

# THE PRESIDENT'S 2024 TRADE POLICY AGENDA

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HEARING  
BEFORE THE  
COMMITTEE ON FINANCE  
UNITED STATES SENATE  
ONE HUNDRED EIGHTEENTH CONGRESS  
SECOND SESSION

APRIL 17, 2024



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## **THE PRESIDENT'S 2024 TRADE POLICY AGENDA**

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**WEDNESDAY, APRIL 17, 2024**

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

The hearing was convened, pursuant to notice, at 10:03 a.m., in Room SD-215, Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the committee) presiding.

Present: Senators Stabenow, Menendez, Carper, Cardin, Brown, Bennet, Casey, Whitehouse, Hassan, Cortez Masto, Warren, Crapo, Grassley, Cornyn, Thune, Cassidy, Lankford, Daines, Young, Barrasso, Tillis, and Blackburn.

Also present: Democratic staff: Sally Stewart Laing, Chief International Trade Counsel; Joshua Sheinkman, Staff Director; and Tiffany Smith, Deputy Staff Director and Chief Counsel. Republican staff: Molly Newell, International Trade Counsel; 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. Ambassador Tai, thank you very much for joining us this morning to discuss the President's 2024 trade policy agenda.

I am going to start by touching on some of the ways in which the Congress and the Biden administration can work together to build a trade agenda that will supercharge America's diverse economic base and create good-paying, innovative jobs across Oregon and the Nation.

I will start with trade enforcement, because without trade enforcement, our trade laws are not worth the paper that they are written on. India's wheat subsidies, for example, distort prices and make it harder for Oregon farmers to compete in the Asian market. Mexico's illegal fishing practices are hurting the environment, and its harmful energy regulations are undermining our clean energy suppliers. China has a rap sheet of unfair subsidies and practices so long that if I were to go through it, we would be here until dinner time. So I am going to spare everyone that filibuster.

Every single one of these unfair practices by foreign countries is directly hurting workers and companies in America, including in my home State. There is a lot more USTR can be doing, in my view, with the tools it has, and we want to work together to raise issues directly with trading partners, starting dispute settlement,

or opening 301 investigations into unfair trade practices. In my view, that is the only way to hold trade cheats accountable and level the playing field for American workers and businesses.

The second issue: trade barriers. Our economy thrives when our workers can make stuff in America and grow stuff in America and add value to it in America, and then ship it all over the world. But you just cannot do it with all these barriers.

In my home State, one out of four jobs relies on exports. We have world-renowned exports, from wheat to potatoes to wine to high-tech electronics, and everything in between. But the success of Oregon's farmers and workers depends on the administration's knocking down barriers to help them compete in the global market and get their products on shelves.

That is why, in addition to enforcing the rules on the books to hold trade cheats accountable, I want—working closely with the administration and USTR—to play offense. It is not enough to sell domestically; the United States has to expand opportunities in the global market for American exporters across all our industries.

The negotiations with Taiwan, Kenya, and Indo-Pacific countries could net big wins for our exporters in agriculture and manufacturing. But we are going to have to work with the administration to push even harder to crack down on tactics like unfair labeling, duplicative testing requirements, and ag regulations that are not supported by science and are designed to put American farmers, workers, and ranchers at a disadvantage.

Before I wrap up, I also want to note, particularly in my State, how important it is that we have a standard for high-tech innovative industries. The United States needs to be a leader in setting the rules of the road for digital trade so our creators and innovators get a fair shake in foreign markets. We are not going to take a back seat to anybody in the process when it comes to privacy, security, and antitrust enforcement. While lawmakers look to domestic tech regulation, we must also push for digital trade rules that are going to protect a free and open Internet, help small businesses, and push back on the China model of digital surveillance and censorship.

I am very pleased to see that the White House is taking charge in this issue, working closely with all in the administration and vowing to work with the Congress on this issue. There are diverse stakeholders and agencies, so I think the White House position of a whole-of-government approach is a wise one. I look forward to working on a digital trade position that reflects the needs of American workers, businesses, and consumers.

The American people, finally, deserve to know what the government's priorities are with regard to trade policy. I am concerned—and I made this point to a number of people in the administration. I think that the administration needs to do more to work with the Congress and make sure the American people are not kept in the dark.

To this end, I want to make sure that the USTR and other parts of the Biden administration are clear and straightforward with Congress and the public. When you take meetings with foreign officials, it is not enough to say, well, there was a range of bilateral concerns raised. That does not tell my constituents a whole lot

about trade. We need to be told what trade barriers the USTR and other parts of the administration are trying to break down, and how this is going to help American workers and businesses.

If negotiators are meeting with the Japanese, tell us if you are pushing to get Oregon potatoes on shelves in Japan. When officials engage with Indonesia, tell us if you are pushing against unfair licensing requirements that hurt Oregon dairy farmers. If there are negotiations with Kenya, tell us how you will push them to improve their environmental and labor laws or bring down barriers to biotech products. Fishermen in Newport and ranchers in Prineville, they are asking me to tell them exactly how the administration and this trade office are helping their businesses thrive in the global market.

So, we need more light shed on trade policy in America, and we are going to pursue that diligently. Enforcing laws on the books and making our government's trade policies clear is a good place to start, finally, in leveling the playing field. I look forward to today's discussion and working closely with the administration and all our colleagues on both sides of the aisle of this committee on trade matters.

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, and welcome, Ambassador Tai.

I, first of all, want to say I agree wholeheartedly with the chairman's opening statement and his comments. As a matter of fact, Senator Wyden's first two issues that he raised are the first two issues in my first paragraph.

I read the President's trade agenda carefully. If we measured wisdom by word count alone, President Biden's trade policy agenda would be very wise. If we measured it in terms of creating meaningful opportunity for Americans, it is profoundly misguided, particularly in terms of enforcement approach and negotiating ambitions.

This administration's enforcement record is the weakest of any administration in 25 years. Although the administration highlights regularly using the USMCA rapid response labor mechanism to help Mexican workers, that mechanism cannot supplant bringing cases to increase market openings for American workers. Such cases are sorely lacking. The USTR has yet to self-initiate a single enforcement action against China, period, whether at the WTO or under section 301 or under the Phase One deal. Nothing. Today's announcement accepting a section 301 shipbuilding petition, which could take a full year to complete, does not make up for over 3 years of inaction on China.

When it comes to discriminatory treatment, our trading partners now expect USTR to simply note that it is considering all options—as it did with Canada's decision to move forward with its discriminatory digital trade services taxes—and further expect that USTR's consideration of all options is likely to be indefinite. For example,

USTR has not advanced our case against Mexico's discriminatory energy policies for nearly 2 years now.

Administration plans for negotiations fare no better than they do for enforcement. For the fourth year in a row, the administration's trade agenda provides no plan for real negotiations to improve market access. Instead, the administration lauds the Inflation Reduction Act, asserting that our workers need to be shielded, subsidized, and micromanaged through industrial policy, even if it entails massively expanding our national debt.

That is not only misguided, but as former Joint Chiefs of Staff Michael Mullen noted, our debt is in fact one of the top national security threats to the United States. What we need is market access.

I recently traveled to Asia, the United Kingdom, and to other partners. Our partners want to make real deals with high standards. They want to trade with us rather than China, and they want to do it now. We should want that too, because each day we wait is another day that Americans fall further behind our competitors, including China.

Make no mistake: tariffs matter, particularly for small businesses like our farmers. Australia and New Zealand each negotiated free trade agreements with Thailand, and since then, demand for premium U.S. beef fell by 30 percent because our cattlemen face a 50-percent tariff while those two partners face none.

Whether it be Idaho potatoes and dairy, Iowa soybeans and pork, South Dakota wheat, Texas cotton and beef, or Washington State apples, our farmers are the best in the world. That is precisely why a large number of farm groups wrote to you, Ambassador Tai, on Monday, asking for a real trade agenda and advancing dispute settlement reform so that we can open markets for them.

United States manufacturing, innovation, creative, and tech industries are second to none. If the administration will not negotiate tariffs, it should at least help workers in these industries by negotiating critical rules on technical barriers to trade, intellectual property, and key digital provisions such as nondiscrimination and free data flows.

Thus far, USTR has failed to do so in any of the so-called framework negotiations, and the trade agenda indicates this will continue. This benefits China, which is aggressively participating in international standard-setting bodies, pushing technology transfer, and supporting data localization by countries, which could require our companies to store data on servers that are produced by Chinese companies such as Huawei, rather than on ones we host in the United States.

The proposals the Trump administration crafted in coordination with this committee for USMCA, for technical barriers to trade, for intellectual property, and for digital trade, ensured that we could regulate and also rise to China's challenge. Simply abandoning coordinated and reasoned proposals without consulting Congress is a profound mistake. I urge my colleagues to remember when this administration told us that comprehensive congressionally approved trade agreements are a 20th-century tool. Its vision of the future is piecemeal, through frameworks done as executive agreements devoid of any real enforcement mechanisms.

Ambassador Tai, the members of this committee know that attempts to bypass Congress are neither new nor groundbreaking. And they also know that such efforts are not sufficient or truly effective in creating the types of opportunities our citizens deserve. It is well past time this administration begins working with Congress to meaningfully expand market access opportunities.

Thank you, Mr. Chairman.

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

The CHAIRMAN. I thank my colleague.

So, Ambassador, you can already tell 15 minutes into the discussion today, that a Democratic chair and a Republican ranking member are going to work in a bipartisan way on these issues, and we are interested in doing it with the administration. So please proceed, and we will make your prepared remarks a part of the record in their entirety. Welcome.

**STATEMENT OF HON. KATHERINE C. TAI, UNITED STATES  
TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE  
PRESIDENT, WASHINGTON, DC**

Ambassador TAI. Chairman Wyden, Ranking Member Crapo, and members of this fine committee, good morning. And I appreciate the opportunity to discuss with you the President's trade policy agenda.

The Biden-Harris administration believes strongly that our economic policies should work to strengthen our middle class. In order to give all Americans a fair shot, we need to ensure broad-based access to economic opportunity, and our trade policy should be a tool that works together with our other economic policy tools to reach that goal.

This is important because trade policy has not always worked that way. To respond to the many changes occurring in the modern economy, the world economy, and the world in general, we must bring a more open mind and be willing to innovate in the way that we approach trade policy, by questioning and testing old assumptions, revisiting norms, and thinking both creatively and strategically.

In this new era, we increasingly measure success and progress by the degree to which we are delivering real benefits to more Americans across our society, no matter where you live or whether you have a college degree. Our approach is one that addresses and advances the interests of all parts of our economy, and does not pit Americans against Americans.

So, let me give you some examples of what middle-out, bottom-up trade policy looks like. First, we are using trade to empower workers, because we know that they are the backbone of our economy. Their success is quite literally our success. This is about building our middle classes together with other countries, and not pitting them against each other.

This is why we have prioritized strong labor commitments in our ongoing trade initiatives, including in our negotiations with Kenya and Taiwan. This is also why we have been so focused on utilizing the USMCA's rapid response mechanism, a key worker-focused fea-

ture of the modernized and the reformed North American Free Trade Agreement that has garnered robust bipartisan support.

Since 2021, we have used the RRM 22 times at facilities that span various industries, from automotive and garments to mining and services. These cases have directly benefited 30,000 workers through new independent unions, new collective bargaining agreements, higher wages, back pay, and reinstatement for wrongful termination.

Advancing worker rights abroad is what strengthens and empowers workers here at home, because only then can our workers compete fairly and thrive in this competitive global economy. Our enforcement efforts are also motivated by the principle of inclusivity; that is, ensuring that all Americans enjoy the benefits of trade.

With respect to the producers and the workers in our steel industry, last year we secured a victory at the WTO that determined the illegality of the retaliatory tariffs that the PRC and Turkey imposed in response to the U.S. section 232 national security actions on steel and aluminum.

Separately, through the USMCA, we are actively championing the interests of our farmers and agricultural producers. We have pursued two cases now against Canada's dairy tariff rate quota allocation measures, and we are currently challenging Mexico's restrictive measures on biotech corn before a panel.

We are also opening markets for hardworking American families and communities, especially our rural communities. Through negotiations, our administration has secured over \$21 billion in new agricultural market access in the last 3 years. For example, after the U.S. and India terminated seven WTO disputes, India agreed to remove retaliatory tariffs on several U.S. products.

This means improved access for chickpeas, lentils, almonds, walnuts, and apples, benefiting farmers across our country, including in Michigan, Oregon, California, and Washington. This means more market access for turkey, duck, blueberries, and cranberries, benefiting the farmers in North Carolina, Pennsylvania, Virginia, Massachusetts, and Minnesota.

Trade should work for all Americans. Our goal is to stop pitting Americans against each other in our trade policy. This is why we are taking unprecedented steps to incorporate more voices into trade policymaking. Just as you stay connected with your constituents in your States, I have made a point of traveling the United States to hear from workers, farmers, small businesses, and Tribal leaders directly, to better understand their hopes and aspirations, and learn how our trade policy can address them.

I am also meeting with civil society and labor leaders, in addition to the big corporations and trade associations that have always had access to USTR. My job is to represent the entirety of the United States, not just those who can afford the Washington lobbyists.

Our vision for a fairer future also applies to the international arena, because it turns out that we all want to grow our economies from the middle out and the bottom up. This is what drives our work at the WTO and in our ongoing negotiations with Taiwan, Kenya, and the Indo-Pacific. We are focused on economic engagement and collaboration efforts to drive durable economic growth

and build our middle classes together, instead of always pitting them against each other.

Over the course of the last several years, it has become clear that, domestically and internationally, we need an economy that is more resilient. That means supply chains that can adapt and rebound more quickly and easily from shocks and crises. Developing the tools to reduce dependencies and vulnerabilities, and to incentivize stronger supply chains, is a major priority for USTR, especially this year.

We are gathering public input and will hold several public hearings on this. This effort will allow us to draw upon a comprehensive set of perspectives and experiences to help us identify more trade policy solutions. Part of this exercise includes developing more effective countermeasures to the PRC's unfair practices and the negative effects of those practices on our economy and workers.

I want to end on this note. For many years now, we have seen how the PRC's nonmarket policies and practices left unchecked have devastated many working communities and industries across our country, including many in your States: steel, aluminum, solar panels, batteries, electric vehicles, and critical minerals, just to name a few sectors.

As the President said during his State of the Union address, this administration will continue to stand up to the PRC. And we are prepared to use our trade tools in this effort, including through new section 301 actions and our 4-year review of the China section 301 tariffs, which assesses ways to deploy tariff measures to more effectively and more strategically address the harms from China's forced technology transfer policies, such as cyber theft and cyber hacking, and related imbalances and inequities in the U.S.-China trade relationship.

This is also why, after close review of the section 301 petition I received from five national labor unions, I have now initiated a full and thorough investigation of the PRC's longstanding efforts to dominate the maritime logistics and shipbuilding sectors. The unions' petition raises serious concerns about harms to U.S. workers, the shipbuilding industry, and U.S. resilience.

This administration is fighting every single day to put working families first, to rebuild American manufacturing, and to strengthen our supply chains. We are using trade to give everyone a fair shot, while working with our allies and partners.

I want to especially thank my USTR team serving in Washington, DC and around the world for their unwavering devotion and determination to serve all of America.

Thank you.

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

The CHAIRMAN. Thank you very much.

I am going to pick up—lots to cover on this China issue that you touched on at the end. Obviously, China has just thrown money at everything, from solar panels to semiconductors, doing everything they can to drive American competitors out of business with a flood of cheap imports.

So my own view is, I think it was a good thing that you and the President opened a 301 investigation into the unfair trade practices

in China's shipbuilding industry, with the formal petition from the Steelworkers, AFL-CIO, and others, obviously being very, very important in this issue.

My question on 301 is—Congress gave you all the power to self-initiate 301 investigations into unfair trade practices. And my question to you is, Ambassador, how can you all use 301 more proactively to investigate and take action against China's unfair subsidies in some of these areas that I mentioned: the semiconductors, EVs, batteries, and solar?

It is good what you and the President did here just recently in opening the shipbuilding one, but I want to see more proactive work from USTR, because Congress gave you all the power to do that. What can be done there?

Ambassador TAI. Senator Wyden, as you know very well, section 301 is perhaps the most important enforcement tool at USTR. When we encounter challenges throughout the world, whether we advance them through negotiations, through enforcement actions under our FTAs, or separately outside of our trade agreements through a section 301 action, this is one of the most important tools that we have to bring to bear.

So I can assure you that we value this tool very much. We also look to appropriate tools for resolving the problems that face us. In this particular case, with respect to shipbuilding, this has been a longstanding concern in the U.S. economy.

If you look at the petition, since 1975 U.S. shipbuilding capabilities have eroded not just significantly, but entirely eroded. We are eager to take up this investigation, to follow the rules of section 301, and to work on determining, first, whether or not there have been harms to the U.S. economy.

I can assure you that, with respect to China especially, given the scope and scale of the challenge that we have with respect to China's nonmarket policies and practices, that section 301 remains very much at the forefront of our minds, and in the development of our posture.

The CHAIRMAN. Let me see if I can get a couple more questions in. We want to follow that up with you, because I want this used in the maximum fashion possible, particularly with you all initiating, because that is why we gave you the power.

As you know, up here we are very proud of the Brown-Wyden part of the USMCA. I understand that you all have initiated 22 cases using the rapid response mechanism to enforce the rights of our small businesses and our workers. Yet at some point, this expanding number reflects a systemic failure of Mexico to enforce the labor laws, and USMCA.

Have you all considered moving beyond our rapid response and looking for more compliance through a state-to-state USMCA dispute on labor enforcement?

Ambassador TAI. Well, Senator Wyden, before we started regularly calling this mechanism the rapid response mechanism, as you have called it, our shorthand name for this was the Brown-Wyden mechanism. So I am delighted that you are following the developments in our implementation and in our active use of this tool very closely, because you should absolutely see this as very much your contribution to modern trade policy.

There are multiple tools in the USMCA. There is the rapid response mechanism. As you also know, there is an independent Mexican labor expert board that assesses the state of the overall Mexican labor reform on a regular basis, providing expert assessment. As you also well know, the Mexican labor reform that came together with the USMCA coming into effect was always an ambitious project. That was even before COVID became part of our world.

We remain very, very plugged into the progress that Mexico is making, but also the continued challenges and their implementation. And so, yes, we have many tools under the USMCA, including regular reports from USTR to Congress. So, yes, all of the tools are available and are ones that we consider using.

The CHAIRMAN. I am really out of my time, but I just want to get one other matter in very quickly, because Democrats and Republicans are very much united on this, and that is dealing with Mexico's discriminatory licensing processes in the energy field.

I mean, we really are getting ripped off by Mexico. You all have started consultations with respect to these discriminatory actions. But when do you anticipate taking the next step and bringing a formal case over Mexico's protection through these discriminatory licensing practices harming our workers, and particularly the ability to make sure that we tap the full potential of the Clean Energy for America effort, which was written essentially in this room?

Ambassador TAI. Senator Wyden, we look at that actively every single day. The focus is on how to be most effective in resolving the challenges for our companies. We remain in close conversation with our companies, and in terms of our decision-making and our timing, let me assure you that it also reflects the appetite of our companies in terms of when and how to move forward.

The CHAIRMAN. Senator Crapo?

Senator CRAPO. Thank you, Mr. Chairman. And by the way, I also agree with your questions as well as your opening statement.

I would like to talk about section 301, the 301 investigation, not the petition that you just accepted. This investigation has now been going on for 2 years, and it is my understanding that President Biden has recommended that there be a tripling of our tariffs on steel and aluminum for China, but that there may be some kind of an interagency disagreement between the USTR and Treasury about tariffs.

And the question I have is, when are we going to get an answer? When will this investigation end and a decision be made?

Ambassador TAI. Senator Crapo, I appreciate this question as well, because obviously, this is something we have been working very hard on. Just a couple of corrections. I think that what you are talking about is the review of the existing tariffs that we kicked off in the fall of 2022. So we are calling it, shorthand, the 4-year review. It is an unfortunate shorthand, because it is a review that starts at Year 4, not a review that lasts for 4 years, first of all.

Senator CRAPO. Understood.

Ambassador TAI. To your point about 2 years, it has really been about a year and a half. But given the President's calling on USTR to consider specifically the tariff adjustments on steel and alu-

minum trade with China, I think that you should take that as an indication that we are in very, very advanced stages of our inter-agency work, and that I expect that we will come to a conclusion very soon.

Senator CRAPO. All right; I appreciate that. I hope that that means very soon.

Next, as you know, the National Potato Council expressed disappointment with how Japan's ban on U.S. potatoes appeared in the National Trade Estimate, because it did not capture the full extent of the problem. A number of your stakeholders also took issue with this year's NTE because of your decision to cut out a number of trade partners barriers, by seeing if those barriers were in their public interest.

Did you take the opportunity to discuss the ban of U.S. potatoes in your recent conversations with Japan?

Ambassador TAI. Senator Crapo, now this is an area of shared interest and dedication with respect to potatoes, and Idaho in particular. So yes, absolutely. USTR has raised market access for table-stock potatoes in all four meetings of the U.S.-Japan partnership on trade, most recently in December 2023.

We will continue to press Japan to advance the request in a timely and science-based manner. And I also want to let you know that, in the person of our very dynamic Ambassador to Japan, Ambassador Emanuel, USTR has the strongest and most active of partners in advancing this particular issue.

Senator CRAPO. All right; thank you. I am betting that Oregon potato growers agree with that, and we will continue to raise this issue. I want to move on to digital services taxes.

Recently, when you were asked about discrimination against U.S. technology companies, you said, "How many of these American companies are actually really American companies, because they are actually paying taxes there as opposed to paying taxes here." Actually, those companies pay billions of dollars of taxes here, but they are paying more overseas because of discriminatory digital services taxes, or DSTs.

If you feel that it is problematic that U.S. companies are paying more taxes overseas, will you then commit to this committee that you will actually take action against DSTs, rather than just consider it? And if countries continue to move forward on implementation of their DSTs, will you take action?

Ambassador TAI. Senator Crapo, with respect to these tax issues, this is one of those areas where I always have to acknowledge the jurisdiction of the Treasury Department, although Senate Finance gets jurisdiction over both tax and trade.

I think one of the challenges, as I understand it, working this issue, is reflected in that Pillar 1/Pillar 2 negotiation that Secretary Yellen has led, to address that arbitrage over international minimum taxes, to try to level the playing field. So, I know that this is part of a larger conversation.

With respect to USTR, our role in the digital services taxes partnership with Treasury is really triggered around the architecture of a lot of these DSTs, where USTR has run section 301s, assessed discriminatory impacts of these DSTs, and moved forward with respect to articulating possible sanctions.

Those sanctions remain suspended. They remain part of our tool-kit, and we remain in very close touch with our Treasury Department colleagues, and in monitoring what is happening in these jurisdictions. So, I will just assure you that we are looking at this very carefully, and we value our tools with respect to the leverage that they give us in leveling the playing field.

Senator CRAPO. Well, are you telling me that Secretary Yellen is the one I should be asking this question to?

Ambassador TAI. What I am telling you is that, with respect to DSTs, it is an issue where USTR and Treasury authorities are both implicated.

Senator CRAPO. I think I understood you to say you are still looking at it?

Ambassador TAI. We are prepared to use the tools that we have.

Senator CRAPO. I hope you do.

The CHAIRMAN. Thank you.

Senator Stabenow will go next, and Senator Grassley will go after Senator Stabenow.

Senator STABENOW. Yes; good morning. It is wonderful to see you again and to have you with us, and to talk about such important issues, both in terms of markets but also fairness and what needs to happen for American workers, businesses, farmers, and so on.

I appreciate your efforts and the President's leadership as we work to support our trade laws, both trade enforcement and leveling the playing field for our farmers.

We just heard about potato growers. We have other issues, as you know, with our farmers that need to be addressed, as well as our manufacturers. I just want to lend my voice to the fact that the 4-year review of section 301 tariffs on Chinese products needs to be concluded as quickly as possible in favor of both either extending or increasing tariffs on Chinese goods, while we at the same time focus on the interests of American workers.

And I want to speak to something very specific and important to us in the auto manufacturing sector right now, because in Michigan we know just how critical it is to level the playing field. Our State, as you know, put the world on wheels. We are very proud of that.

We have the best auto workers in the world, and they are ready to build—and are building—the vehicles of the future right here in America. There is no doubt in my mind that we can outcompete anybody in the world, as long as the rules are enforced and there is a level playing field. But the Chinese Government's unfair trade practices, including heavy, heavy subsidies for Chinese automakers, pose a significant threat to our American manufacturing capacity and to our consumers—and to our national security interests, I would add.

Allowing artificially low-priced Chinese EVs to flood the U.S. market would cost thousands of jobs and endanger our shared goal of ensuring that the electric vehicle transition is led by American workers. Importing Chinese EVs, many of which are equipped with highly connected electronic components and autonomous driving technologies, also creates an unacceptable national security risk.

It is essential that we protect our consumers, American businesses, our workers, and our critical infrastructure from being ex-

plotted by Chinese state actors, as we know. And so, how does that fit into the President's trade agenda?

Ambassador TAI. Senator Stabenow, it is wonderful to see you. I think that your State is actually one of the best examples of why we are advancing a different kind of trade policy. Michigan is a great agriculture-producing State, and also a great State with an industrial contribution to America and the world.

The specific challenge of EVs is actually a part of a larger pattern that we have seen over and over and over again. First it was steel and aluminum, then it was solar panels. Again, where? I think in both Michigan and Oregon and other places in the U.S., we had a growing, innovative industry in the early 2000s that got washed out by exactly these same anticompetitive practices: enormous amounts of state support fostering an overproduction and overcapacity that brought world prices down so far that no one could compete or survive.

So we know that we are facing this again on autos and EVs. We have to take action. Leaving these types of policies unchecked—we already know what is going to happen. We are going to lose the capacity to produce and compete, and as we lose that capacity, it is so hard to rebuild that capability.

So we have to take early action, decisive action, and we have to be really clear about why we are taking the action. We are looking for a level playing field, because the current playing field is not level. For all the talk about free trade being the ideal, it is a beautiful concept. But it is also a beautiful dream, because the world economy is not characterized by free trade, in particular when you look at the practices that are leading to the dynamics we are seeing on autos and EVs.

So, Senator Stabenow, this is a significant animating principle for us as we look at our tools at USTR, how we support American manufacturing industries, American manufacturing workers, how we can continue to innovate. But it is also an animating principle on how we look at how we can partner with other countries and economies who share our structures, share our values, both politically and economically.

Senator STABENOW. Let me just say, as I close, two things. One, we are right now competing—and this is happening in other areas—but with the Chinese Government. It is not Chinese businesses. It is the Chinese Government against American businesses and American workers. So it is absolutely critical—and with my ag hat, I will not go into questions, but I know there are a number of agriculture stakeholders that sent you a letter earlier this week, urging you to commit to an aggressive agriculture trade agenda.

It is so important that we have those markets. Secretary Vilsack, at the request of Senator Boozman and I, has added robust funding to marketing of our agricultural products, and we need those markets, and we need the trade agreement. So I appreciate your focus on that.

The CHAIRMAN. We are always glad to have our ag champion in the house. And another Senator who cares deeply about agriculture is Senator Grassley.

Senator GRASSLEY. Welcome, Ambassador.

I would like to discuss a prime example of this administration's abdication of leadership on trade. There has been a bipartisan agreement on this committee on critical issues such as free cross-border data flow, data localization, open markets, and intellectual property protection. However, this has been undermined by actions of this administration, so other countries then end up setting the rules on digital trade. These bipartisan principles are the foundation of the digital economy, and U.S. companies enjoy a significant competitive advantage relative to foreign competitors.

Our competitors repeatedly seek to discriminate against U.S. companies and impede access to their markets. Yet the Biden administration has pulled back from negotiations on digital services trade and rejected the long-term, long-held, bipartisan principles against discriminatory practices of our partners.

USTR has abdicated its leadership role on this important issue. So why is USTR allowing other countries to set the rules that will put American companies at a disadvantage? This cannot be consistent with USTR's mission.

Ambassador TAI. Senator Grassley, it is good to see you. Thank you for the question, and thank you for the opportunity to address this concern that you have. I have heard it quite a bit, and I welcome every opportunity to explain USTR's approach.

You are right with respect to ongoing negotiations around data flows provisions, data localization provisions, and source code provisions. We have pulled back these longstanding proposals that we have made in those negotiations to make adjustments, in large part because we are connecting the dots.

I would like to encourage all of us to connect the dots, because in addition to being on the Senate Finance Committee, you have also been a long-time leader on the Senate Judiciary Committee. I know, for instance, that you are a cosponsor of the American Innovation and Choice Online Act, AICOA, which the administration has expressed support for.

I also know that you are a cosponsor, along with many of your colleagues on both sides of the aisle here on Senate Finance, of the Kids Online Safety Act, which addresses data security for children's data in the digital economy and in the digital sphere.

What I wanted to reflect to you is—when you look at those long-time, long-term developed proposals in the digital trade negotiations on data—that those provisions are still largely based on an understanding that what we are dealing with is data as a facilitator of traditional trade transactions, goods transactions; data as a facilitator of e-commerce, data traveling along with the information that has to be traded in order for goods to move across borders.

And that was certainly the case 20 years ago. But today in 2024, what we have seen is that data has become the commodity itself, that data has become the powerful thing that has value, that enables more innovation, that enables—when you accumulate enormous amounts of it—technological innovation like generative AI.

The issue is, who can have access to that data, and also, where does the data come from? It comes from ordinary Americans. It comes from you, it comes from me, it comes from your constituents, it comes from our kids. And so, with respect to the security of that data, the attempts that we see up here on the Hill to assert the

rights of ordinary Americans with respect to that data as a trade matter——

Senator GRASSLEY. Can you fill in the blanks in writing, because I have to ask one more question?

Ambassador TAI. All right. Can I just finish? I will just finish my sentence. We feel very strongly that our provisions and our trade negotiations should reflect the debates that are happening here, and the legislative efforts that you all are making.

Senator GRASSLEY. The last time you appeared before this committee, I urged you to negotiate lower tariffs on ethanol with Brazil. While I understand that you are currently negotiating this matter, the results have been lackluster. Brazil increased its duty on ethanol this year from 16 to 18 percent and continues to enjoy importing its ethanol tariff-free.

This ethanol competes with home-grown ethanol and California's low-carbon fuel standard, but also in sustainable aviation fuel. What is the administration doing to press Brazil to lower its tariffs, and what concrete measures is the administration considering in the negotiations?

Ambassador TAI. Senator Grassley, your position on ethanol has been crystal clear from Day One. This is a high priority for the administration as well.

I am currently also extremely concerned about Brazilian market access restrictions. We are in coordination with USDA, including at political levels, actively engaging with our counterparts in Brazil on market access barriers to U.S. ethanol, including those tariffs and regulatory barriers that you are talking about. Our objective is to ensure that U.S. ethanol can once again compete on a level playing field with domestically produced ethanol in Brazil.

In my latest engagement with my Brazilian counterpart, which happened about a month and a half ago, the Brazilians indicated to us that they understood at all levels, including from the White House, the prioritization of this issue with them, how important it is to us and our economy, and their desire to find a way to accommodate this priority.

So we are actively working on it, and the strength of your voice on this matter is an asset to us.

The CHAIRMAN. The time of my colleague has expired. Senator Cornyn is next.

Senator Cornyn?

Senator CORNYN. Ambassador Tai, I had to do a double-take on the title of this hearing. The title says "The President's 2024 Trade Policy Agenda." I really think it would be more accurate to say, "The President's 2024 Non-Trade Policy Agenda."

The reason I say that is because the administration is not currently negotiating any free trade agreements, are you?

Ambassador TAI. Not in the traditional sense, Senator Cornyn. We are negotiating new types of trade agreements.

Senator CORNYN. So, the way you are negotiating these so-called frameworks lacks the tools for any market access that a trade agreement would provide, along with enforcement actions that could be taken to enforce that access; correct?

Ambassador TAI. Well, Senator Cornyn, this is an opportunity for me to explain again——

Senator CORNYN. No, you do not need to explain again. You need to answer my question.

Ambassador TAI. The traditional FTAs that we negotiate continue to pit Americans against Americans and sectors against sectors, in a way that is entirely unsustainable, as we have seen in our recent experience. We know we cannot—

Senator CORNYN. But I know you filibustered Senator Grassley, but you are not going to filibuster now. The point is that, absent trade agreements, there is no enforcement mechanism to make sure that American farmers, businesses, and workers are not harmed by denial of market access to these countries that are denying that access, that are imposing huge subsidies to prefer their products as opposed to ours. There is no mechanism for enforcement, is there?

Ambassador TAI. Well, Senator Cornyn, the point is, to secure the market access—and we have done that—with negotiations that are not FTAs, they have moved faster. With India, for instance, we have opened up 12 different categories, gotten lower tariffs.

New product from America is going to India: \$21 billion in new market access over the last 3 years. We have seen results, including for farmers in Texas.

Senator CORNYN. Let's talk about China for a minute. Has the administration taken any enforcement actions against China?

Ambassador TAI. The administration absolutely has moved forward with an aggressive set of policies against China—

Senator CORNYN. Have you taken enforcement actions?

Ambassador TAI. I suppose it depends on what you mean by enforcement actions, but certainly—

Senator CORNYN. I mean enforcement actions—

Ambassador TAI [continuing]. With respect to export controls on semiconductors, you have seen that. There is enforcement there.

Senator CORNYN. I am not just talking about talk; I am talking about actual enforcement actions against China for—

Ambassador TAI. I mean, I think that those actions have certainly moved markets—

Senator CORNYN. If you will wait for my question, they are accessing the World Trade Organization, seeking to dispute provisions of the Inflation Reduction Act. Meanwhile, China continues to subsidize and prefer their products by spending a lot of money, making it much harder for American businesses to compete.

Has the administration taken any sort of enforcement actions against China at the World Trade Organization or anywhere else to go after them? They are taking advantage of that access to the World Trade Organization against us, but are we doing it against them?

Ambassador TAI. We have in the past taken lots of actions against China.

Senator CORNYN. When was the last time you did it?

Ambassador TAI. Well, let me put it this way; let me answer your question.

Senator CORNYN. No. When did you do it?

Ambassador TAI. Well, it has been ineffective, Senator Cornyn, which is why we no longer do the things that are not effective.

Senator CORNYN. Well, you talked them into it or what?

Ambassador TAI. We initiated an enforcement action today under section 301 on Chinese nonmarket policies and practices affecting the maritime industry and shipbuilding industries. So yes, we have this morning.

Senator CORNYN. Let me ask you about—Texas is the largest trade exporting State in the Nation. Yet in recent years, corn exports, for example, were down \$500 million to \$12.8 billion. Livestock, poultry, and dairy exports are forecast to decrease by \$1.3 billion. Pork exports are down \$300 million. Soybean exports are projected down \$500 million, and wheat exports are forecast down \$800 million.

What explains this robust trade agenda that you say the Biden administration has and the fact that market share for American agriculture products is down across the board?

Ambassador TAI. Well, Senator Cornyn, I would have to look at the sources of your statistics to understand better what basis the forecasts are made on. But the last 3 years, we have set records for American ag exports.

Senator CORNYN. You set records, but it is a record decrease, not increase.

Ambassador TAI. No, no, no. Record, record, record, high record exports for the last 3 years. I am happy to get those numbers to you.

Senator CORNYN. I will be happy to share my records with you.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague.

Senator Cortez Masto is next.

Senator CORTEZ MASTO. Thank you, Mr. Chair. Ambassador Tai, it is great to see you. Thank you for visiting with me last week.

One of the things we talked about were titanium sponge tariffs. So let me ask you this. As you well know, the United States currently imports 100 percent of its titanium sponge, a critical material that is domestically manufactured into parts for fighter jets, for military satellites, and other defense technologies. Over 90 percent of these imports come from Japan, our key ally and security partner. This trade supports American jobs, workers, and national defense, yet the U.S. is applying a 15-percent tariff to all titanium sponge imports.

This is a tax that manufacturers in Russia and China do not pay, and our American companies, such as TIMET in Henderson, NV, are trying to compete with companies in these countries.

I am pleased that Senators Blackburn and Tillis on this committee, as well as Senators Capito and Manchin, have joined my effort to remove this tariff and support American security and jobs. Ambassador, my question to you is, do you support the removal of this counterproductive tariff, and what can you do?

Ambassador TAI. Senator Cortez Masto, I just want to reinforce how strongly we as an administration, certainly at USTR, feel about enabling American manufacturing and American manufacturers. It can be a complex question, because we do live in an interconnected world with respect to inputs and access to inputs.

So, I think what I would say to you is that the issue that you raise and have been so much of a champion for certainly merits our looking at through a very strategic lens.

Senator CORTEZ MASTO. Thank you. I hope you do, and I look forward to that quick review.

We also talked a little bit about AGOA, the African Growth and Opportunity Act. I have been hearing from many Nevada businesses about the importance of AGOA, and it is set to expire next year.

I support the need to reauthorize AGOA, but I also think there is a chance to improve the program. As we look to reduce reliance on China for critical minerals, I think AGOA is an opportunity to create closer ties to Africa in this space. I also think there is a need to create more economic opportunity for women and girls, and we can leverage these trade tools for this purpose as well.

So, Ambassador Tai, what are your views as we look toward the need to reauthorize the program?

Ambassador TAI. Well, I think, Senator Cortez Masto, that this upcoming opportunity to reauthorize is also a tremendous opportunity to revisit and enhance. AGOA as a program, like so many of our trade programs, has been around now for 2 decades, more than 2 decades. By the time it expires, I think it will have been a quarter of a century. A lot has changed. A lot has changed here in the world and, most importantly, on the African continent. So I think that we should be looking at how do we improve utilization rates.

AGOA is our foundational program with Sub-Saharan Africa. Utilization rates on average are low. How do we improve that? Second, as some of the countries in Africa really do develop and hit that middle-income level, they become ready to graduate the program as it stands. How do we continue to build on the program so that we have a forward vision for the next stage of development, and how the United States can be there as a partner with these countries in Africa?

Another change in the last few years is the coming into being of the African Continental Free Trade Area, the AFCFTA, which is the effort of the African countries themselves to integrate as a continent. So another question that is presented to us is an opportunity to examine how AGOA can enable U.S. partnership with the countries in Africa in a way that can help to reinforce that integrative effort.

I also have some thoughts, as we continue to go through those eligibility reviews every year, about how we can sharpen the tools in AGOA, how we can make them more flexible, how we can, once a country falls out of AGOA, how we could develop tools to acknowledge progress along the way to encourage that constant incentivization to come back into the program, as opposed to just leaving a country out in the cold.

So, I think that there is a lot of room for enhancement. I know how much Senators and members of the House care about this, and I think that now is the right time to be working on it.

Senator CORTEZ MASTO. I could not agree more. Thank you very much.

The CHAIRMAN. I thank my colleague.

We have worked often with Senator Thune on trade issues over the years. Senator Thune?

Senator THUNE. Thank you, Mr. Chairman. Ambassador Tai, welcome.

And I would echo what my colleague Senator Grassley said about digital trade, and that is something I have worked with the chairman on a lot. It seems like we have abdicated our role as a leader when it comes to digital trade, very quickly allowing China to step into the gap.

But I want to focus specifically on ag trade. That has been referenced already this morning as well, and you indicated that one of the reasons we have a trade deficit in agriculture is because of the strong dollar. I do not deny that there are macroeconomic effects that impact trade.

But USDA also acknowledged that one of the reasons we are running trade deficits is because of market access. I cannot honestly see anything the administration is doing on market access. I have talked to agricultural organizations all the time, and by the way, we are running the largest trade deficit this year ever: \$17 billion this year. They are saying it could be \$30 billion this coming year, and net farm income was down \$30 billion last year, will be down they say \$39 billion this year. So, thanks to inflation, input costs are going up, commodity prices are going down.

One of the things that affects commodity prices is demand, and the way you create demand is to open markets. I cannot tell that the administration is doing anything on that. Now you say we have a different approach to trade, and I understand that approach is grounded in things other than market access.

But market access is what our farmers and ranchers are looking for to open up the market, so they can sell their products and get the trade deficit back to a trade surplus, and get this net farm income back in the positive column. It defies explanation, and you talk about working with our allies.

We have some low-hanging fruit: UK, EU. I want a bill that would create a free trade agreement with the United Kingdom. They are one of our longest and closest allies, and there is not a single free trade agreement that this administration has entered into.

So I want to know what specific actions the Biden administration plans to take to increase U.S. agricultural exports in 2024.

Ambassador TAI. Senator Thune, there is so much that we have already done. As I noted earlier, \$21 billion in market access over the last 3 years. That is, for example, the safeguard agreement that we renewed with Japan that has allowed for high-quality U.S. beef from your State to increase access to a growing Japanese market. That includes the 12 tariff categories with India, a growing market, a growing opportunity for U.S. exporters.

So, I think we have to acknowledge that market access can come more quickly, more effectively, in more agile ways if we are looking for those opportunities to score—what we like to call singles and doubles, to rack up the score that way—as opposed to tying up opportunities over the course of many, many years in FTA negotiations that sometimes do not ever come into being.

Senator THUNE. How about the easy FTAs? How about the UK?

Ambassador TAI. I think there are no easy FTAs. I do not know if you have followed, but the UK and Canada have been negoti-

ating an FTA that they stopped negotiating, because the UK will not talk ag market access.

And in fact, in the last years of the Trump administration, in those negotiations the UK had refused to put ag market access on the table. Ag market access is also something that has traditionally really frustrated our efforts at large FTA-like exercises with the European Union.

So we are absolutely committed. And, Senator Thune, I want to let you know, I think our farmers are the savviest business people that I talk to and work with in trade. They know their businesses, they know trade. With respect to the deficit, we are concerned about the deficit, absolutely, and I think your concern is well placed.

I just wish that our ag champions were as concerned about the industrial trade deficit as they are with ag trade, because it can absolutely indicate a need for concern. Secretary Vilsack and I know, along with our farmers, that we need to be able to diversify our export opportunities, because we are at a lot of risk. We are working very, very hard to do that.

But in addition to a strong U.S. dollar, one of the other challenges we have is a really, really strong economy, a strong consumer economy here in the United States that is actually fueling our economic recovery.

Take for example China, where they are in an economic downturn. They do not have the domestic demand to be able to help them recover, which is why they are relying on an export-led recovery program that is going to cause serious, serious problems for all the rest of us unless we do something.

So I want to start on first principles, reinforce how much we care about our ag producers. We want to make sure that they continue to win, and we are working hard every single day to score wins for them.

Senator THUNE. Well, my time has expired, Mr. Chairman. But I would just say I think that ag always ends up being at the end of the line. Honestly, I mean, convince me, so I can convince some of the agricultural organizations. I just met with all of them in my State last Friday. This is an issue. I mean, they do not think the administration gets it, that we have to be opening up more markets, that the issue is market access, it is tariff and non-tariff barriers.

You focus on all these peripheral issues, none of which are at the core of why we cannot get access to some of these markets around the world, and those tariffs and non-tariff barriers.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague.

Senator Hassan is next.

Senator HASSAN. Thank you, Mr. Chair and Ranking Member Crapo, for this hearing, and thank you, Ambassador Tai, for coming before the committee.

Dependable U.S. trade policies reinforce American global leadership, reassure that our partners and allies are working together, and help drive down costs for American businesses and consumers.

So, let me start with a question about LOGINX, which I understand you just made an announcement about. The Chinese Govern-

ment controls a global logistics management platform called LOGINK. Chinese companies that use LOGINK interact with ports around the world, including our allies' ports that are important to our economic and national security.

Through these interactions, the Chinese Government can predict trends or access early information on U.S. logistics and manipulate information to harm our interests. In past discussions with you, I have raised concerns that through this platform, the Chinese Government could harvest sensitive national security information or commercial data that it could use to undermine competition from U.S. companies.

So I am really pleased that USTR is taking action. This is an urgent threat that I have obviously been following, as you know, for a long time. What are the immediate next steps that USTR is taking to address the threat that LOGINK poses to our national economic security, and what is the timeline for this investigation?

Ambassador TAI. Thank you, Senator Hassan. The immediate step that we are taking with respect to this investigation is, first, a Federal Register notice goes out today to solicit public comment.

Senator HASSAN. Okay.

Ambassador TAI. The deadline closes for public comment on May 22nd. On May 29th, we will hold a public hearing, and again the intention is to gather as much and as high-quality information as we can from all of the participants in our economy.

In the meantime, I will be requesting consultations with China as required under the statute. From there, we have up to a year under the statute to run our investigation. But I agree with you. I think that these challenges and allegations made in the petition are highly concerning and that we would do best by ourselves to accelerate our work.

Senator HASSAN. Well, I appreciate that very much. And will you commit to me to briefing me and my staff on this issue as it develops so we can really work together to address this economic and national security risk?

Ambassador TAI. Absolutely.

Senator HASSAN. Thank you.

Second question: recently the U.S. and UK imposed new sanctions on Russian nickel, copper, and aluminum as a result of Putin's war of aggression against Ukraine. In addition to imposing sanctions on Russia, we need to support Ukraine's war-time economy.

Ukraine has abundant critical mineral reserves. Facilitating trade of critical minerals with Ukraine would support their fight against Putin, and it would increase our access to materials needed for defense applications, renewable energy, and electronics.

How is USTR working with Ukraine and our European partners on establishing strong trade relationships to help Ukraine's economy and to provide more alternatives to Russian critical minerals?

Ambassador TAI. Thank you, Senator Hassan. The challenges presented by Russia's invasion of Ukraine have activated an all-of-administration effort. We are all bringing our tools to bear. With respect to the sanctions, those are primarily in the Treasury and Commerce Department bailiwicks. On those, we work to support.

Your question is specifically on what USTR is doing to help and to support Ukraine. Here, I wanted to let you know that we are negotiating a set of protocols with Ukraine right now on things like trade facilitation, basically, good practices in trade so that we can prepare Ukraine for a robust recovery.

We are also talking critical minerals with Ukraine as well, and all of it is to gauge the engagement that Ukraine can provide now, with a view to a future where Ukraine can fully take advantage of recovery opportunities.

Senator HASSAN. Excellent.

I have other additional questions on some of the other agreements on critical minerals that you guys are working on. I will submit those for the record.

Thank you, Mr. Chair.

The CHAIRMAN. I thank my colleague for her courtesy. This is going to be a hectic day.

Senator Bennet, you are next.

Senator BENNET. Mr. Chairman, I appreciate the opportunity to ask some questions today. Ambassador Tai, thank you very much for being here.

I guess I want to start and maybe spend most of my time on the Americas Act, which Senator Cassidy and I have now introduced as a recognition of the importance for us to work with our hemisphere on a whole range of issues.

It is not just about trade; it is about migration, it is about economic development. And I think Bill and I found a way, in a divided Congress, to remind everybody that we do have a set of values here that are pretty shared. I think in the hemisphere, we have a set of values that are pretty shared. And when I am at home in Colorado, people there are saying to me, "How are we going to compete with China? You know, they have 1.3 billion people, and they get to do whatever Chairman Xi wants them to do. We are a messy democracy, and we're 330 million people." And my answer to them is, well, we have really good trading partners in Canada and in Mexico. We have the benefit of what I think almost everybody on this panel agrees is a 21st-century trade agreement in USMCA. Is there a way to begin to sort of think about how to build that out in the hemisphere?

And that is what has led Bill and me to introduce the bill that we have. I wonder—I know you have noticed it because we have talked about it, but could you talk a little bit about how the administration is seeing the hemisphere?

I would be happy to hear anything you have to say about our bill, but really what I want to do is understand what our strategy is there.

Ambassador TAI. Thank you so much for your leadership on this particular issue, Senator Bennet. I remember seeing you at the Cities Summit of the Americas that was held in Denver last year, and that was a very visible representation of the connectivity of the Western Hemisphere economies, through the lens of cities—and Colorado and Denver's place in that connectivity especially.

Here, I will just start with saying that this particular effort that is embodied in the Americas Act is very much consistent with the values of the administration and the efforts of the administration

that are embodied in the Americas Partnership for Economic Prosperity.

I think that through both efforts, we are looking at ways to frankly become more regionally integrated, to have more of a coherent regional economic identity. I think that the opportunities here are in, for example, the Americas Partnership. I think of the 12 countries—so that is 11, other than us—we have FTA relationships with eight of them already. Now, they might be bilateral, they might be in groups like USMCA or the CAFTA. But there is already a strong architecture with respect to the kinds of trade disciplines we have established between ourselves.

I think the real opportunity there—and I think that this is maybe an interpretation of your comment about USMCA—I think the opportunity there is, one, the USMCA is right now our gold standard. How can we upgrade a lot of the rules in these other relationships and bring them up to today?

The second one goes to supply chains, and that is the economic integration piece of it. I think that you know, again, in terms of our new more strategic approach to trade, we will want to look at this sectorally. This is part of the work that we are doing at the Americas Partnership. But I think that this is also consistent with the spirit of the Americas Act.

Senator BENNET. I was going to say—I mean, it is our job, obviously, to convince Chairman Wyden and the ranking member, Senator Crapo, that this is something that merits the attention of this committee and the Congress. But I do think the benefit of it is that then it will last from administration to administration, which is the kind of predictability that our partners need, and I think frankly Colorado's producers need too.

So I am grateful for the work the administration is doing on it. I am hopeful that we can get to a place where we persuade our colleagues that figuring out how to institutionalize it is important. I mean, if you think about it, in the last 20 years or so, China trade in this region, in Latin America, has gone from \$12.5 billion to \$480 billion. That is a 4,000-percent increase in our region with our neighbors.

That is to say nothing of the infrastructure that they are building and the debt traps that they are creating. I just think there is a huge opportunity for us.

I am out of time. I look forward to working with the chairman and the ranking member on this—and Senator Cassidy has been an amazing partner—and you to see if we can advance the ball as far as we can between now and the election.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague, and we will follow up with you and Senator Cassidy.

Let's see. Next is Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Ambassador, thank you for being here.

Have you—are you aware of a bill that we put together, working with Senators Stabenow and Casey, on the Fighting Trade Cheats Act—also Senator Brown?

Ambassador TAI. Yes, I am.

Senator TILLIS. Have you all taken a position on this yet?

Ambassador TAI. As an administration, I do not believe we have. I will check with my team, although I think we have not yet. But I think we are always prepared to provide technical assistance in the meantime.

Senator TILLIS. Yes. The reason I think it will be helpful, I mean, the whole concept behind it—I had a lot of Republicans looking at me and saying, “What are you doing creating a private right of action?” I said, “Not all private rights of action are bad.” When you’re able to leverage the corporate attorneys who would go after trade cheats, mostly from China, it becomes a force multiplier for an agency that just does not have the capacity today.

So what we are really talking about is being able to bring more cases forward that the department right now is not going to be able to do on their own. So hopefully, I think that we have crafted it properly. I think that it would be a great tool, and it would be a complement to getting through a backlog you are simply not going to be able to.

China does this remarkable job of laundering products and getting to a point where it is virtually impossible to go after all the examples of cheating. So it came out of a suggestion that I had from a company in Charlotte called Charlotte Pipe, where the theft—the intellectual property theft and use cases for Charlotte Pipe are extraordinary.

There is a facility in China that looks like the old Charlotte Pipe foundry in downtown Charlotte. I mean theft—and they came up with a good idea. I know their industry supports it.

I hope we can, and I believe that it could be used maybe as a tool for the administration, for really going after these trade cheats. So that is my shameless promotion for what I think is very sound policy that has good, strong bipartisan support. So we would like to get an official position if we may, because I think it would be helpful in getting it passed.

I wanted to talk a little bit about trade in general, but before I do, we have an issue—I have had this discussion with Senator Coons—on the TRIPS waiver. I am assuming that you all—and I have chaired and now I am ranking member on the Intellectual Property Subcommittee with Senator Coons.

We both think TRIPS waivers are really bad. I think the administration still thinks they are good. So, instead of asking you whether you think in hindsight some of the TRIPS waiver decisions that were made in the COVID era were a good idea, tell me your case for why you thought it was a good or a bad idea? I am assuming you still think it is a good idea. Tell me why you think it is a good idea.

Ambassador TAI. Senator Tillis, on the TRIPS exercises at the WTO, the reason why we think it is a good idea to continue to have these conversations at the WTO is because the public’s access—the access of ordinary people, whether they are Americans or they are people in other advanced economies or in developing countries, to the miraculous lifesaving medicines that are developed, many of them—

Senator TILLIS. I agree. I agree—

Ambassador TAI [continuing]. Is a really important, a really important topic.

Senator TILLIS. I agree. And the only thing more important than access is the actual creation of these very promising vaccines and cures. And if you do not get it right—if you take a look at what we did with Project Warp Speed, and how this country in historic record time produced a vaccine—nobody disputes that—it only happened because the whole of government came together and produced this. But the biotech industry took certain risks. They were not all winners. There were some failed projects out there, and if you send the message that next—and it will not probably be 100 years—the next time you want to do a Project Warp Speed that, for all the work that you could put into it, you could have your intellectual property time horizon collapse and not be able to recover your investment, I do not know that people will line up and necessarily marshal the resources the way that we saw during COVID.

Intellectual property protection—I get access to drugs, but that does not necessarily mean publishing or providing, sharing vital proprietary intellectual property. If we do not get this right, it will have a chilling effect, not only in terms of biotechnology, but I think across all sectors. It will destroy, I think, our position right now as the world's innovator.

Ambassador TAI. Senator Tillis, if I can just respond very, very quickly.

Senator TILLIS. Briefly.

Ambassador TAI. I am going to say I agree with you that the question is about getting it right, but also innovating and creating all of these incredible medicines and having them out of reach for the patients who need them is also not the right place to be—

Senator TILLIS. I agree. But I think the—

Ambassador TAI. It is about where we need to be.

Senator TILLIS. But you would be hard-pressed to find an absence or no access—if I may, because she responded to a point that I think is very important. There were no vaccine deserts. The vaccines were out there. The TRIPS waivers were not necessary to provide more COVID vaccine.

So that would not be a good example, in my opinion, particularly against the risk of failing to innovate in this country.

The CHAIRMAN. Senator Blackburn?

Senator TILLIS. Thank you, Mr. Chair; sorry.

Senator BLACKBURN. Thank you, Mr. Chairman. Ambassador Tai, welcome. We are glad that you are here.

I want to talk to you about enforcement actions against China, because I hear a lot about this in Tennessee. Theft of intellectual property; the genocide, the crimes against the Uyghurs, what all is happening in Xinjiang; the military aggression against Taiwan; and of course you have TikTok and what we are seeing there.

So, I know you have just announced the 301 on shipbuilding. What other enforcement actions have you taken against China?

Ambassador TAI. So, the action from this morning—and thank you for keeping up with the breaking news. We wanted to make sure that there was an opportunity to talk to Senate Finance today.

Senator BLACKBURN. Are there any others that you have done, anything to hold China to account?

Ambassador TAI. Every single day, what we do, whether it is directly vis-à-vis China or it is work that we are doing with other partners and allies——

Senator BLACKBURN. Okay, but no new cases against China at the WTO on your watch?

Ambassador TAI. I mean, cases against China at the WTO have not netted us structural change in China, so——

Senator BLACKBURN. Okay. So you are not going after them and you failed to use the dispute settlement mechanisms under the Phase One agreement; correct?

Ambassador TAI. The Phase One agreement enforcement, we absolutely are advancing in terms of raising the issues with China. We have done that. Right now, I think probably the most important aspect of China enforcement—set aside 301 that we just started today on shipbuilding—comes to the review of the existing tariffs and how we can make them more effective and strategic.

Senator BLACKBURN. Okay. Then let's talk about agriculture. We hear so much from our Tennessee farmers on this, and we know that China is not living up to their purchase commitments that they made under the last administration and under President Trump's Phase One deal. So what are you doing to hold China to account for those purchase commitments?

Ambassador TAI. I think that we are staying very, very strong on not giving them more space. Over the course of the last 3 years, we have faced a lot of calls to release the tariffs on China, and the point that we have made over and over again is that we do not see action from China that would merit us going easier on them.

Senator BLACKBURN. So what are you doing about that? See, this is our point of frustration, that there are purchase commitments that they made, but they are not keeping up with those. So, we have cotton and soybean producers who are saying, "Hey, wait a minute, who is going to stand up for us?" And unfortunately, when they look at USTR and this administration, they do not see people who are going to bat for them, because you have had no new actions. There are no new cases that you have brought against China.

Ambassador TAI. I think that is a narrow way of looking at it. We have also not brought more retaliation on our farmers, because that is a really important part of our trade policy, which is to continue to improve the export opportunities for our farmers. One of the challenges we have with China is an overreliance on China as a customer. They are not a monopoly here, but——

Senator BLACKBURN. If we made a commitment——

Ambassador TAI [continuing]. They are a consumer that is dominating our demand——

Senator BLACKBURN [continuing]. Countries would expect us to keep our commitments if we had made them. China is not keeping their commitment.

Before my time runs out, I do want to talk with you about digital trade, and I thank you for the response to my letter on the small business impact of the digital trade rules. I disagree with you on that, because I think the change in digital trade policy is not one that has been welcomed.

And the Biden administration might think the change is going after big tech, but what you are doing is really hurting countless

small businesses. You made a comment in your opening that you were slow-walking the changes. You brought up the work we were doing on the Judiciary Committee on privacy, and you brought up KOSA as a justification for not doing something on digital trade provisions.

And I would remind you that international agreements on digital trade do not preclude countries from passing privacy laws. You can look at the EU, you can look at GDPR. You can look at New Zealand, you can look at Canada, you can look at Australia.

So that is an excuse and not an accuracy. I see my time is up, so, Mr. Chairman, thank you.

The CHAIRMAN. I thank my colleague. Senator Cassidy is up. I note that Senator Casey has been so patient as well. Everyone is trying to help him, and we will stay within the rules.

Senator Cassidy, you are next.

Senator CASSIDY. I will defer to next in line.

The CHAIRMAN. All right. That makes it, in order of appearance, Senator Lankford.

Senator LANKFORD. Thank you, Mr. Chairman. Thank you, Senator Cassidy. Thank you as well for coming in. Thanks for the work and for the task that you are taking on in this.

Obviously, all of us have questions. We have continued to be able to press on free trade agreements, and it has been the frustration of this committee, and it has been the frustration of many of our ag producers in my State that there are no ongoing FTAs that seem to be moving at all on that. Has that changed? Are there any free trade agreements that are currently being negotiated?

Ambassador TAI. For your ag producers, I just want to make the case that—and reassert—we are working for them every single day. We are scoring wins for them without having to do the long negotiations in a free trade agreement.

So the short answer, to be responsive to you, is “no,” we are not doing the big comprehensive agreements that are really great for ag and terrible for our industries. But we are nevertheless securing wins, \$21 billion for our producers—

Senator LANKFORD. Right. No, I get that.

Ambassador TAI [continuing]. Over the last 3 years.

Senator LANKFORD. The challenge of that is, when it is not an FTA, there is no certainty on it, and that—executive agreements come and go with administrations. An FTA has some semblance of certainty on it. We will at least know what the plan is and what the long-term relationships on that are.

I know Senator Blackburn had mentioned about China and the WTO, that we have not initiated any new cases on that. I have heard you saying, “Hey, we are not going to win anything anyway, and so we are just not going to do it, and not spend time on that.”

There is a messaging portion to that that I think is significant as well, to be able to go through the existing tariffs review that has been ongoing for 2 years. I know you mentioned to Senator Crapo it has only been a year and a half. As I am counting time on that, I think it started on May the 22d.

And so it has been—that sounds like 2 years to me on that. So, 2 years of that process on it. Do you know when that review is going to conclude?

Ambassador TAI. So, Senator Lankford, just to be really precise, the review started in September 2022. And so, I do not want to argue with you over 6 months. But soon, very, very soon—I have a high degree of confidence that we will conclude it soon.

Senator LANKFORD. So, the reason I asked you that is because I know President Biden has asked for consideration—it has not started yet—for consideration on a 25-percent tariff on China on steel, 10 percent on aluminum. *The Wall Street Journal* reported—and we are still waiting on the details on this—*The Wall Street Journal* reported and said it would be .6 percent of the steel coming in the United States under this particular tariff—I do not know if that is an accurate number or not. That was reported today.

So I would be interested to know if it ends up being .6 percent of the steel coming into the United States, or if that is even close. My question to you though is, if we are at the point where the 7.5-percent review from the previous administration—we are a year and a half into it. The 25-percent review, how long will that take until a decision is made, since that consideration started today?

Ambassador TAI. I think that the language was, he called on USTR to consider them. I would not consider that as a starting point. I just want to give you the best information and the most holistic response. It has been a comprehensive review of the existing tariffs.

You are right. It has taken 19 months now, but I have a high degree of confidence that we are coming to a conclusion, and we will be able to finalize it soon.

Senator LANKFORD. Okay. So, for this next group, for the 25-percent and 10-percent tariffs, steel and aluminum on that, how long until a decision is made on that one?

Ambassador TAI. So, what I am trying to tell you is that the review on the tariffs takes place in its entirety, so that when we conclude the process, you should see an entire package.

Senator LANKFORD. So all of that would be included together at some point? *The Wall Street Journal* reporting today that that would affect about an additional .6 percent of the steel, is that accurate, not accurate, or where do you think that number came from? They quoted just an administration source on that, but I do not know who that would be, obviously.

Ambassador TAI. I have not seen the article, Senator Lankford, but I will take a look at it, and I would be happy to respond to you after I have taken a look.

Senator LANKFORD. Okay. It would be helpful; thank you.

As far as new markets on the ag side of things, I know you are working through some of that, trying to be able to help existing agreements. Are there other new markets on the ag side that are pending?

Ambassador TAI. Yes. So there is the work that we have done with India across 12 tariff areas, where we have opened up opportunities for tree nuts and cranberries. This is a little bit of a test for me. I think it was blueberries, turkey, and duck. We had also worked on pork earlier. With Japan, we have opened up with the beef safeguard. We have ethanol, more ethanol going to Japan now too. Jordan just dropped tariffs on eggs. Colombia, they just changed course; they have reopened to our poultry exports. Ban-

gladesh dropped cotton fumigation barriers, which will allow us to ship more cotton. Ghana has opened up access to meat and poultry as well. This is just kind of a top level in terms of our latest work—

Senator LANKFORD. Right, right. So there are a few things. I have seen some of that on the tree-nut side.

The chairman and I have had this conversation before, talking through different aspects of how do we actually help individual companies make complaints, especially against China. We have companies in my State that know that steel or other products are being dumped into the market. For them to be able to initiate the challenge on that has been burdensome. As you know, they have to get with a foreign entity to get them to show their paperwork as well. It is very difficult. It is an area that we need to be able to work together on as a committee. The chairman and I have talked about this, and we need to be able to get some solutions for those companies.

The CHAIRMAN. The time of the gentleman has expired. There has been an awful lot of collegiality here in the last few minutes, and I want to see if it would be acceptable to Senator Brown if we let Senator Casey go next. If we could among colleagues, say Senator Casey, Senator Brown, then Senator Cassidy. Is that acceptable? Great. I thank all my colleagues on both sides for all their patience.

Senator Casey?

Senator CASEY. Mr. Chairman, I want to thank you for that, and my colleagues. I also want to add Senator Whitehouse to that chorus of charity here.

The CHAIRMAN. Yes, yes. Thank you.

Senator CASEY. But, Ambassador Tai, I will keep within my time. I want to start out by thanking you for your public service and your focus in leading the trade office on a worker-centered approach to trade. I am grateful for that.

I just want to get one thing on the record before I get into a broad question. I want to thank you for your continued commitment to securing the full set of dairy export benefits that we worked so hard to establish in USMCA. I encourage you to continue to exhaust all avenues to get Canada to fix how they are administering USMCA dairy tariff rate quotas, so-called TRQs, in order to see the export gains the agreement was clearly designed to deliver for our dairy industry. The status quo of Canada on this front is simply unacceptable, and I stand ready to support USTR's work in securing fairness for Pennsylvania dairy farmers. So you and I have talked about this. I just want to put that on the record.

But here is the broader question. It is about Nippon Steel and the potential acquisition of U.S. Steel. My principal focus there is the high likelihood of loss of union steelworker jobs in the Mon Valley of southwestern Pennsylvania to nonunion States. But I also have a major concern, of course, about national security.

In Pennsylvania, workers and industry are all too familiar with how foreign actors seem to game the system with regard to national or industrial subsidies, state-owned enterprises, the use of forced labor, and more to sell their products in the U.S. market at unfairly low prices. Another way of saying all that is "China,

China, China.” Unfair trade practices like dumping have put far too many Americans out of work. The practice serves to diminish the capacity of our industrial base,. And in the case of my home State of Pennsylvania and Pennsylvania steel, that risks our ability to adequately supply our infrastructure and defense needs.

Nippon’s potential acquisition—the big concerns among many are its ties to China. Senator Brown made reference to a recent report that is entitled “Forged Friendship: Nippon-China Industrial Base Risk.” I will not go into that, but Horizon Advisory was the one that put out that report.

We have already seen early indications of how these external influences of China can impact robust trade enforcement here in the U.S. So, I would ask you about the dangers of that, of letting a foreign entity, a foreign country, in this case China, determine the outcome of trade enforcement in the U.S.?

Ambassador TAI. Senator Casey, thank you for raising this very, very important subject. Now, I know that there is a CFIUS process that is ongoing, and you have not asked me specifically about it.

Senator CASEY. Right.

Ambassador TAI. But I do want to be careful how I talk about this as well. Just to note that, I am not going to talk about the CFIUS process, subject to the confidentiality rules. Nevertheless, I did want to really reflect to you that I hear what you are saying overall in terms of—again, we have been to this rodeo before.

And you know, just maybe taking a couple of steps back and looking at it more broadly—I was talking to our Chief Agricultural Negotiator, Ambassador Doug McKalip, who is sitting behind me, who grew up on a farm in western Pennsylvania. And he was telling us about his uncles who were factory workers in the same community, and how their factory was bought by a foreign company—I did not even bother to ask which country, but just a foreign company—and that what happened to them is something that had happened to their neighbors and their friends as well, which is that after the acquisition, the company moved the factory somewhere else, and that that factory shut down and fundamentally affected the landscape of that community, but also bit by bit the strength of our manufacturing capability.

So just keeping it at a higher level, I just want to acknowledge that these types of transactions are actually things that we have seen for a long time, and we continue to live with the consequences. I think that that is something that we at USTR are very thoughtful about.

Senator CASEY. Ambassador, thanks very much.

Mr. Chairman, thank you.

The CHAIRMAN. I thank my colleague, and again I thank everybody for the collegiality.

Senator Brown?

Senator BROWN. Thank you, Mr. Chairman. Thank goodness, and again, Ambassador, thanks for serving our country so well. Communities like mine have many of the same issues that Senator Casey does—especially sort of west-central Pennsylvania and Ohio—of closed factories and jobs leaving town because of bad trade agreements.

American workers want to compete, and I want to take off a little on what Senator Casey said about Nippon and trade enforcement. The ITC decision, more and more people are saying, could have come out differently if U.S. Steel had been part of a seamless, if you will, steel industry in our country. But they were not, and that may have made that decision go the wrong way. That is why I am particularly concerned about that merger. I know Senator Casey has talked to the White House—so have I—talked to the Economic Advisors, talked to you about that, and we are counting on this administration. I know the President is in Senator Casey's State today.

At the USW, we know how Nippon did not bring workers to the table. Cleveland-Cliffs—I am not advertising for one company to buy this plant. It is not my choice, not my decision, but I am advertising that one company not buy this plant, this iconic U.S. steel company. So thank you for that.

I want to talk about—if I could again thank Senator Casey. I want to talk about what Mexico is doing with steel. In 2019, Mexico signed a joint agreement with the United States, promising to keep imports to historic levels. The United States lifted the 232 tariffs. Mexico is not sticking to their side of the agreement. Still, products like conduit are surging. I am hearing from Ohio companies about the damage it is causing. I am introducing a bill with Senator Cotton, the Stop Mexico's Steel Surge Act, to reimpose 232 and allow the administration to use quotas. Will you commit to holding Mexico accountable to protect American steelworkers?

Ambassador TAI. Senator Brown, my team and I are absolutely working on this, and this is something easy for me to commit to every single day.

Senator BROWN. Okay; thank you. Thank you.

One last question. Now is not the time to let up on countries like Mexico and China. The administration must keep the 301 tariffs in place, and increase them where necessary in areas like solar panels and steel, to address China's unfair trade practices and attempts to undermine our national security.

I may be in the only State that has major steel production, and we are for sure the State with the largest solar manufacturer in the country in northwest Ohio, a different part of the State. China has consistently demonstrated they will not play by the global rules of trade. We are concerned about dumping of electric vehicles. I know you are too. I know the chairman is. We are concerned about steel. We are concerned about their cheating and circumventing and manipulating to get ahead, targeting our manufacturing base.

Just sort of an open-ended question. What do you plan to do at USTR, Ambassador, to stand up to China and protect American jobs, especially in industries like solar and steel?

Ambassador TAI. Senator Brown, thank you for your leadership on these issues, and for being such a clear and strong champion for our critical industries. They need to be able to survive before they can thrive. At USTR, we have a lot of tools, obviously section 301. We have a lot of tariffs deployed.

We are in the final stages of a process for assessing how those tariffs can be more effectively and strategically deployed with the goal in mind of more effectively and strategically creating counter-

measures with respect to the unfair practices that harm our industries and our workers.

On solar as well, we have authorities under section 201. We have been looking at all of our authorities and looking at how we can bring them to bear to address this challenge of revitalizing an industry that we were on the path to having and growing, that we lost because of the inability to compete with unfair advantages from the Chinese marketplace.

And you know, coupled with our climate needs, how do we reestablish American leadership in this field? So, we are looking at all our tools. And, Senator Brown, I know that you are one of the foremost leaders in developing new tools as well.

I know that you have bills out there too. This is an area where I commit as well to continuing to work with you, to develop those tools that are fit for the challenges of today. Most of our tools date back to the 1970s and the 1980s.

Senator BROWN. Okay; thank you, Ambassador.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague. And earlier Ambassador Tai said that they have used the Brown-Wyden concept 22 times, and we talked about the ways in which they can apply it to other areas as well. So, thank you for all your leadership. It is wonderful to partner with you.

Senator Cassidy?

Senator CASSIDY. Thank you. Ambassador Tai, I'd like to continue the conversation we had regarding shrimp a couple of days ago. Just for table-setting, a whistleblower has found unsanitary conditions and rampant labor abuses in the India shrimp industry.

The Department of Commerce has put on countervailing duties with rates of 3.89 to 4.72 percent. Now, I understand the CBP has a role in enforcing forced labor designations, and we recognize that the USTR has put out the CVD.

My shrimpers are saying, "My gosh, if I have to go to court to make this happen, I am going to be out of business before there is actually relief." So, if you were speaking directly to my shrimpers, who are being put out of business by labor abuses and subsidies, how do you reassure them, my gosh, this is going to be taken care of and you do not have to spend millions on lawsuits?

Ambassador TAI. Well, I would begin by pointing to you, Senator Cassidy, and the fact that you and I have been talking about this. This has been literally one of your highest priorities since the day we have sat in this formation. So you did share with me the report on the abuses in this particular industry in India.

USTR is part of the Forced Labor Enforcement Task Force that was created as part of the USMCA implementing bill, but it goes more broadly. We sit on that alongside the Department of Labor, as well as CBP. We can continue to prioritize the addressing of this particular issue.

I think that with respect to our relationship with India as well, that has been evolving in very important ways. I do raise this issue with my Indian counterpart. It is not an easy conversation.

We will continue to champion this particular issue, because I take your point, and I think that, with respect to the logic of the trade policy that we are advancing, it is to ensure that we can

champion the survivability and the opportunity to thrive for all of our industries, and that no one is asked to sacrifice themselves for someone else.

Senator CASSIDY. So, if the person, the shrimper, watching right now would say, okay, out of all that, is there something in particular that we think will have an immediate effect, or will it be more lawsuits and more kind of cajoling, but it is hard to have something hard and fast?

Ambassador TAI. Senator Cassidy, it occurs to me that what we could do, hopefully fairly quickly, certainly something we can do at USTR, is to try to convene with our partners at CBP, and also with yourself, and have a session where we can really probe what our options are in the very near term.

Senator CASSIDY. I would appreciate that. Because there is also a concern that WTO will push the U.S. to have a so-called pass-through consideration, that if the upstream is getting a subsidy and selling to the downstream processor who has to freeze it to ship it, that kind of subsidy that they are giving gets buried within that transaction.

But it seems that, if we are decreasing the price for the downstream guy to freeze and ship, it is still a subsidy affecting our shrimpers, if you will.

Ambassador TAI. Let me take that one back with my team and drill down on it a bit more. We are very, very vigilant when it comes to the WTO negotiations. And I appreciate the flag from you, and I promise you a follow-up.

Senator CASSIDY. There is also concern from my rice people—they said that if it were not for Indian subsidies of rice, they would have like roughly \$850 million more in exports. So, if we can add that to the agenda, I would appreciate that.

Ambassador TAI. One hundred percent. That issue I know very well.

Senator CASSIDY. Going back to steel and aluminum, we have spoken about our proposal for a foreign pollution fee, which I have introduced with Senator Lindsey Graham—and I know that Senator Whitehouse has something similar on his side—in which we would put a tariff relative to the avoided cost of environmental compliance with international environmental norms, which would principally apply to China, but also to other countries.

Just your general thoughts about that, because it is a little bit different than what you are negotiating with the Europeans, but I think ours is more robust.

Ambassador TAI. I think the most important thing is, it is consistent, and I think that the progress you are making will help us with progress that we are trying to make. I hope that, vice versa, it can help too, that this can be a virtuous cycle. So we do know about your legislation. We are very encouraged by it and want to continue this conversation with you.

Senator CASSIDY. I appreciate it. I yield.

The CHAIRMAN. All right. Next in order of appearance would be Senator Menendez.

Senator MENENDEZ [off mic].

The CHAIRMAN. That would be wonderful. I mean, we've got colleagues all coming in, and I think we had better stick to the order

of appearance, or we are just never going to get out of here. Senator Menendez will be next, and we only have a few other Senators, so I think we can get this done pretty quickly. But Senator Whitehouse has been Mr. Collegiality.

So, Senator Menendez?

Senator MENENDEZ. Okay.

Ambassador, I have continued to hear from many New Jersey businesses about the importance of GSP, which Congress has unfortunately failed to renew since it expired in 2020. That has cost importers in New Jersey alone over \$182 million. And beyond the direct monetary effects, allowing GSP to lapse has undermined other parts of our trade policy.

So, Ambassador, how does the lapse of GSP hamper our efforts to combat China's maligned trade practices?

Ambassador TAI. Well, I suppose what I would say here is, recalling that GSP is our foundational trade and development program, GSP provides us with an ongoing program to support development of our developing country partners. And those are partners who—almost all of them—have very vibrant, strong, and growing relationships in trade with China as well.

I would note that I spent some time with the Ways and Means Committee yesterday, and there was a lot of focus on GSP, because they are marking up a GSP bill today. The administration's position is to support GSP reauthorization, of course—with appropriate updates on anticorruption, human rights, rule of law, labor, and environment—and also encourage Congress and the two committees to look at other lapsed programs that are relevant here too, like TAA.

Senator MENENDEZ. Well, I appreciate that. I will look forward to seeing them do that, and for us to have an opportunity.

In New Jersey, 94 percent of GSP tariffs paid since expiration were for products that faced section 301 tariffs when imported from China. That means allowing the GSP to lapse would weaken the effects of our section 301 program. It has also cost us leverage, in my view, in negotiating with our trade partners. So, I see it as a key component of our trade policy, and I am glad to hear that the House is moving. I look forward to being able to do that as well.

Earlier today we had a hearing in the Senate Foreign Relations Committee about the Indo-Pacific, our challenges with China. And I think that having heard a whole host of hearings and experts in this regard, there is, I would say, a nearly universal consensus that, as part of our meeting the China challenge, we cannot do so unless we have robust trade agreements in the Indo-Pacific, and trade agreements that ultimately lead not just to uniformity of process and certain standards, but that create market access.

If in fact that part of our China challenge—which this Congress, in a bipartisan way, seems to be focused on trying to meet—access to markets, is a key part of it, when will the administration get to moving in that direction?

Ambassador TAI. So, Senator Menendez, I will begin with what I wholeheartedly agree with, which is that we should have vibrant trade negotiations and trade programs with our partners, our strategic partners, and that those trade agreements should reflect our values.

Now, with respect to the Indo-Pacific, I think that one of the challenges, which is particularly pronounced because of geography, is that so many of the existing supply chains have links in and through China. And for us to bring an economic engagement program to the region that adds value for us and adds value for our partners, is really about supply chain diversification as opposed to all of us, through these trade agreements, further entangling ourselves into existing Chinese supply chains. So I think that the key to how we do that is, how do we develop programs within our trade agreements, including on tariffs, that will help us to diversify and create parallel supply chains that do not actually worsen the challenge that we all have?

Senator MENENDEZ. But we could do that through trade agreements as well. We do not need to do it exclusive of trade agreements.

All I am saying is that, without market access, we have China an economic behemoth right next door, a neighbor to all these countries, that will act in their self-interest. Their self-interest is an economic one as well as a security one.

Right now, we only have one dimension that we seem to be offering them, in part. So I commend that to your attention.

Finally, your 2024 trade policy agenda states that the Chinese Communist Party's use of state-sponsored forced labor is "not just an extreme form of unfair competition, but a moral stain." I certainly agree with your characterization.

But closer to home, I want to remind you and my colleagues that the Cuban Government also uses forced labor to advance its political and economic objectives. I raised the Cuban regime's forced labor practices in the context of Article 23.3 of USMCA, which requires parties to eliminate all forms of forced or compulsory labor. It was reported last year that Mexican President López Obrador has been importing doctors from Cuba and financing the regime.

These doctors are not going voluntarily. They are sent by the regime, and our own State Department has listed it as forced labor. Have you reviewed the applicability of USMCA's forced labor standards on Mexico's decision to host Cuban forced labor doctors?

The CHAIRMAN. Briefly, Ambassador.

Ambassador TAI. Yes, Senator Menendez. I think it is a trafficking challenge, as opposed to that forced labor import ban, which is about the products of forced labor. But this is an important issue, and I am happy to follow up with you on that.

The CHAIRMAN. Next in order of appearance will be Senator Carper.

Senator CARPER. I just sat down, and I am going to yield maybe to whoever is next in line.

The CHAIRMAN. Next in order of appearance would be Senator Daines. Senator Whitehouse has been wonderfully patient, but Senator Daines would be next.

Senator DAINES. All right. Mr. Chairman, thank you. Ambassador Tai, good to have you here this morning.

I want to talk about agriculture for a moment. It is the lifeblood of our economy in Montana, and 95 percent of the world's consumers live outside of the United States. So our farmers and

ranchers know very well that access to trade is absolutely essential to provide a future for Montana agriculture.

The USTR is charged with opening markets and creating new opportunities for American producers to compete on a level playing field around the world. But frankly, as it relates to agriculture, that is not happening. I am concerned by this administration's unambitious trade agenda and the growing decline in U.S. ag exports. I would urge you and your team to prioritize action to reverse this very troubling trend.

Ambassador Tai, in fact, in the last fiscal year, ag exports declined by more than \$17 billion and are forecasted to continue to drop to a record low in the coming year. That is unacceptable.

I just met this morning with some of my ranchers from Montana, and they are talking about the soaring prices, the rise in input costs. At the same time, commodity prices remain volatile. Montana farmers and ranchers need expanded access to these critical foreign markets just to stay afloat.

The current trade deficit is unsustainable, and corrective action is necessary. My question, Ambassador, is, what specific actions does the administration plan to take to reverse this widening ag trade deficit?

Ambassador TAI. So, Senator Daines, I actually wanted to start by saying to you that we actually have something to celebrate, which is—in my confirmation hearing, you impressed upon me how important pulse crops and the pulse crop producers are in your State. And just in the last year we have been able to achieve improved market access for lentils and chickpeas to the Indian market, a market that has been very, very challenging for us.

So, I wanted to begin there with a positive, and to acknowledge that every one of these conversations makes a strong impression on me, that it is a strong and important part of the work that we do at USTR.

Senator DAINES. Yes, and thank you for that progress in pulse crops. We are one of the leading—we have been the leading pulse crop producer in the United States, and access to India is very important for them. Thank you.

Ambassador TAI. Super. So, from there, I want to address your points on the ag trade deficit. We have run deficits before in the past, in the recent past. It happens from time to time.

Part of the factor is the strong U.S. dollar, but also really, really strong consumer demand here in the United States. That said, you and I have absolutely a shared priority in terms of the work that we want to do to continue to boost U.S. ag exports. In fact, even with the downturn last year, 2021, 2022, and 2023 were record-setting years for U.S. ag exports at \$173 billion, \$197 billion, and then \$179 billion.

I think that the drop, even for 2023, reflects growth from 2021 numbers. Again, I know we have been through a pandemic, so everything about the global economy is a bit more volatile than we would like. That said, for your State as well, we have opened up Japan for more beef, expanding that safeguard in Japan.

We also have allowed for U.S. producers to capture up to 100 percent—that is, the entirety—of the Japanese ethanol market. We

have just gotten Jordan to drop tariffs on eggs, Colombia for poultry, Bangladesh for cotton, across the board.

Our focus is to score the singles and doubles that we can do with more agility, faster, with more effective results for our farmers and producers. And again, I know that we are going to have differences of opinion. But I just want to reinforce how important our farmers are to us, from the large farmers all the way down to the small family farmers.

Senator DAINES. Thanks. Thanks for the answer.

I wanted to, before we wrap up my time here, talk about TPP for a moment. I have called on our Presidents—both parties, Republicans and Democrats—to reengage on the Trans-Pacific Partnership, to boost the American economy through fair trade with partners, I think a very strategic part of figuring out what to do about China in the Indo-Pacific. This should be a priority as China advances alternative agreements in the region now without the United States.

Here is my question: does the administration have any plan to prioritize market access agreements and enforce existing agreements in the Indo-Pacific?

Ambassador TAI. Let me put it this way again. This builds off my answer to Senator Menendez, but this is my answer to you, which is, where we do agree, I do agree that it is important for us to have a robust trade and economic relationship with the countries in the Asian Indo-Pacific. The focus—I think, whether it is market access or other rules aspects of trade agreements—is how do we bring a program to our partners that will help us diversify our supply chains and make each other more resilient?

And I think that that is the key question for how we develop a program that necessarily will look different from TPP, especially around those tariffs, but how important it is for us to do that.

Senator DAINES. Thank you.

The CHAIRMAN. The time of the gentleman has expired.

Senator Carper is next.

Senator CARPER. Thanks. Welcome. It is great to see you; thank you. You have a hard job, and you knew that when you signed up for it. But thank you for taking it on, and our thanks to the folks sitting behind you who are part of your team.

As you know, the pandemic highlighted the fragility of global supply chains and the importance of medical innovation for our national security. I applaud the President's recent efforts to shore up supply chains across industries, and the U.S. Trade Rep's request for public comments to inform new actions on supply chain resiliency.

Strong and diverse supply chains with our allies are vital to ensuring that medical supply chains are resilient in the future, and ensuring that Americans have access to the products that they need when they need them. I was pleased to see that your office will explore tariff and nontariff negotiations with the European Union and the United Kingdom as part of its work plan in 2024. Europe has been a historically important partner, as you know, for medical supply chains, and it is clear that there is more work to be done to strengthen those relationships with our allies.

My question: do you agree that initiatives focused on eliminating tariff and nontariff barriers to goods like medical products should be one tool in our toolbox to promote supply chain resiliency with our allies around the world?

Ambassador TAI. Senator Carper, what was your question? I am sorry, I missed it, the entirety. Do I agree that tariffs can be an important tool in enhancing supply chain resilience for medical products?

Senator CARPER. Let me just repeat it verbatim, all right?

Ambassador TAI. Thank you.

Senator CARPER. Do you agree that initiatives focused on eliminating tariff and nontariff barriers to goods like medical products should be one tool, one tool in our toolbox to promote supply chain resiliency with our allies around the world?

Ambassador TAI. I think it could be, absolutely, and we are looking forward to hearing from our stakeholders on that specific question with respect to the Federal Register notice exercise.

Senator CARPER. Second question: in February of this year, the American Civil Liberties Union, along with Freedom House and a number of other advocacy groups, as well as academics, sent a letter expressing concern with the United States' decision to withdraw from the key digital commitments at the World Trade Organization. But that letter outlines the impact of digital trade across sectors and the importance of ensuring that the United States has a seat at the table in order to help write the rules of the road, both for creators and small and medium-sized businesses that must adapt to the changing digital landscape.

Here is my question. As you work with our friends in the White House and other agencies to develop the United States' position on digital trade, can you commit to us to working with a broad group of stakeholders, as well as U.S. creators across industries, to build out a United States posture on digital trade commitments?

Ambassador TAI. Absolutely, Senator Carper, and it is something that we are already doing. But yes, I know that commitment is very consistent with our approach, which is to ensure that what we are calling digital trade policies on data—in particular data flows, localization, storage, source code—reflect the perspectives and the equities of all of the American economy so that clearly the biggest of the big, big, big companies, but also smaller ones that might still be big companies, smaller companies that are struggling with access to data, computing power, are citizens whom many of you are championing in terms of asserting and creating rights for them on their data privacy, on securing where their data ends up, what rights they have, their intellectual property rights as well.

So I think this is an opportunity for me to assure you, I also am looking for robust engagement with the technologists out there, the people who are actually innovating and who are actually making use of the data and understanding what is happening, including with data brokers.

I know that the chairman has been lead sponsor on a data broker bill that addresses people's and women's health data in particular. Those are all aspects we want to make sure are informing our approach to the development of trade proposals.

Senator CARPER. Yes. Last thing, right? It is not a question that I am going to ask you to answer here. But I am going to ask you for the record to describe how the administration is working to appropriately use trade tools and work with our trading partners to address the climate crisis in ways that foster job creation. I will ask that for the record.

Thank you, and thanks so much for your service. Thank you for being here; thank you for your testimony. Thank you.

The CHAIRMAN. I thank my colleague. I just want to recognize all the remaining members.

Just on this point with respect to digital, I feel strongly that keeping these markets for digital free and open and fighting these sleazy data brokers are not mutually exclusive. We can do both.

Senator Young?

Senator YOUNG. Thank you, Mr. Chairman. Ambassador Tai, it is good to have you before the committee. I am going to continue to pull on the thread that Senators Carper and Wyden have, as they have emphasized the importance of digital trade to our country, to our national security, to our people.

I think not everyone associates the State of Indiana and the industrial Midwest with digital trade and the importance of digital trade, but they should. This is a potential opportunity for countless Hoosiers to lower costs especially, something top-of-mind at a time of inflation concerns. This creates new opportunities for consumers and workers alike. It is an opportunity for us to advance our global competitiveness. Increasingly, service industries and IT-related industries are an important part of Indiana's economy—and much of the rest of the country's economy.

So I happen to believe—and I think our committee has demonstrated on a broadly bipartisan basis—that digital trade is increasingly important to our country. At this moment in history, however, our government has not acted as though it is as important as this committee seems to believe.

So, under your leadership, USTR is diminishing our role in defending open digital trade rules, to put it pointedly. Can you elaborate, Ambassador, on whether there was consultation with the International Trade Commission, the White House Council on Economic Advisors, the National Economic Council, or other national security agencies, before deciding to scale back our advocacy for open digital trade rules?

Ambassador TAI. Senator Young, good to see you. I agree with you that digital touches all of us and is critical to all of our lives. That is why it is so important to connect the conversation that we have been having in digital trade with everything else.

Yes, there is a lot of consultation that happens in this administration. We consult with each other all the time. And with respect to these provisions on digital trade—which are of such importance and focus of this committee—relating to data flows, data localization, storage, and source code, yes, robust interagency conversations began or really heightened in the early parts of last year.

Senator YOUNG. So what was the rationale provided by these national security bodies, since they were consulted? Were they supportive of this decision to scale back U.S. advocacy for open digital trade rules?

Ambassador TAI. So, I am going to quibble with you on your characterization of what we did——

Senator YOUNG. Please, please.

Ambassador TAI [continuing]. Because I do not, I certainly do not see it as scaling back. I see it as upgrading and advancing our conversation about what digital trade means. When we talk about digital trade, it is really an extension of talking about e-commerce, which is how we thought about these issues 20 years ago.

The world is vastly different now. The level of sophistication in the world of technology—and frankly, in the public policy debate—is completely different now. If you look at the provisions that are in question relating to data flows and data localization—let's just start right there—they are really, really good signaling. They are good signaling language around free flows of data and prohibitions on data localization. The challenge is kind of defining where the companies and the private sector can have free rein, and it really cabins governmental action, regulatory action, into the confines of some exceptions.

One of those serious concerns we have—and at USTR, it is because we are trade negotiators, but we are also the trade litigators. We bring cases we also have to defend, and those exceptions make us extremely nervous, given the kinds of debate up here which are asserting the interests of Americans into this framework, which is not reflected in the proposals.

Senator YOUNG. I gave you plenty of time to reframe this conversation. You are a negotiator in part, so what success can you point to that you have had in persuading your counterparties to adopt rules and to accept those rules in strengthening our digital trade ties and thus giving influence to the United States of America in this digital economy of the present, but especially of the future?

Ambassador TAI. Well, an important part of negotiations is also talking and listening. And in our negotiations—with the Europeans through the Trade and Technology Council, certainly with the Japanese in the bilateral and other formations that we have, including in the Indo-Pacific and those partners—what we have seen is that all of our friends and allies are all in the process of struggling with the same types of questions we are having today around privacy, around where you set the limits for who can do what with people's data.

And so, the progress that we are making is in advancing toward more updated proposals. You are right. Our proposals might not be the same as the Europeans, but we are all facing the same challenges.

Senator YOUNG. So, I think it is fair to say—I will close here, knowing that my time is already expired—we do not have any outcomes yet. I understand that can be the case. Talking and listening has been the outcome.

I know that sometimes—I would regard that as part of the process before you get an outcome. We are almost at the end of the administration. You have been years in office, and I would hope that we would have had an outcome. That is not always realistic. I think that is a fair way to end it. I will look forward to working with you.

The CHAIRMAN. The time of the gentleman has expired.

Senator YOUNG. Yes; thanks.

The CHAIRMAN. Senator Whitehouse?

Senator WHITEHOUSE. Thanks very much. Welcome, Ambassador Tai.

I think we are in a happier situation with respect to the CBAM than we have been in past conversations. So, I am very pleased about that, and I would like to ask first of all if you read John Podesta's remarks to Columbia University?

Ambassador TAI. I did have a chance to see those before he delivered them.

Senator WHITEHOUSE. Are you a part of that White House Climate and Trade Task Force?

Ambassador TAI. I asked Mr. Podesta the same question, and the answer is "yes."

Senator WHITEHOUSE. Do you know who else is?

Ambassador TAI. I do not know that yet. I have not seen the list.

Senator WHITEHOUSE. Can you take a question for the record to fill me in on the status of that task force, and who is on it?

Ambassador TAI. I would be delighted to.

Senator WHITEHOUSE. I appreciate that. Any idea when I might get that answer?

Ambassador TAI. The membership lists, I think, are due soon.

Senator WHITEHOUSE. Very good. I am very interested in finding out where we are and where it is going. I thought that the speech that John gave was very positive, and I think it reflects, first of all, the firm response of the EU joined by the UK, that they are not going to accept weak alternatives from the U.S., which is something that I think is terrific. That helps improve our negotiations here in Congress.

And I want to thank particularly Senator Cassidy for his very productive work with Senator Graham on a Republican counterpart to my border tariff bill. They do not align yet, but you start with your positions, and then you work together. So, I am very appreciative of what they have done, and I am very appreciative that the position of the White House seems to have moved in this direction. So I will make that statement.

The other thing I wanted to talk with you about is the loathsome ISDS process. We are not putting ISDS provisions into any new treaties, but they exist as hangovers from past treaties.

I am told that it is actually possible to remove ISDS from existing free trade and bilateral investment agreements, and that you are looking at the best way to go about doing that. Can you give me a progress report on that? But let me just elaborate for a moment that I really think that there is something very evil about the entire ISDS mechanism.

It is perhaps best embodied by the attack, through the ISDS mechanism, of the tobacco industry on the little country of Togo. Togo had the nerve to try to control the packaging of cigarettes with warnings about tobacco's known health effects, and they were sued by the world tobacco industry, which has enormous resources at its disposal.

Togo is a country of about 8 million people. It has less than 5,000 miles of roads. Its annual budget is about \$1.2 billion. It is in no

position to take on an international industry like that that can use it to, first of all bully Togo into submission, and then take that and leverage it against other countries.

In fact, the tobacco industry even ultimately went up against Australia and got themselves tangled up in the complexity of their effort. But that shows how evil this is. So the quicker we can get rid of that as a vehicle for putting private interests over public interests, and putting size and weight over virtue, the better off we will be.

I would ask for your thoughts on how we can remove ISDS from those existing agreements and treaties.

Ambassador TAI. Well, I think we have a number of tools with respect to ISDS, whether they are in bilateral investment treaties or they stand alone or they are incorporated into FTAs. We are looking at this question actively right now with respect to existing ISDS provisions and——

Senator WHITEHOUSE. So you have no report on——

Ambassador TAI [continuing]. How they can be improved. But again, this is one of those things where we are very, very interested in the views of members of Congress, especially those who sit on the Judiciary Committee and our in-house lawyers, indeed.

Senator WHITEHOUSE. Which I do. The U.S. was responsible for pushing a lot of this ISDS nonsense into those treaties in the first place; correct?

Ambassador TAI. I think that is absolutely correct.

Senator WHITEHOUSE. Yes; okay. Well, Godspeed. Stay in touch with us on the conclusions that you draw.

I would add to my existing QFR request for any further information you have on this, so it will not belabor the time of the committee, but might be useful to me and my team as we look to try to rid our trade agreements of this really noxious agreement.

Thank you very much, and thank you, Mr. Chairman.

Oh, and Senator Warren is arriving, who is the champion of cleaning up the foul, toxic, noxious, and evil ISDS arrangements. So——

The CHAIRMAN. All right. We are heading into the home stretch here, with Senator Barrasso, Senator Cardin, and Senator Warren.

Senator BARRASSO. Thanks so much, Mr. Chairman. Great to see you again. Thanks for being here today.

Last November, the U.S. Department of Agriculture finalized a rule allowing fresh beef imports from Paraguay. There are serious concerns that I have with this new rule, given that Paraguay has a history of foot-and-mouth disease—the last outbreak, 2012. Here in the U.S., we have not had foot-and-mouth disease since 1929, 100 years. An outbreak would be catastrophic to American cattle producers.

The Biden administration has stressed the importance of Paraguay as an ally. I am just worried about placing one of our largest agricultural industries at unnecessary risk. The number one cash crop in Wyoming is beef. The U.S. Department of Agriculture's approval process for Paraguayan beef was, I believe, questionable. Specifically, the Department's Animal and Plant Health Inspection Service relied on site visits from 2008 and 2014.

So, making a decision based on a site visit most recently 10 years ago, this means there are no recent in-country site visits to confirm Paraguay's animal health claims. So, as U.S. Trade Representative, how are you ensuring that the U.S. promotes science-based trade with our allies and relies on the latest, most accurate information prior to granting market access?

Ambassador TAI. Senator Barrasso, thank you so much for raising this particular issue. It is something that we are tracking very closely and tuning in with respect to the latest events here in the Senate, tracking what may happen in the House and our own conversation with USDA.

To your question, I get a lot of flak for not negotiating traditional big FTAs. Nevertheless, it is really important for me to impress upon Senators like you from great agriculture-producing States that we value our farmers, big and small, and our ranchers across the board.

And what I want to highlight is, in every single one of our active, ongoing negotiations—whether it is in the Indo-Pacific, with Kenya, with Taiwan—we are actively negotiating agriculture chapters that address this particular issue, especially around science-based approaches to regulating food trade and agricultural trade.

So that has been a very, very high priority for us. We are making very, very good progress with all of these partners. And even outside of those types of negotiations, the commitment to science-based, transparent, risk-based regulation is something we deeply believe in.

Senator BARRASSO. Well, I appreciate the concern and the value that you place on our farmers and ranchers. I mean, my concern is science-based. As you talk about how critically important it is, there has not been an onsite visit in 10 years. I would just hope that you would consider that as you move forward with that area.

I want to move on to the next question, which is: in July 2023, I sent to you a bipartisan letter—bipartisan, bicameral—regarding Mexico's discriminatory policies toward American energy producers. We urged you to pursue full enforcement action against Mexico.

Mexico's policies have violated the historic U.S.-Mexico-Canada Agreement. Mexico continues to favor their state-owned utility, oil, and gas companies. These actions threaten more than \$10 billion in U.S. energy investment.

Regarding this issue, the 2024 trade policy agenda report says as of December 2023, the parties continue to consult on this matter. You are well aware of that. So what concrete steps have you taken to resolve issues with Mexico's energy policies that would protect American producers?

Ambassador TAI. So, we went through a period of intensive consultations and engagements with Mexico. I know the word "consultation" sounds polite. They can be pretty heavy-hitting conversations that we have. I think maybe the most important aspect of the work that we are doing on this right now today is with respect to our own companies.

We want to make sure that steps that we take are well supported by our companies, are coordinated with them. And I think that, just for purposes of this conversation, I am happy to follow up with you as well. I will just put the emphasis there, that we

remain very, very engaged with our companies around our strategy here.

Senator BARRASSO. I guess my final question is, Mr. Chairman—I just know the timing—why has the U.S. not requested a dispute settlement panel with relation to this?

Ambassador TAI. It is one of the options that we have, and again, it is something that we are talking to our stakeholders about.

Senator BARRASSO. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague.

Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman. Ambassador Tai, it is good to see you.

On March 26th, the third busiest port in the United States was closed—a tragic event causing six people to lose their lives, and the destruction of the Key Bridge.

The port of Baltimore was closed. It handles \$80 billion of foreign commerce every year, 1.2 million containers—number one in roll-off/roll-on, whether it is auto or farm or construction equipment, affecting supply chains in this Nation and globally.

President Biden committed the whole-of-government approach to help Baltimore in getting the bridge replaced, getting the harbor open, taking care of the challenges. So my question to you is—I will be meeting with my port administrator tomorrow—what can you do to help in regards to this tragedy, in regards to supply chain, in regards to the return of the port of Baltimore to full strength? Tell me how you can help us.

Ambassador TAI. Senator Cardin, I would like to begin first and foremost with expressing condolences. Our thoughts are with the families and the loved ones of the workers who lost their lives, the first-order tragedy. Second, we are so incredibly, incredibly grateful for the brave first responders who were on the scene and rescuers who helped to contain the immediate aftermath, and we stand with the people of Baltimore and all those affected by this accident.

To your specific question about what USTR can do, let me say a little bit about what USTR has been doing. Immediately—and again, I want to acknowledge the contributions of my fearless and vigilant Chief Agricultural Negotiator, Ambassador Doug McKalip, who is sitting behind me. He leapt to action immediately, especially with thoughts around how this tragedy would be affecting trade—and agriculture trade specifically.

He has been a conduit for engaging with our stakeholders and connecting them to the effort that is being driven by the NEC. Second, USTR has been engaged throughout the interagency process being convened by the NEC, and the process has been, I am glad to say, holistic, communicative, and timely.

We remain in close contact on a daily basis with relevant government authorities, to ensure there is as little disruption to the supply chains as possible, and we will continue to stand ready to use additional USTR tools when we are called upon to do so.

Senator CARDIN. And I want to just acknowledge, President Biden has been incredible here, including helping us preserve the contracts with the port of Baltimore. We recognize there are going to be some diversions as a result of the port not being open. We

hope it will be opened to about 75 percent of capacity by the end of the month, and 100 percent by the end of May.

But there is a need to have the understanding of some of our international players, and it seems to me that the USTR can play a role in making that a reality, carrying out the President's commitment to help the people of Baltimore. So we may be calling on you to do a few more things.

The CHAIRMAN. Senator Cardin, all of us are prepared to help you on the Baltimore issue and what you are dealing with, and certainly the Finance Committee will be there.

Senator CARDIN. I appreciate that, Mr. Chairman. It has been incredibly difficult. And I agree that our prayers are with the families of the victims, and the workers who have been dislocated as a result of the closing of the port—20,000 jobs, about \$15 million a day, every day of delay in opening up the port.

But I want to give a big shout-out to the Coast Guard, the Army Corps of Engineers, and President Biden. The Unified Command has really been a unified command. I have never seen the cooperation that we have gotten there and the progress that has been made.

It is a nightmare to try to clear out the port. The debris, the steel and concrete, are mingled on the bottom of a 50-foot channel, and the engineers are performing miraculous work. So I thank you for that. We have had a tremendous outpouring, and we will be calling upon all of you.

The CHAIRMAN. Count on it.

Senator Warren?

Senator WARREN. Thank you, Mr. Chairman.

So, corporations have long used secretive trade negotiations as a backdoor cheat to try to undermine regulations, and to trigger a global race to the bottom. Now big tech is running this play, and one of the demands is blanket protections for the "free flow of data," where they want to guarantee big tech companies' right to sell Americans' personal information anywhere in the world. In other words, big tech wants to keep auctioning off your data to the highest bidder, even when that means that your data makes it to the Chinese or Russian Governments.

Now, Ambassador Tai, as U.S. Trade Representative, you have stood up to big tech's trade agenda and to China's digital authoritarianism. Tech lobbyists would have us believe that their data flows language will persuade China to abandon its surveillance state and to tear down the Great Firewall. Back when China joined the World Trade Organization, supporters made exactly the same claim, arguing that trade would transform China into a liberal democracy.

Ambassador Tai, remind me. Did that happen? What has been China's track record on meeting its WTO commitments that it made at the time, and moving toward a liberal democracy?

Ambassador TAI. Senator Warren, this is one of the greatest disappointments, I think, in trade policy over the course of the last 25 years. I have had a lot of conversations with members of Congress on both sides of the aisle around China's accession to the WTO, and their description of how disappointed they are, in terms of their expectations, is very deep.

Senator WARREN. All right. So now, big tech is making the same claim, that if we will just let big tech sell off our data wherever they want, China will become a more open, democratic country.

You know, President Biden has not been fooled by this. In February, he issued an executive order to prevent big-tech companies from transferring huge swaths of Americans' financial, health, and other data to China and other countries of concern.

Ambassador Tai, how would the President's data security executive order square with big tech's demand for free data flows in all situations? And let me just ask, is this why you rejected big tech's demands, so that the U.S. Government can take actions like the President's order, to protect Americans' data from adversaries?

Ambassador TAI. Senator Warren, the short answer is "yes," both with respect to the administration's executive order safeguarding the security of Americans' bulk data from flowing into China and never coming back out, but also with respect to all of the activity that is happening up here in the Congress.

We saw a data brokers' bill move through the House and pass on a 414 to 0 basis. We see the data broker bill that has been introduced by the chairman and Senator Hirono, as well as a lot of the other legislative efforts up here, again, to define the rights that Americans have with respect to their data, as well as being concerned with the outward flow of that data to places that make it unsafe for us.

Senator WARREN. Yes, and I very much appreciate your making sure that trade policy is not a way to block appropriate regulations that Congress and the President are trying to put in place.

I want to hit one more issue, and that is the USTR's annual report listing foreign barriers to U.S. trade and investment. Up until now, corporate interests have stacked this report with kind of a laundry list of any other policy from any other country that they think somehow nips into their own profits.

But not you. You have not fallen for this. This year, you refused to label common-sense tech policies from the EU, from Canada, and from other allies as "trade barriers." And by the way, those are policies that look a lot like the ones we are actively working on here in the United States.

Now big tech is screaming that you are not protecting them from these dangerous foreign adversaries like Canada. Ambassador Tai, did you remove China's abusive data and intellectual property policies from the trade barrier report?

Ambassador TAI. We did not.

Senator WARREN. You did not. So, you are still taking on China's abusive digital policies, but big tech is throwing a tantrum, even though there is a clear difference between our allies' good-faith efforts to regulate and China's digital authoritarianism.

Look, big tech does not want to be regulated, period, and hopes that it can use trade policy to help insulate them from any regulation. I am glad to see that you and President Biden are giving big tech's digital trade agenda the boot, and instead fighting for the protection and security of Americans' data. Thank you.

The CHAIRMAN. I thank my colleague.

Just to wrap up—and we will liberate you here momentarily, Ambassador. Just on this question of technology policy, I showed

up in the U.S. Senate when only one Senator knew how to use a computer. That was Pat Leahy.

I decided then it was one of the areas that I wanted to go in on, and my horse was small business—small business. And I put on this kind of prism to say the big guys are going to be able to take care of themselves. My interest is small business.

So I am very glad that the White House is now working with everybody on this, the whole-of-government approach. And just so everybody knows, I am going to be pushing hard that these policies like forced localization are just poison for small businesses, because there is no way they can move ahead if they are going to be paying for servers and all the rest.

So we can have this discussion another time. You have been very patient. We have a lot to do. And you know, Ambassador—I think we started close to 3 hours ago—obviously, we feel very strongly about enforcement issues and trade barriers and the like.

This is a challenge, obviously, to strike a balance on a lot of these issues. We very much appreciate the shipbuilding 301 investigation. I get your point on how it all worked and all the rest. Let's just play more offense. Let's just play more offense; that is what you heard from the committee.

After TPP—and you and I have talked about this many times—Senator Brown and I reached out to pretty much the entire Senate and said, “How can we do two things: how can we be fair and protect our workers and our businesses, and how can we open markets?” That is why you heard all of us talking up here. So let's find some ways to advance this kind of agenda.

For Senators, questions for the record are due April 24th.

Senator Crapo, do you have anything you want to add?

Senator CRAPO. I am good.

The CHAIRMAN. With that, we are adjourned.

[Whereupon, at 12:38 p.m., the hearing was concluded.]

## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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SUBMITTED BY HON. JOHN BARRASSO,  
A U.S. SENATOR FROM WYOMING

July 20, 2023

The Honorable Katherine Tai  
U.S. Trade Representative  
Office of the U.S. Trade Representative  
600 17th St., NW  
Washington DC 20006

Dear Ambassador Tai:

We write in regard to the Government of Mexico's pursuit of discriminatory policies that favor state-run energy companies and directly undermine United States-Mexico-Canada Agreement (USMCA) commitments. We strongly support your July 20, 2022 request for consultations—an important initial step to enforce USMCA for U.S. energy workers and families. However, consultations under USMCA are designed to last only 75 days before a party may request a dispute settlement panel to review the matter. The Biden administration has afforded Mexico nearly a year—and yet there remains a lack of any meaningful progress. Consequently, we urge you to pursue full enforcement action against the Government of Mexico to address its energy policies that hinder U.S. investment in Mexico's energy sector.

These discriminatory policies exist throughout Mexico's energy sector, including natural gas and oil exploration and production, electricity generation including solar and wind power, and retail sales. Mexico's unfair actions threaten over \$10 billion in U.S. investment that have already been made and clearly run afoul of Mexico's USMCA obligations. Ensuring there is a reliable market for U.S. energy production and infrastructure will help strengthen energy supply chains in North America and lower energy costs for consumers as Americans continue to feel the impacts of volatile energy markets.

Extending the period of consultations has not yielded results. Robust enforcement action is necessary—not just in the renewable energy sector, but across the entire energy sector. Establishing a dispute settlement panel for these troubling energy issues will demonstrate that the United States is serious about enforcing USMCA to provide Americans the benefits that we bargained so hard to achieve in USMCA negotiations.

We therefore respectfully urge the U.S. Trade Representative to request the swift establishment of a USMCA dispute settlement panel to address Mexico's discriminatory policies across the energy sector.

Sincerely,

John Barrasso, M.D.  
United States Senator

John Cornyn  
United States Senator

Tim Scott  
United States Senator

Jodey C. Arrington  
United States Representative

Adrian Smith  
United States Representative

Beth Van Duyne  
United States Representative

James Lankford	Carol Miller
United States Senator	United States Representative
Bill Cassidy, M.D.	Brad R. Wenstrup, D.P.M.
United States Senator	United States Representative
Todd Young	Mike Carey
United States Senator	United States Representative
Ron Johnson	Lloyd Smucker
United States Senator	United States Representative
Henry Cuellar	Vicente Gonzalez
United States Representative	United States Representative

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

Thank you, Mr. Chairman. Welcome, Ambassador Tai.

I read the President's trade agenda carefully. If we measured wisdom by word count alone, President Biden's trade policy agenda would be wise. If we measured it in terms of creating meaningful opportunity for Americans, it is profoundly misguided—particularly in terms of its enforcement approach and negotiating ambitions.

This administration's enforcement record is the weakest of any administration in 25 years. Although the administration highlights regularly using the USMCA rapid response labor mechanism to help Mexican workers, that mechanism cannot supplant bringing cases to increase market openings for American workers.

Such cases are sorely lacking. USTR has yet to take a single enforcement action against China, period—whether at the WTO, or under section 301, or under the Phase One deal. Nothing.

When it comes to discriminatory treatment, our trading partners now expect USTR to simply “note” that it is “considering all options,” as it did with Canada's decision to move forward with discriminatory digital services taxes, and further expect that USTR's “consideration of all options” is likely to be indefinite. For example, USTR has not advanced our case against Mexico's discriminatory energy policies for nearly 2 years now.

Administration plans for negotiations fare no better than they do for enforcement. For the fourth year in a row, the administration's trade agenda provides no plan for real negotiations to improve market access. Instead, the administration lauds the Inflation Reduction Act, asserting that our workers need to be shielded, subsidized, and micromanaged through industrial policy, even if it entails massively expanding our national debt. That is not only misguided, but as former Joint Chiefs of Staff Chairman Michael Mullen noted, our debt is, in fact, one of the top national security threats to the United States.

What we need is market access. I recently traveled to Asia, the United Kingdom, and to other partners. Our partners want to make real deals with high standards. They want to trade with us rather than China. And they want to do it now. We should want that too, because each day we wait is another day that Americans fall back further behind our competitors, including China.

Make no mistake, tariffs matter, particularly for small businesses like our farmers. Australia and New Zealand each negotiated free trade agreements with Thailand, and since then, demand for premium U.S. beef fell by 30 percent because our cattlemen face a 50-percent tariff while those two partners face none.

Whether it be Idaho potatoes and dairy, or Iowa soybeans and pork, or South Dakota wheat, or Texas cotton and beef, or Washington State apples—our farmers are the best in the world. This is precisely why a large number of farm groups wrote to you, Ambassador Tai, on Monday asking for a real trade agenda and advancing dispute settlement reform so we can open markets for them.

United States manufacturing, innovation, creative, and tech industries are second to none. If the administration will not negotiate tariffs, it should at least help workers in these industries by negotiating critical rules on technical barriers to trade, intellectual property, and key digital trade provisions such as on nondiscrimination

and free data flows. Thus far, USTR has failed to do so in any of the so-called framework negotiations—and the trade agenda indicates this will continue.

This benefits China, which is aggressively participating in international standards-setting bodies, pushing technology transfer, and supporting data localization by countries, which could require our companies to store data on servers that are produced by Chinese companies such as Huawei, rather than on ones we host in the United States.

The proposals the Trump administration crafted in coordination with this committee for USMCA for technical barriers to trade, for intellectual property, and for digital trade ensured we could regulate and also rise to China's challenge. Simply abandoning coordinated and reasoned proposals—without consulting Congress—is a profound mistake.

I urge my colleagues to remember when this administration told us that comprehensive, congressionally approved trade agreements are a 20th-century tool. Its vision of the future though is piecemeal frameworks done as executive agreements, devoid of any real enforcement mechanisms.

Ambassador Tai, the members of this committee know that attempts to bypass Congress are neither new nor groundbreaking. And they also know that such efforts are not sufficient or truly effective in creating the types of opportunities our citizens deserve. It is well past time this administration begin working with Congress to meaningfully expand market access opportunities.

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PREPARED STATEMENT OF HON. KATHERINE C. TAI, UNITED STATES TRADE  
REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT

Chairman Wyden, Ranking Member Crapo, and members of the committee, I appreciate the opportunity to discuss the President's trade policy agenda. Congress is our constitutional partner on trade, and I am delighted to be here to discuss our agenda and hear your views.

President Biden summed it up during his State of the Union address last month: America is writing the greatest comeback story never told.

Our administration's economic plan is leading our country in the strongest economic recovery amongst all developed nations. More importantly, we are doing so in a way that democratizes economic opportunity for more people.

We have shifted the conversation from focusing on the bigs to including and championing the interests of the smalls and the mediums. From trickle-down to bottom-up. From people as consumers only, to people as workers also.

We are reorienting the economic system to strengthen the middle class. The President's trade agenda is critical to this reorientation. In the past, trade policy primarily focused on and benefitted the largest stakeholders, but we are flipping that top-down approach on its head.

Trade is a tool to give all Americans a fair shot and ensure that our system is set up for inclusive and durable growth. Promoting healthy competition is critical to achieving this goal. This is why I am honored to serve as a member of the White House Competition Council, to align our trade agenda with our domestic economic tools to advance fair competition for more people.

It is also a critical tool for building robust supply chains that lower costs for American families, a goal I work to advance as a member of the President's Council on Supply Chain Resilience.

Asking old tools to solve new challenges—like economic insecurity, fragile supply chains, and a worsening climate crisis—is destined to fail. We must question assumptions, revisit norms, and think creatively and strategically. In this new era, we increasingly measure success and progress by the degree to which we are delivering real benefits to more Americans across our society—no matter where you live or whether you have a college degree.

Our approach is one that addresses and advances the interests of all parts of our economy and does not pit Americans against Americans. Let me give you some examples of what middle-out, bottom-up trade policy looks like.

## EMPOWERING WORKERS THROUGH TRADE

First, we are using trade to empower workers, because they are the backbone of our economy. Their success is our success. We are incentivizing a race to the top so that we are not pitting our workers against those in other countries and regions. Fellow trade ministers tell me that they too want to build their economies from the middle out, and enacting and maintaining high labor standards is key.

This is why the United States has prioritized strong labor commitments in our ongoing trade initiatives, including in our negotiations with Kenya and Taiwan. As part of this process, USTR has consulted extensively with labor stakeholders, in addition to the business community. We will continue to work with our trading partners and with you to ensure that our trade agreements work for workers.

This is also why we are using innovative tools with our trading partners to address harmful practices, such as forced labor. Our work with Japan through the Task Force on the Promotion of Human Rights and International Labor Standards in Supply Chains is one example.

This is a part of our administration's broader strategy to fight for workers' rights around the world, including through the first-ever presidential memorandum outlining our commitment to worker rights globally, signed by President Biden last November.

Advancing workers' rights abroad also strengthens workers here at home. This is possible when we are not pitting our working communities against each other, but instead allowing them to compete fairly and thrive in this global economy. This is what it looks like to align our domestic and foreign economic priorities—a foreign policy for the middle class.

At a press conference in San Francisco on the launch of the memorandum, I had the privilege to meet Rudy Gonzalez, Secretary-Treasurer of the San Francisco Building and Construction Trades Council. He spoke with such passion and conviction on why our approach is important to real, working people.

It is because of friends like Rudy and his colleagues that we are also focused on enforcing the labor provisions in agreements we already have. Trade agreements are not trophies to admire on shelves—they are tools to get us results. The United States-Mexico-Canada Agreement is a prime example.

When I worked for the Ways and Means Committee, I worked with many of you to create the USMCA's rapid response labor mechanism, and I want to share what it is doing for working people. Since 2021, the United States has sought Mexico's review under the RRM 22 times at facilities that span various industries, including automotive, garments, mining, and services.

These cases have so far directly benefited 30,000 workers, provided \$5 million in back pay and benefits to workers, ensured wrongly terminated workers were reinstated, and helped secure free and fair elections in which workers selected independent unions to represent them.

Last July, I participated in a labor stakeholder forum on the margins of a USMCA FTC meeting in Mexico. There, I met Juan Gerardo Castor Puentes, a special delegate for the Mexican Workers' League. It is a union that represents garment workers at a factory near the Coahuila-Texas border. He shared with me how important it was for governments to work together to fight for workers and their interests—how doing so is making a real positive impact on people's daily lives. This not only affects workers in Mexico, it also empowers U.S. workers by reducing the incentive to unfairly ship jobs overseas.

There are many success stories to choose from, but I want to highlight the Teksid facility in Frontera, Mexico. In that case, the United States requested Mexico's review of whether workers at the facility were being threatened or coerced into choosing a particular union, and whether workers were being subject to a state-level collective bargaining agreement that was inferior to a federal-level collective bargaining agreement. The company was also refusing to recognize the independent union that held the right to represent workers at the facility.

As a result of the RRM, 36 workers who had been wrongfully terminated were reinstated and given back pay. The independent union was given access to the facility and even paid dues that were previously withheld from workers' pay. Shortly after the case was closed, the independent union negotiated additional benefits for workers, including a 9-percent wage increase and a 6.8-percent increase in the overall value of nonwage benefits, as well as an increase in vacation days, bonuses, com-

pliance with required overtime pay, and improvements to working conditions to address work-related injuries.

This is real positive change for these workers in Mexico, but also helps ensure that the good-paying jobs our administration is creating stays here, in our communities. This is how we are building up our working communities and middle classes together, giving them a fair shot to thrive in this global economy.

#### ENFORCING TRADE AGREEMENTS FOR A LEVEL PLAYING FIELD

This is why enforcing the trade rules we have continues to be a priority this year for the administration. We will continue to level the playing field for American workers and businesses. We are vigorously enforcing our trade agreements, defending American jobs, and making sure more people enjoy the benefits of trade. For the USMCA, this extends to the interests and rights of our farmers and agricultural producers.

I know the agricultural biotechnology concerns with Mexico are important to our farmers, especially our corn producers. Last August, we established a dispute settlement panel under the USMCA. We are working to resolve our concerns and help ensure that American farmers can continue to access the Mexican market and use innovative tools to respond to climate and food security challenges.

I also know that many of you are concerned that Mexico is undermining American companies and U.S.-produced energy in favor of Mexico's state-owned utility and oil and gas company. We launched dispute settlement consultations under USMCA with Mexico to address those concerns and continue engagement with our stakeholders on developments.

On Canada dairy, the United States won a USMCA dispute on Canada's tariff rate quota allocation measures. However, Canada's revised policies did not fix the problem for U.S. dairy farmers, and we will continue to work with Canada to resolve our dairy industry's concerns.

We have also activated the tools for environmental enforcement under the USMCA by engaging in consultations with Mexico relating to the protection of the critically endangered vaquita porpoise, the prevention of illegal fishing, and trafficking of totoaba fish.

I also want to note that, last year, the United States prevailed at the WTO in the cases against the retaliatory tariffs the People's Republic of China (PRC) and Turkey illegally imposed in response to the U.S. section 232 national security actions on steel and aluminum.

These matters are a priority for USTR this year, and enforcement is one way we are fighting for American farmers, ranchers, producers, workers, and businesses.

We are also working tirelessly with trading partners to open markets for hard-working American families and communities—especially our rural communities—to get more wins.

#### WINS FOR U.S. AGRICULTURE AND RURAL COMMUNITIES

We signed an agreement with the EU to modify tariff rate quota (TRQ) allocations on several important U.S. products, including rice, wheat, and corn.

We revised the beef safeguard mechanism under the U.S.-Japan Trade agreement, to allow U.S. beef exporters to more reliably meet Japan's growing demand for high-quality beef. In 2023, U.S. beef and beef product exports to Japan were \$1.8 billion, accounting for more than 46 percent of Japan's total beef and beef product market.

We are shipping more fresh potatoes to Mexico now, beyond the previous limit of a 26-kilometer zone along the U.S.-Mexico border. U.S. fresh potato exports to Mexico, our largest export market, grew from \$82.7 million in 2022 to \$117.4 million in 2023. This benefits U.S. potato growers from Idaho to Maine.

We also got major wins for our poultry producers: South Africa lifted restrictions on U.S. poultry and poultry products, and we reopened the Colombian market for U.S. poultry and egg products.

Specifically, let me highlight what we did to open the Indian market for our exports. Last June, India and the United States terminated six WTO disputes, and India agreed to remove retaliatory tariffs on several U.S. products. This means im-

proved access for chickpeas, lentils, almonds, walnuts, and apples benefiting farmers across the country, including in Michigan, Oregon, and Washington.

Additionally, in September, India and the United States resolved our final outstanding WTO dispute, and India agreed to reduce tariffs on several U.S. products. This means more market access for turkey, duck, blueberries, and cranberries benefiting farmers in North Carolina, Pennsylvania, Virginia, and Wisconsin.

We also worked with Japan to implement a new biofuels policy that will allow the United States to capture up to 100 percent of Japan's on-road ethanol market. I know this is important to many of you. Under this policy, exports of U.S. ethanol could increase by over 80 million gallons annually, representing an additional \$150–\$200 million in exports each year. This is an important win for our producers in Iowa, Missouri, and South Dakota.

U.S. agricultural exports totaled \$174.9 billion in 2023, and our administration has won over \$21 billion worth of new agricultural market access in the last 3 years. However, this is more than just numbers. It is about people, their livelihoods, and their communities. People like the first-generation farmer I met in Rowesville, SC. I met him last December together with Congressman Clyburn at his farm where he grows corn, soybeans, cotton, and small grains. Families growing almonds, like one my Chief Agricultural Negotiator, Doug McKalip, visited in the Central Valley of California last fall. This family was impacted by India's retaliatory tariffs imposed in 2019, limiting their access to a vital market for their operation. We removed those tariffs and provided more economic certainty for this family and many others.

We are working hard in our efforts to not leave anyone behind. We are making sure that Americans do not have to abandon their hometowns to find opportunity.

#### MAKING TRADE WORK FOR ALL AMERICANS

Trade should work for all Americans. This is why we are taking unprecedented steps to incorporate more voices into trade policymaking.

Just as you stay connected with the constituents in your States, I have traveled around the country to hear from workers, farmers, small businesses, and Tribal leaders to learn how trade affects them. I have also made it a priority to meet with a wide range of stakeholders to ensure their views inform our work, including civil society and labor leaders.

I know this approach may be surprising to some, but this should and must be the norm moving forward—because my job is to represent the entirety of the United States, not just those that can afford Washington lobbyists.

We need to deliver more equitable, fairer outcomes for more Americans. If we want different results, we need different inputs—from more people across our society.

This consultation includes Congress and this committee. Like our stakeholders, there is a wide range of views in Congress on trade. Over the last few years, I have welcomed all of your views, and I truly value the various perspectives I hear from Congress. Moving forward, I will continue partnering with you as we carry out our agenda.

Pursuing the interests of all Americans is a clear mandate and vision in the President's trade policy agenda, and we are placing utmost importance on this work this year. We also know that we need more and better data to inform our work. This is why USTR is continuing to work with the U.S. International Trade Commission, and we requested that the USITC repeat the distributional effects investigation every 3 years for the next 15 years.

This is critical for policymakers, researchers, and the public to monitor and ensure progress in assessing the distributional effects of trade policy on U.S. workers. Better input, for better output.

We are also institutionalizing the principles of fairness and equity in our negotiations and regional engagements. For the first time, we have partnered on inclusivity chapters in our trade negotiations, including those with Kenya. We are also meeting with a broad base of stakeholders to gather input, such as the African Diaspora, and women, youth, civil and rights organizations.

During our APEC host year, I was proud to host first-ever minister-level dialogues with labor and Indigenous leaders. We also announced during APEC that the United States is exploring observership in the Indigenous Peoples Economic and

Trade Cooperation Arrangement, or the IPETCA. This is a direct result of our annual Tribal consultations and engagements with Indigenous leaders and communities, and this will be a cornerstone of our work going forward in APEC and in other fora.

This includes the World Trade Organization, where, during the Thirteenth Ministerial Conference (MC13) in February, U.S. leadership was reflected in the effort of ministers holding a first-ever discussion specifically on how the WTO can help foster better outcomes for more people.

#### TRANSFORMING THE WTO

This is part of our overall effort to make the WTO more responsive and effective. Our administration is working with other WTO members on a reform agenda that reflects priorities of our worker-centered approach—improving labor standards, protecting our planet, and advancing shared prosperity.

MC13 was an important milestone to gauge our progress to date, and we announced several important outcomes. We made more progress on dispute settlement reform in the last year than we did in the last several decades.

We extended the e-commerce moratorium, which was not a forgone conclusion. We also announced significant development outcomes. We ensured that members graduating from the least developed countries (LDC) category can continue a smooth transition. We agreed to support their capacity to effectively utilize the Agreements on Technical Barriers to Trade and Sanitary and Phytosanitary Measures, and we supported a work program for small and vulnerable economies. We also agreed to hold dedicated sessions on issues important to land-locked developing countries.

Our discussions in Abu Dhabi highlighted that developing economies, both large and small, are having important debates over what rules and policies best serve their interests. This includes issues such as inclusivity, sustainable development, and the need for our trade policies to be flexible to allow WTO members to manage current global challenges. While MC13 is over, our work at the WTO continues, and our administration remains committed to working with all WTO members to develop a common agenda that allows all of us to have our priorities reflected.

#### COLLABORATING WITH TRADING PARTNERS

What we are trying to do in Geneva is reshaping the global trading system for the better, for the future, for the people. And those are the goals of our regional and bilateral trade initiatives as well.

We are making significant progress with Taiwan. Last June, the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) signed the first agreement under the United States-Taiwan Initiative on 21st-Century Trade. This was less than a year after we announced the negotiating mandate in August 2022.

The first agreement focuses on economically meaningful areas to build our middle classes together. For example, small business owners tell me that tariffs are not the primary reason they cannot export more of their products—in many cases, it is because of the red tape.

So, the first agreement with Taiwan includes commitments on simplifying Customs procedures and making rulemaking processes more transparent, among other issues. It also includes specific provisions to help SMEs compete and thrive, including addressing corruption. Furthering these negotiations with Taiwan is a high priority for USTR this year.

We are making progress on the U.S.-Kenya Strategic Trade and Investment Partnership (STIP) as well. Our teams recently wrapped up a third negotiating round. The United States has tabled text on agriculture, anticorruption, SMEs, and services domestic regulation. Together, we are working closely to deliver real benefits to our people and so that the STIP can serve as a model for engagement with other willing countries on the African continent—all while respecting the priority of integration among African countries themselves.

An important part of these negotiations is to make sure that any trade deal incentivizes a race to the top, for our people and for our planet. This is why we have tabled strong text on labor rights and the environment in these discussions, and also in the Indo-Pacific Economic Framework.

Trade deals take time, but our team made more progress in the last year than what would typically take years to complete. I am incredibly proud of my team for what we have accomplished. We are continuing forward with a new and innovative approach to trade, designed to create durable and sustainable economic growth.

This also applies to our work with AGOA partners and in our planning for the next AGOA Forum later this year. I met incredible workers, small business owners, and entrepreneurs when I was in Johannesburg for the AGOA Forum last November. AGOA has helped Africa grow its extraordinary economic potential over the last 2 decades.

Its renewal is important to continue to bring real change to people across the continent, and our administration fully supports renewal beyond 2025. However, we must also seize this opportunity to make AGOA better, to improve utilization rates, and to explore other trade tools to complement our AGOA relationship.

#### PROMOTING SUPPLY CHAIN RESILIENCE THROUGH TRADE

Increasingly, we are seeing that a sense of growing economic insecurity is shared by different communities across continents, and people everywhere felt this more acutely during the pandemic. Lives and livelihoods, homes and communities were disrupted. This is why reducing dependencies and vulnerabilities and strengthening supply chains is a major priority for USTR this year, which informs our work as part of the President's Council on Supply Chain Resilience.

Resilient supply chains also reduce opportunities for economic coercion and enhance our economic security. They provide a range of sourcing options; adapt, rebound, and recover with agility following shocks; uphold labor rights and environmental protections; and strengthen the U.S. manufacturing base and workforce.

We have been focused on this topic in various fora, including the G7, G20, APEC, and OECD. This also includes our work through the trade track under the Americas Partnership for Economic Prosperity, where a lot of our efforts will focus on supply chain resilience.

But to continue our work to develop innovative trade tools and strategies for connecting trade and other economic policy measures to advance supply chain resilience, we published a Federal Register notice last month. This will allow USTR to draw upon various perspectives and experiences to get a more granular understanding of the challenges and to identify potential policy solutions.

We are integrating trade tools with domestic economic measures to position U.S. manufacturing and services for continued leadership and competitiveness. We are also collaborating with trading partners and allies to incentivize a race to the top through stronger coordination and alignment on labor and environmental protections within trusted networks.

I was in Burlington, NC a few weeks ago, and met with the owners and workers of Glen Raven, a family-owned fabrics and textiles company. I heard firsthand how important it is for us to pursue resilience over efficiency, for our workers and businesses. I also visited the Marsh Furniture Company, a family-owned cabinet manufacturer in High Point, NC. We talked about the company's rich, 100-year history, and why it is critical to address unfair practices by the PRC and other economies.

#### STANDING UP TO THE PRC'S UNFAIR ECONOMIC PRACTICES AND FIGHTING FOR FAIR COMPETITION

At its core, this is about giving everyone a fair shot. However, that is not possible when countries like the PRC continue to use nonmarket policies and practices to dominate industries. That dominance is what enables the PRC to coerce other economies.

The PRC's unfair policies and practices have devastated many working communities and industries across our country, including many in your States: steel, aluminum, solar panels, batteries, electric vehicles, and critical minerals—just to name a few.

The PRC also uses unfair policies and practices to concentrate production of certain goods in the PRC, which undermines supply chain resilience and harms consumers that, in the long run, are deprived of the innovation and choice that fair competition would produce.

As the President said during his State of the Union address, this administration will continue to stand up to China's unfair, non-market policies and practices. And

we are doing so with like-minded partners and allies, as you saw in the joint declaration we issued last June with Australia, Canada, Japan, New Zealand, and the United Kingdom.

We have seen the PRC create dependencies and vulnerabilities in multiple sectors, harming American workers and businesses and creating real risks for our supply chains. This is why we are taking a serious look at how our existing tools are addressing this problem, including through our 4-year review of the China section 301 tariffs. This is also why I am closely reviewing the section 301 petition I received from the five national labor unions regarding the PRC's acts, policies, and practices in the critical maritime, logistics, and shipbuilding sector.

Our economic relationship with the PRC is complex, and as the President said, we want competition with China, not conflict. But the competition must be fair, and USTR and the Biden-Harris administration are fighting every day to put working families first, rebuild American manufacturing, and strengthen our supply chains.

#### CONCLUSION

We're using trade to give everyone a fair shot. That means creating incentives that are more than lower costs; raising labor and environmental standards; and pursuing resiliency.

USTR will remain focused this year on developing innovative trade tools and strategies for connecting trade and other economic policy measures to advance these goals. I want to thank my USTR team, serving in Washington, DC, and around the world, for their unwavering devotion and determination to serve all of America.

I think we all agree that our economic system, including trade, should strengthen the middle class. I look forward to continuing our partnership through regular briefings with you and your staff, as we have done for the last 3 years.

Thank you.

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#### QUESTIONS SUBMITTED FOR THE RECORD TO HON. KATHERINE C. TAI

##### QUESTIONS SUBMITTED BY HON. RON WYDEN

*Question.* China uses large-scale industrial subsidies to support production—and overproduction—of everything from solar panels to semiconductors in an attempt to drive American competitors out of business with a flood of cheap imports. China's massive subsidies, along with its rampant technology theft and market restrictions, hurt U.S. manufacturing and help Chinese industries corner the market on critical inputs and products of the future. These practices also hurt our allies, and a section 301 report would allow the United States to build a definitive record of this behavior.

Will you use section 301 to proactively investigate, establish a record, and take action against China's unfair subsidies in innovative, high-tech industries like semiconductors, electric vehicles, batteries, or solar?

*Answer.* Section 301 is one of the most important enforcement tools that USTR brings to bear to address unfair trade practices. China utilizes a wide range of unfair, nonmarket policies and practices to undermine fair competition and dominate markets, both in China and globally. Those anticompetitive policies and practices, which include nonmarket excess capacity, pervasive subsidization, forced labor and other labor violations, and many others, create strategic dependencies and vulnerabilities, which undermine our supply chain resilience and economic security. I agree with you that we must consider all available tools and options to more effectively address this threat, including use of section 301.

*Question.* Your written testimony stated that USTR opened India's market for U.S. agriculture exports as part of an agreement to resolve several outstanding World Trade Organization (WTO) disputes. This includes disputes initiated and litigated under prior administrations, such as *India—Agricultural Products* (DS430), in which the United States successfully challenged India's restrictions on U.S. agricultural exports. Notably, when the United States prevailed in that particular dispute before a WTO panel and the Appellate Body, Secretary of Agriculture Tom Vilsack hailed the result as “a major win for U.S. agriculture and, in particular, the U.S. poultry industry.”

However, under the Biden administration, USTR has not initiated any new WTO disputes. During the hearing, you explained that USTR had not sought to use this potential enforcement tool because WTO dispute settlement had been “ineffective.”

Please clarify why you consider WTO dispute settlement to be ineffective, while also claiming market access “wins” for U.S. farmers based on resolving WTO disputes. To the extent that your statement was limited to WTO disputes involving China, please explain why USTR has not initiated a single WTO dispute—or even requested consultations—to address trade barriers with respect to any other WTO Member.

Answer. The wins achieved for U.S. farmers through resolution of our seven WTO disputes with India came after 2 years of intensified bilateral engagement between the two countries to deepen our economic and trade ties. The underlying WTO disputes, by contrast, had been ongoing for years—some for more than a decade—and had remained outstanding despite WTO reports. The specific language you quote is from 2015,<sup>1</sup> and we finally were able to resolve that India poultry dispute, through intensive, cooperative efforts, only in 2024—more than a decade after it was launched. This shows that the dispute settlement process was ineffective in this particular case.

As you well know, WTO rules and disputes provide no solutions for the threats from China’s nonmarket economy. In fact, China uses the WTO to attack our ability to defend our workers and businesses from China’s nonmarket policies and practices. It also uses the WTO dispute settlement system to attack U.S. actions to defend our national security interests, such as our section 232 tariffs to preserve our critical steel and aluminum industries, our Hong Kong national security (ROO) actions in defense of democracy and human rights, and our semiconductor export controls. And China has recently filed a dispute attacking the Inflation Reduction Act, our groundbreaking tool for the United States to seriously address the global climate crisis and invest in U.S. economic competitiveness, even while the PRC continues to use unfair, nonmarket policies and practices to undermine fair competition. Given the numerous WTO disputes that have sided with China on critical issues, it is clear that the WTO has been effective in advancing China’s interests and ineffective for core U.S. interests.

This is, in large part, why the Biden-Harris administration has been clear that we must fundamentally reform the WTO dispute settlement system. The United States initiated the interest-based reform conversations in Geneva which were a collective and collaborative exercise that resulted in draft text totaling 50 pages of potential reforms that would advance shared interests. I am pleased that we have made more progress in the interest-based reform conversations than was made in nearly 20 years of the previous process.

Although difficult issues remain unresolved, such as correcting critical erroneous Appellate Body interpretations—including several criticized by members of Congress as diminishing U.S. rights to defend our workers and businesses—the United States is continuing to engage in an interest-based manner as we pursue a system that supports all WTO members in the resolution of their disputes in an efficient and transparent manner, and in doing so limits the needless complexity and interpretive overreach that has characterized dispute settlement in recent years.

We will utilize all our trade policy tools, including enforcement, to defend American workers and businesses and promote our values and interests. Enforcement includes all those actions to make sure that workers, farmers, and businesses enjoy the full benefits of trade agreements, not only at the WTO, but also under our USMCA and other agreements. We have not hesitated to utilize all of those tools, from bilateral dialogue, to engagement through trade agreements, to USMCA rapid response mechanism actions, to dispute settlement, to section 301 investigations and actions to secure more fairness for our workers, farmers, and businesses.

*Question.* Since 1998, the WTO e-commerce moratorium has ensured that electronic transmissions—including things like music, movies, software, and electronic communications—can be sent across borders tariff-free. Attempts to introduce tariffs to electronic transmissions would not only jeopardize the open internet but also put U.S. exporters, innovators, creators, and workers across every industry at a disadvantage. The United States has long supported the moratorium and has pushed

<sup>1</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/june/wto-affirms-us-trade-enforcement-win>.

to make it permanent, with support from Congress.<sup>2</sup> I commend your work to secure an extension of the moratorium at the 13th Ministerial Conference in March 2024;<sup>3</sup> it is also critical that USTR continue its work to keep the moratorium in effect.

Do you support making the e-commerce moratorium permanent on a WTO-wide basis?

Will you advocate for a permanent extension of the e-commerce moratorium on a WTO-wide basis in negotiations and discussions leading up to and during the 14th Ministerial Conference?

Answer. I was pleased we were successful in our efforts to extend the e-commerce moratorium and work program. While the moratorium and work program enjoy broad support among WTO members, it is clear that the WTO membership needs to have a more robust discussion about the future of the moratorium and the impact of the digital economy on developing members.

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#### QUESTIONS SUBMITTED BY HON. MIKE CRAPO

*Question.* The National Potato Council expressed disappointment with how Japan's ban on U.S. potatoes appeared in the National Trade Estimate, or NTE, because it didn't capture the full extent of the problem. A number of stakeholders also took issue with this year's NTE because of your decision to cut a number of trade barriers by seeing if they were in our trading partners' purported public interest.

Did you take the opportunity of the April Japan state visit to raise potatoes, and if not, will you commit to do so immediately?

Answer. I fully appreciate the importance of opening the Japanese market to U.S. table-stock potato producers, which is why USTR has engaged with Japan on this issue many times and has undertaken a number of efforts to secure access for U.S. fresh table-stock potatoes to Japan. Following Prime Minister Kishida's state visit in April 2024, USTR raised this issue with senior officials from the Japanese Ministry of Agriculture, Forestry, and Fisheries. Additionally, USTR has raised this issue with Japan in all four meetings of the U.S.-Japan Partnership on Trade, most recently in December 2023 and in a June 6, 2024 bilateral meeting with Japan's Minister of State Foreign Affairs. Moving forward, USTR will continue to press the appropriate Japanese ministries to advance this issue in a timely and science-based manner in coordination with our colleagues at the U.S. Department of Agriculture (USDA).

*Question.* Relatedly, why look at our trading partners' justifications for their discrimination rather than the measure's content and effects on American workers? As part of this explanation, please explain if the statute for the NTE requires you to consider the trading partner's justification or public interest in determining whether a measure is a trade barrier, and if so, how?

Answer. The statute requires USTR to identify trade barriers in order for USTR to then seek to remove those barriers. According to the legislative history, Congress intended for USTR to "consider vigorously utilizing existing authorities" to "deal with the identified barriers." Thus, the exercise is not simply listing barriers, but listing barriers the United States then seeks to remove. Prior NTEs have, for example, listed import licensing for narcotics as a trade barrier. Consistent with the statute, and with our values as a Nation, the United States does not seek to "deal with" a measure that, while it may impact trade, is for the purpose of protecting the public.

*Question.* You speak of USTR's partnership with Congress. Both sides of the aisle agree that consultation is poor. Briefings rarely share any information, including USTR's position on an issue, until it is a *fait accompli*. This must change.

Will you agree to follow, completely, the consultation provisions in the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation

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<sup>2</sup> See H. Con. Res. 190, Urging the United States to seek a global consensus supporting a moratorium on tariffs and on special, multiple, and discriminatory taxation of electronic commerce, <https://www.congress.gov/bills/106th-congress/house-concurrent-resolution/190/>.

<sup>3</sup> ICYMI: USTR Secures Extension on E-Commerce Moratorium at MC13, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/march/icymi-ustr-secures-extension-e-commerce-moratorium-mc13>.

Act (“U.S.-Taiwan Initiative on 21st-Century Trade Implementation Act”) for that agreement?

Answer. Under my leadership, USTR has taken steps to enhance consultation and transparency with Congress, stakeholders, and the American public. In 2021, I released transparency principles that established guidelines for our engagement with Congress, stakeholders, and the public. These principles include: providing inclusive opportunities for the public to participate in the development of trade policy and trade initiatives; encouraging the participation of a broad range of stakeholders; striving to ensure that the membership of Federal advisory committees includes a wide variety of expert interests and is reflective of the diverse set of stakeholder perspectives; and adhering to the Guidelines for Consultation and Engagement that USTR adopted in October 2015. We have also taken additional steps to keep the public engaged in our negotiations, including holding public listening sessions with stakeholder groups in advance of and during negotiating rounds, publishing summaries of negotiating text, and increasing congressional staff’s access to our negotiating text.

USTR has consulted extensively with members of Congress, the Senate Finance Committee, the House Ways and Means Committee, and staff for various members on a bipartisan basis. These consultations have heavily influenced our views and positions and USTR has made changes to negotiating text in response to feedback from Democrats and Republicans.

In the current negotiation regarding a further agreement with Taiwan, USTR has acted consistently with the U.S.-Taiwan Initiative on 21st-Century Trade Implementation Act for its consultations with the trade committees and intends to continue doing so.

That said, USTR is mindful of the President’s signing statement for the legislation, which said, in part, that “[i]n cases where the requirements of section 7 of the act would impermissibly infringe upon my constitutional authority to negotiate with a foreign partner, my administration will treat them as non-binding.”

*Question.* Please further explain USTR’s position during a January 26, 2024 call with Senate Finance Committee staff that Taiwan’s comments and bracketed text on USTR’s proposed labor chapter and non-paper were not “negotiating text” as defined in the U.S.-Taiwan Initiative on 21st-Century Trade Implementation Act, which resulted in USTR providing updated labor negotiating text on January 16, 2024—well beyond the statutorily required 3-day deadline for negotiating text drafted by Taiwan.

Answer. USTR provided to Congress an updated consolidated labor chapter negotiating text on January 16, 2024, which incorporated attributions provided by Taiwan during a recent virtual meeting, consistent with section 7(b)(3) of the legislation.

The informal “non-paper,” which you refer to from a staff briefing, did not include negotiating text as defined in the legislation. Rather, it was a conceptual paper designed to help USTR understand Taiwan’s views and develop negotiating text. As such, the non-paper falls outside of the scope of section 7(b)(2)–(3) of the legislation.

Where USTR has developed text that meets the definition of “negotiating text” in the legislation or is in possession of a consolidated negotiating text, USTR has shared those texts with the trade committees consistent with section 7(b)(2) or 7(b)(3).

*Question.* Will you apply the consultation procedures set forth in the U.S.-Taiwan Initiative on 21st-Century Trade Implementation Act for all other ongoing negotiations?

Answer. As discussed above, USTR has acted consistently with section 7 of the legislation for the current negotiation of a further agreement with Taiwan. In its other negotiations, USTR has acted consistently with its longstanding transparency practices, including consulting with the trade committees on the basis of proposed negotiating text prior to USTR sharing that negotiating text with the foreign trading partner, inviting committee staff to negotiating rounds, and briefing them at those negotiating rounds. USTR has also applied the additional transparency and consultation measures mentioned in an earlier response to our negotiations with Taiwan and in other ongoing negotiations.

*Question.* Recently, when asked about discrimination against U.S. technology companies, you said “how many of these American companies are actually really Amer-

ican companies?” because they are “actually paying taxes there as opposed to paying taxes here. . . .” Actually, these companies pay billions in taxes here, but they are paying more overseas—because of discriminatory digital services taxes, or DSTs.

You said at the hearing that Treasury has a role as well in addressing DSTs through its negotiations with individual countries. If Treasury is unsuccessful in its role, and the decision is between trade enforcement measures or not—will you move forward with enforcement action rather than note that all options are under consideration?

Answer: USTR initiated section 301 investigations of the digital services taxes of France, Austria, India, Italy, Spain, Turkey, and the United Kingdom in 2019 and 2020. USTR and Treasury have worked closely together in trying to address these DSTs, which burden technology companies and challenge the existing international tax system.

An important purpose of the section 301 investigations is, and always has been, to support Treasury’s efforts to find a lasting solution to the challenge of DSTs through the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting negotiations and in any other negotiations relating to DSTs.

In November of 2021, USTR terminated the trade actions in the investigations on the grounds that action was no longer appropriate due to political arrangements that Treasury had reached with the DST countries. Since then, all seven investigations have been in a monitoring phase under section 306(a) of the Trade Act. Specifically, USTR is monitoring the implementation of the political agreement on an OECD/G20 two-pillar solution as pertaining to DSTs, the commitments under the joint statement between Treasury and the DST countries, and associated measures.

On August 30, 2024, USTR requested consultations with Canada concerning its DST under the USMCA dispute settlement chapter. Moving forward, USTR will continue to consider using all available tools to make progress towards addressing unilateral, discriminatory DSTs.

*Question.* Some of our trading partners have privately told us they felt the United States was not helpful in securing the recent extension of the e-commerce moratorium. They point to the uncertainty of the U.S. position, such as when your deputy, Ambassador Pagán, said it supports the moratorium “for now.”

Can we set our partners straight right now by agreeing that the United States supports a permanent moratorium, which is what Congress approved in USMCA and 80 countries in the WTO e-commerce negotiations support?

Answer. I was pleased we were successful in our efforts to extend the e-commerce moratorium and work program. While the moratorium and work program enjoy broad support among WTO members, it is clear that the WTO membership needs to have a more robust discussion about the future of the moratorium and the impact of the digital economy on developing members.

*Question.* One of the main challenges to recommencing meaningful agriculture talks at the WTO is India’s demand to exempt its trade distorting public stockholding programs. In some years, India’s stockpiles have become so large that it exported subsidized wheat at discounted prices overseas, which hurt our farmers and those of our allies in Canada and Japan.

Do you agree it is past time to challenge India’s trade distorting agricultural subsidy programs?

Answer. We understand that India’s agricultural policies are distorting and adversely affecting markets in India and globally.

The United States is actively coordinating with a growing number of WTO members who are also deeply concerned about India’s trade-distorting agricultural subsidies, including those connected with public stockholding programs.

We continue to take actions in WTO Committee on Agriculture meetings, including by registering formal questions of India and counter-notifying India’s domestic support measures, laying a track-record of our concerns and bringing greater scrutiny to India’s policies.

We will continue to closely monitor India’s policies and actions and continually assess our options for holding India accountable to its WTO commitments.

*Question.* Many stakeholders feel that the framework agreements—particularly farm groups—are not sufficiently ambitious. They are also worried our partners will

not adopt the commitments because we don't have a plan for dispute settlement. Last year, you said you would not insist our partners implement IPEF before declaring entry into force.

Will you revisit that decision and now agree that our partners need to implement any obligations in a framework agreement before we conclude any such agreement?

Answer. USTR's trade initiatives will provide substantive benefits to a wide variety of U.S. producers, including agricultural producers. For example, through the IPEF trade pillar, we are working to produce mutually beneficial outcomes that advance workers' rights through strong and enforceable labor standards; improve economic opportunities for families, farmers and ranchers, and micro-, small-, and medium-sized enterprises; and promote fair, open, and rules-based trade.

When it comes to farm groups, the trade pillar aims to tackle persistent barriers for agricultural producers by seeking commitments from trading partners to facilitate agricultural trade through science and risk-based decision making and through the adoption of sound and transparent regulatory practices. According to USDA data, the Biden-Harris administration has facilitated roughly \$21 billion in blocked agricultural market access through the addressing of non-tariff barriers like ones being tackled through the trade pillar.

We are committed to ensuring that trading partners implement their international trade commitments, including those made in U.S. trade agreements.

*Question.* The United States and Kenya agreed to discuss standards, conformity assessment procedures, and technical regulations—commonly known as TBT commitments—in the context of the STIP negotiations, but USTR has yet to table any proposals in these areas.

Will USTR table TBT commitments in the STIP negotiations and when?

Answer. In response to concerns expressed by Congress over problematic WTO decisions under the TBT agreement, as well as concerns expressed by Congress about the nature of the participation of the People's Republic of China in standards-setting bodies, USTR has sought to ensure that any standards commitments address those concerns. USTR continues to work with Kenya, including by facilitating meetings between Kenya and U.S. standards-related bodies, to advance common goals with respect to standards and compliance. We have also been working with Kenya within the WTO Committee on Technical Barriers to Trade on issues of common interest.

*Question.* If so, will USTR also commit to ensuring that any TBT commitments proposed by the United States reflect the same level of ambition as found in the TBT chapter of USMCA?

Answer. Please see above.

*Question.* Stakeholders assert that USTR's decision to support a TRIPS waiver for COVID vaccines was not a unique instance of agreeing to waive the interests of U.S. innovators but symptomatic of the administration's failure to engage on intellectual property rights generally. Among the issues that stakeholders have flagged where USTR appears to be inactive are (1) South Africa's proposed copyright law, (2) India's lack of trade secret protection and proposals to extend statutory licensing to internet and digital broadcasters, and (3) Peru's failure to implement all of the intellectual property commitments in the United States-Peru Trade Promotion Agreement.

Please identify all significant enforcement or high-level engagement actions taken by USTR during the Biden administration to press intellectual property protections, including for the three issues flagged above. (Please note that this question does not consider noting an issue in a report to constitute significant enforcement or high-level engagement.)

Answer. On South Africa, USTR has engaged heavily throughout South Africa's copyright reform process, going back nearly a decade to the initial stages of the recently passed legislation. Throughout the process, we have engaged extensively with senior South African Government representatives, members of Parliament, and other relevant stakeholders.

Also, USTR has had extensive high-level engagement with India to raise both the lack of trade secret protection and proposals to extend statutory licensing to Internet and digital broadcasters, as well as other high-priority intellectual property (IP) issues. These issues were raised at the 2024 United States-India Trade Policy

Forum led by Ambassador Tai, and USTR continues to engage on these issues in all levels of bilateral IP engagement.

In addition, USTR has regularly engaged with Peru on various IP concerns, such as Peru's lack of preestablished damages for copyright infringement and trademark counterfeiting and Internet service provider liability regulations, including through the U.S.-Peru Free Trade Commission under the United States-Peru Trade Promotion Agreement, which most recently met in February 2024.

Further details regarding USTR's significant enforcement and high-level engagement activity are in the 2024 Special 301 report.

*Question.* Why is USTR not including an intellectual property chapter in any of the framework negotiations it is undertaking such as the Indo-Pacific Economic Framework or U.S.-Taiwan Initiative on 21st-Century Trade?

*Answer.* We recognize that intellectual property (IP)-dependent industries can be drivers of employment and economic activity. We worked with Indo-Pacific Economic Framework partners to develop the scope for trade pillar negotiations and with Taiwan to develop the scope for the U.S.-Taiwan Initiative on 21st-Century Trade, and focused on topics that would enhance our resilient, sustainable, and inclusive trade. We look forward to continuing discussions with you and your team on other ways that we can advance IP protections, including through bilateral engagement with trading partners.

*Question.* U.S. free trade agreements that contain commitments on antitrust or competition normally include due process protections such as right to counsel. These protections are a critical distinguishing feature between legitimate competition regimes such as the United States', and arbitrary regimes such as China's which uses it antimonopoly law as a pretext to attack foreign companies. USTR has indicated in briefings that including due process protections—many of which are guaranteed by the constitution—may be inconsistent with “Bidenomics.”

Does USTR agree that it is important that any negotiated commitments concerning competition also include due process protections? If not, please explain in detail USTR's position, including if appropriate, why “Bidenomics” precludes USTR from pressing constitutionally guaranteed rights in antitrust matters.

*Answer.* USTR has never indicated in a briefing that due process protections may be inconsistent with the President's economic agenda. USTR has, however, noted that the only instance in which concern has been expressed about constitutional rights is in the competition chapter. As USTR has explained repeatedly in briefings, the competition chapter has historically been drafted to reflect the priorities of large corporate interests, including those that benefit from weak competition enforcement regimes.

I would note that the President's executive order on competition states that those harmed by corporate consolidation include farmers, who “are squeezed between concentrated market power in the agricultural input industries—seed, fertilizer, feed, and equipment suppliers—and concentrated market power in the channels for selling agricultural products. As a result, farmers' share of the value of their agricultural products has decreased, and poultry farmers, hog farmers, cattle ranchers, and other agricultural workers struggle to retain autonomy and to make sustainable returns.” Therefore, in this regard, the President's agenda aligns with the interests of American farmers, as well as small businesses, workers, and consumers.

As the United States and other governments promote fair competition, including for the purpose of addressing monopolistic behavior by nonmarket autocracies, it is important to ensure that our trade agreements reflect that priority.

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#### QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

*Question.* Japan is a huge market for frozen potatoes from the State of Washington. Washington growers export approximately \$220 million worth of frozen, dehydrated, or chipped potatoes to Japan each year. However, American growers continue to face significant obstacles in gaining market access for fresh “table-stock” potatoes in Japan. I raised this issue in a letter with nine of my colleagues to President Biden last week during the Japanese Prime Minister's visit to Washington, DC.

Japan's Ministry of Agriculture, Farming, and Fisheries continues to delay substantive technical discussions on table stock access. They have raised phytosanitary concerns, however, the U.S. has a strong history of exporting fresh potatoes to Asia,

including South Korea, Taiwan, Hong Kong, Singapore, Indonesia, the Philippines, Malaysia, and Thailand. If this market access for fresh potatoes is achieved, the U.S. potato industry estimates it will result in an additional \$150 million per year in exports.

I appreciate that you have repeatedly raised with the Japanese Government the need to lower their trade barriers on fresh potatoes and find a solution for U.S. potato producers. We need a concerted effort between the USTR and the Department of Agriculture to make progress.

Can you describe the concrete steps you will take to lead Japan to remove barriers to fresh U.S. potatoes?

Answer. I fully appreciate the importance of opening the Japanese market to U.S. table-stock potato producers, which is why USTR has engaged with Japan on this issue many times and has undertaken a number of efforts to secure access for U.S. fresh table-stock potatoes to Japan. Following Prime Minister Kishida's state visit in April 2024, USTR raised this issue with senior officials from the Japanese Ministry of Agriculture, Forestry, and Fisheries. Additionally, USTR has raised this issue with Japan in all four meetings of the U.S.-Japan Partnership on Trade, most recently in December 2023 and in a June 6, 2024, bilateral meeting with Japan's Minister of State Foreign Affairs. Moving forward, USTR will continue to press the appropriate Japanese ministries to advance this issue in a timely and science-based manner in coordination with our colleagues at the U.S. Department of Agriculture (USDA).

*Question.* In October, USTR withdrew its support at the WTO for long-held positions that would have allowed the free flow of data, protected forced transfer of American technology, and combat data localization requirements. USTR also dropped reference to countless digital trade barriers in the 2024 NTE Report (National Trade Estimate Report on Foreign Trade Barriers) and stopped standing up against digital protectionism abroad, just as U.S. services exporters are facing a barrage of harmful barriers and a proliferation of discriminatory regulatory thresholds around the world.

Business groups across every sector, along with key civil rights and civil society organizations like the ACLU, have called for USTR to continue its long tradition of enforcing digital trade rules and standing up for an open internet. Similarly, you suggested that one reason for backing out of digital trade negotiations and rescinding support for strong digital trade commitments at the WTO and IPEF is a lack of a domestic privacy law.

I wrote the American Privacy Rights Act, a privacy law draft with a colleague Congresswoman McMorris Rodgers. In my view, this proposal is fully consistent with existing digital trade rules, such as those in USMCA, and would not interfere with your ability to replicate those rules in other trade forums, including the WTO and IPEF.

Do you agree that current privacy proposals like mine, if enacted, will help you in your negotiations in different trade forums?

Answer. Given the dynamic nature of the digital economy, USTR is working diligently to ensure that any digital trade rules do not get ahead of the legislative and regulatory considerations taking place right now, including the important efforts that you are leading. As the administration and Congress continue their work on issues critical to the digital economy, such as privacy and personal data protection, USTR will take all such actions, including the proposal of the American Privacy Rights Act, into account in further evolving our trade policy.

In the Biden-Harris administration, USTR has been committed to digital trade that is inclusive, that protects the privacy of consumers and workers, that supports U.S. values like freedom of expression and freedom from discrimination, and that supports environmental sustainability goals.

*Question.* When it comes to a foreign country that targets and blocks U.S. manufactured aircraft, automobiles, or machinery, or raises barriers to U.S. agricultural products, you have been a strong advocate for those industries—which in the State of Washington, we really appreciate. But my State also has major U.S. services exporters. These businesses and their workers rely on fair treatment by foreign countries, yet USTR has stopped standing up against digital protectionism abroad. Many of these other sectors, including aircraft and automobiles, are highly regulated, yet you are able to work through trade agreements and resolve disputes.

Given your approach to supporting other sectors and the clear economic, security, and human rights justifications for upholding open digital trade, why have you not used these same tools to support U.S. services exporters and their workers?

How does digital differ from these other regulated sectors? Why is it that you argue that unfolding regulations in digital are a barrier to your ability to set appropriate standards in trade, when in these other sectors, regulations are also always in flux?

Answer. USTR continues to support U.S. services exporters and their workers through active engagement with trading partners to ensure fair treatment for U.S. exporters. U.S. services exports in 2023 reached a record of \$999 billion, \$71 billion more than in 2022 and \$108 billion more than in 2019. The U.S. trade surplus in services in 2023 was \$280 billion, \$48 billion more than in 2022.

The digital economy is a rapidly evolving aspect of the entire economy that includes new and emerging technologies, such as AI, and an increasing heavy reliance on the use of data, including personal data. U.S. products and services in the digital economy are largely unregulated compared to more mature and less dynamic areas of the economy, and we need to give the administration and Congress their due policy space in trade agreements to address issues important to the American people.

*Question.* The EU's Digital Markets Act targets five U.S. companies and no European companies, and it does not apply to massive Chinese technology companies like Huawei, Tencent, Alibaba, or Baidu.

Will you commit to enforcing our trade rights in Europe with respect to the EU digital regulatory agenda that targets U.S. companies?

Answer. This administration is committed to ensuring that U.S. companies are treated fairly by our trading partners and that our trading partners honor their obligations to the United States. USTR and interagency colleagues will collaborate to analyze and monitor EU digital legislative and regulatory developments with that perspective in mind.

*Question.* Can you explain why you haven't held to a position that opposes foreign laws that target U.S. companies and in fact leave Chinese competitors unregulated? If a reason is U.S. domestic policy debates, can you be more specific about which U.S. domestic policy conversation prevents USTR from opposing protectionist policies that hurt U.S. interests and U.S.-led innovation while benefiting Chinese companies?

Answer. Through the U.S.-EU Trade and Technology Council, the administration is working with the EU to preserve U.S. and EU technological leadership in a range of sectors. As part of this overall effort USTR is working closely with our European Commission counterparts to address Chinese nonmarket policies and practices that unfairly undermine the ability of U.S. and EU workers and the companies that employ them to compete fairly both at home and abroad.

*Question.* In 2018, USTR issued tariffs on selected U.S. imports from China under section 301. In the process of setting the tariffs, seafood products harvested by fishermen in my State, sent to China for secondary processing, and then exported back to the United States for consumption, were improperly included. USTR recognized this error and permanently excluded some of these products, like salmon and cod, from the tariffs. However, Bering Sea flatfish products were accidentally left on the list even though they follow the very same market channel as salmon and cod. Since that time the U.S. flatfish sector has successfully applied for and received exclusions from the tariffs five times.

The most recent exclusion expires on May 31, 2024. However, there are often gaps in the exclusions which result in market disruptions and the uncertainty of the process means U.S. fishermen are receiving lower prices for their products.

Are there plans to revise the section 301 list and potentially remove these products from that list? If not, would USTR consider exclusions of a longer duration to remove some of the uncertainty of this process?

Answer. In a Federal Register notice published at the end of May, USTR further extended certain exclusions through May 31, 2025. The extended exclusions include five exclusions for flat fish products. See 89 Fed. Reg. 46955. The exclusions cover all imports under the following statistical reporting numbers: 0304.83.1015; 0304.83.1020; 0304.83.5015; 0304.83.5020; 0304.83.5090.

## QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

*Question.* As we discussed at the hearing, it has been reported that Mexico helps finance the Cuban regime by participating in its medical missions, which the State Department has identified as a form of forced labor.

Has USTR reviewed the applicability of USMCA's forced labor standards to Mexico's decision to host Cuban forced labor?

If USTR does not believe these standards are applicable, please explain why.

If USTR has not reviewed the applicability of these standards, will you commit to doing so?

*Answer.* We are aware of concerns related to Cuban medical professionals working in Mexico and are tracking this issue closely. We take all allegations of forced labor seriously and we are committed to enforcing the relevant obligations under our trade agreements to ensure that worker rights are upheld.

*Question.* Does USTR agree with the State Department's characterization of Cuba's medical missions as forced labor?

If not, please explain.

*Answer.* In the 2023 Trafficking in Persons Report, the U.S. Department of State found that "Cuban nationals working in Mexico, including medical professionals contracted by the Mexican government, may have been forced to work by the Cuban Government." USTR continues to work closely with the Department of State on labor issues in U.S. trade partner countries, including issues related to allegations of forced labor.

*Question.* If USMCA's forced labor standards are found to be applicable to Mexico's use of Cuban forced labor, will USTR commit to using USMCA's enforcement tools to combat this practice?

If not, please explain why.

*Answer.* The full implementation and enforcement of the USMCA is one of my top priorities. We are committed to using the tools available under the USMCA to ensure that Mexico and Canada provide all the benefits negotiated for our workers, farmers, ranchers, service providers, and producers under the agreement.

## QUESTIONS SUBMITTED BY HON. THOMAS R. CARPER

*Question.* As Chairman of the Environment and Public Works Committee, I was encouraged to see your office focus on strengthening environmental provisions in our trade agreements and putting the climate crisis, which we have evidence to show is intensifying every week, at the forefront of your work.

In light of the formation of the White House Climate and Trade Task Force, how is the administration working to appropriately use trade tools and work with our trading partners to address the climate crisis in ways that foster job creation?

*Answer.* The ongoing work of the White House Climate and Trade Task Force was publicly announced by White House Senior Advisor and Climate Envoy John Podesta in March. The Task Force work is divided into three priority areas: methodologies and data, potential trade measures, and other industrial competitiveness policies. This Task Force work complements USTR's existing efforts to utilize trade tools to address the climate crisis and support job creation. USTR continues to align U.S. trade policies and relevant trading partner engagement with domestic environment and climate efforts. In addition to ongoing engagement in bilateral and multilateral fora, USTR submitted a recent U.S. communication to WTO members to advance discussions on practical ways that members' respective trade-related climate measures can complement and support efforts to address climate change.

*Question.* In March 2024, the U.S. Trade Representative's office released a request for comment on strategies to advance U.S. supply chain resilience in trade negotiations and related initiatives. Learnings from the COVID-19 pandemic have shown that trade and regulatory barriers can adversely impact supply chains, and specifically medical supply chain resiliency.

How is USTR evaluating the role of trusted trade partners in its efforts to build supply chain resiliency?

How do you envision incorporating and enforcing such policies in new forms of trade cooperation you are seeking?

Answer. In furtherance of supply chain resilience, USTR recognizes the importance of building and strengthening trusted networks among regional and like-minded trading partners and allies, where consistent with and supportive of domestic economic policy priorities. When weighing new strategies or forms of trade cooperation identified through the public comment process, we will identify and collaborate with trusted trading partners as appropriate. This collaboration would include efforts to enhance coordination and alignment on labor and environmental protections that are critical to supply chain sustainability.

*Question.* Highly pathogenic avian influenza (HPAI) is a deadly disease that has taken a toll on poultry farms on the Delmarva Peninsula. After the detection of HPAI on a farm in the United States, farms are subject to a quarantine period to limit the spread of the disease, before they can return to regular operations and exports.

How are you working with China to relist States eligible for export after they have cleared the U.S. Department of Agriculture—Animal and Plant Health Inspection Service required protocols for cleaning and disinfection after an HPAI detection?

Answer. We understand concerns regarding China's refusal to reopen the market for products from States that are free of HPAI, consistent with our bilateral HPAI regionalization protocol. In January 2024, the Chief Agricultural Negotiator raised this issue in person with his counterpart at China's Ministry of Agriculture and Rural Affairs. At the staff level, we continue to press China on this issue at every opportunity, including through regular consultations through the consultative mechanism available under the Phase One agreement. At the same time, we have been working closely with USDA experts to ensure our efforts are coordinated as we press China at both the technical and political level to adhere to science- and risk-based standards and commitments related to trade in poultry products from regions impacted by HPAI.

*Question.* Last year I submitted a question for the record asking if it would be worthwhile to reevaluate the use of section 301 tariffs in light of implementing some of the marquee pieces of legislation passed in recent years, including the Bipartisan Infrastructure Law and the Inflation Reduction Act.

In response you noted that as part of the 4-year review of the section 301 tariffs, your office is reviewing the effectiveness of the tariffs in achieving the objectives of the investigation, as well as the effect of the tariffs on consumers, workers, and the U.S. economy at large. And as part of this review, USTR is considering the existing tariffs structure and how to make tariffs more strategic in light of impacts on sectors of the U.S. economy as well as the goal of increasing domestic manufacturing.

Can you provide an update on the status of the review? How are you considering the needs of domestic manufacturers and others hard at work building out our infrastructure and working to further the energy transition?

Would you agree that a comprehensive robust and transparent exclusion process that balances the administration's economic, environmental, and social goals with countering China's unfair trade practices would create an effective trade policy with greater public support?

Answer. USTR has issued a comprehensive report on the statutory review of the tariff actions in the section 301 investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.<sup>4</sup> In the report, I recommended a series of actions that the President could take to pursue the objectives of the 301 investigation to obtain the elimination of China's acts, policies, and practices, including modifications to increase tariffs on specific products in strategic sectors. Many of the sectors included are targeted by China for dominance or are sectors where the U.S. has recently made significant investments through initiatives such as the Inflation Reduction Act and the Bipartisan Infrastructure Law. The sectors include: electric vehicles; lithium-ion batteries; certain critical minerals; ship-to-shore cranes; semiconductors; solar cells (whether or not assembled into modules); and steel and aluminum products. The report also recommends the establishment of an exclusion process targeting machinery used in domestic manufac-

<sup>4</sup> <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china-technology-transfer/china-section-301-tariff-actions-and-exclusion-process/four-year-review>.

turing and recommends 19 exclusions for certain solar manufacturing equipment, with the goal of supporting investment in U.S. solar manufacturing.

Having considered my advice, President Biden directed me to take action by proposing substantial tariff increases on targeted products and establishing an exclusion process for machinery used in domestic manufacturing. Consistent with the President's direction, in a Federal Register notice published on May 28, 2024, I proposed certain modifications to the tariff actions, including increasing section 301 tariffs on products in the above sectors.<sup>5</sup> Additionally, the notice establishes the framework for an exclusion process for machinery and proposes temporary exclusion for certain solar manufacturing equipment.

On September 13th, my office announced the final modifications.<sup>6</sup> The proposed modifications announced in May 2024 were largely adopted, with several updates to strengthen the actions to protect American businesses and workers from China's unfair trade practices following the review of more than 1,100 comments from the public. The updates included new timing and rates for tariffs on face masks, medical gloves, needles, and syringes; an exclusion for enteral syringes; a proposal regarding coverage of additional tungsten, wafers, and polysilicon tariff lines; an exclusion for ship-to-shore cranes ordered prior to May 14, 2024; an expansion of the scope of the machinery exclusions process to include five additional tariff lines; and modification of the coverage of proposed exclusions for solar manufacturing equipment.

These finalized tariff increases will target the harmful policies and practices of the People's Republic of China that continue to impact American workers and businesses. These actions underscore the Biden-Harris administration's commitment to standing up for American workers and businesses in the face of unfair trade practices.

Information on the revisions to modifications are detailed in USTR's Federal Register notice.

*Question.* The Bipartisan Infrastructure Law includes important provisions to ensure that American infrastructure is built by American companies, workers, and that components that support infrastructure products are made in America.

In 2022, Congress passed legislation to help build out our domestic manufacturing base and to combat climate change, as we passed the CHIPS and Science Act and the Inflation Reduction Act. I understand you have been working with U.S. allies on trade measures to facilitate the implementation of the Inflation Reduction Act.

How are you working with U.S. manufacturers, workers, and others to ensure they have the resources needed to successfully and swiftly implement the Bipartisan Infrastructure Law and its robust domestic content provisions?

*Answer.* Strengthening our supply chains is a critical component of the Biden-Harris administration's efforts to advance our worker-centered trade policy, create sustainable economic growth, ensure that our economy is more resilient in the face of supply shocks, and enhance U.S. economic security. This is why the administration is undertaking a whole-of-government effort to proactively strengthen domestic manufacturing and to secure trusted supply chains through strategic arrangements with trusted partners (friend-shoring) and with regional partners (near-shoring). The President is using all the tools at his disposal, including new authorities under the CHIPS and Science Act, Inflation Reduction Act, and Bipartisan Infrastructure Law, to incentivize the reshoring and domestic expansion of critical supply chains. Enduring resilience will require new investments in infrastructure, new incentives to increase the supply of key inputs, and new forms of cooperation with allies and trading partners to prevent and withstand supply chain disruptions and mitigate risks of price spikes and volatility that could contribute to inflationary dynamics. USTR endeavors to empower American workers and businesses, large and small, that are recalibrating and rebuilding secure and trusted supply chains for resilience, through a new approach to trade and investment policy—one that is supported by innovative strategies, tools, and mechanisms, and also integrated with domestic economic policy to position U.S. manufacturing and services for continued leadership and competitiveness.

<sup>5</sup> [https://ustr.gov/sites/default/files/89%20FR%2046252%20\(May%2028%202024\).pdf](https://ustr.gov/sites/default/files/89%20FR%2046252%20(May%2028%202024).pdf).

<sup>6</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/september/ustr-finalizes-action-china-tariffs-following-statutory-four-year-review>.

## QUESTIONS SUBMITTED BY HON. SHERROD BROWN

*Question.* As part of the renewal of USMCA, it will be critical to revisit the automotive rules of origin to address growing concerns in the automotive supply chain, particularly threats from countries seeking to circumvent duties like China, that present challenges to the United States auto industry and auto workers.

Does USTR intend to revisit the automotive rules of origin to address the potential for countries outside of the agreement to exploit the current rules? How does USTR intend to examine potential problems such as Chinese EV companies setting up production facilities in Mexico, or the need for a smelt and cast provision for aluminum automotive parts to prevent Chinese and Russian aluminum from entering the U.S. through Mexico?

*Answer.* As you know, one of the principal outcomes of the USMCA negotiation was much stricter rules of origin for North American trade in automobiles, to better ensure that preferential tariff treatment is only accorded to automobiles substantially manufactured in the United States and North America, and that the agreement's benefits accrue to U.S. and North American workers. At the same time, we are clear-eyed that China has developed and implemented a plan to target the EV sector for dominance through a wide and evolving range of nonmarket-based policies and practices applied across the entire EV supply chain, and is looking to invest in EV production outside of China to circumvent section 301 duties. We will continue to consider any necessary changes to the USMCA rules to ensure the competitiveness of the North American automotive and aluminum industries and that the USMCA's benefits continue to accrue to U.S. and North American workers. In addition, USTR is assessing other potential policy responses, given that the USMCA duty preference is only one element of Chinese automakers' calculus in shifting production abroad.

Section 301 tariffs on Chinese goods have promoted diversification of supply chains away from China, thereby protecting U.S. firms from forced technology transfer. Those tariffs have also encouraged Chinese firms to set up operations abroad, whether in the United States or with our trading partners. Rules of origin have left openings for those Chinese firms to benefit from Most-Favored Nation (MFN) treatment (avoiding section 301 tariffs) or preferential treatment under free trade agreements (avoiding MFN tariffs). Given the openness of our market to goods from key trading partners and to foreign investment, we will need to work closely together with Congress on evaluating and addressing these challenges.

*Question.* What are you doing to address Chinese and Russian-origin aluminum entering the United States through Mexico? What steps are you taking to work with Mexico to develop and implement an effective aluminum monitoring system?

*Answer.* Maintaining a viable aluminum industry is essential to U.S. national security. Aluminum helped fuel American industrialization and build the American middle class.

On July 10, 2024, President Biden and President of Mexico Andrés Manuel López Obrador announced actions to jointly prevent the evasion of tariffs on aluminum and steel. Under this agreement, in order to enter the United States free of section 232 tariffs, aluminum imports from Mexico must not contain primary aluminum smelted or cast in Belarus, China, Iran, or Russia.

My staff and I have repeatedly pressed Mexico to ensure greater transparency with regards to its official trade statistics for aluminum and steel, including through the publication of these data in Mexico's Tariff Information System (SIAVI) and will continue to do so.

## QUESTIONS SUBMITTED BY HON. MICHAEL F. BENNET

## AFRICAN GROWTH AND OPPORTUNITY ACT

*Question.* As China increases its influence in sub-Saharan Africa, the United States must renew the African Growth and Opportunity Act (AGOA) to boost U.S. investment in the region and provide an alternative to Beijing's initiatives and investments. I am glad to cosponsor Senator Coons's bill to reauthorize AGOA, which expires in September 2025. I am also glad President Biden has called on Congress to reauthorize and "modernize" AGOA. But the longer we wait to reauthorize AGOA, the less time we give U.S. firms to make decisions to invest in sub-Saharan Africa. Waiting until the last minute will weaken AGOA's effectiveness.

What specific improvements to AGOA would the administration like to see? How would a failure to renew AGOA undermine the administration's efforts to advance U.S. interests and influence in sub-Saharan Africa?

Answer. For the last 2 decades, AGOA has been a positive force to grow Africa's extraordinary economic potential. It has made a difference for millions of Africans by opening new doors for trade and investment, creating hundreds of thousands of jobs, and promoting regional integration. It has also incentivized many African Governments to undertake key political and economic reforms.

The Biden-Harris administration strongly supports the timely reauthorization and modernization of AGOA. Reauthorization requires an act of Congress, and I am committed to working with Members of Congress, African partners, and other key stakeholders to enhance AGOA and make the program as impactful as possible.

As noted in the 2024 Biennial Report on Implementation of AGOA, this includes supporting continental integration under the AfCFTA; improving utilization rates; exploring ways to deepen economic engagement post-graduation; and providing additional tools for assessing and reinstating eligibility.

#### WTO AND CHINA

*Question.* Last month, China requested World Trade Organization (WTO) dispute consultations over the clean energy tax credits Congress passed as part of the Inflation Reduction Act. China claims these credits discriminate against Chinese goods and violate key international trade rules. But over the past decade, China has made concerted efforts to evade or undermine these rules, most recently when it comes to electric vehicle dumping. You have noted that China "continues to use unfair, nonmarket policies and practices to undermine fair competition and pursue the dominance of [Chinese] manufacturers both in [China] and in global markets."

How can we use existing venues to build an evidentiary base demonstrating China's consistent violation of international trade rules? Are there legislative reforms that would support efforts to counter China?

Answer. USTR has been working intensively with key trading partners in a variety of venues to identify China's nonmarket policies and practices, assess their impact, and design more effective responses, including in the G7,<sup>7</sup> the U.S.-EU Trade and Technology Council (TTC),<sup>8</sup> and with diverse like-minded partners.<sup>9</sup> Regrettably, the primary multilateral venue is the World Trade Organization (WTO), which has undermined U.S. efforts to defend U.S. workers and businesses from China's nonmarket policies and practices and is widely acknowledged to have been ineffective in disciplining those policies and practices. As we explained in the 2023 USTR Report to Congress on China's WTO Compliance, WTO rules and the WTO's dispute settlement mechanism over the years have not proven effective in addressing the serious issues that arise from a WTO member's state-led, nonmarket approach to the economy and trade that systematically disadvantages that member's trading partners and broadly conflicts with the fundamental, market-oriented underpinnings of the WTO system. Despite the extensive enforcement efforts of the United States and other WTO members, China has been able to continue to pursue its predatory nonmarket policies and practices, which WTO rules and the dispute settlement mechanism have proven unable to discipline effectively.

Domestically, the Biden administration and USTR have been intensely focused on using available trade tools to defend U.S. workers and businesses from China's nonmarket policies and practices and to invest in American workers and businesses to rebuild our manufacturing and supply chain strength and resilience. I would welcome the chance to work with you on ways to support our efforts to counter and more effectively address the threat from China.

#### DE MINIMIS REFORM

*Question.* When Congress passed the *de minimis* law that allows for tax and duty-free treatment for certain shipments valued under \$800 per person, per day, it was meant to cut red tape for small business and reduce costs to the American con-

<sup>7</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/20/g7-leaders-statement-on-economic-resilience-and-economic-security/>.

<sup>8</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/31/u-s-eu-joint-statement-of-the-trade-and-technology-council-2/>.

<sup>9</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/joint-declaration-against-trade-related-economic-coercion-and-non-market-policies-and-practices>.

sumer. As time has passed, the *de minimis* law has been used as a loophole for bad actors to skirt laws on forced labor and drug trafficking, among others.

What is your view on the existing *de minimis* law? Would you agree that we must reform the law to better align with the United States' values and standards on labor, environment, and national security?

Answer. Yes. USTR has serious concerns about the exploitation of the *de minimis* exemption to circumvent laws and regulations governing health and safety, labor rights, and environmental protections. USTR also has concerns about the quality of the data that is being provided to government officials seeking to enforce the law.

In addition, I would note that, on September 13, 2024, the administration announced specific administrative actions to address *de minimis*—including a notice of proposed rulemaking by CBP that would exclude all shipments covered by section 301, section 201, or section 232 trade enforcement actions; a notice of proposed rulemaking by CBP to require specific, additional data for *de minimis* shipments; and a final rule from the Consumer Product Safety Commission requiring importers of consumer products to file Certificates of Compliance electronically with CBP and CPSC at the time of entry, including for *de minimis* shipments—and urged Congress to pass legislation this year to reform the *de minimis* exemption comprehensively to further protect American consumers, workers, and businesses.

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#### QUESTIONS SUBMITTED BY HON. MARK R. WARNER

*Question.* As you know, Virginia is a top poultry-producing State, and the industry is critical to the Commonwealth's economy, employing approximately 18,000 Virginians and providing a direct economic impact of \$5.8 billion to the State economy. Unfortunately, the poultry industry has faced numerous challenges in recent years amidst one of the worst outbreaks of highly pathogenic avian influenza (HPAI) to hit the U.S. As this outbreak has persisted, it has had an uneven impact on commercial flocks in various States. In Virginia, it has been over a year since HPAI has been detected in a commercial flock.

However, despite the U.S. Department of Agriculture's (USDA) rigorous monitoring regime confirming the safety of Virginia's commercial poultry industry, China continues to restrict imports of Virginia poultry products. This appears to be a case where China is ignoring the science and defying their trade obligations under the 2020 Phase One trade agreement.

As of this writing, more than 30 States are banned from exporting poultry products into China, including Virginia. This ban remains even though Virginia's commercial poultry flocks have been free of HPAI for over a year.

How has USTR been engaging with USDA and the Chinese Government on HPAI restrictions and what progress has been made towards reopening the Chinese market for American poultry producers, including those in Virginia?

Answer. We understand concerns regarding China's refusal to reopen the market for products from States that are free of HPAI, consistent with our bilateral HPAI regionalization protocol. In January 2024, the Chief Agricultural Negotiator raised this very issue in person with his counterpart at China's Ministry of Agriculture and Rural Affairs. At the staff level, we continue to press China on this issue at every opportunity, including through regular consultations through the consultative mechanism available under the Phase One agreement. At the same time, we have been working closely with USDA experts to ensure our efforts are coordinated as we press China at both the technical and political level to adhere to science- and risk-based standards and commitments related to trade in poultry products from regions impacted by HPAI.

*Question.* What tools have you considered using if China continues the seemingly willful violation of their obligations under the Phase One agreement?

Answer. We continue to use the consultation mechanisms available under the Phase One agreement to address these types of concerns directly with China as they arise. In addition, our strategy has expanded to include working with allies and partners on China-related issues of common concern while also pursuing the vigorous defense of our values and economic interests from the negative impacts of China's unfair, nonmarket policies and practices.

*Question.* Can I get a commitment that you will work with me and other members representing affected States to ensure China follows through on their obligations?

Answer. I look forward to working with you and other members on this.

*Question.* China has spent years tightening its grip on the world's supply of key critical minerals and processing and refining technologies. For dozens of critical minerals, China controls the entire value chain from mining to refining and processing after years of strategic investment in key industries.

Recent legislation including the Infrastructure Investment and Jobs Act, CHIPS and Science Act, and Inflation Reduction Act is helping us take a massive step forward in reshoring critical supply chains for technologies like semiconductors, EV batteries, solar panels, etc. However, the investments made by these bills—while transformational—will not be enough to fully shake our dependence on China for the critical materials and technologies we require for these products.

To address this issue, the U.S. needs a comprehensive strategy that includes multilateral engagement with our allies to secure critical mineral supply chains. One market that is ripe for additional U.S. engagement is Africa. The continent is home to numerous untapped reserves of critical minerals, including a significant quantity of the world's manganese, platinum, chromium, cobalt, graphite, and copper reserves.

Currently, our commercial relationship in sub-Saharan Africa is dominated by the African Growth and Opportunity Act (AGOA), which is set to expire in 2025. As Congress considers AGOA reauthorization, I'm intrigued by the possibility of updating the agreement to help encourage more trade between the U.S. and AGOA-eligible nations in the critical minerals sector.

Such a provision could incentivize non-Chinese investments in both mining and processing in eligible African countries, which could help drive infrastructure investment, employment creation, and revenue generation. Including a critical minerals-specific provision in AGOA could have multiple benefits, including building resilience in the U.S. critical mineral supply chain, deepening U.S. economic relationships on the continent, and providing a significant alternative to China.

How is USTR engaging with African nations to facilitate trade relating to critical minerals and combat Chinese influence on the continent?

Do you believe AGOA reauthorization is an appropriate place to address critical minerals trade between the U.S. and African nations? Based on your conversations with our African trading partners do you believe there would be significant interest in addressing critical minerals trade in AGOA?

Do you believe a critical minerals agreement with AGOA beneficiaries could incentivize nations to maintain eligibility for the program and help reduce Chinese influence in the region?

Answer. Strengthening our supply chains is a critical component of the Biden-Harris administration's efforts to advance our worker-centered trade policy, create sustainable economic growth, and ensure that the global trade and economic system is more resilient in the face of supply shocks. We are undertaking a whole-of-government effort to proactively strengthen supply chain resilience and mitigate the impact of disruptions. This includes addressing supply chain risks arising from unfair trade practices, creating opportunities for businesses to increase sourcing options, including and especially those located domestically, facilitating the movement of supply chains to trusted partners through friend-shoring and near-shoring, and strengthening labor standards and environmental protections governing global supply chains. The administration remains committed to exploring ways to work more closely with African partners on critical minerals and supply chain resilience more broadly, in a way that advances U.S. values, including labor rights and environmental protections.

*Question.* The United States and Australia have for decades enjoyed a deep and long-standing trade and investment relationship, underpinned by the U.S.-Australia Free Trade Agreement. Recently, Australia's Ministry of Culture proposed mandatory screen content requirements on American streaming services. The proposed requirements could place significantly greater obligations on American streaming services and curb foreign investment in Australia and consumer access to Australian content.

Do you believe Australia's proposed mandatory screen content requirements are permissible under the U.S.-Australia FTA?

Answer. We are closely tracking the Government of Australia's consideration of domestic expenditure requirements for streaming services. We have engaged the

government on this issue, and have made clear our expectation that any legislation in this space adhere to rules set out in our FTA.

*Question.* How have you engaged with the Government of Australia on this matter? Will you keep my office informed of progress on USTR's engagements with Australia?

*Answer.* We have engaged the government on this issue, and have made clear our expectation that any legislation in this space adhere to rules set out in our FTA. My office will keep yours informed on these engagements.

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QUESTIONS SUBMITTED BY HON. SHELDON WHITEHOUSE

*Question.* On April 16, 2024, White House Senior Advisor John Podesta announced the formation of the White House Climate and Trade Task Force.

What is the status of this task force? Has it started on its three workstreams? And who are the members of this task force?

*Answer.* The White House Climate and Trade Task Force was publicly announced in March by White House Senior Advisor and Climate Envoy John Podesta. In addition to USTR, it includes EOP components: NSC (international economics and climate and trade staff), NEC, Climate Policy Office, OSTP, OVP, CEQ, OMB, and CEA, as well as Treasury, State, EPA, DOE, Commerce, DOD, GSA, DOT, EXIM, DFC, USTDA, USDA, and NASA (satellite monitoring of emissions). It is currently active and will operate through three priority areas: methodologies and data, potential trade measures, and other industrial competitiveness policies.

*Question.* The Biden administration has rightly opposed adding investor-state dispute settlement (ISDS) provisions to new trade agreements. But foreign corporations continue to exploit ISDS through many existing agreements to the detriment of workers, consumers, and small businesses.

Numerous countries have recently decided to exit ISDS-enforced agreements. For example, the UK and European Union states are leaving the Energy Charter Treaty, Honduras exited the World Bank's ISDS arbitration forum, and Ecuador just voted in a referendum to affirm its ISDS exit.

Experts have detailed viable strategies<sup>10</sup> for the U.S. to eliminate ISDS from existing investment and free trade agreements, and I joined colleagues on May 2, 2023<sup>11</sup> and November 1, 2023<sup>12</sup> in urging you to investigate and pursue all options at your disposal to achieve this. I appreciate that you are actively looking into it.

Can you provide an update on the status of your investigation into how to effectively remove ISDS provisions from existing agreements? Have you discussed ISDS removal with our trading partners?

*Answer.* The Biden-Harris administration does not believe corporations should receive special tribunals in trade agreements that are not available to other organizations, and the President opposes the ability of private corporations to attack labor, health, and environmental policies through ISDS. I share these views, and the United States is not currently pursuing any trade or investment agreements that would establish ISDS.

USTR has focused instead on working with our trading partners to advance worker-centered trade policies that deliver sustainable and inclusive economic growth and benefit workers, consumers, and businesses of all sizes.

Over the past several months, USTR has consulted with a range of stakeholders on this issue, including representatives from labor unions, environmental groups, and the business community. I also look forward to working with you and other

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<sup>10</sup> Daniel Rangel, Lori Wallach, Ladan Mehranvar, Alvaro Santos, and Mario Osorio, October 2023, "Turning the Tide: How to Harness the Americas Partnership for Economic Prosperity to Deliver an ISDS-Free Americas," Center for the Advancement of the Rule of Law in the Americas at Georgetown Law, Columbia Center on Sustainable Investment, Rethink Trade, and American Economic Liberties Project, <https://rethinktrade.org/isds-freeamericas-papermain/>.

<sup>11</sup> Letter to Ambassador Tai and Secretary Blinken, May 2, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.05.02%20Letter%20to%20Tai,%20Blinken%20re%20elimination%20of%20ISDS.pdf>.

<sup>12</sup> Letter to Ambassador Tai and Secretary Blinken, November 1, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.11.01%20Letter%20from%20Warren,%20Whitehouse,%20Cohen%20to%20USTR,%20State.pdf>.

members of Congress, including those on our committees of jurisdiction, to identify the best path forward with respect to ISDS provisions in our existing agreements, recognizing the role of Congress in such matters. To the extent that our trading partners have engaged with us on our investment commitments with them, such discussions generally relate to the standards of investment protection in the context of ISDS.

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QUESTIONS SUBMITTED BY HON. MAGGIE HASSAN

*Question.* Please provide information on the scope of USTR's involvement in discussing LOGINK with other countries involved in the IPEF negotiations, and details on the discussions. If any of that information falls under the Federal classification system, please provide such information to cleared members of my staff in a manner consistent with the level of classification and all applicable laws and regulations.

*Answer.* We are aware of concerns related to LOGINK. We would be happy to provide further information to cleared staff regarding our engagement on this matter.

*Question.* USTR is negotiating critical minerals agreements with the EU and the UK and has negotiated a critical minerals agreement with Japan. Cooperation with our allies is important, as is ensuring that American companies have access to critical minerals.

What lessons has USTR taken away from these negotiations that could be used to inform future trade agreements, including potentially with Ukraine?

*Answer.* The ongoing and concluded Critical Minerals Agreement negotiations have demonstrated the importance of working with allies and partners to support more resilient, diverse supplies in critical sectors and promote high standards with respect to both labor and the environment. We are working with Ukraine through our Trade and Investment Council to lay the foundation for a sustainable economic recovery and long-term reconstruction including business climate reforms.

*Question.* How will agreements be implemented in a way that makes them durable enough to provide confidence to U.S. companies and our allies?

*Answer.* USTR remains committed to implementing agreements it reaches, including the U.S.-Japan Critical Minerals Agreement, in a manner that achieves our common goal of fostering secure, sustainable, and equitable supply chains in critical minerals.

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QUESTION SUBMITTED BY HON. CATHERINE CORTEZ MASTO

*Question.* Titanium sponge is a critical material for U.S. national security needs that is 100-percent imported. Nearly all imports come from our key ally Japan, yet the U.S. applies a 15-percent tariff on these imports, which harms downstream producers in the United States. This counterproductive tariff threatens American jobs and national security by driving up costs for American manufacturers who must compete with those in China and Russia. I have introduced bipartisan legislation called the Securing America's Titanium Manufacturing Act to remove this tariff.

Does the administration support my legislation to remove this tariff?

*Answer.* I understand your concerns regarding the lack of domestic production of titanium sponge, the impact of the existing 15-percent tariff rate on American manufacturers, and reliance on imports from our key ally Japan and other countries. My team is carefully assessing this issue and welcomes engagement with members of Congress and affected stakeholders on the matter.

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QUESTIONS SUBMITTED BY HON. ELIZABETH WARREN

*Question.* You and President Biden have opposed the inclusion of investor-state dispute settlement (ISDS) in future trade and investment agreements, another sign that the Biden administration is reorienting trade policy to work for consumers, workers, and small businesses and not the largest corporations. Yet those corporate interests continue to take advantage of ISDS provisions in existing trade and investment agreements, sticking taxpayers with the bill and extorting U.S. trading partners. Countries as diverse as Germany and Honduras are recognizing the threat

posed to necessary public policy by ISDS and have begun to extricate themselves from ISDS liability.<sup>13</sup> In fact, you reportedly discussed ISDS with your Colombian counterpart in a March meeting.<sup>14</sup>

It is clear that the United States must also begin the process of disentangling itself from ISDS liability, and experts have provided detailed blueprints for how the United States could achieve this.<sup>15</sup> Last year, I was joined by several colleagues in urging you to investigate and pursue all options at your disposal to removing ISDS from U.S. trade and investment agreements,<sup>16</sup> and you shared at the April 17th Finance Committee hearing that you are “looking at this question actively right now,”<sup>17</sup> which I appreciate.

What is the status of your review of the process by which the United States can withdraw itself from ISDS liability under existing trade and investment agreement?

What has been the content and tone of your engagement with U.S. trading partners—such as Colombia—regarding ISDS?

Would you consider forming a working group under the umbrella of the Americas Partnership for Economic Prosperity (APEP) specifically aimed at reviewing and assessing options for removing ISDS from existing pacts among APEP members?

Answer. The Biden-Harris administration does not believe corporations should receive special tribunals in trade agreements that are not available to other organizations, and the President opposes the ability of private corporations to attack labor, health, and environmental policies through ISDS. I share these views, and the United States is not currently pursuing any trade or investment agreements that would establish ISDS.

USTR has focused instead on working with our trading partners to advance worker-centered trade policies that deliver sustainable and inclusive economic growth and benefit workers, consumers, and businesses of all sizes. The Americas Partnership is a mechanism for regional cooperation that will operate alongside our existing free trade agreements in the hemisphere.

Over the past several months, USTR has consulted with a range of stakeholders on this issue, including representatives from labor unions, environmental groups, and the business community. I also look forward to working with you and other members of Congress, including those on our committees of jurisdiction, to identify the best path forward with respect to ISDS provisions in our existing agreements, recognizing the role of Congress in such matters. To the extent that our trading partners have engaged with us on our investment commitments with them, including Colombia, such discussions generally relate to the standards of investment protection in the context of ISDS.

*Question.* The Biden administration has taken several steps to address high prices and anticompetitive practices within the pharmaceutical sector to check corporate abuses and lower health-care costs. USTR has taken steps in alignment with these domestic policies, including steps to ensure that corporate interests are not prioritized over rational trade policy and international commitments.

<sup>13</sup>The Guardian, “UK quits treaty that lets fossil fuel firms sue governments over climate policies,” Arthur Neslen, February 22, 2024, [https://www.theguardian.com/environment/2024/feb/22/uk-quits-treaty-that-lets-fossil-fuel-firms-sue-governments-over-climate-policies?utm\\_term=.65d738703b7eedbf621e439f80513337](https://www.theguardian.com/environment/2024/feb/22/uk-quits-treaty-that-lets-fossil-fuel-firms-sue-governments-over-climate-policies?utm_term=.65d738703b7eedbf621e439f80513337); ICSID, “Honduras Denounces the ICSID Convention,” press release, February 29, 2024, <https://icsid.worldbank.org/news-and-events/communiques/honduras-denounces-icsid-convention>.

<sup>14</sup>Office of the U.S. Trade Representative, “Joint Statement from the United States and Colombia,” press release, March 8, 2024, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/march/joint-statement-united-states-and-colombia>.

<sup>15</sup>Rethink Trade, “Turning the Tide: How to Harness the Americas Partnership for Economic Prosperity to Deliver an ISDS-Free Americas,” October 2023, [https://rethinktrade.org/wp-content/uploads/2024/03/ISDS\\_Report\\_Tides\\_03.12.2024.pdf](https://rethinktrade.org/wp-content/uploads/2024/03/ISDS_Report_Tides_03.12.2024.pdf).

<sup>16</sup>Letter from Senator Warren and colleagues to Ambassador Tai and Secretary Blinken, November 2, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.11.01%20Letter%20from%20Warren,%20Whitehouse,%20Cohen%20to%20USTR,%20State.pdf>; letter from Senator Warren and colleagues to Ambassador Tai and Secretary Blinken, May 2, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.05.02%20Letter%20to%20Tai,%20Blinken%20re%20elimination%20of%20ISDS.pdf>.

<sup>17</sup>CQ, “Senate Finance Committee Holds Hearing on U.S. Trade Policy Agenda,” April 17, 2024, <https://plus.cq.com/doc/congressionaltranscripts-7991639?5>.

Inequitable access to COVID-19 medicines needlessly prolonged the pandemic, costing lives and exacerbating economic losses.<sup>18</sup> The United States supported the WTO's COVID-19 vaccine waiver, acknowledging that pharmaceutical companies' patent protections should not be a barrier to addressing urgent public health needs.<sup>19</sup>

How are you approaching ensuring countries are able to utilize compulsory licensing and other mechanisms to respond to health crises, including during future pandemics?

Answer: Under the Biden-Harris administration, the United States has made it clear that it respects its trading partners' rights to grant compulsory licenses in a manner consistent with the provisions of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the Doha Declaration. The United States also recognizes that the TRIPS Agreement provides for additional flexibilities, including in public health emergencies and other circumstances of extreme urgency within a member's territory. Article 31 of the TRIPS Agreement establishes requirements that must be met with respect to compulsory licenses. Importantly, a member choosing to issue a compulsory license may waive some of these requirements in certain circumstances. For example, in cases of national emergency or extreme urgency or in cases of public non-commercial use, members may waive the requirement to seek prior authorization from the patent holder before issuing a compulsory license. In addition, under Article 31*bis*, the requirement that compulsory licenses must be authorized predominantly for the supply of the member's domestic market may be waived in certain circumstances. Recognizing that members with insufficient pharmaceutical manufacturing capacities could face difficulties in making effective use of compulsory licensing, Article 31*bis* and its related Annex set forth a system whereby such members can import from another member pharmaceutical products produced subject to a compulsory license.

It is also important to note that work on public health and pandemic preparedness issues is continuing not just in the TRIPS Council, but across the WTO, including under the June 2022 Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics. This declaration directs multiple WTO bodies to analyze lessons that have been learned and challenges experienced during the COVID-19 pandemic. The Abu Dhabi Ministerial Declaration adopted at the Thirteenth Ministerial Conference (MC13) in March 2024 recalled the June 2022 Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics and encouraged the relevant WTO bodies to continue their work, to which the United States is contributing.

Finally, the Biden-Harris administration has continued its policy of declining to call out countries for exercising TRIPS flexibilities, including with respect to compulsory licenses, in a manner consistent with TRIPS obligations.

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#### QUESTIONS SUBMITTED BY HON. JOHN CORNYN

*Question.* China has been aggressively signing trade and economic agreements across the Indo-Pacific, Latin America, and Africa, including the Regional Comprehensive Economic Partnership (RCEP). China also applied to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). I am concerned about China's growing influence in global trade.

Are you concerned that the U.S. is losing leverage to set trade terms in the region because we are not negotiating free trade agreements?

Do you agree that free trade agreements with countries in the Indo-Pacific would help the U.S. counter China's influence?

Are your policies creating greater trade opportunities for China that will disadvantage U.S. firms?

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<sup>18</sup>See e.g., Health Place, "Global inequities in access to COVID-19 health products and technologies: A political economy analysis," Deborah Gleeson et al., September 2023, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10247888/>.

<sup>19</sup>Office of the U.S. Trade Representative, "Statement from Ambassador Katherine Tai on the COVID-19 Trips Waiver," press release, May 5, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/statement-ambassador-katherine-tai-covid-19-trips-waiver>.

Answer. We are working with key trading partners, and also regionally and multilaterally, to find solutions to the many serious problems posed by China's state-led, nonmarket approach to the economy and trade. USTR has been working intensively with key trading partners in a variety of venues to identify China's nonmarket policies and practices, assess their impact, and design more effective responses, including in the G7,<sup>20</sup> the U.S.-EU Trade and Technology Council (TTC),<sup>21</sup> and with diverse like-minded partners.<sup>22</sup> The United States is also holding discussions with many other like-minded trading partners, including in the Indo-Pacific region, on how to strengthen our existing trade relationships. In the current negotiation regarding a further agreement under the U.S.-Taiwan Initiative on 21st-Century Trade, the United States and Taiwan are seeking to adopt provisions to collaborate on ways to address unfair, anticompetitive nonmarket policies and practices. Given that China's approach to the economy and trade poses so many serious risks and potential harms, it is in the United States' interest to enhance our trade relationships with like-minded economies.

*Question.* Last year I submitted a question for the record asking what it would take to restart and reform the section 301 exclusions process. In your response you noted "Within the 4-year review, USTR is reviewing the overall structure of the tariffs, including which products should be subject to additional duties . . . and that USTR continues to consider whether additional exclusion processes may be appropriate."

What is the administration's position on restarting and reforming the section 301 exclusions process?

Can you provide an update on the administration's timeline for completing the review of the section 301 tariffs on products from China, which has been ongoing for nearly 2 years? Will there be an announcement this year?

Answer. USTR has issued a comprehensive report on the statutory review of the tariff actions in the section 301 investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation. In the report I recommended a series of actions to the President, including modifications to increase tariffs on specific products in strategic sectors. Many of the sectors are targeted by China for dominance or are sectors where the U.S. has recently made significant investments through such initiatives as the IRA and Bipartisan Infrastructure Law. The report also recommends the establishment of an exclusion process targeting machinery used in domestic manufacturing and recommends 19 exclusions for certain solar manufacturing equipment.

Having considered my advice, President Biden directed me to take action. Consistent with the President's direction, in a Federal Register notice published on May 28, 2024, I proposed certain modifications to the tariff actions, including increasing section 301 tariffs on products in certain strategic sectors. Additionally, the notice establishes the framework for an exclusion process for machinery and proposes temporary exclusion for certain solar manufacturing equipment.

On September 13th, my office announced the final modifications.<sup>23</sup> The proposed modifications announced in May 2024 were largely adopted, with several updates to strengthen the actions to protect American businesses and workers from China's unfair trade practices following the review of more than 1,100 comments from the public. The updates included new timing and rates for tariffs on face masks, medical gloves, needles, and syringes; an exclusion for enteral syringes; a proposal regarding coverage of additional tungsten, wafers, and polysilicon tariff lines; an exclusion for ship-to-shore cranes ordered prior to May 14, 2024; an expansion of the scope of the machinery exclusions process to include five additional tariff lines; and modification of the coverage of proposed exclusions for solar manufacturing equipment.

These finalized tariff increases will target the harmful policies and practices of the People's Republic of China that continue to impact American workers and businesses. These actions underscore the Biden-Harris administration's commitment to

<sup>20</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/20/g7-leaders-statement-on-economic-resilience-and-economic-security/>.

<sup>21</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/31/u-s-eu-joint-statement-of-the-trade-and-technology-council-2/>.

<sup>22</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/joint-declaration-against-trade-related-economic-coercion-and-non-market-policies-and-practices>.

<sup>23</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/september/ustr-finalizes-action-china-tariffs-following-statutory-four-year-review>.

standing up for American workers and businesses in the face of unfair trade practices.

Information on the revisions to modifications are detailed in USTR's Federal Register notice.

*Question.* I appreciate that USTR has continued to provide extensions for certain product exclusions under the section 301 tariffs. However, I am disappointed that USTR has continued to announce its decisions regarding the extensions of the exclusions with little time for importers or interagency partners to react. For example, during the extension announced at the end of December 2023, USTR did not provide U.S. Customs and Border Protection (CBP) enough time to program its system (the Automated Commercial Environment or ACE) to note that the exclusions had been extended. As a result, importers who imported products eligible for the exclusions during the first few days of January were required to pay duties to CBP and then subsequently file for a duty refund—creating additional administrative burdens.

Will USTR commit to providing importers and its interagency partners with more advanced notice about the status of the exclusions?

*Answer.* In a Federal Register notice published May 30, 2024, USTR extended all exclusions through June 14, 2024, to provide a transition period, and further extended certain exclusions through May 31, 2025. This notice was submitted to the Office of the Federal Register and to Customs and Border Protection (CBP). USTR's notice provided CBP with sufficient time to program ACE prior to the exclusions expiring and without interruption.

*Question.* The USTR budget indicates that the agency might be preparing for a scale-down of its 301 exclusion operations. In the President's budget, USTR references a consolidation of two staff contracts ". . . that USTR is using to operate the 301-tariff exclusion process and support trade agreement enforcement; in FY 2024, USTR anticipates consolidating the two staffing contracts into one and adjusting the total staffing to the anticipated 301-tariff exclusion process effort."

What are the implications of this action?

*Answer.* Each year USTR must consider the level of contract staffing needed for the section 301 exclusion process and other enforcement activities. In FY 2024, with the statutory review and exclusion extension docket, USTR maintained the previous year's staffing level. However, with the recent announcement of a proposed exclusion process, the level of contract staffing is likely to increase at the end of FY 2024 and in FY 2025. The consolidation of the two staffing contracts helps streamline USTR's contractual services, but will not affect the level of contract staffing maintained.

*Question.* The administration is expressing deepening concerns about another round of PRC overcapacity, this time in advanced manufacturing sectors beyond EVs.

What does the administration plan to do about that coming overcapacity?

*Answer.* We continue to have significant concerns about PRC industrial targeting policies across a range of sectors. These nonmarket policies and practices are leading to market concentration and excessive dependencies, distortionary effects, and harmful nonmarket excess capacity in a range of sectors. These policies and practices undercut our workers, industries, and the investments we are making in our economic security and supply chain resilience.

The administration has urged Beijing to consider the broad international spillovers of these distortions, and has taken measures to foster more balanced growth, as we continue to maintain active communication through both economic and commercial channels.

USTR has also developed and engaged in joint initiatives with trading partners to share concerns about China's use of unfair nonmarket policies and practices and to build a common understanding as a basis for taking more effective action. USTR has been working intensively with key trading partners in a variety of venues to identify China's nonmarket policies and practices, assess their impact, and design

more effective responses, including in the G7,<sup>24</sup> the U.S.-EU Trade and Technology Council (TTC),<sup>25</sup> and with diverse like-minded partners.<sup>26</sup>

In addition, USTR's recent Request for Comments on Promoting Supply Chain Resilience has prompted stakeholder discussion of China's nonmarket excess capacity in a range of sectors, and we expect to consider the issue further as we weigh the comments received.

*Question.* How will it affect the outcome of the 4-year section 301 tariff review?

Answer. USTR completed a thorough statutory review of the tariff actions imposed in the section 301 investigation into the PRC's acts, policies and practices related to technology transfer, intellectual property, and innovation. USTR found that the PRC's unfair, nonmarket policies practices have persisted and, in some cases, become more aggressive. Accordingly, and pursuant to direction from the President, USTR proposed making modifications to the section 301 tariff actions to increase tariff on strategic sectors, including imposing 100 percent tariffs on EVs.<sup>27</sup>

On September 13th, my office announced the final modifications.<sup>28</sup> The proposed modifications announced in May 2024 were largely adopted, with several updates to strengthen the actions to protect American businesses and workers from China's unfair trade practices following the review of more than 1,100 comments from the public. The updates included new timing and rates for tariffs on face masks, medical gloves, needles, and syringes; an exclusion for enteral syringes; a proposal regarding coverage of additional tungsten, wafers, and polysilicon tariff lines; an exclusion for ship-to-shore cranes ordered prior to May 14, 2024; an expansion of the scope of the machinery exclusions process to include five additional tariff lines; and modification of the coverage of proposed exclusions for solar manufacturing equipment.

These finalized tariff increases will target the harmful policies and practices of the People's Republic of China that continue to impact American workers and businesses. These actions underscore the Biden-Harris administration's commitment to standing up for American workers and businesses in the face of unfair trade practices.

Information on the revisions to modifications are detailed in USTR's Federal Register notice.

*Question.* The supply chain for compound semiconductors used in the critical telecommunications infrastructure sector, data centers, and artificial intelligence is largely dominated by foreign adversary production and includes investments from companies like Huawei and ZTE. In fact, reports indicate that Huawei, from wafer production to finished products such as optical transceivers, has made strategic investments to dominate the U.S. and global supply chains in these areas in order to "leapfrog" the United States and its companies. Not only does this create U.S. supply chain dependency on foreign adversary countries, but it creates the potential for cybersecurity risk in critical infrastructure through hardware and software vulnerabilities. In addition, these investments have resulted in the strategic overcapacity of compound semiconductors, driving prices below market value and harming U.S. compound semiconductor manufacturers and optical transmission equipment manufacturers.

In its review of section 301 tariffs, its Request for Comments on Promoting Supply Chain Resilience, and related supply chain assessments, has USTR considered the impact of overcapacity in foreign adversary compound semiconductor production, from wafer production to finished products such as optical transceivers?

Answer. Yes. USTR has considered the impact of China's nonmarket excess capacity in the semiconductors sector, and we continue to assess the threats posed by China's unfair, anticompetitive nonmarket policies and practices on an ongoing basis.

<sup>24</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/20/g7-leaders-statement-on-economic-resilience-and-economic-security/>.

<sup>25</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/31/u-s-eu-joint-statement-of-the-trade-and-technology-council-2/>.

<sup>26</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/joint-declaration-against-trade-related-economic-coercion-and-non-market-policies-and-practices>.

<sup>27</sup> [https://ustr.gov/sites/default/files/89%20FR%2046252%20\(May%2028%202024\).pdf](https://ustr.gov/sites/default/files/89%20FR%2046252%20(May%2028%202024).pdf).

<sup>28</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/september/ustr-finalizes-action-china-tariffs-following-statutory-four-year-review>.

We continue to have significant concerns about PRC industrial targeting policies across a range of sectors, including the semiconductor industry. These nonmarket policies and practices are leading to market concentration and excessive dependencies, distortionary effects, and harmful nonmarket excess capacity in a range of sectors including semiconductors. These policies and practices undercut our workers, industries, and the investments we are making in our economic security and supply chain resilience.

The section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation and resulting tariff modifications are only part of the solution to our broader concerns about China's nonmarket policies and practices, including the threat posed by rapidly emerging nonmarket excess capacity and market concentration in the semiconductors sector.

The administration has also urged Beijing to consider the broad international spillovers of these distortions, and also to take measures to support domestic demand and more balanced growth, as we continue to maintain active communication through both economic and commercial channels.

In addition, USTR's recent request for Comments on Promoting Supply Chain Resilience has prompted stakeholder discussion of nonmarket excess capacity in semiconductor production, and we expect to consider the issue further as we weigh the comments received.

USTR has also developed and engaged in joint initiatives with trading partners to share concerns about China's use of unfair nonmarket policies and practices and to build a common understanding as a basis for taking more effective action. USTR has been working intensively with key trading partners in a variety of venues to identify China's nonmarket policies and practices, assess their impact, and design more effective responses, including in the G7,<sup>29</sup> the U.S.-EU Trade and Technology Council (TTC),<sup>30</sup> and with diverse like-minded partners.<sup>31</sup>

*Question.* On March 7, 2024, USTR announced it is seeking comments to “inform the development of trade and investment policy initiatives that promote supply chain resilience.”

Why is USTR launching this comment period and initiative just now in Year 4 of the administration?

How will USTR communicate with stakeholders and Congress about outcomes, strategies, and objectives developed from this public comment period?

*Answer.* While USTR continues to pursue a range of efforts to promote supply chain resilience, we seek through the public comment period to solicit input from a wider group of stakeholders, which will inform a more integrated, holistic understanding of supply chain resilience. Additionally, having weathered the acute disruptions wrought by the COVID-19 pandemic during earlier years in the administration, many stakeholders now have new perspectives that can help shape trade policy going forward. Accordingly, we aim to harness these insights to both build on our past work and identify new tools and approaches.

We are committed to communicating in due course with stakeholders and Congress about relevant trade policy outcomes, strategies, and objectives developed from the public comment period.

*Question.* I understand USTR conducted a review of China's industrial subsidies and has a report on the topic that it never issued.

Why has USTR not issued that report?

Does USTR plan to formally launch a section 301 review of China's industrial subsidies?

*Answer.* China utilizes a wide range of unfair, nonmarket policies and practices to undermine fair competition and dominate markets, both in China and globally. Those anticompetitive policies and practices, which include nonmarket excess capacity, pervasive subsidization, forced labor and other labor violations, and many others, create strategic dependencies and vulnerabilities, which undermine our supply

<sup>29</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/20/g7-leaders-statement-on-economic-resilience-and-economic-security/>.

<sup>30</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/31/u-s-eu-joint-statement-of-the-trade-and-technology-council-2/>.

<sup>31</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/joint-declaration-against-trade-related-economic-coercion-and-non-market-policies-and-practices>.

chain resilience and economic security. The United States must consider all available tools and options to more effectively address this threat, including use of section 301, strategic investments, and other actions, in order to defend our workers and market-oriented businesses and address China's nonmarket distortions.

USTR does not have a report on the topic that it has never issued.

*Question.* The administration has expressed an interest in engaging with Congress on renewing the African Growth and Opportunity Act (AGOA), which is currently set to expire on September 30, 2025. USTR has also indicated it would like to explore how AGOA could be improved to increase the utilization rates and "ensure that the program's benefits fully reach all segments of society."

In your view, what changes to AGOA would help accomplish these goals?

Answer. For the last 2 decades, AGOA has been a positive force to grow Africa's extraordinary economic potential. It has made a difference for millions of Africans by opening new doors for trade and investment, creating hundreds of thousands of jobs, and promoting regional integration. It has also incentivized many African governments to undertake key political and economic reforms.

The Biden-Harris administration strongly supports the timely reauthorization and modernization of AGOA. Reauthorization requires an act of Congress, and I am committed to working with members of Congress, African partners, and other key stakeholders to enhance AGOA and make the program as impactful as possible. As noted in the 2024 Biennial Report on Implementation of AGOA, this includes improving utilization rates, particularly for smaller and lesser developed African economies; exploring additional trade tools to complement our AGOA relationship, collaborating on the implementation of the AfCFTA, and better using the multilateral trading system for the benefit of underserved groups in each of our economies.

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#### QUESTIONS SUBMITTED BY HON. JOHN THUNE

*Question.* Recently, USTR published taking the dairy cases under USMCA as an example of having advocated for agriculture, and then answered questions related to next steps for Canada dairy with brainstorming next steps. That response is similar to how this administration answered the same question on next steps for Canada dairy in December 2023.

What specifically is the administration working on and when do you expect to be able to take action for U.S. dairy export trade barriers in Canada?

Answer. The Biden-Harris administration is committed to ensuring that American dairy farmers workers, processors, and exporters receive the full benefit of the market access Canada agreed to provide under the USMCA. While the United States won a previous USMCA dispute on Canada's dairy TRQ allocation measures in 2021, USTR is disappointed with the USMCA panel report released in November 2023. We continue to work closely with U.S. industry to consider all options to ensure our dairy sector receives the full benefit of market access under the USMCA and will not hesitate to use all available tools to enforce our trade agreements.

*Question.* The United States has a dairy trade deficit with the European Union (EU) of more than \$2 billion. More onerous EU tariffs and nontariff barriers play a major role in driving this dynamic. As of last month, the EU appears poised to increase that gap even more. In March, the EU Health Ministry abruptly changed how it plans to enforce a regulation related to the use of veterinary medicines and imported animal products. It's bad enough that this statute dictates to U.S. farmers which medicines they will be able to use on their farms moving forward. Now, the EU appears to intend to enforce this regulation retroactively, insisting that no animals supplying milk or meat bound for the EU can have been treated with the newly restricted medicines in their entire lifetime. Since dairy cows live for several years, this new interpretation risks shutting down U.S. dairy exports to the EU.

How is the United States working to push back on European efforts like these to dictate to our farmers how to farm?

What steps is the United States taking to ensure that this veterinary medicines regulation is implemented on a forward-looking basis, rather than on a retroactive one?

Answer. While the United States and European Union align on a number of strategic issues, the U.S. is concerned with EU efforts that treat American agriculture

unfairly. The United States has raised concerns both bilaterally and at the WTO SPS Committee regarding the EU's proposed veterinary drug regulation, and the United States has shared comments and concerns throughout the EU's process of fully enacting their legislation. Like you, we are concerned with the EU's proposed approach, in particular their recent clarification that new restrictions on use of veterinary medical products will apply retroactively to animals currently in production. Over the last 5 years, the United States has built a strong coalition of like-minded countries that oppose the EU's proposed regulatory approach, and we will continue to engage on multiple fronts as the EU works to finalize implementation of the regulation.

*Question.* Indonesia is a valued partner and important destination for many U.S. agricultural exports. For example, it is a top 10 market for U.S. dairy exports. Yet, it also has the slowest, most onerous process in the world for allowing new facilities to be authorized to ship. Some facilities have been waiting over 4 years just to enter the market—and still are not allowed to ship yet. In comparison, most other countries manage to register new facilities anywhere from a few days to a few months.

Where do efforts stand to secure more reasonable new entry terms for our dairy exporters?

*Answer.* The United States continues to press Indonesia on its onerous facility registration requirements not only for dairy, but meat products as well. We have raised this issue on multiple occasions over the past year with Indonesia, both bilaterally and in IPEF negotiations, with the aim of having Indonesia commit to increased transparency and a timely, science-based facility registration process that would allow U.S. businesses to export their quality products. USTR will continue to find opportunities to raise this issue and attempt to improve the process in our future engagements.

*Question.* One of the nontariff barriers that the EU has aggressively pursued domestically and exported to outside markets has been the monopolization of common food and beverage names. The result is that U.S. producers can suddenly no longer use certain terms, which have long been generic—like “parmesan,” “bologna,” and “chateau”—to market and sell their products abroad. The EU is pressing this issue with real tenacity.

Can you provide an update on where USTR efforts stand regarding protecting the rights of U.S. producers to use common names in markets around the world?

*Answer.* The United States has seen how European Union (EU) trade agreements with provisions that provide for automatic or virtually automatic protection for a list of terms as geographical indications (GIs) can undermine market access for U.S. products in third countries. USTR is working intensively through bilateral and multilateral channels to advance U.S. market access interests in foreign markets and to ensure that GI-related trade initiatives of the EU, its member states, like-minded countries, and international organizations do not undermine such market access, including through seeking provisions in trade agreements and exchanges of letters. USTR is also continuing to press other trading partners to ensure transparency and due process in the granting of GI protection and to ensure that the grant of GI protection does not deprive interested parties of the ability to use certain names.

*Question.* How are you working with trading partners to secure these protections so that U.S. export markets aren't further undermined?

*Answer.* We are raising these concerns and engaging with trading partners through every available avenue, including in trade agreement negotiations, through exchanges of letters, and as part of bilateral dialogues, such as our trade and investment framework (TIFA) discussions. For example, on September 3rd, the National Congress of Chile approved the agreement on Chile Market Access and Prior Users for Cheese and Meats after a multiyear USTR-led effort to exchange letters on this exact issue. The agreement ensures that U.S. producers have the opportunity to grow their businesses and supply Chilean consumers with specialty cheeses and meats.

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#### QUESTIONS SUBMITTED BY HON. TIM SCOTT

*Question.* As you know, our country is projected to have a \$30.5 billion agricultural trade deficit this year. Surging imports of fruits and vegetables from Mexico, which benefit from unfair labor and pricing practices, are a large part of that trade

deficit and continue to cause widespread harm to growers in South Carolina and throughout the southeast United States.

When will USTR officially launch its new Southeast Produce Advisory Committee that was promised 18 months ago, and how quickly will the administration take concrete trade measures in conjunction with that advisory committee to restore fair competition for farmers in South Carolina?

Answer. Since the beginning of the Biden-Harris administration, USTR has been engaging with trading partners across the globe to provide export opportunities for farmers and producers, including through the reduction of both tariff and non-tariff barriers. According to USDA calculations, these actions have supported roughly \$21 billion in U.S. agricultural exports over the course of the 3 highest years of agricultural exports ever, breaking records in 2 of the past 3 years.

On May 30th, USTR and USDA announced appointments to the Seasonal and Perishable Agricultural Products Advisory Committee. USTR and USDA will work with the committee and members of Congress to develop possible administrative actions and legislation that would provide real benefits to producers of seasonal and perishable produce in the southeastern United States.

*Question.* The United States' motion picture and television industry generates billions of dollars annually for the American people, and in South Carolina alone, the industry supports thousands of jobs, contributing to millions of dollars in wages supported by the licensing of content to over 140 countries.

This industry is one of the most highly competitive on the planet, generating a positive balance of trade in nearly every country in which the U.S. industry does business. However, U.S. leadership in this area faces significant challenges due to ever-increasing market access barriers—notably including the effort to impose legacy media obligations on streaming services.

Given the importance of these industries to the U.S. economy and American jobs, do you commit directing USTR's resources to push back on such initiatives overseas?

Answer. We are closely tracking the imposition of domestic expenditure requirements for streaming services. We are committed to engaging governments on this issue, and have made clear our expectation that any legislation in this space adhere to rules set out in our FTAs, where applicable.

*Question.* While I appreciate your response to the bipartisan Senate letter sent in March of this year regarding the European Union Deforestation-free Regulation (EUDR), I would still like clarity as to how USTR plans to engage with the European Union on this issue moving forward. The EUDR as written will undoubtedly have a direct impact on producers in South Carolina, and it is primarily the EUDR's vague definition of "forest degradation" that gives me cause for concern.

What specifically is USTR doing to engage with the EU on this, and what active steps will be taken to prevent the Commission from adopting vague criteria that would put an undue burden on American producers?

Answer. The Biden-Harris administration remains strongly committed to combating deforestation, but I share your concerns regarding how the EU's Deforestation-free Supply Chain Regulation (EUDR) will be implemented and the impact it may have on U.S. producers that engage in sustainable production practices. USTR has directly engaged with the EU at all levels regarding our implementation concerns and continues to urge the EU to delay implementation and enforcement of penalties until U.S. concerns have been addressed. This includes adjustments to the risk benchmarking to take into account good forest management practices, such as those in the United States. I have engaged directly with Executive Vice President for the European Green Deal, Interinstitutional Relations and Foresight Maroš Šefčovič to request that implementation and enforcement issues are addressed, including by sending a letter with USDA Secretary Vilsack and Commerce Secretary Raimondo detailing our shared concerns. Chief Agricultural Negotiator Doug McKalip has also raised these issues directly to the European Commission. Additionally, we have raised EUDR implementation concerns at the WTO, including at the Committee on Technical Barriers to Trade, the Committee on Market Access, and the Council for Trade in Goods. USTR will continue to engage at all levels to press the EU to ensure that this regulation does not lead to unnecessary barriers for U.S. exports.

*Question.* You have stated for some time now that USTR's ongoing review of the section 301 tariffs is finishing soon.

A number of manufacturers in South Carolina have requested tariff exclusions related to machinery and key inputs that are critical to their manufacturing processes, and they continue to wait for you to complete the review.

Why has it taken so long for USTR to conduct its 4-year review of the section 301 tariffs and can you assure me that your staff is moving as quickly as possible to address the needs of manufacturers in South Carolina?

Answer. USTR has issued a comprehensive report on the statutory review of the tariff actions in the section 301 investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation. In the report I recommended a series of actions to the President, including the establishment of an exclusion process targeting machinery used in domestic manufacturing. The report also proposes 19 exclusions for certain solar manufacturing equipment, with the goal of supporting investment in U.S. solar manufacturing.

Having considered my advice, President Biden directed me to take action and consistent with the President's direction, in a Federal Register notice published on May 28, 2024, I proposed certain modifications to the tariff actions and established the framework for an exclusion process for machinery. On September 13th, my office announced the final modifications. The proposed modifications announced in May 2024 were largely adopted, with several updates to strengthen the actions to protect American businesses and workers from China's unfair trade practices following the review of more than 1,100 comments from the public. The updates included new timing and rates for tariffs on face masks, medical gloves, needles, and syringes; an exclusion for enteral syringes; a proposal regarding coverage of additional tungsten, wafers, and polysilicon tariff lines; an exclusion for ship-to-shore cranes ordered prior to May 14, 2024; an expansion of the scope of the machinery exclusions process to include five additional tariff lines; and modification of the coverage of proposed exclusions for solar manufacturing equipment.

These finalized tariff increases will target the harmful policies and practices of the People's Republic of China that continue to impact American workers and businesses. These actions underscore the Biden-Harris administration's commitment to standing up for American workers and businesses in the face of unfair trade practices.

Information on the revisions to modifications are detailed in USTR's Federal Register notice.

*Question.* I share the concerns of a number of my colleagues on this committee regarding USTR's stance on digital trade and cross-border data restrictions. The United States has had longstanding negotiating objectives when it comes to digital trade, and I believe USTR's recent change of posture will ultimately harm American businesses and workers. In particular, cross-border data restrictions can have the greatest impact on the 61 million U.S. workers employed by U.S. small businesses, which account for 95 percent of all U.S. exporting enterprises.

What is USTR doing to protect U.S. small businesses from digital trade barriers abroad?

Answer. The digital landscape is rapidly evolving and is not the same as it was in 2020, particularly when it comes to the conduct of nonmarket autocracies. Congress recently enacted legislation to address the challenges associated with TikTok and also took action with respect to data brokers. Earlier this year, President Biden signed an executive order to address the harms associated with the transfer of bulk data to countries of concern.

Given the dynamic nature of the digital economy and evolving public policy considerations, USTR is very careful to ensure that any digital trade rules do not get ahead of the legislative and regulatory considerations taking place right now, and in particular the bipartisan goal of addressing the risks associated with data flows to countries of concern. As the administration and Congress continue their work on issues important to the digital economy such as privacy and personal data protection, USTR will take all such actions, including the proposal of the American Privacy Rights Act, into account in further evolving our trade policy.

USTR frequently meets with small business stakeholders to gather information on their challenges in the international digital economy. USTR works with interagency partners to address these concerns through bilateral discussions, at the WTO, the G7, and other international forums.

## QUESTIONS SUBMITTED BY HON. STEVE DAINES

*Question.* Australia is one of our longest trading partners and closest allies in the Indo-Pacific. Unfortunately, Australia's Minister of Culture is currently considering imposing screen content requirements on streaming services, which is a violation of Australia's Free Trade Agreement (FTA) commitments. This potential violation coincides with an all-time high for U.S. investment in Australian content services.

Do you agree that it is imperative that Australia complies with its FTA obligations?

*Answer.* We are closely tracking the Government of Australia's consideration of domestic expenditure requirements for streaming services. We have engaged the government on this issue, and have made clear our expectation that any legislation in this space adhere to rules set out in our FTA.

*Question.* Chinese medical devices, particularly syringes and needles, have flooded the U.S. market. This has pushed out American manufacturers, impacted supply chains, and risks patient safety with substandard products.

What steps will you take to help protect domestic manufacturing from coordinated attempts to undercut by foreign entities?

*Answer.* Following the report in the statutory 4-year review of actions taken in the section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, on May 14, 2024, the President directed USTR to increase tariffs on certain strategic sectors, including syringes and needles.

Consistent with the President's direction, in a Federal Register notice published on May 28, 2024, USTR proposed certain modifications to the tariff actions, including increasing section 301 tariffs for syringes and needles to 50 percent. In the same notice, USTR announced the opening of a docket and requested public comments on the proposed modifications. With respect to needles and syringes, USTR is soliciting comments on whether the tariff rates should be higher than 50 percent.

On September 13th, my office announced the final modifications. The proposed modifications announced in May 2024 were largely adopted, with several updates to strengthen the actions to protect American businesses and workers from China's unfair trade practices following the review of more than 1,100 comments from the public. The updates included new timing and rates for tariffs on face masks, medical gloves, needles, and syringes; an exclusion for enteral syringes; a proposal regarding coverage of additional tungsten, wafers, and polysilicon tariff lines; an exclusion for ship-to-shore cranes ordered prior to May 14, 2024; an expansion of the scope of the machinery exclusions process to include five additional tariff lines; and modification of the coverage of proposed exclusions for solar manufacturing equipment. These finalized tariff increases will target the harmful policies and practices of the People's Republic of China that continue to impact American workers and businesses. These actions underscore the Biden-Harris administration's commitment to standing up for American workers and businesses in the face of unfair trade practices.

Tariffs are only part of the solution to our broader concerns about China's non-market policies and practices, including nonmarket excess capacity. China utilizes a wide range of unfair, nonmarket policies and practices to undermine fair competition and dominate markets, both in China and globally. Those anticompetitive policies and practices, which include nonmarket excess capacity, pervasive subsidization, forced labor and other labor violations, and many others, create strategic dependencies and vulnerabilities, which undermine our supply chain resilience and economic security. The United States must consider all available tools and options to more effectively address this threat, including use of section 301 and strategic investments, in order to defend our workers and market-oriented businesses and address China's nonmarket distortions.

Under the U.S.-EU Trade Technology Council, we have engaged with the EU with respect to China's nonmarket policies and practices in the medical devices sector. The United States and the EU have engaged with other countries who share our concerns the medical devices sector, and conveyed these concerns directly to China.

*Question.* Protecting American intellectual property in our trade initiatives should be one of the administration's highest priorities, particularly in the Indo-Pacific Economic Framework for Prosperity (IPEF). While you have expressed that addressing tariff barriers in IPEF and other agreements, your position on protecting American IP is not clear.

Do you agree that our trading partners need to do more to protect American intellectual property, and can you explain why the administration is not pursuing that objective in IPEF and other agreements?

Answer. We recognize that intellectual property (IP)-dependent industries can be drivers of employment and economic activity. We worked with Indo-Pacific Economic Framework (IPEF) partners to develop the scope for trade pillar negotiations, and focused on topics that would enhance our resilient, sustainable, and inclusive trade. We look forward to continuing discussions with you and your team on other ways that we can advance intellectual property protections, including through bilateral engagement with trading partners.

*Question.* Mexico has yet to fully implement commitments in the United States-Mexico-Canada Agreement (USMCA) intellectual property chapter and continues to delay regulatory approval for innovative American medicines. These delays undermine American jobs and exports by restricting market access and weaken medical supply chains in North America.

Will you commit to use all tools at your disposal to ensure Mexico's compliance with USMCA commitments?

Answer. The full implementation of the USMCA is one of my top priorities, and I remain committed to ensuring that Mexico and Canada provide all the benefits negotiated for our workers, farmers, ranchers, service providers, and producers under the agreement.

The United States continues to urge Mexico to address longstanding concerns related to intellectual property (IP), including with respect to enforcement against counterfeiting and piracy, protection of pharmaceutical-related IP, preestablished damages for copyright infringement and trademark counterfeiting, and enforcement of IP rights in the digital environment. The United States continues to monitor Mexico's compliance with outstanding IP-related USMCA commitments, including those with transition periods that end in 2024 and 2025.

In addition, I share your concerns about regulatory delays, which remain a primary barrier to entering the Mexican market for pharmaceuticals. The USMCA included novel commitments in the pharmaceutical sector with the goal to better strengthen regulatory cooperation in critical products and to enhance resiliency in North American pharmaceutical supply chains. USTR will continue to raise concerns about the regulatory delays and underscore the importance of the full implementation of all pharmaceutical commitments under the USMCA.

*Question.* Recently, members reached an agreement to extend the e-commerce moratorium at the 13th World Trade Organization (WTO) Ministerial Conference until 2026.

Do you support a permanent extension of the e-commerce moratorium at the WTO?

Answer. I was pleased we were successful in our efforts to extend the e-commerce moratorium and work program. While the moratorium and work program enjoy broad support among WTO members, it is clear that the WTO membership needs to have a more robust discussion about the future of the moratorium and the impact of the digital economy on developing members.

*Question.* Did you solicit feedback from or perform an economic impact analysis for small and medium-sized businesses before the decision to step away from previously held digital trade and e-commerce commitments in October 2023?

Answer. Given the dynamic nature of the digital economy, USTR is very careful to ensure that any digital trade rules do not get ahead of the legislative and regulatory considerations taking place right now. As the administration and Congress continue their work on issues important to the digital economy such as privacy and personal data protection, USTR will take all such actions, including the proposal of the American Privacy Rights Act, into account in further evolving our trade policy.

The President's competition agenda recognizes that corporate consolidation is harmful to a wide range of Americans, including small businesses. Digital provisions under discussion implicate the ability of small businesses to compete with the largest actors. Therefore, small businesses were an important factor in evaluating whether traditional digital trade rules serve their interests.

USTR frequently meets with small business stakeholders to gather information on their challenges in the international digital economy. USTR works with interagency

partners to address these concerns through bilateral discussions, at the WTO, the G7, and other international forums.

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QUESTIONS SUBMITTED BY HON. TODD YOUNG

*Question.* As a member of the Committee on Foreign Investment in the United States (CFIUS), you are at the forefront of scrutinizing foreign investments into American industries. The proposed acquisition of U.S. Steel by Nippon Steel not only has economic implications, but also captures political attention, including pointed remarks from President Biden.

Given President Biden's critical comments on the acquisition, how do you—as a member—separate political perspectives from CFIUS's core mission to evaluate national security implications? Additionally, can you provide insights into how you will ensure CFIUS's decision-making process remains impartial and focused on the statutory criteria despite external political pressures in this particular case?

*Answer.* CFIUS is subject to strict statutory confidentiality and, consistent with law and practice, I cannot comment on particular CFIUS matters including whether a transaction is being reviewed. I would refer you to the Department of the Treasury for any CFIUS-related questions. As chair of CFIUS, Treasury is committed to keeping Congress informed about its activities, consistent with its authorizing statute.

I take seriously USTR's role as a voting member of CFIUS and our responsibility to maintain the United States' open investment policy while taking appropriate action through CFIUS to protect our national security. By law, CFIUS reviews are focused solely on national security risks that arise as a result of a covered transaction. CFIUS's statute lists illustrative factors to consider as appropriate in the context of each transaction. Executive Order 14083, issued by President Biden in September 2022, elaborates and expands on this statutory list of factors to reflect the evolving national security threat landscape. The executive order directs CFIUS to focus on protecting U.S. supply chain resilience and security, technological leadership, and sensitive personal data, and to examine transactions in the context of wider industry and investment trends.

*Question.* The 2024 National Trade Estimate Report on Foreign Trade Barriers (NTE Report) has scaled back its coverage of digital trade barriers as compared to previous editions. This reduction has raised concerns among various stakeholders about the United States' commitment to defending its digital trade interests, particularly when faced with escalating digital protectionism globally.

While I understand that not all digital trade barriers were removed, can you clarify how this decision aligns with the mandate under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 to aggressively counteract measures that hinder U.S. digital commerce?

*Answer.* The National Trade Estimate Report is governed by 19 U.S.C. sec. 2241. Of note, the statute does not refer to digital trade. It refers to "electronic commerce." The statute cross references the definition of electronic commerce under 47 U.S.C. sec. 151 note. That definition provides that electronic commerce means "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access." The definition thus refers to "information," and not to "data." Nevertheless, USTR included problematic data localization and other digital policies in its report.

With respect to Trade Promotion Authority, which Congress has not renewed, it is worth noting that the digital landscape has changed significantly since 2015. Congress has taken steps to address the behaviors of countries of concern, including with respect to TikTok in particular by passing the Protecting Americans from Foreign Adversary Controlled Applications Act in April 2024. Congress has also taken steps to address the behavior of data brokers, and the President earlier signed an executive order on bulk transfers of data to countries of concern. In this context, it is USTR's responsibility to ensure that we advocate for U.S. digital commerce, but not in a manner that puts the data of the American people at risk.

*Question.* Given USTR's rationale for scaling back various digital trade barriers in the NTE Report—which argues that every government "has the sovereign right to govern in the public interest and to regulate for legitimate public policy reasons"—how will USTR ensure this approach does not enable foreign governments

to justify discriminatory or unfair trade practices under the guise of “legitimate” public policy? For instance, if we examine some of the barriers removed from the NTE Report, such as the EU’s Digital Markets Act, isn’t there a risk that justifying these barriers as “legitimate” public policy could create a loophole for discriminatory practices?

Answer. USTR indicated in 2021 that whether measures are discriminatory or in furtherance of legitimate public policy objectives is a factual question. The recognized tension between discriminatory measures and measures in the public interest dates back to the GATT 1947.

*Question.* On page 32 of the NTE Report, it is noted that the “United States continues to engage with Brazil to lower its ethanol tariff to provide reciprocal treatment,” highlighting the bilateral trade disparities between the U.S. and Brazil.

What specific diplomatic efforts are currently being undertaken to negotiate with Brazilian authorities for a resolution that benefits both parties? Additionally, in light of the challenges faced by American farmers and ethanol producers, such as market volatility and regulatory uncertainties, what strategies does the administration have in place to mitigate the negative impacts of these tariffs?

Answer. Market access for U.S. ethanol in the Brazilian market continues to be a top priority in our overall trade relationship with Brazil. USTR, led by Ambassador McKalip, is currently engaged with Brazil on this issue with the aim of lowering Brazil’s tariff and ensuring fair treatment for U.S. ethanol in Brazil’s market. We continue to work toward the goal of arriving at a mutually agreeable solution with Brazil soon where U.S. ethanol is once again treated fairly in Brazil’s market.

*Question.* Last May, as part of the U.S.-EU Trade and Technology Council Joint Statement, the U.S. and EU committed to sharing information on nonmarket policies and practices impacting digital trade and their approaches to addressing risks from digital firms in nonmarket economies.

What actions has USTR undertaken to assess how the EU’s digital regulatory framework, including the Digital Markets Act, affects the competitiveness of U.S. firms relative to Chinese firms? How important do you view this analysis for gauging our strategic stance in the global digital economy?

Answer. This administration is committed to ensuring that U.S. companies are treated fairly by our trading partners and that our trading partners honor their obligations to the United States. USTR and interagency colleagues will collaborate to analyze and monitor EU digital legislative and regulatory developments with that perspective in mind.

Through the U.S.-EU Trade and Technology Council, the administration is working with the EU to preserve U.S. and EU technological leadership in a range of sectors. As part of this overall effort USTR is working closely with our European Commission counterparts to address Chinese nonmarket policies and practices that unfairly undermine the ability of U.S. and EU workers and the companies that employ them to compete fairly both at home and abroad.

*Question.* Last year, the G7 Trade Ministers’ Joint Statement emphasized the significance of the Data Free Flow with Trust (DFFT) initiative in advancing digital trade.

What are your views on the implementation and practicality of the DFFT initiative, and how does USTR plan to collaborate with international partners to find an agreed-upon definition of “trust” and its application in data regimes?

Answer. USTR remains engaged in ongoing discussions about the appropriate role that trade rules play with respect to “data free flow with trust.” Our objective is to secure space for legislators and regulators to address critical issues related to data flows, such as privacy, competition, and cybersecurity.

*Question.* What is USTR’s plan for pursuing and concluding the Indo-Pacific Economic Framework’s trade pillar? What hurdles remain in concluding these negotiations? How will USTR ensure that the trade pillar delivers meaningful, high ambition commitments that help American businesses and workers compete against China?

Answer. The Biden-Harris administration is committed to economic engagement with partners in the Indo-Pacific region and to concluding the IPEF trade pillar. Through trade pillar negotiations, the United States seeks to strengthen our economic ties to the region, while promoting inclusive growth for workers and busi-

nesses, advancing strong labor standards, and tackling climate change. As part of this effort, we are specifically focused on negotiating provisions that can help American businesses and workers compete in the global economy and are seeking to include commitments on labor, environmental sustainability, the digital economy, agriculture, transparency and good regulatory practices, competition policy, and trade facilitation. The administration's focus is developing high-standard rules that can increase competitiveness among parties to the agreement, which can generate increased access to foreign markets for U.S. exporters.

At this time, we are not in a position to share a timeline for concluding the agreement, but we are eager to make progress quickly and deliver results for U.S. workers and businesses. We are committed to continuing to keep Congress informed of progress on trade pillar negotiations.

*Question.* The administration has expressed an interest in engaging with Congress on renewing the African Growth and Opportunity Act (AGOA), which is currently set to expire on September 30, 2025. Yet, there are ongoing concerns regarding South Africa's increasingly close relationships with adversarial nations such as China and Russia, raising questions about its alignment with the trade values AGOA supports.

Considering South Africa's deepening ties with America's strategic competitors and persistent issues of public corruption, does USTR see value in an out-of-cycle review to confirm South Africa's adherence to the principles of AGOA and alignment with U.S. interests?

*Answer.* USTR announced the initiation of the annual AGOA eligibility review on May 14, 2024. USTR, along with the AGOA Implementation Subcommittee of the Trade Policy Staff Committee (AGOA TPSC Subcommittee), will review written public comments and conduct a virtual public hearing on this matter.

*Question.* As the coauthor of the Trading System Preservation (TSP) Act alongside Senator Coons, our legislation directs USTR to negotiate trade agreements with like-minded partners in key economic sectors. This approach is designed to rejuvenate the World Trade Organization by navigating around the stalemates caused by a few obstructive members, enhancing our ability to secure sector-specific agreements vital for our national interests.

In your view, could the TSP Act serve as a strategic tool for USTR to forge targeted trade agreements in vital sectors such as critical minerals? Additionally, if authorized to pursue sector-specific agreements specifically for critical minerals, how would USTR work closely with Congress to ensure that these negotiations are effectively targeted and meet our strategic economic objectives?

*Answer.* We share your concerns regarding nonmarket policies and practices that harm U.S. workers and businesses in key sectors. USTR has been working with like-minded trading partners to formulate appropriate responses. One area of particular focus is the critical minerals sector. In March 2023, USTR, in consultation with Congress, concluded a targeted agreement with Japan that facilitates collaboration on strengthening critical minerals supply chains. A strengthened, resilient supply chain will include enhanced domestic production, as appropriate; more diversity of suppliers, through shifting supply away from China and other sources of concern; and more sustainability, through strengthened labor standards and environmental protections, to ensure that trade reflects U.S. values. The U.S.-Japan agreement provides for, among other things, collaboration with Japan on "domestic measures to address nonmarket policies and practices of non-parties affecting trade in critical minerals" so that our trading partners are contributing to solutions to our over-dependence on China and other supply chain vulnerabilities. We are also pursuing critical minerals agreements with the UK and EU, in close coordination with Congress. In these critical minerals negotiations, as in any of our trade engagements, USTR is committed to ensuring that our domestic economic objectives drive and shape our trade policy, by consulting with Congress and stakeholders and by developing tools and strategies informed by a deep understanding of relevant supply chains. To that end, we would welcome the opportunity to work further with Congress on legislation relating to trade agreements focused on critical minerals or other sectors.

*Question.* We have seen a significant increase in imports of certain steel products from Mexico, particularly U.S. rebar imports, which have significantly exceeded the historical average from 2015 to 2017. This trend seems to challenge the 2019 U.S.-Mexico agreement that suspended the application of section 232 tariffs under the condition that import volumes remain within historical norms. While I appreciate

USTR's continued dialogue with Mexican authorities on this matter, I remain concerned that Mexico does not seem willing or able to take the action necessary to address U.S. concerns.

What additional measures is USTR considering to ensure Mexico adheres to the terms of the 2019 agreement, and at what stage would it be necessary to reconsider the implementation of section 232 measures for these surging imports?

Answer. Maintaining viable steel and aluminum industries is essential to U.S. national security. These industries fueled American industrialization and built the American middle class.

On July 10, 2024, President Biden and President of Mexico Andrés Manuel López Obrador announced actions to jointly prevent the evasion of tariffs on steel and aluminum. Under this agreement, in order to enter the United States free of section 232 tariffs, steel imports from Mexico must be melted and poured in the United States, Mexico, or Canada and aluminum imports from Mexico must not contain primary aluminum smelt or cast in Belarus, China, Iran, or Russia.

The United States is committed to continued discussions with Mexico on surges, including in products like rebar where we know our industry remains deeply concerned.

*Question.* As you know, the Department of Commerce is currently assessing Vietnam's classification as a nonmarket economy under U.S. antidumping laws. This decision is critical, as numerous U.S. manufacturing sectors rely on robust trade remedy enforcement to ensure fair competition. The U.S. steel industry, in particular, has been significantly impacted by surges in steel imports from Vietnam.

Could you elaborate on the administration's concerns, if any, about potentially recognizing Vietnam as a market economy? Additionally, how does Vietnam's status as a market economy play into its role in broader trade discussions, such as those within the Indo-Pacific Economic Framework?

Answer. We refer you to the U.S. Department of Commerce regarding its review of the nonmarket economy status of Vietnam. The Department of Commerce's determination that Vietnam is a nonmarket economy for purposes of U.S. antidumping and countervailing duty laws does not otherwise play a role in broader trade discussions with Vietnam.

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#### QUESTIONS SUBMITTED BY HON. THOM TILLIS

*Question.* The United States' creative industries play a vital role in growing the U.S. economy and creating good American jobs. In 2021, these industries accounted for over 7 percent of the U.S. economy, employed nearly 9.6 million workers and exceeded the U.S. average annual wage by 51 percent. But U.S. leadership as the world's largest content creator is under attack by pirates who seek to profit from U.S. creativity and innovation. Unprecedented levels of digital piracy risk eroding one of our Nation's greatest economic and cultural assets. Moreover, digital piracy exposes consumers to innumerable harms including identity theft, fraud, and malware.

Outside of Special 301, what is your agency doing to promote the robust copyright protections and enforcement needed to combat this threat?

Answer. USTR, in conjunction with our colleagues across intellectual property (IP) agencies, monitors developments in our trading partners' copyright legislation and engages with them on improving their legislation to fully protect copyrighted content in the digital space. For example, we promote accession to and the full implementation of the World Intellectual Property Organization (WIPO) Copyright Treaty and WIPO Performances and Phonogram Treaty (collectively, WIPO Internet treaties) with all our trading partners, as the rights and responsibilities laid out in these treaties are critical to supporting the digital copyright ecosystem. We engaged with the Dominican Republic's increased enforcement actions and interagency cooperation on combating signal piracy and with Bulgaria on its new Act Amending and Supplementing the Criminal Code, which provides for the criminal prosecution of persons who create conditions for online piracy. In addition, we have been engaging heavily with South Africa's government on recently-passed legislation that would implement protection for copy control technological protection measures and introduce a right of making available for copyrighted works. We also continue to en-

gage with India to ensure that their statutory license for broadcasts is not expanded to include interactive Internet transmissions.

USTR also publishes an annual Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) separately from the annual Special 301 Report. The Notorious Markets List identifies illustrative examples of online and physical markets that reportedly engage in, facilitate, turn a blind eye to, or benefit from substantial copyright piracy and trademark counterfeiting.

More about USTR's latest IP efforts and successes can be found in USTR's 2024 Special 301 Report.

*Question.* There has been a surge in imports of certain steel products from Mexico. For example, U.S. rebar imports from Mexico increased by more than 1,700 percent in 2023 over the 2015–2017 historical average. This appears to be in violation of the 2019 U.S.-Mexico agreement to suspend application of section 232 measures, provided that import volumes do not surge in excess of historical volumes. I remain concerned that Mexico does not seem willing or able to take the action necessary to address U.S. concerns.

What more can be done to ensure that Mexico abides by the 2019 agreement? At what point does it become necessary to consider reapplying section 232 measures to products where surges have occurred?

*Answer.* Maintaining viable steel and aluminum industries is essential to U.S. national security. These industries fueled American industrialization and built the American middle class.

On July 10, 2024, President Biden and President of Mexico Andrés Manuel López Obrador announced actions to jointly prevent the evasion of tariffs on steel and aluminum. Under this agreement, in order to enter the United States free of section 232 tariffs, steel imports from Mexico must be melted and poured in the United States, Mexico, or Canada and aluminum imports from Mexico must not contain primary aluminum smelt or cast in Belarus, China, Iran, or Russia.

The United States is committed to continued discussions with Mexico on surges, including in products like rebar where we know our industry remains deeply concerned.

*Question.* I understand that the U.S. and Mexico have been negotiating a provision that would require steel imports from Mexico to be melted and poured in Mexico in order to benefit from the tariff-free treatment. This provision is critical to help ensure that China and other countries don't evade the section 232 measures by shipping product through Mexico.

What is the status of these negotiations, and what more can be done to ensure that Mexico agrees to this critical provision?

*Answer.* We agree that a melt-and-pour requirement is critical to help ensure that China and other countries do not evade the section 301 and section 232 measures. On July 10, 2024, President Biden and President of Mexico Andrés Manuel López Obrador announced actions to jointly prevent the evasion of tariffs on steel and aluminum. Under this agreement, in order to enter the United States free of section 232 tariffs, steel imports from Mexico must be melted and poured in the United States, Mexico, or Canada and aluminum imports from Mexico must not contain primary aluminum smelt or cast in Belarus, China, Iran, or Russia.

*Question.* A company with their headquarters and significant manufacturing presence in North Carolina is facing unfair competition from a Chinese company that has set up a new factory in Thailand to circumvent the China section 301 tariffs. It is using cheap Chinese inputs in its production in Thailand and bringing the final products into the United States tariff-free, undercutting the local NC company. While the company is pursuing AD/CVD relief, we know that is costly, time-consuming, and uncertain. I understand the Chinese are duplicating these efforts in other industries.

What emergency authorities or policies could combat this clear circumvention of U.S. tariffs? Could you provide any policy solutions USTR could take to address this type of situation?

*Answer.* To maintain the effectiveness of the section 301 actions, the U.S. Government must ensure that goods subject to the section 301 duties are properly assessed. That is why, in my report, Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer,

Intellectual Property, and Innovation, I recommended additional funds be allocated to Customs and Border Protection (CBP) for the enforcement of trade actions. As noted in my report, despite the significant increase in trade actions under section 301, section 201, and section 232, the budget for CBP does not have funds specifically allocated for the enforcement of these trade actions. Additional funds for CBP's enforcement work would make these trade actions more effective.

Generally, as your question suggests, we must be aware of the incentives created by the section 301 tariffs. These tariffs promote diversification of supply chains away from China, but they may encourage PRC-based companies to set up operations outside China, whether in the United States or in other jurisdictions, to avoid the tariffs. Given the openness of our market to goods from key trading partners and to foreign investment, we will need to work closely with Congress to evaluate and address these challenges.

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QUESTIONS SUBMITTED BY HON. MARSHA BLACKBURN

*Question.* The theft of intellectual property (IP) by China poses significant risks to U.S. producers, undermining their competitive advantage and stifling innovation. When American ideas, designs, and technologies are appropriated without authorization, businesses face revenue losses and decreased incentives for research and development. This is exactly the situation facing Tennessee-based Meco, which is the last domestic producer of charcoal grills. Chinese producers have been flooding the U.S. market with knockoffs of Meco's grills, fully usurping Meco's IP down to stolen imagery (produced by Meco) used to advertise the grills online.

What actions has the United States Trade Representative (USTR) taken to address China's anticompetitive practices, specifically concerning the intellectual property theft from American producers like Meco?

*Answer.* USTR's statutory Four-Year Review of the Section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation found that China continues to engage in intellectual property theft and forced technology transfer, which underpinned the initial 2018 investigation. In light of this finding and to further encourage the elimination of China's unfair technology transfer-related policies and practices that continue to burden U.S. commerce, the President directed USTR to increase tariffs on \$18 billion of imports from China in strategic sectors. We are committed to using the full range of tools we have and developing new tools as needed to defend American economic interests from harmful, unfair policies and practices.

We continue to press China to address a range of intellectual property (IP) enforcement concerns, including IP theft. Under the United States-China Economic and Trade Agreement, China committed to take sustained and effective enforcement action to stop the manufacture and block the distribution of counterfeit products and to combat the prevalence of counterfeit goods on its e-commerce platforms, including by revoking licenses for repeated failures to curb the sale of counterfeit goods. We continue to use the consultation mechanisms established by the agreement to address IP concerns as they arise. Nevertheless, China continues to be the world's leading source of counterfeit and pirated goods. China remains on the Special 301 Priority Watch List in 2024 and is subject to continued monitoring pursuant to section 306 of the Trade Act of 1974, as amended (19 U.S.C. § 2416).

USTR also works closely with our colleagues across IP agencies, including regional IP attachés, the Department of Justice, and Customs and Border Protection, on these types of company-specific issues.

*Question.* I appreciate your March 28th response to our bipartisan letter inquiring about USTR's engagement with its EU counterparts regarding the implementation of the EU Deforestation-Free Regulation. As you know, I am deeply concerned that EUDR will disrupt the U.S.-EU trade relationship and urge the Biden administration to work with the EU to ensure that American producers' market access is not disrupted.

Could you please provide an update on USTR's discussions with EU regulators on EUDR's implementation?

*Answer.* The Biden-Harris administration remains strongly committed to combating deforestation, but I share your concerns regarding how the EU's Deforestation-Free Supply Chain Regulation (EUDR) will be implemented and the impact it may have on U.S. producers that engage in sustainable production practices.

USTR has directly engaged with the EU at all levels regarding our implementation concerns and continues to urge the EU to delay implementation and enforcement of penalties until U.S. concerns have been addressed. This includes adjustments to the risk benchmarking to take into account good forest management practices, such as those in the United States. I have engaged directly with Executive Vice President for the European Green Deal, Interinstitutional Relations and Foresight Maroš Šefčovič to request that implementation and enforcement issues are addressed, including by sending a letter with USDA Secretary Vilsack and Commerce Secretary Raimondo detailing our shared concerns. Chief Agricultural Negotiator Doug McKalip has also raised these issues directly to the European Commission. Additionally, we have raised EUDR implementation concerns at the WTO, including at the Committee on Technical Barriers to Trade, the Committee on Market Access, and the Council for Trade in Goods. USTR will continue to engage at all levels to press the EU to ensure that this regulation does not lead to unnecessary barriers for U.S. exports.

*Question.* U.S. agriculture exports dropped by \$17 billion in the last fiscal year. China did not live up to its agricultural purchase commitments under President Trump's Phase One Deal and USTR has failed to take enforcement actions against China.

What are you doing to hold China accountable for failing to meet its purchase commitments?

Answer. Since the beginning of the Biden-Harris administration, USTR has been engaging with trading partners across the globe to provide export opportunities for farmers and producers, including through the reduction of both tariff and nontariff barriers. According to USDA calculations, these actions have supported roughly \$21 billion in U.S. agricultural exports over the course of the 3 highest years of agricultural exports ever, breaking records in 2 of the past 3 years.

USTR's statutory Four-Year Review of the Section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation found that China continues to engage in intellectual property theft and forced technology transfer, which underpinned the initial 2018 investigation. In light of this finding and to further encourage the elimination of China's unfair technology transfer-related policies and practices that continue to burden U.S. commerce, the President directed USTR to increase tariffs on \$18 billion of imports from China in strategic sectors. We are committed to using the full range of tools we have and developing new tools as needed to defend American economic interests from harmful, unfair policies and practices.

We remain open to meaningful improvements from China for our agricultural products and to mitigate against retaliation. But one of the challenges we have with China is an over reliance on China as a customer. Our strategy therefore has expanded to include working with allies and partners on issues of common concern and market opportunities while also pursuing the vigorous defense of our values and economic interests from the negative impacts of China's unfair economic and trade policies and practices.

*Question.* USDA projects that exports of corn, livestock, poultry, dairy, pork, soybeans, and wheat will all fall by hundreds of millions of dollars in Fiscal Year 2024. You have not negotiated or signed new trade agreements to create new markets for our farmers.

Does your office intend to do so in 2024 or will American farmers experience more of the same and continue to lose market share to their competitors?

Answer. Since the beginning of the Biden-Harris administration, USTR has been engaging with trading partners across the globe to provide export opportunities for farmers and producers, including through the reduction of both tariff and nontariff barriers. According to USDA calculations, these actions have supported roughly \$21 billion in U.S. agricultural exports over the course of the 3 highest years of agricultural exports ever, breaking records in 2 of the past 3 years.

USTR has been taking a leading role to develop innovative strategies and initiatives to integrate trade and other economic policy measures in a way that promotes trade and bolsters resilience. We have launched initiatives to strengthen our relationships with key partners in the Indo-Pacific and the Americas and with Taiwan and Kenya. With respect to existing agreements, we will continue to focus on full implementation, monitoring, and enforcement. We will remain focused on the work

ahead to drive more inclusive, sustainable economic growth—and to shape the global trading system for the better.

*Question.* I would like you to address our exchange as well as your exchange with my colleague, Senator Grassley, during the hearing. When questioned about USTR's withdrawal from longstanding proposals made during international negotiations on issues related to free cross border data flow, data localization, and source code issues, you responded that the administration's rationale was a changed perception of data—specifically that it should be viewed as a commodity as opposed to a facilitator of trade. You stated this in the context of the Kids Online Safety Act (KOSA), which is legislation that I am cosponsoring with Senator Blumenthal and that you acknowledged addressed data security for children's data in the digital economy and in the digital sphere.

In your view, how would KOSA violate U.S. commitments under the World Trade Organization, as well as trade agreements like the U.S.-Mexico-Canada Agreement?

Several countries have their own data privacy laws. Do the data privacy laws of other countries violate its commitments to international agreements?

If so, why has USTR not taken enforcement action against these countries?

*Answer.* At the hearing, I did not state that there was a changed perception of data. Rather, I stated that the very nature of the discussion about electronic trade had changed, from using digital technology to facilitate the flow of goods, to a circumstance in which the data itself is the commodity.

In circumstances in which the United States commits to the free cross-border flow of data, any measure that does not permit the free flow of data, including children's data, is subject to challenge as a violation of that agreement. Administrations dating back to President George W. Bush have expressed concern over WTO dispute settlement because it did not show adequate deference to parties' sovereign rights. Dispute settlement panels have not consistently respected governments' efforts to regulate in the public interest. We need to ensure that international commitments on data permit the United States to act domestically to protect our citizens' data, and that those international commitments only proscribe what we agree governments should not do.

Respecting Congress's interest in legislating, the United States has limited its exposure to such challenges by refraining from making further commitments until we are confident that the interests of the American people are secure.

*Question.* This past December, the EU extended their tariff suspension for products affected by the steel and aluminum trade dispute through March 31, 2025. This includes the suspension of a 50-percent tariff on American whiskey products.

Please provide a detailed update on USTR's ongoing discussions with the European Union regarding its retaliatory tariffs imposed on American products in response to section 232 tariffs on steel and aluminum?

*Answer.* In December 2023, the United States extended the EU's access to U.S. tariff rate quotas for steel and aluminum until December 31, 2025, in order to give more time for both the United States and the European Union to negotiate a global arrangement. For its part, the EU chose to extend the suspension of its retaliatory tariffs on U.S. goods only until March 31, 2025. The United States has been clear to the EU that a resumption of the EU's retaliatory tariffs at that time could lead to a return of the section 232 tariffs for the EU. We continue to strongly encourage the EU to extend the suspension of the retaliatory tariffs until December 2025.

*Question.* Over the past 2 years, officials from USTR and the Department of Commerce have participated in several rounds of negotiations related to the Indo-Pacific Economic Framework for Prosperity (IPEF). I would like to know more about the costs associated with these international trips to U.S. taxpayers.

Could you please produce detailed expense reports or related documentation accounting for costs associated with sending USTR officials to the first negotiating round held in Brisbane, Australia, from December 10–12, 2022, followed by a special negotiating round on Pillars II–IV in New Delhi, India, from February 8–11, 2023?

Could you please produce detailed expense reports or related documentation accounting for costs associated with sending USTR officials to the second negotiating round held in Bali, Indonesia, from March 13–19, 2023,

Could you please produce detailed expense reports or related documentation accounting for costs associated with sending USTR officials to the third negotiating round held in Singapore from May 8–15, 2023?

Could you please produce detailed expense reports or related documentation accounting for costs associated with sending USTR officials to the fourth negotiating round held in Busan, South Korea, from July 9–15, 2023?

Could you please produce detailed expense reports or related documentation accounting for costs associated with sending USTR officials to the fifth negotiating round held in Bangkok, Thailand from September 10–16, 2023?

Could you please produce detailed expense reports or related documentation accounting for costs associated with sending USTR officials to the sixth negotiating round was held in Kuala Lumpur, Malaysia from October 15–24, 2023.

If you cannot produce expense reports or documentation, can you commit to providing cost estimates for each of these international trips?

Answer. Through the IPEF trade pillar negotiations, the United States seeks to strengthen our economic ties to the region, while promoting inclusive growth for workers and businesses, advancing strong labor standards, and tackling climate change. As part of this effort, we are specifically focused on negotiating provisions that can help American businesses and workers compete in the global economy and are seeking to include commitments on labor, environmental sustainability, the digital economy, agriculture, transparency and good regulatory practices, competition policy, and trade facilitation. The administration's focus is on developing high-standard rules that can increase competitiveness among parties to the agreement, which can generate increased access to foreign markets for U.S. exporters. We are eager to make progress quickly and deliver results for U.S. workers and businesses. We are committed to continuing to keep Congress informed of progress on trade pillar negotiations.

As the U.S. lead for international trade and investment matters, USTR staff across administrations have traveled to meet with trading partners to advance America's interests. This includes traveling for negotiating rounds, such as the IPEF negotiating rounds. Traveling to engage in person is an essential feature of USTR's trade work. In-person meetings help USTR build important relationships and allows negotiations to occur in a setting that helps the United States make more progress on behalf of American workers, farmers, businesses, and others, as well as our national interest.

USTR reports travel expenses in its annual budget requests. As noted in USTR's Fiscal Year 2025 Budget Request, USTR's travel expenses totaled \$7.2 million in Fiscal Year 2023.

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

Today I'm going to discuss the ways in which Congress and the administration can work together to build a trade agenda that will supercharge America's diverse industries and create good-paying and innovative jobs across Oregon and nationwide.

Let's start with trade enforcement: without enforcement, our trade laws aren't worth the paper they're written on.

India's wheat subsidies are distorting prices and making it harder for Oregon's farmers to compete in the Asian market. Mexico's illegal fishing practices are hurting the environment, and its harmful energy regulations are undermining American clean energy suppliers. China has a rap sheet of unfair subsidies and trade practices so long, we'd be here until dinner time just to get through it. But I'll spare everyone the filibuster.

Every single one of these unfair practices by foreign countries is directly hurting workers and companies in the United States, including in my home State.

There's a lot more USTR can be doing with the tools it has—whether that's raising issues directly with trading partners, starting dispute settlement, or opening 301 investigations into unfair trade practices. That's the only way to hold trade cheats accountable and level the playing field for American workers and businesses.

Next up: trade barriers. Our economy thrives when our workers make and grow stuff here, add value to it here, and ship it around the world—but we can't do it with all these barriers in place.

In my home State, one in four jobs relies on exports. Oregon has world-renowned exports from wheat, to potatoes, to wine, to high-tech electronics, and everything in between. But the success of Oregon's farmers and workers depends on the administration knocking down barriers to help them compete in the global market and get their products on shelves.

That's why, in addition to enforcing the rules on the books to hold trade cheats accountable, USTR can and must be playing offense. It's not enough to sell domestically; the United States must expand opportunities in the global market for American exporters across every industry.

The negotiations with Taiwan, Kenya, and Indo-Pacific countries could net big wins for our exporters in agriculture and manufacturing—but only if the administration pushes hard to crack down on tactics like unfair labeling, duplicative testing requirements, and ag regulations that aren't supported by science and are designed to put American workers, farmers, and ranchers at a disadvantage.

Before I wrap up, I'll also note our country, particularly my home State, has set the standard on high-tech, innovative industries. The United States needs to be a leader in setting the rules of the road for digital trade so our creators and innovators get a fair shake in foreign markets.

I take a back seat to no one when it comes to privacy, security, and antitrust enforcement. While lawmakers look to domestic tech regulation, we must also push for digital trade rules that will protect the free and open Internet, help small businesses, and push back on China's model of digital surveillance and censorship.

I'm glad the White House is taking charge on this issue and working with diverse stakeholders and agencies to develop a whole-of-government position. I look forward to working on a digital trade position that reflects the needs of American workers, businesses, and consumers.

I'll close with this: the American people deserve to know what the government's priorities are with regard to trade policy. Unfortunately, I have strong concerns that this administration has moved away from working with Congress and, as a result, is keeping the American people in the dark.

To that end, I'm asking USTR to be straight with Congress and the public. When you take meetings with foreign officials, it isn't enough to say "a range of bilateral concerns" were raised. Tell us what trade barriers you're trying to break down, and how that will help American workers and businesses.

If negotiators are meeting with the Japanese, tell us if they're pushing to get Oregon potatoes on shelves in Japan. When officials engage with Indonesia, tell us if you're pushing against unfair licensing requirements that hurt Oregon's dairy farmers. In your negotiations with Kenya, tell us how you'll push them to improve their environmental and labor laws or bring down barriers to biotech products.

Fishermen in Newport and ranchers in Prineville want to know exactly how USTR is helping their businesses thrive in the global market. So I need you to shed some light on trade policy.

In my mind, enforcing laws on the books and making our government's trade policy priorities clear is a good place to start to level the playing field for the American people. I look forward to today's discussion about how Congress and the administration can work together to make it possible.

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## COMMUNICATIONS

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AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS  
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<https://aaei.org/>

April 15, 2024

The Honorable Ron Wyden  
Chairman  
Senate Committee on Finance  
Washington, DC 20510

The Honorable Jason Smith  
Chairman  
House Ways & Means Committee  
Washington, DC 20515

The Honorable Mike Crapo  
Ranking Member  
Senate Committee on Finance  
Washington, DC 20510

The Honorable Richard Neal  
Ranking Member  
House Ways & Means Committee  
Washington, DC 20515

Re: Generalization System of Preferences (GSP) program renewal

Dear Chairman Wyden, Ranking Member Crapo, Chairman Smith, and Ranking Member Neal,

The American Association of Exporters and Importers (AAEI) urges Congress to complete work and report legislation to reauthorize the Generalized System of Preferences (GSP), including provisions to ensure that this program is renewed on a fully retroactive basis.

On December 31, 2020, the Generalized System of Preferences (GSP) program lapsed. GSP strengthens U.S. interests by supporting the development of 119 emerging economies opening the U.S. market to qualified exports. The GSP program has a long history of bipartisan support going back to its establishment in the Trade Act of 1974. GSP supports American workers and manufacturers by reducing the costs of imported inputs, materials, and equipment for domestic manufacturing. Additionally, GSP helps American families by lowering the costs of consumer goods imported from eligible countries that are aligned with U.S. national security and economic interests. Products imported under GSP do not compete with U.S.-made goods in a significant way.

For over 100 years, AAEI has served as a prominent national voice for the United States' international trade community. AAEI proudly represents a diverse range of industry sectors within the global trade landscape, comprising manufacturers, importers, exporters, wholesalers, retailers, and various service providers such as customs brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of its members are small businesses seeking opportunities to export to foreign markets, while the larger entities help to fuel the economy through their supply chains. As the premier U.S. international trade organization, AAEI is recognized for its expertise in the day-to-day facilitation of trade, including the administration and compliance with import and export laws of the United States, making it an indispensable resource for those directly involved in and impacted by developments in international trade.

GSP solidifies the U.S. relationships with developing companies, ensuring that these countries improve their approaches to the environment, human rights, and the rule of law. To the extent that the U.S. Government is looking for reliable partners that share U.S. values as a viable alternative to imports from China, GSP countries are ready to fill this role. They simply need a signal in the right direction. GSP can send that message clearly. Since GSP expired in 2020, U.S. companies have paid over \$2 billion in extra taxes while also dealing with the effects of the COVID-19 pandemic,

high freight costs, and supply chain disruptions in both the U.S. and beneficiary countries. These issues have contributed to high and persistent U.S. inflation while hindering American companies' efforts to build more diversified and resilient supply chains.

If you have any questions or require any clarification of our responses, please contact my staff lead Mitchell Hart at [MHart@aaei-hq.org](mailto:MHart@aaei-hq.org).

Sincerely,

Eugene C. Laney  
President and CEO

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AMERICAN FARM BUREAU FEDERATION  
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The American Farm Bureau Federation, the nation's largest general farm organization, submits this statement for the Senate Committee on Finance hearing on the President's 2024 trade policy agenda. Trade is critically important to the current welfare and future prosperity of U.S. farmers and ranchers. America's farmers and ranchers depend on growing and stable export markets for the success of their businesses.

#### **President's Trade Agenda for 2024**

The Administration's approach on trade includes the Indo-Pacific Economic Framework; reducing trade barriers generally and with Taiwan and Kenya specifically; supporting agriculture; promoting sustainable environmental practices; focusing on supply chain improvements; and promoting stability.

The Indo-Pacific Economic Framework (IPEF) was introduced as a part of the overall Indo-Pacific Strategy. It is an approach to improve relationships and reach agreements with the region's countries. It should also be used to reach science-based standards that will assist exports. The inclusion of sanitary and phytosanitary (SPS) standards will reduce barriers and expand opportunities for our agricultural exports. Trade initiatives should also include a strategy of expanding market access for agriculture by working to reduce tariff barriers.

The Administration is also not proposing a reauthorization of Trade Promotion Authority nor a commitment to pursue trade negotiations with binding and enforceable commitments. Farm Bureau supports trade agreements in the Indo-Pacific region as the most durable and effective means to improve market opportunities for farmers and ranchers.

The U.S.-Taiwan Initiative on 21st Century Trade was launched in 2022. For agriculture, this effort needs to resolve standards barriers by Taiwan that restrict U.S. exports. In fiscal year 2023, \$3.7 billion in agricultural products were exported to Taiwan.

#### **Indo-Pacific Region Agricultural Trade**

Current agreements in the region show the importance of moving forward with additional efforts to improve opportunities for U.S. agricultural exports.

##### *U.S.-China*

The U.S.-China Phase 1 Agreement resulted in improved agricultural trade and progress in the removal of barriers that impact the competitiveness of U.S. products in this market. In the Phase 1 Agreement, China committed to increase purchases of U.S. agricultural products.

The outlook for Chinese purchases of soybeans, corn, wheat, sorghum, beef, pork, and other products remains strong. China bought \$33.7 billion of U.S. agricultural products in 2023.

China must continue addressing the commitments they made to improve and reform many standards in the Agreement. As these barriers go down, the opportunity for increased U.S. commodity sales improves.

An ongoing trade relationship with China is critical for U.S. farmers and ranchers.

*U.S.-South Korea*

The U.S.-South Korea Free Trade Agreement (KORUS) entered in force on March 25, 2012. The agreement eliminated or reduced tariff and non-tariff barriers on agricultural and other products. U.S. agricultural exports to South Korea reached an all-time high in 2023 at \$7.7 billion.

*U.S.-Japan*

The U.S.-Japan Trade Agreement went into effect on January 1, 2020. The tariffs applied to U.S. products are now the same as those applied to the products of the other countries with a trade agreement with Japan. Tariffs are being reduced or eliminated on a variety of U.S. agricultural exports to Japan. The U.S. and Japan should continue talks on the remaining issues, such as SPS rules, which would help lead to a comprehensive FTA between the U.S. and Japan. The agreement on the operation of Japan's beef safeguard mechanism will help increase sales of U.S. beef products.

U.S. agricultural exports to Japan were over \$12.2 billion in 2023.

**USMCA**

The U.S.-Mexico-Canada Agreement is important for the continuation and improvement of trade among the nations of North America. Mexico (\$28.3 billion) and Canada (\$28 billion) are the second- and third-largest export markets for U.S. agriculture. The implementation and enforcement of this agreement will yield future growth for our exports.

Issues between the U.S. and Mexico on biotech corn are currently in the dispute settlement system. Concerns continue with the amount of U.S. dairy product access into Canada.

**U.S.-United Kingdom**

We support a resumption of trade negotiations between the U.S. and the UK to deal with non-science-based barriers to our agricultural exports. A trade agreement that addresses both tariff and non-tariff barriers will benefit farmers and consumers.

**Trade Promotion Authority**

The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Trade Promotion Authority) ended on July 1, 2021. Farm Bureau recognizes the crucial importance of Trade Promotion Authority and supports its reauthorization. The negotiating objectives set by Congress, the consultation requirements of the Administration with Congress and the voting procedures established under TPA are important to the successful negotiation and conclusion of trade discussions.

**World Trade Organization**

The Biden Administration will need to deal with various WTO reform issues such as the operation of the Appellate Body. For agriculture, we support working toward increased transparency through an improved notifications process. We do not support discussion of subsidy levels without a full discussion of market access initiatives.

**Sustainability**

U.S. farmers and ranchers look to be partners in addressing the challenges of our changing climate. Not only are agriculture's emissions low, American farmers and ranchers are making their footprint even smaller. This is best accomplished through policies that provide voluntary, incentive-based tools for farmers, ranchers, and forest owners to maximize the sequestration of carbon. This approach will also help achieve a reduction in greenhouse gas emissions, increase the resilience of the land, advance science-based outcomes and help rural economies adapt.

**Agricultural Exports and Imports**

U.S. imports of agriculture and food are growing more than our agricultural exports, with imports of \$195 billion in fiscal year 2023 and exports of \$178.7 billion. This growing trend shows the need for more aggressive efforts to expand market opportunities for U.S. farmers and ranchers.

Part of the rise in imports is due to an increase in fruit and vegetable imports. We are concerned that foreign competitors are hurting domestic seasonal produce growers.

We support efforts to expand export markets and to also use our existing trade laws to protect growers against unfairly traded imports. When fruit and vegetable imports are increasing, producers of perishable commodities need an import relief pro-

cedure that will prevent their markets from being severely impacted during a short marketing season.

### Conclusion

U.S. farmers and ranchers rely on export markets for over 20% of agricultural production. As Congress considers future discussions with the nations that are our most important export destinations, and those that have the potential to grow in importance, we need to consider how trade initiatives can most effectively expand agricultural exports to the benefit of the nation's farmers and ranchers.

As we seek to expand and diversify our markets, we will rely upon the actions of Congress and the Administration to enact market-opening trade agreements.

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AMERICANS FOR FREE TRADE  
<https://americansforfreetrade.com/>

April 15, 2024

The Honorable Ron Wyden  
 Chairman  
 Senate Committee on Finance  
 Washington, DC 20510

The Honorable Jason Smith  
 Chairman  
 House Ways and Means Committee  
 Washington, DC 20515

The Honorable Mike Crapo  
 Ranking Member  
 Senate Committee on Finance  
 Washington, DC 20510

The Honorable Richard Neal  
 Ranking Member  
 House Ways and Means Committee  
 Washington, DC 20515

RE: Statement for the Hearing Record: The President's 2024 Trade Policy Agenda  
 Dear Chairman Wyden, Ranking Member Crapo, Chairman Smith, and Ranking Member Neal,

The Americans for Free Trade coalition, a broad alliance of American businesses, trade organizations, and workers united against tariffs, respectfully submits this written statement to include in the public record of the Senate Finance Committee and House Ways and Means Committee's ("the Committees") 2024 Trade Policy Agenda hearings scheduled for April 16th and 17th. We appreciate the Committees holding hearings on this important matter.

By way of background, Americans for Free Trade represents every part of the U.S. economy including manufacturers, farmers and agribusinesses, powersports, retailers, technology companies, service suppliers, natural gas and oil companies, importers, exporters, and other supply chain stakeholders. Collectively, we employ tens of millions of Americans through our vast supply chains.

For more than 5 years, AFT has called for an end to the China 301 tariffs which have had a disproportionate economic impact on American companies, workers, and consumers. These tariffs have also failed to achieve their stated objective which was to change China's use of unfair trade practices relating to intellectual property rights, forced technology transfers, and innovation. We have repeatedly called for the administration to find a new path forward to address the ongoing China trade issues, without a response. We continue to believe that it is well past time for a strategic realignment of the tariffs to focus on the original intent of the Section 301 investigation and seek alternate measures to achieve the necessary changes in China's behavior.

Unfortunately, we have seen no change in the Biden-Harris administration's position or communication regarding the tariffs since the last time the committee held this hearing in 2023. The statement<sup>1</sup> that we submitted for those hearings remains true today. The only difference is that importers have paid close to \$40 billion more in the Section 301 tariffs. As of today, importers have paid more than **\$211 billion**<sup>2</sup> in Section 301 tariffs on covered products imported from China, according to U.S. Customs and Border Protection (CBP). These taxes continue to create tremendous uncertainty, increase the cost of doing business in the United States, and place a financial burden on American businesses—negatively impacting their ability to invest in their companies, hire more American workers, innovate new technologies,

<sup>1</sup> <https://americansforfreetrade.com/wp-content/uploads/2023/04/AFT-Trade-Policy-2023-Statement-for-SFC-HWM-Hearing-Record-Final-040623-1.pdf>.

<sup>2</sup> CBP Trade Statistics—<https://www.cbp.gov/newsroom/stats/trade>.

and remain competitive globally. The tariffs also have an impact on consumers. While many companies have tried to absorb the costs of the tariffs, many have had to share the costs with final consumers.

### **I. Lack of USTR Response and Timely Communications**

AFT has continuously sent communications to the Office of the U.S. Trade Representative (USTR) regarding both the release of the 4-year necessity review as well as calls to renew expiring exclusions and to reopen a more fulsome exclusion process. Each of those communications has gone unanswered.

Our most recent letters sent in July 2023<sup>3</sup> and December 2023<sup>4</sup> urged USTR to quickly renew expiring exclusions, as well as call for an immediate release of the results of the 4-year review. The lack of urgency for USTR to renew the expiring exclusions has been concerning. Each time USTR has renewed the exclusions, importers have been guessing until the last minute whether they will have to pay the tariffs on products that have already been bought and paid for under contract.

For the most recent extension of the COVID-19 and small batch exclusions at the end of December 2023, USTR did not provide CBP enough time to program its system (the Automated Commercial Environment or ACE) to note that the exclusions had been extended. This resulted in importers having to pay duties on products imported into the United States for several days and then subsequently file for a duty refund—creating additional administrative burdens for both the importers as well as CBP. USTR must improve the product exclusion renewal process so that both importers and CBP are provided with more advanced notice about the status of the exclusions.

As AFT communicated with the committees in a December 2023 letter,<sup>5</sup> *“USTR has taken over a year and half to conduct the review, which has exacerbated the uncertainty around the future of the tariffs.”* The letter concluded, *“As economic uncertainty continues, it is imperative that Congress reclaim its constitutional authority over trade and conduct rigorous oversight over USTR to ensure it is using its tools appropriately to create economic opportunity for all Americans and to ensure that American businesses can compete globally.”* We continue to renew that call upon Congress to reclaim its tariff authority.

### **II. 301 Tariffs’ Impacts on American Businesses and Consumers**

From the onset of the tariffs, AFT has stated that American companies, not Chinese companies, bear the economic brunt of the tariffs. Those who argue otherwise are simply ignoring reality. As a reminder, this fact was confirmed by the non-partisan, independent U.S. International Trade Commission (USITC) last year in its recent report entitled *“Certain Effects of Section 232 and 301 Tariffs Reduced Imports and Increased Prices and Production in Many U.S. Industries.”*<sup>6</sup> The report states: *“U.S. importers bore nearly the full cost of these tariffs because import prices increased at the same rate as the tariffs. The USITC estimated that prices increased by about 1 percent for each 1 percent increase in the tariffs under sections 232 and 301.”*

As part of the 301 4-year review, AFT submitted comments<sup>7</sup> to USTR with feedback from our coalition partners regarding the negative impacts that the tariffs have had on their businesses, workers and consumers.

In general, our comments concluded that:

- 1) **The tariffs make U.S. manufacturers less competitive.** While protecting domestic manufacturing was never the stated purpose of the section 301 tariffs, they have been harmful to manufacturers by taxing inputs they need to produce more products domestically. Many of these companies are not able to find alternate markets to purchase their inputs, even from U.S. manufacturers.

<sup>3</sup>AFT Letter to USTR—Extension of Section 301 China Tariffs Exclusions—<https://americansforfreetrade.com/wp-content/uploads/2023/07/AFT-Letter-to-USTR-Tariff-Exclusion-Renewal-Final-072723.pdf>, July 27, 2023.

<sup>4</sup>AFT Letter to USTR—Four Year Review and Exclusions—<https://americansforfreetrade.com/wp-content/uploads/2023/12/AFT-Letter-to-USTR-Tariff-Exclusion-Renewal-Four-Year-Review-Final-Updated-121123.pdf>, December 11, 2023.

<sup>5</sup>AFT Letter to Congress Urging USTR to Promptly Conclude Section 301 Four-Year Review and Extend Expiring Exclusions—<https://americansforfreetrade.com/wp-content/uploads/2023/12/AFT-Section-301-Tariff-Letter-to-Big-Four-HWM-SFC-Final-Update-122023.pdf>, December 20, 2023.

<sup>6</sup>Economic Impact of Section 232 and 301 Tariffs on U.S. Industries—<https://www.usitc.gov/publications/332/pub5405.pdf>, March 15, 2023.

<sup>7</sup>AFT Comments to USTR on Four-Year Review—<https://americansforfreetrade.com/wp-content/uploads/2024/04/AFT-USTR-301-Review-Comments-011723-Final.pdf>.

The section 301 tariffs have harmed, and continue to harm, U.S. manufacturers and make them less competitive vis-à-vis their competitors and China. They should be lifted immediately.

- 2) **Tariffs increase costs for American consumers and contribute to inflation.** Despite what the proponents of the tariffs say, the tariffs do have a very real impact on inflation when they artificially cause prices to remain high. While there are various contributing factors to inflation, lifting tariffs is one of the few tools that the administration could utilize to bring down inflation. Time and again, we have heard from businesses of all kinds that they were forced to pass along the increased costs associated with the section 301 tariffs directly to their customers.
- 3) **Tariffs disproportionately harm low-income American families.** Tariffs harm American families by raising prices on consumer products, and this is felt most acutely by low-income families. A report<sup>8</sup> by the Progressive Policy Institute found that tariffs on consumer goods are discriminatory and regressive because low-income Americans are disproportionately impacted by these tariffs, especially single-parent families and people of color. Our coalition partners agree with the report and witness the impact the tariffs have on their customers.

### III. China Strategy Moving Forward

As we have asked previously, members of Congress must call upon the Biden-Harris administration to provide a clear and transparent China trade strategy. Such a strategy has yet to be delivered. We know that this strategy goes well beyond the China 301 tariffs, but we believe addressing the tariff issues and China's unfair trade practices associated with them are important for the reasons we discussed above.

As a near-term path forward, with regards to the tariffs specifically, AFT urges the following:

- 1) **Realign the Section 301 Tariffs**—Through the strategic 4-year review process, the administration must strategically realign the tariffs away from consumer goods and manufacturing inputs and equipment that are currently unavailable in sufficient quantities from sources other than China. These tariffs harm American companies and consumers and are not related to China's Made in 2025 program or critical sectors. The realignment should provide the opportunity for the administration to refocus the tariffs and create better leverage to achieve changes in China's unfair trade practices regarding forced technology transfer and intellectual property theft. As part of this realignment, USTR should also include a new, fair, predictable, and transparent exclusion process available to all products subject to the 301 tariffs to ensure that American companies are not unduly harmed.
- 2) **Use Targeted Tools to Hold Bad Actors Accountable**—There has been ongoing discussion about what tools other than tariffs can be used to achieve success regarding China's trade practices. USTR has discussed other "tools in the toolbox" and potentially the development of "new tools" but has stopped short of articulating what those might be. We believe these discussions are incredibly important and need to continue, with stakeholder input. We need to find the right set of tools that address China's unfair trade practices in a targeted way without causing disproportionate economic harm to American businesses, workers, and consumers.
- 3) **Support U.S. Supply Chain Resiliency and Competitiveness by Partnering with Allies**—AFT continues to call upon the administration to work with allies to address China's unfair trade practices. This includes work at the G20, G7, World Trade Organization, the Asia-Pacific Economic Cooperation (APEC) forum, and other multilateral and regional institutions. The U.S. can be much more effective in addressing China's unfair trade practices by working in concert with allies.
- 4) **Support Efforts on Supply Chain Diversification**—Congress and the Biden-Harris administration should support the U.S. business community's efforts to further diversify supply chains. This includes developing an offensive

<sup>8</sup>Progressive Policy Institute Report—Trade Policy, Equity, and the Working Poor: United States MFN Tariffs are Regressive Taxes Which Help Few Workers and Harm Many (4/19/22), <https://www.progressivepolicy.org/pressrelease/u-s-tariffs-are-regressive-taxes-that-hurt-american-working-families-argues-new-report-from-ppi/>.

trade agenda that supports supply chain diversification and ensures the U.S. does not cede global economic influence and international rulemaking to China. This should include seeking new free trade agreements with our allies that include tariffs and market access considerations. Congress should also quickly act to retroactively renew expired trade preference programs including the Generalized System of Preferences (GSP), which provide sourcing alternatives to China, as well as the Miscellaneous Tariff Program (MTB), which provides temporary duty benefits for U.S. manufacturers and businesses.

#### IV. Conclusion

We appreciate the Committees' continued focus on ensuring that U.S. trade policy advances American values and boosts U.S. competitiveness. The Committees must continue to weigh in with the Biden-Harris administration to ensure that destructive tariffs are lifted and that a new and more effective approach to addressing China's unfair trading practices is adopted.

We thank the Committees for holding this year's trade agenda hearings and look forward to continuing to work with you.

Sincerely,

Accessories Council	American Association of Exporters and Importers (AAEI)
ACT   The App Association	American Association of Port Authorities
Agriculture Transportation Coalition (AgTC)	American Bakers Association
Alliance for Chemical Distribution (ACD)	American Bridal and Prom Industry Association (ABPIA)
ALMA, International (Association of Loudspeaker Manufacturing and Acoustics)	American Clean Power Association
American Apparel and Footwear Association (AAFA)	American Coatings Association, Inc. (ACA)
American Down and Feather Council	American Fly Fishing Trade Association
American Home Furnishings Alliance	Electronic Transactions Association
American Lighting Association	Energy Workforce and Technology Council
American Petroleum Institute	Experiential Designers and Producers Association
American Pyrotechnics Association	Exhibitions and Conferences Alliance
American Rental Association	Fashion Accessories Shippers Association (FASA)
American Seed Trade Association	Fashion Jewelry and Accessories Trade Association
American Specialty Toy Retailing Association	Flexible Packaging Association
American Trucking Association	Florida Ports Council
Arizona Technology Council	Florida Retail Federation
Arkansas Grocers and Retail Merchants Association	Footwear Distributors and Retailers of America (FDRA)
Association For Creative Industries	Fragrance Creators Association
Association for PRINT Technologies	Game Manufacturers Association
Association of American Publishers	Gemini Shippers Association
Association of Equipment Manufacturers (AEM)	Georgia Retailers
Association of Home Appliance Manufacturers	Global Business Alliance
Auto Care Association	Global Chamber®
Bay Area Council	Global Cold Chain Alliance
Beer Institute	Greeting Card Association
Building Service Contractors Association International (BSCAI)	Halloween & Costume Association (HCA)
Business Alliance for Customs Modernization	Home Fashion Products Association
California Retailers Association	Home Furnishings Association
Chemical Industry Council of Delaware (CICD)	Household and Commercial Products Association
Coalition of New England Companies for Trade (CONNECT)	Housing Affordability Coalition

Coalition of Services Industries (CSI)	Idaho Retailers Association
Colorado Retail Council	Illinois Retail Merchants Association
Columbia River Customs Brokers and Forwarders Association	Independent Office Products and Furniture Dealers Association (IOPFDA)
Computer and Communications Industry Association (CCIA)	Indiana Retail Council
Consumer Brands Association	Information Technology Industry Council (ITI)
Consumer Technology Association	International Bottled Water Association (IBWA)
Council of Fashion Designers of America (CFDA)	International Foodservice Distributors Association
CropLife America	International Housewares Association
Customs Brokers and Freight Forwarders Association of Washington State	International Warehouse and Logistics Association
Customs Brokers & Freight Forwarders of Northern California	International Wood Products Association
ISSA—The Worldwide Cleaning Industry Association	Licensing Industry Merchandisers' Association
Juice Products Association (JPA)	Los Angeles Customs Brokers and Freight Forwarders Association
Juvenile Products Manufacturers Association	Louisiana Retailers Association
Leather and Hide Council of America	Maine Grocers and Food Producers Association
Maine Lobster Dealers' Association	North American Association of Uniform Manufacturers and Distributors (NAUMD)
Maritime Exchange for the Delaware River and Bay	North Carolina Retail Merchants Association
Maryland Retailers Association	Ohio Council of Retail Merchants
MEMA, The Vehicle Suppliers Association	Outdoor Industry Association
Michigan Chemistry Council	Pacific Coast Council of Customs Brokers and Freight Forwarders Assns. Inc.
Michigan Retailers Association	Pennsylvania Retailers' Association
Minnesota Retailers Association	PeopleforBikes
Missouri Retailers Association	Personal Care Products Council
Motorcycle Industry Council	Pet Food Institute
NAPIM (National Association of Printing Ink Manufacturers)	Pet Advocacy Network
National Association of Chain Drug Stores (NACDS)	Plumbing Manufacturers International
National Association of Foreign-Trade Zones (NAFTZ)	Power Tool Institute (PTI)
National Association of Home Builders	PRINTING United Alliance
National Association of Music Merchants	Promotional Products Association International
National Association of Trailer Manufacturers (NATM)	Recreational Off-Highway Vehicle Association
National Confectioners Association	Retail Association of Maine
National Council of Chain Restaurants	Retail Council of New York State
National Electrical Manufacturers Association (NEMA)	Retail Industry Leaders Association
National Fisheries Institute	Retailers Association of Massachusetts
National Foreign Trade Council	RISE (Responsible Industry for a Sound Environment)
National Grocers Association	RV Industry Association
National Industrial Transportation League (NITL)	San Diego Customs Brokers and Forwarders Association
National Lumber and Building Material Dealers Association	Semiconductor Industry Association (SIA)
National Marine Manufacturers Association	Snowsports Industries America

National Pork Producers Council	Software and Information Industry Association (SIIA)
National Restaurant Association	South Dakota Retailers Association
National Retail Federation	Specialty Equipment Market Association
National Ski and Snowboard Retailers Association	Specialty Vehicle Institute of America
National Sporting Goods Association	Sports and Fitness Industry Association
Natural Products Association	TechNet
New Jersey Retail Merchants Association	Technology Trade Regulation Alliance (TTRA)
North American Association of Food Equipment Manufacturers (NAFEM)	Telecommunications Industry Association (TIA)
Texas Retailers Association	The Hardwood Federation
Texas Water Infrastructure Network	Toy Association
The Airforwarders Association	Travel Goods Association
The Fertilizer Institute	Truck and Engine Manufacturers Association (EMA)
United States Council for International Business	Virginia Retail Federation
United States Fashion Industry Association	Virginia-DC District Export Council (VA-DC DEC)
US Global Value Chain Coalition	Washington Retail Association
US-China Business Council	Water Quality Association
Vinyl Institute	Window and Door Manufacturers Association
Virginia Association of Chain Drug Stores	World Pet Association, Inc. (WPA)

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#### Statement of Michael G. Bindner

Chairman Wyden and Ranking Member Crapo, thank you for the opportunity to submit comments to the committee.

As Russian aggression in Ukraine continues, it must be a key component of our trade policy, not just including the obvious connection to our Foreign Military Sales program, which is being used to aid Ukraine directly and to backfill contributions by our NATO allies.

Europe's energy independence is also a related issue, which means that replacing Russian energy with other sources is a relevant issue—and a reason to consider alternatives like increased support of nuclear power here and abroad (development of small modular reactors) and its use to replace gasoline with electric vehicles—either battery powered or tethered electric cars and trucks (on separate roadways).

These changes are necessary, regardless of Ukraine, due to global climate change—particularly regarding the warming of the Barents Sea and its impact on the continued warming of the Northern Hemisphere. In short, the thermostat is broken and only drastic change, like replacing gasoline in urban areas, is required.

Replacing Ukrainian and Russian grain in the developing world is another priority—however such replacement should not rest with the United States, at least not in the long term. Instead, developing nations need help in developing nations to feed themselves. For too long, agricultural aid and trade have been predatory, designed to destroy local agriculture for the sake of our own. We need to ship know-how, not grain, whenever possible, although such know-how should respect local land ownership practices rather than imposing the Anglo-American system of ownership fee-simple arising as a grant from the British monarchy or state government.

Our comments from last year touch on still lingering issues of trade with China and the possible resurrection of something like the Trans-Pacific Partnership, immigration as a trade policy issue, consumption taxes and the issue of Tier 2 OECD corporate tax policy reforms. We have included them as an attachment, along with our usual attachments on taxation and trade policy, consumption taxes and an asset value-added tax (which will include a need for a negotiated rate).

Some income taxation of the very wealthy as a way to reduce the debt is appropriate, as are the use of an income tax system (or subtraction value-added tax) to fund adequate tax support for families. Taxation for other domestic government, including contributions from employers to social insurance, should be replaced with a credit invoice value-added tax or some sort of fair tax. To not do so runs counter to the spirit of the constitutional provision banning export taxes.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

#### **Attachment One—The President's 2023 Trade Policy Agenda, March 23, 2023**

(Last year at this time) Chinese President Xi met with Vladimir Putin to strengthen economic ties, although any direct help with the Russian aggression in Ukraine (not a regional conflict) was not disclosed. If such aid is found to exist, it is news to no one that this would be very bad for our trade relationship with China.

Barring such stupidity, an agreement between Russia and China on energy and resources is geographically inevitable, although its instigation by authoritarian regimes is problematic for anyone outside the ruling oligarchy on one side and the Communist Party on the other. Revolution in both countries is inevitable and may occur sooner than later—which would be good news for the Mongols, the Uyghurs, and the Ukrainians (and many others).

The continuing conflict in Ukraine is not good for the Belt-Road Initiative. If China acts in their own interests in this matter, rather than in the interests of the strongmen, development will be good for all.

Until sanity returns, a rapprochement between Russia and China is all the more reason to dust off plans for the Trans-Pacific Partnership (or whatever Ambassador Tai wishes to call it). We made our feelings about extra-legal provisions of trade treaties in regard to local law last year—and the years before. Global capitalism is bad enough. Global authoritarian capitalism is worse. Using right to work laws to leave American workers naked in the face of such power (including migrants to the United States) is a practice that must be ended if we wish to claim moral high ground in dealing with the Chinese.

The crisis on the border continues. The President is finding that dealing with it is not so easy as evicting Stephen Miller from the West Wing, which is why immigration reform must be part of the trade policy agenda. Workers who do not have documentation problems cannot be easily exploited—especially if they are able to unionize. This will also help level the playing field for American workers.

An analysis of how consumption taxes can improve our trade policy is found in our first attachment, as it was last year. We have updated our tax reform and debt papers, which are also attached.

Congress has recently passed corporate minimum taxes to come into compliance with the OECD's agreement on this subject. The President's budget includes further proposals in this area. I am no fan of corporate income taxation when value-added taxes (both GST/Invoice VAT and Subtraction VAT) are available.

Our proposal for an **Asset Value-Added Tax** will require international cooperation. Part of trade is moving money around—including financial assets. An asset VAT as a replacement for capital gains taxes and capital returns must go farther than the border. It is too easy to shift to offshore stock exchanges where such taxes do not exist. International agreements on rates and enforcement structures are vital for such a tax to work. The model for negotiating the CMT on a multi-national basis can be used for this effort. Again, please see the third attachment, which has been recently updated.

#### **Attachment Two—Taxation and Trade Policy**

Consumption taxes could have a big impact on workers, industry and consumers. Enacting an I-VAT is far superior to a tariff. The more government costs are loaded onto an I-VAT the better.

If the employer portion of Old-Age and Survivors Insurance, as well as all of disability and hospital insurance are decoupled from income and credited equally and personal retirement accounts are not used, there is no reason not to load them onto an I-VAT. This tax is zero rated at export and fully burdens imports.

Seen another way, to not put as much taxation into VAT as possible is to enact an unconstitutional export tax. Adopting an I-VAT is superior to its weak sister, the Destination Based Cash Flow Tax that was contemplated for inclusion in the TCJA. It would have run afoul of WTO rules on taxing corporate income. I-VAT, which taxes both labor and profit, does not.

The second tax applicable to trade is a Subtraction VAT or S-VAT. This tax is designed to benefit the families of workers through direct subsidies, such as an enlarged child tax credit, or indirect subsidies used by employers to provide health insurance or tuition reimbursement, even including direct medical care and elementary school tuition. As such, S-VAT cannot be border adjustable. Doing so would take away needed family benefits. As such, it is really part of compensation. While we could run all compensation through the public sector.

The S-VAT could have a huge impact on long-term trade policy, probably much more than trade treaties, if one of the deductions from the tax is purchase of employer voting stock (in equal dollar amounts for each worker). Over a fairly short period of time, much of American industry, if not employee-owned outright (and there are other policies to accelerate this, like ESOP conversion) will give workers enough of a share to greatly impact wages, management hiring and compensation and dealing with overseas subsidiaries and the supply chain—as well as impacting certain legal provisions that limit the fiduciary impact of management decision to improving short-term profitability (at least that is the excuse managers give for not privileging job retention).

Employee owners will find it in their own interest to give their overseas subsidiaries and their supply chain's employees the same deal that they get as far as employee ownership plus an equivalent standard of living. The same pay is not necessary, currency markets will adjust once worker standards of living rise. Attachment Three further discusses employee ownership.

Over time, ownership will change the economies of the nation's we trade with, as working in employee-owned companies will become the market preference and force other firms to adopt similar policies (in much the same way that, even without a tax benefit for purchasing stock, employee-owned companies that become more democratic or even more socialistic, will force all other employers to adopt similar measures to compete for the best workers and professionals).

In the long run, trade will no longer be an issue. Internal company dynamics will replace the need for trade agreements as capitalists lose the ability to pit the interest of one nation's workers against the others. This approach is also the most effective way to deal with the advance of robotics. If the workers own the robots, wages are swapped for profits with the profits going where they will enhance consumption without such devices as a guaranteed income.

### **Attachment Three—Consumption (Fair) Taxes, March 24, 2023**

Corporate income taxes as a whole should be abolished and a two stage Fair Tax enacted in its place. We propose channeling a Fair Tax style subsidy through two taxes, a (credit) invoice value-added tax (turning the deduction for sales taxes paid into a full credit—which is the essential the difference between a VAT and income tax-based collections) and a subtraction value-added tax to channel subsidies for health care and the child tax credit through employers rather than the Social Security Administration (as proposed for the Fair Tax).

**Subtraction Value-Added Tax (S-VAT).** Corporate income taxes and collection of business and farm income taxes will be replaced by this tax, which is an employer-paid Net Business Receipts Tax. S-VAT is a vehicle for tax benefits, including:

- Health insurance or direct care, including veterans' health care for non-battlefield injuries and long-term care.
- Employer paid educational costs in lieu of taxes are provided as either employee-directed contributions to the public or private unionized school of their choice or direct tuition payments for employee children or for workers (including ESL and remedial skills). Wages will be paid to students to meet opportunity costs.
- Most importantly, a refundable child tax credit at median income levels (with inflation adjustments) distributed with pay.

Subsistence-level benefits force the poor into servile labor. Wages and benefits must be high enough to provide justice and human dignity. This allows the ending of state-administered subsidy programs and discourages abortions, and as such enact-

ment must be scored as a must-pass in voting rankings by pro-life organizations (and feminist organizations as well). To assure child subsidies are distributed, S-VAT will not be border-adjustable.

**Credit Invoice Value-Added Tax (CI-VAT).** Border-adjustable taxes will appear on purchase invoices. The rate varies according to what is being financed. If Medicare for All does not contain offsets for employers who fund their own medical personnel or for personal retirement accounts, both of which would otherwise be funded by an S-VAT, then they would be funded by the I-VAT to take advantage of border adjustability.

CI-VAT forces everyone, from the working poor to the beneficiaries of inherited wealth, to pay taxes and share in the cost of government. As part of enactment, gross wages will be reduced to take into account the shift to S-VAT and CI-VAT, however net income will be increased by the same percentage as the I-VAT. Inherited assets will be taxed under A-VAT when sold. Any inherited cash, or funds borrowed against the value of shares, will face the CI-VAT when sold or the A-VAT if invested.

CI-VAT will fund domestic discretionary spending, equal dollar employer OASI contributions, and non-nuclear, non-deployed military spending, possibly on a regional basis. Regional I-VAT would both require a constitutional amendment to change the requirement that all excises be national and to discourage unnecessary spending, especially when allocated for electoral reasons rather than program needs. The latter could also be funded by the asset VAT (decreasing the rate by from 19.25% to 13%).

**Carbon Added Tax (C-AT).** A Carbon tax with receipt visibility, which allows comparison shopping based on carbon content, even if it means a more expensive item with lower carbon is purchased. C-AT would also replace fuel taxes. It will fund transportation costs, including mass transit, and research into alternative fuels. This tax would not be border adjustable unless it is in other nations, however in this case the imposition of this tax at the border will be noted, with the U.S. tax applied to the overseas base.

#### **Attachment Four—Asset Value-Added Taxes, June 7, 2022**

There are two debates in tax policy: how we tax salaries and how we tax assets (returns, gains and inheritances). Shoving too much into the Personal Income Tax mainly benefits the wealthy because it subsidizes losses by allowing investors to not pay tax on higher salaries with malice aforethought.

**An Asset Value-Added Tax (A-VAT)** is a replacement for capital gains taxes and the estate tax. It will apply to asset sales, exercised options, inherited and gifted assets and the profits from short sales. Tax payments for option exercises, IPOs, inherited, gifted and donated assets will be marked to market, with prior tax payments for that asset eliminated so that the seller gets no benefit from them. In this perspective, it is the owner's increase in value that is taxed.

As with any sale of liquid or real assets, sales to a qualified broad-based Employee Stock Ownership Plan will be tax free. This change would be counted as a tax cut, giving investors in public stock who make such sales the same tax benefit as those who sell private stock.

The repeal of corporate profits taxes as part of the creation of a subtraction value-added tax and repeal of capital gains taxes in the United States will lead to their repeal worldwide. If Asset Value-Added Taxes are adopted, the rate should be negotiated so that investors who are able do not market shop for the lowest rate. The recent OECD compact on minimum rates is an example of how tax cooperation on capital can work for other types of asset taxation. This tax will end Tax Gap issues owed by high income individuals. The base 20% capital gains tax has been in place for decades. The current 23.8% rate includes the ACA-SM surtax), while the Biden proposal accepted by Senator Sinema is 28.8%. Our proposed Subtraction VAT would eliminate the 3.8% surtax. This would leave a 25% rate in place.

Settling on a bipartisan 22.5% rate (give or take 0.5%) should be bipartisan and carried over from the capital gains tax to the asset VAT. A single rate also stops gaming forms of ownership. Lower rates are not as regressive as they seem. Only the wealthy have capital gains in any significant amount. The de facto rate for everyone else is zero.

With tax subsidies for families shifted to an employer-based subtraction VAT, and creation of an asset VAT, taxes on salaries could be filed by employers without most

employees having to file an individual return. It is time to TAX TRANSACTIONS, NOT PEOPLE!

The tax rate on capital gains is seen as unfair because it is lower than the rate for labor. This is technically true, however it is only the richest taxpayers who face a marginal rate problem. For most households, the marginal rate for wages is less than that for capital gains. Higher-income workers are, as the saying goes, crying all the way to the bank.

In late 2017, tax rates for corporations and pass-through income were reduced, generally, to capital gains and capital income levels. This is only fair and may or may not be just. The field of battle has narrowed between the parties. The current marginal and capital rates are seeking a center point. It is almost as if the recent tax law was based on negotiations, even as arguments flared publicly. Of course, that would never happen in Washington. Never, ever.

Compromise on rates makes compromise on form possible. If the Affordable Care Act non-wage tax provisions are repealed, a rate of 26% is a good stopping point for pass-through, corporate, capital gains and capital income.

A single rate also makes conversion from self-reporting to automatic collection through an asset value-added tax levied at point of sale or distribution possible. This would be both just and fair, although absolute fairness is absolute unfairness to tax lawyers because there would be little room to argue about what is due and when.

Ending the machinery of self-reporting also puts an end to the Quixotic campaign to enact a wealth tax. To replace revenue loss due to the ending of the personal income tax (for all but the wealthiest workers and celebrities), enact a Goods and Services Tax. A GST is inescapable. Those escapees who are of most concern are not waiters or those who receive refundable tax subsidies. It is those who use tax loopholes and borrowing against their paper wealth to avoid paying taxes.

For example, if an unnamed billionaire or billionaires borrow against their wealth to go into space, creating such assets would be taxable under a GST or an asset VAT. When the Masters of the Universe on Wall Street borrow against their assets to avoid taxation, having to pay a consumption tax on their spending ends the tax advantage of gaming the system.

This also applies to inheritors. No "Death Tax" is necessary beyond marking the sale of inherited assets to market value (with sales to qualified ESOPs tax free). Those who inherit large cash fortunes will pay the GST when they spend the money or Asset VAT when they invest it. No special estate tax is required and no life insurance policy or retirement account inheritance rules will be of any use in tax avoidance.

Tax avoidance is a myth sold by insurance and investment brokers. In reality, explicit and implicit value-added taxes are already in force. Individuals and firms that collect retail sales taxes receive a rebate for taxes paid in their federal income taxes. This is an intergovernmental VAT. Tax withheld by employers for the income and payroll taxes of their labor force is an implicit VAT. A goods and services tax simply makes these taxes visible.

Should the tax reform proposed here pass, there is no need for an IRS to exist, save to do data matching integrity. States and the Customs Service would collect credit invoice taxes, states would collect subtraction VAT, the SEC would collect the asset VAT and the Bureau of the Public Debt would collect income taxes or sell tax-prepayment bonds.

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COALITION FOR ECONOMIC PARTNERSHIPS IN THE AMERICAS

April 10, 2024

The Honorable Ron Wyden  
Chairman  
United States Senate  
Committee on Finance  
Washington, DC 20510

The Honorable Mike Crapo  
Ranking Member  
United States Senate  
Committee on Finance  
Washington, DC 20510

Dear Chairman Wyden and Ranking Member Crapo:

We, the Coalition for Economic Partnerships in the Americas (CEPA), a group of major American companies and manufacturers dedicated to promoting regional trade and job growth, write today to underscore the importance of expanding trade and investment throughout the Western Hemisphere. Through this lens, we are particularly focused on expanding apparel sourcing from partner countries in the Dominican Republic-Central America Free Trade Agreement (CAFTA–DR).

The CAFTA–DR region offers enormous potential due to its proximity to the U.S. market. However, some in the U.S. apparel industry have faced challenges in meeting new investment goals and commitments in the region, and recent allegations of transshipment of goods made with forced labor through CAFTA–DR perpetuate these challenges by driving a risky narrative that trade with the region is tainted.

U.S. apparel imports face regressively high tariffs, so the duty-free benefits that free trade agreements like CAFTA–DR offer provide additional incentives to source competitive apparel for U.S. consumers. These duty-free benefits are key to unlocking investment in the region. Unfortunately, CAFTA–DR is not living up to its potential as apparel imports from the region claiming duty-free benefits have declined since the agreement’s rolling entry into force.<sup>1</sup>

Increasing utilization of CAFTA–DR for apparel can be done without reopening the agreement and will facilitate trade and investment in the region. This also aligns well with initiatives such as the Vice President’s Call to Action and the Partnership for Central America, supporting shared policy goals to strengthen and diversify supply chains, boost economic development, empower women in the region, and stem the flow of migration.<sup>2</sup>

We want to build on this momentum and capitalize on industry commitments to achieve those goals, but several long-term challenges have proven an obstacle to doing so. CAFTA–DR’s built-in short supply mechanism allows sourcing flexibilities for yarns and fabrics that are not made in the U.S. or partner countries so that imports can still unlock duty-free treatment. But this process has been costly, burdensome, and inefficient over the years. Companies seeking to expand their investments have been unable to source the inputs that would allow them to manufacture high-demand products like technical apparel and fashion items in the region. Without these additional materials, companies are restricted to producing basic apparel in the region, which imposes a ceiling on the region’s growth potential.

Compounding this long-term challenge is a growing narrative that CAFTA–DR countries are being used to transship products connected to forced labor. Lawmakers have amplified these allegations in a series of recent letters to the Biden Administration. The U.S. apparel and retail industry champions robust trade compliance and is on the front lines of ensuring our supply chains are free of forced labor. Therefore, we have concerns about repeated claims of non-compliance being made without supporting evidence and data, which may harm the very growth the U.S. government and industry are trying to promote by creating a chilling effect on new investment and sourcing in the region.

In response to these allegations, the Department of Homeland Security (DHS) has developed a comprehensive action plan with the aim of expanding enforcement of these illegal customs activities that are purportedly harming the American textiles industry.<sup>3</sup> The U.S. apparel industry, which boasts many designated as “trusted traders” by U.S. Customs and Border Protection, stands ready to engage with and provide input to DHS as it rolls out these enhanced enforcement activities. The U.S. apparel industry benefits from a level playing field and is an important partner in ensuring bad actors are unable to profit from illegal customs practices. We encourage you to hold DHS to a commitment to work with all stakeholders in support of

<sup>1</sup>Dr. Sheng Lu, *U.S. Apparel Sourcing from CAFTA–DR and U.S. Textile Exports: Myth vs. Reality*, Coalition for Economic Partnership in the Americas, (March 2023), <https://img1.usimg.com/blobby/go/22dee558-ac80-4801-b2f6-9c5d799b644e/downloads/CAFTA-DR%20sourcing%20and%20US%20textile%20exports%2003.30.pdf>.

<sup>2</sup>FACT SHEET: Vice President Harris Launches a Call to Action to the Private Sector to Deepen Investment in the Northern Triangle, The White House, (May 27, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/27/fact-sheet-vice-president-harris-launches-a-call-to-action-to-the-private-sector-to-deepen-investment-in-the-northern-triangle/>; and Partnership for Central America, <https://www.centampartnership.org/>.

<sup>3</sup>New DHS Textile Enforcement Actions Crack Down on Illicit Trade to Support 500,000 American Textile Jobs, U.S. Department of Homeland Security (April 5, 2024), <https://www.dhs.gov/news/2024/04/05/new-dhs-textile-enforcement-actions-crack-down-illicit-trade-support-500000>.

a risk-based and data-driven action plan that is effective in combating illicit commerce while still facilitating legitimate trade.

The textiles and apparel industries comprise unique, complex supply chains that foster growth and support jobs both in the region and here at home. We appreciate congressional engagement in supporting strong trade partnerships throughout the hemisphere, and we look forward to continuing to work with lawmakers to shape policies in a way that grows economic opportunities for the whole supply chain.

Sincerely,

Beth Hughes  
Vice President, Trade and Customs Policy  
American Apparel and Footwear Association  
On behalf of CEPA

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COMPUTER AND COMMUNICATIONS INDUSTRY ASSOCIATION  
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The Computer and Communications Industry Association (CCIA)<sup>1</sup> appreciates the opportunity to respond to the Senate Finance Committee's April 17, 2024, hearing regarding, "The President's 2024 Trade Policy Agenda," featuring U.S. Trade Representative (USTR) Ambassador Katherine Tai.

Digital trade is crucial to U.S. economic and global security interests. Exports of digitally-enabled services generated \$626 billion in 2022, which helped to achieve a \$256 billion surplus in the sector.<sup>2</sup> Digitally-enabled services are a critical piece of the overall strength of the United States in the services sector, reflected by the fact that 70% of U.S. services exports were digitally-enabled services in 2022.<sup>3</sup> The digital economy writ large generated \$2.6 trillion worth of value added—which represented 10.0% of Total U.S. GDP—in 2022, which supported 8.9 million jobs in the United States with \$1.3 trillion provided in annual compensation.<sup>4</sup> The export of digital products and services also promote an interconnected world through a free and open internet, support freedom of expression globally, and strengthen U.S. competitiveness in a critical and emerging industry.

To ensure U.S. digital products and services exporters—and the goods and services exporters that are reliant on digital services to reach foreign consumers—are able to access foreign markets, commitments struck in trade agreements and enforcement of those commitments are critical. USTR has historically performed this function, in line with the directives of the 1974 Trade Act and later iterations of delegated responsibility such as the 2015 Bipartisan Congressional Trade Priorities and Accountability Act. However, as highlighted by a bipartisan group of lawmakers in letters and testimony at these hearings,<sup>5</sup> USTR has reversed course on this long-standing U.S. policy, withdrawing core digital trade proposals from the World Trade Organization (WTO) and the Indo-Pacific Economic Framework and removing references to swaths of digital trade barriers from the Congressionally-mandated National Trade Estimate (NTE) for which USTR is directed to identify significant trade barriers in electronic commerce.<sup>6</sup>

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<sup>1</sup> CCIA is an international nonprofit membership organization representing companies in the computer, internet, information technology, and telecommunications industries. Together, CCIA's members employ nearly half a million workers and generate approximately a quarter of a trillion dollars in annual revenue. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and internet industries. A complete list of CCIA members is available at <http://www.ccianet.org/members>.

<sup>2</sup> Amir Nasr, "New Data Showcase the Strength of Digital Services Exports to Overall U.S. Economy," Disruptive Competition Project (July 26, 2023), <https://www.project-disco.org/uncategorized/strength-of-digital-services-exports-to-u-s-economy/> ("Disruptive Competition Project New Data Post").

<sup>3</sup> Disruptive Competition Project New Data Post.

<sup>4</sup> "How Big is the Digital Economy," U.S. Department of Commerce (last accessed April 22, 2024), Bureau of Economic Analysis (last accessed April 22, 2024), <https://www.bea.gov/sites/default/files/2023-12/digital-economy-infographic-2022.pdf>.

<sup>5</sup> "What Lawmakers Said at the 2024 USTR Congressional Hearings," Computer and Communications Industry Association (April 23, 2024), <https://ccianet.org/library/what-lawmakers-said-at-the-2024-ustr-congressional-hearings/>.

<sup>6</sup> 19 U.S.C. § 2241(a)(1)(A)–(B).

Below, we submit a few targeted responses to remarks and claims raised across both the House Ways and Means and Senate Finance Committees' hearings in relation to arguments for why USTR has opted to deprioritize digital trade by ceasing negotiations in multiple fora and scaling back enforcement of existing rules. Attached to this submission is a March 2023 brief<sup>7</sup> that identifies the myths perpetuated by those who argue that the United States should step back from strong digital trade rules globally—myths that should not dictate U.S. trade policy. The broad theme USTR uses to justify its course reversal is a purported need for “policy space” to ensure that that nascent law or regulation can evolve unhindered by binding trade rules. CCIA has written on this false choice in detail<sup>8</sup> as well as about the harms of deprioritizing digital trade barriers in the NTE report.<sup>9</sup> Below are some of CCIA's key findings.

### **Rules Promoting Cross-Border Data Flows Were Never Primarily About Facilitating Goods Trade**

One of the key reasons cited by Ambassador Tai to defend USTR's digital trade withdrawal is her view that rules promoting cross-border data flows need updating, as they were formed at a time—roughly 30 years ago—as an adjunct to goods trade. Ambassador Tai stated at the House Ways and Means Committee hearing that the rules the U.S. has previously championed on data flows, data localization, and source code were “rooted in our recognition and our understanding 20 years ago that data is just about facilitating traditional trade transactions.” In the Senate Finance Committee hearing, Ambassador Tai elaborated on this, stating that these provisions are founded on an “understanding” of data as “a facilitator of traditional trade transactions, goods transactions, data as a facilitator of e-commerce, data traveling along with the information that has to be traded in order for goods to move across borders.”

This is simply untrue. The roots of data flow rules extend back to 1994 to the conclusion of the General Agreement on Trade in Services (the GATS) where both for financial services, and services generally, disciplines were introduced to ensure that cross-border services trade would not be impeded through restrictions on data. Thus, both the Financial Services Understanding,<sup>10</sup> and the GATS Annex on Telecommunications,<sup>11</sup> contained specific provisions designed to ensure that governments (or telecommunications suppliers) would not use control over data to “nullify and impair” a service commitment—the ability of a bank, insurance company, travel agency, or computer service supplier to operate globally and serve customers in distant locations. Those concerns remain as valid now as they were then.

Additionally, 30 years ago, trade negotiators recognized the importance of “policy space” by ensuring that commitments were subject to reasonable exceptions, including specifically for privacy. Analogous provisions addressing data flows were included in the first modern Free Trade Agreements (FTAs) struck by the United States, the North American Free Trade Agreement and the subsequent FTA signed by the United States, with Jordan in 2000.<sup>12</sup>

It is further evident from these early FTAs that digital trade was not focused on facilitating traditional goods trade. Consider both the U.S.-Chile FTA and U.S.-Singapore FTAs, which have commitments to refrain from imposing customs duties on electronic transmissions and to not discriminate against digital products from the other Party. Electronic transmissions and digital goods and services were seen as necessary to protect the Parties' broader interests in an emerging new area—digital trade was not seen as a conduit for the trade of goods.

<sup>7</sup> “Myths and Facts about Digital Trade Rules,” Computer and Communications Industry Association (Updated March 21, 2023), <https://ccianet.org/library/myths-and-facts-about-digital-trade-rules/>.

<sup>8</sup> Jonathan McHale, “Friendly Fire: the Saga of Trade Policy at an Impasse,” Disruptive Competition Project (February 23, 2024), <https://www.project-disco.org/21st-century-trade/friendly-fire-the-saga-of-trade-policy-at-an-impasse/>.

<sup>9</sup> Amir Nasr, “Why a USTR Report Represents Another Step Back for Digital Trade,” Disruptive Competition Project (April 2, 2024), <https://www.project-disco.org/21st-century-trade/why-a-ustr-report-represents-another-step-back-for-digital-trade/>.

<sup>10</sup> “Understanding on commitments in financial services,” World Trade Organization (last accessed April 22, 2024), [https://www.wto.org/english/tratop\\_e/serv\\_e/21-fin\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/21-fin_e.htm) (“WTO Understanding on Commitments in Financial Services”).

<sup>11</sup> “Annex on telecommunications,” World Trade Organization (last accessed April 22, 2024), [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gats\\_anntelecommunications\\_jur.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/gats_anntelecommunications_jur.pdf).

<sup>12</sup> <https://ustr.gov/sites/default/files/Jordan%20FTA.pdf>.

Charlene Barshefsky, the USTR at the end of the Clinton Administration, described the United States digital trade policy goals succinctly in 2000 that are just as valid today:

This new initiative will create a lasting set of rules and agreements which help to ensure that the trading system provides for electronic business the same guarantees of freedom, fair competition, respect for intellectual property rights and access to markets that more conventional commerce enjoys.<sup>13</sup>

### **The WTO E-Commerce Moratorium Remains Crucial for U.S. Businesses and Workers; Making it Permanent Should Be a Top Priority for USTR**

At the WTO's Ministerial Conference 13th Ministerial Conference in late February, WTO Members renewed a crucial commitment for countries to refrain from imposing customs duties on electronic transmissions (the "e-commerce moratorium"). This was a critical achievement—failure to extend a commitment which has been renewed consistently since it was first agreed to in 1998 would have dealt a major blow to the WTO, and the trade flows that depend on this commitment. The moratorium protects firms from what would be onerous and pernicious customs duties, allowing the digital economy to flourish between WTO member countries.

The importance of the moratorium could not be understated—studies consistently show the agreement brings broad benefits to WTO Member economies and that the commitment lapsing would lead to widespread economic losses,<sup>14</sup> and the past two renewals were far from guaranteed. Recently, Dr. Ngozi Okonjo-Iweala, Director General of the WTO, predicted that the e-commerce moratorium would not be renewed when next scheduled for review—in two years when the current agreement ends—and that companies should prepare for that event.<sup>15</sup>

Despite this near-term threat, Ambassador Tai would not commit to seeking the most obvious solution—making this moratorium permanent. Instead, Ambassador Tai argued that the e-commerce moratorium was "developed at a time when we talked about electronic transmissions because the relevant transmission was about fax transmissions," and the world currently is "so far advanced," it renders the debate about the moratorium as "stuck in time."

The world is indeed very different from the time the e-commerce moratorium was struck, but it is simply not true that negotiators in 1998 were focused on tariffs on fax transmissions.<sup>16</sup> Rather, they understood perfectly well that physical goods, subject to tariffs, were increasingly being digitized and that this burgeoning trade of e-books, music, videos and software would be significantly impaired if subject to tariffs.<sup>17</sup> Indonesia has set up a framework to do just that,<sup>18</sup> so the threat is no longer hypothetical. A firm, clear U.S. position is a top priority.

### **Canada's Digital Services Taxes Warrant USTR Intervention**

Ambassador Tai provided a strong commitment to continue pursuing U.S. interests in pushing back on digital services taxes (DSTs) as they spread internationally, stating that USTR is "prepared to use the tools that we have." We appreciate USTR's efforts on this front, particularly as Canada—one of the closest trading partners of the United States—is in the process of passing Bill C-59, a discriminatory DST which may soon become law. USTR should commit to expeditiously addressing the harms presented by Canada's DST, which would cost hundreds of millions of dollars a year for U.S. companies and thousands of jobs for U.S. full-time employees. A com-

<sup>13</sup> <https://usinfo.org/usia/usinfo.state.gov/topical/global/ecom/00102301.htm>.

<sup>14</sup> Andrea Andrenelli and Javier López González, "Understanding the scope, definition, and impact of the WTO e-commerce moratorium" Vox EU Center for Economic Policy Research (March 26, 2024), <https://cepr.org/voxeu/columns/understanding-scope-definition-and-impact-wto-e-commerce-moratorium>.

<sup>15</sup> Andy Bounds, "Ecommerce tariffs will kick in from 2026, says WTO chief," Financial Times (March 27, 2024), <https://www.ft.com/content/aea64aa4-fde2-46f3-9376-c56b8e94263b>.

<sup>16</sup> [https://one.oecd.org/document/TAD/TC/WP\(2023\)6/FINAL/en/pdf](https://one.oecd.org/document/TAD/TC/WP(2023)6/FINAL/en/pdf) ("[a] majority of delegations agreed that a majority of electronically transmitted products were indeed services. However, there was still a lack of clarity with regard to the classification under GATT or GATS or certain products which can be delivered both in electronic form and on a physical carrier.").

<sup>17</sup> The GATT had grappled with this issue as early as 1984, when considering the treatment of software delivered over satellite networks. See [https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/decisions/wto\\_val\\_decision\\_4\\_1.pdf?la=en](https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/decisions/wto_val_decision_4_1.pdf?la=en).

<sup>18</sup> [https://insightplus.bakermckenzie.com/bm/consumer-goods-retail\\_1/new-regulation-on-the-import-of-consigned-goods-gives-clarity-and-guidelines-for-e-commerce-transactions](https://insightplus.bakermckenzie.com/bm/consumer-goods-retail_1/new-regulation-on-the-import-of-consigned-goods-gives-clarity-and-guidelines-for-e-commerce-transactions).

mitment to initiate a formal investigation and consider action using existing tools such as Section 301 and USMCA dispute resolution is now fully warranted.

### **Discriminatory Streaming Policies Require USTR Engagement**

In April 2023, Canada passed the Online Streaming Act, which requires all foreign online content providers to fund arbitrarily-defined “Canadian content” and to “clearly promote Canadian programming.”<sup>19</sup> The law discriminates against U.S. film, television, and music content on streaming services, as it gives preferential treatment to Canadian content, violating Article 19.4 of the U.S.-Mexico-Canada free trade agreement (USMCA).<sup>20</sup> Further, U.S. suppliers are subjected to requirements to fund local competitors in a discriminatory manner that implicates investment commitments in Article 14.10.1 (b) of USMCA.<sup>21</sup>

CCIA appreciates Ambassador Tai’s clear commitment to ensure that, as Canada amends its definition of Canadian Content, USTR will advocate for “fair outcomes for U.S. stakeholders.” USTR should also consider addressing the underlying discriminatory nature of the law using the tools available. For example, under USMCA’s implementing legislation, USTR is obligated to investigate any discriminatory measures sought under Canada’s Cultural Industries exception, and consider subsequent actions to compensate for any harms. USTR should, pursuant to its legislative mandate, proactively address the harms that could cost U.S. businesses, content creators, and workers hundreds of millions of dollars annually.

Further, in line with Ambassador Tai’s commitment to protect U.S. content creators and streaming suppliers in Canada, it is important for USTR to remain vigilant regarding similar discriminatory proposals that are being developed in Australia despite clear rules in the U.S.-Australia Free Trade Agreement (AUSFTA) constraining such actions. The proposals, which the Australian Government seeks to have in force by July, would likely violate Article 16.4 of AUSFTA’s E-Commerce Chapter—Non-Discriminatory Treatment of Digital Products—and Article 11.9 of AUSFTA’s Investment Chapter.<sup>22</sup> As USTR engages with Canada, the agency must monitor, deter, and ultimately investigate and act upon this policy if Australia passes the law to ensure the policy does not spread to other jurisdictions.

### **Securing Strong Digital Trade Rules Ensures that U.S. Leadership and Values not those of Adversaries, are Reflected on Global Stage**

Finally, a theme emerged from the hearings regarding the harms of the United States withdrawing from digital trade commitments on the global stage and how such a move would benefit the Chinese or Russian view of digital governance. While digital trade rules are criticized as an ineffective mechanism for advancing our values relating to democracy, free expression, and rule of law, such criticism misses the point—no one disputes that. However, if the United States is not leading discussions and advocating for digital trade rules with the values of the free flow of commerce and freedom of expression, China will fill the vacuum and more easily advocate for third party nations to adopt China’s vision of digital authoritarianism domestically. A Digital Silk Road, the antithesis to a free and open internet, is not in our interest, but without robust engagement, its reach will only grow.

The spread of China’s repressive model of digital oversight has already begun. Both Cambodia and Nepal have in recent years sought to implement “National Internet Gateways” which filter the internet and create a government-owned intranet.<sup>23</sup> Similarly, Vietnam passed its own version of data localization requirements in the mold of China’s approach.<sup>24</sup> U.S. leadership in digital can combat the spread of

<sup>19</sup> <https://www.parl.ca/legisinfo/en/bill/44-1/c-11>.

<sup>20</sup> Computer and Communications Industry Association, “CCIA White Paper on Canada’s Online Streaming Act (Bill C-11)” (January 19, 2023), <https://ccianet.org/library/ccia-white-paper-on-canadas-online-streaming-act-bill-c-11/> (“CCIA Online Streaming Act White Paper”).

<sup>21</sup> *Id.*

<sup>22</sup> Amir Nasr, “Australia Pursues Streaming Obligations That Would Harm U.S. Service Suppliers and Workers,” Disruptive Competition Project (December 19, 2023), <https://www.project-disco.org/21st-century-trade/australia-pursues-streaming-obligations-that-would-harm-u-s-service-suppliers-and-workers/>.

<sup>23</sup> Adrian Wan et al., “Internet Impact Brief: Nepal’s Proposed National Internet Gateway,” Internet Society (Feb. 19, 2024), <https://www.internetsociety.org/resources/2024/internet-impact-brief-nepals-proposed-national-internet-gateway/> (“The Cambodian government claims this will bolster national security and help crack down on tax fraud. However, the impact on Cambodian network connections will affect anyone who connects to these networks, which could have serious consequences for social and economic life and endanger privacy and security.”).

<sup>24</sup> Justin Sherman, “Vietnam’s Internet Control: Following in China’s Footsteps?”, The Diplomat (December 11, 2019), <https://thediplomat.com/2019/12/vietnams-internet-control-following-in-chinas-footsteps/>.

similar efforts in the Indo-Pacific region—a key piece of U.S. diplomatic and security policy objectives—while abandoning the issue could give time for these policies to proliferate widely.

#### CORRECTING THE RECORD

##### **Myths and Facts about Digital Trade Rules**

*Myth: Digital Trade Rules Only Benefit “Big Tech.”*

**Fact: Digital trade rules benefit firms from all sectors of the economy, especially SMEs.**

Small and medium-sized enterprises (SMEs) are prime beneficiaries of digital trade rules, which facilitate their ability to reach foreign markets online:

- More than 80% of top grossing apps are made by small companies.
- Over 300,000 companies are active in the mobile app market in the United States, participating in an “app economy” estimated to be worth \$1.7 trillion.
- SMEs comprised 70% of the companies using Privacy Shield, a key mechanism allowing U.S.-EU data transfers.

All these firms need to transfer data, and few can afford to invest in computing facilities in every market they serve—issues that trade rules address.

By preventing a range of discriminatory barriers, digital trade rules help small businesses “achieve scale without mass” and expand their footprint with fewer resources. Foreign markets represent a key area for growth for small businesses enabled by digital services—the U.S. Census Bureau has estimated that 97.4% of the more than 277,000 U.S. companies that exported goods in 2021 were SMEs, which in turn contributed 34.6% of the country’s \$1.5 trillion merchandise exports. These firms typically use digital technologies to access foreign markets and thus distortive foreign policies can have a disproportionate effect on their growth and job-creating potential.

*Myth: Digital Trade Rules Hurt U.S. Workers.*

**Fact: Digital trade rules sustain broad-based, high-quality U.S. jobs.**

Quality jobs supported by digital trade permeate the U.S. economy, encompassing firms both large and small. Some of the biggest beneficiaries of the digitalization of the economy are traditional sectors—pharmaceutical development, health care, transportation, travel, and agriculture—supporting technology workers whose wages are 125% higher than the median national wage in the U.S. The export potential of digitally-intensive industries, and the employment they support, benefit from a fair and predictable rules-based framework for trade: government data indicates that the digital economy in 2021 generated \$3.70 trillion in output, or 10.3% of total U.S. GDP, accounting for 8 million jobs, over \$1.24 trillion in total compensation, and a persistent trade surplus (most recently of \$300 billion). It is in our national interest to leverage this strength, not constrain it.

*Myth: Digital Trade Rules Undermine Countries’ Right to Regulate in the Digital Space.*

**Fact: Digital trade rules do not prevent governments from regulating effectively and appropriately.**

Governments’ right to regulate is explicit in trade agreements, with rules affecting not whether a country can regulate but how. Digital trade rules developed to date in agreements like USMCA (support of data flows, constraints on localization and discriminatory treatment) are narrowly targeted to provide guardrails around only the most unreasonably trade-restrictive practices, leaving most economic activity wholly in the domain of domestic regulation. Such a targeted approach avoids governments pursuing policies that unfairly discriminate in favor of local suppliers, while taking into account national policies and practices. Trade rules include flexibility based on legitimate exceptions (privacy, security, public morals, etc.). In the face of a country invoking such an exception, a trading partner must demonstrate that there is a reasonably available approach that achieves the regulatory goal—goals that a country independently sets. Thus, the key effect of a negotiated trade rule is a level of accountability between trading partners based on shared values and ensures that regulation in narrowly identified areas is developed pursuant to fair and transparent processes.

*Myth: Digital Trade Rules Undermine Consumer Privacy and Consumer Protection.*

**Fact: Digital trade rules can enhance consumer protection and privacy rights.**

A key innovation in recent U.S. digital trade policy is undertaking binding obligations to protect consumers generally and privacy in particular—putting this goal front and center as not only a legitimate regulatory objective, but one that countries must implement. The USMCA and the U.S.-Japan Digital Trade Agreement each included such provisions, incorporating into trade rules a binding obligation as well as OECD guidance on how to implement an effective privacy regime. In USMCA, the Parties expanded on this by also referencing the U.S.-championed APEC Privacy Framework.

At the heart of the traditional U.S. approach has been the well-established norm that privacy protections do not depend on location, and that protections can, with the right mechanisms, travel with data, minimizing the need for overly restrictive constraints on cross-border data flows. Not only are private sector entities fully capable of instituting mechanisms that can reflect the highest levels of protection different countries may set, but democratic governments have also developed principles governing governmental access to data, such as the OECD Declaration on Government Access to Personal Data Held by Private Sector Entities. Such principles can be incorporated into trade frameworks (e.g., ongoing IPEF negotiations) demonstrating that trade rules can enhance, not undermine privacy.

*Myth: Data Localization Rules are Needed to Protect Privacy and Ensure Government Access.*

**Fact: Data localization mandates do not strengthen privacy or security and can actively undermine these goals.**

Data localization requirements do not, in and of themselves, enhance data privacy or security. While certain sensitive data (e.g., national security data, health data, and financial information data) merits additional safeguards, such safeguards (e.g., encryption, multi-factor authentication) can be applied irrespective of location and do not require data localization. To the extent that governments need access to data for regulatory or law enforcement purposes, and where the U.S. cannot be ensured such access, identifying specific unacceptable locations would be consistent with the rule. But, a general prohibition on foreign storage is unnecessary.

Data localization requirements in specific markets often have a direct and negative impact on U.S. suppliers: such requirements typically result in superfluous investment, often in countries with less robust cybersecurity practices than performed in the United States. Accordingly, forced localization can demonstrably weaken security, since the proliferation of redundant facilities opens an additional “attack surface” for bad actors.

Apart from the security, the economic impact is obvious. The United States leads the world in data processing and storage capacity, so any requirement to move such capacity to a foreign location to serve that market undermines the clear competitive advantage enjoyed by U.S. exporters of services based on secure processing and storage.

*Myth: Digital Trade Rules Will Hurt U.S. Jobs.*

**Fact: Jobs in digitally-intensive industries are growing.**

Over the past decades, digitally-intensive job growth is responsible for a net gain of over 15 million jobs. This growth remains strong, with unemployment rates half those of the economy generally—supported by robust digitally-enabled exports. Even the one target of trade critics, call-center jobs, do not support the offshoring narrative: call center jobs have actually increased in the past decade, from 2.3 to 2.8 million. In short, trade rules that support the U.S. competitive advantage in the digital economy will help ensure strong U.S. job growth going forward; and a turn to localization and other protectionist measures (as seen in the EU and China) will only diminish it.

*Myth: Digital Trade Rules that Prohibit the Disclosure of Source Code Undermine a Regulator’s Ability to Investigate Harms.*

**Fact: Digital trade rules strike the right balance between protecting trade secrets and the public interest.**

Regulators may need access to source code in limited cases, and these cases can be addressed in trade rules, as was done in USMCA, balancing such access against the harms to trade secrets and cybersecurity protections. Rules limiting access to source

code are not designed to, and do not in practice, protect companies from regulatory oversight or enforcement actions. Those goals generally can be addressed through robust testing, and does not require access to source code. Regulating against commonly identified harms (bias, inequity, and other forms of discrimination) is fully consistent under digital trade rules. And, where evidence of harms emerges, particularly when it is intentional (*e.g.*, in the motor vehicle emissions cases of a decade ago, or financial market manipulation), the rules accommodate such need for access—subject to requirements under the law to protect the trade secrets and other confidential business information. Expanding the scope of regulatory access to source code puts U.S. companies at significant risk in many markets that do not have the robust trade secret protections of the United States. To this end, trade agreements should not create new access rights to governments or third parties that are not available under existing Parties' law.

*Myth: Non-Discrimination Rules Hinder Enforcement of Existing and New Anti-Monopoly Laws.*

**Fact: Prohibiting discrimination on the basis of nationality is a worthy goal that does not implicate robust competition enforcement.**

Critics of digital trade rules have asserted that a 20-year-old rule preventing discrimination against digital products undermines efforts to enforce or enhance competition law. The digital products rule<sup>25</sup> extends a 75-year-old “national treatment” rule common in trade agreements,<sup>26</sup> that is applicable to physical products, to their digital counterparts. Based on this rule, a country would be prohibited, for example, from imposing a tax on foreign software that was downloaded from abroad that it does not also impose on domestic software (*i.e.*, creating a preference for domestic software). This rule has no more bearing on legitimate competition law than its older goods-rule analogue. Critics are erroneously conflating how a government treats a supplier generally with how that supplier's products are treated in comparison to those of its competitors.

Regardless of whether new competition-inspired regulation is justified, measures seeking to constrain the behavior of specific suppliers (*e.g.*, Europe's Digital Markets Act, Korea's App store legislation) do not typically result in creating explicit “preferences” for domestic products, the target of digital non-discrimination rules.<sup>27</sup> Rather, these regulations typically seek to constrain specific conduct of specific firms.

CCIA has raised compliance concerns with the digital product rule in the context of efforts to impose payment obligations on U.S. digital platforms for hosting or indexing news content in Canada and Australia. The problematic discrimination identified in these instances is not vis-à-vis the internet platforms but, rather, competing foreign news products. None of this is relevant to any U.S. domestic conversation, since trade rules do not constrain burdens that the United States may choose to apply to its own suppliers.

#### Links

<https://actonline.org/2016/05/05/small-businesses-make-it-big-in-the-app-economy/>

<https://actonline.org/wp-content/uploads/2020-App-economy-Report.pdf>

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<sup>25</sup> *E.g.*, USMCA 19.4, available here: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf>.

<sup>26</sup> *I.e.*, Article III-4 of the General Agreement on Tariffs and Trade, available at [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm).

<sup>27</sup> There is a separate question of whether competing domestic firms as a whole gain preferential treatment by virtue of being excluded from the scope of such regulations. That is a legitimate inquiry under the analogous national treatment rules for services, but such inquiry does not require analyzing treatment of those domestic firms' products.

[https://timreview.ca/sites/default/files/article\\_PDF/TIMReview\\_2020\\_July%20-%203.pdf](https://timreview.ca/sites/default/files/article_PDF/TIMReview_2020_July%20-%203.pdf)

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<http://oecdprivacy.org/>

<https://cbprs.blob.core.windows.net/files/2015%20APEC%20Privacy%20Framework.pdf>

<https://www.oecd.org/newsroom/landmark-agreement-adopted-on-safeguarding-privacy-in-law-enforcement-and-national-security-data-access.htm>

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[https://www.bls.gov/news.release/archives/ocwage\\_03292013.pdf](https://www.bls.gov/news.release/archives/ocwage_03292013.pdf)

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In advance of the April 16th and April 17th congressional hearings on the 2023 U.S. Trade Policy Agenda, the Consumer Technology Association (CTA)<sup>®</sup> respectfully submits this statement for the record on increasing the ambition of U.S. trade policy and reducing the harm the current path is causing to the U.S. economy.

The current trajectory set by the Office of the United States Trade Representative (USTR) should be cause for deep bipartisan concern. The current U.S. trade policy agenda is undercutting the collective U.S. efforts to compete with China not just on trade, but on our foreign policy and national defense priorities.

By not negotiating or entering into new trade agreements, not defending U.S. companies from barriers to trade in foreign markets, and ceding global trade leadership to other countries, including U.S. adversaries, USTR is isolating the United States, harming the U.S. economy, increasing inflation, and weakening the U.S. innovative and defensive capacity. More, by taking protectionist steps in the name of its “worker-centered trade policy” or “supply chain resilience,” USTR in fact is diminishing prospects for U.S. workers and their long-term investments. Collectively, this helps China, not the United States.

CTA is gravely concerned that the isolationism envisioned by USTR will lead to more expensive consumer prices. With workers already in short supply due to generational shifts in the U.S. workforce shifts and limitations on immigration, USTR’s protectionist agenda will result in out-of-control inflation and force interest rates higher. This lethal combination of cutting down on trade, failure to protect U.S. companies overseas, and higher-for-longer interest rates will hurt our national defense as it will isolate us from our friendly trading partners, skyrocket government interest payments and further take away from defense spending.

With this context in mind, CTA offers the statement below.

#### **USTR Has Thrown U.S. Companies into the Trade Jungle**

Congress created the Office of the Special Trade Representative (STR) under the Executive Office of the President in Section 141 of the Trade Act of 1974. President Carter reorganized the STR and established it as the Office of the U.S. Trade Representative (USTR) in 1979 under Executive Order 12188. Since its founding, U.S. businesses of all sizes and all sectors expected that USTR would identify foreign trade barriers and work to address and remove them through a wide range of negotiation, enforcement and litigation tools. They did not expect that USTR would en-

courage foreign governments to impose trade barriers on U.S. companies and ignore the harms of those barriers on the U.S. economy.

Today, the USTR openly admits that encouraging foreign trade barriers in the name of “public interest” is a fundamental aspect of its harmful and misguided domestic competition policy. Since October 2023, USTR under Ambassador Katherine Tai has taken the position that all governments deserve “policy space” to regulate as they see fit. When USTR released the significantly shorter National Trade Estimate report in March 2023, Ambassador Tai reiterated that each government “has the sovereign right to govern in the public interest and to regulate for legitimate public policy reasons.” These statements are not as benign as they first appear.

Under this world view, USTR is signaling to other governments that they can discriminate against U.S. companies—whether by intent or impact—and USTR will do nothing in response, especially if the government claims the measure is in the “public interest.” With this policy, USTR has opened a Pandora’s box of discrimination against U.S. companies to preserve the United States’s own ability to discriminate and violate international trade norms and U.S. law.

Where does this leave U.S. companies, particularly technology firms who are the primary target of the Administration’s ire? Once, they could rely on the U.S. government to uphold and promote the rule of law and to enforce the WTO and other free trade agreements. Now, they will contend with the law of the jungle, where might makes right and the rule of law is an inconvenient relic of the past. U.S. companies exporting to other markets or operating abroad will be on their own in facing trade barriers, whether digital barriers, technical barriers, or other discriminatory measures. They will receive less favorable treatment by foreign governments, who may choose to prioritize their own domestic companies and retaliate against U.S. measures.

Congress must hold USTR to account, demand that USTR justify its deviation from decades of bipartisan trade policy and explain why it believes that other governments can do whatever they want on trade so long as they claim their measures are in the “public interest.” More, if USTR remains unable to meet its statutory obligations to defend U.S. companies in foreign markets, Congress should consider drastic steps, such as withholding appropriations, refusing to confirm nominees for key roles or assigning responsibility for digital trade issues to other agencies.

#### **USTR’s Theory of the Case on Supply Chain Resilience Is Wrong**

The Biden-Harris Administration has identified supply chain resilience for certain strategic goods as one of its top economic priorities. The Administration has also cited the fragility of certain private sector supply chains during the pandemic as a reason for this approach. While some supply chains showed strains of historically high demand during the pandemic, not all supply chains buckled and collapsed. In fact, many, many more survived and thrived due to the agility and nimbleness of U.S. companies and their ability to pivot in the face of challenging circumstances associated with the pandemic (*e.g.*, people staying at home and purchasing more goods, including consumer technology products). These companies, many of them startups and small businesses, succeeded without any help from federal or state governments and often had to overcome policy barriers hampering their ability to compete and respond (*e.g.*, the tariffs on imports from China under Section 301 of the Trade Act of 1974).

President Biden issued an Executive Order (EO) on America’s Supply Chains in February 2021. Only now, more than 3 years later, is USTR seeking public comment and testimony from stakeholders on its own set of supply chain resiliency principles that diverge from the EO. In doing so, it is signaling that supply chains not located in the United States are inherently risky and that government intervention might be necessary to address those risks. It is not making any distinction between strategic goods identified by the EO and goods designed for and delivered to consumers. In fact, the Federal Register notice concerning this request for comment identifies many additional economic sectors for scrutiny, most of which are not related to the EO. Congress should be wary of USTR going “off-mission” and designing trade measures that have protectionist intent for the sake of supply chain resilience.

In CTA’s comments and testimony before USTR in that consultation, we will encourage USTR to understand how and why companies design and execute supply chains. USTR may benefit from viewing supply chains, and the workers who run them, not through the lens of academics or the federal government but through the eyes of the private sector. It may also benefit from speaking more with U.S. trading partners, particularly our treaty allies and FTA partners, who may take offense at

USTR efforts to force companies to make everything in the United States. Supply chain resilience is an important concept, but it should not be a pretext for protectionism and forced localization at the expense of U.S. foreign policy and economic interests.

### **Tariffs Hurt U.S. Consumers, and Supply Chains and Are Not as Worker-Centric as USTR Believes**

CTA has long fought for tariff relief for the consumer technology industry, including by advocating the removal of the harmful and ineffective Section 301 tariffs on imports from China.<sup>1</sup> Study after study demonstrates that tariffs, which are taxes on imports, do *not* make U.S. businesses more competitive, lead to more job creation, or make supply chains more resilient. These studies have indicated that the U.S. consumer bears the costs of U.S. tariffs.<sup>2</sup> This is because importers to the United States pay the tariffs,<sup>3</sup> not foreign governments. Importers can either absorb the costs or pass them on through their supply chains. Inevitably U.S. consumers pay the costs. CTA has included a short annex to our statement on recent studies and tariff commentary for the benefit of the Ways and Means and Finance Committees.

USTR believes that tariffs make supply chains more resilient. USTR has also demonstrated that it does not value the public comments it receives about tariffs. This ambivalence was evident during both the current and prior Administrations. For example, in 2019, USTR implemented massive and unprecedented modifications to the Section 301 tariffs over 3,000+ vociferous public comments opposing the policy. And this USTR has dallied for nearly 2 years on the statutorily-required “necessity review” of those tariffs, again in ignorance of thousands of public comments seeking the removal of the tariff action.

The truth is that tariffs undermine the resilience of private sector-led supply chains by imposing more costs, creating significant uncertainty on rates and duration of duties, and forcing companies to spend time and resources on tariff payments and bureaucracy as opposed to hiring and innovating new products and services. Instead of dismissing tariff analysis as “fiction” or conveniently ignoring authoritative research inconsistent with its world view, USTR should take this analysis into account as it formulates and executes U.S. trade policy. Further, we encourage Congress to organize hearings with trade economists to present their research in person to Committee members and invite USTR leadership to attend these hearings.

If USTR or Congress truly believe that tariffs are a necessary tool—for example to prevent highly subsidized imports from China from entering the U.S. market or further decouple the U.S.-China economic relationship by revoking permanent normal trade relations—it must level with Americans that they will experience higher inflation, higher costs for inputs and finished goods, and retaliation by trading partners that could evaporate markets for their goods and services abroad. Such candor with the American public is emblematic of rational and compelling leadership. Ignoring inconvenient truths about economic impacts of tariffs and other trade barriers is the hallmark of governments lacking confidence in their actions and seeking to deflect the political fallout.

### **Reducing Trade Costs Between the United States and Its Trading Partners Will Support Supply Chain Diversification Efforts**

As companies reorient their supply chains and find new sourcing opportunities, they will look at the costs of trade between the United States and its allies and key trading partners. Reducing trade costs, whether through tariff elimination, trade facili-

<sup>1</sup> See, e.g., CTA’s comment to USTR on its 4-year necessity review docket, submission USTR-2022-0014-00034970, available at <https://comments.ustr.gov/s/commentdetails?rid=72BH3CQWG6>.

<sup>2</sup> Building a Resilient U.S. Consumer Technology Supply Chain, Consumer Technology Association (July 2022), <https://shop.cta.tech/products/building-a-resilient-u-s-consumer-technology-supply-chain>; Analysis of Section 301 Tariff Impacts on Imports of Consumer Technology Products, Consumer Technology Association (July 2022), <https://shop.cta.tech/products/analysis-of-section-301-tariff-impacts-on-imports-of-consumer-technology-products?variant=43179752358058;PNTR%20Revocation%20is%20a%20Recipe%20for%20Inflation>, Consumer Technology Association (January 2024), [https://cdn.cta.tech/cta/media/media/pdfs/cta\\_pntreport.pdf?ga=2.139639793.373325017.1712953669-1972693078.1712953669&gl=1\\*8wysx5\\*ga\\*MTk3MjY5MzA3OC4xNzEyOTUzNjY5\\*ga\\_5P7N8TBME7\\*MTcxMjk1MzY2OS4xLjAuMTcxMjk1MzY3Mi41Ny4wLjA](https://cdn.cta.tech/cta/media/media/pdfs/cta_pntreport.pdf?ga=2.139639793.373325017.1712953669-1972693078.1712953669&gl=1*8wysx5*ga*MTk3MjY5MzA3OC4xNzEyOTUzNjY5*ga_5P7N8TBME7*MTcxMjk1MzY2OS4xLjAuMTcxMjk1MzY3Mi41Ny4wLjA).

<sup>3</sup> E.g., U.S. International Trade Commission, Press Release, Certain Effects of Section 232 and 301 Tariffs Reduced Imports and Increased Prices and Production in Many U.S. Industries, available at [https://www.usitc.gov/press\\_room/news\\_release/2023/er0315\\_63679.htm](https://www.usitc.gov/press_room/news_release/2023/er0315_63679.htm) (“The report finds that on average from 2018 to 2021: U.S. importers bore nearly the full cost of these tariffs because import prices increased at the same rate as the tariffs.”).

tation measures, or regulatory alignment, will create a stronger enabling environment for the diversification of supply chains. Reducing trade costs also allows U.S. companies to compete more effectively against firms from foreign adversaries.

USTR may promote the notion that more trade barriers lead to more resilient supply chains, for example by localizing production of goods in specific economies. However, reducing trade costs allows companies to make their supply chains as efficient as possible, therefore permitting them to lower their own internal costs and deliver competitively priced products to consumers. Companies also will seek to produce their goods with sustainability in mind as a means of delivering more ethical products to consumers, particularly in the face of growing consumer demand for such products. The costs of sustainable production are decreasing, and companies will benefit from being able to freely choose sourcing partners that can demonstrate high commitments to sustainability. But more importantly, lowering trade costs strengthens U.S. commercial and trade relations with its allies and key trading partners, thereby increasing U.S. soft power over time.

#### **USTR Must Negotiate New Agreements That Strengthen U.S. Relationships With Its Allies and Key Trading Partners**

USTR has stated that free trade agreements are a tool of the 20th century. Nevertheless, in the 21st century, U.S. trading partners continue to negotiate FTAs, some of which exceed the high standards of the U.S.-Mexico-Canada Agreement (USMCA) particularly on topics like digital trade. The Biden Administration has chosen to avoid any trade negotiations that would result in an agreement require an affirmative vote from Congress for enactment, thereby seeking to make an end-run around long-standing, bipartisan Congressional priorities.

CTA strongly advocates for the negotiation of new FTAs to support supply chain diversification, particularly with U.S. treaty allies such as the United Kingdom and Japan and other close trading partners in Southeast Asia, such as Vietnam, Thailand, Malaysia, and the Philippines. The adamant refusal of USTR to even contemplate the negotiation of comprehensive, market-opening, binding and enforceable FTAs with these partners is a source of comfort to U.S. adversaries. USTR could still address its labor and sustainability objectives through FTA negotiations while advancing higher-standard rules that curtail the harmful and predatory practices of adversaries. USTR's current posture of doing as little as possible on trade creates a vacuum in the global rule-making environment. Stronger U.S. trade leadership on the global stage is necessary to fill that vacuum.

#### **U.S. Global Trade Leadership Is Essential for Preserving and Strengthening the Multilateral Trading System**

At the 13th WTO Ministerial Conference in Abu Dhabi in February, a final, limited package came together due to the leadership of the UAE and the WTO Director-General, Dr. Ngozi Okonjo-Iweala. We understand that the USTR team on the ground worked incredibly hard behind the scenes to secure another 2-year extension of the moratorium on customs duties on electronic transmissions. This was the most important deliverable for MC13. However, it does not seem that USTR leadership played a key role in securing this deliverable. The path to MC14 in Cameroon in 2026 will be far more difficult and will require greater and more visible leadership from USTR to renew the moratorium or make it permanent. A permanent moratorium would benefit U.S. businesses in all sectors and of all sizes by providing durable certainty that they will not face tariffs on cross-border data flows as they navigate a global digital economy made all the more challenging through USTR's unwillingness to address barriers to trade in foreign markets.

#### **Conclusion**

CTA greatly appreciates the opportunity to submit these comments for the record. We look forward to continuing to work with the House Ways and Means and Senate Finance Committees to increase the ambition of the U.S. trade policy agenda, combat inflation, strengthen U.S. trade and economic ties with allies, open new markets to exports of U.S. consumer technology products, negotiate high-standard, binding and enforceable trade rules and bolster U.S. technology leadership and the innovation economy.

#### **Attachment 1—Studies on Economic Impact of Tariffs—2021–present**

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**Statement of Robert Maron, Vice President, International Issues and Trade**

The following statement is submitted on behalf of the Distilled Spirits Council of the United States, Inc. ("DISCUS") for inclusion in the printed record of the Finance Committee hearing on the Administration's 2024 trade policy agenda. DISCUS is a national trade association representing U.S. producers, marketers, and exporters of distilled spirits products. Its member companies represent approximately 75% of total U.S. distilled spirits exports.

**Introduction**

DISCUS and its member companies have strongly supported commitments by the U.S. to liberalize trade through a variety of fora and mechanisms. International trade is essential to the U.S. distilled spirits sector and is instrumental to its long-term viability. Our small, medium and large companies, their employees and their suppliers have benefitted from the successful efforts to open markets for U.S. spirits exports. Distilled spirits are high value-added agricultural products, which utilize a range of grains, fruits, and other agricultural raw materials in the production process. In fact, over the past decade, grain use in U.S. production of whiskey, brandy, rum, gin, and vodka increased by 121% to more than 2.8 billion pounds in 2023.

2023 was a banner year for American spirits exports. Total U.S. spirits exports reached a record \$2.2 billion, up 8% compared to last year. American Whiskeys, which accounted for 63% of all U.S. spirits exports, increased by 9% over 2022 to reach a record \$1.4 billion. U.S. distilled spirits were exported to more than 130 countries in 2023 from small, medium, and large distillers located in 44 states. Today, there are more than 2,600 U.S. craft distillers, up from less than 100 in 2005. The distilled spirits sector directly and indirectly supports 1.7 million good-paying jobs in every state, from the production, import, wholesale and retail tiers.

Over the past 2 decades, global U.S. spirits exports rose nearly 280% (from \$587 million to more than \$2.2 billion between 2003–2023). Long-term growth for U.S. spirits exports is due, in large part, to the range of trade agreements that eliminated import tariffs, opened many foreign markets for distilled spirits, and provided tools and mechanisms to address discriminatory tariff and non-tariff barriers.

U.S. spirits exports tumbled between 2018 and 2021, due largely to retaliatory tariffs on American spirits imposed by the European Union (EU) and United Kingdom (UK), which have since been suspended or removed. In 2023, exports have rebounded over pre-tariff levels. Our top priority is to secure the final removal of tariffs on U.S., EU, and UK distilled spirits and a return to permanent zero-for-zero tariffs.

## **I. U.S. Spirits Industry Has Benefitted From Market Opening Trade Agreements**

DISCUS and its members have strongly supported comprehensive trade agreements that eliminated tariffs and included other provisions to protect U.S. spirits products, such as recognition for distinctive American Whiskeys (*e.g.*, Bourbon, Tennessee Whiskey, American Rye Whiskey, and American Single Malt Whiskey), and best practices for the labeling and certification of distilled spirits products. These have been vital to opening new markets and keeping them open for U.S. spirits exports.

### *a. Tariff Elimination*

Exports to our trading partners, which have agreed either through multilateral, regional, or bilateral trade agreements, to eliminate tariffs on U.S. spirits, reached \$1.8 billion in 2023, accounting for 83% of global U.S. spirits exports. In 2023, U.S. distilled spirits exports to bilateral and regional free trade agreement (FTA) partners totaled \$726 million, accounting for nearly  $\frac{1}{3}$  of global U.S. spirits exports. In fact, between 2000 and 2023, exports to U.S. FTA partners have grown faster (539% increase) than U.S. distilled spirits exports to non-FTA partners (400% increase).

In contrast, U.S. spirits exports to high-tariff countries, such as India (150% tariff), Vietnam (45% tariff) and Brazil (20% tariff on all imported distilled spirits, except bulk whiskey, which is 12% tariff), reached \$69.2 million, accounting for only 3% of total U.S. spirits exports in 2023. Clearly, the elimination of tariffs leads to an increase in U.S. spirits exports.

In particular, the tariff elimination commitments regarding distilled spirits products secured during the Uruguay Round, which led to the development of the World Trade Organization (WTO) in 1994, and subsequent negotiations under the U.S. government's "zero-for-zero" initiative have paved the way for a significant increase in U.S. distilled spirits exports. At the outset, participation in the spirits "zero-for-zero" was limited to the U.S. and the EU. However, other countries, including Japan, Canada, Macedonia, Taiwan and Ukraine have since also agreed to eliminate tariffs on spirits imports on a Most Favoured Nation (MFN) basis.

Since the "zero-for-zero" agreement came into effect in 1997, the value of U.S. spirits exports to the EU (current membership) increased by 413%, from \$171 million to nearly \$880 million in 2023. The "zero-for-zero" agreement continues to produce benefits for U.S. spirits exports. Specifically, as countries have joined the EU, they are required to adopt the EU's common external tariff, which, in the case of distilled spirits is zero for practically all spirits. For example, exports to Latvia, which is currently the 21st largest destination for U.S. distilled spirits, increased by almost 879%, from \$1.8 million in 2004 when it joined the EU, to \$17 million in 2023. Similarly, exports to Poland, which is the 14th largest market, increased by nearly 3,887%, from \$1.1 million in 2004 when it joined the European Union to \$47 million in 2023. Prior to Poland joining the EU, U.S. spirits faced tariffs ranging from 75% to 105% *ad valorem*.

In the case of Japan, U.S. distilled exports grew from \$68 million in 2002, when the tariff was eliminated, to \$122 million in 2023, representing a growth rate of 79%.

### *b. Distinctive Product Recognition for Bourbon, Tennessee Whiskey, and American Rye Whiskey*

Bourbon and Tennessee Whiskey, the largest categories of American spirits exports, are recognized by 45 countries as distinctive products of the U.S. Such recognition ensures that products sold as Bourbon and Tennessee Whiskey are produced in the U.S. in accordance with U.S. laws and regulations. Distinctive product recognition for Bourbon and Tennessee Whiskey has been secured in free trade agreement negotiations with Canada, Mexico, Colombia, Peru, Chile, Australia, Panama, Korea, Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. In addition, distinctive product recognition for Bourbon and Tennessee Whiskey has been secured in Brazil, Japan, the EU, the UK, and Bolivia through bilateral agreements. With regard to the EU, any country that joins must automatically afford this protection to Bourbon and Tennessee Whiskey.

The USMCA includes provisions to preserve recognition for Bourbon and Tennessee Whiskey in Canada and Mexico and secures Mexico's agreement to take steps to provide distinctive product recognition for American Rye Whiskey, a fast-growing category of American Whiskey.

*c. Best Practices for the Labeling and Certification of Distilled Spirits Products*

For the first time in a U.S. FTA, the USMCA establishes new best practices regarding the labeling and certification of beverage alcohol products. These important protections will facilitate trade in distilled spirits and reduce potential barriers to trade by providing greater certainty, transparency and efficiency for distilled spirits producers, importers and exporters among the three countries. These commitments ensure that the USMCA is a model 21st-century trade agreement for the distilled spirits industry.

## **II. American Spirits Exports Tumbled Due to Retaliatory Tariffs**

As noted above, trade agreements and the elimination of tariffs on U.S. spirits exports have directly increased U.S. spirits exports.

However, in mid-2018, the EU, UK, Canada, Mexico, Turkey, and China implemented retaliatory tariffs on U.S. spirits in trade disputes unrelated to the spirits sector. The retaliatory tariffs curtailed overall U.S. spirits export growth between 2018 and 2021.

Export contracts were canceled, and distribution negotiations were postponed for U.S. distillers of all sizes. Many also put expansion and investment plans on hold. The impact was felt across the U.S. throughout the supply chain, from farmers to suppliers.

The only retaliatory tariffs on U.S. distilled spirits currently imposed are those applied by China and Turkey. The EU's retaliatory tariffs on U.S. distilled spirits products are suspended as part of trade disputes over steel-aluminum and large civil aircraft subsidies. The U.S., Canada, and Mexico reached an agreement in the steel and aluminum dispute in connection to the USMCA negotiation that resulted in the repeal of retaliatory tariffs on American Whiskey exports to Canada and Mexico.

Since the EU first agreed to suspend its 25% retaliatory tariff on American Whiskeys in 2022, exports to the EU surged by over 60%, climbing from \$439 million in 2021 to \$705 million in 2023.

In December 2023, the EU announced that it would continue the suspension of tariffs on American Whiskeys in the steel and aluminum dispute for 15 months, until March 31, 2025. If no agreement is reached, the EU will reimpose its tariff on American Whiskeys at 50%, up from the previously imposed 25%. The UK permanently removed its retaliatory tariff on American Whiskeys in the steel and aluminum dispute in June 2022.

Tariffs on U.S., EU, and UK distilled spirits in the large civil aircraft disputes are suspended until June 2026. If agreements are not reached, the tariffs will be reimposed. Our top priority is to secure the permanent removal of U.S and EU tariffs on distilled spirits and a permanent return to zero-for-zero tariffs with the EU and UK.

## **III. U.S. Tariffs on Imported EU and UK Spirits Impact U.S. Jobs**

While U.S. tariffs imposed on EU and UK spirits may appear only to harm EU and UK companies, this is simply not the case. As a result of the important market-opening agreements highlighted above, the U.S., EU, and UK spirits sectors are deeply integrated with companies owning a range of U.S., EU, and UK spirits. The same is true for EU and UK tariffs on American spirits. Many companies have made considerable investments in the U.S., EU, and UK to successfully create complementary product portfolios with brands from the U.S., EU, and UK to satisfy consumer demands. Thus, tariffs on imported spirits compounds the negative impact on companies negatively impacted by the EU's retaliatory tariff on American spirits. Since retaliatory tariffs on imports are, in effect, taxes, imposing tariffs on EU beverage alcohol imports will have the unintended consequence of harming U.S. consumers of these products.

Trade associations representing the spirits sectors in the EU and UK are aligned with DISCUS in opposition to tariffs on distilled spirits. They have and continue to urge their respective governments to permanently remove tariffs on American spirits imports.

#### **IV. DISCUS Strongly Supports New Comprehensive Market-Opening Trade Agreements**

DISCUS and its members have strongly supported comprehensive multilateral, regional, and bilateral market-opening agreements, as these are vital to opening new markets and keeping them open for U.S. spirits exports. Efforts by the U.S. government to secure the elimination of tariffs on U.S. spirits have contributed to the significant growth in exports. As noted above, U.S. spirits exports to our trading partners, which have agreed to eliminate tariffs through multilateral, regional, or bilateral trade agreements, reached \$1.8 billion in 2023, accounting for 83% of global U.S. spirits exports.

DISCUS supports new comprehensive bilateral/regional market-opening agreements, which we believe will contribute significantly to the continued growth of our sector. DISCUS supported the Congressional passage of the U.S.-Mexico-Canada Agreement (USMCA) implementing bill and continues to urge the administration to pursue new comprehensive trade negotiations to secure the reduction of tariffs for U.S. spirits exports, distinctive product recognition for Bourbon, Tennessee Whiskey, and American Rye Whiskey, and best practices for the labeling and certification of distilled spirits products.

DISCUS also strongly supports the WTO and its ongoing efforts to further liberalize global trade and strengthen the rules-based multilateral trading system. Unquestionably, the package of agreements concluded in the Uruguay Round, which led to the establishment of the WTO in 1994, has significantly benefitted the U.S. distilled spirits sector by reducing or eliminating import tariffs and establishing rules for transparency, non-discrimination, and equal access. Since the Uruguay Round agreements entered into force in 1997, global U.S. distilled spirits exports have increased by almost 300% through 2023.

#### **V. Other Trade Barriers Negatively Impacting American Spirits Exports**

Several priority target markets apply discriminatory spirits taxes in favor of domestically produced spirits and maintain high tariffs and/or an array of non-tariff barriers to U.S. spirits, which inhibit the sector's long-term growth prospects. For example, India maintains an excessive tariff on imports of bottled spirits of 150% ad valorem, Brazil maintains a tariff of 12% ad valorem for bulk whiskey and 20% ad valorem for other distilled spirit products, and Vietnam imposes a 45% ad valorem tariff. In addition, Thailand, Peru, Brazil, and the EU continue to apply discriminatory spirits taxes in favor of domestically produced spirits, which distort the market in violation of the national treatment provisions of GATT Article III, paragraph 2. Furthermore, labeling requirements, packaging requirements, and product standards under consideration in Thailand, Ireland, South Africa, the EU, Brazil and elsewhere, which are inconsistent with standard international practices, could impose unnecessary barriers to entry for U.S. spirits exporters.

These, and many other tariff and non-tariff market access barriers impacting U.S. spirits exports, are discussed in length in DISCUS' October 2023 submission regarding foreign trade barriers to U.S. exports to the Office of the United States Trade Representative, which can be viewed at the following link: <https://www.distilledspirits.org/wp-content/uploads/2023/10/DISCUS-2024-National-Trade-Estimate-Report-Submission-Final.pdf>.

#### **Conclusion**

In summary, the U.S. distilled spirits industry has benefitted significantly from the comprehensive multilateral, regional, and bilateral trade agreements the U.S. has concluded. However, the imposition of retaliatory tariffs had a significant negative impact on the sector. For these reasons, our top priority is to request that Congress continue to urge the Administration to engage with their EU and UK counterparts to secure the permanent removal of U.S., EU, and UK tariffs on distilled spirits. Our EU and UK counterparts share our strong opposition to the application of any tariffs on distilled spirits and are sharing similar concerns with their respective governments.

In addition, we urge the Administration to pursue new market-opening and comprehensive trade agreements for U.S. spirits exports to secure the reduction of tariffs on these exports, distinctive product recognition for Bourbon, Tennessee Whiskey, American Rye Whiskey, American Single Malt Whiskey, and best practices for the labeling and certification of distilled spirits products.

Thank you again for the opportunity to provide the U.S. spirits sector's views. Please do not hesitate to contact us if we can provide any additional information. Thank you very much for your consideration.

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<https://www.engine.is/>

April 15, 2024

U.S. Senate  
Committee on Finance  
Dirksen Senate Office Bldg. Rm. SD-219  
Washington, DC 20510-6200

Dear Chairman Wyden, Ranking Member Crapo, and Honorable Members of the Senate Finance Committee:

We write to urge you to use the upcoming April 17th hearing to probe recent actions by the Office of the U.S. Trade Representative, particularly with regard to digital trade. Engine is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government and a community of thousands of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship. Lowering barriers to trade unlocks markets for U.S. startups to expand, compete, and find success and is a vital part of promoting domestic technology entrepreneurship. Recent backsliding on longstanding digital trade priorities threatens to raise barriers to global success for U.S. startups, and it must be corrected.

Several recent actions by USTR have been alarming for startups that rely on smart digital trade policy to keep barriers low and help them reach markets around the world. In multilateral talks at the World Trade Organization last October, the U.S. Trade Representative retreated from important and long-held negotiating positions on source code protection, antidiscrimination, and free data flows.<sup>1</sup> Shortly thereafter, the trade pillar of the Indo-Pacific Economic Framework was seemingly jettisoned, in part due to the emerging upheaval on digital trade.<sup>2</sup> Last month, in the National Trade Estimate, which is supposed to be an accounting of trade barriers faced by U.S. companies, USTR markedly dialed back the number of digital trade barriers they intend to address, especially around data localization.<sup>3</sup>

Barriers encountered by startups dictate the markets where they can reasonably enter, create additional costs that detract from investments in R&D and job creation, and hamper U.S. economic growth by limiting the flow of goods and services across borders. Across administrations, the U.S. has pursued a strong, forward-looking digital trade agenda to address these digital trade barriers like data localization. These measures placing limitations on how and when data can be transferred across borders have particularly negative impacts upon startups. Startup founders have described these restrictions as “very costly,” leading them to “lose prospects and customers,” and forcing them into decisions about what services they can offer.<sup>4</sup>

U.S. startups need strong digital trade policy implemented by policymakers that will fight for their interests on the global stage. To that end, a coalition of over 40 startups, investors, and support organizations penned an open letter highlighting what U.S. trade policymakers must do to support them. That letter is attached as an appendix below, but in particular, the startups called for policies that:

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<sup>1</sup>See, e.g., David Lawder, *US drops digital trade demands at WTO to allow room for stronger tech regulation*, Reuters (October 25, 2023), <https://www.reuters.com/world/us/us-drops-digital-trade-demands-wto-allow-room-stronger-tech-regulation-2023-10-25/>.

<sup>2</sup>See, e.g., David Lawder, *U.S. suspends Indo-Pacific talks on key aspects of digital trade-lawmakers*, Reuters (November 8, 2023), <https://www.reuters.com/business/finance/us-suspends-indo-pacific-talks-key-aspects-digital-trade-lawmakers-2023-11-08/>.

<sup>3</sup>See, e.g., Ari Hawkins and Doug Palmer, *USTR defends trade report amid industry rebuke*, Politico (April 1, 2024), <https://www.politico.com/newsletters/weekly-trade/2024/04/01/ustr-defends-trade-report-amid-industry-rebuke-00149889>.

<sup>4</sup>See Letter from Engine to Ambassador Katherine Tai (October 30, 2023), [https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/653ab38280bab20aba47a209/1698345894992/Startups\\_letter+to+USTR.pdf](https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/653ab38280bab20aba47a209/1698345894992/Startups_letter+to+USTR.pdf).

- Enable cross-border data flows and oppose local storage mandates;
- Foster innovation and regulatory consistency;
- Avoid technology-specific levies and prohibit duties on digital transmissions; and
- Streamline trading processes and support access to resources and digital tools.

Many of the policies needed to support startups are those that the U.S. Trade Representative is actively backing away from. We urge you and your colleagues to examine the recent moves of Ambassador Tai's agency and to implore her to change course. It is imperative that the U.S. pursues a strong digital trade policy agenda that ensures U.S. startups can thrive and remain global leaders in innovation.

Sincerely,

Engine

*Appendix: Open Letter from Coalition of Startups*

February 7, 2024

To U.S. Trade Policymakers:

We are leading members of the U.S. startup ecosystem—entrepreneurs, startup founders, incubators, investors, accelerators, and support organizations—that serve customers and clients across the country and around the globe. Sound digital trade policy is critical to startups' international competitiveness, and we write to encourage U.S. trade policymakers to aggressively pursue policies that lower barriers to trade and enable startup success.

U.S. startups are at the fore of global innovation and domestic job creation, largely thanks to the Internet, digitization of world economies, and forward-looking digital trade policies that have enabled startups to reach markets beyond U.S. borders. Still, U.S. startups encounter myriad barriers as they grow and scale internationally. Those barriers dictate the markets where startups can reasonably enter and compete, create additional costs that could instead fuel R&D and job creation, and hamper U.S. economic growth by limiting the flow of goods and services across borders.

Startups need smart digital trade policies that promote an open and global Internet to lower and keep low barriers to trade. In 2020, Congress overwhelmingly approved the U.S.-Mexico-Canada Agreement, revealing a broad bipartisan consensus on the forward-looking digital trade provisions included in the deal. U.S. digital trade policy should build on those provisions and other longstanding U.S. trade policies to support the success of U.S. startups looking to expand into foreign markets and engage customers abroad by embodying these principles:

**Enable cross-border data flows and oppose local storage mandates.**

The Internet is inherently borderless and should allow startups to reach foreign markets with little additional investment. Conversely, policies that restrict where data can be stored or how and when data can be transferred across borders erect barriers to trade and increase costs that startups with limited resources have difficulty overcoming, especially compared to their larger rivals.

**Foster innovation and regulatory consistency.**

Different rules about the same issue across jurisdictions create costs and heighten barriers for startups. Regulations adopted in other jurisdictions—including around data privacy, intermediary liability, emerging technologies, and more—can negatively impact startups, especially when they are discriminatory, apply extraterritorially, or require startups to significantly alter their products, undermine security measures, or compromise proprietary technology.

**Avoid technology-specific levies and prohibit duties on digital transmissions.**

Digital services taxes increase costs for startups regardless of who the taxes are initially levied upon, putting startups at a disadvantage in jurisdictions with them. And the moratorium on imposing customs duties on electronic transmissions has shaped the market, allowed digital trade to flourish, and must be permanently extended.

**Streamline trading processes and support access to resources and digital tools.**

Trade facilitation and capacity building is critical to lowering costs and burdens while opening opportunities for startups. Federal and state governments can play a critical role in helping more startups reach markets abroad through grants, workshops, access to digital services, and other resources.

Trade policy impacts U.S. startups' ability to break into new markets, create domestic jobs, earn investment, and scale their ventures. We encourage you to pursue strong digital trade provisions that open opportunities and defend the ability of U.S. startups to provide their goods and services to customers around the globe.

Sincerely,

1Huddle Newark, NJ	ACT   The App Association Washington, DC
Allied for Startups San Francisco, CA	ArchAngels Washington, DC
Arcascope Arlington, VA	Black Women Talk Tech New York, NY
CAPTVR3D Clark, MO	Carefully Brooklyn, NY
Center for American Entrepreneurship Great Falls, VA	Colorado Startups Boulder, CO
Connected Commerce Council Washington, DC	Deltacard Corp Orlando, FL
Engine Washington, DC	Enployable, Inc. Tysons, VA
Get Write to Business LLC Belton, TX	Global Innovation Forum Washington, DC
Hacom LLC Santa Ana, CA	hobbyDB Superior, CO
KCRise Fund Kansas City, MO	Ki-Zen Power Systems Portsmouth, VA
Libib Covina, CA	Make Startups Augusta, GA
M1PR, Inc. Roswell, GA	MetaProp New York, NY
PIE Portland, OR	PILOT Inc. New York, NY
pollen.media Austin, TX	Productions.com Atlanta, GA
Pruuvn Inc. Atlanta, GA	Retail Aware Omaha, NE
RevUp Capital Providence, RI	Shatterbox Tulsa, OK
Small Business and Entrepreneurship Council Washington, DC	SmarTwin AI New York, NY
TechUnited:NJ Jersey City, NJ	Themis Strategic Partners, LLC Chicago, IL
TheraTec, Inc. Horace, ND	TMSOFT Tavernier, FL
Tostie Productions LLC San Diego, CA	Venntive New York, NY
Voatz Boston, MA	Warmilu Ann Arbor, MI

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**Statement of Melinda St. Louis, Director,  
 Public Citizen's Global Trade Watch**

Dear Chairman Wyden, Ranking Member Crapo, Chairman Smith, and Ranking Member Neal:

Public Citizen, a nonprofit consumer advocacy organization with more than 500,000 members, welcomes the opportunity to submit a statement for the record in regard to the 2024 United States Trade Agenda. A mission of Public Citizen is to ensure that in this era of globalization, a majority can enjoy economic security; a clean environment; safe food, medicines and products; access to quality affordable services; and the exercise of democratic decision-making about the matters that affect their lives.

At the core of the discussions of both hearings was a rehashing of a long-settled debate over the direction of U.S. trade policy. Since the early 1990s, corporate-rigged free trade agreements (FTAs) have undermined domestic safeguards and perpetuated a global race to the bottom for the cheapest labor and lowest environmental standards, contributing to the hollowing out of U.S. manufacturing and increasing income inequality. Americans who have lived with the consequences of the North American Free Trade Agreement (NAFTA) and its clones have thus demanded that their representatives in government pursue a new path. As a result, a new FTA hasn't successfully passed through Congress for over a decade, since 2012.

Biden administration officials have repeatedly stated that the President's vision for trade will not repeat the past mistakes of prioritizing efficiency above all else, but will serve workers, consumers, and the environment. It is the right but difficult task to create a new model of trade policy that excludes problematic investment, intellectual property, market access, and procurement provisions in order to put people and the planet first.

The neoliberal model had decades to run its course. It is unreasonable to expect a wholly new model to be completed within only three years—and still, important improvements have already materialized.

**Worker-Centered Trade**

U.S. trade agreements since the George W. Bush administration have included labor and environmental standards in their core texts as part of the "May 10th" standard. The ostensible goal of these terms was to raise standards in trade partner countries. But these terms have proven ineffective. The absence of effective labor and environmental standards created race-to-the-bottom incentives for U.S. firms to offshore production and slammed U.S. firms and workers with a flood of imports subsidized by environmental and social dumping.

The U.S.-Mexico-Canada Agreement (USMCA) however, thanks to the determination of congressional Democrats and labor unions late in the negotiations, included innovative labor provisions. The office of the U.S. Trade Representative under Katherine Tai has used the USMCA's Rapid Response Mechanism (RRM) to ensure that companies cannot secure unfair advantages by shipping jobs out of the U.S. to exploit workers in Mexico. Public Citizen recognizes the efforts of Ambassador Tai to enforce these terms, as well as her role in the crafting of those provisions in Congress. As of April 2024, these labor provisions have directly benefited nearly 30,000 workers in Mexico by providing millions of dollars in backpay and benefits to workers, ensured wrongly terminated workers were reinstated, and helped secure free and fair elections in which workers selected independent unions to represent them. **The labor provisions and RRM enforcement process in the USMCA are the new minimum standard that must be met for trade agreements going forward.**

One of the top priorities in President Biden's trade policy agenda is working toward an Indo-Pacific Economic Framework (IPEF). It appears this administration recognizes that it would be disastrous in terms of policy and politics to return to the failed "free trade agreement" model that made the Trans-Pacific Partnership (TPP) so widely unpopular. From the start of negotiations, USTR has been clear that IPEF is not an FTA, and that it excludes all of the most controversial aspects of the TPP.

The Biden administration did the right thing by not concluding the IPEF Trade Pillar last fall, as the standards in the labor chapter were lacking, and there is no “worker-centered trade” without enforceable standards. It’s better to miss an arbitrary deadline than to ink a deal that fails to live up to the administration’s promise of “worker-centered” trade, especially when rules governing 40% of the global economy are on the line. This move by the Biden administration and USTR broadcasts the message to the world that if a trade deal doesn’t meet standards to protect workers and the environment, it’s not worth concluding. We applaud the righteous decision to slow negotiations, prioritizing workers over scoring political points.

Similarly, Public Citizen calls on members of Congress and the administration to work together to ensure that strong and enforceable labor and environmental standards are at the center of ongoing and future trade talks, including Critical Minerals Agreement (CMA) negotiations. The U.S.-Japan CMA must not be the model, as the lip service around labor rights and environmental protections are unenforceable. The only binding language in the text concerns a vague commitment to share information on labor protections. All labor standards must be subject to swift and certain enforcement that include facility-specific enforcement mechanisms and meaningful penalties for violations. Public Citizen is encouraged that the U.S. Trade Representative appears to be responsive to the critiques from labor and Congress regarding the lack of transparency in negotiations and enforceable standards in the U.S.-Japan CMA, as negotiations with other partners have reportedly slowed. These new and foundational texts will play a major determining role in the green transition, and we look forward to improved processes with meaningful stakeholder engagement in future negotiations.

Reflecting on the lessons learned from the IPEF process, we call on the administration to center labor rights and environmental protections in negotiations for a U.S.-Kenya Strategic Trade and Investment Partnership (STIP). And we note that all of the negotiations over the past 3 years would have benefited from greater transparency and civil society participation.

### **Redefining Digital Trade Rules**

Several representatives at the hearings disingenuously criticized USTR’s rethink of digital trade rules as if it shuts down all online sales and the internet itself. In reality, all that USTR did was remove U.S. support for four extreme “digital trade” provisions that the previous administration proposed at e-commerce talks on the sidelines of the World Trade Organization (WTO). These rules—on data flows, data localization, source code/algorithm non-disclosure, and anti-competitive non-discrimination—came straight from the tech industry, which has picked up the pharma industry playbook to insert rules in trade agreements that would restrict governments’ ability to regulate them.

We commend Ambassador Tai for leading the update of digital trade rules to provide the policy space necessary for our nation to enact urgently needed policies that Congress and regulators are currently crafting: on Big Tech competition, gig worker rights, online consumer privacy and data security protections, and AI accountability measures. We are eager to work with the Biden-Harris administration to create new digital trade rules that promote worker rights, consumer privacy, civil rights, and data security goals.

The 2024 National Trade Estimate (NTE) Report on Foreign Trade Barriers shows continued progress on this front. This year’s NTE is not simply a hit list of other countries’ laws and regulations that large U.S. corporations dislike. Now, for the first time in memory, USTR is recognizing that it is not in the U.S. national interest to attack and threaten other nations’ consumer and worker protection measures. This is particularly apparent in the context of “digital trade” barriers, many of which are actually privacy, anti-discrimination, and anti-monopoly safeguards. As governments around the world, including our own, work to regulate the rapidly changing tech space, it does not make sense to list these new regulations as “barriers to trade.” Still, there are 22 jurisdictions with sections on “digital barriers to trade” (compared to 28 in Trump’s 2020 NTE)—revealing the lie behind Big Tech’s claim that USTR has dropped their interests entirely.

There is still more work to be done to ensure that the NTE does not inappropriately target other countries’ public health and development laws. This would be consistent with the Biden-Harris administration’s stated “worker-centered” approach to trade, that does not simply privilege large corporate interests over all else, but recognizes that trade policy should complement, rather than undermine, public interest goals.

### Checking Corporations' Power to Challenge Laws

Senator Sheldon Whitehouse and Ambassador Tai acknowledged at the Senate Finance hearing that for decades the United States was the driving force expanding the Investor-State Dispute Settlement (ISDS) mechanism. Yet at the end of 2019, the U.S. Congress, in a welcome act of bipartisanship, agreed to eliminate ISDS provisions with Canada and significantly reduce them with Mexico as part of the USMCA. This shift in U.S. policy sent a signal worldwide to the many countries also eager to exit the ISDS regime, especially after nations that terminated ISDS agreements saw no fall-off in foreign investment.<sup>1</sup>

President Biden and USTR have thus far followed through on the promise to exclude ISDS provisions in new trade negotiations. **The next step is to dismantle ISDS in the dozens of active U.S. agreements in which it still exists.** Public Citizen is encouraged that, in response to Sen. Whitehouse's impassioned plea to remove the mechanism in existing agreements, Ambassador Tai noted that USTR is actively looking into options to address ISDS in existing agreements. We look forward to working with the administration to make concrete progress on this as soon as possible, and would like to note for the record the growing support for this endeavor:

- 300+ Professors of Law and Economics Urge Elimination of ISDS in U.S. Trade and Investment Agreements, <https://www.citizen.org/wp-content/uploads/2024-Professors-Letter.pdf>.
- Sánchez, Doggett call for Biden Administration to Reform CAFTA–DR trade agreement, <https://lindasanchez.house.gov/media-center/press-releases/sanchez-doggett-call-biden-administration-reform-cafta-dr-trade>.
- Warren, Whitehouse, Cohen, Lawmakers Urge Biden Administration to Eliminate Investor-State Dispute Settlement from Existing U.S. Trade and Investment Agreements, <https://www.warren.senate.gov/newsroom/press-releases/warren-whitehouse-cohen-lawmakers-urge-biden-administration-to-eliminate-investor-state-dispute-settlement-from-existing-us-trade-and-investment-agreements>.
- Public Citizen, AFL–CIO, Sierra Club, and 200+ Organizations Urge Biden to Terminate ISDS Provisions in Existing U.S. Trade and Investment Agreements, <https://www.citizen.org/wp-content/uploads/exit-ISDS-organizational-letter.pdf>.
- UN Report: Paying polluters: the catastrophic consequences of investor-state dispute settlement for climate and environment action and human rights, <https://www.ohchr.org/en/documents/thematic-reports/a78168-paying-polluters-catastrophic-consequences-investor-state-dispute?s=03>.
- American Economic Liberties Project, White Paper: Turning the Tide: How to Harness the Americas Partnership for Economic Prosperity to Deliver an ISDS-Free Americas, [https://rethinktrade.org/wp-content/uploads/2024/03/ISDS\\_Report\\_Tides\\_03.12.2024.pdf](https://rethinktrade.org/wp-content/uploads/2024/03/ISDS_Report_Tides_03.12.2024.pdf).
- Center for International Environmental Law: Overcoming International Investment Agreements as a Barrier to Climate Action: A Toolkit to Safeguard Fossil Fuel Measures from Investment Treaty Claims, <https://www.ciel.org/wp-content/uploads/2024/01/Overcoming-International-Investment-Agreements-as-a-Barrier-to-Climate-Action.pdf>.

### Access to Medicines

Too often, the U.S. government has sided with Big Pharma at the expense of access to medicines and vaccines in developing countries, contributing to suffering and preventable death during the early global AIDS crisis and accepting access delays at the height of the COVID emergency. In years past, the U.S. government sought to deter even consideration of pro-health patent policies in many other countries, under potential penalty of trade sanctions, and provided cover for far more aggressive opposition tactics by powerful prescription drug corporations.

But as with investment rules, USTR has changed course and excluded intellectual property (IP) rules from ongoing trade negotiations. Ambassador Tai has frequently spoken about the need to balance IP protections with access to affordable medicines and technologies.

Public Citizen applauds USTR for realizing that this balance has leaned heavily in favor of pharmaceutical company profits for far too long. For example, in the recent Special 301 Report, USTR states its “policy of declining to call out countries for exercising [WTO Trade-Related Aspects of Intellectual Property Rights] TRIPS flexi-

<sup>1</sup> <https://www.citizen.org/article/termination-of-bilateral-investment-treaties-has-not-negatively-affected-countries-foreign-direct-investment-inflows/>.

bilities, including with respect to compulsory licenses, in a manner consistent with TRIPS obligations.”

This statement gives reason for hope. Countries struggling under the burden of high-priced medicine monopolies should know that the United States will not interfere with their efforts to make medicine affordable for their people, consonant with WTO rules.

However this progress is constrained by the still-onerous and pharma-authored rules of the WTO. And U.S. negotiators of a WHO pandemic accord have yet to accept forward-looking proposals from developing countries on medical patents. And the Special 301 report still supports harmful rules favored by drug corporations, including challenges to practices safeguarding India’s provision of generics to the world. This must change.

In 2021, the initial announcement from the Biden administration of support for a temporary waiver of IP barriers to facilitate more production of COVID–19 vaccines was a welcome change from the previous administration. The final outcome of the negotiations was ultimately inadequate to meet the scope of the tragedy facing the world, but shining a light on the deadly prioritization of intellectual property over public health in our global trade systems was an important first step.

Helpfully, the Biden-Harris administration acknowledged countries’ health interest in compulsory licensing to support production and access, and stepped down trade pressures against their use. The October 2023 USITC report found compulsory licenses are “associated with increased generics and lower prices, and increased access to pharmaceuticals.” The report cites evidence that patent protection “has little to no positive effect for innovation in developing countries and negative effects for access and affordability.

The world will never forget the critical time the WTO wasted or the untold lives lost because rich countries refused to share the doses and knowledge that scientists around the world and public funds helped produce. We sincerely urge the U.S. Trade Representative to learn from these missteps and act quickly and effectively in the next crisis, and look forward to the U.S. continuing the work to shift the balance towards access.

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SOCIETY OF CHEMICAL MANUFACTURERS & AFFILIATES

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April 15, 2024

The Honorable Ron Wyden  
Chairman  
U.S. Senate  
Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Jason Smith  
Chairman  
U.S. House  
Committee on Ways and Means  
1139 Longworth House Office Building  
Washington, DC 20515

The Honorable Mike Crapo  
Ranking Member  
U.S. Senate  
Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Richard Neal  
Ranking Member  
U.S. House  
Committee on Ways and Means  
1139 Longworth House Office Building  
Washington, DC 20515

**RE: Statement for the Record—Hearing on the Biden Administration’s 2024 Trade Policy Agenda**

Dear Chairman Wyden, Ranking Member Crapo, Chairman Smith, and Ranking Member Neal,

The Society of Chemical Manufacturers & Affiliates (SOCMA) appreciates the opportunity to submit comments regarding the hearings on the Biden Administration’s 2024 Trade Policy Agenda with United States Trade Representative Katherine Tai.

SOCMA is part of a \$300 billion industry that’s fueling the U.S. economy. Our members play an indispensable role in the global chemical supply chain, providing specialty chemicals to companies in markets ranging from aerospace and electronics to pharmaceuticals and agriculture. As the only U.S.-based trade association solely

dedicated to the specialty and fine chemical industry, our industry network extends to more than 20,000 influencers and decision makers in the specialty chemicals supply chain.

### **Section 301 Tariffs**

SOCMA is not seeking the elimination of the Section 301 Tariffs. China's unfair policies and practices towards intellectual property have had a range of negative effects on the American economy and have significantly undermined American manufacturing. Many SOCMA members have been victimized by IP theft in China—theft that is particularly hurtful to an industry that thrives on innovation. We respect the administration's need for a full range of options to deal with China's unfair practices and understand that tariffs are an impactful tool that should remain at the Administration's disposal.

Nevertheless, the Section 301 tariffs have placed burdens on domestic specialty chemical manufacturers that have placed them at a competitive disadvantage. In many cases, China is the only or predominant source of inputs and raw materials for the specialty chemical industry and there is a need to alleviate the tariffs on those products.

### **Reinstatement of Section 301 Exclusion Process**

SOCMA encourages a three-step approach to 301 tariff exclusions:

1. Reopen the exclusion process for previously extended exclusions (already completed by USTR).
2. Open the exclusion process for all previously granted, now expired exclusions.
3. Reopen the exclusion process to all 301 tariffs.

SOCMA strongly believes any exclusion process must be transparent and inclusive for all stakeholders, apply consistent procedures and processes for all tariff exclusion applications, and base decisions on clear evidence and consistent criteria.

There are a number of reasons to re-open the exclusion process, not the least of which is that tariffs on products that are not competitively available outside of China have a compounding effect on the US economy of which the chemical industry is a net exporter. The tariffs that are being paid by US companies hinder their production and growth opportunities, and because it increases the cost of US products it makes them less competitive in the global market, which in turn inhibit reductions in the US trade deficit.

### **Support for Legislation to Amend USMCA Implementation**

SOCMA also requests the support in amending USMCA implementing legislation to allow duty drawback for 301 surtaxes. The collection of these levies places SOCMA members at a severe disadvantage for exports to Mexico and Canada since international competitors do not have the 25% surcharge included in the cost of raw materials. The implementing legislation of USCMA will need to be amended to resolve this trade imbalance. SOCMA's hope is that this is a unilateral change and does not require the participation, nor negotiation with, Mexico or Canada.

### **Conclusion**

SOCMA has appreciated the opportunity to provide input and looks forward to continued engagement with the Committees. If you have any questions about these comments, please feel free to contact me at [gstrand@socma.org](mailto:gstrand@socma.org) or 571-348-5123.

Respectfully submitted,

Genevieve Strand  
Director, Government Relations

