculture Office at USTR, and I can assure you that having your political and Senate-confirmed bosses in place is important in order to have agriculture be part of the discussion among the political and the White House engagement.

So, I think it is extremely important. It is important also to be able to engage with other countries, because many agriculture issues are going to be political. So you need a political person there to push, to drive, to lead, and to have the vision to move forward. And this is one of those areas in IPEF where making sure you have a strong agriculture voice at the political level within the administration will be important to make sure it gets included as a part of any negotiation.

Senator GRASSLEY. Also for you: one of my top concerns is seeing China take serious action to expand its foothold in the Indo-Pacific region. You noted in your testimony that other countries are not standing still, and the U.S. farmers are losing market share.

Do you feel that the Indo-Pacific Economic Framework is the best vehicle for increasing our engagement in the Indo-Pacific region?

Ms. LAURITSEN. Thank you, Senator. Well, in full disclosure, I was one of the negotiators of the Trans-Pacific Partnership. So I feel that that agreement and the CPTPP would be particularly important and possibly easier to benefit American farmers and ranchers.

I recognize there are a whole bunch of other issues that make it difficult, but that might be an important vehicle that might be able to be achieved more quickly if there was a political will on the part of the United States. Absent that, and absent any other bilateral trade agreement negotiations, IPEF could be an important vehicle, provided it has the right provisions, the right level of ambition to actually open up export markets for American food and agricultural products.

Senator GRASSLEY. And also for you: a few weeks ago, Ambassador Tai made a comment about setting standards that promote fair and open competition with respect to our ag producers when developing the Indo-Pacific framework. I appreciate those comments, but we need more concrete clarification about how the ad-

ministration is working to involve the agricultural industry in the process.

So for you: what would your advice be to Ambassador Tai regarding non-tariff trade barriers like burdensome regulatory requirements and geographical indication barriers to the sale of U.S. exports?

Ms. LAURITSEN. So, I am a firm believer, Senator, in a two-pronged approach. One is building the strong rules. USMCA has a set of very strong rules when it comes to sanitary and phytosanitary barriers. But the other is actually to get the regulators and the trade negotiators at the table with the political will to find the resolution and open up those markets. They need to be handled in tandem to have real results for our exporters.

Senator GRASSLEY. My next question is the last one. The government of India has a goal of 20-percent ethanol-blending gasoline by 2025. E-20 is set to be rolled out starting April 20, 2023. This is an aggressive timeline for a country with over a billion people.

As noted in your testimony, India currently restricts ethanol imports. How can the United States best engage with India so that they can meet their air quality and climate goals through U.S.-produced ethanol?

Ms. LAURITSEN. Thank you, Senator. And that is actually an issue that I worked on while I was at the U.S. Trade Representative's office, and I engaged proactively with India. And we were actually making progress. But then the pandemic occurred and the change of administrations, so things slowed down.

So I do think there is opportunity—again if you are at the table and actively negotiating and engaging—to be able to open up that India market, particularly for ethanol for fuel use.

The CHAIRMAN. Thank you, Senator Grassley.

Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman.

Even as the United States is currently focused on the tragedy unfolding in Ukraine, it is clear that one of the most pressing challenges facing the United States in the 21st century remains what has rightly been termed strategic competition with China. And while we still may have aspirations for a more constructive future with China, I think we have to be clear-eyed and focused as we contemplate the sort of regional and global architecture inimical to our interests and our values that Beijing is currently seeking to construct, and the steps that we have to take to invest in our economy and to safeguard our interests and the values of our allies and partners.

And I think we also must be equally clear-eyed that much of our strategic competition with China is not just in traditional geopolitical or geostrategic spheres, but competition in geoeconomic dimensions of national power shaped by new and emerging technologies like artificial intelligence, quantum computing, and geonomics, among others.

So, success in this new realm of competition will require the United States to work with like-minded partners to assure that the economic and commercial map of the Indo-Pacific is connected, free, and open, and that the United States is engaged.

So the administration's IPEF proposal to me represents a good first step in that direction, but that's just it: I think it is a first step. What should a robust and durable regional economic architecture, one that is underpinned by high-quality, high-standard agreements on labor, the environment, intellectual property, and rule of law, look like?

I met with all of the ASEAN ambassadors last week, and they all say, "This is nice, but if you want to have a real presence here, then we are looking for a more robust aspirational effort."

So, can you address that question? It is open to any of you who wish to answer.

Mr. WESSEL. Senator, I would be happy to take that question, and I appreciate it, and appreciate all the work of you and your staff on so many issues.

As I look at recent events in Ukraine, with China's actions in Hong Kong, their course of tactics and threats to Taiwan as well, I think we all can understand that many of the countries in the Indo-Pacific are not embracing China's vision of what their hegemonic control of the region should be.

That does not mean we should not be engaged. As I said earlier, we are engaged. The question is, moving forward, what are the standards? And how do we engage?

I think the USMCA showed that, with real discussions with labor and other stakeholders across the board that go to the fine details of any approach, we can work things out. It does not mean it is going to be perfect, but we can reach a broad consensus.

So I am optimistic. I do not believe that countries like Vietnam, India, et cetera are looking to China as being the leader. We are engaged. We must continue that engagement, and we must stay deep in it.

Senator MENENDEZ. Ms. Shaw, did I see you leaning in to answer?

Ms. SHAW. Yes, I am happy to unless you have another question. On this, I could not agree more with your point, sir. The 10 ASEAN countries together comprise the fifth largest economy in the world. And China is their number one trading partner.

The RCEP agreement that we talked about earlier further entrenches a China-ASEAN supply chain. And we do not seem to be doing much about it. I agree with you that IPEF is a modest first step, but the question is, what else are we going to do?

I would support the CPTPP as the obvious next step, but that is not going to get us all the way. We need strong rules that are comprehensive, that cover the waterfront of our trade and economic relationships, and we need to offer an alternative to China, not just in terms of markets but also with respect to values. And having real rules where we have skin in the game is what is really going to move the ball, and that is what is really going to get countries interested in this IPEF exercise.

Senator MENENDEZ. Yes, 600 million people, and the fifth largest economy in the world. It seems to me we should do much better.

But lastly, Taiwan is a key trading partner of the United States, one with which we have a strategic relationship that is intimately intertwined with our economic security, particularly as it relates to trade in semiconductors.

Could you comment on the role Taiwan plays in regional trade and economic relations? And would not excluding Taiwan represent a missed opportunity, both for the vision we have for Taiwan and also for the sort of regional trade and economic architecture we are seeking to build?

[No response.]

Senator MENENDEZ. I did not think my questions were that difficult. Anybody want to answer that?

[No response.]

Senator MENENDEZ. Shall I direct my question, then, so that I can get an answer? Ms. Lauritsen, I see you are smiling, so I am going to give you a shot.

Ms. LAURITSEN. That is a huge foreign policy issue, so I wanted to keep to my lane in food and agriculture. You know, Taiwan is a very important export market for U.S. with agricultural goods, but obviously there are huge foreign policy issues that are, I will say, well above my pay grade—even when I worked for the government—that need to be delicately balanced.

Senator MENENDEZ. But even if we set aside the foreign policy elements, as a regional trading element, it is a powerhouse in that regard, is it not, Ms. Shaw?

Ms. SHAW. We have managed to figure out a trading relationship with Taiwan in the context of the World Trade Organization. I think that there are ways to move forward that do not necessarily beg the question of defining our relationship with China. Taiwan is clearly a red line for China, so I agree with my fellow witnesses at the witness table that we need to take into consideration broader issues if we are going to move forward in deepening relationships with Taiwan.

But I agree. They are a strategically important partner economically, and I think we can figure out a way forward in the context of this broader IPEF action.

Senator MENENDEZ. Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague. It is good to have the chairman of the Senate Foreign Relations Committee, who looks at these issues. And I thought that last comment to Chairman Menendez was very instructive. We have to find a way that works in both countries, and I am one who is committed to doing that and working with my friend to do it.

Okay. Let's see; our next Senator will be Senator Cornyn.

Senator CORNYN. Well, thank you, Mr. Chairman. This is a very important topic, and I appreciate the witnesses joining us today. I am glad to see the Biden administration taking some first positive steps toward trade agreements in the Indo-Pacific, but looking back on TPP, Senator Carper—who is the chairman of the Trade Subcommittee—and I as the ranking member, have written and spoken a number of times at a hearing on the importance of reengaging in the region, and expressing some regret that we did not take the issue more seriously when TPP was on the table.

I think that was a missed opportunity for us, and here we are today having Trade Promotion Authority expiring. It seems to me that that would be a first logical step for Congress to take, if we are actually serious about trade in the Indo-Pacific.

One of the challenges with the economic framework that has been announced by the administration is, of course, it depends on who is President, and it will change perhaps with the politics changing with each change of the executive. And so it seems to me that trying to figure out how we can move toward a more permanent, or a more stable, relationship by reengaging with the prospect of a possible trade agreement, would be very, very important.

And I appreciate the comments made by Senator Menendez. I do not know how we can look at this issue through a soda straw and just look at the economic aspects of it and not consider the national security imperative that is involved.

China is at the top of everybody's list here in Washington, DC, as it should be, and we are playing catch-up.

But, Ms. Shaw, would you just comment on the desirability of us actually passing Trade Promotion Authority as a prerequisite to reengaging with the possibility of another trade agreement in the Indo-Pacific?

Ms. SHAW. Yes; thank you for the question. I mean, clearly, to be effective in the region, we are going to need to negotiate the types of commitments that require congressional authority.

So for that reason alone, I think it is certainly a step in the right direction, and it is a positive sign to our trading partners that we are serious about this type of engagement. I guess my question would be, if Congress were to give the administration Trade Promotion Authority, is it something that, at this point, the administration would be willing to use? I am not sure the answer to that is "yes."

Senator CORNYN. Well, I know that one of the issues that continues to come up, and the chairman raised it as well, is he and Senator Brown championed some labor-related provisions in the USMCA, and, Mr. Wessel, I might ask you as the Chair of the Labor Advisory Committee to USTR—

Last year at a hearing on the USMCA, I asked a labor representative what it would take for labor to get behind a multilateral regional comprehensive trade agreement in the Asia Pacific. And the response was, "We are a long way from there."

Could you provide maybe some more detail for what it would take to get labor on board?

Mr. WESSEL. I would be happy to, and thank you for your question. In my prepared testimony, I identify a number of provisions in the TPP that labor thought were deficient, from a rule of origin that would have allowed China, for example, to provide two-thirds of the products in an auto assembled by other countries in the TPP region, and have that considered for preferential status, to the SOE provisions where labor and the business community jointly in the ACTPN report indicated that the provisions were deficient by grandfathering all subsidies prior to entering into force, as well as having an injury test that, in most situations, required injury to occur for a year or more.

For many industries—agriculture, commodities, steel, et cetera—contracts are often done on a spot basis, so the injury is periodic and not continuous. And the result was, the ability to fight SOEs under those provisions would have been very limited.

In the labor area, not only were the rights deficient, but the consistency plans were inadequate. In Vietnam it would have allowed them to have a 5-cent-an-hour minimum wage, but qualify as if they have a minimum wage. So, the substantive concerns that labor had about the TPP were very deep. It was not a question of whether we should be engaged or whether we should have a trade agreement, but what its provisions were.

Senator CORNYN. Thank you. My time is up.

The CHAIRMAN. I thank my colleague.

Our next four will be Senator Carper, Senator Portman, Senator Cardin, and Senator Cassidy. And I believe Senator Carper is on the line?

Senator CARPER. Yes, he is proudly on the line.

Mr. Chairman, you're a fellow who has played a lot of basketball in his day, and the University of Delaware—actually we have had some women's sports teams that became quite good over the years, and we have had some great football teams and basketball teams as well. But this is the first time in Delaware history where both our men's and our women's basketball teams made it to the NCAA tournament.

So we have a witness, and I think it is Ms. Llansó—Ms. Llansó, are you a Fightin' Blue Hen?

Ms. LLANSÓ. I am. Let's go, Blue Hens.

Senator CARPER. Friday afternoon, the men's team goes to Pittsburgh to play Villanova, and actually it will be a little challenging. I think we are taking on Maryland at College Park on Sunday afternoon as well. So we will see how it ends up. We are just proud that they have made it this far.

I want to welcome our other witnesses, those who are Blue Hens and those who aspire to be Fightin' Blue Hens. There are three topics I would like to cover today. One is effective tools for economic engagement with our allies. Two is with digital trade in the Indo-Pacific. And third is achieving environmental goals through trade.

We will start with effective tools for economic engagement with our allies. And this would be, I think, for Ms. Shaw. First, I am grateful for all of your presence with us today. I have long advocated for multilateral economic cooperation, especially in the Indo-Pacific region. I am proud that today's hearing builds on the bipartisan work of Senator Cornyn and I—he just spoke about it—as leaders of the Trade Subcommittee of this committee, including holding a hearing last summer on opportunities for engagement in the Indo-Pacific. This framework also provides an opportunity to work cooperatively with many of our like-minded allies in order to advance our shared values and combat the rise of China. However, this framework is not expected to include tariff reduction or expanded market access, which typically serve as incentives for greater cooperation during multilateral negotiations.

My question to you, Ms. Shaw, is this: absent increased market access, what tools should U.S. policymakers consider to incentivize our partners to join this effort and adopt robust standards as part of the Indo-Pacific Economic Framework?

Ms. SHAW. Well, thank you so much for the question. I think you will find that my answer is pretty straightforward. We need mar-

ket access to be on the table in order to incentivize our trading partners to make substantive commitments in these areas.

It is hard to imagine what incentives they would have unless there is more skin in the game. So I think, as a first step, Congress should really impress upon the administration to expand their scope—and to the extent they are not considering market access, to reevaluate that strategy.

Senator CARPER. Well, that was pretty straightforward; thank you.

My second question would go to Ms. Llansó and Mr. Wessel, and it deals again with digital trade in the Indo-Pacific. The Indo-Pacific Economic Framework presents an important opportunity to establish digital trade rules, to uplift workers, and to expand economic opportunity for women, for people of color, and individuals from lower-income backgrounds, as well as the rest of us.

I am eager to work with the Biden administration and our allies to advance policy that supports the free flow of data that connects small businesses to global markets and ensures that digital technologies abide by robust cybersecurity and consumer protection standards.

The question, again for Ms. Llansó and Mr. Wessel: what lesson can be taken from digital trade standards in existing multilateral agreements such as the USMCA and U.S.-Japan agreement, and what kind of digital rules would best support U.S. workers and businesses?

Ms. Llansó, please?

Ms. LLANSÓ. Yes. Thank you, Senator. We absolutely need to be pursuing commitments from nations in the region to limit the use of surveillance technologies, both through domestic legislation protecting, for example, workers' rights, ensuring that workers are not surveilled by bossware or other kinds of monitoring technologies, but also to focus on the limit on export controls and to ensure that spyware and other privacy-invasive technologies are not able to be kind of exported and shared around the world.

Senator CARPER. Thank you.

Mr. Wessel, the same question.

Mr. WESSEL. A very broad question, and clearly a digital component of the IPEF can have benefits for workers, for democracy, and many other interests. But it also can undermine them.

When we look, for example, at section 512—you mentioned previous trade agreements. As the Patent Office, I believe said, the Copyright Office, it is unbalanced and is in need of being updated. And the Senate Judiciary Committee is looking at that.

When we look at the rights of creative artists, of which \$2 billion of their income is at risk every year, we need to make sure that we have the enforcement mechanisms that ensure that there is not wage theft.

But there are many other provisions, and it was mentioned by the chairman earlier about the Arab Spring and the power of the Internet to help spread democracy. It can also be used for ill purposes, as we have seen with surveillance, with the Great Firewall, et cetera. So this is a deep issue that we look forward to working with you and your colleagues on to find the right balance to move forward.

Senator CARPER. All right; thanks.

Mr. Chairman, my time has expired, but if you do not mind, I would just like to take 15 seconds to just state my third question for the record. What opportunities exist to promote environmental conservation sustainability as we engage with our allies in the Indo-Pacific region? And that would be a question for the record.

Again, thank you all very much for joining us today. And I will say, Ms. Llansó, in closing, Go Blue.

Thank you.

Mr. WESSEL. Senator Carper, I should also point out that two of my sons are Blue Hens, so it is in the family.

Senator CARPER. Oh, that is great. They must have picked the right father and mother.

The CHAIRMAN. Thank you, Senator Carper. As a general proposition, anybody who gets me involved in a basketball discussion is going to generate a lot of time, so we will have to pass on that.

Senator Portman?

Senator PORTMAN. Thank you, Mr. Chairman. First, I want to thank you and Senator Crapo for holding this hearing. It is really important. And I want to start with just three quick thoughts about where we are in terms of Indo-Pacific trade.

One is, we have to recognize the importance of opening up foreign markets. That is sort of an obvious advantage of trade. Trade jobs pay about 16 percent more on average; 90 percent of consumers live outside of the United States. We need to make things in this country in order to take advantage of that, but that should be the objective.

The second is, I find it surprising that after passing USMCA with such an overwhelming bipartisan vote, the conclusion of a lot of people is that we should stop expanding trade at all. And if you look at the campaign that President Biden ran, one thing he said was, let's stop FTAs. That has always been very confusing to me. The Indo-Pacific Economic Framework, as was said earlier, does not include any new market access for U.S. exporters. I mean, I don't get that. Senator Carper just talked about that. It disappoints me because, after decades and decades of debate, we finally developed what I thought was a pretty good paradigm and found consensus between industry and labor, ag, and others, and it is a template that we should be using to move forward and improve our competitiveness. Instead, we are ceding market share to China. And Mr. Wessel acknowledged this in his testimony. We need to be engaged in the region, not just writing it off, and engaged in terms of opening up new market access.

Third, when we talk about expanding trade, there is always a tendency to default to TPP. So it is either you are for the Trans-Pacific Partnership or nothing. And we have to remember that that was not very popular on a bipartisan basis. It had some flaws, including its impact on the manufacturing sector here in this country. I think what we should be doing immediately is getting Japan into the fold. Japan is by far the largest economy in the TPP group that we do not already have a trade agreement with. We have trade agreements with most of them, but not Japan. So we ought to deepen the existing ties with Japan and get a trade agreement done, which requires TPA, which is another reason it is important

that we sort of look beyond this notion that somehow trade is not a good thing, but rather that it is something that helps our American workers.

Lastly, we need to be blunt about the elephant in the room, which is China. In 2002, America was the top trading partner of these Indo-Pacific nations. We were number one. Today, it is China, by far.

And, Ms. Shaw, I heard your comment on that, but they are the most dominant trading partner, and that should be a wake-up call to us to embrace a new path forward, one that allows us, again, to have better market access for our products and, like USMCA, has enforceable labor and environmental rules to guard against offshoring.

There are a couple of things that some of us have proposed that I want to ask you about quickly, that take us down that track.

One is to do something with regard to the WTO. Right now, too often agreements get stalled because one country or another objects. Often it is China. And so it works by consensus, and that means it does not work very well. Senator Cruz and I have introduced legislation called The Trading System Preservation Act, which gives authority to USTR to pursue sector-specific trade agreements with allies which do not have an MFN or a most-favored nation requirement. In other words, we should find like-minded countries that want to come up with an agreement with us and move forward with those agreements. And we should not, certainly, allow China to be able to free ride on the global trading system, or be empowered to act as a spoiler to prevent these agreements from going forward. The Government Procurement Agreement with the WTO would be an example of that.

So, we will start with you, Ms. Shaw. Do you support sector-specific plurilateral agreements without MFN as an effective way to open markets with allies, and to put pressure on China?

Ms. SHAW. Thank you for the question. I do, and thank you for your leadership, along with Senator Cruz, on that piece of legislation.

I think countries are going to continue to negotiate with or without the WTO. So to make clear that the view from the U.S. Congress is that we should be pursuing plurilateral agreements is the right message to be sending to Geneva and our trading partners around the world.

But what I would say about plurilateral and sector-specific agreements is that we should not be limiting ourselves to a single sector, or a single topic to discuss. We should be negotiating across a broad range of plurilaterals so that we have the opportunity to make important trades across difficult issue areas. That is how we make progress. And I realize I am talking to a former USTR about negotiations, and I definitely defer to your experience, but I do not see how we can make significant progress just taking one issue at a time. I think we need a coalition of the willing to go deep on a certain set of issues that really reflect the challenges we are facing today.

Senator PORTMAN. Yes, I think that is a good observation, because there are tradeoffs between different sectors, and our legislation would not be limited just to one specific sector, but it would

be this notion that we do not have to have everybody on board, because that is what has blocked progress of all kinds. I think of environmental goods. Why can't we come up with an agreement on that? Because one, or in this case, two countries object. Well, let's get the rest of us together and maybe do some tradeoffs with some other areas and move forward to expand opportunities for trade and market openings.

The other bill that we have been working on is called Leveling the Playing Field 2.0. A number of the members of this committee are cosponsors to that legislation. Senator Brown and I are the original cosponsors. And basically what it says is, the reality is that with Belt and Road in particular, and with transshipments, that China continues to game the international trading system, and we need to be responsive to that. That is the real world.

So that legislation has new tools to combat some of these trade abuses. We now have 172 business trade associations and ag groups and unions that have endorsed the bill. It has a lot of support here on both sides of the aisle, including with Republicans, and it also passed the House as part of the COMPETES Act.

Mr. Wessel, maybe you could comment on that legislation. Do you agree that the Leveling the Playing Field Act 2.0 will help combat China's unfair trade practices and improve our economic situation in the Indo-Pacific area?

Mr. WESSEL. I couldn't speak more highly of both the bill that you and Senator Brown put together, and your work over time—and the importance of Leveling the Playing Field 2.0 as a component of whatever legislation comes out of the conference on COMPETES and USICA. Giving workers the tools to defend their rights when they are injured by unfair foreign trade is vital. There are too many areas right now where they have no tools, and they are victims. Your legislation will help put an end to that.

Senator PORTMAN. Great; thank you.

Mr. Chairman, I appreciate the time.

The CHAIRMAN. Very good.

We are next with Senator Cardin.

Senator CARDIN. Well, thank you, Mr. Chairman. And we thank all of our witnesses. It is very helpful to have a former USTR on our committee, and I really do want to acknowledge that Senator Portman has always reached out to try to find bipartisan ways to advance all agendas, including in trade. So we appreciate your willingness to try to find common areas so we can advance trade in this country.

I want to start with an observation, and then ask Mr. Wessel what we can expect in regard to this framework to advance good governance.

In the last Trade Promotion Authority, we put as one of the principal objectives good governance and anti-corruption, and the USTR took that seriously. In the initial negotiations on the TPP, because that was evolving, there was a strong chapter on anti-corruption and governance.

Now we are not a party to TPP, but some of the countries that are part of this framework discussion. So, Mr. Wessel, I would like to get from you—recognizing this is the framework, it is not really the market access—what can we reasonably expect to be able

to achieve to advance our good governance, anti-corruption agenda that Congress has clearly shown a direct interest in in any trade discussions? What can we expect in this framework?

Mr. WESSEL. Well, I am optimistic about what we can achieve. If you look at some of the other components of the overall Indo-Pacific strategy—which include infrastructure, decarbonization, and many other components—good governance, anti-corruption is a real opportunity for making some advances.

We have all seen the China model as it relates to Belt and Road debt traps and their approaches there, et cetera. The public in many of these countries is desperate for anti-corruption measures. And with many of the provisions—the carrots that are in what President Biden is seeking to achieve—anti-corruption provisions should be part of that.

Senator CARDIN. So, without having a formal access agreement, how do you enforce any of those understandings in the framework? Could you just enlighten me how we could advance these issues and have some degree of confidence that it is not just language, and not just verbal commitments, but actually we have made progress in being able to achieve these objectives?

Mr. WESSEL. When one looks at what the administration is talking about in terms of infrastructure, alternatives to the AIIB, and other engagement in the region, I think there are real incentives to have enforceable standards around good governance and anti-corruption. There will be other provisions, of course, where there are carrots, some sticks, maybe sharp carrots as I like to say, and I think there are ways of ensuring that there are enforcement measures because there will be preferential approaches within the overall Indo-Pacific strategy.

Senator CARDIN. Thank you.

Ms. Shaw, I want to get to a separate subject. The USMCA included a separate chapter on small business, which was very much appreciated by the small business community. I chair the Small Business Committee, and I have been pushing for similar sensitivities as we go into all trade discussions.

So in regard to this framework, could you just give us a strategy as to how we can be sensitive to the needs of smaller companies?

Ms. SHAW. Yes; thank you so much. Small and medium-sized enterprises face unique challenges, and it is important that we take steps to increase their opportunities in the Indo-Pacific region, as well as safeguard their interest in the project.

One way that we can address some of these issues is through trade facilitation, easing some of the Customs burden, cutting red tape, making it easier for our businesses that need critical inputs to be able to get them and to be able to get them quickly. But I think that just generally improving the terms of trade, and again being as bold as possible about expanding the type of economic opportunities in the Indo-Pacific, is going to go a long way to unleashing growth and opening up jobs and opportunities for some of our small and medium-sized companies.

Senator CARDIN. There is no question, innovation is so much focused in smaller companies, and there can be intimidation issues. So I think some of the areas that you are talking about are very, very important.

We also saw that the size of transactions may also be a factor. We can make special rules that will assist those smaller and middle-sized companies in not having to deal with some of the challenges that are created under trade agreements.

So I thank you for that. I hope that you will all stay engaged as this moves forward. It is an area that we are a little bit confused about, because we do not know exactly what rules are going to be applied in regard to congressional engagement or private-sector engagement, but I think it is important that we all stay involved, because we know that we have to increase our presence in the Indo-Pacific area.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cardin.

We are now at Senator Cassidy.

Senator CASSIDY. Thank you.

I will address my first question to Ms. Shaw and Mr. Wessel.

So we have put these negotiations in, in which we seek to have a decarbonization of an economy, and we seek to have some sort of labor standards so that our folks are not competing against slave labor. That is good.

But the cost of compliance, or the cost of not using slave labor, increases your costs relative to a product made in China, for example. I spoke to one fellow. A company he was formerly with made the decision to put their new manufacturing plant in China because they did not enforce their SO_x and NO_x scrubbers. The return on investment would be 18 percent there, as opposed to 8 percent elsewhere, where they would have to turn on SO_x and NO_x scrubbers.

In a sense, these requirements incentivize the movement of industry to China where they do not enforce these standards.

So my point is, how do we avoid a race to the bottom? Or should there be some sort of offset, border offset, for using slave labor, or for polluting the common areas of the ocean and of the sky which elsewhere we are attempting to regulate down?

Put differently, if we negotiate a trade agreement which China is not a part of, and in which the participants must have the cost of compliance with labor and environmental regulations, are we not just building in an advantage for China?

Ms. Shaw, you first, please.

Ms. SHAW. Sure. Having diverse and resilient supply chains is critical. Part of the challenge that you are talking about is that, wherever it is cheaper to produce is where companies will go. But that is not the most effective way to do business.

We have to incentivize companies to do business in a strong and resilient Indo-Pacific region, but we do have high labor standards. We do have high environmental—

Senator CASSIDY. I was going to say, how do you incentivize it when there is a higher cost of doing business where you have those standards, and a lower cost where you do not?

Ms. SHAW. Market access. You give preferential trade treatment, lower duties, if you meet certain standards and comply with certain provisions of the trade.

Senator CASSIDY. So, implicit in what you just said is that there should be an elevated duty on those who do not meet some stand-

ard and when it comes to the environment, labor, or perhaps other factors.

Ms. SHAW. Or a lower duty for those who do.

Senator CASSIDY. Okay.

And, Mr. Wessel?

Mr. WESSEL. I think there are—first of all, thank you for the question. I think in terms of carbon intensity, there is a path forward. The U.S. and the EU, as part of their 232 arrangement, included a provision on a global arrangement to deal with carbon intensity as one component. And I think one of the things that is on the table there is a border adjustment measure that would address the lax environmental enforcement by China and other countries in terms of what they are exporting.

For each ton of steel, as I understand it, China has three times more carbon intensity per ton than the U.S. We cannot allow that to be a competitive advantage, and we need to deal with that with border measures. I expect, as part of IPEF and the Indo-Pacific strategy, that carbon intensity can be dealt with in a similar way.

For the question of forced labor, similarly we can have border measures. We do have some with the Uyghur Forced Labor Prevention Act, which is now going through the regulatory scrub. We have seen countries across the globe condemn China's actions in Xinjiang, calling them genocide, and we need to find a way to make sure that that is not a competitive advantage and is dealt with effectively among allied nations.

Senator CASSIDY. Would you suggest that if we were going to have a trade agreement with other countries in which we expect them to comply with standards such as this, that part of that trade agreement would have to have a border adjustment of some sort for these factors we are discussing, to avoid that incentivization of companies to move to China?

Mr. WESSEL. I think, in terms of carbon intensity, that is going to be on the table. In terms of forced labor, I think we need to trace supply chains to make sure that those products either directly or—for example, polysilicon being utilized in solar arrays, et cetera—that those products do not make their way into the U.S. By doing that, we create the incentive for the Indo-Pac countries and others to disengage from Chinese supply chains that spoil the environment and abuse workers' rights.

Senator CASSIDY. I see. So wherever that supply chain flowed through, if you just wanted to take it to a third country, you would somehow defeat that initiative.

Let me take a little—Ms. Lauritsen, may I ask you a quick question, please? I've got a lot of shrimpers, and they are competing against what they allege is dumped shrimp coming from India.

Now I think your testimony points out that India has really high import tariffs, and yet we bless them with pretty low import tariffs on our side—if you will, tilt the playing field. How do I go back to my shrimpers and defend that?

Ms. LAURITSEN. It is always a challenge, right? And India is a particularly protectionist market when it comes to food, seafood, and agricultural products. But this is where, actually, negotiating on tariffs and market access to level the playing field would be par-

ticularly important, either directly and bilaterally with India, or through the IPEF. That is how you deal with it.

Obviously, the U.S. already has countervailing duties and anti-dumping laws which can help on the import side, but again I would propose that having that balanced playing field in both markets can be a benefit.

Senator CASSIDY. I yield back.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague.

Senator Hassan is next, and she has been very patient indeed.

Senator HASSAN. Well, thank you very much, Mr. Chair and Ranking Member Crapo, for holding this hearing. Thank you to all of the witnesses. We really appreciate your expertise and your being here.

Mr. Wessel, I have a number of questions for you. So let me start by asking you a question about supply chain resiliency. As you know, the pandemic has laid bare vulnerabilities in our supply chain and highlighted the importance of making strategically critical goods here at home. And I have also heard from Granite Staters, including Gray Chynoweth, who is the CEO of a company called Minim. These Granite Staters have been impacted by both new and longstanding supply chain issues.

That is why I am working on legislation to help us bring American manufacturing back in critical sectors such as semiconductors, biotechnology, and military technology. In addition to these efforts, Mr. Wessel, how can the U.S. ensure that the Indo-Pacific Economic Framework increases our supply chain resiliency?

Mr. WESSEL. As you just pointed out—and thank you for all your work on this issue—in critical supply chain areas we must ensure first that we can make those products here in the U.S. where we can. Second, where we cannot, we must do so with allied countries that share our views and refuse to weaponize supply chains, as we have seen with China. I think that can be a component of the IPEF agreement.

But investing in our own economy, making sure that we can meet our critical needs, and working with our allies to make sure that we share the burden of providing those products globally to democratic nations, is key.

Senator HASSAN. Thank you.

This is also a question to you, Mr. Wessel. I am working on a bipartisan basis to promote research and development investment in the United States, including through bipartisan tax legislation with Senator Young.

According to a recent report by the U.S.-China Commission, between the years—if I've got the years right—2001 and 2017, U.S. companies increased their R&D investments in China at a faster rate than their R&D investments in domestic operations in the United States.

So how can the Indo-Pacific Economic Framework balance promoting domestic R&D and strengthening ties with our allies in the Indo-Pacific region?

Mr. WESSEL. Well, thank you for the question. And again, that goes back to your first point, which is, first we must make sure that we have the environment here in the U.S. to support R&D.

It is not only work like you are doing on the tax code, but also the provisions that are in America COMPETES and USICA that will ensure that we have the R&D base here that we need to make sure that it is not under attack by countries like China that engage in massive espionage.

There are also cooperative things we can do with our partners in the Indo-Pacific. India, for example, is a major producer of active pharmaceutical ingredients and utilizing them in formularies, et cetera. We need to make sure that there is a balanced R&D strategy but, first and foremost, do what we can to have the core, the basic, and the forward-looking R&D being done here.

Senator HASSAN. Thank you. And I want to follow up on something you just referenced, which is how we go about protecting our intellectual property.

In addition to increasing R&D, protecting that intellectual property produced by U.S. R&D is obviously vital for promoting domestic innovation. That is why, as a part of any new agreement, we have to address the vulnerability of U.S. businesses to IP theft posed by policies like data localization requirements that require U.S. companies to store data abroad.

What are the vulnerabilities to IP theft that U.S. businesses face in the Indo-Pacific? And how could a new economic framework address these vulnerabilities?

Mr. WESSEL. Thank you. IP is the lifeblood for workers here in the U.S. Labor led on the patent reform legislation a number of years ago because, if U.S. producers of IP and innovation do not have confidence in their ability to get the proper rate of return, they are going to either do the R&D elsewhere, or they are going to license it to countries like China that will then undermine our long-term industrial base.

We need strong IP protections in any agreement. We need to make sure that there are no coercive measures, performance requirements, and other provisions that other nations in the IPEF can use to force U.S. companies to share their IP unwillingly.

Senator HASSAN. Thank you very much.

And thank you, Mr. Chair. I yield back.

The CHAIRMAN. I thank my colleague.

Let's see. Next would be Senator Young.

Senator YOUNG. Thank you, Mr. Chairman.

Ms. Shaw, thank you for sharing your important perspective at this critical hearing today on trade in the Indo-Pacific region.

I have been a constant advocate that the United States should be proactive with pursuing meaningful trade negotiations in the Indo-Pacific region, as it is an issue of national security. In my view, trade and national security are inextricably linked.

China's move to initiate their own trade agreement in the region, followed by action in joining the CPTPP, should be an important signal to Ambassador Tai that the U.S. cannot continue passive engagement in the region.

Ms. Shaw, can you share with us some of the concerning actions by China to increase its influence in the region, for instance, how economic coercion or foreign direct investment from China will further undermine our economy?

Ms. SHAW. Thank you so much for the question. I would need more than the remaining 4 minutes to catalogue all of the ways that China is continuing to advance its interests in the region to the detriment of our producers, our farmers, and our workers. But I will say, you have highlighted one step, which is the negotiation of Chinese trade agreements, including the largest trade agreement in history, and its application to the CPTPP. China is also currently negotiating a trade deal with South Korea and Japan, two important export markets for the United States, and two important national security and military allies. So there is a lot of concerning activity on the trade front.

In terms of foreign direct investment, China's foreign direct investment in the region, to put it simply, displaces ours. In terms of economic coercion, that is unfortunately a tool that they have used and continue to use. They have in some ways weaponized their economy to pursue political goals and to exert pressure and pain on countries that simply do not agree with them. Australia and Lithuania are two recent examples.

So this is very concerning. And it is very much the reason why the United States needs to lean in, needs to press in, and frankly needs to give the region a real alternative.

Senator YOUNG. Yes, I think that was a great summary in about 90 seconds about why this is indeed a national security issue.

Do you see, Ms. Shaw, the need for urgency by the United States as it approaches trade policy with partners in the Indo-Pacific region, particularly with ensuring that the Indo-Pacific Economic Framework is an effective and useful tool to bolster our relationships?

Ms. SHAW. Yes, absolutely. I mean, to be frank, we should be negotiating right now. The economic framework has not yet been launched, and it is not clear when that is going to happen, although the administration has indicated by the spring or summer.

Six months from now we will still have an opportunity to engage. Three years from now, we will not. The time is now.

Senator YOUNG. Well, I agree with you. I do not see the same level of urgency, quite candidly, from the administration. And I will do everything I can to support them should they lean into this important national security issue.

Ms. Llansó, I am encouraged that the administration is prioritizing digital trade by designating a module dedicated to digital trade in the Indo-Pacific Economic Framework. Discriminatory digital trade practices stunt our economic growth and cause financial distress when countries, specifically China, require forced transfer of intellectual property in exchange for market access.

I am working on a digital trade resolution to complement the administration's strong efforts to promote integrity in digital trade. This will be a valuable tool in tandem with the digital trade initiative present in the Indo-Pacific Economic Framework.

Ms. Llansó, do you see value in congressional actions supporting the administration's digital trade efforts? And more broadly, how important is it for Congress and the executive to be united when confronting the increasing challenge in addressing digital trade barriers?

Ms. LLANSÓ. Thank you, Senator. I think it is absolutely important for Congress to be in coordination with the administration, and for both sides to be operating in tandem in the region.

The issues of security, both of intellectual property and of individual users' data in the region, are very heightened. And so, whatever can be done to ensure that not only are there important principles being advanced through the IPEF, but also to make sure that there are real guarantees for the safety and security of data throughout the region, is critically important.

Senator YOUNG. Very good.

Lastly, I would like to turn to an important position which the administration has not yet nominated someone to fill. It is the Under Secretary of Agriculture for Trade in Foreign Agricultural Affairs.

As our witnesses know, this post was previously held by Ted McKinney, who made significant strides to increase market access for American agriculture. Additionally, the Chief Agricultural Trade Negotiator nominee has been named but not considered by this committee.

With input prices skyrocketing due to inflation, it is absolutely critical that Hoosier farmers have adequate demand from our global trading partners and that we continue to explore new market opportunities. So I would just like to, in this public forum, emphasize the importance to me, to the people of Indiana, and really to the country, to ensure that someone is nominated to that Under Secretary post.

With that, I will yield back to the chair.

The CHAIRMAN. I thank our friend and look forward to working with him.

Let's see. Senator Cortez Masto, I think, is next. I know she has a busy morning.

Senator CORTEZ MASTO. I am here. Thank you—

The CHAIRMAN. Oh, there she is. Senator Cortez Masto, the time is yours.

Senator CORTEZ MASTO. This has been an interesting discussion today. I really appreciate you all being here.

Mr. Wessel, let me start with you, because you touched on it very briefly, but I want you to expand a little bit more on where we are in talking about digital trade. As you well know, Nevada is the entertainment capital of the world. We have so many creative artists there, and they are a major economic driver. But my concern is, as we enter into these new agreements and these trade agreements, what should we be doing to really look out for the protection of creative artists? And what are the complexities surrounding that as we look to addressing digital trade in any framework as we move forward.

Can you touch on that a little bit more?

Mr. WESSEL. I would be happy to. And thank you for your question. My colleagues in the creative industries—there are 12 unions. As I understand it, there is more than \$2 billion of income each year, which they rely on via the Internet in terms of residuals, other payments, et cetera. So this is critical. And for many of the content workers, it is the difference between food on the table or not.

I think we have to update the provisions and look at them very carefully. I mentioned section 512 and section 230. As the Patent and Trademark Office recently indicated, for section 512, it is unbalanced. The Senate Judiciary Committee is looking at that. I think we need to take a step back before we proceed in the digital area, have discussions among you and your colleagues, as well as stakeholders and labor and otherwise, to make sure that we have a balanced approach that ensures there will not be wage and compensation theft, while also promoting many of the other benefits of a digital economy.

Senator CORTEZ MASTO. I agree, and thank you. I think it is so important they are at the table. Their content is really their livelihood, and they should be adequately compensated and protected for that content. So thank you, because I do think it is important that they are at the table as we are discussing trade.

Let me jump to another area that is important for Nevada as well, and that is really our agricultural industry that we have in Nevada. And we so appreciate Senator Grassley's comments earlier involving agriculture and making sure that it does not get left behind in any framework.

Ms. Lauritsen, let me ask you this. Nevada's largest agricultural industry here—we export our beef, dairy feed, and livestock. South Korea and Japan both buy more of these from Nevada ranchers than China does, which missed the purchase commitment of \$80 billion for the years 2020 and 2021. I know you talked a little bit about some of the needed protections, and you had a whole list of them.

Can I ask you, for purposes of protecting ag, including my ranchers and dairy farmers, is there anything in that specific list that we should prioritize over something else? Or can you touch a little bit on, in general, which one is the most important thing that we should be addressing in any future framework to protect our agricultural industries across this country?

Ms. LAURITSEN [off microphone].

Senator CORTEZ MASTO. Oh, there you go. If you could start over, I could not hear the first part.

Ms. LAURITSEN. I am sorry, Senator, I should know better, having lived my life with microphones in negotiations. Thank you for the question.

And in terms of, particularly the interests of your exporters, looking at the sanitary and phytosanitary barriers that we have in Asia—there are a number of phytosanitary restrictions on wheat exports, for example. But in the case of beef, you are also then looking at tariff differences, where Australia has a better tariff going into Vietnam than the U.S.

So looking at those types of really concrete barriers to our exports, and trying to get that level playing field, I think is going to be critically important for your ranchers and your farmers.

Senator CORTEZ MASTO. Thank you. I appreciate that. Again, thank you for this great conversation today.

Mr. Chairman, I yield back.

The CHAIRMAN. I thank my colleague from Nevada.

Next is Senator Barrasso.

Senator BARRASSO. Thanks so much, Mr. Chairman, to you and to Senator Crapo for holding this hearing. Thank you all for being here today.

Ms. Shaw, as we take a look at this tragic, unprovoked war in Ukraine that is continuing to shock the world, we are seeing more nations realize really how energy security is tied to national security. Russia has demonstrated its willingness to use energy as a weapon. Countries around the globe are scrambling to find new energy supplies to replace Russian oil and coal and gas and nuclear fuel.

America can and should fill that void that Russia is now creating. So, as I look at the priorities this administration has laid out in the Indo-Pacific Economic Framework, I do not see anything that resembles a strategy to help our allies in the regions be more energy secure.

In Wyoming, we have an abundance of coal, oil, natural gas, uranium, all of it. And I believe the U.S. can provide our allies in the region reliable, affordable, and secure energy resources.

So this framework fails to address market access in any way, and focuses instead on climate change and decarbonization of the energy sector. I believe it is a huge mistake.

So how can we counter China's influence in the region if we do not aggressively export American energy to our allies?

Ms. SHAW. Thank you so much for the question. This may not surprise you, but I completely agree with you. I think that the framework, as it has been outlined and proposed, is a modest step, but it is certainly not something that, in its current form, is going to really move the dial.

I think we need to work closely with our allies where we have a competitive advantage. We have a national security interest, and I think energy is a prime sector where we should be focusing our interests and our energies. But beyond that, we need to take on market access.

We need to look at a broader scope of economic activity between the United States and half the world's population. We should not limit it to very specific and narrow issues.

Senator BARRASSO. If I could go to the issue of trade—and in the last question in responding to Senator Young, I think you talked about trade, and you said, I think, the time is now, Ms. Shaw. So the Indo-Pacific region is critically important for American economic security and national security. So I think, since backing out of the TPP, the U.S., in my view, has been on the sidelines with respect to trade. China, on the other hand, has been very aggressive in its efforts to expand trade and their influence in the region.

So—and then I am going to turn to the other two witnesses as well—given China's aggressive efforts in the Indo-Pacific region, just how far behind have we fallen? And how quickly can we move to counter China?

Ms. SHAW. When it comes to trade, we are woefully behind. The trouble with TPP was that it was a flawed agreement. So, while it was the right national security play, it was not the right economic play. But the world has changed a lot since 2016 when we withdrew, and the national security arguments for moving forward in a renegotiated CPTPP, or something like that, are much strong-

er. And I think that there are incredibly strong economic arguments for doing so as well. The further China goes in terms of strengthening its own supply chains in the region, the further behind we are.

So economically, we are starting from behind, and we really desperately need to move ahead.

Senator BARRASSO. Let me ask the other witnesses.

Ms. LLANSÓ. Thank you. Yes, I think, unfortunately, we are somewhat behind on advancing the open Internet and digital freedom perspective that has been so beneficial to the United States' economy and to so much of the world economy.

China has made significant inroads in advancing its authoritarian model of Internet governance, and so I think the United States really needs to show a vision for how an open Internet really leads to more economic benefit and protection of human rights as a counter to that.

Senator BARRASSO. Thanks.

Ms. Lauritsen?

Ms. LAURITSEN. Thank you for that. And already agricultural exporters are falling behind in the Indo-Pacific region. For example, in Vietnam for beef and pork, or in Japan also for beef and pork issues—and wheat, and a whole bunch of other agricultural products—we are at a tariff disadvantage. While we have high-quality products, we also have inputs that are costly. So we really need to be able to get to the table to negotiate lower tariffs and compete.

Senator BARRASSO. Well, following up on that, you know in Wyoming we produce some of the highest quality beef in the world. And the Indo-Pacific region is critical for our beef export market, and opportunities in Japan, Taiwan, among others, continue to be major growth markets for Wyoming beef. In fact, Wyoming even opened our own international trade office in Taipei a couple of years ago. So there continues to be great opportunity for Wyoming beef around the world.

So how do we expand opportunities for Wyoming ranchers and farmers in the region if we are not actively pursuing increased market access?

Ms. LAURITSEN. Well, I guess that is why I would answer that by saying we need to be pursuing improved market access. We also—I think a couple of Senators have talked about the need for an Under Secretary of Trade at USDA to actually go around the world and sell and promote the high-quality, cost-effective U.S. products.

So, a lot more can be done in this area with boots on the ground meeting, and talking, and negotiating with our trading partners.

Senator BARRASSO. Mr. Chairman, I see my time has expired.

The CHAIRMAN. Thank you, Senator Barrasso.

Senator Warren?

Mr. WESSEL. Mr. Chairman, if I just might have the opportunity to quickly respond to the Senator's question, because I think America has stood up to China over the last number of years, both through the Trump and now the Biden administration, and President Biden's approach, which is to invest in our economy, to strengthen America before we go back into the trade field in a major way, I think is the right thing to do, to both ensure that we

go from a position of strength but that we know Americans support, workers support our trade policies.

So I do not think we are behind. I think we actually have given an example to the world of China's predatory and protectionist actions. They more and more agree with us. They are cooperating. We need to strengthen our economy and then move forward.

The CHAIRMAN. All right.

Senator Warren?

Senator WARREN. Thank you, Mr. Chairman.

For too long, U.S. trade agreements have sold out American workers for corporate profits, and in particular the Trans-Pacific Partnership would have helped offshore American jobs to countries that use child labor and deny workers the right to organize.

So I am glad that the United States withdrew from TPP, and I am glad that the current U.S. Trade Representative, Katherine Tai, is committed to a worker-centric trade policy. But corporate lobbyists would like nothing better than to turn back the clock to the old failed trade policies.

The administration recently announced plans to negotiate a new Indo-Pacific Economic Framework led by USTR and the Commerce Department. Now corporations are heralding this as a new trade deal that will be the second coming of TPP. And comments from Commerce Secretary Gina Raimondo raised real questions about whether she is putting workers first, or instead trying to help out giant corporations.

Secretary Raimondo has bragged that this new agreement will be, and I quote, "even more robust than the traditional free trade agreements."

Mr. Wessel, you chair a committee that advises the U.S. Government on labor issues in trade agreements. So I know you agree that the goal of U.S. trade negotiators should be to protect and create good American jobs.

Would modeling this new framework on old, failed trade deals like TPP accomplish this goal?

Mr. WESSEL. TPP was unacceptable and is not the model for moving forward.

Senator WARREN. Well, I agree with you on this.

Secretary Raimondo has also boasted that this new trade deal will be, quote, "flexible and inclusive, allowing countries like Vietnam and Malaysia to sign up for some parts of the agreement but not others."

Now, Mr. Wessel, if this new trade deal is inclusive for countries that mistreat their workers, and flexible by allowing them to opt out of the requirements to improve their labor standards, is that going to help American workers?

Mr. WESSEL. It is only going to promote offshoring. And what we have said is, there should be no cherry-picking labor rights, and corporate accountability must apply to all modules.

Senator WARREN. I agree with you, Mr. Wessel. And now the Commerce Department has just put out a request for comments on its plans to negotiate key parts of this deal, including building on supply chain resiliency. But while Commerce lists nine priority issue areas, there is zero—zero—mention of workers' rights and worker protection.

This is puzzling. I am pretty sure that workers are at the heart of our supply chain, making critical products from cans to food. So, Mr. Wessel, the U.S. clearly needs to build more resilient supply chains, but should we be locking ourselves into overseas supply chains rooted in places that use forced labor and suppress unions without any guard rails to raising their labor standards?

Mr. WESSEL. We need guard rails. We need to make sure that our critical needs are met here first. Resiliency to support our allies is fine, but again we need to make sure that our needs here are supported. I believe President Biden is leading in that direction.

Senator WARREN. Thank you very much. I appreciate that.

You know, I have real concerns about this new Indo-Pacific Economic Framework, and I am calling on the administration to carefully consider its approach. It would be a huge mistake to listen to corporate lobbyists and negotiate a new trade deal that mimics TPP and that undercuts American workers. The Biden administration has promised to put workers at the center of its trade policy, and I want to hold them to that commitment.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Warren.

Let's see. Senator Bennet, Senator Scott, and Senator Thune is here.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman. And thanks for holding what I think is a very timely hearing. And before I ask questions, I just want to underscore the vital importance of having a Chief Ag Negotiator at USTR. Farmers, ranchers, and producers in South Dakota and across the country deserve the best representation possible on the global stage.

The Biden administration has had more than a year to advance a Chief Ag Negotiator. If the administration is serious about helping American agriculture and American workers, it needs to stop dragging its feet and make filling this position a top priority.

In year 2 of the Biden administration, the Indo-Pacific trade strategy appears, unfortunately, hollow. Trade Promotion Authority has lapsed. There have been non-meaningful market access initiatives in the region, and America's exporters are losing ground to competitors.

Meanwhile, China recently joined the Regional Comprehensive Economic Partnership, the world's largest free-trade block, and now aspires to join the trade deal that America helped craft, but ultimately withdrew from, the TPP, or what is now known as the CPTPP. Without coincidence, of course, China is also becoming more aggressive militarily in the East and South China Seas.

Ms. Shaw, if this lack of meaningful U.S. trade action persists, what impact will it have on our Nation's strategic and economic interests in the Indo-Pacific over the next 5 to 10 years?

Ms. SHAW. Thank you for the question. The results would be catastrophic, particularly if China does join the other regional trade agreement, the CPTPP. Part of the challenge that we are facing is that, while on the one hand we are spending trillions of dollars investing in the United States in some of our most critical sectors, if we are not doing anything offensively on the trade side, what we are doing here domestically is going to be inherently less competi-

tive in third-country markets, and specifically the Indo-Pacific where we have strong national security interests and strong economic ones.

We are ignoring half of the equation. And I think it is critical, both for our national security interests as well as our economic ones, that we come up with a comprehensive and offensive trade strategy. At the moment, we just do not seem to have one.

Senator THUNE. How would losing out on market access in the region impact American jobs here at home?

Ms. SHAW. If American goods are less competitive, and 95 percent of the world's customers live outside our borders, at some point we are not going to have anyone to sell our goods to. And that is really the problem.

Senator THUNE. So the Indo-Pacific Economic Framework is, arguably perhaps, a step in the right direction, but the proposal clearly does not seriously counter China or offer durable advancement of U.S. economic interests.

In the IPEF, tangible benefits are off the table. Market access and enforceable commitments are not prioritized. And the process does not go to Congress for approval or review. A trade pillar on digital trade, forced labor, and trade facilitation is hardly a grand strategy.

So, Ms. Shaw, let me ask again—I know you have covered some of this ground already—but how can the framework be most improved? And let me ask a follow-up so you can just—are there other trade initiatives in the region, such as CPTPP, that the U.S. should pursue instead of, or in tandem with, this one?

Ms. SHAW. Thank you for the question. My strong view is that we should be pursuing a renegotiated and completely revamped CPTPP. Our CPTPP partners want us to be part of that agreement, and at the moment we have leverage to make the necessary changes that not only would advantage our national security interests, but would also advantage our economic interests. I think it is imperative that we put market access on the table, that we are tackling services, intellectual property, that we are moving forward in advancing the rules for state-owned enterprises. This is about the future of U.S. markets. And as I noted at the beginning of my comments, if all we are doing is investing here at home and not opening up export opportunities, we are missing the second half of that puzzle, and we are just going to be shooting ourselves in the foot long-term as we lose out on third-country market access opportunities.

Senator THUNE. Thank you.

So using the Indo-Pacific Economic Framework to resolve non-tariff barriers has the potential to help U.S. farmers and ranchers, especially as it relates to export markets for foods with common names such as parmesan and asiago. It can also help blunt the EU from gaining protection for geographical indications through trade negotiations.

Ms. Lauritsen, how could the administration best preserve the rights of American food and beverage producers and reduce foreign tariffs in the framework?

Ms. LAURITSEN. Thank you, Senator. In my view, it is critical that the IPEF include market access to create incentives, to actu-

ally reach market-opening deals, and to achieve the types of things that you have just mentioned, commitments that protect the ability of us to sell cheeses with common names or getting agricultural biotechnology regulations that work for our corn and soybean exports.

You need real, tangible results. You need incentives, and you need political will. And that really happens when there is an economic incentive in a negotiation to try and reach those deals.

Senator THUNE. Mr. Chairman, my time has expired. Thank you.

The CHAIRMAN. I thank my friend from South Dakota. These are very important issues, and we look forward to working with him as we have done so often in the past on trade issues.

I think Senator Daines is next.

Senator DAINES. Mr. Chairman, thank you, and thanks to the panelists today.

I think it has been said a couple of times, but it is worth reemphasizing: 95 percent of the world's consumers live outside of the United States. Because of that, trade is essential, certainly for a State like Montana, as well as the entire country. It is about jobs, economic growth, the future. It is about kids and grandkids and access to these markets.

I think I am one of the few Senators who actually spent a fair amount of time working on the ground in China, launching American brands once upon a time, so I saw this up close and personal.

It is also important that we work with our allies to reduce unfair barriers to trade and ensure that our farmers and our ranchers and small businesses are able to compete on a level playing field at home and around the world, especially given China's growing economic and geopolitical influence. It is essential that we work with our allies and partners across the Asia-Pacific region.

Last year, I traveled to India towards the end of the year and met with Commerce Minister Goyal. We were advocating then to reduce tariffs on Montana and U.S. ag, and we saw firsthand some of their leading technology companies. It is clear that India, I believe, is going to play an even larger role in the region for years to come, and that the U.S. should work to expand economic ties and consider formal negotiations with India, which presents an enormous opportunity for growth. It is the only other country that has a billion-plus in their population.

As we think about our farmers long-term, especially Montana's pulse crop farmers—Montana is the leading producer of pulse crops in the United States, and India is the leading consumer in the world. We can think about other businesses that we can engage in with India, in addition to just the strategic regional and geopolitical influence of India as a counterweight to China's growing influence.

Ms. Lauritsen, in your testimony you highlight India's high agricultural tariffs. How should the U.S. approach India and its many challenging and longstanding market access issues, whether it be on a bilateral or a multilateral basis?

Ms. LAURITSEN. Thank you, Senator, for that question. And in the last couple of years of my tenure at USTR, I actually was negotiating with India to try and actually accomplish those very things. They are tough negotiators. They protect their farmers vigorously.

But there are opportunities. First of all, they have retaliatory tariffs still imposed on some of our food and agricultural products as a result of the 232 steel and aluminum restrictions. That hurts our exports, including on pulses. But there are opportunities, I think, to engage with them. It is likely kind of transactional, but you do not get anywhere if you do not sit down at the table and actually work through the issues to try and lower their tariffs—even to our levels would be a huge benefit to our exporters.

We have a number of phytosanitary issues on wheat that could be resolved, for example. Or agricultural biotechnology, ethanol—there is a long list. But you have to be at the table, and you have to have political will and economic incentives to achieve it.

Senator DAINES. Thank you.

I have been sitting here listening, and I know TPP has come up a fair amount back and forth. During my time in the Senate, I have been a supporter. In fact, I called on both President Trump and President Biden to reengage with the Trans-Pacific Partnership. In fact, if you remember, it was President Obama who was an advocate of TPP, working more with Republican Senators then. It was a unique kind of coalition to try to move forward on TPP. I think it is important, both for economic benefits as well as a more holistic strategy, to think about countering China.

Ms. Lauritsen, how has withdrawing from TPP impacted U.S. ag exports and access to markets in the region?

Ms. LAURITSEN. So, because we are not a part of CPTPP, we are at an economic disadvantage for many products. While we have a partial agreement with Japan, we did not succeed in negotiating elimination of all tariffs going into Japan. So that needs to be done, and we are losing market share.

With Vietnam, we also are at a significant disadvantage; for example, beef and pork in particular. So not being a partner, we are at a tariff disadvantage. Foreign buyers are going to buy based on price, and it is important that we have lower tariffs so that we can compete against Europe, compete against Australia and New Zealand and other countries.

Senator DAINES. Thank you.

I have time for one more question. Ms. Llansó, you highlight many concerns about increasing digital authoritarianism around the world, particularly China and its model of Internet regulation. China is in the process of testing a digital yuan. While most countries that are looking at digital currencies are concerned about privacy implications, China's motivation stems in part from the desire to gain insight into the financial lives of its citizens.

The question is, how could a push by the Chinese Government to spread the digital yuan outside of its own borders threaten human rights in neighboring countries around the world?

Ms. LLANSÓ. Yes, that is an excellent question, Senator Daines. I think the reach of China to be able to surveil the financial transactions and interactions of people across the region would only grow with the push to spread the digital yuan beyond its borders. And it just highlights the issue of the really important needs of security and privacy technologies for all financial transactions that happen in the region, including strong encryption and abilities to resist that kind of surveillance and censorship.

Senator DAINES. Thanks. My time is up.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you. Before my colleague leaves, I want to thank him for wrapping up his questions with that focus on digital currency and encryption. I did that as well. And for those who are not aware, Senator Daines and I have worked together often on these issues, and I know we will be applying some of what we have learned to the Indo-Pacific issue as well, and I thank my colleague.

All right; Senator Brown?

Senator BROWN. Thank you, Mr. Chairman. I am glad to see labor here for the discussion. This is a different President and a different chair of the committee, and I thank you for putting labor at the center of all of this.

We want—and my question will be for Mr. Wessel—we want a worker-centered trade approach that creates good jobs and raises wages; that rebuilds our industrial base; that looks out for workers' health and safety, and the safety and cleanliness of our planet; and that improves labor rights worldwide, something we have not seen in the past in this committee or in an administration in my memory.

We unite in wanting—and I appreciate Ms. Llansó's comments about that—we unite in wanting to counter China's labor and human rights abuses, and its cheating in the global economy. This committee, this administration, has put the world on notice. No more Trans-Pacific Partnership that ignores labor rights, as we saw in the last two administrations. Trade with the United States may be possible and will be encouraged, but under very different rules from the past. The rules in any agreement matter. They matter for union steelworkers in eastern Ohio, they matter for solar energy companies in northwest Ohio.

I have asked the administration—and this was a great success, a bipartisan success, if you will—in the infrastructure bill for an equally robust Made in America economic framework. It includes infrastructure investments that we are about to implement.

So my question, Mr. Wessel, is, speak to what you would like to see the administration implement before, during, and after any trade agreement that we pass.

Mr. WESSEL. Thank you for your question, and thank you for your leadership on these issues. First of all, going to your point, this President has said that before he engages in new trade negotiations, he is going to build back the U.S. economy. And that is what he is trying to do. He did it with the infrastructure plan that is now being rolled out. He has been working with the Congress on the legislation that is now going through both the House and the Senate and is ready for conference. Hopefully, it includes the provision that you and Senator Portman authored, Leveling the Playing Field 2.0. But we first have to rebuild our economy to make sure that we are approaching all of this from a position of strength.

Second, we need to have a better idea of what the administration wants to achieve with IPEF. It is still ill-defined, and Congress, along with other stakeholders, have to be at the table, and they need to be real partners in all of this.

And then, whatever provisions we are able to achieve—hopefully with your help, Senator Wyden’s, and the rest of the committee—they have to be properly implemented, monitored, and enforced. Too often we sign agreements and then move on to the next one, without ensuring that we achieve the results that had been expected.

Senator BROWN. Thank you, Mr. Wessel.

Talk for a moment about labor enforcement. I thank Chair Wyden for mentioning it earlier in his comments. I am thankful to be associated with the chair on Brown-Wyden under the USMCA and the difference—we took another corporate trade agreement and dramatically changed the USMCA with Brown-Wyden and what that will mean.

We have seen two elections in Mexico where workers voted overwhelmingly for independent unions, not the company unions in the past that we saw in Mexico and that we see around the world. These two elections—the construct we built is going to help workers on both sides of the border in the long run.

Our approach on trade policy in the Asia-Pacific region requires that same buy-in from the people who make this country work.

So, Mr. Wessel, what guidance would you recommend to ensure that labor provisions included in the Indo-Pacific Economic Framework are actually enforceable, as they have been in Mexico?

Mr. WESSEL. Again, thank you—not only thank you for your question, but for the leadership that you and Chairman Wyden had on putting together the rapid response mechanism that is having a fundamental impact on labor rights in Mexico.

You mentioned the two cases. Subsequent to that, the workers at the Mazda facility rejected a protection contract that their protection union was trying to force on them. So it is a model going forward.

But that model was also built on all the work that you and so many others engaged in to make sure that the standards that are being enforced are worthy of all of our efforts. And that is a critical issue for the Indo-Pacific. We saw inadequate labor consistency plans in the TPP. Vietnam was a perfect example. So we must not only have the right standards, and we must push forward, but we need efforts like yours and Senator Wyden’s to promote the right kind of enforcement mechanisms, and engage in new implementation monitoring and enforcement efforts that support workers around the globe.

Senator BROWN. Thank you, Mr. Wessel. And thanks to the whole panel.

Mr. Chairman, thank you.

The CHAIRMAN. I thank my colleague. And what is striking, and it is so fitting that Senator Brown is—I am going to ask you one more question, but Senator Brown is officially ending the first round. We know that different parts of the country for a lot of years had differences of opinion. In other words, the Midwest looked at these issues differently than the Pacific Northwest did. And what Senator Brown has been willing to do is to make, in a very transparent way, specific ideas that could bring the two regions together.

In my part of the world, where our backyard is practically the Pacific region that we are talking about, people care deeply about this issue, and they know that a lot of trade jobs pay better. But as Senator Brown has said, it does not matter unless you have strong trade enforcement.

So before you came, Senator Brown, Mike Wessel said we are going to try to bring the same kind of approach to enforcement to this new area. Now it is different. It is a different kind of issue. Each one of these trade debates is different. But the principle you brought to this committee, which is that trade enforcement is important to workers in every nook and cranny of this country, is one I do not think we are going to turn our back on, and I thank you for it.

All right, let's wrap up with one question with respect to climate, if I might. And I think I am going to ask you about this, Ms. Lauritsen, because I know you have had an interest in these issues. And it strikes me that the new approach we are talking about with respect to the Indo-Pacific is one that would give us a kind of less structured, perhaps more nimble approach where we could really get at this climate issue that is forgotten in too many instances.

I mean, climate and reducing carbon is front and center to the quality of life and livability in our country and in the Indo-Pacific region. And it seems to me the project is an opportunity to pull solar panel production away from China's Uyghur region and bring an innovative approach to climate.

So I think for my last question, tell me what you think of that. Are there opportunities here to make real progress with respect to tackling climate change that are born out of the fact that you do not have quite so much of the bureaucratic kind of set of requirements that almost tie our hands when what we really need is fresh thinking? What do you think?

Ms. LAURITSEN. Well, Senator, I actually agree with you. I do think that this provides an opportunity, because the more you get other countries on board with even general philosophies but also bringing that concreteness to actual practices—you know, in the area I know of farming, it is promoting resilient agriculture, being able to promote technologies that can help alleviate drought, whatever it might be, reducing the use of greenhouse gas emissions on the farm.

This is an opportunity, but again, you have to be at the table, and you have to have the incentives to bring these other countries along. They may not be ready to sign on the dotted line right away, but you bring them along. You work with them. You help them. And that is an important way forward.

The CHAIRMAN. The three of you have been very valuable, and we thank Mike Wessel, who is, I think, still listening online. And I am just going to leave with one thought, and you all will be liberated to get some lunch and go on about your business.

We have talked about big issues, hugely important issues relating to freedom and censorship in digital trade. We obviously keep coming back to more good-paying jobs in a variety of sectors, and that involves a whole host of questions, supply chain issues obviously being front and center. And then we basically closed on the

issue of climate, and that perhaps the kind of structure for this upcoming Indo-Pacific discussion may make it easier to tackle climate change. And this committee is very proud of the fact that we basically passed legislation to transform the Federal tax code. In this committee, we took provisions on energy and threw them in the garbage can and said, for the future, we are going to tie reducing carbon emissions to tax savings.

So we are capable of looking at these issues in a different way, and you have given us a lot of good ideas. The key to getting it done, though, in my view—and you three touched on it with Mike Wessel as well—is having more open and transparent discussions.

I do not know if you all followed it, but the China legislation was really up against it for a number of days when we were trying to find a path forward on a bipartisan bill. The Majority Leader, Senator Young, Senator Crapo, and I spent a lot of time talking with both sides of our dais with respect to the trade provisions. And when we got down to trying to advance the legislation, we offered a bipartisan amendment that had an enormous amount of debate among the members of this committee, and it won 91 to 4. And then the legislation was on its way, and we are getting ready to work with the House, and I think it is going to be a bipartisan bill in the end.

And it really stems from the fact that we had the chance in this committee to talk about various ways to craft legislation in the hugely important area of trade that you are talking about today. And thank you for giving us a lot of good ideas for going forward. I think everybody understands trade debates are not for the faint-hearted. People have really strong views, and they often come in with a great interest in keeping their view and defeating the other person's view.

Senator Brown just talked about how we broke new ground in terms of labor enforcement. We can break new ground on climate. You three and Mike Wessel have given us a lot of good ways to proceed. We thank you.

And with that, the Finance Committee is adjourned.

[Whereupon, at 12:37 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. First of all, thank you for holding this hearing today. We are in agreement on the importance of strengthening our economic and trade ties, particularly in the Indo-Pacific area, but also across the globe.

Vibrant economic and trade links are an essential part of building confidence, trust, and cooperation in different areas of the world and at different levels of geopolitical engagement. Putin's invasion of Ukraine makes it abundantly clear that the United States must increase its focus on strategic trade engagement and, as part of that, reestablish its leadership on trade relations in the Indo-Pacific region.

For the first time, in January of 2022, the United States exported more liquefied natural gas (LNG) to Europe than Russia. Although there is much more we can do to expedite U.S. energy exports, our increased trade strengthened our allies' ability to withstand Russian aggression.

Critically, the Department of Energy must still sign off on any LNG export to any country with which we lack a free trade agreement, causing uncertainty for many of our partners. This is just one example of why we need more trade agreements with our partners—and the Indo-Pacific is the one region where we need them ASAP.

The Indo-Pacific is a dynamic region, perhaps the key to U.S. economic prosperity. Over two-thirds of all global economic growth in the last 5 years took place in the Indo-Pacific. The GDP of just the 11 countries in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) is over \$10 trillion.

Regrettably, we are losing ground in the Indo-Pacific. Behind me are two maps comparing whether China or the United States is the more important trade partner for a particular country. The 2002 map shows the United States as the more significant trading partner for most Indo-Pacific countries. The 2018 map shows the relationship turned upside down, in China's favor.

Even more regrettably, the situation with China in the Indo-Pacific region is likely to become worse—if not entrenched—unless we change course. The Biden administration failed to initiate any new trade negotiations last year, but China helped finalize the trade agreement it backs. Known as the Regional Comprehensive Economic Partnership, RCEP, it lacks any disciplines on state-owned enterprises, labor, or the environment, and worse, it essentially endorses China's limited intellectual property protections. With RCEP having only entered into force this January, China is already better positioned than the United States in most of our Asian partners' markets.

On top of that, China is now pushing to join CPTPP, which would leave the United States even further behind in the Indo-Pacific region. To reestablish U.S. economic momentum right now, the Biden administration must reverse course and chart an ambitious trade policy.

Although the administration announced that it seeks to pursue an Indo-Pacific Economic Framework, or IPEF, it unfortunately indicated that this framework will not include any market access component. Certain aspects of what I am hearing about IPEF are troubling—including the notion that it could be used to advance the tax deal the administration negotiated at the OECD that would make the U.S. less

competitive, even before Congress agrees to accept such an outcome for the United States.

The administration's present position of leaving out a market access outcome makes no sense. Economically, our workers, businesses, and farmers will lose out on important opportunities if we stay on the sidelines. America's leading innovators will also be undermined if we do not lay down a foundation for strong intellectual property rights. In fact, one way to redress the economic impact of the administration's current misguided inflationary policies is to promote market access.

Export-oriented jobs typically pay 16 percent more on average in the manufacturing industries and 15.5 percent on average in the services industries. We must strategically deepen our trade ties to ensure we and our allies have secure access to energy, critical minerals, and sensitive technologies. We must also develop rules for digital trade that enshrine openness and freedom. If we do not write the rules, China will.

Accordingly, this hearing is an excellent opportunity for the Finance Committee to help chart the course the United States must take to have a strategic and sensible trade policy in the Indo-Pacific.

Mr. Chairman, thank you for organizing this hearing. I look forward to the testimony from our witnesses.

PREPARED STATEMENT OF SHARON BOMER LAURITSEN, PRINCIPAL,
AGTRADE STRATEGIES LLC

Chairman Wyden, Ranking Member Crapo, and distinguished members of the committee, thank you for the opportunity to appear before you today to share my thoughts on the challenges and opportunities for America's farmers and ranchers in the Indo-Pacific region. **Key to enhancing the sustainability of American farms and ranches is investing time, energy and ambition to negotiate new trade agreements to increase our competitiveness and open export markets in the Indo-Pacific, and particularly Asia.**

As we witnessed in 2018 when U.S. agricultural exports to a major market were severely disrupted, not only farmers, ranchers, businesses, and their workers were hurt, but taxpayers as well when the government provided support for those businesses to stay afloat. In 2017 before the trade war, nearly 14 percent of U.S. agricultural exports were concentrated in China. Despite calls at that time to diversify U.S. export markets, last year in 2021, we were up to nearly 19 percent or \$33 billion of U.S. agricultural exports concentrated in China. Clearly, China is and will remain a critically important export market for U.S. food and agriculture. But, to enhance market stability and resiliency in our food systems, we need to diversify our agricultural export markets. And there is no better place than to focus on the Indo-Pacific region.

With growing populations and fast-growing economies, Indo-Pacific economies are attractive markets for the types of food and agricultural products that the United States produces—whether it be apples, corn, soy, ethanol, cotton, rice, potatoes, wheat, beef, pork, poultry, dairy, or the thousands of other products grown on America's farms and ranches and produced in our food manufacturing facilities. But the unfair barriers to U.S. agricultural exports in the region are many. Just a few examples are:

- Indonesia's import restrictions on feed corn and apples;
- Thailand's ban on imports of U.S. fresh and frozen pork;
- India's restrictions on ethanol and products derived from agricultural biotechnology;
- Vietnam's animal feed certification requirements and its longstanding ban on certain offal; and
- The Philippines restrictive sanitary and phytosanitary measures for a range of products.

The barriers, however, are also tariff-related. For example,

- Thailand's average bound agricultural tariff is 39.1 percent and its applied tariff in 2021 was 29.3 percent;
- Vietnam's average bound agricultural tariff is 18.8 percent and its applied tariff is 16.5 percent; and

- India has one of, if not the highest average bound agricultural tariffs in the world at 113 percent and its applied tariff is 34 percent.

Even if non-tariff barriers are resolved, U.S. agricultural exports are also often challenged with being competitive in certain markets, because our products face higher tariffs in countries that already have preferential tariff agreements with U.S. competitors, such as Australia, New Zealand, or the European Union.

We know that preferential trade agreements benefit our farmers and ranchers. Thanks to our free trade agreements, Canada and Mexico have long been two of our three largest export markets. U.S. food and agricultural exports to Australia increased 156 percent since implementation of our FTA in 2005. U.S. agricultural exports to Singapore increased nearly 400 percent since implementation of that FTA in 2004. More recently, U.S. agricultural exports to South Korea have increased 54 percent since 2012, and that FTA is still in the process of phasing out tariffs.

Let's compare those growth numbers to overall U.S. agricultural export growth over the past 10 years of 24 percent—both to the world as well as to 15 non-FTA countries in the Indo-Pacific region,¹ and that is with a banner export year in 2021. The difference in U.S. agricultural export growth rates between countries with U.S. FTAs and those without is unmistakable.

Other countries are not standing still. Countries with which U.S. farmers and ranchers compete have proactive policies to negotiate free trade agreements. The European Union is negotiating with the Philippines, Indonesia, and Australia. Australia already has agreements with ASEAN countries and is trying to negotiate with India. Importantly, the Regional Comprehensive Economic Partnership is being implemented by 10 countries in the region, although it may not be as comprehensive as some of the United States' trade agreements. On top of that, the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), to which the United States is not a party currently, is lowering tariffs among eight countries. These preferential tariff agreements put America's farmers, ranchers, agribusinesses, and their workers at a competitive disadvantage in these growing markets.

The administration's recently announced Indo-Pacific Economic Framework (IPEF) provides an opportunity to create a fair and level playing field for our exports in the region. At this time, however, little public information is available as to what is really envisioned by the administration. USTR's recent Federal Register notice identifies agriculture as part of the IPEF, but unfortunately emphasizes that it is not seeking to address tariff barriers at this time. In USTR's 2022 Trade Policy Agenda issued earlier this month, the administration provides very general concepts for IPEF, for example: (1) sustainable food systems and science-based agricultural regulation; (2) transparency and good regulatory practices; and (3) trade facilitation. Science-based agricultural regulation, transparency, good regulatory practices, and trade facilitation are standard approaches in U.S. trade negotiations, but will they really open new markets for America's farmers and ranchers?

To have a meaningful impact for fair and resilient trade for U.S. food and agricultural products, the following elements should be considered for IPEF:

(1) Enhanced Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) Rules: Several of the Indo-Pacific countries have already signed onto the SPS- and TBT-plus rules of the CPTPP, which are similar to the SPS and TBT provisions of the U.S.-Mexico-Canada Agreement. Since the administration has already identified science-based agricultural regulation as one pillar of IPEF, basing IPEF commitments on CPTPP or USMCA is logical. Some least developed countries may need additional assistance to build their SPS and TBT regulatory infrastructure, but having a harmonized approach for strong, science-based and transparent food safety, plant health and animal health rules can greatly facilitate trade.

Another element of this pillar could be to gain commitments from trading partners to not create new unwarranted trade barriers in the future. U.S. negotiators have been successful in getting countries to agree to recognize the U.S. food safety system, for example, and to accept U.S. Department of Agriculture export certificates. These types of specific commitments help to provide a predictable business environment and facilitate trade into the future.

¹ Brunei, Burma, Cambodia, India, Indonesia, Japan, Laos, Malaysia, Mongolia, New Zealand, Philippines, Singapore, Taiwan, Thailand, and Vietnam. Source: USDA/GATS.

(2) Resolving Actual Non-Tariff Barriers: Establishing strong SPS, TBT and other rules, such as transparent and functioning import licensing practices, however, is not enough. Using IPEF to actually resolve unwarranted non-tariff barriers is important up front so that U.S. farmers and ranchers can actually realize improved trading conditions in the near term. U.S. negotiators have been successful using trade agreement negotiations to resolve long standing barriers. For example, the United States negotiated with Australia to open its market to U.S. cooked and processed pork in 2005, now about a \$200 million market. Mexico eliminated all of its BSE-related barriers to U.S. beef in 2012, when it wanted to join the Trans-Pacific Partnership.

A couple of examples of the types of barriers that need focused negotiations are non-functioning dairy facility registration systems in Indonesia, and burdensome and restrictive import licensing regimes in several southeast Asian countries. In addition, negotiating permanent access in our export markets for U.S. foods with common names (*e.g.*, asiago, parmesan) would help blunt the EU gaining protection for a large number of geographical indications through its trade negotiations. While the U.S. Department of Agriculture, the Office of the U.S. Trade Representative, and U.S. regulatory agencies work every day to resolve barriers, prioritizing this work during a trade agreement negotiation, where incentives and leverage may exist, can reap real results.

(3) Reduce Agricultural Tariffs: As noted above, many of the Indo-Pacific countries have high most-favored nation (MFN) agricultural tariffs, compared to the U.S. average agricultural applied tariff of about 5 percent. As U.S. competitors gain preferential tariff access in export markets, U.S. exporters lose out. For example, Vietnam has a 10-percent tariff on U.S. apples, but a zero tariff on New Zealand apples since 2019. U.S. apple exports have dropped 40 percent to Vietnam, while New Zealand apple exports to Vietnam have increased 76 percent. U.S. french fries face a tariff of 12 percent into Vietnam, and yet EU fries will face no tariffs by 2025. I recognize the legal limits that the administration may have in negotiating U.S. tariffs without Trade Promotion Authority (TPA), but even if Congress does not pass TPA in the near term, opportunities exist to negotiate for our trading partners to lower MFN tariffs or to lower tariffs to U.S. levels. Vietnam, for example, recently temporarily lowered its MFN applied tariffs for pork, corn, and wheat to align the tariffs affecting U.S. products with those provided preferentially to other countries. In 2020, with that temporary tariff reduction, U.S. pork exports increased 191 percent over 2019. When the tariff reduction lapsed, U.S. pork exports decreased 74 percent in 2021, losing sales to the European Union and Russia, which have FTAs with Vietnam.

In addition to MFN and applied tariff barriers, U.S. exports of almonds, walnuts, apples, chickpeas, and lentils still face retaliatory tariffs imposed by India in 2019 due to U.S. section 232 tariffs. Exempting agricultural products from a dispute unrelated to agriculture would provide welcomed relief to U.S. agricultural exporters.

(4) Common vision on agricultural sustainability, sustainable food systems, and food security. International trade is integral to supporting agricultural sustainability, sustainable food systems, and food security. Secretary of Agriculture Tom Vilsack is taking important steps in framing these issues and building coalitions internationally for a common approach. IPEF can be an important forum to build on this work and support food and agricultural trade among countries. Aligning like-minded countries in these areas can also support science-based decision making in the Codex Alimentarius Commission, World Organization for Animal Health, and the International Plant Protection Convention. To advance sustainability, supporting the use of new agricultural technologies with appropriate regulatory systems would be of benefit to farmers throughout the Indo-Pacific region. For example, several countries in the Indo-Pacific region have either no functioning regulatory approval system for products derived from agricultural biotechnology or have cumbersome and slow systems. With the advent of gene editing in the past several years, ensuring that countries allow the import of these new crops becomes increasingly critical for a sustainable and resilient trading system.

(5) Inclusion of as many countries as possible: International trade is one element in building stronger foreign relations in the Indo-Pacific region. If countries want to be a part of the broader Indo-Pacific strategy, they then should also be a part of the IPEF. If a country is concerned about meeting the obligations of SPS-plus rules, for example, negotiators can be creative to find ways to bring them along. IPEF should bring as many countries together as possible, since the more in-

clusive the IPEF is, the stronger our economic ties and foreign policy objectives will be in the region.

(6) Enforcement: An agreement is only as good as it is implemented and enforced. For IPEF to have any meaning or real results, provisions need to be enforceable. Enforcement should emphasize bilateral dialogue to resolve disagreements, but timely and straight forward dispute settlement mechanisms, including mediation, should be a part of any agreement. Of course, USTR will then need to do the follow-on work to actually enforce the agreement.

I have traveled to nearly every U.S. State and am always awed by the breadth and scope of American agriculture. With more than 20 percent of American production being exported, our rural communities in all 50 States depend on finding strong, stable, and predictable markets. U.S. trade agreements do just that, and I believe that with creative thinking and ambition the Indo-Pacific Economic Framework can also have economically meaningful results for a sustainable future.

Thank you.

QUESTIONS SUBMITTED FOR THE RECORD TO SHARON BOMER LAURITSEN

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. Asia is a key export destination of the success of Idaho's farmers, particularly our dairy, wheat and potato farmers. Oddly, U.S. French fries face a tariff of 12 percent into Vietnam, and yet EU-produced fries will face no tariffs by 2025. In short, producers in Idaho are losing ground because the U.S. is simply not negotiating trade agreements, and I imagine the rest of the country is losing as well.

Can we achieve successful agricultural market access in the Indo-Pacific region without addressing foreign tariffs?

Idaho's farmers are also well aware that protectionist measures disguised as food safety measures are a major impediment to agricultural trade.

Do you think it makes sense to impose WTO obligations that ensure such measures are based on science, in regional trade agreements, to a framework like the IPEF?

Answer. To achieve meaningful market access, U.S. agricultural exports need to be competitive in export markets, importantly in terms of price. Key to competing on price is the cost of tariffs. While a market may be opened with the elimination of a non-tariff barrier, if a U.S. exporter is at a price disadvantage because of unequal tariffs with his or her competitors, the U.S. exporter will not achieve successful market access. With Indo-Pacific countries increasingly entering into preferential tariff agreements with U.S. competitors, to compete in the Indo-Pacific region and achieve successful market access, the United States therefore would need to address high foreign tariffs facing U.S. food and agricultural exporters.

While countries likely to be involved in the Indo-Pacific Economic Framework are all members of the World Trade Organization and already obligated to abide by its agreements, particularly the WTO SPS Agreement and TBT Agreement, it does make sense to include such obligations as well as enhancements and elaboration of those WTO obligations in regional trade agreements. The WTO SPS and TBT Agreements were written and agreed to nearly 30 years ago, and governments and the private sector have learned how those agreements have worked, and where they could be improved. Regional trade agreements provide that opportunity to make such improvements as the United States achieved in the United States-Mexico-Canada Agreement. In fact, several countries in the Indo-Pacific region have already agreed to SPS and TBT "plus" commitments in the Comprehensive and Progressive Trans-Pacific Partnership.

Question. Inasmuch as the administration's proposed IPEF may include what it describes as "binding rules" is positive, particularly if those rules extend to digital trade and agricultural market access. The U.S. ensures that its free trade agreement rules are binding because it enforces the rules through dispute settlement provisions and application of tariff suspension benefits.

Are "binding" rules possible in an IPEF, if it lacks a dispute settlement mechanism?

Answer. Without the ability to resolve disputes and enforce a trade agreement, “binding” rules would not then seem to be actually binding. Dispute resolution or dispute settlement can certainly take different forms, but if rules are to be binding some sort of dispute settlement mechanism is needed. It also requires governments to actually use the mechanism to resolve the disputes.

QUESTION SUBMITTED BY HON. THOMAS R. CARPER

Question. As the chairman of the Committee on Environment and Public Works, I have a keen interest in the link between trade policy and the environment. Building a strong economy can—and should—include protecting our environment and addressing climate change. That is why I believe it is crucial for us to include robust environmental standards in our trade agreements.

What opportunities exist to promote environmental conservation and sustainability as we engage with our allies in the Indo-Pacific region?

Answer. From an agricultural perspective, international trade is a one key element to enhancing sustainability. For example, crops should be grown where they are least resource intensive and then be able to be imported and exported without unnecessary trade barriers. I believe that environmental conservation and sustainability specifically can be promoted with allies in the Indo-Pacific region. First, depending on the partner country, this could come in the form of research cooperation; technical assistance to promote production best practices; sharing of tools to implement improvements for water and energy usage, food security, or reduced greenhouse gas emissions; and supporting profitability in farm income. Second, trade agreements, whether bilateral or multilateral, should allow for a farmer’s voluntary use of conservation programs and prohibit discrimination based on how sustainability and conservation objectives are achieved. Third, the United States could also look to build support in the Indo-Pacific region for conservation and sustainability objectives that are then carried into plurilateral and multilateral discussions, supporting widely accepted principles that measures affecting trade should be based on scientific evidence, linked to legitimate objectives, and be no more trade restrictive than necessary. A fourth element in agricultural production would be acceptance of new technologies that improve conservation and sustainability and ensuring Indo-Pacific countries have science-based, transparent and functioning regulatory systems to allow technology adoption.

QUESTION SUBMITTED BY HON. BILL CASSIDY

Question. You mentioned in your testimony that India has amongst the highest bound tariffs of any country in the world. I agree that there is a huge need for new market access into these countries and it’s difficult for the U.S. to offer much in the way of tariff relief for imported products without TPA. So looking at what agricultural products Louisianans would like to ship more of to the Indo-Pacific region, rice and seafood come to mind. Unfortunately, both of those sectors are also historically and culturally sensitive within the Indo-Pacific markets. If the administration chooses to pursue market access as part of the Indo-Pacific talks, do you think there’s likely to be positive outcomes for those Louisiana commodities?

Answer. Negotiations to open export markets for import sensitive agricultural products are never easy; but with an assertive trade policy that achieves improved market access through elimination or reduced tariffs for all products—both import and export—positive outcomes can be achieved, including for products such as rice and seafood. Getting such improved access, however, is likely to only be achieved in a comprehensive trade agreement, if the other country gets important benefits in return, such as improved tariff market access into the United States, which would require Trade Promotion Authority being approved by Congress.

PREPARED STATEMENT OF EMMA LLANSÓ, DIRECTOR,
FREE EXPRESSION PROJECT, CENTER FOR DEMOCRACY AND TECHNOLOGY

Chairman Wyden, Ranking Member Crapo, and members of the committee, thank you for the opportunity to testify before you today about the opportunities for advancing digital rights and fostering robust digital economies through strategic trade engagements in the Indo-Pacific region. My name is Emma Llansó, and I am the

director of the Free Expression Project at the Center for Democracy and Technology (CDT), where I have worked for more than 12 years to promote law and policy that support Internet users' rights to freedom of expression, access to information, and privacy in the U.S., Europe, and around the world.

CDT is a nonpartisan nonprofit 501(c)(3) charitable organization dedicated to advancing civil rights and civil liberties in the digital world. Headquartered since 1994 in Washington, DC, and with a growing office in Brussels, Belgium, CDT works to ensure that human rights and civil liberties are at the forefront of policy debates around the Internet and emerging technologies, and to advance policy solutions that sustain an open, interconnected Internet that supports people's enjoyment of their human rights.

So I am grateful for the committee's focus on the promises and challenges in the digital sphere that will arise as the United States pursues closer trade relations in the Indo-Pacific. Over half of the world's young population lives in the Indo-Pacific region, which makes up 60 percent of the global GDP and nearly two-thirds of global economic growth.¹ It accounts for a little over half of the world's Internet users,² and Internet use in the Indo-Pacific Region is expected to grow to up to 3.1 billion users by 2023.³

There is an urgent need to counter the authoritarian model of Internet regulation promoted by the Chinese Government, which threatens human rights and impedes the development of an open digital economy. Indeed, there are an alarming number of recent laws and legislative proposals across the Indo-Pacific region that seek to control speech and access to information, subject Internet users to surveillance, and give state authorities control over Internet infrastructure.

The U.S. has the opportunity, including through the Indo-Pacific Economic Framework (IPEF) discussions, to promote a rights-respecting, multistakeholder approach to Internet governance that ensures the participation of civil society and technical experts in the development of technology policy and prioritizes maintaining an open, interconnected Internet in the region and worldwide. It should promote the rule of law and seek commitments to uphold international human rights, which are vital to countering digital censorship and surveillance practices, and which in turn benefits the economy. Online service providers and other businesses need the legal certainty that comes from the rule of law in order to operate globally. When national regulations comply with international human rights obligations, they both protect people's rights and bring economic benefits by more closely harmonizing regulations across borders. The U.S. should build on existing commitments to digital rights, including through the Freedom Online Coalition,⁴ and secure additional commitments to refrain from imposing Internet shutdowns, reject extralegal censorship, limit the use of surveillance technologies, and ensure access to end-to-end encrypted services.

The U.S. should also promote opportunities for shared learning across governments, and with the involvement of human rights advocates, technical experts, and other civil society representatives, especially around emerging issues, including artificial intelligence. The IPEF process should coordinate with the variety of such learning and information-sharing forums that already exist across the U.S. Government, including the EU Technology Trade Council and the Freedom Online Coalition.

Finally, the U.S. should recognize that nations sometimes have legitimate concerns that may impel them to adopt laws that threaten human rights, such as data and personnel localization mandates and requirements to undermine encryption. For the U.S. to successfully promote the free flow of data, and reject overly restrictive national data protection laws that can serve as vehicles for censorship and surveillance, other nations must be able to have confidence that, for example, their citizens' data will be protected from corporate and government abuses when sent to the U.S.

¹White House, Indo-Pacific Strategy of the United States 4–5 (February 2022), <https://perma.cc/7PSM-QDY2>.

²Trisha Ray et al., The Digital Indo-Pacific: Regional Connectivity and Resilience, QuadTech Network at 1 (February 2021), <https://perma.cc/BPL6-9WW6>.

³Cisco, Annual Internet Report 3 (2020), <https://perma.cc/9TJA-MJ6Z>.

⁴See Freedom Online Coalition (last visited March 12, 2022), <https://perma.cc/27Z8-PLXK>.

COUNTERING DIGITAL AUTHORITARIANISM

This committee is already familiar with the threat of digital authoritarianism presented by China's model of Internet regulation. China's Government uses a variety of technical and legal practices to exert control over the Internet and the Chinese populace.⁵ China engages in direct digital censorship, including through Internet shutdowns and through its decades-long project to build a "Great Firewall" that blocks outside information sources and enables the Chinese Government to impose strict domestic censorship policies. China also censors information through indirect means, including obligations for technology companies to store data within the country, to enable government access to user data.⁶ Such requirements discourage foreign service providers from making information available in the country, and the threat of surveillance can exert a chilling effect on users. The Chinese Government is notorious for its mass and discriminatory surveillance of the population, particularly of the Uyghur community in Xinjiang province.⁷ A lack of respect for human rights and weak rule of law in China mean that it is extremely difficult for U.S. companies to operate responsibly in the country,⁸ which has only further cemented the Chinese Government's grip on its domestic communications network.

Unfortunately, the past 3 weeks have provided a stark example of the threats to human rights from digital authoritarianism, in the context of the Russian Government's invasion of Ukraine. Bolstered by laws that give the government broad censorship and surveillance powers and that require foreign tech firms to locate personnel and data within the country, the Russian Government has sought total control of the Russian people's access to information about the war the government is conducting.⁹ The Russian Government has throttled and ultimately blocked access to social media services that dared to attach fact-checks to state propaganda,¹⁰ and has passed a new "fake news" law that prohibits anyone from "knowingly disseminating false information" about Russia's military, which is understood to include referring to its actions in Ukraine as an "invasion."¹¹ As a result, many media outlets have left the country, for fear of the safety of their personnel on the ground, and many online service providers have shuttered their services or are blocking access by Russian users, leaving the Russian people with few information alternatives to state propaganda and strengthening the government's control.¹²

Troublingly, these authoritarian tactics are already finding purchase in other nations, including in the Indo-Pacific region. The recent U.S. International Trade Commission report, "Foreign Censorship Policies and Practices that Affect U.S. Businesses" describes some of the growing digital censorship practices in India, Vietnam and Indonesia, among other countries.¹³ It is vital that the U.S. work with these nations and other leaders in the region to advance an affirmative vision for Internet governance grounded in an open, interoperable Internet free from digital censorship.

DIGITAL CENSORSHIP TAKES MANY FORMS

"Digital censorship" is direct or indirect state action that seeks to prevent or suppress online communication, or to punish online speakers, through laws, policies, or practices that are inconsistent with states' international human rights obligations. Digital censorship impedes both individuals' freedom of expression and their ability to receive information. Some forms are direct and overt, such as Internet shutdowns or laws prohibiting certain content. Other forms of government suppression of expression and information online are indirect, such as government pressure on con-

⁵ See United States International Trade Commission, Foreign Censorship, Part 1: Policies and Practices Affecting U.S. Businesses (February 2022), hereinafter "U.S. ITC report," <https://perma.cc/W7KK-XGBK>.

⁶ *Id.* at 51.

⁷ Human Rights Watch, China's Algorithms of Repression: Reverse Engineering a Xinjiang Police Mass Surveillance App (May 1, 2019), <https://perma.cc/MG86-67B3>.

⁸ Global Network Initiative, The Operation of the GNI Principles when Local Law Conflicts with Internationally Recognized Human Rights (last visited March 13, 2022), <https://perma.cc/5JJA-NZ6C>.

⁹ Human Rights Watch, Russia: Growing Internet Isolation, Control, Censorship Authorities Regulate Infrastructure, Block Content (June 18, 2020), <https://perma.cc/P7E7-SZAR>.

¹⁰ Dan Milmo, Russia blocks access to Facebook and Twitter, *The Guardian* (March 4, 2022).

¹¹ Ann M. Simmons and Alexandra Bruell, Russia Targets Media Outlets With "Fake News" Law, Blocks Facebook, *Wall Street Journal* (March 5, 2022), <https://perma.cc/Z9B3-9ENL>.

¹² Guy Faulconbridge, Russia fights back in information war with jail warning, Reuters (March 4, 2022); Rebecca MacKinnon, The Invasion of Ukraine Is Horrific. Cutting the Russian People off From the Internet Could Make It Worse, Tech Policy Press (March 10, 2022), <https://perma.cc/D2MV-H6PZ>.

¹³ U.S. ITC report, *supra* n. 5.

tent moderation processes through methods contrary to the rule of law and mandates to locate personnel in-country to increase the government's leverage over private companies. In this section, I discuss several forms of digital censorship and their economic consequences, including examples from the region (with country names in bold), as well as alternative, rights-respecting approaches that the U.S. Government could promote.

Internet Shutdowns

A free, open, interconnected, and interoperable Internet contributes to the enjoyment of human rights and freedoms by people around the world, including the rights to opinion and expression, assembly and association, public participation, privacy, and religious freedom and belief. Internet access is an essential prerequisite to full enjoyment of those rights in the digital age. However, as CDT and other human rights groups have noted, there is a disturbing trend of governments disrupting ICT services to calm unrest or thwart perceived threats.¹⁴ State-sponsored network disruptions have grown from a few dozen in the years between 2008 and 2014 to 155 in 2020 alone.¹⁵ According to UN Special Rapporteur Clement Voule, Internet shutdowns are now “lasting longer” and “becoming harder to detect.”¹⁶

In **China**, the government uses Internet shutdowns to stifle dissent and control the flow of information to its people, often justified by claims of national security concerns.¹⁷ In 2009, China shut down the Internet in Xinjiang, which had a population of 22 million people, for 10 months in response to ethnic violence in the regional capital;¹⁸ shutdowns have subsequently continued sporadically in that region.¹⁹ More recently, China has also engaged in Internet shutdowns “to limit information related to the COVID-19 pandemic.”²⁰

When governments act directly or coercively to interrupt wireless service, they are enacting a “prior restraint” on speech which in turn inevitably suppresses many innocent speakers’ ability to communicate; this has been especially effective in countries which have few Internet providers, leaving them technically more vulnerable to such shutdowns.²¹ Military conflicts and protests are often the impetus behind Internet shutdowns, including within the Indo-Pacific region. The **Indian** Government has imposed more Internet shutdowns than any other country in the world, “with 121 shutdowns in 2019 and 109 shutdowns recorded in 2020,” often in response to protests or military crackdowns, such as in the Jammu and Kashmir regions.²² In **Myanmar**, intermittent shutdowns and disruptions began following a military takeover in 2021, depriving residents of access to the outside world and to information about rights abuses.²³ The **Indonesian** Government has also repeatedly shut down the Internet in regions of the country because of protests.²⁴ In **Bangladesh**, authorities imposed an “Internet blackout” on a refugee camp that lasted 355 days, in response to a demonstration by the refugees.²⁵

Internet shutdowns demonstrate extreme vulnerability of mobile and Internet access companies to governmental pressure. These shutdowns harm human rights, and they are all the more concerning during the COVID-19 pandemic, because they “limit[] people’s ability to obtain timely information about the pandemic or use digital tools to access health care, education, and other necessary services.”²⁶

¹⁴ Michael Grimes and Emily Barabas, Network Shutdowns, Ctr. for Democracy and Tech. (September 11, 2014), <https://perma.cc/GT5Z-H5A7>.

¹⁵ *Id.*; Access Now, #KeepItOn (last visited March 13, 2022), <https://perma.cc/5DGJ-7L3Y>.

¹⁶ United Nations, Internet shutdowns now “entrenched” in certain regions, rights council hears, UN News (July 1, 2021), hereinafter “UN News,” <https://perma.cc/PSN7-53MW>.

¹⁷ Freedom House, Freedom on the Net 2021—China (2021), <https://perma.cc/ZL3C-JAHG>.

¹⁸ *Id.*

¹⁹ U.S. ITC report, *supra* n. 5, at 46.

²⁰ U.S. ITC report, *supra* n. 5, at 47.

²¹ Emma Llansó, CDT to FCC: Wireless Shutdowns Are Never the Right Choice, Ctr. for Democracy and Tech. (May 1, 2012), <https://perma.cc/V53Z-KAX6>.

²² U.S. ITC report, *supra* n. 5, at 46; Adrian Shabaz and Allie Funk, Information Isolation: Censoring the COVID-19 Outbreak, Freedom House (2020), <https://perma.cc/FFL9-S7KM>; Software Freedom Law Center, Internet Shutdowns (2022), <https://perma.cc/ASS5-QSV3>.

²³ Access Now, Update: Internet access, censorship, and the Myanmar coup (February 16, 2022), <https://perma.cc/MSX3-YPCA>.

²⁴ Access Now, Court rules the Internet shutdowns in Papua and West Papua were illegal (June 3, 2020), <https://perma.cc/4RWK-AN92>; Natalia Krapiva et al., Indonesians seek justice after Internet shutdown, Access Now (May 13, 2020), <https://perma.cc/CM2H-QMN8>.

²⁵ UN News, *supra* n. 16.

²⁶ Shabaz and Funk, *supra* n. 22.

In addition, Internet shutdowns have lasting economic effects, resulting from a myriad of impacts. Experts estimate that these costs add up to billions of dollars each year. For example, a report by Brookings conservatively estimated that the global economy lost \$2.4 billion as a result of Internet shutdowns in 2015.²⁷ According to this analysis, India alone lost nearly \$1 billion in 2015 because of its repeated Internet shutdowns.²⁸ More recently, a report based on the NetBlocks Cost of Shutdown Tool—which estimates the economic impact of an Internet disruption, mobile data outage or app restriction using indicators from the World Bank, ITU, Eurostat and U.S. Census²⁹—estimated that Internet shutdowns cost the economy \$5.45 billion in 2021 and has already cost the economy \$1.2 billion in 2022.³⁰

Requiring Online Service Providers to Determine the Legality of Speech

Intermediary liability laws, which establish whether and in what circumstances online service providers (or “intermediaries”) face liability for hosting, transmitting, or otherwise enabling access to illegal user-generated content, are another tool that governments can use for direct or indirect digital censorship. Intermediary liability frameworks may take the form of broad, unconditional shields from liability³¹ or conditional notice-and-action regimes that specify requirements intermediaries must meet upon being notified of illegal content, in order to maintain their statutory safe harbor from liability.³²

There is currently considerable debate about the optimal contours of intermediary liability frameworks in the U.S. and many other countries around the world.³³ However, intermediary liability frameworks that require or incentivize intermediaries to censor online content that is not illegal pose significant risk to freedom of expression. Some intermediary liability laws require private companies, rather than courts, to make determinations about whether specific user-generated content is illegal. These laws may also allow non-judicial authorities to declare content illegal, which circumvents the rule of law and international human rights standards.³⁴ One of the most notorious examples of this is the **Chinese** model, in which intermediaries are provided with extensive lists of prohibited content and required to actively police their services for it.³⁵

Nevertheless, many governments around the world—including in the Indo-Pacific region—have adopted or proposed regulations that would require service providers to evaluate whether content is illegal after receiving a notification from an average user, or require providers to remove content pursuant to an order from a non-judicial government agency—or risk facing liability for the content themselves. Such laws will result in the erroneous removal of lawful speech. Users and non-judicial government agencies may accidentally misuse or purposely abuse notices by reporting content that is not actually illegal, spurring intermediaries to remove content rather than risk facing liability for it.

For example, in **India**, the 2021 Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules (the Indian Intermediary Rules) require online services to remove illegal content within 36 hours of receiving an order from a government agency—not necessarily a judge.³⁶ Online services must also remove certain categories of content, including sexually explicit material, within 24 hours of receiving a complaint from any user about the material.³⁷ The Indian Inter-

²⁷ Darrell M. West, Internet shutdowns cost countries \$2.4 billion last year, Ctr. for Tech. Innovation at Brookings (October 2016), <https://perma.cc/5N9L-GXLV>.

²⁸ *Id.*

²⁹ NetBlocks, Cost of Shutdown Tool (2022), <https://perma.cc/JZN4-KN33>.

³⁰ Samuel Woodhams and Simon Migliano, Government Internet Shutdowns Have Cost Over \$18 Billion Since 2019, Top10VPN (March 9, 2022), <https://perma.cc/R6KR-EPXA>.

³¹ See, e.g., 47 U.S.C. § 230.

³² See, e.g., 17 U.S.C. § 512; European Union, Directive on Electronic Commerce, Directive 2000/31/EC.

³³ The European Union, for example, is revising its intermediary liability laws in the forthcoming Digital Services Act, though the core notice-and-action framework of the E-Commerce Directive will persist.

³⁴ See David Kaye, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Human Rights Council of the United Nations 19 (August 17, 2018) (finding that governments should only restrict access to or remove content pursuant to the order of an impartial judicial body in order to remain consistent with international human rights principles), <https://perma.cc/N3LV-ZEBU>.

³⁵ Freedom House, Freedom on the Net 2020—China B2 (October 2020), <https://perma.cc/29SK-7XWU>.

³⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 3(1)(d), hereinafter “2021 Indian Intermediary Rules.”

³⁷ *Id.*, Rule 3(2)(b).

mediary Rules are stringent and could lead to jail time for employees of online services who fail to comply with requests to take down illegal content.³⁸ CDT has warned that the rules “open[] the door for . . . authorities to seek the removal of speech for political or other inappropriate reasons—and the Indian government already has demonstrated it will walk through that door.”³⁹ The Indian Intermediary Rules are likely to serve a model for other legislation in the region; **Bangladesh**, for example, has already proposed similar guidelines.⁴⁰

Some countries have used concerns about online disinformation or so-called “fake news,” coupled with intermediary liability regimes that do not require a court order determining the illegality of speech, to require intermediaries to remove user-generated content. For example, in **Singapore**, the Protection from Online Falsehoods and Manipulation Act (POFMA) “permits a single government minister to declare that information posted online is ‘false,’ and to order the content’s ‘correction’ or removal if deemed to be in the public interest.”⁴¹ Companies that refuse to comply face steep fines, and individuals who violate the law can be jailed.⁴² According to Human Rights Watch, “As of mid-2020, the government had invoked POFMA more than 50 times, primarily against people or publications that criticized the government or its policies.”⁴³ After one instance in which government officials ordered Facebook to block access to a blog post critical of the government’s response to the COVID-19 pandemic, the company argued that the order was “disproportionate and contradict[s] the government’s claim that POFMA would not be used as a censorship tool.”⁴⁴

Short Time Frames for Content Removal

Another concerning liability trend involves laws or regulations that obligate providers to remove content on sharply abbreviated timelines—often within hours. These laws discourage companies from closely scrutinizing government or user demands to remove content and push them to err on the side of quickly removing content. Laws with short deadlines for content removals may also effectively require, or at least strongly encourage, intermediaries to use automated technologies to detect, filter, and remove content, with often disastrous impacts for users’ freedom of expression. Despite recent advances in machine learning and artificial intelligence, automated content analysis techniques have significant limitations that create risks to human rights.⁴⁵

Laws discouraging scrutiny of removal demands and encouraging the use of automated content analysis tools through brief time frames for content removals are unfortunately proliferating in the Indo-Pacific region.⁴⁶ For example, the 2021 **Indian** Intermediary Rules require that intermediaries remove content within 36 hours after receiving a government order and that they remove certain other categories of content within 24 hours.⁴⁷ Similarly, in **Australia**, the new Online Safety Act

³⁸ Namrata Maheshwari and Emma Llansó, Part 1: New Intermediary Rules in India Imperil Free Expression, Privacy and Security, Ctr. for Democracy and Tech. (May 25, 2021), <https://perma.cc/WLZ4-D4DK>; see also Global Network Initiative, GNI Analysis: Information Technology Rules Put Rights at Risk in India (March 30, 2021), <https://perma.cc/W2TG-B8M5> (explaining that failure to comply with the new intermediary rules can lead to a loss of safe harbor protections under the IT Act and ultimately result in prison terms of up to 7 years for employees based in India).

³⁹ Maheshwari and Llansó, *supra* n. 38.

⁴⁰ Mitaksh, Bangladesh Releases Draft Rules to Regulate OTT Platforms, Modeled [sic] on India’s IT Rules, MediaNama (February 9, 2022), <https://perma.cc/83WP-86YP>.

⁴¹ Human Rights Watch, Singapore: “Fake News” Law Curtails Speech (January 13, 2021), hereinafter “HRW, Singapore,” <https://perma.cc/9P6L-TZB6>.

⁴² Ashley Westerman, “Fake News” Law Goes Into Effect in Singapore, Worrying Free Speech Advocates, NPR (October 2, 2019), <https://perma.cc/2TJU-8HWM>.

⁴³ HRW, Singapore, *supra* n. 41.

⁴⁴ Reuters Staff, Facebook says “deeply concerned” about Singapore’s order to block page, Reuters (February 18, 2020), <https://perma.cc/2VJX-RFCM>.

⁴⁵ See Carey Shenkman et al., Do You See What I See? Capabilities and Limits of Automated Multimedia Content Analysis, Ctr. for Democracy and Tech. 22–24 (2021), <https://perma.cc/XM4B-RLAY>.

⁴⁶ Such laws and policies are not unique to the region: the European Union’s Code of Conduct on Countering Illegal Hate Speech Online calls for participating companies to review content takedown requests from “trusted flaggers” within 24 hours. EU: European Commission’s Code of Conduct for Countering Illegal Hate Speech Online and the Framework Decision, ARTICLE 19 (June 2016), <https://perma.cc/J8UV-TH8P>. Germany’s NetzDG imposes a 24-hour timeline on providers to remove “manifestly” unlawful content, and illegal content that is not manifestly unlawful must be removed within 7 days. NetzDG, Article 1§3(2)–3.

⁴⁷ 2021 Indian Intermediary Rules, *supra* n. 36, Rule 3(1)(d); *Id.*, Rule 3(2)(b).

requires providers to remove content sanctioned by the eSafety Commissioner within 24 hours.⁴⁸ And in **Indonesia**, electronic system operators could be required to remove prohibited content within just 4 hours after receiving notice from authorities, in urgent situations.⁴⁹ In **Thailand**, users can report banned content to intermediaries, and intermediaries “must remove flagged content within 7 days for alleged false or distorted information, within 3 days for alleged pornographic content, and within 24 hours for an alleged national security threat.”⁵⁰

Weak intermediary liability regimes that can be leveraged for digital censorship not only impact users rights; they also impose economic costs. Given the high volume of user-generated content online and correspondingly high volume of content reported as illegal or violating a company’s Terms of Service, it can be extremely costly for online intermediaries to actively monitor content, make decisions about the legality or illegality of content, and evaluate content under strict time frames to determine whether or not it should be removed.⁵¹ Laws that require intermediaries to undertake these efforts—or face litigation costs or steep fines—serve as a barrier to entry to new intermediaries, stymieing competition and growth. In addition, intermediaries that are unable or unwilling to comply with intermediary liability regimes that require them to invest huge amounts of resources may cease operating in a country altogether, depriving local users of online services that allow them to communicate with investors or customers, buy and sell goods, and engage in other economic activity.

Manipulation of Content Moderation Processes by State Actors

Governments around the world are increasingly relying on service providers’ own content policies to obtain removal of online content or accounts. Rather than challenging content in court as a violation of law, the government flags and reports it to the provider for removal on the basis that the content violates the provider’s Terms of Service. In some countries, governments have formalized Terms of Service referrals using Internet Referral Units, which are government entities formed to flag user-generated content directly to the service provider that hosts it, often using the provider’s own content-flagging mechanisms, so the provider will remove the content under its Terms of Service.⁵²

Manipulation of private companies’ content moderation processes are contrary to rule of law principles and allow governments to leverage providers’ Terms of Service to censor online speech of which they disapprove. Terms of Service may prohibit a variety of types of speech, including far more speech than that which is prohibited by law. As a result, governments can use providers’ Terms of Service to obtain removal of legal content, including content that cannot be made illegal consistent with international human rights standards. Government actors may also selectively target speech prohibited by providers’ Terms of Service to censor speech based on viewpoint or content. In addition, government referrals can be coercive, exerting significant pressure on a provider to remove content “voluntarily” under its own Terms of Service. And, in some countries, providers face mandatory regulations for refusing to comply with government removal requests⁵³ or can be stripped of liability protection for user-generated content based on a government notification.⁵⁴

Governments have used these Terms of Service referrals to target critics, rivals, or activists. For example, Amnesty International has reported that the **Vietnamese** Government engages in “mass reporting campaigns” in which it relies on social media sites community reporting functions to have “large numbers of users . . . si-

⁴⁸Freedom House, Freedom on the Net 2021—Australia (2021), <https://perma.cc/T4LW-HYGA>; eSafety Commissioner, Online Safety Act of 2021 Fact Sheet (January 2022).

⁴⁹Freedom House, Freedom on the Net 2021—Indonesia (2021), <https://perma.cc/7YFC-YD5L>.

⁵⁰Freedom House, Freedom on the Net 2021—Thailand (2021), <https://perma.cc/26V3-686V>.

⁵¹Katie Schoolov, Why content moderation costs billions and is so tricky for Facebook, Twitter, YouTube and others, CNBC (February 27, 2021), <https://perma.cc/L3SF-Z2XJ>.

⁵²Jason Pielemeier and Chris Sheehy, Understanding the Human Rights Risks Associated with Internet Referral Units, VOX-Pol (March 26, 2020), <https://perma.cc/CC5Q-PF4L>.

⁵³Tomer Shadmy and Yuval Shany, Protection Gaps in Public Law Governing Cyberspace: Israel’s High Court’s Decision on Government-Initiated Takedown Requests, *Lawfare* (April 23, 2021), <https://perma.cc/F4HX-LPPE> (stating that the Israeli Cyber Unit “has the power to subject the online platforms to mandatory regulations should they systematically refuse to comply with its takedown requests”).

⁵⁴Jim Killock, Informal Internet Censorship: The Counter Terrorism Internet Referral Unit (CTIRU), Open Rights Group (March 5, 2019), <https://perma.cc/LWM2-VTUD> (describing the impact of detailed notification under the E-Commerce Directive on content hosts’ “actual knowledge” of criminal content and subsequent potential liability for that content).

multaneously ‘report’ a particular account or specific content with the aim of having it deleted or suspended by social media companies on the basis of it violating community standards.”⁵⁵ According to news reports, the Vietnamese government has used the mass reporting technique to target journalists and human rights activists on Facebook.”⁵⁶

Local-Presence Requirements or “Personnel Localization”

Legal requirements that Internet companies locate personnel in particular country—known as “personnel localization” but sometimes referred to as “hostage provisions”⁵⁷—are another mechanism through which states indirectly exert control over online speech. Personnel localization requirements make it harder for intermediaries to resist abusive government demands to shut down the Internet or to remove particular websites or user-generated content, because of the threat that failure to comply will result in punishment, including imprisonment, of the local personnel.

Recent events in **Myanmar** demonstrate how countries can use the presence of personnel in-country to exert control over communications intermediaries. Following the 2021 coup d’état, and demands by military leaders to shut down the Internet, block certain websites, and activate communications-intercept equipment,⁵⁸ Telenor Group decided to sell Telenor Myanmar.⁵⁹ The sale has yet to be formally approved by authorities in Myanmar, and as of February 2022, Myanmar had prohibited some Telenor staff, including a Telenor executive who is a Norwegian citizen, from leaving the country.⁶⁰ According to Telenor’s CEO, “The authorities say that they want to have leading Telenor employees on the ground as long as they have not clarified whether we will be allowed to sell the business or not.”⁶¹

Other countries in the Indo-Pacific region have required personnel localization by law or regulation. For example, the **Indian** Intermediary Rules require certain social media companies to have at least three responsible company employees resident in India, including a Chief Compliance Officer (CCO).⁶² The CCO must be a “key managerial personnel from the company” and is personally liable for the company’s failure to comply with the rule’s requirements regarding content removals, facing penalties of up to 7 years in prison and significant fines for noncompliance.⁶³ As the Software Freedom Law Center, India has explained, the personnel localization requirement poses significant financial and operational barriers to smaller companies operating within India and may mean that smaller or nonprofit companies, like encrypted messaging service Signal, cannot offer their services in India.⁶⁴

Recommendations for Combating Digital Censorship in the Indo-Pacific

As Congress consults with the administration on the IPEF, CDT respectfully recommends that it prioritize adherence to international human rights standards and the rule of law, as key pillars of a sustainable, rights-respecting digital economy. International human rights standards could be incorporated into the IPEF, for example, through shared principles that articulate a fundamental commitment to freedom of expression online and state that efforts to regulate online speech must be

⁵⁵ “Let Us Breathe!”: Censorship and Criminalization of Online Expression in Viet Nam, Amnesty Int’l 53 (2020), <https://perma.cc/D88L-69CA>.

⁵⁶ Russel Brandom, Facebook’s Report Abuse button has become a tool of global oppression, The Verge (September 2, 2014).

⁵⁷ GNI Submission to European Commission Consultation on the Digital Services Act, Global Network Initiative (April 1, 2021), <https://perma.cc/2JRT-YECV>.

⁵⁸ Telenor, Updates on Telenor in Myanmar (February 28, 2022), <https://perma.cc/2L7Z-STW5>.

⁵⁹ *Id.* This decision raised human rights concerns because of links between the companies to which Telenor Myanmar is to be sold to the ruling military junta. Access Now, As Myanmar junta extends control over telcos, surveillance and privacy risks increase (January 24, 2022), <https://perma.cc/VSU5-G6X7>.

⁶⁰ Gregers Møller, Norwegian Telenor leader is denied departure from Myanmar, ScandAsia (February 28, 2022), <https://perma.cc/6HJT-HD9S>.

⁶¹ *Id.*

⁶² Maheshwari and Llansó, *supra* n. 38; Letter to MeitY and GNI Analysis of the IT Rules, Global Network Initiative (March 30, 2021), <https://perma.cc/998K-6R4C>.

⁶³ This is not an idle threat; even before the effective date of the new rules, India threatened to jail employees of Twitter, Facebook, and WhatsApp for their failure to comply with takedown requests related to protests by Indian farmers against the government. See Jeff Horowitz and Newley Purnell, India Threatens Jail for Facebook, WhatsApp and Twitter Employees, *Wall Street Journal* (March 5, 2021), <https://perma.cc/W5V7-JPAP>.

⁶⁴ Analysis of the Information Technology Intermediary Guidelines and Digital Media Ethics Code Rules, 2021, Software Freedom Law Center, India (February 27, 2021), <https://perma.cc/2FMZ-83MA>.

grounded in human rights and the rule of law. The U.S. should build on the work of the Freedom Online Coalition, which includes Australia, Japan, and New Zealand, and encourage additional states in the region to commit to join the coalition, engage in its diplomatic coordination function, and endorse its many joint statements regarding Internet freedom and human rights.⁶⁵

The U.S. should also take the opportunity in IPEF discussions to emphasize the importance of participatory policymaking processes that enable human rights defenders, technical experts, and other members of civil society to engage meaningfully. The U.S. should seek commitments from other states to engage in multistakeholder consultation around issues of online content regulation and support civil society participation in policymaking processes. The U.S. should also urge nations in the region to make use of existing subject-specific multistakeholder initiatives, such as the Christchurch Call to Action,⁶⁶ as fora for discussion, shared learning, and addressing global challenges within a framework that champions human rights and an open Internet.

In addition, the U.S. should provide sustained funding for human rights-protecting technology and seek commitments to do the same from other nations engaged in the IPEF discussions. Moreover, the U.S. should seek commitments from other nations not to interfere with individuals' use of critical privacy-enhancing and censorship-circumvention tools such as end-to-end encrypted services and virtual private networks (VPNs). As discussed in the next section, such tools are vital to people's ability to use the Internet and digital services for their own economic benefit and the enjoyment of their human rights.

HUMAN RIGHTS RISKS OF SURVEILLANCE, IMPEDING THE FREE FLOW OF DATA, AND EMERGING TECHNOLOGIES

Threatening Access to End-to-End Encrypted Services

In addition to countering digital censorship, digital trade discussions present the opportunity to address the human rights risks associated with surveillance, threats to data privacy, and emerging technologies. A top priority should be ensuring access to end-to-end encrypted services, which are essential to preserving individuals' communications privacy and enabling them to fully participate in the digital economy. The Russian Government's invasion of Ukraine is only the most recent reminder of how critical it is for journalists, activists, businesses, and everyday people to be able to communicate privately and securely, without fear of reprisal. Encryption is essential, not only in times of war, but for everyday activities such as reading the news, banking, exchanging business information, making purchases, running a small business, and communicating with loved ones—knowing that your data is secured from prying eyes.⁶⁷

Unfortunately, a number of countries in the Indo-Pacific implement restrictions on people's access to strong encryption.⁶⁸ The **Indian** Intermediary Rules mandate "traceability" of online communications, requiring that intermediaries with more than 5 million registered users be able to identify and disclose the "first originator" of any information they carry.⁶⁹ Though the Indian government has proposed several methods for complying with this obligation, none of these methods would maintain the guarantees of privacy and security that users expect from services that are encrypted end-to-end. **Australian** law jeopardizes access to encryption in a different way, by permitting the Attorney General to issue "technical capability notices" that effectively require communications service providers to build back doors into their services to enable the government to surveil the communications of specific individuals.⁷⁰

The U.S. should strongly support individuals' access to end-to-end encrypted services and should seek commitments from other governments to do the same. The U.S.

⁶⁵ See Freedom Online Coalition (last visited March 12, 2022), <https://perma.cc/27Z8-PLXX>.

⁶⁶ See Christchurch Call (last visited March 12, 2022), <https://perma.cc/XJ8M-ABFM>.

⁶⁷ See David Kaye, Report on encryption, anonymity, and the human rights framework, United Nations Office of the High Commissioner on Human Rights (May 22, 2015), <https://perma.cc/5VBJ-3L8P>.

⁶⁸ Global Partners Digital, World map of encryption laws and policies (last visited March 12, 2022), <https://perma.cc/HP5K-4QKF>.

⁶⁹ Namrata Maheshwari and Gregory Nojeim, Part 2: New Intermediary Rules in India Imperil Free Expression, Privacy and Security, Ctr. for Democracy and Tech. (June 4, 2021), <https://perma.cc/B7TQ-4YFP>.

⁷⁰ Stilgherrian, The Encryption Debate in Australia: 2021 Update, Carnegie Endowment for International Peace (March 31, 2021), <https://perma.cc/C8E3-WP68>.

should reject any proposals that reference exceptions or limitations to encryption, e.g., to enable law enforcement access to content or to require certain forms of content moderation on encrypted messaging services. Instead, the U.S. should work with other nations through the IPEF to share information about methods of investigation and approaches to law enforcement that do not require investigators to undermine these key security technologies. The U.S. should also address underlying challenges to cross-border investigations by updating its own legal frameworks (see below).

Surveillance Tools and Surveillance-for-Hire

Another threat to individuals' privacy is the growing availability of powerful surveillance technologies for government and private use, which threatens individuals' privacy and can subject them to arbitrary and discriminatory decision-making. For example, facial recognition technology (FRT) is increasingly in demand by law enforcement and administrative agencies in the U.S. and in the Indo-Pacific region,⁷¹ despite the risk of biased and discriminatory policing that FRT enables.⁷² Project Panoptic is monitoring at least 97 facial recognition technology systems in use across the **Indian** Government,⁷³ and in **Japan**, FRT is used by law enforcement, commercial entities, and will be integrated into the national ID card.⁷⁴ In addition, the surveillance-for-hire industry presents a substantial threat through which private actors can use invasive software tools and other data collection strategies to target individuals. The Pegasus Project revealed the scale of this problem, identifying at least 180 journalists in 20 countries who were selected for potential targeting with NSO spyware from 2016–2021. A coalition of over 150 civil society organizations and independent experts have called on governments to regulate the export, sale and use of surveillance technology.⁷⁵

The U.S. has put NSO Group and others on the “entity list” because of the sale of surveillance tools to repressive governments,⁷⁶ and should seek commitments from governments in the Indo-Pacific region to do likewise. The U.S. should also pursue shared principles condemning the use of spyware technologies and affirming the obligation of states to regulate the export, sale and use of such tools. It should seek commitments to investigate export licenses granted for surveillance technology; revoke marketing and export licenses where appropriate; implement procurement standards restricting government contracts for surveillance technology and services to only those companies which demonstrate that they respect human rights in line with well-established principles; and provide capacity building assistance to third countries to support multilateral export control regimes. Such efforts should complement, or ideally enhance, the Export Controls and Human Rights Initiative being developed in connection with the Summit for Democracy and any related efforts taking place within the U.S.-EU Tech and Trade Council.

Barriers to the Free Flow of Data

In general, the U.S. should prioritize maintaining the free flow of data across borders in the region and worldwide. The global digital economy depends on the free flow of data, which enables people to access information and education, engage in

⁷¹Paul Bischoff, Facial recognition technology (FRT): 100 countries analyzed, CompariTech (June 8, 2021), <https://perma.cc/F75G-STPT>.

⁷²Amy K. Lehr and William Crumpler, Facing the Risk: Mapping the Human Rights Risks in the Development and Deployment of Facial Recognition Technology, Ctr. for Strategic and Int'l Studies (July 27, 2021), <https://perma.cc/E4Z9-92EZ>. CDT has called for a Federal moratorium on the use of FRT. Letter from Algorithmic Justice League et al., to the Honorable Mitch McConnell et al. (July 1, 2021), <https://perma.cc/NFN9-MLKR>.

⁷³Project Panoptic, Facial Recognition Systems in India (last visited March 12, 2022), <https://perma.cc/6U2Q-8W79>; Anushka Jain, The tech vs privacy face-off, *Forbes India* (August 24, 2021), <https://perma.cc/LDX7-8HYR>; Prabhjote Gill, India is ramping up the use of facial recognition to track down individuals without any laws to keep track of how this technology is being used, *Business Insider India* (February 10, 2021), <https://perma.cc/6AXS-JSU4>.

⁷⁴Japan's police introduce facial recognition system in criminal probes, *Japan Times* (September 13, 2020), <https://perma.cc/Q4PD-G34A>; Japan's face recognition technology confronted by challenges in handling personal data, *The Japan News* (June 23, 2021), <https://perma.cc/3M44-FDW6?type=image>; Alessandro Mascellino, Japanese government selects SAFR face biometrics for in-person service access, *Biometric Update* (October 29, 2021), <https://perma.cc/ARV2-H8WE>.

⁷⁵Gregory Nojeim and Sharon Bradford Franklin, CDT Joins Civil Society Orgs and Independent Experts Calling for Investigation and Regulation of the Sale, Transfer and Use of Surveillance Technology, Ctr. for Democracy and Tech. (July 27, 2021), <https://perma.cc/L52M-ZNPJ>.

⁷⁶Drew Harwell et al., Biden administration blacklists NSO Group over Pegasus spyware, *Washington Post* (November 3, 2021), <https://perma.cc/26LD-SQ3L>.

financial transactions, and connect with other people; it also enables businesses of every size to attract and serve customers around the world. Well-intentioned measures designed to protect consumers in a particular jurisdiction, such as data protection laws, data localization laws, and laws mandating government access to communications data in order to fight crime, can have the inadvertent effect of restricting data flows and contributing to the splintering of the Internet.

The U.S. should pursue a strategy in the Indo-Pacific region that recognizes the importance of cross-border data flows as an essential component of the digital economy and that addresses the underlying concerns that motivate restrictive measures, such as data localization mandates, that threaten human rights. For example, the U.S. should leverage the requirements of the CLOUD Act, which sets certain standards that a foreign government's surveillance laws must meet in order to gain access to communications content held by U.S. companies. The CLOUD Act empowers the U.S. to seek specific improvements in other nations' substantive and procedural protections for privacy and civil liberties in their communications surveillance laws, and presents a compelling alternative approach to data localization mandates for enabling foreign law enforcement access to communications data for legitimate purposes.

The U.S. should also pursue agreement with governments in the region on shared principles that countries should adopt strong comprehensive privacy protections that protect all individuals' data, have in place an effective enforcement regime that provides meaningful redress, and avoid imposing data localization requirements that restrict beneficial data flows or local data "mirroring" requirements in the name of protecting privacy. This is yet another reason for Congress to prioritize passing Federal privacy legislation and reforming U.S. surveillance law: The lack of a strong Federal privacy law in the U.S., along with concerns about the scope of the U.S. Government's surveillance powers,⁷⁷ fuels the drive for data localization in the region. For the U.S. to successfully promote the free flow of data, and reject overly restrictive national data protection laws that can serve as vehicles for censorship and surveillance, other nations must be able to have confidence that their citizens' data will be protected from corporate and government abuses when sent to the U.S.

Emerging Technologies

Finally, there are a wide range of emerging issues in the digital sphere that will be relevant to discussions of the digital economy. New surveillance technologies and data-driven assessment tools are making it easier for companies to monitor workers in the workplace, and make inferences about employees based on a wide variety of data points. Examples include the use of AI in hiring or promotion decisions; "bossware" that closely monitors workers' activities to assess performance and efficiency in both factories and office environments;⁷⁸ and software that analyzes workers' social media activities. These tools present clear risks for workers' privacy, autonomy, ability to organize, and physical and mental safety.

The U.S. should raise awareness about these threats and demonstrate its commitment to protecting workers' interests. Potential strategies could include pursuing shared principles that recognize the risks of work-related surveillance tools for workers' privacy, autonomy, ability to organize, and physical and mental safety. These could articulate clear red lines on certain topics, like the extension of surveillance technology outside the workplace, or the use of surveillance technology to impede worker organizing. The U.S. should also consider developing a cooperative mechanism or engaging in information sharing between the labor departments of participating nations about the types of technologies being deployed to monitor and evaluate workers, their prevalence and impacts, and approaches to regulation and/or oversight. These efforts would overcome the significant information asymmetry that makes it hard for workers, advocates and governments to engage in oversight of such tools.

More broadly, across the U.S. Government and in other countries, there is a growing awareness that AI technology can bring not only new opportunities, but also risks—including the risk that AI or data-driven decision-making in fields such as employment, lending, housing, or access to public benefits can reinforce existing biases in society, or make decisions in a way that evades public scrutiny and accountability.

⁷⁷ Gregory Nojeim, Schrems II and the Need for Intelligence Surveillance Reform, Ctr. for Democracy and Tech. (January 13, 2021), <https://perma.cc/G7XH-Q75T>.

⁷⁸ See Matt Scherer and Lydia X.Z. Brown, Warning: Bossware May Be Hazardous to Your Health, Ctr. for Democracy and Tech. (July 24, 2021), <https://perma.cc/S2MJ-JT9L>.

The U.S. could use the IPEF as a forum to raise awareness about these issues, share information about potential regulatory responses, and articulate shared principles recognizing these concerns. This could include pursuing commitments for countries to adhere to the OECD AI Principles, to which many IPEF target nations already subscribe.⁷⁹ The U.S. should also pursue principles that recognize the potential for AI, while clearly warning about the risks in various use cases. These should set clear red lines on the most dangerous use cases of AI, along the lines of the U.S.-EU TTC's condemnation of social scoring systems.

The U.S. should also engage in information-sharing with governments in the region about risks that arise in different AI use cases, including countries' own experience deploying the technologies and specific ways to address those risks. This could include information-sharing sessions that bring in experts from civil society and the private sector to share knowledge on how to conduct or require meaningful audits and impact assessments; approaches to transparency and explanations regarding how AI systems are used; processes to improve procurement and public accountability around government use of AI in the administration of public benefits; and ways to evaluate the appropriateness of using AI (such as facial recognition technology) for law enforcement purposes. One good model of this sort of information-sharing is the Freedom Online Coalition's Task Force on Artificial Intelligence and Human Rights (T-FAIR), which meets regularly with member governments, experts from civil society, members of the private sector, and other stakeholders to deepen our collective understanding on topics such as the use of automation in content moderation, human rights considerations around facial recognition technology, and the design and deployment of algorithms by online services. Information-sharing efforts under IPEF should also build on efforts the administration is developing as part of the U.S.-EU TTC, and should be synced with U.S. domestic efforts currently being led by OSTP, NIST, EEOC, CFPB, ACUS and other agencies.

The Internet and associated technologies are the backbone of the global economy. Only an open, interconnected, stable, and secure Internet can foster the fullest level of economic benefit for the U.S. and its trading partners; this is best achieved and safeguarded by legal systems that respect human rights and the rule of law. There are a great many challenges to digital rights in the Indo-Pacific region, not least of which is the growing influence of the authoritarian model of Internet regulation promoted by the Chinese Government. The United States should advance rights-respecting Internet law and policy through its trade engagements and the IPEF.

PREPARED STATEMENT OF KELLY ANN SHAW, FORMER DEPUTY ASSISTANT TO THE PRESIDENT FOR INTERNATIONAL ECONOMIC AFFAIRS (2018–2019); AND PARTNER, HOGAN LOVELLS

Chairman Wyden, Ranking Member Crapo, distinguished members of the committee, thank you for the opportunity to discuss U.S. trade and economic engagement in the Indo-Pacific, the globe's most dynamic region. Prior to my current role in private practice, I was privileged to spend a decade in government service, negotiating with our trading partners throughout the Indo-Pacific. While I draw upon these experiences, the testimony I provide this morning is solely my own.

How we structure and nurture our economic relationships in Asia today will go far in determining whether the United States remains the world's leading economic power.

But the stakes are about more than just whether the United States will continue to be number one. Democracy itself is under threat—not just in Europe, but in Latin America, Africa, Asia, and the Pacific. The rise of autocracy and state capitalism threatens our economic values and freedoms every bit as much as the political freedoms that undergird successful democracies.

Historically, trade has been one of our most important tools for pushing back against authoritarianism. The United States led in creating a postwar global trading system that, for many years, helped drive U.S. jobs and growth and widen the circle of freedom and prosperity. Now, at a critical moment when democracy is under threat, we've retreated from our leadership role and abandoned our long-standing view that countries that trade together are less likely to go to war against each other.

⁷⁹ Given the principles' high-level nature, these should be seen as a baseline to improve upon with more specific commitments and frameworks for cooperation/information sharing.

Trade is a difficult issue for any democracy, but rather than take the lead in defining a new approach for today's challenges—one that strengthens U.S. manufacturing, unleashes innovation, protects our workers, and advances our values abroad—the United States has given up saying anything at all. We've become mired in our own domestic politics.

Today, the United States has no meaningful offensive trade strategy. In no place is the current lack of strategy—this leadership vacuum—more dangerous to long-term U.S. strategic, economic, and commercial interests than in the Indo-Pacific.

The Indo-Pacific is our backyard, filled with military allies and important trading partners. Two-way trade with the region totals upward of \$1.75 trillion. But when it comes to our economic vision, the concept of a free and open “Indo-Pacific” has turned into something we say, rather than something we do.

This year, the largest trade agreement in history, the Regional Comprehensive Economic Partnership (RCEP), encompassing one-third of global GDP, 15 Indo-Pacific countries, 53 percent of the world's exports, and 2.3 billion people, entered into force with China—not the United States—at its helm. Moving forward, Beijing not Washington will have outsize influence in setting future standards and regulations for Asia and the Pacific. Lower tariffs, common rules of origin, and eased customs procedures will help China lock in regional supply chains at the expense of American suppliers, attract new foreign investment, and expand its Belt and Road Initiative by strengthening transportation, energy, and communication links.

U.S. manufacturers, workers, and farmers all stand to lose from the deal. And if China manages to accede to the other major regional trading bloc, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the results for U.S. economic interests will be catastrophic.

Multilateralism will not save us. The World Trade Organization (WTO) is on the brink of irrelevance, after 2 decades of atrophy. Regionalism—and regional trade rules—are now king. Even before RCEP, more than 50 percent of global trade occurred outside of the WTO system through more than 300 bilateral and regional trade agreements. Seventy-five percent of the EU's trade, for example, is governed under these preferential agreements. The world is moving on without us.

The recently announced Indo-Pacific Economic Framework (IPEF) is a modest step in the right direction but risks turning into another failed exercise. Few details have been announced regarding participating countries, the scope of modular commitments, or how the project will be more robust than CPTPP without any significant trade components.

It is difficult to imagine IPEF having a meaningful impact on long-term U.S. economic interests without enforceable commitments on market access, rules of origin, technical barriers to trade (TBT), services, intellectual property, investment, or state-owned enterprises to name a few. A trade pillar focused exclusively on digital trade, forced labor, or trade facilitation is not enough to extract meaningful concessions from our trading partners or shape the region moving forward. Congress should push the administration to broaden its ambition so that we are setting rules, not merely making suggestions.

To put a finer point on it, the optics alone of the U.S. negotiating an 11-page digital deal while China negotiates thousands of pages of commitments across all aspects of its trading relationship with the same set of countries would be demoralizing to our partners and of limited value to our broader interests.

Instead of starting from scratch, the United States should also seriously consider rejoining the CPTPP, and to do so quickly. Despite some of the deep fundamental flaws of its predecessor, the Trans-Pacific Partnership (TPP), many of the provisions in the original deal were groundbreaking. It would be straightforward enough for the United States to return to the negotiating table to harvest the provisions that work, jettison those that don't, and ultimately keep China out of the deal. The CPTPP countries would welcome us back.

To conclude, we need a trade strategy for the Indo-Pacific that works for Americans and for democracy—one that serves both our economic and commercial interests, as well as our strategic ones. Above all, we need to bold.

The struggle now being waged by 44 million Ukrainians to defend their homeland is a reminder that the international system that was put in place in the aftermath of WWII requires attention in all its dimensions because economic freedom, liberal democracy, and respect for human rights are mutually reinforcing—and that we

must fight for those values because our opponents are not resting in the fight against them.

QUESTIONS SUBMITTED FOR THE RECORD TO KELLY ANN SHAW

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. The Trans-Pacific Partnership (TPP) is claimed to be outdated with respect to China because it was negotiated during the Obama administration.

Can TPP be fixed, and if so, what aspects would you recommend modernizing?

Answer. The United States should seriously consider rejoining and renegotiating the CPTPP. Despite some of the deep fundamental flaws of its predecessor, the Trans-Pacific Partnership (TPP), many of the provisions in the original deal were groundbreaking. It would be straightforward enough for the United States to return to the negotiating table to harvest the provisions that work, jettison those that don't, and ultimately keep China out of the deal. The CPTPP countries do not want China's state-centric economic model to dominate the future of the Indo-Pacific region. The United States has an opportunity right now to reopen, rebalance, and modernize it, including with provisions related to intellectual property, state-owned enterprises, labor, rules of origin, and market access.

Question. The reason the United States imposed section 301 tariffs on China under the previous administration was to counter China's theft of U.S. technology. I support the efforts to keep pressure on China. However, China will remain incentivized to continue such practices if it can reap the benefits of IP theft in third countries. I am also concerned about the remaining TPP countries suspending various provisions, including in the intellectual property chapter, until the United States rejoins the agreement.

Do you agree that we need to work with our partners in the Indo-Pacific to raise intellectual property standards—and, if so, what mechanisms will accomplish that?

Answer. I agree. Renegotiating U.S. membership in the CPTPP will give the United States leverage to raise IP standards throughout the Indo-Pacific region by conditioning U.S. membership on the adoption of strong rules.

Question. Inasmuch as the administration's proposed IPEF may include what it describes as "binding rules" is positive, particularly if those rules extend to digital trade and agricultural market access. The U.S. ensures that its free trade agreement rules are binding because it enforces the rules through dispute settlement provisions and application of tariff suspension benefits.

Are "binding" rules possible in an IPEF, if it lacks a dispute settlement mechanism?

Answer. It is hard to envision how the United States would enforce IPEF rules without a dispute settlement mechanism.

QUESTIONS SUBMITTED BY HON. BILL CASSIDY

Question. The last several administrations have opted not to pursue dispute settlement actions against India for exceeding their agricultural subsidy limits.

Do you foresee engagement in the Indo-Pacific Economic Framework as an opportunity to provide leverage to get other members of the pact to comply with WTO commitments? Specifically, is there a possibility that the administration could use this forum to call for domestic agricultural reforms in markets like India where their producers continue to operate at a significant advantage over U.S. producers?

Answer. Theoretically, the launch of the framework is an opportunity for the administration to make progress in addressing barriers to trade (or a lack of compliance with WTO rules). By taking market access off the table, however, the administration has limited its ability to extract meaningful concessions from its trading partners like India through IPEF.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

Question. Chinese overcapacity of steel, aluminum, cement, chemicals and numerous other industrial inputs is part of a broader strategy to drive down prices and put international competitors out of business. Chinese state-owned enterprises and export subsidies hurt American businesses and workers. In Wyoming, our soda ash producers and steel pipe and tubing producers know firsthand how difficult it is to compete with China in the marketplace.

Where should the U.S. focus our efforts in the Indo-Pacific to counter China's export subsidies and overcapacity?

Answer. Chinese overcapacity and industrial subsidies are a significant concern for the United States and IPEF countries alike. China's unfair practices make our products less competitive and distort the global marketplace to the detriment of producers and workers throughout the Indo-Pacific. By negotiating ambitious rules on subsidies and state-owned enterprises, either through a more ambitious IPEF trade pillar or a renegotiated CPTPP agreement, the United States and its allies can develop new tools to fight back against these practices and better protect their markets from the harmful effects.

Question. The Chinese Communist Party continues to commit terrible human rights abuses. The Uyghurs, a religious and ethnic minority in China, have experienced brutal repression at the hands of the Chinese Government. They continue to be subjected to torture, imprisonment, and forced labor. At least 1 million Uyghurs have been put in internment camps by the Chinese Communist Party. Around 100,000 Uyghurs and ethnic minority ex-detainees have reportedly been used as forced labor in textile and other industries in China.

How effective have U.S. actions been at addressing the human rights abuses and the use of forced labor?

How can this framework improve our efforts to crack down on China and increase transparency and enforcement?

Answer. The Uyghur Forced Labor Prevention Act was an important step. The United States should work closely with its Indo-Pacific partners through IPEF to increase transparency in supply chains and encourage our allies to adopt similar measures.

Question. This year, the largest trade agreement in history, the Regional Comprehensive Economic Partnership, entered into force. China led the way. In your testimony, you noted:

Lower tariffs, common rules of origin, and eased trade facilitation will help China lock in regional supply chains, attract new foreign investment, and expand its Belt and Road Initiative by strengthening transportation, energy, and communication links.

You go on to say:

U.S. manufacturers, workers, and farmers all stand to lose from the deal.

Can you elaborate on this and explain to the committee what the U.S. needs to do right now to ensure to avoid what you called "catastrophic" results for our economic interests?

Answer. See response to question below.

Question. China targets its investments in developing countries as a way to expand its political, economic, and strategic goals. China is reportedly committing \$1 trillion to their Belt and Road Initiative. China's "debt diplomacy" can be seriously damaging to developing countries. China offers countries the ability to borrow a lot of money for infrastructure projects. The problem is that these countries are accumulating an indebtedness to China that they often are unable to pay back. As financially strapped countries negotiate with China to escape the massive debt, China is demanding serious concessions, like equity in strategically important assets.

What are some examples of China's debt diplomacy taking place in the Indo-Pacific region?

How effective has China's debt diplomacy been in achieving its political, economic and strategic goals?

Are developing nations starting to understand the serious implications of China's predatory lending?

What steps should the United States take to counter China's Belt and Road Initiative in the Indo-Pacific?

Answer. The Belt and Road Initiative (BRI), China's trillion-dollar infrastructure initiative throughout the developing world, presents a significant challenge to U.S. national security and economic interests. Since the initiative's launch in 2013, China has indebted much of the developing world by financing projects with lending terms and conditions that are difficult for recipient countries to pay back and by attaching political strings to funding. While much of this debt is unsustainable and there is growing concern, particularly from G7 and G20 members, about the consequences of default, to date over 130 countries have endorsed the initiative and several key U.S. allies have signed up as BRI members, including Italy and Poland.

While BRI is not just limited to the Indo-Pacific, China has become a chief financier of major infrastructure projects throughout Southeast Asia. As noted above, RCEP supports China's ambitions with respect to building out BRI projects. RCEP's single rule of origin, eased trade facilitation, and market access commitments will make it easier for China to lock in ASEAN and Southeast Asian supply chains, particularly for critical infrastructure projects. The United States needs to offer the region an alternative. Failure to do so not only will make U.S. farmers, producers, workers and service providers less competitive in the region but it will also make U.S. investments in the region less attractive compared to China's BRI alternative.

There is no silver bullet when it comes to taking on BRI in the Indo-Pacific, as the challenges are multidimensional. But the negotiation of unenforceable commitments through vague, voluntary modules currently envisioned by the administration under IPEF won't help. Renegotiating and joining the CPTPP could.

In 2018, Congress passed the BUILD Act, which was designed to incentivize private investment as an alternative to a state-directed investment model and increase the effectiveness and efficiency of U.S. government development finance functions. While more needs to be done both unilaterally and in partnership with U.S. allies, continuing to develop and bolster the mission and operation of the Development Finance Corporation (which was created under the BUILD Act) would be another good place to start.

PREPARED STATEMENT OF MICHAEL WESSEL, STAFF CHAIR, LABOR ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS AND TRADE POLICY; AND PRESIDENT, THE WESSEL GROUP INC.

Mr. Chairman, Ranking Member Crapo, members of the committee, it is an honor to appear before you today as you evaluate "The Promise and Challenge of Increased Trade Engagement in the Indo-Pacific Region."

My name is Michael Wessel, and I am appearing today on behalf of organized labor. For many years I have been a staff liaison for the United Steelworkers union to the Labor Advisory Committee (LAC), one of the statutory advisory committees to the USTR and Secretary of Labor, and currently serve as the staff chair of that committee because Tom Conway, the International President of the Steelworkers is the current LAC chair. The LAC, as you know, is deeply involved in trade issues and was involved in assessing the Trans-Pacific Partnership (TPP) negotiations, the U.S.-Korea Free Trade Agreement (KORUS) and many other trade initiatives.

I also serve as a Commissioner on the U.S.-China Economic and Security Review Commission (USCC) and have been a member since its creation in 2000. Over the years the Commission has evaluated not only bilateral trade, economic and security issues between the U.S. and China, but also regional issues relating to that relationship and U.S. interests. While travel by the Commission has been curtailed as a result of the COVID-19 pandemic over the past 2 years, the Commission has traveled to many of the countries in the region. Our hearings and research, as well as our annual reports to Congress are available on our website at www.uscc.gov.

My testimony is based on my work with organized labor, my service as a commissioner and other work, but my comments are my own.

Today's hearing occurs at a critical time as we all know.

With rising global insecurity, recently fueled by Russia's invasion of Ukraine, U.S. engagement around the globe is critical. Russia's actions are not isolated attacks on international norms and ideals. China's abuse of human rights in Xinjiang and

across the country, its trampling on democratic rights in Hong Kong and continued coercive and military pressure on Taiwan are of tremendous concern as well.

The question is not whether we should be engaged; the question is what will be the terms, architecture, and commitments that will be required. For far too long, the jobs and economic prospects of America's workers have been pawns in the pursuit of foreign policy objectives. Trade agreements in the past have primarily been a tool of foreign policy, often premised on the alleged effects of investment flows, rather than a tool for advancing the rights, interests and futures of our workers and workers across the globe. There have been improvements, most notably with the passage and entry into force of the United States-Mexico-Canada Agreement (USMCA), but much more needs to be done and we can't revert to the old playbook.

Some act as if we aren't already engaged in the Indo-Pacific. We don't need false debates or faulty analysis. In fact, our engagement in the Indo-Pacific is broad and deep:

- We have collective defense arrangements with several countries in the region.
- We have Free Trade Agreements with:
 - Australia.
 - Korea.
 - Singapore.
- We have reached section 232 arrangements with Japan, South Korea, and Australia.
- With Vietnam there was a more than \$90-billion trade deficit in 2021.
- With Japan there is more than \$200 billion in bilateral trade, with a goods trade deficit of more than \$60 billion in 2021, most of that in autos. For the first 9 months of 2021, the U.S. imported 1,041,625 new passenger vehicles and light trucks from Japan, while the U.S. exported just 12,536 new passenger vehicles and light trucks to Japan over the same period.
- The goods trade deficit with the major Pacific Rim Countries in 2021 was \$503 billion (this excludes a lot of data—for example, the good deficit with Thailand was almost \$35 billion). Excluding China, the goods trade deficit with the Indo-Pac countries was well over \$215 billion).
- The goods trade deficit with India was \$33 billion in 2021 (an increase of more than 37 percent over 2020).
- The U.S. has more than \$1 trillion in foreign direct investment in the Indo-Pacific.
- The 7th Fleet regularly transits the South and East China Seas. We have forces located across the region.
- We have expanded defense cooperation with Japan, Australia, and other regional allies including the recent U.S.-UK-Australia trilateral security partnership.
- The revitalized Quadrilateral Security Dialogue is an effective forum for strategic cooperation and military preparedness, and President Biden has shown its usefulness for cooperation on COVID and reaching a common understanding on Ukraine.

In short, the question is what should be our future engagement in the region and what are the opportunities and challenges posed by such engagement. The diversity and breadth of the landscape of the Indo-Pacific defies a one-size-fits-all analysis or approach. I will first comment on past initiatives, then current approaches, and finally what provisions must be included in any enhanced engagement to advance the interests of working people.

Despite the length of my prepared testimony, it only touches upon the important issues before this committee and the Congress, and I look forward to working with you as the debate unfolds.

Today marks the 12th anniversary of the commencement of the first round of negotiations on the TPP which were held in Melbourne, Australia. As the members of this committee know, the TPP was an integral part of the Obama administration's pivot to Asia. Organized labor spent thousands of hours engaged on the TPP negotiations.

The U.S. was right to have refused to join that agreement. The TPP was poorly designed, and many of its critical provisions were inadequate. Organized labor strongly opposed the agreement.

Some said that TPP was about writing the rules so that China didn't get to. In my view, China didn't need to write the rules, because in many areas, we did it for

them. The TPP was not the kind of high ambition trade agreement that advanced the interests of working people here at home, or in the signatory countries.

There were numerous important flaws in the TPP agreement:

- It failed to include robust provisions on enforceable workers' rights that would have adequately advanced the interests of workers and ensured that their internationally recognized worker rights were an integral part of economic liberalization in the region. For example, while signatory countries would have to have a minimum wage, it could be 5 cents an hour and fulfill the labor requirements of the agreement. In addition, the enforcement mechanisms and standards were deficient.
- It failed to adequately discipline state-owned enterprises, allowing all previously granted subsidies and benefits to be grandfathered and limiting action regarding the non-market impact of SOE activities in many instances to situations where the injury occurred for a year or more, tying the hands of producers and workers who were serially injured by the SOE predatory practices.
- It included a rule of origin in the auto area that, according to its provisions and analysis by the House Ways and Means Committee staff, would have allowed roughly two-thirds of an automobile's content, for example, to originate from non-TPP countries but still be eligible for TPP trade benefits.
- It included unacceptable Investor State Dispute Settlement (ISDS) provisions.
- It failed to include disciplines on currency manipulation.
- It failed to address growing overcapacity in key sectors.

Many are now advocating that the U.S. join the successor Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), but that would be unwise and unacceptable as it includes many of the flaws in the TPP.

We have been asked whether we support the President's Indo-Pacific Economic Framework (IPEF). That's impossible to answer as there is not yet enough detail to know whether it is an agreement that advances the interests of working people. It is still a framework being developed. We have engaged and will continue to work with the administration on what the architecture of the IPEF should be.

We support enhancing America's relations with allies and friends to foster growth with opportunity, democratic values, human rights and workers' rights. Economic reform in a Western sense and greater freedom, as we have seen all too clearly with China, are not the automatic result of expanded economic relations. Free trade is simply a theoretical construct and workers know the reality is far different—particularly in the Indo-Pacific. How we shape our economic engagement is the critical issue.

There are a number of initial questions that must be answered, which I outline below. There are also a number of consequential design issues that must be addressed for any agreement to have the support of organized labor. As the IPEF is still very much a work in progress, I look forward to working with you, other members of Congress and the administration in the coming days and know that my labor colleagues stand ready as well.

Some key initial questions:

1. Which countries will be participants in the IPEF?
2. Will the framework include "docking" provisions allowing others to sign on and what will be the requirements for participation?
3. Will market access commitments be included in the framework? While initial answers are no, what are the long-term plans?
4. What will be the role for stakeholders and Congress?
5. Will enforceable workers' rights and corporate accountability measures apply to all modules?

These are important questions, and I am sure I am missing some. In addition to these threshold questions, there are key design questions relating to the substance of the provisions. Below I identify several important issues. In the coming days, as more information becomes available, we will be able to provide further thoughts.

WORKERS' RIGHTS AND CORPORATE ACCOUNTABILITY

The number one concern for organized labor is how workers' rights will be protected, enforced, and promoted in the region. Workers' rights are the key to ensuring that trade will promote growth and opportunity for workers rather than driving a race to the bottom.

There is cause for some optimism about workers' rights in light of the impact of the first two USMCA rapid response mechanism (RRM) cases in Mexico. At the GM facility in Silao and the Tridonex facility in Matamoros, entrenched protection unions were voted out and have been replaced by independent unions. Following these votes, workers at the Mazda facility in Salamanca rejected the contract negotiated by the protection union at the facility. There is still a long way to go to harvest these successes at these facilities and to expand these wins at facilities across the country. But the early signs are positive.

The RRM created a facility specific enforcement mechanism that allows specific products to be sanctioned and potentially denied entry, the first time in any trade agreement. Coupled with the labor chapter's requirement in the USMCA and the changes in Mexican law that were required, the requirement that workers' rights be respected, implemented, monitored and enforced has advanced. The agreement, however, is only a floor and significant improvements are needed in future trade agreements and trade initiatives.

There can be no question that workers' rights are a priority for this administration. Its record has been noteworthy in terms of a real commitment to ensuring that not only are workers' rights a priority, but that the necessary resources, implementation, and enforcement efforts back up their stated commitment. The recent signature into law of the Uyghur Forced Labor Protection Act shows that words will be backed up by real action.

Administration officials have indicated that workers' rights will be part of the IPEF. But how broad that coverage is, what standards will be applied, and what enforcement mechanisms will be included is very much an open question.

Workers' rights commitments and enforcement provisions must cut across *all* of the separate modules that may be part of the IPEF. Participants in the IPEF should not be able to cherry-pick which modules they want to participate in to avoid having to adhere to high standards and advance the interests of working people. There have been some indications that workers' rights may only be contained within the module being negotiated by the USTR. This would be a blow to the administration's overall advocacy for and commitment to a worker-centered trade policy.

Access to enforcement efforts must be available to workers as it is their interests that are most affected. There must be no requirement to show that a violation is "in a manner affecting trade" or that there be a "sustained or recurring" course of violations to merit an enforcement effort. Those concepts and requirements are outdated, and a worker centered trade policy must ensure that abuse of workers' rights be actionable.

We are willing to assess different approaches to advancing workers' rights to ensure that corporations cannot continue to engage in labor and environmental arbitrage, scouring the globe for the cheapest and most lax regimes in which to operate. The IPEF must create enforceable tools to hold corporations accountable for labor rights across their global supply chains to ensure that trade is based on fair competition, not worker exploitation.

DIGITAL TRADE

Efforts to promote a digital trade agreement predate the announcement by the administration for the IPEF. Digital trade remains a key module and is presently being shepherded by the USTR. The issue of digital trade has garnered considerable attention from organized labor in recent years as utilization of "gig" worker platforms have skyrocketed, the power of technology companies has exploded, and digital outsourcing of jobs has accelerated.

The digital issues are highly complex and require enormous study and evaluation. Rushing to adopt new digital trade measures could have serious adverse consequences for U.S. economic and national security interests. Congress must be broadly engaged, along with other stakeholders, in assessing what the road ahead should look like.

Technology's role in everyday life is difficult to comprehend. As some say, data is the new oil with the potential to fuel economic engagement at every level. Certainly, technology has provided enormous benefits from connecting the world, to promoting democratic advances, to facilitating working-from-home during the pandemic, to countless other applications.

But technology has also been used by governments as a tool to surveil and suppress, as has been evident in China, Russia, and elsewhere. While technology origi-

nally helped foster democracy advocates in Hong Kong, it was later turned into a weapon against the population.

Data and technology are not only open to abuse by governments, but by the private sector as well. Unregulated digital platforms like Google and Facebook, collect massive amounts of users' data that is then mined, packaged, and sold to third parties. Meanwhile, employers are increasingly using "bossware" programs to monitor employees' remote work and collect other data often without their knowledge or consent—sometimes even when they are off the job.

Wejo, a publicly traded company, collects vehicle data to be used by government and business. Of course, mapping congestion, enhancing traffic safety and other uses can be for the good, the data can also potentially be used for adverse purposes and to monetize every action an individual takes. Wejo's website indicates that it has curated more than 489 billion miles and, as of the date that this testimony was written, has 13.2 trillion data points.

Similar collection platforms are expanding around the globe, and we need to understand how digital trade provisions advance individual rights and interests, rather than undermine them, and how any framework does not just pad the bottom line of corporations.

These questions, of course, also go to data localization, privacy, online fraud, worker misclassification, and many others. Those are issues that organized labor is wrestling with.

We also must examine how a digital trade agreement addresses the use, and abuse, of algorithms which can have a discriminatory effect on users and communities. Digital employment tools have been criticized for the costs imposed on communities of color, for example, and an agreement must help abate that practice.

The potential direct employment impacts of digital trade provisions are significant. At the outset, let me make clear that many jobs are already being outsourced through digital means and via digital platforms. Agreements that are properly structured, implemented, monitored and enforced could make a significant difference. Poorly constructed, however, they could mean accelerated outsourcing of jobs. We cannot afford another trading arrangement that will ship more jobs overseas.

Let me provide two examples of why we are concerned about the offshoring of jobs via digital platforms.

- Call center jobs are increasingly being outsourced with India and the Philippines being significant locations for lost jobs. These are good family-supporting jobs, a substantial number of them being union jobs. *The Wall Street Journal* reported last year on a startup that had received significant funding for software "that modifies pronunciation to make accented speech more like Standard American English."¹ Wealthy corporations will do just about anything to lower costs by shipping jobs overseas.
- Health-care jobs are also increasingly at risk. The Department of Labor estimated that there were 341,600 jobs for Medical Records and Health Information Specialists in 2019 paying a median wage of \$40,090 per year with much faster than average job growth estimated during the 2019–2029 period (8 percent).² A web page ad for Healthcare Outsourcing Services Philippines, promotes its services highlighting that "Hire Dedicated Offshore Healthcare Professionals and save up to 75 percent compared to hiring locally." The site stresses that "The Healthcare Business Process Outsourcing (BPO) Market is estimated to grow at a CAGR of +10 percent from 2019 to 2025 to reach \$312 billion by 2025 from \$191.68 billion in 2019."³ Teleradiology is increasingly being used to offshore high-skilled radiology jobs.

The potential impact of digital trade provisions on public sector workers, and those who service the public sector may also be significant. The Australia-Singapore

¹David Carnevali, *The Wall Street Journal*, Startup That Reduces Accents in Real Time Draws Seed Capital: Sanas.ai raises \$5.5 million after developing software that modifies pronunciation to make accented speech more like Standard American English, September 2, 2021, <https://on.wsj.com/3MEDmK0>.

²Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Medical Records and Health Information Specialists, at <https://www.bls.gov/ooh/healthcare/medical-records-and-health-information-technicians.htm> (visited June 28, 2021).

³Outsourced, <https://outsourced.ph/services/staffing-categories/healthcare/> (visited July 27, 2021).

Digital Economy Agreement, for example, included provisions that would open up access to government data allowing “for the development of new and customized products and services demanded by business, government and the community.”⁴ This is a potential pathway towards privatization.

Many content-creating workers—actors, musicians, writers, and the people who work behind the scenes—earn a portion of their collectively bargained pay and contributions to their health care and pension funds from the sales and licensing of works on digital platforms. Because of the economic threat from stolen and unlicensed content, these workers’ very livelihoods depend on strong copyright protections. Yet past U.S. trade agreements have enshrined outdated, overbroad rules that allow digital providers to avoid any liability when they profit off of stolen content that appears on their platforms, and which robs workers of just compensation and future work opportunities. At stake is more than \$2 billion in annual, collective compensation for hundreds of thousands of middle-class creative professionals.⁵ A digital trade agreement must protect and promote copyright protections for creative professionals, not facilitate additional wage theft.

Education unions have also participated in discussions about the digital trade issues. As distance and remote learning spiked during the pandemic, the risk to our domestic education workforce—teachers and others spiked as well. We cannot allow the education of our children be put at risk to offshoring along with the provision of services from so many other professions.

Until there is a better understanding of the design and direction of a digital trade agreement, it is impossible to know its impact but, clearly, without proper provisions including strong workers’ rights and corporate accountability measures that are enforceable, the possibility for significant job loss and downward pressure on wages and compensation exists.

As with the TPP, advocates for a digital trade agreement are arguing that we need to write the rules so that China doesn’t get to. Certainly, we cannot allow China’s vision of the digital economy with the Great Firewall, 50,000 or more Internet cops, and suppression of rights and freedoms to win the day. But we also cannot allow today’s digital rules to guide the future with virtually unregulated corporate control of workers’ and citizens’ data, harvesting of value, fostering of hate-filled speech and other abuses to be the model.

A digital trade agreement, done right, could advance the interests of workers. Again, as with other issues within the IPEF, much work remains to be done.

RESILIENT SUPPLY CHAINS

One of the pillars of the proposed Indo-Pacific Economic Framework is resilient supply chains. Until several years ago, the American public rarely gave a thought to supply chains. Their attention to the issue was often sparked by press accounts such as those highlighting dog food tainted with melamine and kids toys with lead paint from China. There were occasional concerns for the public, but rarely consistent attention.

The pandemic changed all that. Overnight the public became aware of just how painfully dependent we are on China for many of our critical products—pharmaceutical ingredients, personal protective equipment (PPE) and other products. Auto-workers found their factories idled by limited supplies of semiconductors. The availability of other products, from toilet paper to paper towels and other daily needs, suddenly became a concern for our citizens.

The increasing dependence on other nations for many of our needs has increased dramatically as globalization has accelerated. This dependence has been used as a political tool, such as when China weaponized supplies of rare earth minerals many years ago. During the pandemic, China engaged in so-called mask and vaccine “diplomacy” to curry favor and advance its interests.

Russia’s attack on Ukraine has also informed the public of our dependence on overseas supplies. Energy is top of mind. But supplies of critical minerals and materials are also highlighted as being at risk.

⁴“Australia-Singapore Digital Economy Agreement: Summary of key outcomes,” <https://www.dfat.gov.au/trade/services-and-digital-trade/australia-singapore-digital-economy-agreement-summary-key-outcomes>.

⁵Creative Professionals Depend on Strong Copyright Protections, <https://www.dpeaflcio.org/other-publications/creative-professionals-depend-on-strong-copyright-protections>.

Most Americans want supply chains to be strengthened here at home. Certainly, they recognize that we live in a global world and enjoy—and depend on—products sourced from around the globe.

Organized labor’s approach to supply chains is easy to articulate: We want the vast bulk of production to occur here in the U.S. with the jobs held by union workers. Of course, we know that not all products will be sourced here.

So when we hear that the IPEF will include a module to promote more resilient supply chains, we look at the idea through the prism I just offered. Indeed, with this administration’s efforts to ensure domestic capacity to meet critical needs—an approach started under the previous administration—we wonder whether the IPEF’s supply chain approach will advance or undermines that goal. Are they consistent objectives?

In discussions with the administration to date, there simply has not been enough information on what will be included in the supply chain module. Shifting sourcing from China to other countries in the Indo-Pacific may have some benefits in terms of reduced dependence for supplies from China which, all too often, benefits from its non-market and predatory trade practices, and by signaling that we know our economic engagement helps support the power of the Chinese Communist Party (CCP).

But simply shifting the supply base around will at best only have marginal benefit, and we will still face potential shocks from geopolitical and natural events. We may lose the capacity to build our own industrial and technological capacity as research and development (R&D) and production moves offshore. For example, according to a staff study issued by the U.S.-China Economic and Security Review Commission based on Commerce Department data, between 2001 and 2017, the rate of increase on R&D spending by U.S. multinationals increased in China at three times the rate of their R&D investments here in the U.S.⁶

A resilient supply chain module should also include provisions ensuring that new investments be subject to corporate accountability measures that require recognition and enforcement of workers’ rights and advance shared goals such as decarbonization and environmental sustainability. An IPEF must promote our standards and interests, not undermine them.

CONCLUSION

Mr. Chairman, Ranking Member Crapo, members of the committee, my testimony today has only touched upon the issues that are involved in the design and development of the Indo-Pacific Economic Framework. Issues like overcapacity, currency manipulation and others deserve attention. I fully recognize that this is not a market access agreement and, therefore, there are limits to what it can achieve. However, we are not interested in an agreement that advances the interests of multinational companies without significantly advancing the interests of workers.

There is no question that we should be engaged in the region—we already are. The question is what the forward path is and what opportunities, and challenges, exist for our workers . . . our citizens.

In past years, trade and international economic initiatives have largely been fueled by foreign policy concerns. In many respects, the agreements have either failed to produce the promised benefits or, worse, have dramatically undermined U.S. interests. The admission of China to the World Trade Organization, facilitated by the grant of Permanent Normal Trade Relations, is the prime example of that failure.

In seeking to expand America’s role in the region and to strengthen our economic and national security interests we must not rush forward without paying proper attention to the needs and interests of our workers, and workers in the Indo-Pac countries. Workers here in the U.S. have increasingly used their voices to speak out on trade issues and their impact has been significant in politics and on policy. America’s leadership would be significantly undermined if another bad agreement is brought forward that cannot garner the support of our people.

⁶Malden, Kaj, Trends in U.S. Multinational Enterprise Active in China, 2000–2017, the U.S.-China Economic and Security Review Commission, July 1, 2020, at page 12, https://www.uscc.gov/sites/default/files/2020-06/US_Multinational_Enterprise_Activity_in_China.pdf.

Organized labor is committed to working with you, your colleagues, and the administration to try and develop the right path forward. We are not against negotiations, but we will fight for the interests of our members.

Thank you.

QUESTIONS SUBMITTED FOR THE RECORD TO MICHAEL WESSEL

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. Medical supply chains between the United States and Indo-Pacific countries are deeply intertwined. U.S. innovation in the biopharmaceutical sector provides an opportunity for leadership and engagement with our allies in the region. Moreover, U.S. leadership in this proves to be good for workers. In particular, the biopharmaceutical industry annually relies on 22 million union labor hours, generating \$774 million in wages.

Accordingly, one would expect the administration's worker-centered trade policy to support this innovative industry. Instead, the administration appears to have tentatively agreed to an outcome where the U.S. will waive its intellectual property rights under the WTO TRIPS Agreement with respect to COVID vaccines, immediately. An even broader waiver will follow in six months on other therapeutics and diagnostics.

The administration is amenable to this waiver even though existing producers believe they can produce 22 billion vaccine doses by June of this year. Moreover, the Pharmaceutical Industry Labor Management Association warned last May that "[t]he WTO TRIPS waiver will permanently ship . . . jobs overseas to countries that do not have the quality that we enjoy in the U.S."

Even before the waiver, your testimony to the House Energy and Commerce Committee stated that China's support policies are "driving out . . . many U.S. lines of production." You moreover asserted in other forums that China's regulatory system for drugs is opaque and presents safety risks, and that Russia and China hack our companies to obtain technological data for vaccines.

Given all of this, do you agree that the administration should not agree to the proposed TRIPS waiver without first preparing and publicly sharing an assessment on the waiver's impact on U.S. jobs and global vaccine access?

Do you believe that the waiver should extend to countries that systematically undermine U.S. intellectual property rights in the pharmaceutical sector?

Do you believe that the waiver should extend to countries that are proven unreliable suppliers to developing countries because their products are not proven efficacious, fail safety standards, or fail to meet contractual obligations?

It appears the waiver may extend 3 to 5 years. Do you agree that, at this time, the U.S. does not need to seek a waiver of that length?

Answer. The COVID-19 pandemic and devastating blow to the health of tens of millions of people across the globe requires emergency responses. More than 2 years after the beginning of the pandemic, too many people are still dying, being hospitalized, and suffering in countless ways. The health consequences, on their own, are enough to merit unique and untested responses. In addition, the pandemic has upended supply chains and has altered working conditions across the globe.

A limited waiver of intellectual property rights to address the pandemic is in our Nation's and the world's interests. Intellectual property is the lifeblood of innovation and is critical to supporting American production and employment but where so many lives are at stake, we must respond to those needs and do so quickly. Simply producing more vaccines here in the U.S. has not yet been sufficient as access to those vaccines is still limited in many parts of the world. A detailed economic analysis cannot begin to measure the human consequences of COVID-19.

Countries that have systematically infringed on our intellectual property rights should be subject to stringent controls in terms of access to the vaccine IP. Their serial violations of our rights should be taken into account but measures should be available to limit the impact and ability to harvest our technology for other gains. These considerations should also apply to countries that have failed to have the proper safety protocols and regulatory regimes in place to ensure the efficacy of their medical products. Protecting human life must be the core consideration.

The constant waves of new variants of COVID-19 merits flexibility in determining the length of any waivers. The CDC recently authorized a second booster for the vaccines from two companies. We have no idea as to the future course of this pandemic and should accept a waiver period that will help ensure that we can quickly produce and deliver the vaccines that are needed to protect people around the globe.

QUESTION SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. Thank you for coming today to testify on these important issues. I want to commend the Biden-Harris administration for their critical work on supply chain resiliency and security, as well as prioritizing our domestic production and manufacturing capacities. As you know, Senator Cornyn and I have been working to pass the bipartisan, bicameral National Critical Capabilities Defense Act, which sets up a committee to review offshoring of critical U.S. supply chains. As the pandemic has demonstrated, we need enhanced visibility on supply chain vulnerabilities. I hope that, as the administration develops the Indo-Pacific Economic Framework, they take into account the decades of offshoring and unfair practices by non-market economies that have left U.S. workers and businesses at a competitive disadvantage.

What tools and strategies do you see as critical to prevent further offshoring that threaten domestic supply chains and U.S. workers, leaving us dependent on foreign adversaries, like Russia and China for critical goods?

Answer. Policymakers and the public have come to understand the risks to America's economic, health, and national security emanating from the excessive offshoring of supply chains over the last decades. While the pandemic has brought this into sharp focus, the overreliance on foreign sources of supply and services have grown for some time. Significant portions of critical supply chains such as electronics, pharmaceutical, rare earths and other key components and products have been offshored and the reclamation of those sources of supply will take time and considerable resources.

This reliance does not only create economic strains, it also threatens critical capabilities. For example, rare earth minerals and resulting products, have largely been offshored with China controlling the vast majority of those products. China has shown its willingness to "weaponize" supplies of these products, as it did with Japan. China engaged in mask and vaccine diplomacy as a way of advancing the goals of the Chinese Communist Party. These actions make clear that we must carefully assess risks to U.S. interests and quickly respond.

The Trump and Biden administrations both engaged in actions to identify critical supply chain risks and identify actions that must be taken to abate these risks. Those are important initiatives. But much more must be done. An important action would be passing legislation based on the proposal you and Senator Cornyn introduced to include an outbound investment screening approach and which was included in the House America COMPETES package. The U.S.-China Economic and Security Review Commission in its 2021 Annual Report to Congress identified the goals of your legislation among its top ten recommendations. Congress should quickly act to adopt such an approach.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

Question. Chinese overcapacity of steel, aluminum, cement, chemicals and numerous other industrial inputs is part of a broader strategy to drive down prices and put international competitors out of business. Chinese state-owned enterprises and export subsidies hurt American businesses and workers. In Wyoming, our soda ash producers and steel pipe and tubing producers know firsthand how difficult it is to compete with China in the marketplace.

Where should the U.S. focus our efforts in the Indo-Pacific to counter China's export subsidies and overcapacity?

Answer. China has been seeking to export its overcapacity and undermine market-based producers around the globe and has been doing so through direct and indirect assaults on our producers and workers in a variety of sectors. In the Indo-Pacific, the most immediate threat from China's actions comes from transshipment of its products through countries such as Vietnam, South Korea, and others in an effort to circumvent and evade existing relief measures under U.S. law against unfair trade. China has also invested in many of these countries in an effort to create

production facilities that will utilize subsidized and dumped input to gain market share and opportunities. If an Indo-Pacific Economic Framework proceeds, it should include measures to engage partners in the region to respond and contain Chinese practices.

Question. The Chinese Communist Party continues to commit terrible human rights abuses. The Uyghurs, a religious and ethnic minority in China, have experienced brutal repression at the hands of the Chinese Government. They continue to be subjected to torture, imprisonment, and forced labor. At least 1 million Uyghurs have been put in internment camps by the Chinese Communist Party. Around 100,000 Uyghurs and ethnic minority ex-detainees have reportedly been used as forced labor in textile and other industries in China.

How effective have U.S. actions been at addressing the human rights abuses and the use of forced labor?

How can this framework improve our efforts to crack down on China and increase transparency and enforcement?

Answer. Efforts to address human rights abuses and the use of forced labor fostered by the Chinese Communist Party have been limited and inadequate. The result of limited commitment to enforcement and promotion of human rights is evident not only in the treatment of the Uyghurs and other ethnic minorities, but the attack on human rights in Hong Kong and across the mainland. Congress's passage of the Uyghur Forced Labor Protection Act was an important step forward but the implementation of that Act and the adequacy of the regulations now being drafted is still very much in question.

The actions of the last several years in this critical area, and in broader terms relating to concerns about supply chains supporting our Nation's needs have drawn needed scrutiny on China and other Nation's economic relationships with the U.S. We must learn from these efforts to identify risks in our supply chains ranging from critical products, to those that support efforts to suppress human rights, democracy and freedom and quickly respond.

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

The Finance Committee meets this morning to discuss the challenges and opportunities in stepping up our economic ties with countries in Asia and the Pacific. The Indo-Pacific region accounts for half the world's population. It's full of like-minded democracies and growing economies. As one of the gateways to the Pacific, Oregon has a lot to gain from this opportunity. One in five jobs in Oregon is trade-related, and those jobs pay better on average than non-trade jobs.

When you look across the Pacific, there are big markets for everything, from Oregon blueberries and alfalfa to manufactured goods to services. Raising environmental standards and ensuring robust labor rights in the region could also help level the playing field for American workers.

Last fall the Biden administration kicked off an effort to develop a wide-ranging economic framework with several countries in the region. There's a long way to go before any such framework comes together, so today's hearing gives this committee an opportunity to discuss key issues and priorities at the outset of the process.

First, the United States must fight for a free and open Internet. The U.S. sees the Internet as a venue for free speech and commerce. Authoritarian governments like China's do not. The competition between those two visions is a fight the U.S. must win. Otherwise, Americans get hit with a one-two punch. First, authoritarian regimes block American exports, and then they export their censorship laws to us.

The most significant example is the Chinese Government and its Great Firewall. When the Internet began to take off a few decades ago, Americans were the first ones out of the gate, launching companies with big, innovative ideas. The Chinese Government decided it couldn't compete on the level. Instead, it blocked the American firms, ripped off their ideas, and started clone companies under tight censorship rules. As those Chinese tech firms have grown, the reach of their censorship has grown too, with repressive effects on the American people.

The Chinese Government is not a part of these Indo-Pacific discussions, nor should it be. Even still, winning the fight for a free and open Internet requires the U.S. to push for digital rules that lock in freedom and openness with our allies at

every opportunity. There is bipartisan interest in fighting this censorship, so the committee is going to watchdog this issue in the months and years ahead.

Second, the U.S. must fight to raise the bar on labor rights. Democrats in Congress fought to make sure that the recent USMCA would be the strongest agreement in history when it comes to worker protections. It's essential to continue to build on that progress with enforceable labor obligations that fit the region and the task. This includes combating the scourge of forced labor, which is a top priority for this committee. The truth is, forced labor and economic oppression overall are part of the Chinese Government's economic model. It's not only morally repugnant, it's a major threat to American workers and jobs.

Senator Brown and I closed a major loophole in our forced labor law in 2015, and the challenge now is making sure that the law is fully enforced. While the U.S. continues to fight against forced labor in China, it's also essential to prevent a race to the bottom on labor rights in other countries too.

Labor rights and environmental protections often go hand in hand. For example, there's a big need for strong new rules on subsidized fisheries. In some parts of the world, highly subsidized and poorly regulated fleets are abusing workers and massively overfishing the waters. It's not sustainable, and everybody loses in the end, including the abused workers and Oregon fishermen who should never have to compete with forced labor.

Third, in all areas of trade policy, this committee also believes in the old adage "sunlight is the best disinfectant." In 2015, the Finance Committee raised the bar for transparency in trade negotiations, because the American people expect it and so do we. That means consultations with Congress and access to the text of any agreement before it's signed. These new discussions in the Indo-Pacific region will need to meet that transparency standard too.

I'll close on a broader issue. While the committee meets for this hearing, there's a terrible war happening about 5,000 miles to the east. The events of the last few weeks show the importance of our economic alliances, as well as the power they generate for the United States and our friends around the world.

In this unprovoked, unjustifiable war, Vladimir Putin has killed thousands of Ukrainians, displaced millions, and decimated cities. The U.S. has marshaled the collective strength of our economic allies to hit Russia with the most severe economic sanctions in history. Russia's economy is in freefall. The country is isolated. Putin is the head of a pariah state.

This is proof that strong economic alliances add up to a whole lot more than "soft" power. The U.S. is putting that power to work, punishing Russia's government and helping in the fight for democracy. The more economic allies America has, the better.

COMMUNICATIONS

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Statement of Michael G. Bindner

Chairman Wyden and the Ranking Member Crapo, thank you for the opportunity to submit these comments for the record. We have attached our comments to the Subcommittee on International Trade, Customs, and Global Competitiveness from June of last year, as well as our attachment on fighting forced labor.

Forced labor is also a concern outside of China. When poor people go to work, especially children, they accept conditions that are simply unacceptable in the developed world. International inspection, (which includes the American workplace), would help this. International employee-ownership, with transfer pricing based on a common market basket of worker goods, is the ultimate solution.

Let me reiterate—we are not exemplars in the matter of forced labor. It can be found on our soil. By the same token, we are not as “developed” as we think we are. American development is uneven. In some parts of the country, poverty and poor labor conditions are as common as any “third world” country. Meanwhile, some nations on the pacific rim are as advanced as we are. Just as there is a global upper class, there is a global middle class. We don’t have a monopoly on skyscrapers or fast food.

From the Indian subcontinent to southeast Asia and Indonesia, a key concern is climate change. When I shared that I was doing comments for this hearing with a friend in Jakarta, she responded with a map of global sea level rise. I had already seen it.

Warming in the United States is merely inconvenient. In the Indo-Pacific region, it will be deadly. Island nations and Bangladesh will simply be eliminated. This constitutes a large share of the global population. Java has 154 million people in the same space that the United States has 53 million in the Boston-Washington urban cluster. Visualize relocating them.

Sea level rise is more than the matter for academic debate (which is largely settled—climate change is an imminent threat). It is time to be serious people on this issue.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

Multilateral Approach to Trade Policy in the Asia-Pacific Region, June 22, 2021

The foundational question must be this. What strategy is the nation pursuing?

Are we putting consumers ahead of the interest of workers, both here and abroad?

Are we acting in the public interest or in the interest of commercial concerns? How are we balancing these two concerns?

What is the impact of our relationships on the environment, not only on warming but on the basic questions of pollution? Stopping the warming of polluted air and water still leaves us with polluted air and water.

Most importantly, how are donors affecting how we approach these questions? Who is donating to member political and to “public information” campaigns?

The next issue is tax policy. The easiest form of multilateralism is to comply with the rest of the world on taxing imported and exported goods. This means enacting a border adjustable value added tax. Goods that come in are taxed while goods that go out are not. The current system puts consumers over workers, encourages the exploitation of overseas workers and constitutes an unconstitutional export tax.

. . . The final question is to examine who really killed the TPP and why. Was this a case of an inept presidential candidate running amok or did he gain personally from raising the issue? Was it merely sparring between the major campaigns that killed the agreement or were there more organized interests behind the scuttling of the agreement?

This matter demands investigation. The intelligence community needs to follow the money (assuming it has not done so already). The Public Integrity Section of the FBI must take part. Even the Federal Election Commission has a role in this. The death of the TPP and the rise of the Belt Road are too much of a coincidence not to take a second look. Our democracy needs this question answered, even though many are not asking it. The Subcommittee must.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

Attachment from Finance: Fighting Forced Labor, March 18, 2021

. . . The other issue with China, as well as south Asia and the global south, is de facto slavery.

On the moral front, I am not sure we have room to talk. We hold migrants in stark conditions prior to deportation. If you doubt it, visit Lewisburg Federal Prison. Also stop in the Federal Prison Industries factory while you are there. Visit any food processing plant with large immigrant workforces and see how many workers were trafficked and how local law enforcement reacts when they decide they want to leave. Examine the plight of sex workers in the United States and see how many of their pimps have arrangements with local police.

Our best weapon is our example. As long as slavery exists in the United States, our moral voice is compromised. Again, I am not saying to ignore this situation. I am saying to go “all in” to really fight slavery. Also, call it slavery. On the same subject, examine the Chinese treatment of peasant workers at their factories. There is a two-level society, and American consumers benefit from this. Our commitment to abolishing slavery cannot live only in the fringes.

This is not to say that loopholes cannot be closed, although we must stop our own unfair trade practices as well. American food should not show up in countries just before harvest when doing so depresses the price of local agricultural products. Poverty begets slavery. Making others poor is an invitation to exploitation.

Poor farmers can either be individual or tenant farmers who are essentially peons. The drive for lower food prices for American consumers comes at a human cost. This is especially true when only one buyer dominates the market, as is sometimes the case for export to America (if not often). Poor factory workers never have access to collective bargaining. This factor also drives down wages in American factories—often those with immigrant labor bearing the brunt of bad working conditions, poor wages and lax enforcement. The major difference is that being blacklisted in the United States for attempting to organize is rarely deadly, as it can sometimes be overseas.

Improved enforcement takes money and the willingness to accept higher food prices. More inspectors with more authority are needed at home and abroad. Government or third party inspection is vital to make sure work is safe, fairly compensated and able to organize. We cannot expect worker protection in China or Guatemala if we do not insist on it in North Carolina and Alabama.

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The E-Merchants Trade Council, Inc. (EMTC) appreciates the opportunity to submit comments on “The Promise and Challenge of Strategic Trade Engagement in the Indo-Pacific Region,” which was the subject of a hearing before the U.S. Senate Finance Committee on March 15, 2022.

EMTC was formed in July 2021 to represent the interests of the e-commerce industry by creating a global community of micro, small and medium size enterprise (MSMEs) e-sellers, marketplace platforms, and service providers to resolve trade, tax and transportation challenges. EMTC's advocacy mission is to support national and international policies that simplify cross-border transactions of physical and digital goods. EMTC facilitates dialogue among the E-Merchant worldwide community and global regulators.

Since Chairman Wyden and Ranking Member Crapo emphasized digital trade, we hope the Committee finds EMTC's comments particularly relevant.

1. Policy objectives: What is the goal of strategic trade with the Indo-Pacific Region?

We understand that the Senate Finance Committee is concerned about the significant impact of China's engagement with the other countries in the Indo-Pacific Region through the Regional Comprehensive Economic Partnership (RCEP) which covers 15 countries.

As Kelly Ann Shaw noted in her testimony before the Committee:

[t]he Indo-Pacific is our backyard, filled with military allies and important trading partners. Two-way trade with the region totals upward of \$1.75 trillion. But when it comes to our economic vision, the concept of a free and open "Indo-Pacific" has turned into something we say, rather than something we do.

See, "The Promise and Challenge of Strategic Trade Engagement in the Indo-Pacific Region:" Hearing before Senate Finance Committee, Statement of Kelly Ann Shaw.

EMTC proposes that the Biden Administration and Congress consider that an Indo-Pacific Economic Framework (IPEF) combine the best elements of trade liberalization and national security. EMTC envisions an economic and security agreement that prioritizes:

- Market access for all industry sectors in all IPEF countries.
- Full implementation of the WTO Trade Facilitation Agreement for small-medium enterprises.
- Export control regime and security agreement.
- Digital trade.
- Supply chain resilience.

2. Market access for all industry sectors in all IPEF countries

EMTC strongly urges the Biden Administration to prioritize market access for all industry sectors in IPEF. Past administrations made the mistake of prioritizing certain industries over others (*e.g.*, pharmaceuticals over tobacco), and this had consequences for the failure to pass the Trans-Pacific Partnership (TPP). The Centers of Excellence and Expertise and Small Business Administration should create online access for SMEs to identify and interact digitally for opportunities in the Indo-Pacific region to reduce dependence on the current limited number of lower cost sourcing countries. Market access requires the development of trust through accountability in governance of the supply chain.

3. Full implementation of the WTO Trade Facilitation Agreement for small-medium enterprises

EMTC notes that the WTO Trade Facilitation Agreement has been in force for five (5) years. While several IPEF countries have already achieved 100% of implementation commitments (*e.g.*, Australia, India, Japan), other countries have not (*e.g.*, Vietnam).¹ IPEF may provide an opportunity for capacity building as a catalyst for countries to achieve 100% implementation. EMTC suggests that preferential financing or other trade benefits be contingent upon specific implementation goals.

4. Export control regime and security agreement

EMTC recognizes that Congress made significant progress in national security legislation with passage of the John S. McCain National Defense Authorization Act, Pub. L. 115-232 (August 13, 2018) by enacting the Foreign Investment Risk Review Modernization Act of 2018 (132 Stat. 2173) and Export Control Reform (132 Stat. 2208) as part of the same regime to work in concert with each other. EMTC believes that more IPEF countries should be enticed to become military allies of the United

¹See, WTO May—Progress on Implementation Commitments at <https://tfadatabase.org/implementation/progress/map>.

States with all the benefits that accrue for purposes of foreign direct investment in the United States and export controls for technology to IPEF members.

5. Digital trade

EMTC believes that IPEF should address both the cross-border shipment of physical goods ordered online (e-commerce) and treatment of digital goods (*e.g.*, cross-border digital transmission, data collection, data flows, data localization rules, etc.).

For e-commerce, EMTC strongly believes that prioritizing increasing the de minimis threshold for low-value shipments will go a long way to increase MSME participation in global trade, especially as e-seller exporters. Most of the countries in the IPEF have a de minimis level between \$0 and \$200 whereas the United States de minimis threshold is \$800. The United States was successful in getting Canada and Mexico to increase their de minimis in the U.S.-Mexico-Canada Agreement (USMCA).

Title 19 U.S.C. § 1321 on Administrative Exemptions has been part of the customs statute since the Tariff Act of 1930. Specifically, the de minimis threshold under 19 U.S.C. § 1321(a)(2)(C) for articles free of duty “in any other case” was initially set at \$1 and periodically raised by Congress—first, to \$5 in 1978, and \$200 in 1993 as part of the Customs Modernization Act, Title IV of NAFTA.² Congress increased the de minimis to \$800 recently in the Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. 114–125, 130 Stat. 223. As these amendments demonstrate, Congress has raised the de minimis every few decades taking into account the erosion of purchasing power as a result of inflation. EMTC believes this level for de minimis is appropriate given reports of inflation at over 6% for 2021 and in excess of 7.5% year-to-date. Congress should commit support for the current U.S. de minimis level and stress for near reciprocity in treatment of low value shipments in the Indo-Pacific countries within a limited phased implementation period.

We recognize that Congress has plenary authority to set trade policy and tax rates:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

U.S. Const. art. I, § 8, cl. 1. However, EMTC is alarmed by the possibility of Congress revisiting de minimis and lowering the threshold under 19 U.S.C. § 1321(a)(2)(C) as such policy instability makes it very difficult for companies to plan when they have organized their business operations based on the \$800 threshold level. It is precisely because Congress has only increased the de minimis threshold infrequently every few decades that makes the possibility of a change after only five (5) years from passage of TFTEA in 2016 greatly concerning to the trade community, particularly e-commerce marketplace platforms, e-sellers and companies that provide trade and transportation services to e-commerce companies.

Since the passage of TFTEA in 2016, the trade community faced the prospect of lowering the de minimis threshold under 19 U.S.C. § 1321(a)(2)(C) twice. First, during the negotiation of the USMCA in 2019, the Administration negotiated to raise the de minimis threshold for imports to Mexico (to \$117) and Canada (to \$150), but included a footnote:

Notwithstanding the amounts set out under this subparagraph, a Party may impose a reciprocal amount that is lower for shipments from another Party if the amount provided for under that other Party’s law is lower than that of the Party.

USMCA Ch. 7 Customs Administration and Trade Facilitation, Article 7.8.1(f) Express Shipments, footnote 3 at 7–7.³ As a result of the trade community’s advocacy efforts, Congress wrote a letter to the U.S. Trade Representative stating:

We strongly oppose any effort by the Executive Branch to lower the current \$800 *de minimis* threshold through USMCA implementing bill, including any amendment to 19 U.S.C. 1321 that would grant the Executive Branch additional authority to decrease or eliminate the threshold.

²See list of legislative amendments for 19 U.S.C. § 1321 at <https://uscode.house.gov/view.xhtml?path=/prelim@title19/chapter4&edition=prelim>.

³See https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/07_Customs_Administration_and_Trade_Facilitation.pdf.

The U.S. *de minimis* threshold is a policy recently set by Congress, which raised the threshold from \$200 in 2016. The current *de minimis* threshold still enjoys wide bipartisan support in Congress and throughout the manufacturing, retail, logistics, and e-commerce landscapes. In our view, it is neither necessary, appropriate, nor desirable to change this policy in U.S. law as part of the implementation of USMCA's requirements. In fact, we consider that such an effort would amount to an override of Congressional authority by the Executive Branch, and thus would be entirely inappropriate.

Letter from the Congress of the United States to Ambassador Robert E. Lighthizer, U.S. Trade Representative dated October 18, 2019.⁴

6. Supply chain resilience

As Congress considers several pieces of legislation to build supply chain resilience to counteract the reliance that the United States found itself in the difficult position of relying on China for many commodities (*e.g.*, active pharmaceutical ingredients) and products (*e.g.*, personal protective equipment) during COVID-19, IPEF should create incentives to manufacture critical products in countries that are U.S. military allies if they cannot be produced in the United States. One method of achieving resilience is to jointly map supply chains among the partners in the Indo-Pacific region to identify mutually beneficial chains to ensure consistent competitively priced supplies among the partners through multi-lateral trade agreements and *de minimis* programs.

Global trade volumes have increased and evolved since 1993, and the Congress has enacted a series of laws after the attacks of September 11, 2001, designed to balance the needs of the U.S. Government to collect data for supply chain security and the need to facilitate legitimate trade. See, Trade Act of 2002, Pub. L. 107-210, 116 Stat. 933 (August 6, 2002); the Security and Accountability for Every (SAFE) Port Act of 2006, Pub. L. 109-347, 120 Stat. 1884 (October 13, 2006); Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53, 121 Stat. 266 (August 3, 2007); and the Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. 114-125, 130 Stat. 122 (February 24, 2016). However, none of these laws were a holistic revision of the statutory framework that has been in place since the Tariff Act of 1930.

We understand that a primary driver of IPEF is countering China's unfair trade practices. To accomplish this, EMTC recommends focusing on creating a risk management framework that:

- Increases supply chain visibility and access through the use of transparent digital markets;
- Supports trade facilitation by simplifying cross-border transactions and clarification of data elements (country of origin calculations) given the competitive advantages this affords the U.S.;
- Targets risk management techniques to be introduced through entity-based risk management rather than an entry transaction-based system; and
- Advocates for the use of recognized governance standards and controls (ISO, COSO) to drive accountability and interoperability in ecommerce transactions that result in broad alignment on key common issues with similar agreed upon outcomes. This type of regime would allow for a better assessment of the control environment which would be more effective in verifying the integrity and resilience of the supply chain.

EMTC's recommendation is based on our experience with previous laws passed to increase visibility in the supply chain, such as the Lacey Act Amendments passed as part of the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, 122 Stat. 2952 (June 18, 2008) and Conflict Minerals included in the Dodd-Frank Wall Street Reform and Consumer Protection Act, 111-203, 124 Stat. 2213 (July 21, 2010). Neither of these laws achieved their policy objectives. In the case of the Lacey Act Amendments, the most significant enforcement action was the criminal enforcement agreement against Gibson Guitar Corp. with a penalty of \$300,000, \$50,000 payment to the National Fish and Wildlife Foundation, and civil forfeiture of \$261,844 worth of Madagascar ebony. In the case of the ban on importation of Conflict Minerals from Democratic Republic of the Congo, several companies instead found that their products contain North Korean gold. See, *Dozens of Firms Report N. Korea Gold in Supply Lines*, *Wall Street Journal* (June 4, 2014); *Banned North*

⁴ See letter at: <https://schweikert.house.gov/sites/schweikert.house.gov/files/2019-10-18%20de%20minimis%20threshold%20letter.%20Schweikert.%20Kind.pdf>.

Korean gold taints U.S. products reported in MarketWatch (June 5, 2014). Any U.S. law designed to keep certain commodities out of the U.S. ultimately fails because these are sourcing issues, rather than supply chain issues.

7. Conclusion

EMTC appreciates the opportunity to comment on the Promise and Challenge of Strategic Trade Engagement in the Indo-Pacific Region, and we are happy to discuss the ideas expressed above in more detail. The critical components to effective strategic engagement to drive regional prosperity in the Indo-Pacific Region are local accountability, regional interoperability and risk management based upon globally accepted standards. The Strategy cannot create barriers to trade by raising or creating various taxes, setting unachievable standards or commitments and expects to participate in a market of 1.5 billion people. Rather, setting achievable, transparent standards and working towards alignment on key issues with agreed upon outcomes not regulations will facilitate the growth of trust among partners and therefore resiliency to threats, increased trade among the participants and exclusion of less desirable partners (*e.g.*, PRC).

