

**THE PRESIDENT'S 2019 TRADE  
POLICY AGENDA AND THE UNITED  
STATES-MEXICO-CANADA AGREEMENT**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE  
UNITED STATES SENATE**

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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JUNE 18, 2019  
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**TUESDAY, JUNE 18, 2019**

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

The hearing was convened, pursuant to notice, at 10:15 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Chuck Grassley (chairman of the committee) presiding.

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

Also present: Republican staff: Nasim Fussell, Chief International Trade Counsel; and Mayur Patel, International Trade Counsel. Democratic staff: Greta Peisch, Senior International Trade Counsel; and Jayme White, Chief Advisor for International Competitiveness and Innovation.

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

The CHAIRMAN. I am pleased to welcome our witness, Ambassador Lighthizer. Thank you for coming. We have been eager to have you before the committee for a very important annual hearing to discuss the President's trade agenda.

The laws that delegate Congress's constitutional trade authority to the executive also require close consultation with Congress. This hearing is an important part of that consultation, and it provides an opportunity to explain the President's ambitious trade agenda to the Congress and all Americans. Members of this committee are looking forward to this very important discussion.

A critical component of the trade agenda that I would like to discuss is the U.S.-Mexico-Canada Agreement, USMCA for short. Farmers, workers, and businesses stand to benefit greatly from that agreement. More market access for agriculture, new commitments to critical areas such as Customs, digital trade, intellectual property, labor, environment, currency, and the lowering of non-tariff barriers all translate into higher wages, greater productivity, and more jobs. In fact, the U.S. International Trade Commission's economic analysis found that USMCA will create 176,000 new jobs. We should not squander this opportunity to update NAFTA, which

is now a quarter of a century old but has been critical to the success of farmers and businesses.

Since NAFTA's implementation in 1994, our agricultural exports to these two countries have more than quadrupled. Corn exports increased sevenfold. A 2019 Business Roundtable study found that international trade supports 39 million jobs across America and 12 million jobs from trade with Mexico and Canada.

I am a family farmer, as you know. I can tell you that NAFTA has been critical to the success of Iowa farmers and businesses. The same Business Roundtable study found that 130,000 Iowa jobs were supported by trade with Canada and Mexico in 2017 and \$6.6 billion in Iowa goods and services were exported to Canada and Mexico the same year. According to the National Association of Manufacturers, Canada and Mexico purchase nearly half of Iowa's total manufacturing exports.

President Trump and you, Ambassador Lighthizer, delivered a solid deal to enhance this critical relationship with our good neighbors. Now Congress must act on implementing it. As Mr. Lighthizer said earlier this year, doing so will enhance the credibility of our global trade agenda, and it provides some much-needed certainty to American farmers and businesses.

For agriculture, international trade is critical to reaching the 95 percent of the world's consumers living outside the United States. In Iowa, we export every third row of soybeans. This is why I strongly support the administration's plan to pursue new trade deals, with Japan particularly, the European Union, and even the United Kingdom when it is ready. So we should move quickly.

Japan and the EU have not been sitting still. They have been closing trade deals with other countries over the last 2 years. As a result, our farmers and businesses are losing market share to competitors with preferential access. We need to secure strong agreements so that we can restore a level playing field. And in order to get a deal with the United States, the EU has to include and negotiate agriculture. I have said this before: any deal with the EU that does not include agriculture will not get through the United States Congress.

President Trump has rightly pointed out that trade must be fairer for workers, and this is central to his commitment to confront China's unfair trade practices and their mercantilist policies. When American companies get access to China's market, they often have to sacrifice valuable intellectual property or enter into joint ventures with Chinese companies. China's massive subsidies also create global distortions. This has to stop. And President Xi must recognize that making these changes are in China's best interest as well.

I applaud President Trump for confronting China decisively. And I urge him and President Xi to reach a deal that results in structural changes to China's discriminatory policies and practices and the elimination of the 301 tariffs.

Ambassador Lighthizer, I share the administration's desire to ensure that hard work and innovation are rewarded, while unfair trade practices and illegal government subsidies are punished. I agree that we must have strong and enforceable trade agreements. I believe that you are right to seek reforms at the World Trade Or-

ganization. And I share your views that strong and effective enforcement of the U.S. trade laws prevents other countries from taking advantage of us.

But I do not agree that tariffs should be the tool we use in every instance to achieve every trade policy goal. I fear that continuing to use tariffs in this way will undermine our credibility with our current and potential trading partners and actually undo the benefits of our historic tax reform.

Since March 2018, U.S. Customs and Border Protection has assessed over \$15 billion in section 301 tariffs, and over \$6.5 billion in section 232 steel and aluminum tariffs. So, to be clear, American importers and consumers are paying for these tariffs. Twenty-two billion dollars out of the pockets of hardworking Americans is not in our national interest.

I urge the administration to do everything it can to use tariffs as a last resort option, and to maintain timely and efficient exclusion processes for those that are already in effect. Ambassador, I want to thank you on that note for your commitment to instituting an exclusion process for the section 301 tariffs on imports from China.

Before leaving the issue of tariffs, I want to highlight an example of a successful alternative option. Specifically, Ambassador Lighthizer's team deserves a lot of credit for recently winning two very large WTO cases against China's distortive agricultural policies. While I support the administration's efforts to reform the WTO, we should continue to use WTO mechanisms that can hold China and others accountable to the greatest possible extent.

So in closing, I am glad to have you here today. Ambassador, I want to recognize the critically important and difficult tasks before you. Congress and the administration must work together to ensure that our trade policy benefits all Americans, and I encourage you to work with us to make that happen.

As chairman, I pledge my support to the President's agenda, starting with the implementation of the USMCA.

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

The CHAIRMAN. Senator Wyden?

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

Senator WYDEN. Thank you very much, Mr. Chairman. Let me begin, Mr. Chairman, by saying I very much share your view with respect to consultation with this committee. That was actually embedded in the law. Consultation, more consultation and more transparency, was actually embedded in the law in 2015. So I want to make it clear I share the chairman's view on that point.

The committee meets this morning to discuss the administration's trade agenda. First, China. The President likes to say, and I quote here, "Trade wars are good and easy to win." The situation on the battlefield says otherwise.

China's market is now more closed off to American goods and American agriculture than before the trade war began. The President's next escalation will directly raise the cost of everyday goods in America, and the President is signaling that he will betray our

national security and let Huawei off the hook if China helps him save face.

Now there is no question that confronting the Chinese trade rip-offs was long overdue. The Chinese Government and state-owned enterprises have gotten away with strong-arming American businesses, stealing our intellectual property, and undercutting American jobs for way too long. It has to be handled differently.

Rather than chaos, what is needed is a well-coordinated international effort led by the United States to crack down on the Chinese abuses. Instead, the President has driven away our allies, and it is not clear there is a discernable strategy going forward.

Now some have attempted to focus our efforts directly where China is coming after our strengths—highly technical manufacturing and innovation. The Ambassador, Ambassador Lighthizer, deserves credit for laying out this type of approach to the committee in the past. Unfortunately, those plans get knocked off course all too often by hail storms of tweets sent while the President is watching television in the morning. As a result of this mismanagement on trade, the American people are faced with the prospect that everyday life in our country will be more expensive and less secure.

The next round of tariffs the President is considering would drive up the cost of consumer goods sitting on shelves around the Nation by as much as 25 percent. Millions and millions of American families are going to begin back-to-school shopping in a matter of weeks: school uniforms, gym clothes, sneakers, book bags, pencils, notebooks—you name it. With new tariffs in place, mom and dad might discover what they budgeted only goes 80 percent as far as they expected.

And then there is the issue of Huawei. Huawei poses a genuine spying risk to the United States and our allies. Allowing its equipment to be used in our telecommunications infrastructure would compromise our security. That is the opinion of national security experts outside the government and in key Federal agencies.

Even the President seemed to get it. At a recent White House event, he said of Huawei, and I quote, “You look at what they’ve done from a security standpoint, from a military standpoint, it’s very dangerous.” But in the President’s next sentence he says, and I quote, “It’s possible that Huawei even would be included in some kind of a trade deal.”

So basically, right out in the open—we have members of the Intelligence Committee here—right out in the open the President is telling China’s spymasters that he is willing to give away America’s national security for a face-saving trade deal. This is not some academic concern; it is a real threat. But rather than holding our national security interests paramount, the President seems most interested in the splashy trade headlines.

I am going to close with a couple of quick comments about the Western Hemisphere. I have long said that NAFTA was a product of a different economic era, and it is time for an overhaul. The President campaigned on ripping up existing trade deals. But the new NAFTA sure resembles the old one.

That said, there are areas of meaningful progress. It goes further than before on digital trade and state-owned enterprises. It takes



a modernized approach to Customs and duty-evasion. And again I would like to commend Ambassador Lighthizer for obtaining some strong outcomes in the labor and environmental chapters.

Yet, when it comes to trade enforcement, the enforcement of our trade laws, there is surely some heavy lifting left to be done. Commitments from other countries are not any good if there is no way of holding those countries to them. The new NAFTA retains a weak enforcement system from the old NAFTA, which too often gave a free ride to the trade cheats. That is a bad deal for our workers, particularly the enforcement of labor obligations.

Now Senator Brown, our colleague from Ohio, and I have offered some solutions. I am hopeful and optimistic that with some bipartisan work and that kind of blueprint, those are issues that can be resolved. In the meantime, there is no way to justify pulling out of the current NAFTA since doing so would accomplish nothing except economic pain here at home.

So I look forward to discussing these issues and more with the Ambassador this morning. I thank him for joining the committee. This is an important hearing, Mr. Chairman, and I appreciate your scheduling it.

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

The CHAIRMAN. Thank you. We have the pleasure of having Ambassador Lighthizer with us, sworn in as the 18th United States Trade Representative May the 15th, 2 years ago. Members of this committee have gotten to know Bob well over the past couple of years. I have had the opportunity of knowing him for at least 39 years. And because we have a lot to talk about today, I am going to dispense with all your credentials.

So, please proceed with your statement.

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

Ambassador LIGHTHIZER. Thank you very much, Mr. Chairman, Ranking Member Wyden, and members of the committee. It is a pleasure to appear before you today to testify on the President's trade agenda and the newly renegotiated United States-Mexico-Canada Agreement. I should note, before continuing, that there are some parts of Senator Wyden's comments that I do not entirely endorse, but I do entirely endorse Senator Wyden. [Laughter.]

So I would like to begin by noting that the United States economy has added 5.8 million jobs since the 2016 election. Notably, nearly 500,000 have been manufacturing jobs. The real GDP rose at an annual rate of 3.1 percent in the first quarter of 2019. The past four quarters have seen the fastest growth rate in GDP since 2015. The unemployment rate at 3.6 percent is the lowest rate in nearly half a century and has been at or below 4 percent for 15 consecutive months. Wages are up. Hourly wages were up some 3.1 percent over the last 12 months.

I commend this report right here to the committee. It is the trade policy agenda and the 2018 annual report to the committee. It is one of the subjects of this hearing. The document, which USTR put

out recently, outlines the administration's trade priorities and catalogs recent accomplishments.

As most of you know, the President is troubled by huge and persistent trade deficits which the United States has with many countries. These deficits are the result of many factors: faster economic growth, currency valuations, and to some extent tax policy, but they are also partially the result of trade rules that oftentimes are unfair and lock in non-economic advantages for our trading partners. We at USTR are very much focused on changing these rules where they are unfair to American farmers, ranchers, workers, and businesses. This has included renegotiating KORUS, of which you are aware, and NAFTA, which we have just discussed and will discuss further. We also have been reviewing GSP eligibility, actively engaging in TIFA talks with many, many countries—and we can talk about that—and reviewing the rules and functions of the WTO.

The USTR has also been active in enforcing the existing obligations of our trading partners. We brought many WTO cases. We have filed counter-notifications to the WTO and worked with other WTO members on a proposal to improve compliance with the existing WTO notification obligations. We are also engaged directly with trading partners under existing agreements. For example, we have successfully resolved concerns with Peru after requesting the first-ever environmental consultations in the U.S.-Peru Trade Promotion Agreement. In addition, we have used section 301 to investigate unfair trade practices in China. We believe our economic relationship with China has been unbalanced and grossly unfair to American workers, farmers, ranchers, and businesses for decades. As many members know, after an exhaustive process, we put tariffs on certain Chinese products and are preparing to do more if certain issues cannot be resolved satisfactorily.

Finally, I am pleased to be able to testify here today on the newly renegotiated USMCA. We have worked very closely with members throughout this process, and many of the improvements in this agreement reflect Republican and Democratic members' ideas and thoughts. In short, I believe the USMCA is the strongest, most momentous trade agreement in U.S. history. It is the gold standard for rules on the digital economy, financial services, intellectual property, et cetera. It will help stop the outflow of manufacturing jobs and return many to the United States. Its labor and environmental provisions are the most far-reaching ever in a trade agreement. The agricultural chapter will lead to increased market access and eliminate unfair trading practices by our trading partners.

This is a truly great agreement, and I look forward to working with members to make it even better, and to write implementing legislation which will earn large bipartisan support. And that is my objective. I said from the beginning that my objective was to get a very large number of Democrats and Republicans to support this.

With that, Mr. Chairman, I will stop. Thank you again for the courtesy you and the other members have shown towards me during this 2-plus years as USTR, and I look forward to your questions.

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

The CHAIRMAN. Before my 5 minutes starts—and I thank you for your opening statement—I would like to take a minute to briefly touch on something of great importance to the ranking member and me. Congressional support is key to a successful trade policy agenda. To further this support, we need to have a good grasp on what the administration is doing. This means members, as well as our staffs, receiving timely information, including negotiating proposals and texts, to allow us to support the administration in discussions with our trading partners. In short, the U.S. Constitution calls for a strong partnership between Congress and the administration on trade policy, and I hope that we can strengthen the partnership and further our trade agenda going forward with a consistent two-way dialogue.

Senator WYDEN. Mr. Chairman, without imposing on your time, not only are you right, it is embedded in the 2015 new requirements, and I agree completely.

The CHAIRMAN. Now my time starts. As I stressed in my opening statement, congressional implementation of the U.S.-Mexico-Canada Agreement will provide some much-needed certainty and, consequently, something that is important for farmers and businesses. We cannot afford delay. When Congress implements a trade agreement, it becomes U.S. law, giving Americans and our trade agreement partners certainty in relationships and the benefits that come with it.

This means not having to question whether this relationship or associated benefits will be threatened or jeopardized as a means to an unrelated end. So my question: what assurances can you provide us that implementation of the USMCA will deliver that certainty that Congress, Americans, and our trading partners expect from bringing the agreement into U.S. law?

Ambassador LIGHTHIZER. Well, thank you, Mr. Chairman. As you say, people enter into trade negotiations to get that certainty, largely for their businesses and for their farmers.

From the United States' point of view, we have negotiated very closely with both parties. We have covered all of these items. Everyone—people have made concessions. We have what is now an enforceable agreement, significantly more enforceable than past agreements, and I expect to work with the members of the committee to make it even more enforceable. So the certainty one can get is that Mexico and Canada, as far as we are concerned, have to live up to the actual letter of the agreement. I think they understand that, and we certainly expect to do the same thing.

The CHAIRMAN. You have indicated using section 301 to enforce labor and environment commitments under USMCA. I want to ensure that all USMCA commitments will be enforceable, and through methods that do not raise taxes on Americans.

Could you please identify other ways that we can ensure that USMCA will deliver the benefits that we are promising Americans throughout all chapters of the USMCA?

Ambassador LIGHTHIZER. So let me say first of all, the agreement is completely enforceable. We have a process of panel decisions like you have in most trade agreements. The USMCA and NAFTA be-

fore it had a provision that said, in certain circumstances, a country can opt out of the panel decision if they want to.

We did not change that. We left that in place, largely because we did not want to be in a position where someone could challenge U.S. trade laws. That is something that some members support and some other members are critical of. But we expect 99 percent of the time, maybe even 100 percent of the time, you are going to end up with panel discussions and panel decisions the same way we have had them in the past and can have them going forward.

It certainly is not the United States' position that we would block panels. And I think it is clear that the Mexicans and the Canadians feel the same way. So there are a series of dispute settlement processes, but also what we did in this agreement—which I think is far more helpful—is we made the obligations very, very specific. The more general the obligations are, the harder they are really to enforce.

So if you take, for example, the annex on labor in Mexico, it is very precise about what Mexico has to do. And Mexico did follow that in their own law when they implemented their labor law.

So I would say, number one, we have a viable dispute settlement process, one that I am willing to work with members on. And I will follow the basic instincts of members to the extent they want to plus it up, because there is room to do that, and I am certainly happy to do that. Secondly, we were far more specific than a lot of these agreements in the past, so that we can precisely say whether or not someone is following it.

So I am comfortable that we will get the benefits of this agreement, and I certainly endorse your suggestion—people talk about 180,000 jobs. If you look at the top of the ITC number—and in their text they said there is reason to believe we would be close to the top—“close to the top” is 1 percent of GDP and 550,000 jobs. So there really never has been a trade agreement that has had this much potential for this much impact on the economy, on workers, just right across the economy.

The CHAIRMAN. Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Ambassador, welcome again. And the next round of trade war tariffs could come soon. And I talked earlier about the impact on a family shopping for school and school equipment, but I wanted to ask you about college students now, because they are going to be out buying laptops and smartphones and tablets, as well as books and shoes and other essentials. A lot of these college students are already up to their eyeballs in debt. And it seems to me the next round of the trade war tariffs may require college students to borrow even more to pay for the Trump trade war.

Now these college students cannot make it very easily to Washington, DC. They do not have the wherewithal to make these trips. So start, if you would, by telling me how you are taking into account these kinds of widespread impacts on the general public such as students, college students I just asked about, whose comments may not be reflected in the public comments that you have asked for.

Ambassador LIGHTHIZER. Well, thank you, Senator, for that comment. First of all, I would just note that in terms of the last

traunch, we have hearings going on right now. We have some 300—I saw yesterday we have some 325 witnesses, and we have had more than 2,000 submissions, and so we are in the process of going through that. And I certainly do not want to prejudge all of that, but we have our professional staff going, and ultimately the political staff will look at that. And in this last traunch, as you say, there are issues. There are products like cellphones and laptops and the like which have been avoided until now.

I would take a step back, because when you refer to it as the “Trump trade war,” I would say that, as you and I have spoken many times, none of this makes any sense unless you think we have a problem with China stealing our intellectual property. And I would say to those college students, “If China steals your intellectual property, you are not going to have jobs in the future. And what is worse, your children are not going to have jobs in the future.”

So to me, the first question we have to establish is, is China a problem? Is a \$450-billion trade deficit with China a problem?

If you think not, then none of this makes any sense. If you think it does, then you have to do it as cleverly as you can, I would confess. And it is not easy. If you think China is not stealing our intellectual property, then we should not do this. If you think they are not forcing technology transfer, you should not do this. If you think they are not grossly subsidizing and taking over our markets, then we should not do these things.

But to us, we believe that is the case. We think we had an untenable situation with China, one that should have been addressed, frankly, a couple of decades ago. It is a long history of them violating the norms of intellectual property and similar norms, moving forward and making promises and not keeping the promises.

So we are in a position where we view ourselves as having the most serious problem you can face in the trade space with nothing less than the jobs of our children on the line. And if you face that, then there are going to be issues.

Now it is fair for you to say—

Senator WYDEN. Mr. Ambassador, because time is short—I do not take a back seat to anybody in terms of fighting China cheating. The question is how you do it.

Let me get my next question in, if I could. With respect to the Western Hemisphere, Mexico changed its labor laws. That was a good thing. But the key, obviously, is enforcement. And as you know, Senator Brown and I developed a framework that we believe can finally get us enforcement with real teeth that provides resources, technical assistance—and basically it is a cooperative effort to fight against losing out on real enforcement.

And I want to get this right. You and I have talked about it, and we want to do it on labor, we want to do it on environment, and enforcement more broadly. It has been more than 6 months since the President signed the agreement, but the bottom line is, the heavy lifting on enforcement is still ahead.

So my question to you is, for those of us who really want to see a new day in terms of tough trade enforcement, will you commit to working with members of Congress to do whatever it takes—and I want to emphasize “whatever it takes”—to address these core

concerns so that we can say we turned the page and now finally we have trade enforcement with teeth in it?

Ambassador LIGHTHIZER. Yes.

Senator WYDEN. All right. I will quit while I am ahead. I want to emphasize, colleagues, I said “whatever it takes” to get that new day. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Stabenow?

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

Let me first say—and I want to speak specifically first on the new NAFTA, however we call it. There is a lot of work that has been done, but we are not there yet—and specifically on enforcement and labor and environment, and also the access to medicines and the cost of medicine that I want to ask you about.

But I want to just reinforce and hope that you are very serious in response to our ranking member’s question about working with everyone moving forward to be able to fix the things that there are concerns about, specifically Senator Wyden’s and Senator Brown’s efforts around enforcement—which I think are very important—and put forward a good faith effort to be able to finally do something beyond just language, but to actually have enforcement.

I want to ask you though, specifically, about another provision that has not been focused on as much. And that is the provision that relates to the pharmaceutical industry. Because I am very concerned that, while we are debating lowering the cost of prescription drugs—and the President has talked about that—there is an effort going on in this committee and in the House. We know that the cost of medicine has skyrocketed. We pay far more than others around the world for prescription drugs.

What I am worried about is, in the middle of this negotiation—and this is déjà vu all over again—we have a situation where, like Medicare Part D negotiations which were meant to bring down prices, the pharmaceutical industry used their heft to be able to put a ban on negotiation in the middle of that bill.

And so now in the middle of this effort, we see the brand name drug companies, one of the biggest vocal supporters of this agreement, and then we look more closely and we see what I certainly view as a giveaway to the drug companies in the middle of this agreement. These provisions stop competitors from getting cheaper generic drugs onto the market.

I have seen the argument about how we should—this language is supposed to reduce so-called “foreign freeloaders” from other countries, in other words, other countries that have a patent that is shorter supposedly freeloading off of us. But I would say in Canada, where they have an 8-year timeline rather than the 10-year in this bill, the cost of their medicine is about 40 percent less than ours for the same medication.

So I think if, in order to protect the industry, we are actually making it harder and higher cost than Canada, that is not in the best interests of Americans who want very much to have the opportunity to lower prices and have more generic competition.

So is any of the language in this bill going to get us to a point of lower prices, number one? And secondly, are you planning to request the same language as part of your negotiations with the Eu-

ropean Union, Japan, the UK? Are we going to see this effort going on all over the world to protect the patents and the prices for these drug companies?

Ambassador LIGHTHIZER. So, thank you, Senator. I think that is a really excellent question. So let me take a step back and say, so where are we? Since the beginning of having trade negotiations, one of our objectives has been to have other countries adopt—I may have to run over just a second, Mr. Chairman—have other countries adopt our intellectual property laws. That has been the objective in every fast-track or Trade Promotion Authority agreement. It goes back to at least 1888 when the United States joined the Paris Convention. This has been our objective. It is the negotiating objective that this Congress passed when they set it out for us.

So what we do then is, we go around and we try to have other countries adopt our rules. In Obamacare, the Congress passed a 12-year data protection for biologics, right? Twelve years—that is what you passed. That is what was signed into law, and that is what we have in the United States.

We went out and said, “Okay, we should have the same standards like we do in everything else, right?” That is what we do. That is what our objective is. That is what the Congress told us to do. What we compromised on was 10 years, okay? So what we have in here is 10 years. It is 2 years less than in the United States. And this is really an important point, Senator.

There are no provisions in this agreement that will change U.S. laws with respect to pharmaceutical companies. There is no way—

Senator STABENOW. Let me—excuse me—but just in the interests of time, when you are saying it will not change it, it also will stop us changing it in the future. You are putting it into a trade agreement, and I cannot imagine this will not be used as a reason coming back to say that we cannot address lowering prices. We have had a lot of discussions, this committee and the Judiciary Committee, important discussions about patent law and what is happening, and reforms that need to be made. And you are locking in something that I believe is going to stop us from doing what could be done to lower prices.

Ambassador LIGHTHIZER. So on that point, I completely agree with you. What we did is follow our law. We did not change U.S. law at all. And to the extent a member thinks anything in here will stop you or slow you up from changing laws, these laws, then we have to correct that.

I do not believe it does, but I will correct it in a way that you, Senator, say, “You have corrected that problem.” We cannot be in a position where, if the U.S. Congress decides on changing these rules in some way because you think it is good for drug prices, or for any other reason—if you change those, we should not be in a position where that is more difficult or precluded by this agreement.

I completely agree with you, and I think I have to satisfy you on that point, and I believe I will.

The CHAIRMAN. Senator Cornyn?

Senator CORNYN. Mr. Ambassador, how are your negotiations going with the House and the Speaker on USMCA? And when do

you expect the administration will send us that agreement to begin voting on?

Ambassador LIDTHIZER. Well, thank you, Senator. So I have dealt, as members here know, from the beginning with Democrats as much as Republicans, and I have dealt with the leadership in the Congress consistently during the course of this Congress and before. And the Speaker has been completely fair and aboveboard, and I think constructive in the way we have done it. She has put together a group of people.

My point was, I know generally what people want, and I know what we can do. I just need to get somebody who can sit down there on the other side who will say, "Yes, this is enough." And that is precisely what it is. And the Speaker is sympathetic to that, and she has facilitated that, and I think we are making progress in that. And my hope is that, over the course of the next couple of weeks, we can make substantial progress.

So I believe we are on track. I think we are making progress, and I am hopeful on that score. And the Speaker has been absolutely, as far as I am concerned, exactly as you would hope she would be.

Senator CORNYN. Well, I am optimistic that we will be able to vote on that, both in the House and the Senate, and get it done and behind us. I think that would provide a lot of reassurance to the U.S. economy, and I think it would be something very much in our national interest.

Thinking about China now, I know the administration's position, and I think our conversations privately, about TPP and multilateral trade agreements—you and the President have both indicated your preference for unilateral agreements.

But as I think about the challenge of China, it seems to me that we need our friends and allies to work with us to counter China and to get China in a better place. I frankly am going to be amazed if you are able to get them to make structural changes. I hope you are, but obviously their biggest concern as an authoritarian country is about maintaining power. And their economy seems to be slipping and some of the supply chain moving out of China into other countries like Taiwan and Vietnam, and I have to think they must be a little bit concerned about that and want some resolution.

But can you tell me whether you think it is appropriate at some point to revisit the TPP as a way to counterbalance China? It is certainly such a large country with such a large population, it seems to me that we would do better working with our friends and allies than in a unilateral agreement.

Ambassador LIDTHIZER. Thank you, Senator. I would say, first of all, I certainly agree that we are better off working with our allies, and we have. We have a group we call the Trilateral Group, which is my counterparts in Japan and Europe as well as the United States. Three of us get together. We have had eight meetings already. We put out communiqués, and we work together very closely on exactly this notion, on exactly this problem. And the whole purpose of it is to figure out rules and the like, to coordinate with respect to dealing with China.

So that is something that is going on. I totally agree with you. I do not know quite why we do not get the attention to this group. It gets attention when we have the meeting, and then everybody



sort of says, “Ah, you are not dealing with your allies.” And the fact is, I deal with my allies very closely on this.

And there also are state-owned enterprises and nonmarket economy provisions in the USMCA for the first time, serious provisions in there to deal with this issue of China. So I think we are doing a lot with our allies. So that is number one. Number two, on the issue of the TPP, you have heard me say before, number one, I think it is a bad agreement. You literally could have a car that was made 45 percent in Vietnam and 55 percent in China, sold in the United States with no duties. It would qualify.

To me it would be crazy. It would be—and that is just an example. It would be the end of a lot of our manufacturing. I think it was a very bad agreement. It did not deal with currency properly. It did not deal with a lot of things. I think it was a mistake.

I also do not buy the idea that we were going to somehow encircle China in this, what would have been a 12-person group if we had joined it, because China would have joined it. So it would have been like the WTO. So the geopolitical logic did not make sense. It was not a good agreement. And then the final thing I would like to say is, really there are 11 countries in this group. We have FTAs right now, which we will modernize more, but we have FTAs with 6 of them. That leaves just 5. Of the 5 that are not covered, 95 percent of the GDP is Japan. And we are trying to do a deal with Japan.

With respect to the others, the next biggest ones are like Vietnam, which has \$300 billion worth of GDP, as opposed to \$5 trillion in Japan. Now you could say, should you make a deal with these other ones? And the answer is, probably yes. And we probably will get to that.

But I do not think it matters, for example, whether we do a deal with Brunei, or places like that. So I think the President’s strategy of dealing individually with these people is a far better approach, and it is one that leaves you the flexibility of being able to, number one, keep China out of that agreement; and number two, enforce it with respect to that country. So I like where we are, and I think joining the TPP would be a mistake.

The CHAIRMAN. Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman. I actually want to agree with my colleague from Texas on this one point, and the notion that—I want to ask you about wheat. I want to ask you about intellectual property. I want to ask you about enforcement. But I will say that my colleague is pointing out that when you can get everybody else to join you in a rejoinder on something like intellectual property, that could be very helpful to us. And so I think—I hope we can do more of that.

If I could—you know Washington is one of the most trade-dependent States in the Nation. I think we had \$77 billion in exports in 2017, and we helped support over 300,000 jobs in and outside of our State for trade. So it is very important, and I appreciate your hard work on all of this.

My colleagues have brought up the enforcement issue. We worked on getting money into the Customs bill to do more trade enforcement. So what do we have to do? I support my colleagues Senator Wyden and Brown. What do we have to do to get you more

support to build robust capacity with Mexico as it relates to enforcement?

Ambassador LIDTHIZER. So thank you, Senator.

First of all, we appreciate the budget, the \$15 million that are such an important part for us. I would say we are going to spend a fair amount of money that we do not necessarily have budgeted on exclusion. So at some point we ought to talk about that. The exclusions are going to cost me a lot of money. But it is something the members want, and it is something I think that we have to do in any event.

I think in the area of enforcement generally, I would make two points. One, we have brought more cases—and have had more brought against us, in fairness. We have had more litigation in the WTO than anyone, and we have won some major cases, as has been pointed out, including by the chairman, in these two very, very big cases with China. So we are very, very enforcement-oriented.

Also, I would say I brought the only case that has been brought under the Peru Environmental Logging Agreements. I brought a case there. We got a good result in that. So, number one, we need the money. Hopefully, we use it judiciously. I think we do. Two, we enforce across the board. And three, we have to come to agreement with members on plussing up USMCA on the enforcement side, particularly with respect, I would say, to labor and environment.

And I am happy to do that. These agreements are best not only when they have substantial bipartisan support, but also when they have substantial individual member buy-in, right?—when members actually participate in the process.

There has been, as I alluded in my opening statement, a lot of member participation during the course of negotiation. I dealt with the ranking member a lot on that, and I am sure he will acknowledge that. And there are a lot of provisions in there that are there, but I do not want to go across—

Senator CANTWELL. Thank you. Thank you. I appreciate that, and I think the success of the \$15 million should bolster us to want to do more, and I believe there is so much outside our markets, outside the U.S., where we need to support more activities.

I wanted to ask you—obviously, with the region moving ahead on a comprehensive, progressive Trans-Pacific Partnership, Japan doing a deal with the Canadian and Australian markets puts us at a disadvantage. So how are we going to level the playing field there?

And I do want to point out that protecting intellectual property is a bipartisan issue. We firmly believe that China needs to do better on this, that we have to work harder on this. We appreciate the work that is being done on cloud computing. As I said, I would wish that there would be a world rejoinder on this. I think the United States has done best when we have a really bright message that everybody supports around the globe to put pressure on China, but maybe you can update us on what is happening with that.

Ambassador LIDTHIZER. I would say, number one, the TPP is being implemented. It is in that process. The biggest single issue that is troubling to me on that front, in the short run particularly,

is the hit to our farmers, because we are in a position where the Japanese have made agreements with—you know TPP, and you articulated, you are right, it is Canada and Australia (and probably New Zealand) will be the two biggest farm countries that would affect us. They also made an agreement with Europe, which gave away additional agricultural access to Japan.

We are in a position thus where we are treated worse than we were before relative to our strongest competition. And that is an unacceptable situation from the United States' point of view. And we are in negotiations, and I think we are making headway on that score, so I do not want to say much more than that. But I am happy to sit down and go through the details with you privately.

Senator CANTWELL. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman.

Let me just, Ambassador, start with an example that confirms your consultation with us and results. I had brought up with you the TPA provisions that deal with good governance and transparency, anti-corruption, and I want to congratulate you on chapter 27 of the USMCA, and chapter 28 which is patterned after the negotiations we made in TPP on good governance. And I am just very pleased that we had separate chapters in this agreement dealing with good governance and transparency.

And I would just urge you to use this model in any future FTA that we have to make sure that you are complying with the principal trade objectives that we had in good governance. So, thank you. That is an example of consultation with us, and I just appreciate that.

Ambassador LIDTHIZER. Could I just briefly say “thank you” for your leadership in this? You brought this up at my confirmation hearing. You brought it up at the meeting before the confirmation hearing, and you brought it up many times, but this idea of transparency, good governance, anti-corruption, best regulatory practices, this is a very, very important part of this agreement—and I believe as long as we are here, of every agreement. And it is something that will be enforced as we move forward. So I appreciate your leadership on that, Senator.

Senator CARDIN. Secondly, I want to thank you for opening markets in regards to the poultry industry. Delmarva is a principal poultry community, with Senator Carper and Senator Warner and myself. The provisions here on opening markets in Maryland—the chicken industry was \$1 billion in 2017, and Maryland is 9th in the broiler chicken market. We are looking forward to the provisions of the USMCA opening up additional opportunities for our poultry industry here in our State. So I also want to thank you in regards to that issue.

So let me just underscore the point that Senator Wyden made in regards to enforcement. Yes, we are pleased to see Mexico changing their labor laws and moving towards environmental changes. Our observation is that they do not really have the capacity to make this a reality without additional support from the United States. And that is why we look at the Wyden-Brown effort as an effort to make sure that we have meaningful enforcement.

So as you have set up with Speaker Pelosi a mechanism to deal with the concerns that have been expressed by members of the House, recognize that for those of us who really want to support the USMCA, this issue of enforcement is a major issue that needs to be dealt with as we move forward on this process.

Ambassador LIGHTHIZER. Well, thank you. First of all, I appreciate your comments on poultry, and I completely agree with this point. We have to make an effort on capacity building with respect to Mexico. Canada also, I should say, has announced that they are going to do capacity building there.

What I think Mexico does not get enough credit for that they actually did—there are very few examples in history of a country doing what they did, the kind of labor reform. It is really quite amazing when you look at it, an example of which is that they have agreed to have secret ballot votes on their collective bargaining agreements, of which they have 700,000.

Now they took a period of time to do that, but that is an amazing commitment by Mexico, and it is something that we all have a stake in, all of us, in seeing that, number one, we will have enforceable provisions to make sure they do it, and that is what members want. And we will work on plussing those up. And number two, I think you are completely right. We have to have provisions in here where we help them build their capacity to do it.

I certainly have no interest, and I know the President does not—of entering into this agreement which we consider to be historic and having it just peter out in nonenforcement in the future years when we are not here anymore.

So I completely agree with that. I view it as part of our legacy to actually be in a position that this will go on as automatic enforcement.

Having said that, enforcement, as I said before, is about people, right? If you had a bad cop on your street, your law is not going to be enforced. But I certainly—

Senator CARDIN. And recognize that this is the most recent trade agreement we will enter into. It will be used as the model for the next. So therefore, the fact that we have the governance provisions in this agreement will help us, whether it is Japan or EU or Vietnam, to make sure we also have the provisions in regards to enforcement and capacity to enforce as we look at the next country that we would be looking at for an FTA.

The CHAIRMAN. Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman. I just want to echo the comments of the ranking member on the USMCA. We need to have stronger enforcement across the board, particularly on labor and the environment, and I hope we can get there at the end of the day, at least to get this member's support.

But I would like to move to another question. At the beginning of the month, Americans watched as the President fabricated a diplomatic standoff with Mexico, and then reached an agreement that is a slightly modified version of the status quo. If this is the best win the President can get, then he is right about one thing: I am tired of winning. For an entire week, we had the President throw a high-stakes temper tantrum and put tens of thousands of jobs at

risk by threatening tariffs that would raise costs for American consumers and businesses.

And I think, Ambassador, you and I both know that tariffs are just a tool. They can be the right tool in some cases, but they definitely can be the wrong one in many cases. And in my mind, imposing tariffs on Mexico because the President felt they were not doing enough on immigration was clearly—would be—wrong.

So I am trying to understand where we draw the line here. Do you believe it was appropriate for the President to threaten tariffs on Americans because he does not believe Mexico was doing enough on immigration?

Ambassador LIDTHIZER. Absolutely.

Senator MENENDEZ. Absolutely?

Ambassador LIDTHIZER. As you know, this is not my area. I do not get into immigration. And that is another department on tariffs.

Senator MENENDEZ. But you do deal with—

Ambassador LIDTHIZER. But I do—in some cases, I deal with tariffs. But I think from the President's point of view, he had a crisis. It was a crisis. It was building at a very fast pace. Something had to be done. Mexico was not agreeing to do what needed to be done.

I think that—

Senator MENENDEZ. So you believe that absolutely the use of tariffs for a non-trade issue is an appropriate use?

Ambassador LIDTHIZER. I think if you—if you get to the point where you think it is a national crisis, a national security problem, you do what you have to do, absolutely. And I would suggest any member would do that.

Senator MENENDEZ. Let me ask you this. Would it be appropriate for the President to threaten tariffs on NATO countries if he thinks they are not spending enough on defense? If he thinks that is a national security challenge?

Ambassador LIDTHIZER. Well, I mean, that is up to the President. I have not given that a second's worth of thought.

Senator MENENDEZ. Would it be appropriate to threaten tariffs on a country that has not pulled out of the Iran deal?

Ambassador LIDTHIZER. I have not given that 5 second's worth of thought.

Senator MENENDEZ. Would it be appropriate for the President to threaten tariffs if he feels a country is not doing enough to block Huawei from their markets?

Ambassador LIDTHIZER. I have not given that 5 second's—

Senator MENENDEZ. Well, I know you have not given it 5 seconds, but here is the point. We need to know what is the line in which tariffs, which affect markets as well as American jobs—because tariffs at the end of the day are taxes. And they are not taxes paid by the country; they are taxes paid by American consumers and businesses. I would wonder, would you think it is appropriate for Mexico to put tariffs on us because we are not doing enough to stop illegal guns and cash from going across the border?

Ambassador LIDTHIZER. That is a decision that Mexico has to make. I do not know how big a problem that is. It is just not something I study. I am a trade person.

Senator MENENDEZ. But you had an opinion about tariffs as it relates to a non-trade issue.

Ambassador LIDTHIZER. I have opinions about all kinds of things, and I try to keep them to myself and hope that—

Senator MENENDEZ. Well, it would be good, because, you know—I am afraid the President is at the point of, I am going to call him “Tariffs Man.” He thinks that tariffs are the end-all and be-all at the end of the day. And it is a dangerous economic game to play, especially when we are not talking about trade-related issues.

And I hope that internally you will express that, because I know you do not want to express it here, but I could see the response.

Let me ask you, do you think that this action with Mexico makes it more or less likely to get a comprehensive, lasting deal with China?

Ambassador LIDTHIZER. I think it makes it more likely.

Senator MENENDEZ. More likely? Okay, so how is it that you make a deal like the USMCA, and then all of a sudden, for something that has absolutely nothing to do with trade, you get tariffs slapped on you? How does that make any potential trading partner more willing to engage with us if they do not understand actually what type of commitment we will keep?

Ambassador LIDTHIZER. Well, in the first place, I think they do understand. In the second place, to the extent we end up with a secure border, that will make our relationships between the United States and Mexico far better, more prosperous for both of us. I think that is what Mexico wants. I think that is what the United States wants, and I—

Senator MENENDEZ. It is not a question of borders. It is a question of China, Japan, India—you took them off the GSP list. I hope we can work to solve our issues with India so they can be reinstated into the GSP list. But you have to know that if I am a trading partner, I want to have some predictability. And when I make a deal with you and then you start tariffs on me for something that has absolutely nothing to do with trade, then that is unpredictable.

The CHAIRMAN. Senator Portman?

Senator PORTMAN. Thank you, Mr. Chairman. And, Ambassador, thank you for being before us today. There are so many things to talk about.

First, I appreciated the President’s tweet about an hour ago where he talked about meeting with President Xi in G20. And it seems to me he tasked you and your people to do some groundwork prior to that meeting that perhaps can result in getting the 301 negotiations back on track, which I think is very important.

But USMCA is going to be my focus today, because it is so crucial that we get this thing moving. And you have done a good job negotiating an agreement. It makes some necessary updates to the North American Free Trade Agreement, NAFTA.

By the way, the thing is 25 years old. In the last quarter century, a lot has changed in our economy. A lot has changed in terms of our trading relationships. And I think for the most part, the agreement that you negotiated reflects that. And so, although I do not agree with every aspect of it, nor do you, because you had to negotiate it, it is a good agreement. On balance, it is going to be great

for the people I represent in Ohio. Mexico is our number two trading partner. Canada is number one.

And so we very much want to have this agreement. The status quo is NAFTA. I mean, the alternative is, do we move forward with something that is better and improved, or do we stick with the status quo?

The International Trade Commission has now said it will create 176,000 jobs. It will grow our economy. Although some have said, well, it is only going to grow the economy about a third of a point. That is substantial, particularly in a State like mine where these two countries are huge trading partners. And by the way, it is more than the projected GDP growth from the much-touted TPP agreement, as an example.

So this is a big deal. And I think it is a high-quality, 21st-century agreement you brought home. Again, there are some things that you or I might have done a little differently, but that is not our choice. Our choice here is the status quo, which is NAFTA, or this new USMCA.

Let me ask you a couple of questions, if I might. A “yes” or “no” answer would suffice. Are labor and environmental commitments enforceable under the status quo, under NAFTA?

Ambassador LIGHTHIZER. They are not.

Senator PORTMAN. They are not. Okay. Are they enforceable under the new USMCA?

Ambassador LIGHTHIZER. They are enforceable.

Senator PORTMAN. They are enforceable. Okay, that is a big difference. How would you describe these new environmental and labor standards?

Ambassador LIGHTHIZER. The environmental and labor standards are essentially nonexistent in the current NAFTA. And they are quite robust, the most robust we have ever had, in USMCA.

Senator PORTMAN. The most ever of any trade agreement?

Ambassador LIGHTHIZER. That is correct.

Senator PORTMAN. Let me ask you another question. Under the status quo, does the NAFTA contain any provisions related to digital trade or the Internet?

Ambassador LIGHTHIZER. No; there are no digital trade provisions in NAFTA.

Senator PORTMAN. None. None. Even though that is a big part of our trade today. Does the USMCA, the new agreement, contain provisions related to digital trade and the Internet?

Ambassador LIGHTHIZER. It does, Senator. It is absolutely the gold standard, the best—I do not think there is anyone who could point to an agreement that is better than this with respect to digital trade.

Senator PORTMAN. Okay. How about expansion of agricultural products? Because Senator Cardin talked earlier about the opportunities for exporting more poultry, and I am all for chickens. We also export them from Ohio. But how about beef, and how about pork, and how about commodities like wheat and corn and soybeans? Is it better for American farmers under the status quo NAFTA or better under the USMCA, the new agreement?

Ambassador LIGHTHIZER. No, the USMCA is substantially better. There are egg and poultry improvements. There are dairy improve-

ments. There are wheat improvements. There are SPS improvements. There are a whole bunch of additional improvements.

Senator PORTMAN. Let's talk about auto jobs for a second. You come from Ohio originally. Auto jobs are really important to us, the number two State in the country on auto and supplier and OEM jobs. In the past 25 years under the status quo, have we lost or gained auto jobs to Mexico?

Ambassador LIDTHIZER. We have lost a substantial amount of our auto industry to Mexico.

Senator PORTMAN. Will the new USMCA lead to more automotive production and therefore more auto jobs in the United States of America?

Ambassador LIDTHIZER. Senator, it is our calculation that this agreement will lead to \$33 billion in new investment over 5 years, \$32 billion worth of annual parts purchases in the United States, and over 80,000 new jobs just in autos and auto parts.

Senator PORTMAN. Over 80,000 new jobs just in the auto sector. Okay, so our choice is the new USMCA, which may not be perfect for everybody—and sometimes around here we make the perfect the enemy of the good—and the status quo. The status quo is the current NAFTA.

So look, I hope you will continue to work with my colleagues on both sides of the aisle on this. But I could go on and on, from the steel content and labor content and autos, the chapters on intellectual property you talked about, cracking down on state-owned enterprises, currency manipulations—something a lot of us have pushed you on, frankly. And Democrats have been more front and center on that, working with me on that over the years, and I appreciate that, but that is also unprecedented, right, in a trade agreement?

Ambassador LIDTHIZER. That is correct.

Senator PORTMAN. So there are a lot of things in here that, if you compare the status quo, which is NAFTA, to the USMCA, there are huge improvements. So I hope you continue to work with my colleagues who are undecided, because I think a lot of them are truly undecided. They are sincere about trying to get there, and I make this point: this is a choice we have to make here as a country. Do we want to move forward? Or do we want to continue with the status quo that is not going to work for us? Twenty-five years is a long time. Thank you.

The CHAIRMAN. Senator Whitehouse?

Senator WHITEHOUSE. Thank you. Welcome, Ambassador. I am going to ask you about an issue that we have talked about before, which is the problem of the massive international dumping of plastic waste into the world's oceans.

As you know, we are headed for oceans that have more plastic than fish in them in the next few decades if we do not get ahead of this. It has really terrific bipartisan work happening in Congress as an issue. I want to commend particularly Senator Dan Sullivan, who has been the Republican leader on this, not only in the Senate but also knocking on doors, including I believe yours, in the administration to say, "Hey, hey, hey, let's give this the attention it deserves."



I see Senator Portman across the way, who has been an advocate in this area as well. When our bipartisan bill got signed into law, the President went on to some fulsome length about how important this is. “As President, I will continue to do everything I can to stop other nations from making our oceans into their landfills. It is a very unfair situation. It is also unbelievably bad for the oceans. All the time, we are being inundated by debris from other countries.”

Those are all remarks the President made at the signing ceremony. So here we have a big problem, great bipartisan work in Congress, a President who said, “Let’s go,” it seems, and then I read from Nairobi, from the Kenya Conference, “U.S. accused of blocking ambitious global action against plastic pollution.”

Then I went on a bipartisan codel to the Arctic and heard from governments in the Arctic that the U.S. is the slow dragger on their efforts to improve plastic and this problem—the Arctic being a particularly vulnerable ocean.

Then I read from the G20: “Agreeing on a common approach to the problem has proved problematic with the United States blocking demands to set a global target to significantly reduce or phase out single-use plastics.” I asked Secretary Pompeo about this just recently, and he said—it was at a hearing right in this room, no it was a different room, but a hearing of the Narcotics Caucus—“This is important,” he said about getting the marine plastic debris problem solved. “This is a priority. I hope my team is not dragging their feet. We ought not be doing that. And I will do more than discourage it, if in fact I find that is the case.”

So I get these great statements from Trump administration leaders, including the President himself, about how this is a big priority. What more can I do to have this filter down to the people who are in the room in Nairobi dealing with the Arctic nations and showing up at the G20 who are dragging on progress in the name of the United States?

I am at a loss as to where to go, when we have the Secretary of State and the President saying this is power-forward on this issue, when I have a Congress all around me that is saying, “This is important to us, this is bipartisan,” and somewhere it all evaporates in these negotiations overseas. And where it comes into the USMCA is that it completely explodes the credibility of the language in the USMCA about a common effort with what the agreement calls “marine litter,” when behind the comments that I have seen publicly there is such weak effort, where the people have to be dragged along instead of being the ones who are leading.

So what more can I do? I am at a loss here.

Ambassador LIGHTHIZER. I would say first of all, like Secretary Pompeo, I completely agree with you. I think that USMCA is the first agreement that really has this in it. I will certainly ask Secretary Pompeo. I was not in the room in any of the Nairobi—I have never been to Nairobi. But I am very concerned about this issue. That is one of the reasons that it is in there. And I think there are other things that can be done outside of the realm of these international obligations, more in a unilateral way, and I would like to sit down and talk to you and Senator Sullivan about it.

I think we—I am very focused on this. I think it is a travesty. It only comes in a few places, or at least—

Senator WHITEHOUSE. Five countries and nine rivers.

Ambassador LIGHTHIZER. Yes. The whole problem, though, notionally goes away certainly if you take care of eight or nine rivers, and I think that we ought to be thinking about whether or not there is some more novel trade remedy that we ought to at least try. And I have been trying to cook one up. And when it is to the point where it is only slightly underdone, I would like to sit down with you—

Senator WHITEHOUSE. My time has expired. Let's continue the conversation. I know you have asked for a meeting, and I have said "yes." We will schedule that. We will see what we can do. It is intensely frustrating in our very politically divided country when we produce the kind of bipartisanship we have produced, bicameral bipartisanship that we have produced on cleaning up this mess, when we have the kind of positive statements we have out of the President, out of the Secretary of State, and now out of the Trade Representative, and at the same time every time this issue turns up, we are the ones who the rest of the world sees as dragging against progress instead of leading progress.

So thank you.

The CHAIRMAN. Senator Casey?

Senator CASEY. Mr. Chairman, thanks very much.

Mr. Ambassador, good to see you and great to have you here. Thanks for the hard work you are doing and for staying in touch with us.

You will not be surprised that I am going to be raising the issue of enforcement. I know you spoke to that, both in your testimony and I am sure otherwise today. I wanted to start, though, with a reiteration of my support for the labor and cooperation enforcement framework that two of our colleagues proposed, Senator Wyden and Senator Brown, Senator Wyden being the ranking member of the committee.

Just by way of a quick summary: increasing the number and training of enforcement personnel; number two, U.S.-provided capacity building and joint initiatives to promote the enforcement of internationally recognized labor rights; and also working together to audit and inspect facilities, all of that which I know you are aware of. I just wanted to put that on the record, just for emphasis.

I will start today, Mr. Ambassador, with an acronym and a description. The acronym is ILAB, known as the Bureau of International Labor Affairs, in our Department of Labor. Here is what their website says in terms of the mission of this bureau.

In the general description of their work, they say, and I am quoting, "ILAB's mission is to promote a fair global playing field for workers in the United States and around the world by enforcing trade commitments, strengthening labor standards," and then it goes on from there. Then there is a section entitled "Our Role." It says: "ILAB promotes a strong U.S. trade policy by"—the second bullet under that on the website is, quote, "enforcing the labor provisions of U.S. free trade agreements and trade preference programs."

I mention that because last year, meaning the fiscal year 2019 budget, that bureau had a budget of \$86.1 million in funding. The

President's budget proposal asks for only \$18.5 million. Even I can do the math. That is a \$68-million cut, a 78-percent cut.

And I know you care about these issues. I know you care about enforcement. But when you see that kind of a cut based upon the mission and the work of that bureau, how can workers in my home State of Pennsylvania or any other State trust that the administration is serious about labor enforcement when the President's budget cuts that bureau by 78 percent just from one year to the next?

Ambassador LIGHTHIZER. Well, I would let you know that I do not know much about the Department of Labor's budget, although I have been in rooms where this particular issue was raised on a few occasions. And I guess the first thing I would say is that, as I understand it, the same thing was true last year, and the Congress put the money back in, and that is why you have the \$86 million. And I cannot second-guess the budget. I do not know anything about how they put budgets together.

One of the nice things about USTR is our budget is so small, substantially smaller than ILAB's budget for my entire operation, but that is probably another issue. It is my commitment, and the President's commitment, that we are going to enforce the labor provisions in this agreement and all the other agreements, but in this agreement specifically. And I think we will come to a way that we can do that by working with members and compromising on both sides.

The actual ILAB budget, I just do not know much about it.

Senator CASEY. And I take you at your word. I would ask two things. One is that you raise this with the administration, that it is important that if they are going to talk about enforcement administration-wide, they've got to have the numbers and the budgetary support for that. Because dollars matter. I know a good bit about government at both the State and Federal level. Dollars matter when it comes to enforcement.

And secondly, that you would make sure that this becomes a major issue, not just in the context of this budget in this particular department, but also to keep pushing forward with the proposal of Senator Wyden and Senator Brown. And I know you have considered that seriously.

Just a last question. Maybe I will also submit it for the record so you can answer it more fully, but I did want to ask you a question—and I will submit it in writing, but just to give you a preview—about the engagement that you have undertaken in the context of China and 301 with regard to our European allies and other allies where we can build a strategic partnership in the context of the 301 investigation.

I wanted to get your summary of what you have been doing on that, because I think one of the problems we are having now is, it does not seem like we have a multination or multistate strategy. But I will leave that for days when I have more time, and I will submit it in writing.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cassidy?

Senator CASSIDY. Ambassador Lighthizer, thank you again. You have made yourself so available. We have talked about the ISDS, or the Investor State Dispute System, under a previous phone call.

And I thank you for that, and I look forward to kind of pursuing that with you. You have made your views clear.

I do want to ask one point of clarity. I have heard two different things. I have heard that if you contract with the Mexican Government, you do have access to ISDS. I have also heard that if you contract with a state-owned enterprise of Mexico, you have access to ISDS. Which of those is it?

Ambassador LIDTHIZER. If the SOE is acting as an instrumentality of the government, then you would have ISDS. If it is not acting as an instrumentality of the government, then you would not. Then you would have what was otherwise worked out. That is to say, if there is an actual expropriation, if there is a denial of MFN, or a denial of national treatment, you would still have that access. But you would not have the old ISDS in that case unless the state-owned enterprise was acting in the place of the government.

Senator CASSIDY. Got it. And I assume that there is some way to differentiate that? That the contractual language would indicate that? Because it seems like that could be nebulous.

Ambassador LIDTHIZER. Well, some of these things I suspect will be resolved in litigation, right? I mean that tends to be what happens in these narrow cases.

Senator CASSIDY. Okay.

Fertilizer: EU has duties on our fertilizer. We kind of let them come in to the degree that they produce them. We let them come into our country pretty freely. One of my constituents recently submitted a 301 public comment requesting that nitrogen fertilizers be added to the list of EU imports subject to retaliatory duties.

And I am told they impose a duty of 6.5 percent on our nitrogen fertilizers. They recently imposed an antidumping duty on imports of urea ammonium nitrate fertilizer, making a total import duty level of over 29 percent, obviously prohibitive, as you can imagine, prohibitive for U.S. urea ammonium nitrate exports.

Any thoughts on that?

Ambassador LIDTHIZER. Well, first of all, when an antidumping case is brought, we will challenge that at the WTO if we do not think it was properly brought and followed the international norms or their commitments.

The issue of whether we can add to the list of items that we are going to retaliate on in the Airbus case is something that is under consideration. We have hearings on that. We cannot make a decision on that until we get a decision from the arbitrator on what the amount is. But I am aware of your interest in this area, and doing something in the area of fertilizer is certainly something that we will consider. But it will depend, one, on the extent to which we can retaliate—and that is up to an arbitrator at this point—and then, two, when we take the action.

But it is one of the—there are a bunch of things under consideration, and certainly this is one of them, Senator.

Senator CASSIDY. Thank you. Last, I want to bring up counterfeits, and according to your office, imports of counterfeit and pirated products were valued at approximately half a trillion dollars, or 2.5 percent of imports around the globe. And many are sold online from seemingly reputable and well-rated third-party vendors and

sold on well-known online sites. And yet, although difficult to spot, they can likewise have a lot of, aside from lost revenue for the company who owns the patent or intellectual property, there are other problems, for example, such as chemical burns, lead poisoning, breaking of products, and children swallowing them, et cetera.

Knowing that you have taken an interest in this, can you kind of give us an update on what your efforts and policies have been regarding anti-counterfeiting?

Ambassador LIGHTHIZER. First of all, it is a huge problem. And I suspect that if we actually had better inspections, the number would be far bigger than even your figures indicate. Because when you see the few times when they have actually done studies of this, where they have kind of taken products apart during a brief period of time and saw what was inside, the numbers are generally higher than that.

What we have in our arsenal, one, is we have a notorious markets list which we put out. But it is more in the nature of public shaming than it is anything else. Two, we have Special 301 where we can take actions against countries. But certainly any time you can see a pattern in this area from a country that we can prove, we are interested to try any kind of a novel idea. It is a huge problem.

The administration, I should say, also is looking at it—not necessarily just my office, but looking at some other things like the postal regs and the like to see if there are ways we can actually start doing a better job of this. And it is, I would say also, in the USMCA. We have substantial improvements in this USMCA. And for someone who really cares about counterfeiting, this is even another reason to bring it. We have what is called ex officio authority given, which means that the Canadians and the Mexicans would then be required to stop the counterfeits that come in often from China, for example, in through them.

So we have a very robust provision in this area in USMCA.

Senator CASSIDY. In my conversations with the Mexicans, they also like to have provisions. I yield back, thank you.

The CHAIRMAN. Senator Lankford?

Senator LANKFORD. Mr. Chairman, thank you very much.

Bob, it is good to see you again. Thanks for the ongoing work. There is a great deal that needs to be done on the USMCA. This is a situation where we have NAFTA and we have USMCA, and those are the two options sitting in front of us. And we have to be able to determine which one is the better option.

From every appearance that I have and what I have seen, the USMCA is a much better deal than what we have currently with NAFTA, but I am looking forward to the ongoing conversation with this.

Help me understand one section of it. What do you see on the future of autos? I know there has been a lot of focus on trying to get auto manufacturing in North America, but I want to focus specifically on what the effect will be of the USMCA on auto exports outside of North America, for parts supplies, materials, finished products that we produce in North America and then ship in different countries that pick up. What do you think happens in that, based on this agreement?

Ambassador LIDTHIZER. So I would say, first of all, thank you for your comments. Secondly, I think the auto sector is among the biggest beneficiaries of this agreement. By the way, it is one of the ones that has lost the most because of NAFTA. So this is just a huge—for people who care about autos and auto parts, this is a huge improvement.

This agreement, in and of itself, will make it easier to export to Mexico and to Canada. The reality is, we do not export a huge amount to Mexico. We do export some.

Senator LANKFORD. I am thinking about exports outside of North America.

Ambassador LIDTHIZER. Outside of North America, the way it will principally affect this is, you are seeing substantial new investment in North America in a whole variety of States, some in the northern tier, but a lot of it in the southern tier of the country. All of those plants that will be meeting the new NAFTA requirements—that is to say, have higher U.S. content and more production in the United States—all of those plants will be able to export more easily just through their own efficiency.

And I will give you an example of that. BMW is one. BMW is one of the biggest, forget auto—one of the biggest net exporters in the United States is BMW. And they are substantially increasing their plant for a lot of reasons of efficiency. And that will make them even a bigger exporter of automobiles.

Senator LANKFORD. So let me ask this, because NAFTA has worked pretty well, on ag in particular. What does USMCA benefit the ag community on that is different than NAFTA? What is the greater benefit? Just give me one or two examples.

Ambassador LIDTHIZER. So, well, I mean one would be in the wheat area. We corrected the bad wheat labeling there. Number two, they have up in Canada what is called “Class 7” and “Class 6,” which are limitations on our exports. They have had a devastating effect on our dairy provisions, and I would say if you asked what I was most lobbied on by members, before we fixed it, I would say it was the way they treat our dairy.

I mean, I had Senators from all across the country very, very concerned about that. So there is wheat, there is dairy, and—

Senator LANKFORD. Both of those are Canada-related?

Ambassador LIDTHIZER. Pardon me?

Senator LANKFORD. Both of those are Canada-related, the wheat and dairy?

Ambassador LIDTHIZER. Yes. They are both Canada. They also are—these are the best provisions on SPS. We have a provision that solves the discriminatory action against U.S. wine. We have limitations on how the geographic indications are used against the United States. We just—you know, there are rules for the first time, really, on biotechnology and approving new biotechnology. It is a remarkably better agreement. And I should say, that is even given the fact that agriculture did relatively well under the old NAFTA.

Senator LANKFORD. So let me ask you one more question on USMCA, but before I run out of time, I want to mention to you again how important the 301 exclusion process is to me. I know you are working on this, and we talk about it often.

But for those who have been through List 1 and 2, their exclusions are coming up. I would hope that there would be a way to be able to rapidly renew those exclusions that they already have from List 1 and 2, and for List 3 that that is happening to get to the exclusion process rapidly. Which again, the first time, the first round in going through List 1 and 2, took 8, 10 months on some products. This is a much larger list for List 3, and I would just hope they can—you and I have talked about it before; we can go from there.

Let me ask you about the digital trade provisions, though, in the USMCA. The digital trade provisions—are they similar to what we are seeing in the Pacific Rim and the TPP and what they are already putting into place protecting Customs duties on electronic products, source code protections, and such? Are those similar to the TPP provisions, what we are putting in the USMCA just for digital trade?

Ambassador LIGHTHIZER. So I would say, in every respect they are plussed up over TPP. They are a better agreement than TPP. Obviously, there are no agreements in NAFTA, but under USMCA we plussed it up in every case.

And the reason we could do that, in reality, was because we had the benefit of TPP. So we knew what was in there, and we plussed it up and used the leverage of these negotiations to get a better agreement.

So source codes, for sure—data flow, data localization, all of these provisions. And Senator Wyden is like the world's leading expert on this, and he is going to endorse my comments. This is better than TPP in all of these respects.

The CHAIRMAN. Senator Daines?

Senator DAINES. Thank you, Mr. Chairman. Ambassador Lighthizer, it is good to have you here today. I want to tell you that I very much appreciate your leadership and the President's leadership on China and holding them accountable.

I also want to thank you for your efforts to modernize and improve our trade agreements. As you know, our number one economic driver in Montana is agriculture. Opening these new markets for Montana agriculture, also energy, including coal exports—and I will talk about that in a minute—as well as our outdoor economy, are absolutely essential for our jobs and our State's economy.

And advancing USMCA is critically important, and it needs to get done this year. But we are not operating in a vacuum, and we are losing ground against many of our competitors in critical markets like Japan. So I want to pivot over and talk about Japan here for a moment and ask some questions on it.

You have previously highlighted your goal of quickly reaching an agreement with Japan, potentially in a two-stage process. A question is, where do negotiations stand? And what timeline are you looking at for a possible agreement with Japan?

Ambassador LIGHTHIZER. So thank you, Senator, first of all for your comments on the importance of USMCA. Secondly, with respect to Japan, one of the biggest beneficiaries of our actions with Japan will be of course the beef industry, but also pork and some others. And they are also the ones that are most at risk if we do

not do something, because of the fact that Japan has entered into agreements with TPP.

Senator DAINES. We have about three cows per person in Montana. That is music to my ears.

Ambassador LIDTHIZER. Right.

Senator DAINES. We would like to ship more of them over to Japan.

Ambassador LIDTHIZER. We want to get more of them to Japan. So we have had a series of negotiations, including at the staff level and at my level, last week. We are going to meet again during the course of the G20, on the side of the G20.

I will talk to you privately about who said what to whom so that you have full information. I will not say it here publicly. But I think that we are making headway. And we are in a situation where, if we do not make headway quickly, people will lose customers and never get that market share back.

So it is a serious thing. The Japanese are fully engaged. They understand what needs to be done. We have been quite clear about it. And my hope is that, just in the next few months, we will have an agreement on it.

Senator DAINES. Thank you. And you are exactly right. Our ag folks, particularly, are concerned about losing share in this kind of zero-sum game.

To follow up on that, do you intend to pursue negotiations with Japan consistent with TPA authority so that we would have a congressional approval as part of that process?

Ambassador LIDTHIZER. So what I have proposed doing is to try to take care of a couple of the issues, particularly agriculture, early. Because if we do not, we do not want to wait the length of time for an entire negotiation. Beyond that, we want to negotiate across the board with the Japanese.

Senator DAINES. So regarding Japan and coal exports, Japan has expressed strong interest in more U.S. coal. In fact, according to the World Energy Outlook, Japan and Korea will remain 100-percent reliant on foreign coal imports until 2040.

Now a lot of their coal is coming from the south, Australia and Indonesia. It comes to the South China Sea. And I can tell you that the Japanese have voiced their concerns directly to me about the fact the coal is coming through the South China Sea, the concerns about the militarization of the South China Sea. We have very clear shipping lanes from our West Coast over to Japan. They want more Montana coal. They want more Powder River Basin coal. That is very good for our State. It is very good for jobs. It is very good for Montana's Crow Tribe, as well as overall energy security. However, our current export capabilities are at capacity, and we are struggling to get more out due to Washington State. The State of Washington is extreme in job-killing permitting processes.

My question is this: as negotiations with Japan are ongoing, could you commit to ensure that coal and other U.S. energy exports are on the table and to work to increase coal and energy exports to the Asia Pacific region?

Ambassador LIDTHIZER. Yes, I certainly will. And not just in the negotiations. I will raise it personally with my counterpart, but as you know, the President focuses a lot on coal sales and a lot of



other sales too, but I will certainly remind the President about this as we head over.

Senator DAINES. Thank you. One quick question on polysilicon. The U.S. polysilicon industry has been targeted by China, and retaliatory tariffs are threatening manufacturing jobs at REC Silicon in Butte, MT.

Ambassador Lighthizer, is removing these tariffs on U.S. polysilicon a priority? And will you work to address them as these negotiations with China continue?

Ambassador LIGHTHIZER. Yes. It is something we have raised on numerous occasions and will continue to raise. You know the background of it. There is what we think of as an unfair kind of retaliatory antidumping case that was brought against those products by the Chinese, and it is something that we have raised and will continue to raise. And if we find ourselves with an agreement, then we would expect this to be part of it.

Senator DAINES. Thank you.

The CHAIRMAN. Senator Cortez Masto?

Senator CORTEZ MASTO. Thank you. Ambassador, it is good to see you. Thank you for being here.

Let me just echo the comments of my Democratic colleagues when it comes to the USMCA. We want to work with you. We want to get to a positive outcome. But clearly more work needs to be done, as we have discussed here today. And it seems to me that both parties in both chambers very much want to reach this deal.

I hope that you and the administration will work to incorporate the Brown-Wyden labor enforcement proposals and other changes to make the agreement as good as it needs to be for the American workers, and to ensure it gets broad bipartisan support.

Ambassador LIGHTHIZER. I mean, I am not endorsing any proposal specifically, but I will certainly work with Senator Wyden and Senator Brown and other members who have a particular interest in this area, and I have every expectation that we will come to a conclusion that will be satisfactory to you, Senator.

Senator CORTEZ MASTO. Thank you. I appreciate that.

Let me jump to trade with China. Outdoor recreation is a critical part of Nevada's economy, supporting 87,000 direct jobs. It generates \$12.6 billion in consumer spending, \$4 billion in wages and salaries, and \$1.1 billion in State and local tax revenue.

Many of the outdoor products used by Nevadans and outdoor enthusiasts have been hit by tariffs if they are sourced from China, such as backpacks, sports bags, leather ski gloves, camp chairs, camp stoves, and bikes. The next round will deal another blow to the outdoor recreation economy targeting apparel, footwear, tents, sleeping bags, skis, snow boards, and other sporting goods.

These products have already faced import tariffs on average of about 14 percent, and as high as almost 40 percent. Additional tariffs significantly raise costs of our companies and consumers, putting jobs and new outdoor gear at risk and impeding the ability of more Americans to enjoy the great outdoors.

Ambassador, what is your assessment of the impact of the China 301 tariffs on companies whose products already face significant import tariffs? And what opportunities do these companies have to seek relief?

Ambassador LIGHTHIZER. First of all, as you know, we have several tranches. The last tranche is the biggest tranche. My guess is that that is where most of the outdoor recreation equipment is, and we have hearings going on that started yesterday, and there are 7 days of hearings. They finish next Tuesday.

So when you ask what opportunities they have, I am sure they are testifying and sending in statements and trying to make their case as well as they can on the impact. And number one, there has been no decision made as to whether to put tariffs in place with respect to that last tranche. The President will make that decision at some point maybe in the next few weeks, and I cannot of course prejudge that.

I would say in every case we try to figure out ways to minimize the effect in the U.S., and I think part of it is the exclusion process that Senator Lankford talked about. But there are a lot of other things that we are trying to do to try to make this as painless as possible.

But it is, in the final analysis, painful, and you have to start with the proposition that what we are facing with China is worth having some discomfort on the U.S. side of it.

Senator CORTEZ MASTO. So what do I tell these companies?

Ambassador LIGHTHIZER. I'm sorry?

Senator CORTEZ MASTO. What do I tell these companies?

Ambassador LIGHTHIZER. Well, hopefully they are testifying and they are making compelling arguments, number one. Number two, there is an exclusion process where presumably they go through the same sort of thing and they make their kinds of arguments. And that is looked at by our professional staff, and we have, I think, been fair in terms of granting exclusions in situations—

Senator CORTEZ MASTO. And I appreciate that, but my understanding is, and correct me if I am wrong, tranche 4 included billions of dollars of goods that had been removed from earlier tranches following a comment and testimony by the public and detailed analysis by your staff. So companies who won these removals now are having to file comments all over again.

And that is why I am getting the questions from the companies. At what time does it stop? What type of relief do they have? Is this something that is going to just continue on a whim? What type of policy should they be looking towards with respect to their companies?

Ambassador LIGHTHIZER. So we are involved in a very difficult trade struggle, which I think is extremely important to the U.S. economy, and that is whether or not we are going to protect intellectual property and the jobs of the future, and even our current jobs. And it is impossible to predict when that will be resolved.

But I think it is such an important issue, it is one that not only do we have to engage in, but should have been engaged in for decades before. And it was to the shame of all the people who had these kinds of jobs, and I would say members, as well as us, that we have not focused on this issue enough. And there are issues that will come up with it, and we are trying to make them as small as possible.

What we have seen in many cases is people moving the manufacture of these products out of China, in which case there is no prob-

lem. Another option, of course, is to move the manufacture of these products to the United States, in which case there are no tariffs and no threat of tariffs.

So I would say in the long term, if I was in this business—I cannot predict what the United States is going to do, or whether we are going to be able to resolve this issue with China. My hope is that we can. But if we cannot, if I was in that industry, I would decide on other options down the road, and hopefully including bringing some of the production back to the United States.

The CHAIRMAN. Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

Ambassador, we have had many conversations about these subjects in the past, but I would reiterate what my colleague just said about an exclusion process that actually is workable and useable for some of these companies.

We have companies in my State of South Dakota—I think you are probably familiar with Polaris—that are just getting hammered, that do not have opportunities to shift supply chains and are paying a dear, dear price in the form of impact, not only in their business but I think long-term on their future and the future for their employees.

This has got a—you know, having an exclusion process in place that is useable for these manufacturers who are being harmed, and in some cases harmed greatly, needs to be addressed. And there are so many of these unintended consequences, I think, of some of the trade policies that are in place right now. I mean, I was in a small town in South Dakota on a main street, stopped into a meat locker, and the guy says, he says, “Yes, you need to get this deal with China fixed.” He said, “I used to have somebody who would pay me \$150 bucks a hide to haul my hides away.” He said, “China was buying them. There was a demand for them.” Now, he says, “I have to pay \$600 to have somebody haul them away because that market closed off.” And, he said, “It is costing my business \$40,000 a year,” which in his business is probably the margin.

So there I would just convey to you the sense of urgency associated with at least—as we continue this fight with China—putting in place a process that would be useable and navigable for our companies.

Let me just ask too, because I know you have answered this question probably at some length from some of my colleagues, but on this issue of submitting the implementing legislation, I know that you are working with the House leadership to try to come up with something that would be, in the end, something they could agree to and that would be passable. But at what point, if you cannot reach that deal, might you submit implementing legislation so we can at least get the clock moving?

I mean, I assume you are in those negotiations. Hopefully they are making progress. But I am concerned, and I think a lot of us are, that if we do not start making some headway on this deal, that we could end up getting into the fall or into next year where it gets increasingly complicated, I think, by election-year politics.

Ambassador LIGHTHIZER. Well, thank you, Senator. Yes, certainly, number one, we have a process that is ongoing, and I think we are making progress. And it is certainly my hope, as I have said

many, many times since the very beginning of this, that this has been negotiated in a bipartisan way. Many members have many, many provisions in here that we have adopted that are in this agreement one way or another. So there are members who have a major stake in it on the Democratic as well as the Republican side.

The Speaker has put in place a process that we are working our way through. We certainly agree with you that we want this to be dealt with as soon as possible. The benefits of the agreement are being delayed by delaying on this, and you are also putting in place this risk of, I call it sort of the accidental cause: if something happens that has nothing to do with anything anybody is contemplating and it has some impact on the passage of this, because this is really important to millions and millions of American jobs. It is not just a small FTA with some country that people have never been to. This is \$1.3, \$1.4 trillion worth of trade.

So in terms of the deadline, and I do not want to set a deadline, there clearly is an urgency, which I completely share with you, that we have to get this done. And I would say I see no reason to believe that most of the people I am dealing with do not sense the same urgency. They want to get it done. It has been around for awhile. It was negotiated 9 months ago. People have had access to it for 9 months. And so it is important that we do it quickly.

Senator THUNE. And just to—again, one of the big concerns I would tell you from farmers in my State is that we risk permanently losing market share if we do not get some of these deals done. And I am speaking not just of Canada and Mexico, but of course China. And I know that you have indicated that you are working on other bilateral deals. I would urge you to continue to push hard to get a deal with Japan. That is a huge market for South Dakota agriculture.

But I think that if we do not, other countries are going to leapfrog the United States and build on these free trade networks, and our producers in my State and across the country are going to continue to lose market share.

So I know my time has expired, but please keep working urgently to get these deals done.

The CHAIRMAN. I think if we can get the last three in, we can get everybody accommodated before the vote ends.

So, Senator Carper?

Senator CARPER. Thanks.

Ambassador Lighthizer, welcome. Thank you and your team for working so hard on this agreement, and I think there is a lot of eagerness on our side to work with you to improve the renegotiated NAFTA agreement and try to get to “yes.” There are a couple of areas where we still have some work to do. We talked about some of those today, and I want to mention them as well.

I am the ranking member of the Environment and Public Works Committee in the United States Senate. And as a result, the environmental chapter, as you might imagine, is of special interest to me and to my colleagues on that committee.

I want to thank you for the outcomes in the environment chapter that are an improvement over the current NAFTA. I will mention a couple of them, including the obligation to eliminate fishing sub-

sidies. And also the cooperation framework between countries in the new agreement, we believe is also improved.

Of course the goals of these obligations are not going to be met without sufficient monitoring, cooperation, and resources. And we do not want the enforcement of the environmental obligations to get short shrift. I suspect you do not either.

I do not normally ask “yes” or “no” questions, but I am going to ask two of them. And you do not have to do much more than say “yes” or “no.” So here we go.

Will you pledge to work with this committee, with me, to identify where there may be gaps in the resources that are currently available for monitoring and enforcement of the environmental obligations?

Ambassador LIDTHIZER. Yes, Senator.

Senator CARPER. Thank you. And also would you pledge to work with us to determine ways in which domestic stakeholders can be partners with the government to monitor what is happening on the ground, and to ensure enforcement of the obligations in the environmental chapter?

Ambassador LIDTHIZER. Yes.

Senator CARPER. Thanks so much.

My second question revolves around USMCA dispute settlement. The state-to-state dispute settlement system in the new NAFTA continues to allow for panel blocking; that is, as I understand it, the main reason a dispute settlement panel has not been established since maybe the early 2000s. The Trans-Pacific Partnership made changes, I believe, to fix panel blocking, but these improvements were not included in the new NAFTA.

From the Statement of Administrative Action the administration sent to Congress, it appears that the White House plans to use section 301 tariffs to unilaterally enforce USMCA provisions when a dispute occurs. I would just ask if you could explain to us briefly why using section 301, which would very likely invite retaliation from Canada and Mexico, is preferable to a binding dispute system that does not allow panel blocking?

Ambassador LIDTHIZER. Well, thank you, Senator. First of all, I would point out the obvious. And that is, that panel blocking is permitted under the current NAFTA as well as under USMCA. So anyone objectively looking at distinguishing between the two and deciding to vote against the second because there is no improvement from the first, could find that.

So what we did is, we kept the current provision. Now, why did we keep—let me say first of all, you are right that there have not been any in a while in this context. The reason for that is, people have tended to go to the WTO to enforce those rights. And there have been a number of WTO cases.

So second, why did we not make that change? Our view is that we can enforce our laws in the rare circumstance where there is a blockage by using our unilateral law under 301; 301 says you should go to the international organization or the agreement for enforcement, if there is a violation of a trade agreement, or the WTO in this case. If the other side blocks, the position you would take is that, thus, you have exhausted your remedies and therefore you could legally use 301. So that is like the nature of it.

And why did we do that? Number one, we think it will be very rarely used. But in a situation where, for example, someone challenged the trade laws of the United States and made some argument about that, about the viability of the trade laws, you would want to be in a position where you could preserve your rights.

But this is something I am perfectly happy to work with members on and see where members draw their line. It was clearly a U.S. ask. It was not an ask from the other side. The other side, since they had signed up in TPP, presumably would be willing to go along with it.

Senator CARPER. All right. And with respect to China tariffs, we have heard—I suspect all of us on this committee have heard from constituent companies in our own States who have spent a fair amount of time and money trying to navigate the process for securing a product exclusion from the President's tariffs.

And members of this committee have tried repeatedly to get answers from your staff on how USTR defines, prioritizes, and weights the criteria for obtaining a product exclusion. I have not received answers that are deemed to be satisfactory. I just wanted to ask if you would commit to us today to consulting closely with this committee, its members, including my office, as USTR develops its process for excluding products from the \$200-billion List 3 tariffs. In particular, I want to make sure that the USTR is transparent in how it defines, how it prioritizes, how it weights the criteria for getting the product exclusion, especially since, unlike earlier lists, very few, if any, products on List 3 are related to “Made in China.”

The CHAIRMAN. Senator Brown?

Senator CARPER. Could you say “yes” or “no”?

Ambassador LIGHTHIZER. Yes, Senator.

Senator CARPER. That was a good answer. Thank you.

The CHAIRMAN. Senator Brown?

Senator BROWN. Thank you, Mr. Chairman. Thank you, Ambassador; good to see you again.

I want to focus my questions on China, but I want to make one comment on NAFTA. I have said it before. I will say it again publicly and privately to you. I want to get to “yes,” but it has to be good for American workers. We cannot just change the name of an agreement and expect it to stop jobs leaving Ashtabula and Mansfield and the industrial Midwest and going to Mexico. We need to make sure the agreement has strong anti-outsourcing provisions and that they are enforced better than before.

Ranking Member Wyden and I have an enforcement proposal that many of you on this committee have mentioned that will do that. I look forward to working with you to get it incorporated. I know you said to Ranking Member Wyden that you would do whatever it takes, and that is good to hear. Thank you for that.

China—I want to turn to China. I have been concerned about China's unfair trade practices for, frankly, 20 years, as a member of the House and Senate. We know the way China cheats: huge subsidies, state-owned companies that do not act like companies at all. Their industrial policies urge global domination. Their workers cannot join independent unions to fight for higher wages.

We know the costs our economy has suffered. We know how many jobs have been lost in Ohio, the industrial Midwest, and all over the country. Our manufacturers of clothes have struggled to compete. So I am supportive of any and all efforts to get tough on China, but we need to see results. And I am worried we do not have a plan B.

So my questions—if you can get as close as possible, because of the crunch of time, Mr. Ambassador, to a “yes” or “no” on these.

China’s state-owned steel enterprises account for 8 of the 10 biggest steel producers in that country and are a big part of the steel over-capacity problems. If the talks with China do not succeed, do you think tariffs by themselves will force these SOEs to stop cheating?

Ambassador LIDTHIZER. You know, I cannot answer that “yes” or “no,” so can I give a regular answer, or do you want me—

Senator BROWN. Sure.

Ambassador LIDTHIZER. I could pass, if you would prefer. And given the shortness of time, I am prepared to pass. I do not know if it will get them to stop cheating, tariffs alone. I think you do not have any other option. I know one thing that will not work, and that is talking to them, because we have done that for 20 years. And I know you agree with me on that.

So if we do not get an agreement, then we have to do something. And if there is a better idea than tariffs, I would like to hear it. I have not heard it. But I do know that you and I agree that just chatting with them in a dialogue is not going to get them to change, because that has been proven to be unsuccessful.

Senator BROWN. Well, and I know you care about that. I know you care about wages, wages for Chinese workers and the impact that has both on their country and what impact it has on our competitiveness with them. But I am just concerned that there is no plan B. Has the President really established a strong coalition of other countries that will work with us to force China to stop cheating if our bilateral efforts fail? Have we done that?

Ambassador LIDTHIZER. Of course we have. We have a coalition. We have a coalition, which is called the Trilateral Group—not the Trilateral Commission, the Trilateral Group—and it is the United States, Europe, and Japan. And we have met a number of times to deal with exactly this issue.

We have put out statements. We have had eight meetings. We will continue to have more. I think it has been very effective. So the criticism that we have not put together a group is an erroneous criticism.

Senator BROWN. Well, it did not exactly start out that way, but I do not want to argue—

Ambassador LIDTHIZER. We had our first meeting on—do you remember when our first meeting was? It was at least 2 years ago. Yes, I think it was just short of 2 years ago. So we have been doing it for some time. It is something that we have given an enormous amount of effort to. And our last meeting was within the last 3 weeks.

Senator BROWN. I mean, I think that the criticism of this by many is that we do not play well with others when the others—and not counting “others” as North Korea and Russia and Orban

and Duterte—we do not play well with others in terms of our allies, our economic and our democratic allies, in our efforts.

So I guess I am looking for—if this does not work, this agreement, what is the plan B? I understand talking alone does not do it, but I am very concerned that there is no long-term relief in sight for Ohioans wondering whether they will get to compete on a level playing field with China. So I ask you to consider that.

Ambassador LIDTHIZER. Well, thank you. I appreciate that. I also have to say that to suggest that the only difference between NAFTA and USMCA is a name change, I would take strong exception to that. But I guess you are aware of that too. I just do not want to let that pass.

Senator BROWN. Well, I understand there are differences. I did not say the name change is the only difference, but I am saying a repackage is not nearly sufficient on issues that Senator Stabenow talked about on access to medicines, and five or six of my colleagues who talked about Brown-Wyden. Those are essential to stop jobs from leaving our communities and going to Mexico.

Ambassador LIDTHIZER. Well, sufficiency is a judgment that only a Senator can make. I cannot. But I would say it is massively different in rules of origin for automobiles, massively different in labor, massively different in currency, massively different in intellectual property. Digital trade does not even compare. Financial services—we have a sunset which you are very much aware of modified, not to exactly what you and I wanted, but a lot better than we have ever had in any other agreement.

It has SOE deals. It has at least 20 provisions that we count that have an enormous amount of cooperation with my friend from Ohio.

The CHAIRMAN. Senator Hassan?

Senator HASSAN. Thank you, Mr. Chair. And thank you for keeping the hearing going. Thank you, Ambassador, for being here.

I will just start by echoing what you have heard from other colleagues. I am encouraged by the USMCA working groups that Speaker Pelosi has set up in the House. Many of my colleagues and I are encouraged by aspects of the agreement, but we need to find ways to improve the impact that the agreement would have on American workers and businesses. So I am hopeful that the process operating in the House will help us get there.

I wanted to turn now to China as well. I visited China at the end of April as part of a codel with Senator Coons. While I was there, it seemed that both parties wanted a deal. Soon after I returned, the talks broke down.

It was good to see an announcement this morning that President Trump and President Xi are in fact going to meet at the G20 in Japan later this month. What I would like to make sure of is that we can have, at both a member level and a staff level, a full briefing after that happens.

I very much appreciated you coming to my office when I first became a member of the Finance Committee, but it would be very helpful to have more regular staff-to-staff briefings as well. Can you commit to that?



Ambassador LIDTHIZER. Sure. I am happy to do that. But I would say, if you want actual candor, it will have to be member to Lighthizer.

Senator HASSAN. I am happy to do that too.

Ambassador LIDTHIZER. Which I am prepared to do.

Senator HASSAN. Yes; thank you.

Now I would like to turn as well to the exclusion process that we have been talking about for the third list of Chinese goods subject to section 301 tariffs. I have heard from companies like one called NEMO in Dover, NH, that are trying to make decisions that impact their growth, such as whether they will have the revenue to make new hires or not. And in order to make these decisions, they need to have answers on whether their products will be granted an exclusion.

In the interim, they are being subjected to a 25-percent tariff on a line of products that represents 10 percent of their overall businesses. So can you let—do you have an understanding of the timeline for when the third list, the exclusion process for the third list, will be fully functional?

Ambassador LIDTHIZER. So, yes, Senator. And this is something that I would suggest that your staff do: call my staff with respect to this company, for sure. But it has been a major process, as you can imagine. We do have experience, having done it on the first couple of tranches.

The form that you can actually fill out is available, and it is online—

Senator HASSAN. And this is a company that has written to you. It has—I am sure it is doing its process. But I just want to be clear, because I think the businesses and the constituents that we all represent need us to say this. I understand that you are taking a big-picture look at this and saying that some, I think the word you used earlier today was, some discomfort may be necessary.

For NEMO Equipment to reinvent their supply lines will take 2 years. It is a 25-person company that was just about to launch a whole new sector of growth, and the instability of the tariffs themselves, as well as the lack of certainty in predictability, is really holding them back at this point and harming them, and may in fact mean not only that they cannot grow but that they may have to lay people off.

So I understand what you are trying to balance here, but we need predictability. We will follow up with your staff, but there has been plenty of time to get this exclusion process in place. And it is really urgent that it be operating transparently and predictably. Is that fair?

Ambassador LIDTHIZER. That is a fair comment.

Senator HASSAN. All right; thank you.

Now let me just, because we have a vote—one of the most commonly relayed messages from my businesses in New Hampshire too is, again, the need for predictability and certainty. The manner in which the China negotiations have been starting, stopping, restarting by tweet, et cetera, has left businesses really guessing about what the administration will do next.

Just last month, the President threatened to impose another round, List 4, of tariffs on China. This set would encompass vir-

tually all goods coming into the United States from China. Businesses are nervous. These tariffs would directly impact the prices everyday Americans spend on the things that they need.

I know that the USTR began a hearing about this list yesterday, and you have said today you will not comment on the status of those tariffs and the likelihood that the President implements them, but can you tell me that if he does announce tariffs for this List 4 that there will be an exclusion process?

Ambassador LIGHTHIZER. Yes.

Senator HASSAN. And can you tell us what the cost of these tariffs would be on middle-class Americans?

Ambassador LIGHTHIZER. I don't even know if we are going to have the tariffs. It is entirely up to the President.

Senator HASSAN. Well, just for the record here, it is going to cost middle-class Americans a lot in their quality of life and in their financial health. And so I hope that you and the administration and our President are taking that into account.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. And thank you, Ambassador Lighthizer, for your willingness to appear. I hope you consider it your obligation to appear. You have a lot on your plate, and we know that you work hard at your job.

I would request that Senators with questions for the record please submit them by the close of business July 2nd.

Meeting adjourned. Thank you for coming.

[Whereupon, at 12:30 p.m., the hearing was concluded.]

## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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

I am pleased to welcome our witness, Ambassador Lighthizer, and thank him for being here. We have been eager to have you before the committee for this very important annual hearing to discuss the President's trade agenda.

The laws that delegate Congress's constitutional trade authority to the executive also require close consultation with Congress. This hearing is an important part of that consultation. And it provides an opportunity to explain the President's ambitious trade agenda to Congress and all Americans. Members of this committee are looking forward to this discussion.

A critical component of the trade agenda that I'd like to discuss is the U.S.-Mexico-Canada Agreement, or USMCA. American farmers, workers, and businesses stand to benefit greatly from USMCA. More market access for agriculture, new commitments in critical areas such as Customs, digital trade, intellectual property, labor, environment, currency, and the lowering of non-tariff barriers will translate into higher wages, greater productivity, and more jobs.

In fact, the U.S. International Trade Commission's economic analysis found that USMCA will create 176,000 new American jobs. We shouldn't squander this opportunity to update NAFTA, which is now a quarter-century old but has been critical to the success of American farmers and businesses.

Since NAFTA's implementation in 1994, our agricultural exports to Canada and Mexico have more than quadrupled. Corn exports increased sevenfold. A 2019 Business Roundtable study found that international trade supports 39 million jobs across America and 12 million jobs from trade with Mexico and Canada.

Being a family farmer, I can tell you that NAFTA has been critical to the success of Iowa farmers and businesses. The same Business Roundtable study found that 130,000 Iowa jobs were supported by trade with Canada and Mexico in 2017, and \$6.6 billion in Iowa goods and services were exported to Canada and Mexico the same year. According to the National Association of Manufacturers, Canada and Mexico purchase nearly half of Iowa's total global manufacturing exports.

President Trump and Ambassador Lighthizer delivered a solid deal to enhance this critical relationship with our good neighbors. Now Congress must act to implement USMCA. As Ambassador Lighthizer said earlier this year, doing so will enhance the credibility of our global trade agenda. And it provides some much-needed certainty to American farmers and businesses.

For agriculture, international trade is critical to reaching the 95 percent of the world's consumers living outside the United States. In Iowa, we export every third row of soybeans.

This is why I strongly support the administration's plan to pursue new trade deals with Japan, the European Union, and even the United Kingdom when it is ready. We should move quickly.

Japan and the EU haven't been sitting still. They've been closing trade deals with other countries over the last 2 years. As a result, our farmers and businesses are losing market share to competitors with preferential access. We need to secure strong agreements so we can restore a level playing field. And in order to get a deal with the United States, the EU has to negotiate agriculture. I've said this before:

any deal with the EU that doesn't include agriculture will not get through the United States Congress.

President Trump has rightly pointed out that trade must be fairer for workers across the country, and this is central to his commitment to confront China's unfair trade practices and mercantilist policies.

When American companies get access to China's market, they often have to sacrifice valuable intellectual property or enter into joint ventures with Chinese firms. China's massive subsidies also create global distortions. This has to stop. And President Xi must recognize that making these changes are in China's best interest as well.

I applaud President Trump for confronting China decisively. And I urge him and President Xi to reach a deal that results in structural changes to China's discriminatory policies and practices and the elimination of the section 301 tariffs.

Ambassador Lighthizer, I share the administration's desire to ensure that hard work and innovation are rewarded, while unfair trade practices and illegal government subsidies are punished. I agree that we must have strong and enforceable trade agreements. I believe you are right to seek reforms at the World Trade Organization. And I share your view that strong and effective enforcement of U.S. trade laws prevent other countries from taking advantage of us.

But I don't agree that tariffs should be the tool we use in every instance to achieve our trade policy goals. I fear that continuing to use tariffs in this way will undermine our credibility with our current and potential trading partners and undo the benefits of our historic tax reform. Since March 2018, U.S. Customs and Border Protection has assessed over \$15.2 billion in section 301 tariffs and over \$6.5 billion in section 232 steel and aluminum tariffs. To be clear, American importers and consumers are paying for these tariffs—\$22 billion out of the pockets of hardworking Americans is not in our national best interest.

I urge the administration to do everything it can to use tariffs as a last resort option and to maintain timely and efficient exclusion processes for those that are already in effect. Ambassador, I want to thank you on that note for your commitment to instituting an exclusion process for the section 301 tariffs on imports from China.

Before leaving the issue of tariffs, I want to highlight an example of a successful alternative option. Specifically, Ambassador Lighthizer's team deserves a lot of credit for recently winning two very large WTO cases against China's distortive agricultural policies. While I support the administration's efforts to reform the WTO, we should continue to use WTO mechanisms that can hold China, and others, accountable to the greatest possible extent.

In closing, I'm glad to have you here today, Ambassador. I want to recognize the critically important and difficult tasks before you. Congress and the administration must work together to ensure that our trade policy benefits all Americans, and I encourage you to work with us to make that happen. As chairman, I pledge my support for the President's agenda, starting with the implementation of USMCA.

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

#### INTRODUCTION

Last time I appeared in a hearing before this committee, I began by highlighting the economic success of the country under President Trump. I am happy to report that these trends have continued. The United States is growing faster than any other G7 economy. GDP grew at an annual rate of 3.1 percent in the first quarter of 2019 and at 3.2 percent over the past 4 quarters. In 2018, the lowest earners experienced the fastest wage growth. Unemployment has hit its lowest rate since 1969. This trend has been particularly pronounced among groups such as women, Hispanics, African-Americans, veterans, and Americans with disabilities, all of which have seen record-low numbers of unemployment during this administration. Manufacturing jobs are up by nearly 500,000 since January 2017.

Like the President, I remain concerned by large and persistent trade deficits, which can be affected by factors such as currency policy, taxation, economic growth rates, and my area of responsibility—trade rules. Despite this ongoing issue, U.S.

exports are up significantly. From 2016 to 2018, 45 States saw their exports grow, while U.S. exports grew by \$285 billion during that period. In 2018, total goods and services exports exceeded \$2.5 trillion for the first time. And of course I am here today to talk about how the President's trade agenda has put us on a better track for trade, including through the successful negotiation of the United States-Mexico-Canada Agreement (USMCA).

#### TRADE POLICY AGENDA

In March we issued the President's trade policy agenda. The agenda clearly sets out the trade situation facing the administration, our actions to improve the terms of trade for the benefit of Americans, and our plan to continue rebalancing U.S. trade relationships. This administration inherited a trade landscape characterized by outdated, imbalanced trade agreements, a failing multilateral approach to trade, and rampant unfair trading practices by some of our major trading partners. During the past year, the United States under President Trump's leadership renegotiated the disastrous NAFTA, amended the U.S.-Korea trade agreement, and kicked off trade negotiations with Japan and the European Union. We also laid the groundwork to start trade negotiations with the United Kingdom as soon as it exits the EU. We have led the effort to improve the operation of the World Trade Organization (WTO) by promoting a recommitment to transparency and an overdue reassessment of the treatment of developing countries. We have spearheaded efforts to pursue ambitious, high-standard agreements on digital trade and fish subsidies at the WTO. We have secured new market access for our farmers in dozens of countries around the globe. And we have held trade violators accountable through robust enforcement actions under U.S. law and at the WTO.

In opening this new chapter in American trade policy, we have coordinated with other countries where possible and taken unilateral actions where appropriate. But we should be clear-eyed and realistic about working with our allies. They agree with us on many important matters but do not always have the same level of ambition as the United States in securing a level playing field in international trade. I mention just as an example the European Union, which shares with us many concerns about non-market-oriented policies and practices, forced technology transfer, and the like. Together with my counterparts from the EU and Japan, we have engaged in a trilateral process that focuses on developing new rules for industrial subsidies, establishing criteria for truly market-based trading regimes, and exchanging information and coordinating action with respect to forced technology transfer. At the same time, the EU's tariff and non-tariff barriers pose significant obstacles to U.S. exports, particularly agricultural exports. So while we work closely with our allies on matters of common concern, we also stand up for the American worker and farmer as needed. We have shown that we will not be complacent while other countries, allies or otherwise, take advantage of American workers, farmers, ranchers, and businesses.

#### USMCA

Without question, the USMCA is the strongest and most advanced trade agreement ever negotiated. The agreement rebalances our trading relationship with Mexico and Canada in a way that benefits American workers, and it modernizes the rules of trade among our countries to reflect the needs of our 21st-century economy. Based on estimates from the independent International Trade Commission, we anticipate that the USMCA will raise U.S. real GDP by up to 1.2 percent and increase U.S. employment by up to half a million jobs over time.

As you know, this agreement was negotiated from the beginning and throughout with both Democrats and Republicans in Congress. My team and I spent countless hours consulting with members and your staffs on the negotiations. We also consulted with a broad range of stakeholders including business, labor, the agricultural community, and civil society. These stakeholders are largely unified in recognizing the benefits of the USMCA, and there is a chorus of supporters urging Congress to approve implementing legislation for the agreement. I continue to believe that the USMCA will win broad support in Congress, as it is designed to do.

The USMCA contains the most ambitious labor chapter that has ever been negotiated. It is in the core of the agreement, and it is fully enforceable. It prohibits violence against workers and requires each country to respect internationally recognized labor rights. Mexico agreed to—and has approved—historic labor reform legislation that will eliminate so-called “protection contracts” by ensuring secret ballot votes on labor union representation and collective bargaining agreements. This is a watershed development for labor, and we anticipate it will reduce incentives to

outsource American jobs and have a big impact on the ability of U.S. workers to compete on a level playing field with their Mexican counterparts.

USMCA's stricter rules of origin for automobiles and other products are already creating incentives for businesses to increase jobs and production in the United States. We increased the regional value content threshold for automobiles well above NAFTA levels, we included a requirement for North American steel and aluminum in autos, and we established the first-ever "labor value content" rule to encourage production and assembly in the United States. Under this rule, 40 to 45 percent of a vehicle must be manufactured in North American facilities with an average manufacturing wage of \$16 an hour. This requirement will preserve and increase U.S. jobs in the sector. Indeed, based on data that USTR has received from auto producers, we estimate an increase of over 75,000 direct auto-sector jobs in the United States during the first 5 years of the USMCA's implementation. This is a result of over \$30 billion in direct investments during that period and annual increases in U.S. auto parts sourcing of \$23 billion a year.

The United States has a strong competitive advantage in services, intellectual property, and the digital economy. The USMCA locks in rules that assure the free flow of data across borders and prohibits duties on digital products. It commits our trading partners to higher standards of intellectual property protection and enforcement, incentivizing our innovators as they create the products and technology that lead to greater prosperity for all Americans.

The USMCA has provisions designed to combat unfair trade practices, including rules on currency manipulation, state-owned enterprises and subsidies, duty evasion, and transparency and accountability in trade relationships with non-market economies.

Comprehensive and enforceable environmental standards are also central to the agreement and, unlike the NAFTA, have been included in the core text of the agreement. Additionally, there are a series of good governance chapters on technical barriers to trade, anti-corruption, Customs procedures, good regulatory practices, among others designed to prevent trade-related barriers in North America.

Finally, the USMCA has a new review and termination mechanism that ensures that the United States will never again be in a position where it has permanently given away its economic leverage or become hostage to outdated rules. I believe this mechanism will encourage thoughtful, periodic assessment of whether the agreement is working as intended and ultimately create more domestic support for trade.

I will continue to work with the committee and other members of Congress as we draft implementing legislation for the USMCA. I am aware of specific areas where members have ideas to strengthen the agreement, and we are having constructive discussions on how to make improvements. Timely passage of the implementing legislation for the USMCA will benefit American workers, farmers, ranchers, and businesses throughout the country. My hope is that working with members, we can submit implementing legislation that Congress can approve very soon.

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

QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

USMCA DE MINIMIS

*Question.* USMCA raises Canada and Mexico's de minimis threshold. While these respective increases are not as high as we would have liked, it is a move in the right direction. I am concerned by rumors that the administration is seeking the ability to reduce our own de minimis threshold, which has been a great boon to American small businesses, manufacturers, and ecommerce companies. There is no appetite for that in Congress.

Will you commit that the administration will not seek to reduce our de minimis threshold as part of the USMCA ratification process, or through any other vehicle?

*Answer.* As noted in the administration's submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. These consultations are underway, and I look forward to working with you and other members on this important issue.

## BIOLOGICS

*Question.* The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA) directed the President to achieve intellectual property commitments that would ensure standards of protection that are similar to those set forth in U.S. law. With respect to regulatory data protection (RDP) for biologics, that standard of protection as set forth in the Biologics Price Competition and Innovation Act (BCPIA) is 12 years. That 12-year term had broad bipartisan support. You achieved 10 years of RDP in the United States-Mexico-Canada Agreement (USMCA).

Wasn't this outcome necessary in order to reflect, as TPA calls for, a standard of protection that is similar to that found in U.S. law?

*Answer.* In the USMCA negotiations, we followed the objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, including seeking a standard of protection similar to that found in U.S. law. As you know, the 12-year data protection term was passed as part of the Affordable Care Act during the Obama administration. The 10-year standard in the USMCA for data protection for biologics is the closest that we have ever come in a free trade agreement to reflecting U.S. law. Notably, nothing in USMCA prevents Congress from modifying the term of data protection in the future.

## CHINA NEGOTIATIONS/TARIFFS AS ENFORCEMENT

*Answer.* If a deal is reached with China, I understand that tariffs may be used as an enforcement tool. My own preference is that once a deal is reached, all tariffs are suspended.

If tariffs are used as an enforcement tool, will you commit that there will be congressional consultations, hearings and public comment before deciding which tariff lines will be used for enforcement?

*Answer.* Tariffs have been an effective tool in our negotiations, and USTR has implemented them consistent with Congress's delegation in section 301 of the Trade Act. USTR will continue to follow all procedural requirements for tariff remedies with respect to consultations, hearings, and public comment as set forth in the section 301 statute.

## CHINA NEGOTIATIONS/RARE EARTHS

*Question.* There have been rumors that China may try to leverage its control over the rare earths market to obtain leverage in our negotiations. The United States previously won a major case along with the EU and Japan that saw China remove its prior restrictions on rare earth exports.

What steps are you taking or prepared to take in the event China tries to use its control over rare earths to improve its bargaining position?

*Answer.* The administration continues to closely monitor China's trade policies and practices. Where China engages in unfair or trade restrictive conduct, we will take necessary action to address that conduct. At the same time, the administration is taking steps to protect against the disruption of critical supply chains as a result of foreign government action or other events. In this regard, the administration recently released a Federal Strategy to Ensure a Reliable Supply of Critical Minerals, including rare earth elements. Developed at the direction of the President, the Strategy outlines a coordinated approach by the Federal Government to reduce the Nation's vulnerability to disruptions in the supply of critical minerals.

## CHINA/SECTION 301 EXCLUSION PROCESS

*Question.* Americans working in businesses of all sizes have expressed concerns to me about the exclusion process for section 301 duties. In particular, they note they have to wait months to get a decision, and struggle to understand how USTR is applying the discretionary exclusion criteria. In fact, there are exclusion requests still pending from the first tranche of duties.

What additional support does USTR need to ensure a timely and effective exclusion process, and what resources are currently focused on the exclusion process? In particular, please provide: (a) the number of employees (full-time equivalent) dedicated to the section 301 exclusion process; (b) an approximation of the number of hours they have spent to date establishing and administering the section 301 exclusion process; and (c) if USTR has used any funds from the Trade Enforcement Trust Fund to improve the exclusion process and, if so, the amount of such funds.

Answer. Approximately 35 USTR attorneys, paralegals, trade analysts, and contractors with experiences in law, industrial sectors, tariff classifications, and data analysis work on the exclusion process. Additional staff, including analysts on detail from the Departments of Treasury, Commerce, and Agriculture, are assisting on the exclusions process, particularly for List 3. The majority of these personnel work on the exclusion process on a full-time basis. Furthermore, we intend to use a staffing contract that is in development to hire additional contract analysts to ensure that we can be timely and responsive to applications for exclusions.

USTR presently intends to carry out its section 301 exclusion process at our current level of funding, including resources from the Trade Enforcement Trust Fund. Given the substantial level of resources necessary to implement the List 3 exclusion process, USTR will closely monitor the exclusion process to assess whether additional funding is necessary.

#### CHINA/SECTION 301 EXCLUSION PROCESS

*Question.* Stakeholders have informed me that they are not receiving guidance from USTR as to what precisely satisfies the exclusion criteria. For example, what is “severe economic harm”? For a small business with limited resources, a burden of a few thousand dollars could force a difficult decision to lay off workers or shut down.

Will USTR provide additional guidance on the exclusion criteria? What does USTR consider to be “severe economic harm” when evaluating a section 301 exclusion request?

Answer. USTR has published its guidance on the factors it considers in 84 FR 29576.

With respect to analyzing severe economic harm, we first consider the information that each requester has submitted about the effect of the additional tariffs. If appropriate, we may conduct additional research about the requestor’s size, revenues, number of employees, base of operations, and other market information.

#### AGRICULTURE TRADE WITH THE EU

*Question.* American farmers have long suffered from a number of trade barriers in the EU. Yet the EU thinks it can negotiate a deal with the United States without reaching any agreement on agriculture.

Will you vigorously pursue a deal with the European Union that addresses the many tariff and non-tariffs barriers to American agriculture exports?

Answer. EU Trade Commissioner Cecelia Malmstrom and I have discussed the scope and timing of potential trade discussions, but the EU Commission’s current negotiating mandate specifically excludes agriculture from any market access negotiations. I have been very clear with the Commissioner that a broad-based U.S.-EU trade deal must include agriculture.

#### WTO DISPUTE SETTLEMENT

*Question.* I appreciate that we have challenges with the WTO dispute settlement system. In particular, we recognize that the Appellate Body has overreached in some instances, particularly with respect to trade remedy laws. But we’ve also had some important wins that have opened up markets.

The administration to date has not filed many WTO disputes, and it seems WTO enforcement to open new markets has fallen short.

Additionally, there are a number of problematic barriers to U.S. agriculture exports that we need to act on, including those identified in USTR’s National Trade Estimate.

Will you seriously consider launching new offensive WTO cases, including cases against barriers faced by our farmers?

Answer. The administration is committed to vigorous enforcement action to ensure our workers, farmers, ranchers, and businesses can compete on a level playing field and obtain all the market access to which they’re entitled under our trade agreements. The WTO is one tool the administration uses to achieve this. At the WTO, USTR raises issues in relevant WTO committees and, if necessary, through the dispute settlement process in order to remove barriers to agricultural trade. For example, we have submitted counter notifications in the Committee on Agriculture on India’s domestic support for rice, wheat, cotton and pulses. The administration



had WTO panels established to consider China's excess agricultural domestic support and its failure to administer its tariff-rate quotas (TRQs) for wheat, rice, and corn consistent with WTO rules. USTR recently prevailed in both disputes, and we will closely monitor China's implementation to ensure it brings its measures into full compliance with WTO rules. The administration also initiated a process to reinstate section 301 tariffs and was able to obtain agreement with the European Union on a country-specific beef TRQ allocation to the benefit of U.S. ranchers. USTR is continuously assessing agricultural issues to determine the most effective ways to advance U.S. economic interests, including those of U.S. workers, farmers, ranchers, and businesses.

#### WTO APPELLATE BODY

*Question.* The Appellate Body will no longer have a quorum by mid-December 2019. I support the administration in seeking WTO reform. However, many of our trading partners are now suggesting we have not presented actual demands for reform. They allege we simply want the system to shut down.

Please identify what actions you have taken to date to secure meaningful reforms to the WTO Appellate Body, what you are seeking from other WTO members, and how you would like those actions to be executed.

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

For over 15 years, and through multiple administrations, the United States has repeatedly expressed concerns with the WTO Appellate Body's activist approach, which has involved overreaching on procedural issues, its interpretative approach and its findings on substantive matters. In short, the Appellate Body has failed to apply the WTO rules as written and agreed to by the United States and other WTO members.

In 2018 and 2019, the United States made a series of statements at DSB meetings detailing the Appellate Body's disregard for the rules agreed to by the WTO members and the Appellate Body's attempts to add to or diminish rights or obligations under the WTO agreement. The issues addressed included the Appellate Body's disregard for the mandatory 90-day deadline for appeals,<sup>1</sup> allowing persons to serve on appeals after their Appellate Body term has ended,<sup>2</sup> the Appellate Body's unauthorized review of panel factual findings (including on domestic law),<sup>3</sup> the Appellate Body's issuance of advisory opinions on issues not necessary to resolve a dispute,<sup>4</sup> and the treatment of prior Appellate Body reports as precedent.<sup>5</sup>

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

To identify a solution, it is important that WTO members understand how it is that we have come to this point where the Appellate Body, a body established by

<sup>1</sup>DSU Article 17.5. Statement by the United States Concerning Article 17.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Meeting of the DSB on June 22, 2018, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB\\_Stmt\\_as-delivered.fin\\_public.rev.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB_Stmt_as-delivered.fin_public.rev.pdf).

<sup>2</sup>DSU Articles 17.1, 17.2. U.S. Statement at the August 31, 2017, Meeting of the DSB, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB\\_Stmt\\_as-delivered.fin\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB_Stmt_as-delivered.fin_public.pdf); and U.S. Statement at the February 28, 2018, Meeting of the DSB, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb28.DSB\\_Stmt\\_as-delivered.fin\\_public-1.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb28.DSB_Stmt_as-delivered.fin_public-1.pdf).

<sup>3</sup>DSU Article 17.6. Statement by the United States Concerning Article 17.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* and Appellate Review of Panel Findings of Fact, Including Domestic Law, Meeting of the DSB on August 27, 2018, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB\\_Stmt\\_as-delivered.fin\\_rev\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB_Stmt_as-delivered.fin_rev_public.pdf).

<sup>4</sup>DSU Articles 7.1, 11, 17.6. Statement by the United States Concerning the Issuance of Advisory Opinions on Issues not Necessary to Resolve a Dispute, Meeting of the DSB on October 29, 2018, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB\\_Stmt\\_as-delivered.fin\\_rev\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB_Stmt_as-delivered.fin_rev_public.pdf).

<sup>5</sup>DSU Article 3.9, WTO Agreement Article IX:2.

members to serve the members, is disregarding the clear rules that were set by those same members. In other words, members need to engage in a deeper discussion of why the Appellate Body has felt free to depart from what members agreed to. We must have that understanding in order to know how we can prevent this from happening again in the future. If WTO members believe in a rules-based trading system, then they bear a collective responsibility to ensure that the WTO dispute settlement system, including the Appellate Body, abides by and respects those rules.

#### WTO AGRICULTURE SUBSIDIES NOTIFICATIONS

*Question.* For many years now, many of our trading partners have failed to properly notify their subsidies, including agricultural market support. USTR has rightly identified this as a serious problem.

Please tell me what actions you are taking or intend to take to address this problem.

*Answer.* USTR is working hard to address market-distorting and unfair trade practices of certain trading partners that adversely affect U.S. farmers and ranchers. We continue to press WTO members to submit their domestic support notifications. Recently, the United States has submitted counter notifications in the WTO Committee on Agriculture showing that India provided significant market price support, far in excess of India's self-reported levels, for certain commodities. Due to the leadership of the United States, other WTO members have joined our efforts to promote compliance by trading partners with WTO commitments on domestic support. We will continue to press WTO members to abide by their WTO obligations with respect to domestic support.

#### WTO: E-COMMERCE NEGOTIATIONS

*Question.* In order for a WTO agreement on e-commerce to be most impactful to American businesses, it needs to be ambitious and improve the entire e-commerce ecosystem that enables U.S. companies to access to global markets. This ecosystem includes services, data flows, transparency in regulations, and customs and trade facilitation. Impediments at the border can be a significant barrier to trade, especially for American small and medium-sized enterprises (SMEs) that rely heavily on the Internet to reach customers around the world.

How do you intend to make the outcomes of the e-commerce negotiations benefit all American businesses, including SMEs?

Will you focus on achieving meaningful commitments on physical trade barriers at the border as well as barriers to digital trade as the WTO negotiations unfold?

*Answer.* The WTO digital trade initiative will only be successful if it can deliver commercially significant outcomes for a broad range of firms and consumers in the digital sphere. SMEs would be a key beneficiary of such outcomes. We are working closely with like-minded partners to gain support for high-standard outcomes based on the USMCA Digital Trade Chapter, which we view as a model for core digital trade rules in this negotiation and in future agreements. This approach would provide significant benefits both to firms engaged in trade in physical products as well as those engaged in trade in digital products and services.

#### WTO: MORATORIUM ON CUSTOMS DUTIES ON DIGITAL TRANSMISSION

*Question.* Foreign governments are considering imposing tariffs on digital products and other electronic transmissions as the WTO moratorium on imposing such duties is set to expire at the end of this year.

What steps have you taken ensure that the moratorium is continued at the WTO, and that countries like Indonesia don't move forward on imposing customs duties on streaming content, digital downloads, and other content from the United States?

*Answer.* The WTO moratorium on Customs duties on electronic transmissions has supported the growth of the digital economy for over 20 years and has been replicated in numerous bilateral and regional trade agreements. The administration is working with a broad group of like-minded countries that are committed to pursuing a consensus for the continuation of the moratorium and to addressing the potential challenges within the WTO membership. Such a moratorium is also part of our negotiating position in the ongoing plurilateral WTO digital trade negotiations.

## SECTION 232 EXCLUSION PROCESS

*Question.* Stakeholders have raised with us a significant problem with the quota arrangements that USTR has negotiated in response to the 232 steel and aluminum tariffs. Specifically, even those products that the administration has determined warrant an exclusion can count against the quota, and U.S. business therefore are delaying those imports until the quota is full. This makes little sense. The exclusion was granted because an American person demonstrated insufficient domestic supply or national security interests justified the exclusion.

Will you be negotiating a resolution with the exporting countries so that it's clear that products that have been granted exclusions will not count against any quota?

*Answer.* The quota regime established in the proclamations issued by the President imposes no constraint on when U.S. businesses can import steel and aluminum products for which the Department of Commerce has granted an exclusion. U.S. businesses can import these products at any time, whether or not the quota for the products in question has been filled.

## DIGITAL SERVICES TAX

*Question.* I am deeply concerned by attempts around the world to impose discriminatory taxes on digital services provided by American companies. This is a significant 21st-century barrier to trade. The President's agenda correctly notes that Americans are leaders in this sphere, and that many current international rules are outdated. However, I was disappointed to see nothing mentioned about what USTR will do to tackle some of the most potent threats like discriminatory taxation that targets American companies.

Please tell me what you intend to do to combat attempts by our trading partners to tax digital trade.

*Answer.* The administration shares your concern that proposals by several countries to impose unilateral measures on revenues from certain digital services are deeply flawed as a matter of policy and may be designed to target U.S. companies. USTR flagged concerns with these digital services taxes (DST) in the National Trade Estimate report and continues to look seriously at all of the tools available to address such potential trade barriers. Specifically, in response to the passage of legislation by the French legislature to adopt a unilateral DST, the United States Trade Representative has initiated an investigation under Section 301 of the Trade Act of 1974 to determine whether the French DST is actionable under that provision.

## USTR ROLE IN OECD ACCESSIONS

*Question.* The administration has pledged to support the candidacy of certain countries to accede to the Organisation for Economic Co-operation and Development (OECD). The OECD accession process includes reviews of the compliance of each candidate country's policies with OECD standards and best practices in the areas of international trade and investment. USTR has led executive branch efforts to use the OECD accession process to encourage candidate countries to improve their international trade and investment policies to comply with international standards and obligations, such as your recent efforts in the context of Colombia's accession to the OECD.

What will be USTR's role in U.S. participation in the processes by which "prospective members" pursue accession to the OECD? By what means will USTR consult with Congress and U.S. stakeholders regarding USTR's involvement in OECD accession processes? What are USTR's positions on international trade and investment with regard to the candidacy of each current "prospective member" of the OECD (Argentina, Brazil, Bulgaria, Croatia, Peru, and Romania)?

*Answer.* While USTR is the lead for the OECD Trade Committee, the Department of State is responsible for the overall U.S. position on OECD enlargement. Any decision by the OECD on its enlargement, including on which countries will next be invited to begin the OECD accession process, requires consensus of all 36 OECD members. Through the OECD Trade Committee, USTR will engage closely with Congress and U.S. stakeholders regarding trade-related aspects of OECD accessions as prospective members are invited to begin the accession process.

USTR, in conjunction with the Department of State and other U.S. agencies, supports the OECD's high standards for accession. These standards—including like-mindedness, commitment to democracy, and economic openness and governance—

ensure that the United States, its workers, and its businesses benefit from principles and practices that make markets fairer and more efficient. USTR is committed to ensuring that accession countries meet these standards before they join the OECD in order to ensure equal opportunities and fair treatment for American workers and businesses.

#### BRAZIL ETHANOL TRQ

*Question.* U.S. ethanol exports to Brazil are currently subject to a tariff of 20 percent after exports surpass 150 million liters per quarter. There is some speculation that when this tariff rate quota (TRQ) expires in early August, Brazil may change from a TRQ to a straight tariff of 20 percent on all U.S. ethanol exports.

What has USTR done to date and what can USTR do going forward to engage Brazil on ITS treatment of U.S. ethanol to ensure equal opportunity of exports between our two countries?

*Answer.* USTR and USDA have engaged extensively with Brazil since the temporary, 24-month TRQ was implemented in September 2017, including two high-level delegations to Brasilia led by USTR Ambassador Doud and USDA Under Secretary McKinney to express strong U.S. opposition to the measure. Although the 20-percent above-quota tariff is within Brazil's WTO bound rate of 35 percent on ethanol imports, the United States will continue pressing Brazil to allow the measure to expire after 24 months, as originally announced by Brazil in September 2017, and return to the free trade of ethanol between Brazil and the United States. USTR continues to engage in discussions within the administration about the viability of the candidacies for the prospective members you noted above.

#### CHINA MARKET ACCESS FOR ETHANOL

*Question.* China has an E10, or a 10-percent ethanol policy for gasoline, that is scheduled to be fully implemented by 2020. Since China is the second largest gasoline market in the world, the E10 market there represents a great opportunity for U.S. ethanol producers and corn farmers.

Has USTR raised ethanol in the ongoing trade negotiations with China to ensure the U.S. ethanol industry will have access to China's market in the future?

*Answer.* The United States has been negotiating with China to resolve a large number of unwarranted and longstanding trade barriers to U.S. agricultural exports. We are encouraging China to demonstrate real structural changes across a wide range of unfair policies and practices that will yield actual, verifiable, and enforceable results for American farmers, ranchers, workers, and businesses.

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#### QUESTIONS SUBMITTED BY HON. RON WYDEN

*Question.* We have heard from this administration that the purpose of the various tariffs is to open markets and create a level playing field for U.S. exports. And yet, markets are more closed to U.S. exporters than they have been in decades, due to retaliatory tariffs from China to the European Union to India. Further retaliation hangs over our heads if the administration makes good on its threat to slap tariffs on Mexico over immigration, or Japan and the EU over the so-called national security threat that their U.S.-made autos inexplicably pose.

When President Trump pulled out of the TPP he promised that he would get better deals by bilaterally negotiating them. I appreciate that he renegotiated NAFTA, but the Mexican and Canadian markets were already open. Japan is willing to talk with us, but only about tariffs. And the EU will only discuss tariffs on industrial goods.

What is the timeline for the completion of comprehensive agreements with the TPP partners, including Japan, as well as the EU?

*Answer.* Regarding Japan, this negotiation is a high priority for the administration, and we are working to achieve results on an initial agreement soon. At the same time, the administration seeks to pursue other, much broader objectives for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

Members of the committee are aware that we have not begun comprehensive tariff negotiations with the EU because the EU has not agreed to negotiate reductions in tariffs on agricultural goods. It would not be acceptable to Congress, the administra-

tion, or our stakeholders to conclude a tariff agreement limited to industrial trade. Despite this impasse, we continue to work constructively with the EU on non-tariff barriers that impede U.S. exports to the EU. We have made some progress in these discussions, but we are not in a position to predict when we might reach any agreements. We have also intensified our collaboration with the EU on Chinese trading practices that have adversely impacted U.S. and EU firms and workers.

*Question.* While we have reviewed USTR's detailed negotiating objectives for a U.S.-Japan Trade Agreement, there also appears to have been some discussion of a tariff-only agreement which would avoid congressional approval.

Have the United States and Japan agreed to the scope of the U.S.-Japan Trade Agreement (or a preliminary U.S.-Japan Trade Agreement)?

*Answer.* Discussions regarding the precise scope remain ongoing. The administration is seeking an early outcome from the negotiations to ensure, among other things, that U.S. agricultural exporters have a level playing field in terms of access to Japan's market.

*Question.* Do you intend to reach an agreement that does not require Congress's approval?

*Answer.* As reflected in my October 16, 2018, notification of the President's intent to initiate negotiations of a United States-Japan Trade Agreement, and the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018, we are committed to working closely with Congress and to following the requirements of the Trade Priorities and Accountability Act. We may seek to pursue negotiations with Japan in stages, as appropriate, including to ensure that U.S. agricultural exporters can compete on a level playing field in Japan.

*Question.* Can you explain the value of such an agreement, if it doesn't address trade barriers, such as TBT or SPS measures that exclude or restrict U.S. agricultural products, cars, and other products from the Japanese market regardless of the applicable tariffs?

*Answer.* As suggested in the September 2018 Joint Statement by President Trump and Prime Minister Abe, the administration has envisioned the possibility of a staged negotiation, with an initial, limited outcome designed, in part, to help U.S. exporters put at a disadvantage by Japan's other trade agreements. At the same time, the administration seeks to pursue other, much broader objectives for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

*Question.* Additionally, in your view, will a tariff only agreement include obligations on TRQ administration?

*Answer.* We plan to achieve market access in Japan for U.S. exporters in line with the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

*Question.* As you know, I don't think tariffs are an appropriate tool for addressing concerns with immigration—so I was pleased when President Trump found a reason not to impose tariffs earlier this month. However, Trump's deal with Mexico appears to call for revisiting the immigration situation in 45 days with a possible revisit to the tariff threat.

Does this mean the tariffs could be re-imposed around the time that you may be asking Congress to consider the renegotiated NAFTA?

Can you clarify what specific action or inaction may trigger the imposition of tariffs under the immigration agreement?

*Answer.* I am focused on getting the USMCA through Congress, and of course continue to fully support the President as he uses the tools available to him to address the border emergency. I recommend directing specific questions on addressing the emergency at the southern border to the White House.

*Question.* House and Senate Democrats have outlined concerns about new NAFTA's dispute settlement, labor, environment, and pharmaceuticals provisions. You have recognized these concerns and in our most recent hearing affirmed your willingness to do whatever it takes to address key concerns. House Democrats are leading the effort to find solutions through their working group process which has gained momentum in recent weeks.

Will you commit to work constructively with Congress to resolve concerns and not prematurely submit the implementing bill cutting short discussions on how to address common concerns?

Answer. As I have done throughout the negotiation of USMCA, I will consult with Congress on content and process. In particular, I am working closely with leadership in the House to ensure that we are ready with an implementing bill when the Speaker is ready to move forward.

*Question.* Mexico has now passed a significant labor law required by the new agreement and in line with constitutional reforms made during the negotiations of TPP. As you recognize, this is not the end of the story, these reforms must be meaningfully implemented and enforced. Unfortunately, given the poor track record of labor enforcement in past agreements, many members are skeptical that the Mexican reforms will bring meaningful change.

Do you agree that labor obligations in U.S. trade agreements have not been adequately enforced in the past, and that additional enforcement tools should be brought to bear to make sure that American workers are not undercut by the oppression of labor rights in Mexico?

Answer. I agree completely. I am committed to vigorously enforcing our trade agreements, including the labor obligations, and agree that lower labor standards in Mexico affect American workers and businesses. I also believe that the USMCA and other trade agreements must strengthen our trading partners' labor standards and ensure a level playing field for U.S. workers. The administration worked very closely with the Government of Mexico to ensure that Mexico's labor reforms met the obligations of the USMCA Labor Chapter and Annex on Collective Bargaining. On May 1, 2019, Mexico's Congress passed legislation that complies with its USMCA labor commitments, and I will continue to work with you and other members of Congress to discuss options and policy tools for monitoring the implementation of these important reforms and enforcing Mexico's obligations under the USMCA.

*Question.* At the hearing, you signaled a willingness to address concerns regarding the functioning of the new agreement's dispute settlement mechanism. Due to flaws in the existing agreement, no panel has been formed since the United States blocked the formation of a panel in 2001.

Can you confirm that you are willing to discuss solutions with Mexico and Canada to prevent the blocking of panels and the resolution of disputes through the dispute settlement?

Answer. Yes. I believe there is room for plus-ups, and I am happy to work with members to define what those should be, in order for me and my team to then engage with Mexico and Canada on this issue.

*Question.* I know that you share my concerns about a number of European countries' proposals to implement a tax on digital services. These taxes appear to be designed specifically to target American companies. France is the closest to adopting a version of the digital services tax, and could implement as soon as this summer.

We need a strong response to France in order to show other countries that we are serious about these discriminatory policies. At the March hearing, you told me that you were looking at actions that might be available under our trade agreements to address this trade barrier.

Since then, have you identified trade agreements under which we could bring a case?

If so, will you commit to bringing a timely case to enforce our rights and send a message to the other countries considering a similar tax?

Answer. The administration is very concerned about the French Digital Services Tax (DST) bill. On July 10th, I initiated an investigation under section 301 of the Trade Act of 1974 of the French DST, as set out in the bill agreed to by the joint committee of the French National Assembly and Senate. There will be a public hearing on August 19th. The investigation will determine whether the DST is actionable under section 301. Actionable matters include where the rights of the United States under any trade agreement are being denied or where an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce. The outcome of the investigation will determine what, if any, action we will take vis-à-vis the French measure.

*Question.* The President recently returned from a state visit to the UK, where he promised that the U.S. and UK will reach a “phenomenal trade deal” after Brexit.

As you know, the UK government has announced that it will introduce a new digital services tax in April 2020. This is a tax designed to erect a new barrier to trade and to discriminate against American companies. It seems to me that we have a lot of leverage with the UK, which is eager to enter into negotiations after Brexit to shore up its trade relations.

Would you agree that we should not start trade talks until the UK agrees to drop their digital services tax?

Answer. The UK government recently published the 2019–2020 draft Finance Bill, which includes draft Digital Service Tax (DST) legislation. The UK draft DST legislation would apply a 2-percent tax on revenue to businesses with at least \$625 million of worldwide digital revenue and over \$31 million of UK digital sales. The draft DST legislation is subject to a public consultation period until September.

I am concerned about the potential for the UK tax proposal to unfairly target U.S. services providers, many of which are global leaders. This proposed tax will certainly be a topic of discussion with the United Kingdom.

On a related note, as you know, France will soon enact DST legislation, and I have initiated an investigation under section 301 of the Trade Act of 1974 of the French legislation. Section 301 and related provisions of the Trade Act (codified as amended in 19 U.S.C. §§ 2411–2417) give the USTR broad authority to investigate and respond to a foreign country’s unfair trade practices. The United States will continue its efforts with other countries at the OECD to reach a multilateral agreement to address the challenges to the international tax system posed by an increasingly digitized global economy.

*Question.* In response to legitimate concerns regarding IP theft and tech transfer, the Trump administration imposed three rounds of tariffs on \$250 billion of Chinese goods (with corresponding rounds of retaliatory tariffs placed on U.S. goods by the Chinese). Although currently on hold, tariffs on an additional \$300 billion of Chinese goods may be imposed if talks with China break down.

Tariffs have also been imposed on steel and aluminum imports from China and our allies in response to a perceived national security threat. These too have invited retaliatory tariffs on U.S. exports of agricultural and other goods by China, the EU, Russia, and Turkey and until recently by Mexico and Canada.

Recently, India announced retaliatory tariffs on U.S. products, including apples, walnuts, lentils, and almonds.

This administration has further threatened to place tariffs on cars and car parts due to a perceived national security threat from foreign-owned car brands, and most recently, all imports from Mexico based on a manufactured national emergency. Trump truly is a “tariff man.”

What are the concrete market openings or changes in foreign country behavior on trade-related matters that have resulted from the imposition of tariffs to date with respect to China and the EU?

If talks with China break down again, how long would the administration maintain tariffs on the full range of imports from China?

Answer. With regard to China, the administration is committed to working toward a more fair and reciprocal trade relationship with China. In the current negotiations with China, we are seeking to address a wide range of unfair trade practices, including those that support non-market forces in order to create conditions for fair competition, including through structural reforms. China should have responded to the findings in the section 301 investigation and the U.S. tariff actions by undertaking the necessary economic and policy reforms needed to end its trade-distortive practices. Instead, China retaliated with tariffs on U.S. products. Currently, the administration’s use of tariffs under section 301 of the Trade Act of 1974 is providing the United States with an important source of leverage to bring China to the table to negotiate an enforceable agreement that will address China’s unfair trade practices. The administration does not have a predetermined timetable for how long it will be necessary to leave these tariffs in place.

With regard to the EU, the tariffs imposed by the President on imports of steel and aluminum under section 232 of the Trade Expansion Act of 1962, as amended, are based on a finding by the Secretary of Commerce that the quantity and cir-

cumstances of these imports threaten to impair our national security. We have urged partners such as the EU to work with us to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American farmers and workers.

The President's imposition of tariffs on steel and aluminum imports has spurred several of our trading partners, including the EU, to take more aggressive action to inoculate their own markets from the pernicious effects of global excess capacity, thereby enhancing international focus on the root cause of the problem.

*Question.* Last year, when tariffs were first put in place on Chinese imports, we were told that you were imposing tariffs in such a way as to have maximum impact on China and minimal harm to U.S. purchasers and consumers. Although the new tariffs are currently delayed while talks with China resume, if those talks break down again, additional tariffs may be back on the table.

With tariffs now proposed to cover the vast majority of U.S.-China trade, do you have any room to minimize negative effects on U.S. consumers?

How are you weighing the potential impact on consumers, schools, hospitals, and other entities who might not have submitted comments to USTR?

*Answer.* There has been no decision with respect to the proposed additional tariffs. The President will provide his direction at the appropriate time based on the state of the negotiations with China. Any changes in the rate of duties may affect some businesses more than others. We have tried to mitigate potential negative effects, including by undertaking a fair and transparent process through which we receive comments from as many stakeholders as we can. We have heard from over 300 witnesses during seven days of public hearing and received close to 3,000 comments regarding the proposed additional duties. We also received recommendations from interagency subject-matter experts through the Trade Policy and Staff Committee and confidential advice from the various trade advisory committees.

I will consider all these comments, recommendations, and advice before taking action on the proposed additional tariffs.

*Question.* I agree with the administration that tough action is required to address China's practices related to forced technology transfer and intellectual property protection. That said, the significant tariffs imposed by the President have yet to yield any meaningful agreement regarding reform of China's treatment of U.S. business and IPR. Further, the proposed \$300 billion in additional tariffs will put a severe burden on U.S. families and businesses, including in Oregon.

For tranche 3 exclusion requests and comments to tranche 4, is USTR considering any of the following factors, if not please explain the reasoning: (a) whether a business has attempted to source outside China, including in the United States, and has been unable to do so; (b) whether a business is already paying tariffs under section 301 and/or section 232 and the impact of those tariffs; (c) whether a business has taken appropriate steps to protect their IPR in China; and (d) whether a business competes in downstream product lines with third country and Chinese producers.

*Answer.* USTR is considering these four issues in the context of the factors set forth in 84 FR 22564 and 84 FR 29576.

*Question.* News reports indicate that China has been developing an "unreliable entities" list of U.S. companies to blacklist from doing business in China.

Please provide any information that USTR has about that list and whether China has agreed to refrain from any actions against U.S. companies pending further negotiations.

*Answer.* On May 31, 2019, China's Ministry of Commerce announced that China would be creating an "unreliable entities list" that would include foreign companies and individuals that "fail to comply with market rules, deviate from the spirit of a contract, block supplies to Chinese companies for non-commercial purposes, or discriminate against Chinese enterprises." To date, China has not issued a measure implementing an "unreliable entities list."

*Question.* The President has said on numerous occasions that businesses and consumers can avoid the impact of the tariffs by purchasing goods made in the United States. They may also avoid tariffs by purchasing goods manufactured in third countries.

Has USTR analyzed whether the tariffs are benefiting third-country producers and what steps are you taking to avoid harm to U.S. producers who manufacture



in China where the primary beneficiary of increased tariffs on Chinese products is third-party markets?

Answer. The imposition of tariffs can have many effects, including modifications to supply chains. I have closely followed reports of manufacturing coming back to the United States from China or going to third countries in some instances.

*Question.* In written responses to this committee, you indicated that the aim of an agreement on currency with China is to “refrain from competitive devaluations in currency and to agree to a certain level of transparency that would be enforceable under the agreement.”

Can you clarify whether the obligations would apply to the United States, as well as China, and which obligations would be enforceable?

Answer. Ensuring that China implements its commitments in any agreement is crucial, and we are therefore determined to include an enforcement mechanism that makes China’s commitments fully enforceable and subject to responsive action by the United States in the event of non-compliance. I am happy to discuss with you any potential U.S. obligations under an eventual agreement.

*Question.* Some news reports suggest that in your talks with China you are negotiating provisions on a range of topics that will be binding on the United States. I understand you believe your authority for these negotiations is section 301 and the agreement is intended to settle a dispute over China’s trade action. For this reason, I am concerned about the United States taking on any substantive obligations. Even if the United States is already subject to identical obligations, we have to think through the implications of giving new potential tools to China to break into our market.

Please confirm whether the United States is conditioning the lifting of tariffs on China on issues outside of the 301 report?

Given that negotiations are based on the findings of the 301 report, what authority are you using to negotiate a broader based agreement? Are there any limitations on this authority?

Why is it appropriate to provide this quid pro quo where the United States takes on binding commitments in an agreement that is supposedly settling complaints against China?

Answer. The current negotiations with China are an attempt to reach an executive agreement that would be entered into under the existing authority of the President and USTR. Any agreement will not require changes to U.S. law. The President will provide direction at the appropriate time on whether and if any current tariffs on China should be removed.

*Question.* This administration has touted—often with few specifics—that as part of its trade agreements, China, the EU, Mexico and others have agreed to purchase large quantities of U.S. agricultural products. Our farmers want less state direct and state-owned enterprise involvement in trade in agricultural products; these farmers want to fairly compete on quality and price for consistent foreign customers—not be sustained from year to year by temporary government purchases.

How do foreign government commitments to purchase U.S. ag products support open and free trade in agricultural goods in the long run, particularly if our trade deals with China, Japan, or the EU are not addressing SPS, TRQ administration, or other market access restrictions that our farmers face?

Answer. Regarding China, the United States has been negotiating to resolve a large number of unwarranted and longstanding trade barriers to U.S. agricultural exports. While in an ideal world Chinese buyers would use market mechanisms, China has historically purchased many agricultural goods from U.S. producers through state-owned trading companies, including before our negotiations ever started. We are encouraging China to demonstrate real structural changes across a wide range of unfair policies and practices that will yield actual, verifiable, and enforceable results for American farmers, ranchers, workers, and businesses.

Negotiating and passing high-standard trade agreements like the USMCA is the best way to ensure our farmers have continued and expanded access to foreign markets. The USMCA is the most comprehensive and high-standard trade agreement ever negotiated, and includes a modernized SPS chapter and strong TRQ administration rules.

In addition, USTR's negotiating objectives for a U.S.-Japan Trade Agreement, released December 21, 2018, include administration priorities in areas such as SPS and TRQ administration, and USTR remains committed to achieving those objectives with Japan.

*Question.* Last month the Department of Commerce announced it would place Huawei on its Entity List effectively banning U.S. companies from selling components to Huawei without a license and separately, an executive order was issued to bar Huawei from accessing the U.S. telecom market. By all accounts, these actions are based on a legitimate national security risk created by Huawei and not just an attempt to create leverage in an ongoing trade negotiation.

Nonetheless, the administration reversed course last week after meeting with President Xi at the G20. President Trump tweeted that China will begin purchasing large amounts of agricultural products, while the United States would remove the Entity List restrictions from Huawei as negotiations continue.

The administration appears ready to give up our national security for literal peanuts.

Is it appropriate to involve matters of national security in trade negotiations? Can you cite past examples of national security matters being a subject of such negotiations?

Has the intelligence assessment or national security needs of the United States changed since May 21 so as to justify the reversal in position on Huawei?

*Answer.* As you know, Huawei is currently on the Entity List. I recommend directing any questions regarding Huawei to the Department of Commerce.

*Question.* It is my view that even if national security was on the table in the negotiations with China, trading U.S. safety for status quo exports in hardly the "art of the deal." In 2018, China purchased \$9.2 billion in U.S. agricultural products and was the number 5 export market for U.S. agricultural products, according to USDA. This was down from \$21.4 billion in 2016, when China was the number one agricultural export market for the United States.

When the President touts China's proposed purchases of agricultural products, does the administration anticipate returning to the volume of agricultural product exports maintained prior to the imposition of tariffs and retaliatory tariffs (\$21.4 billion), or does the administration expect the trading of U.S. national security to garner greater agricultural access to China's market? If so, how much?

*Answer.* The United States has been negotiating with China to resolve a large number of unwarranted and longstanding trade barriers to U.S. agricultural exports. We are encouraging China to demonstrate real structural changes across a wide range of unfair policies and practices that will yield actual, verifiable, and enforceable results. The administration has been clear in demanding that China make substantial purchases of U.S. agricultural products and remove technical and regulatory barriers that impede U.S. agricultural exports to China.

*Question.* Please indicate the agricultural products which China has agreed to begin purchasing. Has China agreed to purchase products other than soybeans, such as wheat, corn, rice, tree fruit, nuts, or other specialty crops?

*Answer.* The United States continues to engage in conversations with China concerning purchases of agricultural products. As you know, the United States is demanding that China make substantial purchases of U.S. agricultural products, in addition to making structural changes across a wide range of unfair policies and practices.

*Question.* We understand that you have been working on a trilateral basis with Japan and the EU in undertaking measures to combat the non-market oriented policies and practices of countries such as China. The trilateral discussions also were intended to explore ways to prevent forced technology transfer and possible new rules on industrial subsidies and state-owned enterprises.

What concrete progress has been made in the trilateral discussions with the EU and Japan?

How close are you to having text to share with Congress?

What next steps are expected for the trilateral group?

*Answer.* The trilateral process has been useful to reconfirm our shared understanding that market-oriented conditions are fundamental to a fair, mutually ad-

vantageous global trading system. Non-market oriented policies and practices, forced technology transfer, state-owned enterprises, and industrial subsidies are critical concerns in light of China's overall non-market economic system. On each element of the trilateral discussions, the focus has been to analyze the nature of the problems in China to identify effective means to address our shared concerns. This may include individual, coordinated, or joint enforcement actions, developing shared norms on fair trade, and exploring possible new rules in those areas. Any new rules must be ambitious, high standard, and effective in curbing China's unfair practices. We will continue to work with our partners and engage with other key WTO members with the aim of taking the work forward more broadly.

*Question.* I have long said that it is important to bring our allies along to help address China issues—particularly issues related to overcapacity—that is why I am glad the administration has reached a deal to drop the tariffs against Mexican and Canadian steel and aluminum. However, according to some reports, Chinese steel production has actually increased since the tariffs have gone into place.

What is your assessment of the success of the tariffs on addressing China's overcapacity?

*Answer.* The tariffs imposed by the President under section 232 of the Trade Expansion Act of 1962, as amended, are based on a finding by the Secretary of Commerce that the quantity and circumstances of steel and aluminum imports threaten to impair the national security. The purpose of the tariffs is to address this threat. At the same time, USTR is actively engaged with like-minded trading partners in an effort to address persistent excess capacity in China. This includes an effort to address subsidies and other non-market-oriented policies and practices that are the root cause of the problem. The tariffs have been very successful as we have seen new investment in these industries in the United States, which has resulted in the preservation and creation of jobs in these sectors.

*Question.* It is hard for me to see the national security threat created by a Camry manufactured in Kentucky or a Honda Accord manufactured in Ohio. Nonetheless, Trump's May 17th proclamation provides you 180 days to negotiate limits on the importation of autos and auto parts into the United States on the basis of the supposed threat created by foreign-owned auto producers.

What import limits are you considering and how will you make sure these limits do not affect the ability of foreign-owned manufacturers to continue to manufacture cars here?

When does the administration intend to make the 232 report on autos and auto parts public as required under the statute?

*Answer.* The President's proclamation addresses imports of automobiles and certain automobile parts that are important for maintaining America's technological leadership in automotive research and development that supports national security. The President has directed me to pursue negotiation of agreements with countries that I deem appropriate to address the threatened impairment to our national security. The administration has a longstanding policy of not negotiating in public and, at this time, we cannot comment further on the scope of these negotiations. I of course am happy to discuss this matter with you in more detail.

*Question.* For more than a year this administration has been blocking the approval for new Appellate Body members in an effort to draw attention to concerns regarding the WTO dispute resolution system. I share your concerns, and I want to see them addressed. While your prior written responses to us claim that the "United States is at the forefront of the reform effort in Geneva," the United States to date does not appear to have put forward a written proposal on AB reform.

Does the United States have a reform proposal to address the concerns outlined by the United States regarding the Appellate Body?

Have you shared a plan with other members regarding how to ensure AB members follow the procedural rules set forth in the DSU?

The United States recently appealed findings in the Turkey Tubes dispute (DS 523). Where will a non-functioning dispute settlement system leave that case?

What are the next steps in addressing the problems at the WTO?

*Answer.* The administration's steadfast position is that the WTO dispute settlement system should operate as specified in the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). These are the rules agreed

to by WTO members in the Uruguay Round, and the rules which were approved by Congress in the Uruguay Round Agreements Act.

For over 15 years, and through multiple administrations, the United States has repeatedly expressed concerns with the WTO Appellate Body's activist approach, which has involved overreaching on procedural issues, its interpretative approach and its findings on substantive matters. In short, the Appellate Body has failed to apply the WTO rules as written and agreed to by the United States and other WTO members.

In 2018 and 2019, the United States made a series of statements at DSB meetings detailing the Appellate Body's disregard for the rules set by WTO members, and the Appellate Body's attempts to add to or diminish rights or obligations under the WTO agreement. The issues addressed included the Appellate Body's disregard for the mandatory 90-day deadline for appeals,<sup>6</sup> allowing persons to serve on appeals after their Appellate Body term has ended,<sup>7</sup> the Appellate Body's unauthorized review of panel factual findings (including on domestic law),<sup>8</sup> the Appellate Body's issuance of advisory opinions on issues not necessary to resolve a dispute,<sup>9</sup> and the treatment of prior Appellate Body reports as precedent.<sup>10</sup>

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

To identify a solution, it is important that WTO members understand how it is that we have come to this point where the Appellate Body, a body established by members to serve the members, is disregarding the clear rules that were set by those same members. In other words, members need to engage in a deeper discussion of why the Appellate Body has felt free to depart from what members agreed to. We must have that understanding in order to know how we can prevent this from happening again in the future. If WTO members believe in a rules-based trading system, then they bear a collective responsibility to ensure that the WTO dispute settlement system, including the Appellate Body, abides by and respects those rules.

*Question.* I am encouraged by the ongoing discussion at the WTO regarding the e-commerce initiative and support the strong proposal of the United States and your leadership on this issue.

In your view, what are the next steps in building broad support for an ambitious outcome and what challenges must be overcome?

*Answer.* The WTO digital trade initiative will only be successful if it can deliver commercially significant outcomes for firms and consumers in the digital sphere. We are working closely with allies to gain support for high-standard outcomes based on the USMCA digital trade chapter, which we view as a model for core digital trade rules in this negotiation and in future agreements. The large number of participants, including China, adds challenges and complexity. We must ensure that broad participation does not lower the initiative's level of ambition. Our intent is to achieve a high-standard, high-quality agreement, even if that objective ultimately

<sup>6</sup>DSU Article 17.5. Statement by the United States Concerning Article 17.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Meeting of the DSB on June 22, 2018, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB\\_Stmt\\_as-delivered.fin\\_public.rev.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB_Stmt_as-delivered.fin_public.rev.pdf).

<sup>7</sup>DSU Articles 17.1, 17.2. U.S. Statement at the August 31, 2017, Meeting of the DSB, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB\\_Stmt\\_as-delivered.fin\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB_Stmt_as-delivered.fin_public.pdf); and U.S. Statement at the February 28, 2018, Meeting of the DSB, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb28.DSB\\_Stmt\\_as-delivered.fin\\_public-1.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb28.DSB_Stmt_as-delivered.fin_public-1.pdf).

<sup>8</sup>DSU Article 17.6. Statement by the United States Concerning Article 17.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* and Appellate Review of Panel Findings of Fact, Including Domestic Law, Meeting of the DSB on August 27, 2018, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB\\_Stmt\\_as-delivered.fin\\_rev\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB_Stmt_as-delivered.fin_rev_public.pdf).

<sup>9</sup>DSU Articles 7.1, 11, 17.6. Statement by the United States Concerning the Issuance of Advisory Opinions on Issues not Necessary to Resolve a Dispute, Meeting of the DSB on October 29, 2018, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB\\_Stmt\\_as-delivered.fin\\_rev\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB_Stmt_as-delivered.fin_rev_public.pdf).

<sup>10</sup>DSU Article 3.9, WTO Agreement Article IX:2.

results in the participation of a smaller number of like-minded countries committed to high standards.

*Question.* European cheesemakers can sell their asiago, parmesan, and feta in the United States, but U.S. cheesemakers are not allowed to sell their cheeses using these common cheese names in Europe because of the EU's geographical indication (GI) rules. Industry estimates that we're running a \$1.4 billion dairy trade deficit with the EU; the EU's GI rules are one of the key barriers helping drive this deficit. Adding insult to injury, the EU is taking steps to impose those same types of product bans on cheese names and wine terms in other markets around the world as well.

What steps are you currently taking to stop the spread of this practice with trading partners?

Are GIs part of your discussions with Japan?

What are you going to do to address this with the EU directly in talks with them?

What are you going to do to address this with the EU directly in talks with them?

*Answer.* The United States and the EU have longstanding differences over the scope and level of intellectual property rights protection for geographical indications (GIs). This is an important concern, and USTR is pressing the EU both bilaterally and in multilateral fora to expand market access for U.S. producers into the EU. The EU's actions are also concerning where there are existing international Codex Alimentarius standards, such as for certain cheeses. USTR is working to safeguard third country markets, including removing barriers such as over-broad GI protection for EU products that serve to block U.S. producers and traders using common food names or who have prior trademark rights. As for Japan, the administration's U.S.-Japan Trade Agreement Negotiating Objectives, published in December 2018, include a negotiating objective related to GIs that aim to achieve a level playing field for our dairy and cheese producers.

*Question.* The trade relationship with India appears to continue to deteriorate. The United States is imposing tariffs on India's steel and aluminum exports, and has removed India from the GSP program. India has imposed retaliatory tariffs on U.S. apples, walnuts, and other products. Further non-tariff issues related to dairy imports, medical devices, and other products continue to impact U.S. exports.

What are the next steps in addressing ongoing trade concerns with India and opening up that market for U.S. exports?

*Answer.* We remain engaged with India and are committed to address outstanding trade concerns. I have already spoken to the new Indian Commerce Minister, and a USTR team recently visited New Delhi to meet with a variety of Indian government officials in an attempt to make progress on the broad range of trade barriers we have highlighted. Our objective is for the Indian government to finally move toward pulling down many trade barriers that have historically stifled market access there for U.S. goods and services.

*Question.* China has long claimed that its Protocol of Accession to the WTO requires all countries to treat it as a market economy in antidumping investigations. China initiated disputes against the EU and the United States at the WTO contesting the continuing treatment of China as a non-market economy in our antidumping and countervailing duty proceedings. China has since withdrawn the dispute against the EU.

What is the status of this dispute? What steps will you take to ensure our major trading partners continue to take appropriate action against dumped Chinese product—and where appropriate use a non-market economy methodology?

*Answer.* As you know, China recently requested the panel to suspend its work in the proceeding against the EU, and on June 14, 2019, the panel informed the WTO Dispute Settlement Body (DSB) of its decision to grant China's request and suspend its work. China has not moved forward with a request for panel establishment against the United States. As we have done throughout the non-market economy dispute, the United States continues to work closely with the EU and other trading partners to confront shared challenges with China. The administration is committed to ensuring the vigorous enforcement of U.S. trade remedies laws, including the use of appropriate methodologies to address distortions caused by non-market economic conditions. Additionally, within the USMCA, the United States, Mexico and Canada set forth high standards aimed at combating non-market practices such as currency manipulation and state-sponsored subsidies. The administration will continue to ac-

tively engage with our allies and trading partners on these shared challenges. This is particularly true with respect to the trilateral process, where we are coordinating with the EU and Japan on non-market economy issues.

*Question.* As part of the new NAFTA signed on November 30, 2018, the United States and Canada signed a letter stating that “no later than November 1, 2019,” “[British Columbia] shall eliminate the measures which allow only BC wine to be sold on regular grocery store shelves while allowing imported wine only to be sold in grocery stores through a so-called ‘store within a store,’ and those contested measures shall not be replicated.” This letter entered into force “on the date of [Canada’s] reply.”

Can you confirm that this letter is in force and provide an update on British Columbia’s efforts to remove its measures discriminating against Oregon and other U.S. wine?

*Answer.* On July 8, 2019, British Columbia amended its Liquor Control and Licensing Regulation governing the sale of wine in grocery stores. USTR is continuing to review the amendments to assess whether British Columbia has implemented changes necessary to carry out the commitments in the USMCA side letter.

*Question.* It has been widely reported that USDA is moving the Economic Research Service (ERS) to Kansas City, MO. Public reports suggest that the staffing levels at ERS had already declined by one third over those during the Obama administration.

Has USTR or USDA evaluated the impact of further declines in ERS staff levels attributable to the proposed relocation on the ability of this administration to investigate and enforce violations of WTO or FTA obligations? What effect does USTR anticipate from these declines?

*Answer.* Over the years, USTR has worked with USDA to perform economic analysis for various agricultural trade issues and negotiations, including in support of enforcement actions related to obligations under WTO and FTA agreements. USTR expects to continue receiving this type of support from USDA regardless of the location of USDA employees. We do not believe the proposed relocation of ERS employees to Kansas City will have any effect on our ability to continue this interagency cooperation.

*Question.* I am very concerned with the lack of timely and detailed briefings by the administration on its trade initiatives. Broad descriptions of the President’s trade goals and quick calls with members are not a substitute for briefing staff, especially staff of committee members, on the details of negotiations and providing text of proposed deals when shared with the appropriate safeguards.

Will you commit to having your staff brief staff of members of the committee before and after each round of meetings with China, Japan, the EU, and the UK?

*Answer.* I and my staff have dedicated thousands of hours during the course of this administration to briefing members and staff on trade agreements, negotiations, and other initiatives. I am happy to report that we regularly receive positive feedback from members of both parties acknowledging our transparency and candor with respect to the development and execution of trade policy. I will continue to have USTR staff brief committee staff as new developments arise in ongoing trade matters.

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#### QUESTIONS SUBMITTED BY HON. MIKE CRAPO

*Question.* Many U.S. companies rely on access to customers and markets across the globe, especially so in China. Unfortunately, however, there are U.S. firms that have been caught in the crossfire between the U.S. and China, and those companies—and industries—are suffering as a result. Ultimately, we must reach a meaningful and enforceable agreement with China to allow American businesses to once again compete and thrive in the global marketplace.

What steps is the administration taking to ensure American companies are protected against any retaliatory actions or increased pressures they may face while negotiations with China continue?

*Answer.* Through our ongoing negotiations with China, we are seeking structural changes in China that will help level the playing field for U.S. companies. China should have responded to the findings in the section 301 investigation and the U.S.

tariff actions by undertaking the necessary economic and policy reforms needed to end its trade-distortive practices. Instead, China retaliated with tariffs on U.S. products. Currently, the administration's use of tariffs under section 301 of the Trade Act of 1974 is providing the United States with an important source of leverage to bring China to the table to negotiate an enforceable agreement that will address China's unfair trade practices. In our negotiations with China, we are pressing China to remove its retaliatory tariffs entirely.

*Question.* The dairy industry needs greater access to export markets, including China. The U.S. is well positioned to provide China the dairy products their consumers will demand in the future. However, to successfully compete for this business, the U.S. dairy industry must be able to compete on a level playing field. In order to do so, duty-free access for U.S. dairy, along with the removal of retaliatory tariffs, are needed as part of any deal struck with China.

Will the U.S. dairy industry be considered a priority in future negotiations with China?

*Answer.* U.S. dairy producers face a great number of structural issues that limit their access to China's dairy market, including complicated registration, import licensing, and labeling requirements. We have discussed dairy extensively with China over the course of our conversations this year. We are committed to addressing issues that impede market access in China for U.S. dairy producers.

*Question.* A free trade agreement (FTA) with Japan is critical for the U.S. dairy industry. Not only would a Japan FTA provide American firms with new market opportunities in Japan, but it would help to avoid losing current sales. Due to Japan's agreements with the EU and with Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) countries, U.S. producers are beginning to fall behind in terms of exports and market access. As negotiations with Japan continue, drawing upon the best terms from both agreements will be critical to ensuring that the U.S. is able to secure a strong, competitive position in what would be a key market.

Will you prioritize both the need for a timely agreement and the inclusion of provisions that will allow U.S. dairy to compete with global competitors in the Japanese market?

*Answer.* It is a top priority of the Trump administration to negotiate a trade agreement with Japan to advance the interests of our farmers, ranchers, and food processors in this important market. I have met several times with my Japanese negotiating counterpart in recent months to advance these discussions, including at the G20 meetings in Osaka in late June. A top objective of these negotiations is to ensure that U.S. agricultural exporters, including U.S. dairy suppliers, are not disadvantaged by Japan's other trade agreements.

*Question.* The sportfishing industry has been negatively affected by the section 301 tariffs on China. Recreational fishing is enjoyed by over 600,000 Idahoans each year, which contributes \$1.1 billion to the State's economy and supports roughly 8,400 jobs. Much of the fishing equipment used by Americans is made in China, with few alternative sources produced outside of China. Shifting supply chains cannot be done quickly or without cost. Moreover, fishing equipment purchases are subject to a 10-percent excise tax, the revenues of which fund fish and wildlife agencies through grants distributed via the Sport Fish Restoration and Boating Trust Fund. Tariffs on fishing equipment are borne not only by recreational anglers but by the State wildlife agencies that manage fishery projects, boating access and aquatic education.

Has USTR examined the impact that Section 301 tariffs may have on the sportfishing industry? If not, will USTR do so in the future?

*Answer.* USTR has received comments and heard witness testimonies from the sportfishing industry during the notice and comment process. I will consider these comments and testimonies before taking action on any additional tariffs.

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QUESTIONS SUBMITTED BY HON. PAT ROBERTS

*Question.* From 2017 to 2018, the value of agricultural exports from the U.S. to China decreased 53 percent from \$19.5 billion to \$9.2 billion. For nearly a decade, China has consistently been ranked either the first or second export destination for U.S. agricultural products. However, in 2018, they fell to fourth. Given the need to

feed a large population in China, the lost value in agricultural exports from the U.S. to China has to be sourced somewhere from within the global marketplace.

If the trade war with China continues to drag on, and as China continues to work more closely with other countries in the global marketplace to source their agricultural products, how can we ensure that the U.S. does not lose long-term market share to a country that U.S. farmers have relied on?

Answer. The U.S.-China economic relationship is very important, and the Trump administration is committed to reaching meaningful, fully enforceable commitments to resolve structural issues and address our persistent trade deficit. This of course includes removing impediments to trade in agriculture with China. U.S. agricultural producers face a great number of barriers that limit their access to China's agricultural markets. We are encouraging China to make real structural changes, across a wide range of unfair policies and practices that will yield actual, verifiable, and enforceable results.

*Question.* At the end of last year, the countries that ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) began to utilize its market access. Each day this agreement is in effect, is another day the U.S. is trailing behind our competitors that are taking advantage of this agreement.

I'm aware you cannot share specific details about ongoing trade negotiations—such as those with Japan, the UK, and the EU, but I am interested in hearing how USTR is ensuring the United States continues to be competitive and achieve a level playing field with countries that are utilizing new trade agreements forged around the globe.

Answer. The administration's aim in negotiations with Japan is to address both tariff and non-tariff barriers and to achieve fairer, more balanced trade. As suggested in the September 2018 Joint Statement by President Trump and Prime Minister Abe, the administration has envisioned the possibility of a staged negotiation, with an initial, limited outcome designed, in part, to help U.S. exporters put at a disadvantage by Japan's other trade agreements. At the same time, the administration seeks to pursue other, much broader objectives for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018. Eliminating any disadvantage with competing agriculture exporters is a key goal and is the primary objective of any early outcome with Japan.

At this stage, we are focusing with the EU on several key impediments to U.S. exports in the EU market. The EU protects its market with high tariffs on a wide range of agricultural products and on selected industrial products. These tariffs limit U.S. exports in sectors where U.S. producers and firms are globally competitive or dominant. Members of the committee are aware that we have not begun comprehensive tariff negotiations with the EU because the EU has not agreed to negotiate reductions in tariffs on agricultural goods, and it would not be acceptable to Congress, the administration, or our stakeholders to conclude a tariff agreement limited to industrial trade.

Despite this impasse, we continue to work constructively with the EU on non-tariff barriers that impede U.S. exports to the EU.

As the UK prepares to leave the EU, we intend to negotiate a comprehensive agreement that provides a high level of access to the UK market and a level playing field for U.S. exporters.

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QUESTIONS SUBMITTED BY HON. JOHN CORNYN

*Question.* USTR recently withdrew India's benefits under the Generalized System of Preferences (GSP) program over their failure to provide fair market access to U.S. products. I also understand that USTR is considering launching a Special 301 investigation that could result in additional tariffs on Indian goods.

Have you been in contact with the new Indian Commerce Minister to discuss these matters?

What is USTR's plan to reduce trade tensions with India and get back to the negotiating table?

Answer. Yes, I have spoken to Minister Goyal. A USTR team also recently visited New Delhi to meet with a variety of Indian government officials in an attempt to



make progress on the broad range of trade barriers we have highlighted. We remain committed to finding solutions to the myriad of trade concerns we have with India. I hope that the Government of India demonstrates a comparable commitment to resolving our concerns.

*Question.* I strongly support the administration's effort to address China's predatory trade practices. It is clear that China is making every effort to vacuum up sensitive U.S. technology and erode the technological gap. However, I am also hearing from numerous Texas companies who are being forced to divert funds from other operating expenses—primarily R&D—in order to pay for the tariffs.

Has USTR carefully considered the impact of tariffs on U.S. industry, particularly the impact that less R&D can have on our overall competitiveness?

*Answer.* USTR has received comments and heard witness testimonies regarding the tariffs' effect on R&D during the notice and comment process for the tariff actions on Lists 1, 2, and 3 as well as the proposed tariff action for List 4. I will consider these comments and testimonies before taking action on any additional tariffs for List 4. In addition, with respect to Lists 1, 2, and 3, USTR is conducting an exclusion process that allows for a case-by-case assessment of tariff impacts based on factors laid out in Federal Register notices.

*Question.* The U.S. dairy industry applauded USDA's announcement of up to \$16 billion in relief to U.S. agriculture as retaliatory tariffs from trading partners continue to disrupt U.S. export activity especially USDA purchases of dairy products including fresh, nutritious milk to benefit food banks and food insecure Americans. However, dairy companies need better access to export markets including China. The U.S. is well positioned to provide China the dairy products their consumers will demand in the future. However, to successfully compete for this business, the U.S. dairy industry must have a level playing field which means any trade deal with China must include duty-free access for U.S. dairy products and the removal of China's retaliatory tariffs.

Will dairy be included as a priority in the negotiations?

*Answer.* U.S. dairy producers face a great number of structural issues that limit their access to China's dairy market, including complicated registration, import licensing, and labeling requirements. We have discussed dairy extensively with China over the course of our conversations this year. We are committed to addressing issues that impede market access in China for U.S. dairy producers.

*Question.* Can you please elaborate on the extent to which the negotiations with China have focused on renewed access for U.S. cotton? Has there been any discussion to date about the possibility of greater purchases of cotton, even during the interim while tariffs are in place?

*Answer.* The United States has been negotiating with China to resolve a large number of unwarranted and longstanding trade barriers to U.S. agricultural exports. We are encouraging China to make real structural changes across a wide range of unfair policies and practices that will yield actual, verifiable, and enforceable results. We intend to secure a result that provides real benefits to U.S. cotton producers.

*Question.* Given the current trade dispute with China, the Asia-Pacific continues to become an increasingly important market for U.S. goods and services.

Can you please share some detail on the scope of the negotiations with Japan?

*Answer.* As suggested in the September 2018 Joint Statement by President Trump and Prime Minister Abe, the administration has envisioned the possibility of a staged negotiation, with an initial, limited outcome designed, in part, to help U.S. exporters put at a disadvantage by Japan's other trade agreements. At the same time, the administration seeks to pursue other, much broader objectives for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

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QUESTION SUBMITTED BY HON. JOHN THUNE

*Question.* Page 22 of the May 30, 2019, Draft Statement of Administrative Action states: "Between the submission of this draft SAA and the submission of the final implementation package, USTR intends to continue consultations with Congress on potential changes to section 901 of the Trade Facilitation and Trade Enforcement

Act (19 U.S.C. 1321) to implement Article 7.8.1 (Express Shipments) [of the United States-Mexico-Canada Agreement].” While I appreciate your continued willingness to consult Congress on any potential changes to the current U.S. de minimis threshold, I believe Congress has already spoken conclusively on this matter. Beyond the unilateral de minimis threshold increase set forth in TFTEA, which Ranking Member Wyden and I helped spearhead, in the past year, you have received numerous letters from Congress urging you not to deviate from Congress’s well-established position on de minimis. In fact, since November 2018, you have explicitly heard from more than 10 Republican and Democrat members of this committee, including the chairman and ranking member, all of whom have asked you not to derogate from the current threshold.

Based on your consultations with the House Ways and Means and Senate Finance Committees, do you agree that strong bipartisan majorities of the House and Senate oppose lowering the current U.S. de minimis threshold of \$800, even if Canada and Mexico are unwilling to raise their de minimis thresholds to reciprocal levels? If so, what, if any, other changes to the current U.S. de minimis threshold are you contemplating?

Answer. As noted in the administration’s submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. As you note, these consultations are underway, and I look forward to working with you and other members on this important issue.

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QUESTION SUBMITTED BY HON. RICHARD BURR

*Question.* As you know, exports are critically important to agriculture. According to the most recent data from the North Carolina Department of Agriculture, North Carolina exported nearly \$3.5 billion in agricultural products, supporting nearly 70,000 jobs. However, I continue to be concerned about the effects of retaliation across the globe, including most recently the EU’s list of targeted U.S. exports that included sweet potatoes and tobacco.

Can you describe your plans to ensure markets are open to American agriculture exports, including addressing potential retaliation, and also through negotiations on additional free trade agreements?

Answer. I understand your concern about the impact of the retaliatory tariffs on U.S. exports of agricultural products. Countries have wrongly imposed retaliatory tariffs on a range of U.S. exports, including agricultural products, and we have initiated WTO disputes to defend the United States.

With respect to negotiations on new trade agreements, we are engaged in active discussions with Japan and China, and hope to conclude these in the near future. In the case of the United Kingdom, we have completed the necessary steps under Trade Promotion Authority, including notification to the Congress of U.S. negotiating objectives. We are ready to start trade negotiations with the United Kingdom once it leaves the European Union. We have taken similar steps to prepare for negotiations with the European Union. However, the European Union has so far been unwilling to engage in a negotiation that includes agriculture.

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QUESTIONS SUBMITTED BY HON. JOHNNY ISAKSON

*Question.* I’d like to first applaud you and the President for your efforts in renegotiating NAFTA and producing USMCA. I believe the new agreement will have an overall positive affect on U.S. agriculture. However, you’ve heard me discuss my concern that USMCA does not address the issue of Mexican producers engaging in targeted, seasonal dumping of fruits, vegetables, and other perishables into U.S. markets. Georgia’s fruit and vegetable farmers already find themselves in fragile circumstances in the wake of Hurricane Michael. They will not be able to sustain indefinite market turmoil.

In March, you said the Trump administration was exploring ways to assist the domestic fruit and vegetable industry. Can you provide me with an update on these efforts?

Answer. We continue to consider the seasonality issue and explore possible solutions with members and stakeholders. We look forward to working with you and other members of Congress to address the seasonality issue in a way that properly considers the wide range of views and impacts across the U.S. fresh fruit and vegetable industry.

*Question.* Strong foreign markets are essential for Georgia's agriculture economy. Commodities such as poultry, cotton, peanuts, and many others depend on access to markets abroad and, without these markets, I fear that the already vulnerable farm economy will continue to decline. As I've said before, I applaud the administration's efforts to level the playing field with bad actors like China. However, I'm wary of an ongoing trade war where farmers, consumers, and businesses owners in both countries lose.

Can you provide an update on the progress of current negotiations as well as an update on how USTR is working to establish new agriculture markets in the near future?

Answer. We are engaged in active trade negotiations with Japan, and hope to conclude these in the near future with a robust outcome on agriculture. In the case of the United Kingdom, we have completed the necessary steps under Trade Promotion Authority, including notification to the Congress of U.S. negotiating objectives. We are ready to start trade negotiations with the United Kingdom once it leaves the European Union. We have taken similar steps to prepare for negotiations with the European Union. However, the European Union has so far been unwilling engage in a broad-based trade negotiation that includes agriculture.

Every day USTR and USDA work to resolve trade barriers to U.S. agricultural products, and have had success in many sectors and countries, such as poultry to Tunisia, or pork to Argentina. We currently have ongoing discussions with a number of countries on specific bilateral issues to address market access impediments affecting U.S. farm products. Examples of such bilateral work includes market access for poultry in India, wheat in Brazil, rice in Korea, and horticultural products in Indonesia.

*Question.* Like you, I believe that all aspects of our trade relationship should be on the table when negotiating trade agreements with entities such as the European Union.

What is USTR doing to ensure that previously "off-the-table" aspects of a productive trade agreement, such as agriculture, are up for negotiation? Has USTR considered engaging other non-EU countries in Europe, such as Switzerland, that have indicated interest in negotiations on all aspects of a trade relationship?

Answer. We have made it abundantly clear to both the European Commission and to EU member states that we will not begin tariff negotiations with the EU until agriculture is on the table. In the meantime, we continue our joint efforts to address other matters of importance to the transatlantic trade relationship, including work on non-tariff barriers to trade and specific trade concerns.

We continue to evaluate potential FTA discussions with a number of countries, including Switzerland. The decision on whether to launch any negotiations must be based on an assessment of whether we will have an end result in which more U.S. businesses are selling more of their goods to the country in question. Our end goal in any negotiation is always to make American workers and farmers better off than they were before. If we decide to start such negotiations, we would intend to follow the TPA process as appropriate.

*Question.* I understand that USTR is preparing to open the exclusion process for products falling under List 3 of the China 301 tariffs. Furthermore, USTR recently ended public hearings on a 4th list of tariffed goods, which may go live in the near future.

Are you confident that USTR will be able to handle the list 3 and 4 exclusion processes considering the length of time exclusions were and currently are being processed for Lists 1 and 2?

What is being done to ensure that American businesses are not left in limbo for months after submitting exclusion requests? Furthermore, does USTR plan to give expedited treatment for companies that wish to renew their granted exclusion past the first year?

Answer. Approximately 35 USTR attorneys, paralegals, trade analysts, and contractors with experiences in law, industrial sectors, tariff classifications, and data

analysis work on the exclusion process. In the coming weeks, we anticipate onboarding additional staff, including analysts on detail from the Departments of Treasury, Commerce, and Agriculture, that will assist on the exclusions process, particularly for List 3. The majority of these personnel work on the exclusion process on a full-time basis and collectively have spent thousands of hours reviewing and processing exclusion requests.

USTR presently intends to carry out its section 301 exclusion process at our current level of funding. Given the substantial level of resources necessary to implement the List 3 exclusion process, USTR will closely monitor the exclusion process to assess whether additional funding is necessary.

USTR is reviewing various courses of action with respect to whether and how to renew the exclusions granted for Lists 1 and 2.

*Question.* The Caribbean Basin Trade Partnership Act (CBTPA) program is an important program for U.S. cotton growers and U.S. textile producers because CBTPA requires beneficiary countries to use U.S. made yarns. It supports U.S. manufacturing jobs and strengthens U.S. supply chains. Additionally, the program is critical to the garment industries in beneficiary countries, as it allows them to compete with Chinese and other major suppliers and develop local economies. However, CBTPA is currently set to expire on September 30, 2020. Current uncertainty about the program's continued existence is damaging both beneficiary countries and U.S. companies. Business decisions for late 2020 and beyond are being made now and certainty is necessary. A bipartisan bill to extend CBTPA through 2030—H.R. 991—has been introduced in the House, and I am working to introduce similar legislation in the Senate.

Will you work with me and my colleagues in the House and Senate to support a swift extension of CBTPA?

Answer. I look forward to working with you and other members of Congress as you consider legislation extending CBTPA.

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QUESTIONS SUBMITTED BY HON. ROB PORTMAN

*Question.* USMCA proposes to raise the exclusivity for biologics protection in Canada and Mexico. Without getting into whether U.S. drug exclusivity law should be changed as a matter of policy, I wanted to ask about the effect such a change would have on U.S. obligations under USMCA.

If USMCA were to be implemented and the United States were to change its own exclusivity—currently 12 years—to a different number of years, would the United States no longer be compliance with its USMCA obligations? Why or why not? And if the United States were to be out of compliance with its commitments, would the United States be obligated to take steps to remain in compliance, and if so, what would those steps be?

Answer. The USMCA Intellectual Property chapter does not require any changes to current U.S. laws, including those regarding data protection for pharmaceutical products. Our free trade agreement obligations do not restrain Congress's authority to change U.S. law. Moreover, if Congress were to reduce the data exclusivity term, it is highly unlikely that Canada or Mexico would bring a challenge under the USMCA.

*Question.* Some assert that the exclusivity provisions for biologics will increase drug prices in the United States.

Can you outline the theoretical and empirical arguments for why these exclusivity provisions will actually reduce drug prices in the United States?

Answer. The USMCA exclusivity provisions will not drive an increase in U.S. drug prices because it does not change any rules that influence the U.S. pharmaceutical market. The USMCA does not require any changes to U.S. laws on pharmaceutical intellectual property rights in order to comply with the IP Chapter, including with respect to data protection for new biologics products, and will not lead to higher prices on drugs for U.S. consumers. At the same time, the USMCA significantly increases the level of protection that U.S. biologics innovators receive in Mexico and Canada. Research and development into new pharmaceuticals is costly, time-intensive, and risky, particularly for cutting-edge pharmaceutical technologies such as biologics. As the President noted in the May 2018 Blueprint to Lower Drug Prices, unfairly low prices in foreign markets “places the burden of financing drug

development largely on American patients and taxpayers, subsidizes foreign consumers, and reduces innovation and the development of new treatments.” The USMCA raises the standards for data protection of new biologics in Mexico and Canada, while not affecting their protection in the United States.

*Question.* Article 3.7 in the appendix entitled Provisions Related to the Product-Specific Rules of Origin for Automotive Goods requires that for a vehicle to be originating the core parts enumerated in column 1 of Table A.2 must be originating. However, Article 3.9 permits producers to bundle the parts under column 1 together as a “super core” part when calculating the value of non-originating material (VNM).

What is the justification for allowing producer’s to bundle column 1 parts together when calculating the VNM? What are some scenarios in which a producer would elect calculate the VNM of column 1 parts as separate rather than together as a “super core” part? Can you describe how Article 3.9 strengthens, rather than weakens, the automotive rules of origin?

*Answer.* Many vehicle producers do not segregate core parts when producing vehicles, but use or bundle them within different modules along the production line. The “super core” calculation allows such producers to meet the core parts requirement without having to segregate each of the parts and do separate, burdensome calculations. The super core calculation incentivizes U.S. producers to use more originating content and maintains their competitiveness without accruing any possible efficiency losses from having to segregate core parts.

*Question.* The recent agreements with Canada and Mexico to lift the section 232 tariffs on steel and aluminum provide that the parties to these agreements will implement measures to prevent the importation of steel and aluminum that is unfairly subsidized or dumped, prevent the transshipment of steel and aluminum from outside Canada and Mexico, and monitor for surges of steel and aluminum imports from Canada and Mexico.

What specific action does USTR intend to take to ensure effective and comprehensive implementation of these commitments?

*Answer.* The administration will be vigorously enforcing the outcome of the understandings the United States arrived at with Canada and Mexico with respect to the tariffs on steel and aluminum imports. Working with interagency partners, USTR will be closely monitoring trade statistics to identify any problematic changes in trade patterns at an early stage. We will also be engaging regularly and often with stakeholders and with the Canadian and Mexican governments to ensure that we have the latest information on market developments, and to ensure ongoing compliance with the terms of the understandings.

*Question.* In response to a question for the record that I submitted after the March 2019 hearing on World Trade Organization (WTO) reform (page 18), you noted that international trade agreements, and especially those involving new provisions lacking provenance, must be drafted with “great precision and clarity.” Furthermore, you noted that we must ensure that those “called upon to interpret the text must not add to or diminish” the agreed upon commitments. And yet operationalizing these goals in order to—as T.S. Elliot wrote in “Choruses From the Rock”—create “a system so perfect that no one will need to be good” has proven elusive.

Assuming that semasiological drift is not intrinsic to international trade agreements and can be prevented through precise drafting and restrained interpretation, in the context of the World Trade Organization, what mechanisms should be created to ensure that those who interpret such agreements remain faithful to the text of the agreement and neither expand or diminish obligations created by the agreement?

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

For over 15 years, and through multiple administrations, the United States has repeatedly expressed concerns with the WTO Appellate Body’s activist approach, which has involved overreaching on procedural issues, its interpretative approach and its findings on substantive matters. In short, the Appellate Body has failed to

apply the WTO rules as written and agreed to by the United States and other WTO members.

In 2018 and 2019, the United States made a series of statements at DSB meetings detailing the Appellate Body's disregard for the rules set by WTO members, and the Appellate Body's attempts to add to or diminish rights or obligations under the WTO agreement. The issues addressed included the Appellate Body's disregard for the mandatory 90-day deadline for appeals,<sup>11</sup> and allowing persons to serve on appeals after their Appellate Body term has ended,<sup>12</sup> the Appellate Body's unauthorized review of panel factual findings, including on domestic law,<sup>13</sup> the Appellate Body's issuance of advisory opinions on issues not necessary to resolve a dispute,<sup>14</sup> and the treatment of prior Appellate Body reports as precedent.<sup>15</sup>

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

To identify a solution, it is important that WTO members understand how it is that we have come to this point where the Appellate Body, a body established by members to serve the members, is disregarding the clear rules that were set by those same members. In other words, members need to engage in a deeper discussion of why the Appellate Body has felt free to depart from what members agreed to. We must have that understanding in order to know how we can prevent this from happening again in the future. If WTO members believe in a rules-based trading system, then they bear a collective responsibility to ensure that the WTO dispute settlement system, including the Appellate Body, abides by and respects those rules.

*Question.* Foreign trade barriers can be very costly to U.S. exporters, increase the trade deficit, and make American workers and firms less competitive.

Do you believe the National Trade Estimate (NTE) report should include estimates for the cost of identified foreign trade barriers as measured by potential lost U.S. exports? What resources would USTR need to include this information in the NTE?

Answer. The NTE report, wherever possible, presents estimates of the impact of specified foreign trade barriers and other trade distorting practices on U.S. exports, foreign direct investment or U.S. electronic commerce. Quantitatively calculating estimates of the effects of particular barriers and practices is time and data intensive, involving analysis by many subject experts and economists from several U.S. government agencies. In certain cases where consultations related to specific foreign practices are proceeding at the time of the report's publication, estimates are omitted from the NTE to avoid prejudice to the consultations. The NTE's introduction describes this estimates process in more detail.

*Question.* As I understand it, there is a USTR attaché in China, but not a permanent negotiator.

Do you agree that USTR should have a permanent negotiator at the U.S. Embassy in Beijing to quickly address emerging trade disputes and also to monitor enforcement with any concluded section 301 agreement with China?

<sup>11</sup>DSU Article 17.5. Statement by the United States Concerning Article 17.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Meeting of the DSB on June 22, 2018, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB\\_Stmt\\_as-delivered.fin\\_public.rev.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB_Stmt_as-delivered.fin_public.rev.pdf).

<sup>12</sup>DSU Articles 17.1, 17.2. U.S. Statement at the August 31, 2017, Meeting of the DSB, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB\\_Stmt\\_as-delivered.fin\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB_Stmt_as-delivered.fin_public.pdf); and U.S. Statement at the February 28, 2018, Meeting of the DSB, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/feb28.DSB\\_Stmt\\_as-delivered.fin\\_public-1.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/feb28.DSB_Stmt_as-delivered.fin_public-1.pdf).

<sup>13</sup>DSU Article 17.6. Statement by the United States Concerning Article 17.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* and Appellate Review of Panel Findings of Fact, Including Domestic Law, Meeting of the DSB on August 27, 2018, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB\\_Stmt\\_as-delivered.fin\\_rev\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB_Stmt_as-delivered.fin_rev_public.pdf).

<sup>14</sup>DSU Articles 7.1, 11, 17.6. Statement by the United States Concerning the Issuance of Advisory Opinions on Issues not Necessary to Resolve a Dispute, Meeting of the DSB on October 29, 2018, available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB\\_Stmt\\_as-delivered.fin\\_rev\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB_Stmt_as-delivered.fin_rev_public.pdf).

<sup>15</sup>DSU Article 3.9, WTO Agreement Article IX:2.

Answer. Currently, USTR officials in Washington work closely with the USTR officials and officials from other U.S. Government agencies resident at the U.S. embassy in Beijing to monitor Chinese trade policies and practices. USTR officials in Beijing also engage and, where needed, negotiate with Chinese Government officials in Beijing, subject to direction from USTR's leadership in Washington. I agree that ensuring that China implements its commitments in any agreement is crucial, and we are therefore determined to include an enforcement mechanism that makes China's commitments fully enforceable and subject to responsive action by the United States in the event of non-compliance. We will continue to use all available U.S. Government resources, including USTR officials based at the U.S. embassy in Beijing, in these efforts.

*Question.* Monopsony is a market condition where there is a single dominant buyer. In many sectors, China is the largest single purchaser of a particular good. For example, according to the International Trade Administration, China was the top market for semiconductors with 29 percent of the global market in 2015. Such semiconductor consumption is almost entirely import-based; imports constituted 91 percent of China's semiconductor demand, with 56.2 percent of demand coming just from U.S. imports.

Do you believe that China possesses monopsony power in certain sectors? If so, are you concerned about the impact such monopsony power would have for American exporters? What do you believe should be done to address China's potential monopsony power?

Answer. The administration monitors China's policies and practices in key sectors, including with regard to whether China possesses or is using monopsony power in its purchasing of imports. In our negotiations with China, we are trying to address as many of China's non-market oriented policies and practices as possible.

*Question.* China has taken a keen interest in the international standards setting process. For example, in 2018, China had eight of the 39 available leadership positions, the most of any country, at the International Telecommunications Union (ITU) 5G-related bodies. The United States had only a single representative. At the International Standards Organization (ISO), last year China was in third place and the United States was tied for 16th place, with Finland, for the most participants.

Do you agree that China's efforts to "flood the zone" on standards setting reduces American competitiveness and can create future barriers to American exports? Do you believe that the United States government should take a more active role when it comes to U.S. membership on international standards setting bodies? What ways do you believe USTR can be helpful to ensure standards setting bodies are not weaponized by foreign countries seeking to establish new trade barriers?

Answer. China uses participation in standardization as a strategic part of its industrial policy, and it invests significant resources in participating in the development of international standards. These efforts can and do create barriers to American exports. Currently, the U.S. Government also takes an active role in standardization to the extent agency resources are available to participate. USTR does not participate directly in international standardization organizations, except Codex Alimentarius. USTR participates in the American National Standards Institute's (ANSI) policy council that develops U.S. positions in the International Organization for Standardization (ISO), and the committee that monitors foreign and regional policies on standardization. USTR also reviews trade concerns to make sure China and other countries follow the World Trade Organization's (WTO) Agreement on Technical Barriers to Trade's (TBT) Code of Good Practice during national adoptions of voluntary standards, and the WTO TBT committee decision on international standards when implementing a standard in a technical regulation or conformity assessment procedure. The U.S. standards-setting system consists of numerous private bodies, with some government involvement. This system has largely developed organically and haphazardly over many years without a coherent governing principle for dealing with current international challenges, and the system might benefit from a U.S. Government role to become more effective on the international stage. However, any such initiative should be careful to minimize increases in unnecessary regulations or bureaucracy.

*Question.* In fall of 2018, the European Union (EU) considered a digital services tax that appeared to discriminate against U.S. technology companies.

Do you believe that any country that implements a digital services tax that substantially resembles the EU proposal from fall 2018 would violate that country's World Trade Organization (WTO) commitments? If a country were to implement

such a tax, would USTR consider using section 301 to address the resulting inequities or discrimination? In such a scenario, what factors would USTR consider when deciding whether to take unilateral action under section 301 or to pursue dispute settlement at the WTO?

*Answer.* On July 10th, I initiated an investigation under section 301 of the Trade Act of 1974 of the French Digital Services Tax (DST), as set out in the bill agreed to by the joint committee of the French National Assembly and Senate. The French DST shares many elements of the EU proposal. The investigation will determine whether, and on what basis, the DST is actionable under section 301. Actionable matters include where the rights of the United States under any trade agreement are being denied or where an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce. The outcome of the investigation will determine what action, if any, we will take vis-à-vis the French measure. If other EU countries enact DSTs, we will review them on a case-by-case basis and consider appropriate action to respond to them.

*Question.* It is exciting it is to see talk of a U.S.-Switzerland trade agreement back in the news. As chair of the Senate Swiss Caucus, I believe a U.S.-Switzerland trade agreement would open up new agricultural markets and help “test drive” what a broader agreement with the EU might look like.

Do you agree that a U.S.-Switzerland trade agreement should be a priority? What is USTR doing to prioritize a trade agreement between the United States and Switzerland?

*Answer.* We continue to evaluate potential FTA discussions with a number of countries, including Switzerland. The decision on whether to launch any negotiations must be based on an assessment of whether we will have an end result in which more U.S. businesses are selling more of their goods to the country in question. Our end goal in any negotiation is always to make American workers and farmers better off than they were before. If we decide to start such negotiations, we would intend to follow the TPA process.

*Question.* In response to a question for the record (QFRs) submitted after the March 2019 hearing on World Trade Organization (WTO) reform (page 17), you noted that the “administration is pressing China to remove these retaliatory tariffs entirely.”

Given that the administration has suggested that some U.S. retaliatory tariffs may remain in place even after an agreement has been reached, do you have confidence that China would withdraw its counter-retaliatory tariffs in such a scenario?

*Answer.* In the prior response that you reference, I explained that the goal of the section 301 investigation is to change China’s unfair and market-distorting behavior. China should have responded to the findings in the section 301 investigation and the U.S. tariff actions by undertaking the necessary economic and policy reforms needed to end its trade-distortive practices. Instead, China retaliated with tariffs on U.S. products. In our negotiations with China, we are pressing China to remove its retaliatory tariffs entirely. As you know, the negotiations are ongoing and involve numerous issues. At this time, it is difficult to single out a particular issue and predict how the negotiations will ultimately deal with it, but I can assure you that we will continue to press China to remove its retaliatory tariffs entirely.

*Question.* A number of products that were removed from the supplemental \$200 billion trade action as a result of the comment period held by USTR, have reappeared on the proposed supplemental \$300-billion trade action.

What is the justification for adding products to the proposed supplemental action that USTR has already determined to merit removal from the existing supplemental action?

*Answer.* During the notice and comment period, USTR has received comments and heard testimonies regarding products that were previously removed from Lists 1, 2, or 3 but were included on the proposed list for the supplemental \$300-billion trade action. I will consider these comments and testimonies before taking any action on the additional tariffs.

*Question.* I have heard from many constituent companies who are frustrated with the slowness and uncertainty of the section 301 exclusion process.

What is the administration’s proposal to ensure that existing and future section 301 exclusion processes provide timely relief to applicants? Will USTR consider exempting certain industries which can demonstrate that they will not be able to sur-



vive the burden of the China tariffs? Does USTR plan to devote additional resources to existing and future exclusion processes? Does USTR need additional funding and resources to be able to implement and conduct exclusions processes efficiently?

*Answer.* Approximately 35 USTR attorneys, paralegals, trade analysts, and contractors with experiences in law, industrial sectors, tariff classifications, and data analysis work on the exclusion process. USTR is working expeditiously to process all product exclusions requests and will continue to issue determinations on pending requests on a rolling basis. USTR carefully considers each request under the product exclusion criteria set forth in the Federal Register notice. USTR takes into account all available information, including information submitted by the requester and by other interested parties that may comment on specific requests.

In the coming weeks, we anticipate onboarding additional staff, including analysts on detail from the Departments of Treasury, Commerce, and Agriculture, that will assist on the exclusions process, particularly for List 3. The majority of these personnel work on the exclusion process on a full-time basis and collectively have spent thousands of hours reviewing and processing exclusion requests.

USTR presently intends to carry out its section 301 exclusion process at our current level of funding. Given the substantial level of resources necessary to implement the List 3 exclusion process, USTR will closely monitor the exclusion process to assess whether additional funding is necessary.

*Question.* As the Nation's number one producers of Swiss cheese, Ohio is a top dairy State.

To that end, has market-access for dairy been included in the scope of current talks with China?

*Answer.* U.S. dairy producers face a great number of structural issues that limit their access to China's dairy market, including complicated registration, import licensing, and labeling requirements. We have discussed dairy extensively with China over the course of our conversations this year. We are committed to addressing issues that impede market access in China for U.S. dairy producers.

*Question.* The Aruna Project is an Ohio-based nonprofit that utilizes the Generalized System of Preferences (GSP) to import athleisure wear made by Indian women who are sex trafficking survivors. Loss of the GSP preference has had a critical impact on The Aruna Project and their ability to provide opportunities, financial security, and education for women transitioning out of slavery and into freedom. Imports from humanitarian organizations like The Aruna Project constitute a negligible amount of GSP-related trade with India.

Will you commit to establishing a "humanitarian exception" to the termination of India's GSP privileges so as to allow the small portion of "humanitarian" GSP trade with India to continue to enter the United States duty free?

*Answer.* President Trump decided to fully remove India from the GSP program following its failure to provide the United States with assurances that it will provide fair and adequate market access. Restoration of some or all of India's GSP benefits is only possible if it meets the eligibility criteria for the program as established by Congress.

*Question.* On June 13, 2019, USTR granted an exclusion from the section 201 solar safeguard to bifacial solar panels that consist of bifacial solar cells.

What was USTR's rationale for granting this bifacial exclusion, and what is the data behind that rationale? Does USTR anticipate that this bifacial exclusion will undermine the safeguard by increasing imports of low-cost, bifacial solar panels? How does USTR plan to address concerns about the circumvention risk posed by this exclusion, given that it is difficult to distinguish the physical appearance of bifacial solar panels from monofacial solar panels?

*Answer.* As the U.S. International Trade Commission recognized during its investigation under section 201 of the Trade Act of 1974, bifacial solar products represent a small percentage of the global solar market, roughly less than 3 percent. We have been actively working with stakeholders to assess the effect of the exclusion. USTR will continue to monitor the effects of the safeguard measure, including the exclusions granted from its application, and will take action if necessary to prevent circumvention of the remedy.

*Question.* Forced data localization poses a major trade barrier for many sectors of the economy. Language in USMCA tackling forced data localization for all sectors,

including financial services, is a valuable part of the agreement and sets a helpful precedent for future agreements.

Is it your intention to include similar language in future trade agreements?

Answer. The USMCA includes a number of state-of-the-art provisions that will help to expand U.S. services exports, including in the area of digital trade. Those high-standard digital trade provisions, including rules on cross-border data transfer and data localization in the financial services sector, served as a template for the U.S. negotiating position in the ongoing WTO digital trade initiative negotiations and will likewise serve as a model in future U.S. agreements.

*Question.* Congress made clear in section 901 of the Trade Facilitation and Trade Enforcement Act of 2015 that higher de minimis thresholds have value for small businesses and manufacturers, and I support the good work you have done to secure increased de minimis thresholds in Canada and Mexico as part of the U.S.-Mexico-Canada Agreement (USMCA).

Given that changes to section 901 are not necessary to implement Article 7.8.1 on Express Shipments in the USMCA, will you commit to not make changes to section 901?

Answer. As noted in the administration's submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. These consultations are underway, and I look forward to working with you and other members on this important issue.

*Question.* Operated by the National Oceanic and Atmospheric Administration (NOAA), the Fisheries Finance Program provides low-interest long-term loans to the commercial fishing industry. Last fall, NOAA proposed to expand the Fisheries Finance Program to fund loans for the construction of new fishing vessels.

Given that the United States has consistently held the position that overcapacity leads to overfishing, does the adoption of a capacity increasing policy by the United States undermine the U.S. negotiating position on fisheries subsidies both bilaterally with trading partners and multilaterally at the World Trade Organization? Did NOAA seek insight, expertise, or technical assistance from USTR as part of the development of their proposed rule? If so, did USTR provide insight, expertise, or technical assistance to NOAA?

Answer. The Fisheries Finance Program has been barred from financing any project that could lead to increased harvesting capacity of any fishery. Congress authorized the modifications to allow the financing of new vessels in a limited access system, and USTR worked closely with NOAA on the proposed rule to ensure that the proposed change would continue this policy and be consistent with U.S. trade obligations.

In particular, we note several aspects of the proposed rule to ensure the rule change does not increase harvesting capacity. Eligibility is restricted to limited access fisheries that are neither overfished nor subject to overfishing. In addition, the replaced vessels must be named at the time of application and must meet one of the following three conditions: (1) it must be scrapped; (2) it must continue to operate in a federally managed fishery under limited access, or (3) it must have its Federal fishery endorsement permanently canceled. In this instance, the vessel is permanently prohibited from fishing or providing support to fishing activities anywhere in the world, and the vessel's title is marked to prohibit the vessel's transfer to any foreign flag.

NOAA sought insight, expertise and technical assistance from other U.S. agencies, including USTR, as well as the public, as part of its rulemaking. NOAA is currently reviewing all comments received and will continue to coordinate with USTR on the draft final rule.

*Question.* USMCA includes prohibitions on harmful fisheries subsidies. Article 24.20, section 1 states: "The Parties recognize that the implementation of a fisheries management system that is designed to prevent overfishing and overcapacity . . . must include the control, reduction, and eventual elimination of all subsidies that contribute to overfishing and overcapacity."

Given that the proposed change to the Fisheries Finance Program would constitute a capacity-enhancing subsidy, and assuming USMCA is ratified, is the pro-

posed change to the Fisheries Finance Program consistent with U.S. obligations under USMCA?

Answer. USTR has reviewed the eligibility requirements of the proposed rule and determined that they are consistent with U.S. obligations under the USMCA. Although it may be possible for a loan to be provided to build a fishing vessel that is capable of harvesting more seafood more efficiently, the fishery in which it participates must be limited access and not be overfished or subject to overfishing. The proposed rule also places constraints on the replaced vessels to ensure those vessels also do not contribute to overcapacity in a fishery.

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QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY

*Question.* The renegotiated NAFTA agreement contains a new mechanism called “Review and Term Extension,” *i.e.*, a sunset provision, which is codified at Article 34.7 of USMCA. The sunset provision requires that USMCA’s “Free Trade Commission” (as outlined in Chapter 30) meet to conduct a “joint review” of the agreement 6 years after entry into force. As part of the joint review, “each party shall confirm, in writing, through its head of government, if it wishes to extend the term of the agreement for another 16-year period.” If a party does not agree to extend the agreement at the 6-year review, the Commission must conduct joint reviews every year, until the agreement is extended or terminates.

As you know, USTR’s draft statement of administrative action (SAA), which outlines in part the administration’s view on how the implementing legislation for the agreement will change or effect existing law, was transmitted to Congress on May 30, 2019. While the draft SAA details numerous changes to U.S. law that are “strictly necessary or appropriate” to implement the agreement, it does not include any changes to U.S. law in order to implement the sunset provision.

Please explain why the administration feels that no changes to U.S. law are required to implement the agreement’s sunset provision.

Assuming that “party” refers to each USMCA country’s government—*e.g.*, the Government of the United States of America—per the agreement’s preamble, what should the internal process be for the United States to decide whether it wishes to stay in the agreement at the first 6-year review?

Does the administration believe that Congress is included in USMCA’s definition of “party” as “the Government of the United States of America”? If not, why not? What role should Congress have in determining whether or not the U.S. chooses to extend its participation in the agreement at each joint review?

Chapter 30 of USMCA states that the Free Trade Commission tasked with joint reviews shall be composed of “government representatives of each party at the level of ministers or their designees.” In the draft SAA, the administration states that the U.S. Trade Representative (or his or her designee) will represent the U.S. on the Commission. How will USTR ensure that the views of Congress are accurately represented at each joint review?

Answer. The USMCA’s review and term extension mechanism will help ensure that the agreement is working as intended and continues to serve the interests of the United States. I look forward to working with you and other members to ensure that Congress’s views are appropriately accounted for as part of this review process.

*Question.* USMCA significantly scales back NAFTA’s Investor-State Dispute Settlement (ISDS) mechanism, which is designed to ensure that U.S. investors are treated fairly when they invest in Canada or Mexico. With respect to Mexico, full ISDS treatment is extended only to a handful of sectors (oil and gas, power generation, telecommunications, transportation, and some infrastructure). With respect to Canada, ISDS is completely eliminated within 6 years of entry into force.

Please explain USTR’s rationale for eliminating from ISDS NAFTA’s Minimum Standard of Treatment (MST) obligation protections (Article 1105) for most investors, particularly in light of the fact that American investors have filed 38 NAFTA ISDS cases claiming an MST violation.

Please explain USTR’s rationale for eliminating from ISDS NAFTA’s protections against indirect expropriation (Article 1110) for most investors, particularly in light of the fact that American investors have filed 31 NAFTA ISDS cases claiming indirect expropriation.

Please explain USTR's rationale for eliminating from ISDS NAFTA's protections against performance requirements (Article 1106) for most investors, particularly in light of the fact that American investors have filed 11 NAFTA ISDS cases involving a performance requirements claim.

Trade Promotion Authority includes as a principal negotiating objective a directive that U.S. negotiators "secure for investors important rights comparable to those that would be available under United States legal principles and practice," including fair and equitable treatment (covered by NAFTA's MST clause), the elimination of performance requirements, and compensation for expropriation. How does the explicit removal of these ISDS protections from the current NAFTA comply with TPA?

Why was the term "infrastructure" removed from the list of covered sectors with full access to ISDS in Mexico during the legal scrub of USMCA?

Has USTR assessed whether the weakening of NAFTA's investor protections in USMCA will result in a reduction in U.S. investment in Canada and Mexico? If so, how great does USTR estimate that reduction to be?

Answer. USMCA's substantive investment rules accord with the highest international standards of investment protection, including prior U.S. international investment agreements, and provide rights consistent with key U.S. legal principles and practice. The more limited availability of ISDS under USMCA reflects the administration's broader efforts to ensure that our trade and investment rules respect our sovereignty and the right to regulate, reduce defensive litigation exposure, and reduce or eliminate incentives to outsource production and jobs. Under USMCA, U.S. investors in all sectors have the ability to bring ISDS claims against Mexico for violating the national treatment, most-favored nation treatment, and expropriation obligations after litigating in Mexican court. Because U.S. investors contracting with the Mexican government in sectors such as oil and gas, power generation, and telecommunications, may face unique political risks to long-term, capital-intensive projects, USMCA provides those investors access to ISDS for a broader scope of obligations, including MST, indirect expropriation, and performance requirement claims. Similarly, state-to-state dispute settlement procedures are available to bring claims relating to any obligation in the investment chapter.

*Question.* On May 30, 2019, President Trump announced that he would impose blanket 5-percent tariffs on all goods imported into the United States from Mexico if Mexico did not take steps to address illegal immigration. While I was glad to see that the President ultimately did not impose these tariffs, it is concerning that U.S. FTA partners like Mexico have been threatened with unilateral tariffs as a tool for achieving non-trade related policy objectives.

Should there be assurances to Mexico and Canada codified in U.S. law that prevent the unilateral imposition of tariffs on them and, thereby, guarantee that the U.S. will adhere to its tariff-free treatment obligations under the agreement?

If Congress does not prohibit the unilateral imposition of tariffs on Canada and Mexico in the USMCA implementing legislation, how is tariff-free treatment among the three parties otherwise assured?

Answer. The safety and security of the United States will always be a priority for the President. The President's authorities for responding to emergencies and national security issues are outside the scope of trade agreements.

*Question.* On May 16, 2019, President Trump met with Swiss President Maurer to discuss a possible FTA with Switzerland. As you know, trade with Switzerland supports nearly 28,000 jobs in Pennsylvania, particularly in the chemicals industry.

What are the prospects that USTR will open trade negotiations with Switzerland?

If negotiations are opened with Switzerland, will you commit to following TPA procedures and submitting any agreement to Congress for ratification?

Answer. We continue to evaluate potential FTA discussions with a number of countries, including Switzerland. The decision on whether to launch any negotiations must be based on an assessment of whether we will have an end result in which more U.S. businesses are selling more of their goods to the country in question. Our end goal in any negotiation is always to make American workers and farmers better off than they were before. If we decide to start such negotiations, we would intend to follow the TPA process.

*Question.* As you know, USMCA includes a narrow exemption from Canada's cultural exceptions for broadcasting. Specifically, USMCA provides that "Canada shall

ensure that U.S. programming services specializing in home shopping, including modified versions of these U.S. programming services for the Canadian market, are authorized for distribution in Canada and may negotiate affiliation agreements with Canadian cable, satellite, and IPTV distributors.”

How does Canada plan to implement this exemption?

If USMCA enters into force, how long will it be before home shopping networks like QVC may broadcast into Canada?

Answer. Canada has several options it can use to amend its regime to allow for the distribution of U.S. home shopping networks in Canada, including those with modified signals. We are closely monitoring developments in Canada, including its implementing legislation and its discussion with its stakeholders. Once USMCA enters into force, commitments will be fully enforceable. The U.S. certification process will ensure that Canada has completed implementation by entry into force, which will allow U.S. networks to take advantage of the new opening in the USMCA.

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QUESTIONS SUBMITTED BY HON. TIM SCOTT

*Question.* South Carolina is home to rapidly expanding innovation and trade across multiple sectors, both commercial and small business oriented. While much of that trade occurs on the commercial level, increasing numbers of small businesses across the State utilize e-commerce platforms and rely on de minimis threshold shipments. In 2016, Congress recognized the importance of raising the de minimis threshold to better facilitate these expanding and innovative industries and manufacturers that rely on low value inputs. The Trade Facilitation and Trade Enforcement Act of 2015 codified a new de minimis threshold of \$800, a boon for many in our supply chain. However, I remain concerned with the de minimis footnote that was included in Article 7.8(1)(f) of the Customs and Trade Facilitation chapter of the U.S.-Mexico-Canada Agreement (USMCA), and potential circumvention of congressional intent. I would not support any changes to section 901 of the Trade Facilitation and Trade Enforcement Act of 2015 (19 USC 1321), and I would not agree that any such changes are necessary to implement Article 7.8.1 on express shipments.

Will you commit that you will not make changes to section 901, having heard consistently from bipartisan members of both chambers that there is no support for such a change?

Answer. As noted in the administration’s submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. As you note, these consultations are underway, and I look forward to working with you and other members on this important issue.

*Question.* American innovation is a key driver of our robust economic growth. To that end, I commend the administration’s efforts to safeguard American intellectual property from theft and forced technology transfers by the Chinese. Now is the time to strike a strong and enforceable deal with China. At the same time, we must ensure we are not punishing the good actors. To that effect, I am concerned by the efficiency of USTR’s section 301 exclusion process as many companies struggle with delays on exclusion requests. We know certain companies and small businesses are enduring the added pressure, while they have waited several months to a year or more for an exclusion. Moreover, many businesses that secured exclusions for Lists 1 and 2 face significant uncertainty about whether they will be renewed. Many of those businesses, not unreasonably, could not readjust supply chains in only a year.

Do you commit to ensuring a timely exclusion process for list 3 (\$200 billion) products, given the large volume of products included? Furthermore, do you intend to establish an expedited process for renewing exclusions granted for Lists 1 and 2?

Answer. For Lists 1 and 2, USTR has granted over a thousand of exclusion requests. The exclusion process for List 3 products is well underway, and it is more efficient than our process for Lists 1 and 2 given the establishment of a new online portal. I understand your view on extending exclusions granted for Lists 1 and 2. Our hope is that businesses have taken action during the period of their exclusion to adjust to the tariffs. At this time, USTR has not determined a course of action with respect to extension of the exclusions, all of which will have been available for a year (and longer in many cases).

*Question.* South Carolina is one of the greatest exporting States in the country. To us exports equal jobs. The more we can export the more jobs that can be created. USMCA for the auto industry is mostly about localization since the agreement requires 75 percent North American content. My question, and my concern, is that these companies are the experts and so have determined the right formula based on their particular business case for exporting. Further localization likely means more expensive production costs. Higher costs make these companies less competitive globally and risks this incredible export growth we've been experiencing.

Can you tell me how you see USMCA benefiting U.S. exports? Is there room in this agreement for high-volume exporters to get credit for their exports?

What is the impact of the auto rules of origin in USMCA on new auto manufacturers? How are you handling new plants that just came online and sourced their suppliers based on the old NAFTA rules? Will there be a clear grandfather?

*Answer.* There is no question that NAFTA drove auto and auto parts jobs and investment away from the United States and to Mexico. The USMCA rules of origin will benefit U.S. production and exports by incentivizing the production of more auto parts and other content in the United States. Based on auto producers' own information, we expect that the new rules will incentivize additional U.S. capital investments of \$34 billion and U.S. automotive parts purchases of \$23 billion, some of which will likely be exported. The rules make North American auto production more competitive as a region, and the United States in particular is poised to benefit by way of new jobs and investment. Many auto producers have already announced new investment here in the United States, which is particularly notable given the weakness of auto production in markets such as China, the EU, and South America.

Under the USMCA rules of origin, new auto producers in North America will get incentives if they make investments and parts purchases in the United States. This is different from the incentive schemes for new producers under NAFTA, which largely incentivized additional investments in and outflow of jobs to Mexico and allowed increasing content from non-NAFTA countries. Producers who are sourcing content based on the old NAFTA rules will get an extended transition period to meet the USMCA rules if they provide a detailed and credible plan to ensure that their production meets the new rules.

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QUESTIONS SUBMITTED BY HON. TODD YOUNG

*Question.* First, let me reiterate my congratulations on your successful USMCA negotiations. Securing high pharmaceutical IPR standards through USMCA, including 10 years of regulatory data protection for biologics is important for the State of Indiana and serves as a strong foundation for future agreements with Japan, the European Union, and the United Kingdom.

Furthermore, establishing 10 years as the global floor for protection is critical to maintaining the long-term viability of the innovative U.S. industry at a time when China looks to further develop its own competing industry. China has targeted the biopharmaceutical industry as a strategic growth sector. It wants to encourage domestic innovation through, for example, proposing a 12-year period of regulatory data protection for biologics, if those products are first developed and introduced into China.

Can you reassure us that this will continue to be a priority for USTR in future negotiations?

*Answer.* USTR is committed to following the intellectual property-related negotiating objectives contained in Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

*Question.* Reports have suggested the United States is considering entering into limited trade negotiations with the likes of Japan or the European Union. My hope is that as a part of our trade dialogues with both the EU and Japan that we are pressing for comprehensive trade negotiations. Given the urgent need for the United States to open up new markets for Indiana manufacturers and farmers alike, I believe that anything less than a comprehensive trade agreement represents a missed opportunity.

Can you ensure that any trade agreements with either Japan or the European Union will not be limited in their scope? That they will be comprehensive trade agreements?

Answer. As suggested in the September 2018 Joint Statement by President Trump and Prime Minister Abe, the administration has envisioned the possibility of a staged negotiation, with an initial, limited outcome designed, in part, to help U.S. exporters put at a disadvantage by Japan's other trade agreements. At the same time, the administration maintains other, much broader objectives for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

In our negotiations with the EU, we seek to reduce or eliminate both tariff and non-tariff barriers that are significant obstacles to U.S. exports. We will not enter into a trade agreement with the EU that does not achieve those goals. We seek comprehensive tariff negotiations with the EU, covering agricultural as well as industrial products. Members of the committee are aware, however, that we have not begun tariff negotiations because the EU has not agreed to negotiate agricultural tariffs, and it would not be acceptable to Congress, the administration, or our stakeholders to conclude a tariff agreement limited to industrial products. Despite this impasse, we continue to work constructively with the EU on non-tariff barriers that impede U.S. manufactured exports to the EU.

*Question.* Indiana is home to numerous RV manufacturers and their downstream supply chain. Their industry association resubmitted a Competitive Need Limitation waiver for lauan at the 10-digit level, and I hope that USTR will give this request due consideration. This waiver updates a request made in 2018 to a much narrower group of products that are essential to RV manufacturers located in Indiana.

Since the removal of this product from GSP for Indonesia, imports have grown despite an 8-percent tariff, showing that there is no other viable source for this product. This costs RV manufacturers in Indiana and across the country almost \$1 million each month.

Will you promise to work with my office to review this issue, and direct your staff to work with the RV industry and the ITC to help this innovative and uniquely American sector remain competitive?

Answer. I have requested that the USITC study the RV industry's GSP petition for a CNL waiver on lauan wood. Under the GSP statute, the USITC must do an independent analysis of the request, including whether a like or directly competitive product was produced in the United States within the last 3 years. The analysis will be complete by early September.

*Question.* I have been informed that some tool manufacturers are facing tariff rates of more than 50 percent on tool sets that include items from List 1 and List 3 because Customs and Border Protection (CBP) stacked the section 301 tariffs from List 1 and List 3 together for some sets that include items from both lists. It is my understanding that CBP has interpreted USTR's 301 notifications to mean that toolsets from List 3 that contain a product from List 1 are subject to the 25-percent duty rate for the List 1 tariff, and additionally the List 3 tariff duty rate (CBP ruling HQ H299857). Stacked together, this is essentially a 50-percent duty rate, plus the ad valorem duty, rather than the normal duty rate of the product with the highest duty rate in the set, or 25 percent. I am told CBP suggested they believe they are interpreting the application of the section 301 tariffs appropriately, and would need guidance to change their current approach.

With negotiations with China ongoing and the prospects of List 4 being applied to a new set of goods, I am concerned that what is now an issue impacting one industry could impact other industries.

Is USTR familiar with the CBP ruling and that some section 301 tariffs are being applied in this manner? Does USTR agree with CBP's interpretation of its section 301 notifications and agree that section 301 tariffs are to be stacked in this manner?

Answer. USTR is aware of this issue with respect to applying section 301 tariffs to tool sets. We are currently reviewing this issue.

*Question.* There seems to be some question as to whether vehicles that are produced in the U.S. only for the U.S. market will be subject to the qualifying rules of origin requirements in USMCA. In an April *Politico* story, a senior USTR official indicated that auto manufacturers have to qualify their entire North American fleet under the new auto rules of origin, which seems to imply that 100 percent of U.S. produced vehicles must meet USMCA rules of origin even if the vehicles are only sold in the U.S. and not traded.

Is it USTR's intention that all vehicles produced in the United States meet this requirement even if they are not exported to Canada and Mexico? Can you explain how this process would work and USTR's authority to enforce such a requirement?

Answer. This is a misunderstanding by *Politico*. Only vehicles traded among the United States, Canada, and Mexico may claim USMCA preferential treatment and are subject to the USMCA's rules of origin. In order for a producer to receive an extended transition period to meet the USMCA rules, a vehicle producer must provide a detailed and credible plan based on their entire North American production indicating how their production, with averaging, meets the new rules. However, only those vehicles for which companies make a claim of preferential tariff treatment would need to meet the rules.

*Question.* One of the longstanding European Union trade barriers that concerns me is the EU's application of prohibitive duties on imports of U.S. fertilizers, which represent an important agriculture market in Indiana. The EU is an important market for American nitrogen exports, with our lower feedstock costs and transportation advantages over exports from other countries.

However, the EU continues to impose a protectionist duty of 6.5 percent on most U.S. nitrogen fertilizers. To make matters worse, the EU recently imposed an anti-dumping duty on imports of U.S. urea ammonium nitrate (UAN) fertilizer, making the total import duty level of over 29 percent prohibitive for U.S. UAN exports.

As such, I ask if the U.S.-EU trade negotiations progress, will you make the reciprocal access for fertilizer trade between the United States and the European Union a priority in the negotiations?

Answer. USTR staff have been consulting with U.S. fertilizer producers and monitoring developments in the EU tariffs on fertilizer inputs and products. Addressing fertilizer tariffs will be an important objective of any comprehensive U.S.-EU trade negotiation.

*Question.* I continue to maintain concerns regarding the de minimis footnote that was included in Article 7.8(1)(f) of the Customs and Trade Facilitation chapter of the U.S.-Mexico-Canada Agreement. I continue to hear from Indiana stakeholders regarding the importance of maintaining a high de minimis threshold of \$800, a congressional priority that I helped include within the confines of the Trade Facilitation and Trade Enforcement Act of 2015. In fact, the importance of the de minimis issue was raised with you in a letter from 25 bipartisan Senators last November. Your subsequent January response to the letter did little to assuage the concerns of me or my Indiana stakeholders who support high a de minimis threshold.

Will you pledge to work with our Mexican and Canadian counterparts to improve their de minimis rules further, rather than lowering levels as the footnote proposes doing?

Answer. As noted in the administration's submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. These consultations are underway, and I look forward to working with you and other members on this important issue.

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QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

*Question.* The administration and the Department of Commerce developed an exclusion process to hold harmless U.S. companies inadvertently affected by the section 232 steel quotas. As you and the Department of Commerce are aware, my constituent company, Micro Stamping Inc., was one of a few companies to receive favorable exclusion decisions under this order. However, during calendar year 2019, Micro has not been able to use these exclusions to import much-needed product.

How will your office and the Department of Commerce expedite a resolution to this situation?

What options are available to the Department of Commerce to immediately allow the company to exercise their exclusions to import the product they need to continue manufacturing critical medical devices?

Have you discussed this company's specific situation directly with Korean trade officials?



What is the status of those discussions?

*Answer.* USTR staff, as well as officials of the Departments of Commerce and Homeland Security, have met on several occasions with Micro Stamping and its representatives to hear the company's concerns and answer its questions about the quota. The quota regime established in the proclamations issued by the President imposes no constraint on when U.S. businesses can import steel and aluminum products for which the Department of Commerce has granted an exclusion. U.S. businesses can import these products at any time, whether or not the quota for the products in question has been filled. We have relayed to Korean trade officials the concerns Micro Stamping has raised with respect to the commercial decisions of Korean exporters about whether to supply the company. We understand the company is in direct contact with Korean industry and government representatives.

*Question.* We can both agree that India has a host of trade policies that discriminate against U.S. companies, especially for medical devices, which are a key industry in my home State of New Jersey. At the same time, we have dozens of small and medium-sized companies in New Jersey that import from India and are struggling to adapt to the sudden loss of trade preferences. Some of them that were hit hard by the China tariffs moved their sourcing to India, only to find out shortly thereafter that the administration is removing trade preferences there. In short, the status quo isn't an acceptable solution for any of my constituents.

Can you commit to making it a priority to solve our issues with India so they can be reinstated into GSP?

What are the criteria that India has to meet to be reinstated?

Moving forward, what is your plan for getting a successful outcome?

*Answer.* The decision to terminate India's GSP beneficiary status was not taken lightly and was in accordance with the congressionally mandated GSP eligibility criteria that govern the program. For many years, India has prevented effective access for many U.S. goods and services while simultaneously benefiting from largely open access to the U.S. market, including the extension of special preferences under GSP. India's failure to provide fair and adequate market access was harmful to U.S. interests and it was important that we enforce the statutory criteria for these benefits.

Looking ahead, we remain engaged with India and are committed to address these issues. I have already spoken to Minister Goyal, and a USTR team recently visited New Delhi to meet with a variety of Indian government officials in an attempt to make progress on the broad range of trade barriers we have highlighted.

*Question.* It is my understanding that books have long been able to be imported into the U.S. duty-free. This is largely because Americans understand that we all benefit from a free flow of knowledge and information.

Given literature's ability to enrich our political, religious, and cultural discourse, and promote literacy and learning for children, do you believe imposing tariffs on books is consistent with American values?

Do you believe tariffs on books are in America's self-interest?

Do you believe tariffs on books will alter Chinese behavior in ways tariffs on other goods will not?

*Answer.* There has been no decision with respect to the proposed additional tariffs. The President will provide his direction at the appropriate time based on the state of the negotiations with China.

During the notice and comment period, USTR has received comments and heard testimonies regarding the potential effects of the proposed tariffs on books. I will consider these comments and testimonies before taking any action on the additional tariffs.

*Question.* When President Trump moved to increase section 301 tariffs to 25 percent on the third tranche of Chinese products on May 10th, USTR clarified that shipments from China that had already been shipped would be excluded from this tariff rate increase. Later, Customs and Border Protection issued guidance indicating that this exception would only apply if the goods also entered the United States before June 1st. On May 31st, USTR revised its guidance, noting that covered products exported from China to the United States before May 10th will remain subject to only the additional 10-percent tariff if they enter into the United States before June 15th. While I appreciate USTR's extension, I have heard from constituents that there were shipments containing covered products that were ex-

ported from China to the United States before May 10th that did not enter into the United States before June 15th, simply because they were headed to ports on the east coast and encountered transit delays.

Why did USTR choose June 15th as the deadline for in-transit shipments to benefit from the old 10-percent tariff rate?

Are you aware that there are some shipments containing covered products that were exported from China before May 10th that did not enter the United States before June 15th?

Will USTR allow these shipments to benefit from the 10-percent tariff rate?

Answer. USTR relied on U.S. Customs and Border Protection to identify an effective date that was consistent with historical shipping data from goods on the water between China and the United States. Covered products that were exported from China to the United States prior to May 10, 2019 will remain subject to an additional 10-percent tariff if they enter into the U.S. before June 15, 2019. As noted, originally, the deadline to enter the U.S. before the goods would be subject to an additional 25-percent tariff was June 1, 2019. This limited extension further accounted for Customs enforcement factors and the transit time between China and the United States by sea.

Pursuant to 84 FR 20495 and 84 FR 26930, shipments that were shipped from China before May 10th and entered the United States after June 15th will be subject to the additional duty rate of 25 percent.

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QUESTIONS SUBMITTED BY HON. THOMAS R. CARPER

*Question.* When you testified at the Finance Committee's 2018 trade agenda hearing, I asked about USTR's position on restarting the Trade in Services Agreement negotiations, which stalled at the end of the Obama administration. You told me you were looking into it. I want to reiterate what I said last year, which is that the U.S., and my State of Delaware in particular, has a strong comparative advantage in service exports, and we should be doing everything we can to expand trade opportunities for our services.

Now that a year has passed, can you share the administration's position on restarting the Trade in Services Agreement?

Answer. The administration places a high priority on continuing to expand U.S. services exports and services trade, recognizing that services are a key driver of our economy. The USMCA, for example, includes a number of state-of-the-art provisions that will help to expand U.S. services exports, including in the area of digital trade, and will serve as a template for future agreements. We are also currently pursuing the negotiation of high standard digital trade rules that would significantly benefit U.S. services suppliers in plurilateral WTO digital trade initiative negotiations. We continue to evaluate other potential negotiations to further expand U.S. services exports.

*Question.* I appreciate that USTR previously recognized the potential risks of section 301 China tariffs on medical products that are necessary to respond to man-made and natural disasters as they removed related products from prior tariff lists. I am concerned that List 4 includes the return of a number of key personal protective equipment items, including gloves and gowns, which had been removed from previous lists.

Can you explain USTR's justification for re-including on List 4 these and other goods that were dropped from previous lists?

Has USTR fully considered the risk of imposing tariffs on personal protective equipment to ongoing patient treatment and care, as well as the impact possible shortages may have on the country's ability to respond to public health events such as the forthcoming flu season, hurricane season, and possible spread of Ebola to American shores?

Answer. There has been no decision with respect to the proposed additional tariffs. The President will provide his direction at the appropriate time based on the state of the negotiations with China.

During the notice and comment period, USTR has received comments and heard testimonies regarding the products that were previously removed from the previous lists and the potential effects of the proposed tariffs on personal protective equip-

ment. I will consider these comments and testimonies before taking any action on the additional tariffs.

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QUESTIONS SUBMITTED BY HON. SHERROD BROWN

*Question.* You have mentioned that there are reformers in China that want to use the U.S.-China trade talks as an opportunity to push the country toward a market-oriented economy.

Is China's complete transition to a market-oriented economy a U.S. objective in the talks? If so, what specific policy changes in China will be critical to achieving that objective?

*Answer.* In our negotiations with China, we are trying to address as many of China's non-market oriented policies and practices as possible. Among other things, these policies and practices unfairly skew the playing field against U.S. companies and workers. For example, China's pervasive subsidization of its domestic industries is a key issue in our ongoing bilateral negotiations. These and other market-distorting practices have caused unfair competitive disadvantages for U.S. manufacturers and workers for decades. This administration is determined to take action to address these issues.

*Question.* As you know, China's steel state-owned enterprises account for eight of the 10 biggest steel producers in that country and are a big part of the steel overcapacity problem. Steel overcapacity—and the corresponding threat to steel jobs in the U.S.—cannot be resolved if these SOEs continue to operate with business as usual.

What specific policy changes must China enact in order for the steel SOEs to operate according to commercial consideration? How long do you think it would take to implement those policy changes?

*Answer.* The United States, working with international partners, has identified a number of market-distorting measures, the elimination of which would help restore market functioning and reduce excess capacity in the global steel sector. These include a range of measures that implicate state-owned enterprises operating in China, such as preferential financing, debt forgiveness, and other financial support measures; the assumption of liabilities by the government or government-related entities; the provision of goods and services preferentially or at non-market rates; subsidies and tax rebates that favor domestic production for export; and the selective application and enforcement, or non-application and non-enforcement, of laws and regulations. The United States has pressed China to adopt these policy recommendations swiftly and in full.

*Question.* In the course of the China trade talks, has the U.S. asked China to commit to reducing its net steel capacity? If so, has the U.S. developed a mechanism for monitoring China's compliance with that commitment?

*Answer.* In our ongoing negotiations with China, we are seeking to address excess capacity in many different industries, including steel. We are determined to ensure that any commitments that we are able to secure from China will be subject to a strong enforcement mechanism.

*Question.* In the hearing, I asked if you were building an international coalition to help apply pressure to China. You mentioned the U.S. is working with the EU and Japan. I know the U.S. is cooperating with the EU and Japan within the context of the WTO to combat non-market-oriented policies of third countries.

Can you explain how that trilateral WTO collaboration is giving the U.S. leverage in the U.S.-China talks? Given that the WTO is a consensus organization, is it your belief that a trilateral coalition is sufficient to convince China it must transition to a market economy? Is the U.S. reaching out to any other countries to join this coalition? If so, which countries?

Have the imposition of tariffs or the threats of tariffs on imports from Japan and the EU affected the two countries' willingness to collaborate with the U.S. on non-market-oriented policies?

*Answer.* The trilateral process put the EU and Japan on record with a shared understanding that market-oriented conditions are fundamental to a fair, mutually advantageous global trading system. Non-market-oriented policies and practices, forced technology transfer, state-owned enterprises, and industrial subsidies are

critical concerns in light of China's overall non-market economic system. On each element of the trilateral discussions, the focus has been to analyze the nature of the problems in China to identify effective means to address our shared concerns. This may include individual, coordinated, or joint enforcement actions, developing shared norms on fair trade, and exploring possible new rules in those areas. Any new rules—on subsidies, for example—must be ambitious, high standard, and effective in curbing China's unfair practices. We will continue to work with our partners and engage with other key WTO Members with the aim of taking the work forward more broadly.

*Question.* As you know, I have long been concerned about the business model of U.S. companies moving production—and U.S. jobs—overseas to countries like China only to ship goods back in the U.S. Low wages are a major driver of this business model. You previously stated that you are not addressing China's suppression of worker's rights in China in the trade talks.

Does the administration view China's low wages as a contributing factor to U.S. job loss to China? If so, what is the administration's strategy for closing the U.S.-China wage gap?

In the context of the U.S.-China trade relationship, what policies is the administration pursuing to stop this business model of off-shoring production and shipping products back into the U.S.?

*Answer.* As set forth in USTR's 2018 Report to Congress on China's WTO Compliance, the administration has a number of concerns regarding problematic Chinese labor laws and practices, including China's lack of adherence to certain internationally recognized labor standards. These shortcomings adversely affect American workers and businesses. I remain committed to working with members of Congress to discuss options and policies for addressing these important labor issues.

Through our ongoing negotiations with China, we are seeking structural changes in China that will help level the playing field for U.S. companies and help remove artificial incentives and other unfair policies and practices that influence their decisions to establish production facilities in China rather than the United States. For example, addressing China's pervasive subsidization of its domestic industries is a key objective of our ongoing bilateral negotiations. These and other market distorting practices have caused unfair competitive disadvantages for U.S. manufacturers and workers for decades. This administration is determined to take action to address the issue.

*Question.* Section 301 tariffs on imports from China have been in place for nearly a year.

What changes, if any, has China made to its industrial policies since the section 301 tariffs took effect? Are there any other policy changes made by the Chinese government that can be attributed to the imposition of U.S. tariffs on Chinese imports?

*Answer.* Currently, the administration's use of tariffs under section 301 of the Trade Act of 1974 is providing the United States with an important source of leverage to bring China to the table to negotiate an enforceable agreement that will address China's unfair trade practices, including in the area of industrial policies. Since the start of the negotiations, China has issued or revised a handful of relevant measures, such as a new foreign investment law and a revised trademark law. We continue to press China to add specificity to these measures to address our most important concerns.

*Question.* Have there been significant shifts in global supply chains in any sectors as a result of the tariffs? If so, please identify the specific changes to global supply chains that involved the reshoring of jobs to the U.S. Is it your belief that changes to global supply chains as a result of section 301 tariffs are permanent changes?

*Answer.* It appears that the tariffs imposed by the United States pursuant to section 301 of the Trade Act of 1974 have contributed to companies' decisions regarding their global supply chains. Over the past year, numerous companies that had invested in China have relocated, or have begun the process of re-locating, some or all of their manufacturing facilities to countries other than China. Some companies have moved production to the United States, and other companies appear to be moving production to countries in Southeast Asia. It appears that many companies are no longer comfortable with investing heavily in China and are making forward-looking decisions to protect themselves against trade frictions that may emerge between China and its trading partners.

*Question.* In the hearing, I asked you if the administration had a Plan B instead of the tariffs in case the U.S.-China talks do not result in an agreement. You stated that you are open to alternatives but have not heard of a better idea than tariffs. The president recently stated that his Plan B for China is more tariffs.

Is USTR actively exploring alternative non-tariff-related ways to gain leverage with China?

*Answer.* We believe that the additional tariffs currently in place on Chinese goods are helping to create leverage and have played a role in China's decision to engage in serious discussions with the United States. If we conclude that an agreement is not possible under these circumstances, we will consider other possible means for creating the leverage necessary for achieving a successful and meaningful agreement with China.

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QUESTIONS SUBMITTED BY HON. MICHAEL F. BENNET

*Question.* Nearly 2 years ago, you told me that the administration would do no harm to agriculture. You committed to maintaining markets that our farmers and ranchers already had access to, and expanding new export opportunities. One year after that, you admitted that farmers are getting the short end of the stick and offered your sympathies. And now the situation is worse.

How much of the damage to American agriculture is irreparable?

Is a return to "status quo" the best that our farmers and ranchers can hope for?

How many new bilateral deals have been finalized since the start of this administration and how have farmers and ranchers benefitted?

*Answer.* The administration has prioritized opening markets for agricultural and has had success across a range of sectors and in many countries, such as poultry in India and pork in Argentina. As you note, some of our trading partners have engaged in illegal retaliation on their imports of U.S. agricultural products in response to lawful U.S. initiatives to bring balance to our trading relationships. These countries can immediately rectify this situation by negotiating a solution rather than retaliating. Our trading relationships, including with respect to agricultural exports, have flourished with countries that have chosen to resolve these trade irritants.

*Question.* Right now, American consumers are paying for the President's tariffs; farmers and ranchers are paying for retaliatory tariffs; and taxpayers are footing the bill for tens of billions of dollars of USDA trade aid. I've said it before: this trade war is not without consequence.

How would you characterize the cost of your approach to farmers and ranchers?

What steps are you taking to restore certainty into agricultural markets?

*Answer.* As noted by several studies and news outlets, the impact of tariffs is widely dispersed and largely affects exporters seeking to maintain market share in the United States. This is particularly true with respect to China, where the state manages much of the economy and is not particularly responsive to market forces. Many countries around the world continue to use high tariffs and a multitude of non-tariff trade barriers to impede access to U.S. agricultural products. This status quo is not acceptable. The United States continues to explore and negotiate market opening agreements for agriculture with our trade partners. The International Trade Commission estimates our agreement with Canada and Mexico will increase U.S. agricultural exports by \$2.2 billion. Upon completion of the current negotiations with Japan, U.S. farmers and ranchers will experience significant new opportunities for U.S. agricultural exports. And resolving China's longstanding SPS issues with respect to agricultural will benefit farmers seeking to sell into that market.

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QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

*Question.* The administration's 301 actions were undertaken in response to China's long history of forced tech transfer, industrial espionage, and market restrictions. The threats and challenges that China poses as it relates to these issues are not unique to the United States.

In the context of China and the 301, please provide a summary of your engagement with the EU and our other allies, as you were undertaking the 301 investigation.

*Answer.* From the start of the administration, we worked closely with the EU and other partners that we know share our concerns about China's unfair trade practices, exploring strategies to respond to those practices. We had multiple engagements with the EU on China at the senior leadership and technical level during the 301 investigation. We have a trilateral group with the EU and Japan that meets quarterly and has been very vocal in taking a unified stand against forced technology transfer. Both the United States and the EU have brought cases at the WTO against Chinese practices in this area, and we continue to explore new rules on industrial subsidies with our partners. It should also be noted that in the USMCA we agreed with Canada and Mexico to provisions disciplining state-owned enterprises, currency manipulation, and other non-market practices.

*Question.* In the context of China and the 301, please provide a summary of your engagement with the EU and our other allies in time since the conclusion of the 301 investigation, regarding to the ways in which we can work together to coordinate our efforts to address the challenges posed by China.

*Answer.* Since the March 2018 section 301 report, USTR has continued our steadfast engagement with the EU and other allies to coordinate our efforts to address the challenges posed by China. We share similar views with the EU on the challenges that China poses to our economic and commercial interests.

As part of the trilateral process, I met with the EU Commissioner and the Japanese Minister of Economy, Trade, and Industry on May 23rd in Paris, where we advanced our shared objectives to address non-market-orientated policies and practices of third countries. The trilateral discussions have been constructive and throughout we have reviewed our concerns and ongoing work. Our discussions have focused on nonmarket policies and practices, market-orientated conditions, forced technology transfer policies and practices, industrial subsidies and state-owned enterprises, WTO reform and digital trade and e-commerce. The EU agreed to a joint statement effectively affirming the outcomes of the section 301 report, and as noted above, brought their own case at the WTO targeting these practices by China. We look forward to our ongoing cooperation with our like-minded partners.

*Question.* The 232 is a critical tool to address overcapacity, but we must also ensure our domestic steel industry can compete on a level playing field globally. And global overcapacity of steel and aluminum remains an issue.

Can you discuss how you are engaging with China and our allies to address global overcapacity head on?

*Answer.* The administration is working with a broad range of partners in an effort to address the causes and challenges of massive and persistent excess capacity in the global steel and aluminum sectors. In the OECD and G20, for example, the United States is working with partner governments in an effort to bring greater transparency to capacity developments and government support measures in these sectors, and to articulate principles that governments should adhere to in order to ensure proper market functioning. We are also working with like-minded partners such as Japan and the European Union to develop stronger international disciplines on industrial subsidies and state-owned enterprises. The role of market-distorting forces, including subsidies and state-owned enterprises, in creating excess capacity has also been an element of the negotiations we have undertaken with China over our bilateral economic relationship.

*Question.* In the context of overcapacity, please provide detail regarding the direction the President has given you and how he has empowered you to work with our allies to address global steel overcapacity.

*Answer.* The United States has been an active and committed participant in international forums directed at addressing the challenge of global steel overcapacity, such as the Steel Committee of the OECD and the Global Forum on Steel Excess Capacity. President Trump and his fellow G20 Leaders have repeatedly called on members of the Global Forum to fulfill the commitments they have undertaken as part of that process. Unfortunately, we have not seen an equal commitment to that process from all forum members. Progress on this issue will only occur when those that have created the problem of massive excess capacity act to remove subsidies and other measures that distort markets and create serious global imbalances.

*Question.* The 301 negotiations with China encompassed all manner of activity, going beyond the scope of the 301 investigation, including market access for agricultural goods.

Did your negotiations with China ever include efforts to reach meaningful reform on steel and aluminum overcapacity?

*Answer.* The negotiations with China over the trade relationship between our two countries have covered a wide range of issues, including how market-distorting forces in China, including subsidies and state-owned enterprises, can lead to excess capacity. In the context of these discussions and multilateral discussions, we have urged China to remove market-distorting measures that contribute to overcapacity.

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QUESTIONS SUBMITTED BY HON. MARK R. WARNER

*Question.* In a recent briefing for congressional staff, USTR indicated that it was in the process of hiring additional employees to assist in the review of applications for exclusions to 301 tariffs. USTR has mostly finalized review of the first tranche of tariffs. It is nearing completion of review of applications related to the second tranche. But a process for the third tranche hasn't even been finalized yet. And the announcement of a fourth tranche in May foreshadows what will be yet another round of applications. Most troublingly, each of the 3rd and 4th tranches is more than an order of magnitude larger than either the 1st or 2nd tranche in terms of goods impacted. This does not bode well for the administration's ability to develop a coherent trade agenda.

How can Virginia businesses have confidence that USTR will work expeditiously in developing a process for, and subsequently reviewing, deserving applications for exclusions?

As USTR is only now hiring additional employees to meet the inevitable larger volume of exclusion requests, how expeditiously are you shaping the hiring and training process for new employees?

How will the larger tranches impact the length of time USTR takes to grant an exclusion?

*Answer.* Approximately 35 USTR attorneys, paralegals, trade analysts, and contractors with experiences in law, industrial sectors, tariff classifications, and data analysis work on the exclusion process. USTR is working expeditiously to process all product exclusions requests and will continue to issue determinations on pending requests on a rolling basis. USTR carefully considers each request under the product exclusion criteria set forth in the Federal Register notice. USTR takes into account all available information, including information submitted by the requester and by other interested parties that may comment on specific requests.

In the coming weeks, we anticipate onboarding additional staff, including analysts on detail from the Departments of Treasury, Commerce, and Agriculture, that will assist on the exclusions process, particularly for List 3. The majority of these personnel work on the exclusion process on a full-time basis and collectively have spent thousands of hours reviewing and processing exclusion requests.

USTR presently intends to carry out its section 301 exclusion process at our current level of funding. Given the substantial level of resources necessary to implement the List 3 exclusion process, USTR will closely monitor the exclusion process to assess whether additional funding is necessary.

*Question.* Developing a coherent agenda to counter China's efforts to undermine the rules based trading system—and beyond that, on security issues—is something I have been calling for a number of years now. Crucially, this means working with allies—and particularly regional allies. However, I'm concerned that the administration is pursuing an ad hoc trade strategy that has the effect of isolating regional partners.

Did the administration consider the impact of suspending India's participation in the GSP, in the midst of a major election cycle in India, on securing India's future cooperation with respect to China?

Secretaries Ross and Pompeo are going to India to meet with new Government; will USTR be sending officials too?

Do you agree with the President's assessment that Vietnam "takes advantage of [the United States] even worse than China"?

Answer. For years, U.S. exporters have faced significant barriers in India to their goods and services while India benefited from unilateral trade concessions by the United States. The administration's decision to enforce the GSP statutory criteria for market access was long overdue. The administration gave due consideration to timing of the decision on India's GSP benefits. The President made the final decision to withdraw GSP benefits for India well after the Indian elections were over and there was a decisive result.

I have already spoken to Minister Goyal, and a USTR team recently visited New Delhi to meet with a variety of Indian government officials in an attempt to make progress on the broad range of trade barriers we have highlighted.

Likewise, U.S. businesses face a host of unfair trade barriers in Vietnam. The United States has been clear with Vietnam that it has to take action to reduce the unsustainable trade deficit, including by expanding its imports of goods from the United States and by resolving market access restrictions related to goods, services, agricultural products, and intellectual property.

Seeking resolution of trade issues with these partners does not preclude cooperation with them on other fronts, particularly in dealing with China. We continue to coordinate closely with the State Department and other relevant agencies as we seek to prioritize U.S. interests globally.

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QUESTIONS SUBMITTED BY HON. SHELDON WHITEHOUSE

*Question.* The new environment chapter in the renegotiated NAFTA has some positive elements in it—the provisions on marine debris, fish subsidies, and combating IUU fishing in particular. But the words on paper are only as good as enforcement on the ground and on the water. I'm concerned about the enforceability of the agreement broadly, but particularly with respect to the environment. Mexico has a lot of work to do, and the United States can be a partner in this work. I'd like to be a partner with you to identify where enforcement is going to be a challenge and how the U.S. can close gaps in terms of monitoring and capacity building so that Mexico lives up to its obligations and we aren't left with trade disputes over whether Mexico is abiding by its commitments.

Will you commit to working with Congress to determine how we and our Mexican partners can best allocate resources to ensuring these provisions of the agreement and fully enforced?

Answer. Yes, I am committed to working with you and other members of Congress to ensure effective implementation and enforcement of the USMCA environment chapter.

*Question.* The entry into force of increased section 301 tariffs on List 3 imports from China earlier this month has dramatically increased the number of U.S. companies whose products are implicated in the ongoing trade war. The Rhode Island Manufacturing Association and many RI companies are concerned about their ability to seek tariff relief, as well as the fairness and objectivity of the exclusion review process. As we wait for the exclusion review process for List 3 items to be published in the coming weeks, I'd like to understand why such a process should not already exist when new tariffs are announced.

Will you commit to making public the application process for tariff exclusions at the same time that any future section 301 tariffs are announced?

What have you learned from the tariff exclusion application and review process for List 1 and List 2 products? How can USTR improve the service it provides to U.S. companies when considering such exclusion requests?

Answer. There has been no decision with respect to the proposed additional tariffs, including any exclusions process. The President will provide his direction at the appropriate time based on the state of the negotiations with China.

The exclusion process for List 3 has started and is in full operation. USTR considered the feedback we've received with respect to the exclusion process for List 1 and List 2 in developing the exclusion process for List 3. As a result, USTR created a new, user-friendly online portal that makes the submission process easier and revised the request form. USTR is also improving its coordination with the ITC and CBP to ensure efficient decision-making. We look forward to continuing to consult with the committee on any future exclusion processes.



*Question.* Many of the Rhode Island manufacturers that have contacted me about tariff exclusions are small businesses with limited resources, and are thus disadvantaged by comparison with large corporations when collecting information and filling out forms required to seek exclusions.

What steps can USTR take to ensure a level playing field for U.S. companies of all sizes seeking relief from tariffs?

*Answer.* My office has made considerable efforts to facilitate the access of small businesses to the product exclusion process. Those efforts include the following:

- **Single point of contact and technical support:** We designated a single section 301 hotline to take inquiries from the public. USTR trade specialists staff the hotline during business hours and respond to all voicemail messages within 24 hours. We provide a full spectrum of technical services to the public, including helping interested persons submit their exclusion requests, answering questions about the products subject to the additional tariffs, and making referrals to other government agencies on collateral issues. We receive, on average, 20 to 25 calls per day from interested persons. Furthermore, we have worked individually with requesters (mostly small businesses) to correct deficiencies in approximately 1,700 requests.
- **Collaboration with the Small Business Administration (SBA):** We have worked extensively with the SBA throughout the section 301 investigation, including on the product exclusion process. For example, we assisted the SBA Office of International Trade on publishing a primer on the recent tariff actions: <https://www.sba.gov/blogs/what-small-businesses-should-know-about-tariffs>. We also conducted an agency-wide product exclusion process briefing to SBA district officers from the field offices and briefed State and local level trade officials. At the request of SBA, USTR also created Frequently Asked Questions to address small business concerns. Furthermore, we have advised SBA on additional resources for small business counselors.
- **Notice and dissemination of information:** We conducted an extensive notice and comment process throughout the investigation that included four public hearings, more than 500 witnesses, and approximately 10,000 comments. In addition, we created information papers and a searchable database to facilitate public access to information regarding the products and requests. We published the information and tools on a designated section 301 investigation page: <https://ustr.gov/issue-areas/enforcement/section-301-investigations>.
- **Online portal:** For List 3, USTR created a new, user-friendly online portal that makes the submission process easier.

We look forward to continuing to work closely with the committee on any future exclusion processes.

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QUESTION SUBMITTED BY HON. MAGGIE HASSAN

*Question.* As you know, in 2015, as part of an overwhelmingly bipartisan effort, Congress increased the United States de minimis threshold to \$800 dollars, and American consumers and small businesses have greatly benefited from reducing this friction at our border.

I am not looking to rehash the NAFTA renegotiations. Rather, I have a simple question for you regarding footnote 3 to Article 7.8(1)(f) of the Customs and trade facilitation chapter, which, as you know, implies that the U.S. could lower our thresholds to match the Canadian and Mexican levels.

Will the implementing legislation the administration sends to Congress include language that lowers our threshold? If so, will this language apply only to Canadian and Mexican trade or will it have a global application?

*Answer.* As noted in the administration's submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. These consultations are underway, and I look forward to working with you and other members on this important issue.

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

The Finance Committee meets this morning to discuss the administration's trade agenda.

First, on China. The President likes to say that "trade wars are good and easy to win." The situation on the battlefield says otherwise.

China's market is more closed off to American-made goods than before the trade war began. The President's next escalation will directly raise the cost of everyday goods in America, and he's signaling that he'll betray our national security and let Huawei off the hook if China helps him save face.

There's no question that confronting China's trade ripoffs was long overdue. The Chinese Government and state-owned enterprises have gotten away with strong-arming American businesses, stealing IP, and undercutting American jobs for too long. But this needs to be handled differently. Rather than chaos, what's needed is a well-coordinated, international effort led by the U.S. to crack down on China's abuses. Instead, the President's actions have driven away our allies, and there is no discernable strategy guiding the way forward.

Some have attempted to focus our efforts directly where China is coming after our economic strengths—highly technical manufacturing and innovation. Ambassador Lighthizer has laid out that type of approach to this committee in the past. But those plans get knocked off course by hail storms of tweets sent while the President is watching his morning television.

As a result of this mismanagement on trade, the American people are faced with the prospect that everyday life in this country will become more expensive and less secure.

The next round of tariffs the President is considering would drive up the price of consumer goods sitting on shelves across the country by as much as 25 percent. Millions and millions of families will begin back-to-school shopping in a matter of weeks—school uniforms, gym clothes, sneakers, bookbags, pencils, notebooks, you name it. With new tariffs in place, Mom and Dad might discover the amount they budgeted only goes 80 percent as far as they expected.

And then there's the issue of Huawei. Huawei poses a genuine spying risk to the United States and our allies. Allowing its equipment to be used in our telecom infrastructure would compromise our security. That's the opinion of national security experts outside the government and in key Federal agencies.

Even the President seemed to get it. At a recent White House event, he said of Huawei, "You look at what they've done from a security standpoint, from a military standpoint, it's very dangerous." But in his very next sentence the President said, "It's possible that Huawei even would be included in some kind of a trade deal."

So right out in the open, the President is telling China's spymasters that he's willing to give away America's national security for a face-saving trade deal. This is not some academic concern. This is a real threat. But rather than holding our national security interests above all else, the President seems most interested in getting splashy trade headlines.

Now I'll turn briefly to the Western Hemisphere. I've long said that NAFTA was a product of a different economic era, and it's past time for an overhaul. The President campaigned on ripping up existing trade deals, but the new NAFTA sure resembles the old one.

That said, there are areas of meaningful progress. It goes further than before on digital trade and state-owned enterprises. It takes a modernized approach to Customs and duty evasion. I commend Ambassador Lighthizer for obtaining some strong outcomes in the labor and environment chapters.

But particularly when it comes to enforcement, there's some hard work left to be done. Commitments from other countries aren't any good if there's no way of holding those countries to them. The new NAFTA retains a weak enforcement system from the old NAFTA, which was too easy on trade cheats. That's a bad deal for American workers, particularly the enforcement of labor obligations.

Senator Brown and I have offered some solutions. I'm hopeful and optimistic that, with some bipartisan work, those are issues that can be resolved.

In the meantime, there is no way to justify pulling out of the current NAFTA, since doing so would accomplish nothing except economic pain here at home.

I'm looking forward to discussing these issues and more with Ambassador Lighthizer this morning, and I thank him for joining the committee.

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## COMMUNICATIONS

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### **U.S. Agriculture and Trade**

There are deepening concerns for farmers and ranchers across the country due to the impacts of the multiple tariffs on agricultural exports and their negative impact on farm income and the future of farming and ranching.

American Farm Bureau urges the Administration and Congress to work to resolve trade imbalances through negotiations. Tariffs are not the answer and trade wars directly harm agricultural exports. We need to grow our export markets. At least 20 cents of every dollar in farm income comes from exports.

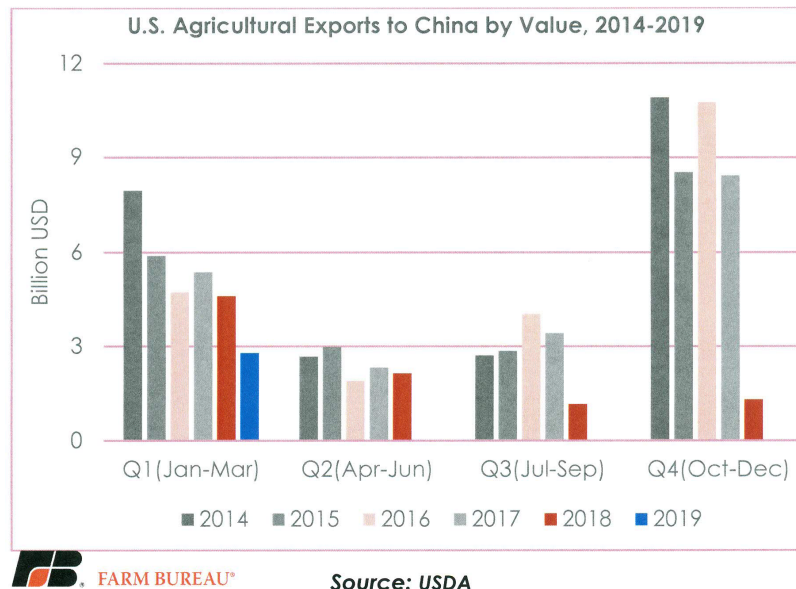
Our farmers are facing a difficult financial situation:

- Since 2014, farm income has fallen 52 percent. Now, farmers are dealing with depressed commodity markets because of the lack of free and open trade and the impact of tariffs.
- Throughout history, some farmers have survived by expanding their operations. Today, that option is nearly impossible for many because of the lack of qualified labor.

Agriculture needs consistent trade policies that will show the world that the U.S. can pass a trade agreement. Let's start with approving and ratifying the U.S.-Mexico-Canada Agreement, which will bring real gains for agriculture in the North American market. The U.S. must also work quickly to complete a trade agreement with Japan and finish a deal with China.

### **Tariff Impacts**

- Tariffs have depressed crop prices across the board, and some commodities, like soybeans, have been especially depressed due to lost sales to China. U.S. agricultural exports to China have declined dramatically from \$23 billion in 2017 to \$9 billion in 2018. The forecast for exports to China remains bleak for 2019 at \$9 billion. China has very quickly dropped from being our number two export destination to our fifth largest destination.
- Agriculture has traditionally been a bright spot in our nation's overall balance of trade. In 2018 we exported more than \$140 billion in farm products, which is \$21 billion more than we imported. As it now stands, we are quickly losing our place as a leader in the global marketplace, and our policies are signaling that we cannot be trusted as a trading partner. Our farmers no longer have constant access to the markets they depend upon for survival.



### U.S. Agriculture and Retaliation

U.S. agriculture exported more than \$140 billion of products world-wide in 2018. More than 20 percent of overall agricultural production goes to export markets, with many sectors, such as cotton and tree nuts, primarily dependent upon export markets.

Trade actions by the U.S. on steel and aluminum imports has resulted in retaliation against U.S. agricultural exports. On April 2, 2018, China began imposing 25-percent tariffs on U.S. pork products and 15-percent tariffs on tree nuts (shelled and in-shell) including almonds, walnuts and pecans; fruit (fresh and dried) including apples, cherries, grapes, oranges and lemons; wine; ginseng; denatured ethanol and other products. This action was in direct response to increased U.S. steel and aluminum tariffs on China that went into effect on March 23, 2018. These tariffs by China have impacted approximately \$2 billion of U.S. food and agricultural exports.

In addition, the imposition of tariffs on \$50 billion of imports from China in July and August 2018 also brought immediate retaliation. For agriculture, this list includes soybeans, wheat, beef, pork, poultry, corn, sorghum, cotton, tree nuts, fruit, wine, tobacco and other products. This action by China continues to negatively affect farmers and ranchers across America.

China now has applied successive retaliatory tariffs on many agricultural products, such as pork. Unfortunately, these multiple tariffs have resulted in some U.S. agricultural products facing retaliatory tariffs in the range of 40 to 50 percent. These tariff actions have resulted in large cumulative tariffs that have now priced U.S. agricultural products out of foreign markets.

The tariffs on \$200 billion of Chinese imports has also brought retaliatory tariffs on additional U.S. agricultural exports to China. Now, over 95 percent of all U.S. agricultural and food exports to China are subject to increased retaliatory tariffs.

We understand that other countries, particularly China, have not played fairly, and we respect the need to remedy those situations. The problem is, those countries know just where to punch us back in a dispute—agricultural products. Through no fault of agriculture, farmers and ranchers end up being used for leverage.

The agriculture industry has not shared in the current economic uptrend, and the reduction in income due to long-term trade disputes only make matters worse for family farms.

Our members are starting to ask, what is this Administration's exact goal? Is there a strategy that will benefit farmers and ranchers? Obviously, none of us know the time frame, and the months of uncertainty are harmful to the economic situation of farmers.

Rather than fixing all the problems at once, we suggest a more targeted approach. First, we support the U.S.-Mexico-Canada Agreement and urge Congress to work with the Administration to pass the agreement as soon as possible. Secondly, agriculture also needs agreements with China, Japan and the European Union completed. We are losing important markets to our competitors who now have more favorable tariff treatment.

American agriculture has long supported a rules-based international trading system, through the agreements in the WTO. As reform is being discussed for the WTO, we must maintain the market-opening opportunities that are due to enforceable international rules

### **Conclusion**

We urge our trade officials to engage in discussions to resolve trade concerns before resorting to tariffs. Adding on tariffs, such as those targeting the many countries that export automobiles and automotive parts to the U.S., and on an expanded list of Chinese imports, will result in hurtful retaliation against U.S. agricultural exports.

We must get back to the negotiating table and get these issues resolved. If we cannot do that, the consequences are increasingly dire for our nation's family farms and ranches.

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### **Statement of Michael G. Bindner**

Chairman Grassley and Ranking Member Wyden, thank you for the opportunity to submit these comments for the record to the Committee on Finance.

Trade negotiations with China, Japan, the EU, and the UK threatening tariffs have taken on the character of economic gunboat diplomacy, but without the Navy. These occur because the President is ill-equipped by his background as a businessman to work cooperatively, which is the essence of governance in a free society. He has a freer hand in trade negotiations. Sadly, his experience as a CEO has not served the nation well. The modus operandi of most executives is to break things in order to be seen fixing them. This must stop. The public is not amused, including the Chamber of Commerce, farmers and the stock and commodity markets.

The solution to these problems lies not with oversight of trade policy but through using criminal contempt proceedings against the leadership of the Internal Revenue Service, the Secretary of the Treasury and anyone in the White House, possibly, if not probably, including the President for not releasing the tax information requested by the Chairman. The penalties for refusing to do so are quite clear and the opinion that a sitting President cannot be indicted can no way apply to this matter.

Today's witness is not likely to say his boss is a vainglorious idiot, so allow me to. It is well known that in this Administration, professional diplomatic expertise is not valued. Mr. Trump prefers to shoot from the lip. The incompetence of this president is tragic for our ongoing trade policy, which relies on a high degree of professionalism and careful work over a period of several administrations. NAFTA negotiations and its successor, as well as similar free trade agreements are an example of this. The Trans-Pacific Partnership was one such effort, but it was derailed by presidential politics on both sides. In trade, what is good politics is often not good economic policy.

This is not to say that there are not fundamental issues that need to be addressed in current and future agreements. We have reservations in matters having to do with the U.S.-Mexico-Canada Agreement. Material stating our reservations (which should be yours as well, but more formally) on both Enforcement and who is allowed to migrate are brought forward from our testimony on May 22nd of this year and July 2017 on the modernization of NAFTA. There are two other issues we would like to address as it relates to NAFTA and to all subsequent trade agreement.

The first is Chapter 19 tribunals. These tribunals put national and state sovereignty at the mercy of the interests of multinational enterprise. If such enterprise were employee owned, we would see no problem. That, however, is not the case. Local workers and the environment are put at the mercy of the wealthy few.

The second is visas. Canadian (including refugees from Hong Kong) and American citizens can immigrate for one year (renewable) on a NAFTA visa. Mexican workers cannot. This is purely racism. If the Congress believes there are too many Mexican workers in American fields and factories, repeal right to work laws and immigration restrictions. Most employers will prefer American workers if they have to pay a union wage and operate under safety standards set in collective bargaining. Until then, make visa rules uniform and apply them to workers already here. If this does not happen, someone may yet raise an equal protection case in our courts, which will also give us a test of the constitutionality of the Chapter 19 tribunals.

WTO participation, like NAFTA/USMCA, have issues regarding extra-territorial regulation of American business interest. The interesting question is who is regulating who? We explored this in comments to the Senate Finance Committee on March 22nd of this year. You can find these comments in Attachment One.

The interaction of tax and trade is worthy of mention. Attachment Two contains our revised tax reform proposals. Two elements of these proposals are discussed below.

Consumption taxes could have a big impact on workers, industry and consumers. Canada has a Goods and Services or Value-Added Tax (VAT), as does Mexico. In our tax reform proposal, we refer to such taxes as an Invoice or I-VAT. Such taxes are zero rated at the border, so American consumers benefit while our lack of these taxes means that Canadian and Mexican consumers pay our taxes indirectly while getting none of the associated benefits. This essentially means they often shop elsewhere, which is not good for our workers or industry.

Enacting an I-VAT is far superior to a tariff. The more government costs are loaded onto an I-VAT the better. Indeed, if the employer portion of Old-Age and Survivor's Insurance, as well as all of disability and hospital insurance are decoupled from income and credited equally and personal retirement accounts are not used, then 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 week 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.

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—Senate Finance, “Approaching 25: The Road Ahead for the World Trade Organization,” March 12, 2019**

Regulatory capture theory is essential to explain how international trade associations work, from NAFTA to the WTO. Capture theory, which is part of the Public Choice School of economics, is associated with George Stigler and others. While it is usually associated with national and state regulation, such as the Food and Drug Administration and the late, great Interstate Commerce Commission, it is equally applicable here. It is similar to what we all learned as Iron Triangles or Issue Networks.

The gist of the theory is that, while regulation is initially promulgated for the public good, relationships between government and regulated industries grow symbiotic. This occurs because professional expertise is often industry specific. This expertise is interchangeable in regulated industries, regulatory staff, on K Street, the academy and congressional staff. Campaign contributions often grease the skids of communication. Regulation always begins with private sector resistance until relationships are established. Eventually, regulatory agencies are co-opted by industry and the resistance stops. While there is still an oppositional dynamic, by and large capture helps steer the regulatory ship.

Capture is so complete in trade that industrial panels are often the most important part of modern trade agreements. In NAFTA, these take the form of Chapter 19 panels. These panels wield super-national authority, allowing them to over-ride governmental actions which are seen as contrary to free trade as the industry sees it. Such industrial favoritism is likely the glue that gets trade agreements past congressional approval. While treaties are part of federal supremacy in Article IV of the Constitution, ceding this authority to industry is likely beyond what the framers would have expected—and they were often mercantilists. Of course, the U.S. Constitution may itself be an instance of regulatory capture.

The impact of capture are very real barriers to entry, both for professionals and for newer companies. Larger firms dominate small ones, who must find a link to an existing larger company in order to even function. While regulations favoring small businesses attempt to steer such relationships, especially by introducing affirmative action into such decisions, these actions are also captured by industry.

There is no need to drain the swamp. The swamp seems just fine where it is. Indeed, calls to do so under the banner of populism are likely to give temporary advantage to industry, but it will later adjust (if it is even really changed), with changes in Administration and the benching of its team of rookies.

**Attachment Two—Tax Reform, Center for Fiscal Equity, May 22, 2019**

For the past 8 years, we have had a standard plan with four elements followed by explanatory paragraphs. The following is a different presentation with the same concepts.

Individual payroll taxes. These are optional taxes for Old-Age and Survivors Insurance after age 60 (or 62). These will be collection of these taxes occurs if an income sensitive retirement income is deemed necessary for program acceptance. The ceiling should be lowered to reduce benefits paid to wealthier individuals and a floor should be established so that Earned Income Tax Credits are no longer needed. Subsidies for single workers should be abandoned in favor of radically higher minimum wages.

Income Surtaxes. Individual income taxes, which exclude business taxes, above an individual standard deduction of \$50,000 per year. It will include initial cash distributions from inheritance (except those from the sale of estate assets, see below). This tax will fund net interest on the debt (which will no longer be rolled over into new borrowing), redemption of the Social Security Trust Fund, strategic, sea and

non-continental U.S. military deployments, veterans' health benefits as the result of battlefield injuries, including mental health and addiction and eventual debt reduction.

**Asset Value-Added Tax (A-VAT).** A replacement for capital gains taxes and the estate tax. It will apply to assets held for a longer period of time, exercised options, inherited assets and the profits from short sales. Tax payments for option exercises and inherited assets will be reset, 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. Free assets to the seller will be counted as such. As with any sale of liquid or real assets, sales to a qualified broad-based Employee Stock Ownership Plan will be tax free. These taxes will fund the same spending items as income or S-VAT surtaxes. This tax will end Tax Gap issues owed by high-income individuals.

**Subtraction Value-Added Tax (S-VAT).** These are employer paid Net Business Receipts Taxes that allow multiple rates for higher incomes, rather than collection of income surtaxes. They are also used as a vehicle for tax expenditures including healthcare (if a private coverage option is maintained), veterans' health care for non-battlefield injuries, educational costs borne by employers in lieu of taxes as either contributors, for employee children or for workers (including ESL and remedial skills) and an expanded child tax credit.

The last allows ending state administered subsidy programs and discourages abortions, and as such enactment must be scored as a must pass in voting rankings by pro-life organizations (and feminist organizations as well). An inflation-adjustable credit should reflect the cost of raising a child through the completion of junior college or technical training. To assure child subsidies are distributed, S-VAT will not be border adjustable.

The S-VAT is also used for personal accounts in Social Security, provided that these accounts are insured through an insurance fund for all such accounts, that accounts go toward employee ownership rather than for a subsidy for the investment industry. Both employers and employees must consent to a shift to these accounts, which will occur if corporate democracy in existing ESOPs is given a thorough test. So far it has not.

Regardless, S-VAT funded retirement savings will be credited equally for every worker, which allows for funding both the current program and personal accounts and lessens the need for bend points in benefit calculations. It also has the advantage of drawing on both payroll and profit, making it less regressive.

**Invoice Value-Added Tax (I-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. I-VAT also forces everyone, from the working poor to the beneficiaries of inherited wealth, to pay taxes and share in the cost of government.

Enactment of both the A-VAT and I-VAT ends the need for capital gains and inheritance taxes (apart from any initial payout). This tax would take care of the low-income Tax Gap.

I-VAT will fund domestic discretionary spending, disability and survivors insurance (which will no longer be tied to income and shall be raised to the increased minimum wage rate and adjusted for inflation), and OASI employer contributions if personal accounts are not enacted 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.

As part of enactment, gross wages will be reduced to take into account the shift to S-VAT and I-VAT, however net income will be increased by the same percentage as the I-VAT. Adoption of S-VAT and I-VAT will replace pass-through and proprietary business and corporate income taxes.

**Carbon Value-Added Tax (C-VAT).** 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-VAT would also replace fuel taxes. It will fund transportation costs, including mass transit, and research into alternative fuels (including fusion). This tax would not be border-adjustable.

**Attachment Three—Employee Ownership From Improving Retirement Security for America’s Workers, Center for Fiscal Equity, June 6, 2018**

In the January 2003 issue of *Labor and Corporate Governance*, we proposed that Congress should equalize the employer contribution based on average income rather than personal income. It should also increase or eliminate the cap on contributions. The higher the income cap is raised, the more likely it is that personal retirement accounts are necessary. A major strength of Social Security is its income redistribution function.

We suspect that much of the support for personal accounts is to subvert that function—so any proposal for such accounts must move redistribution to account accumulation by equalizing the employer contribution.

We propose directing personal account investments to employer voting stock, rather than an index funds or any fund managed by outside brokers. There are no Index Fund billionaires (except those who operate them).

People become rich by owning and controlling their own companies. Additionally, keeping funds in-house is the cheapest option administratively. I suspect it is even cheaper than the Social Security system—which operates at a much lower administrative cost than any defined contribution plan in existence.

If employer voting stock is used, the Net Business Receipts Tax/Subtraction VAT would fund it. If there are no personal accounts, then the employer contribution would be VAT funded.

Safety is, of course, a concern with personal accounts. Rather than diversifying through investment, however, we propose diversifying through insurance. A portion of the employer stock purchased would be traded to an insurance fund holding shares from all such employers. Additionally, any personal retirement accounts shifted from employee payroll taxes or from payroll taxes from non-corporate employers would go to this fund.

The insurance fund will save as a safeguard against bad management. If a third of shares were held by the insurance fund than dissident employees holding 25.1% of the employee-held shares (16.7% of the total) could combine with the insurance fund held shares to fire management if the insurance fund agreed there was cause to do so. Such a fund would make sure no one loses money should their employer fail and would serve as a sword of Damocles’ to keep management in line. This is in contrast to the Cato/PCSSS approach, which would continue the trend of management accountable to no one. The other part of my proposal that does so is representative voting by occupation on corporate boards, with either professional or union personnel providing such representation.

The suggestions made here are much less complicated than the current mix of proposals to change bend points and make OASI more of a needs-based program. If the personal account provisions are adopted, there is no need to address the question of the retirement age. Workers will retire when their dividend income is adequate to meet their retirement income needs, with or even without a separate Social Security program.

No other proposal for personal retirement accounts is appropriate. Personal accounts should not be used to develop a new income stream for investment advisors and stock traders. It should certainly not result in more “trust fund socialism” with management that is accountable to no cause but short term gain. Such management often ignores the long-term interests of American workers and leaves CEOs both over-paid and unaccountable to anyone but themselves.

If funding comes through an S-VAT, there need not be any income cap on employer contributions, which can be set high enough to fund current retirees and the establishing of personal accounts. Again, these contributions should be credited to employees regardless of their salary level.

Conceivably a firm could reduce their S-VAT liability if they made all former workers and retirees whole with the equity they would have otherwise received if they had started their careers under a reformed system. Using Employee Stock Ownership Programs can further accelerate that transition. This would be welcome if ESOPs became more democratic than they are currently, with open auction for management and executive positions and an expansion of cooperative consumption arrangements to meet the needs of the new owners.

The new House Majority should not run away from this proposal to enact personal accounts. If the proposals above are used as conditions for enactment, we suspect

that it won't have to. The investment sector will run away from them instead and will mobilize the next version of the Tea Party against them. Let us hope that the rise of Democratic Socialism in the party invests workers in the possibilities of employee ownership.

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June 18, 2019

The Honorable Chuck Grassley  
 Chairman  
 U.S. Senate  
 Committee on Finance  
 Washington, DC 20515

The Honorable Ron Wyden  
 Ranking Member  
 U.S. Senate  
 Committee on Finance  
 Washington, DC 20515

Dear Chairman Grassley and Ranking Member Wyden.

On behalf of the members of the Electronic Transactions Association (ETA), I am writing in support of the United States-Mexico-Canada Agreement (USMCA). Ratifying the USMCA would strengthen U.S. cross border digital trade leadership and advance electronic payment products and services ability to grow platforms and services that enable engagement with the digital economy.

As Congress considers the many important provisions in the USMCA, we urge lawmakers to take into account the significance of the digital trade rules on the United States economy and to take the necessary steps to ratify the USMCA and start receiving the myriad of benefits. Likewise, ETA is working with the Canadian government and asking them to take the appropriate steps to ratify the trade agreement.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services; its membership spans the breadth of the payments industry to include independent sales organizations, payments networks, financial institutions, transaction processors, mobile payments products and services, payments technologies, equipment suppliers, and online small business lenders.

Digital technology drives global commerce and ensures payments happen on time and in the right amount. The USMCA promotes and sets a new and important precedent for modern trade rules that reflect the importance of data, technology, and innovation in the United States—and the North American—economy.

Businesses and entrepreneurs in every American state and every community use the Internet to sell and export their goods and services across the globe and the USMCA provides strong provisions in the agreement allow for the free flow of information across borders. Additionally, the USMCA encourages governments to release non-sensitive data in an open format so companies have the opportunity to build additional applications and services. This is essential to the vibrancy of the international economy and ensures American businesses and entrepreneurs can easily access data and provide services to partners in Canada and Mexico.

The USMCA also limits government restrictions on information flow across borders, recognizing that wide availability of information leads to more trade and economic growth. By barring any country from requiring any sector to use or locate computing facilities in their territory as a condition for conducting business, this provision will allow companies to store their data wherever they choose. Reducing the cost and regulatory burdens of doing business in other countries and ensuring their data isn't vulnerable to attack. Leveraging the global, interconnected nature of the Internet is beneficial to all consumers—especially for United States small businesses expanding into new markets.

The USMCA reflects the important principle that consumers' privacy should be protected no matter what country and individual or business is located. The USMCA promotes flexible but strong privacy laws and cybersecurity standards to protect people's data without prohibiting the movement of data across borders.

Ratification of the USMCA would be a boost for the American economy and bring predictable rules for all companies that use electronic payments in North America. The United States has an important opportunity to continue to be the world's leader

in global commerce by passing the USMCA. We urge the Administration and Congress to work together to do so.

We appreciate your leadership on this important issue. If you have any questions, please feel free to contact me directly at [stalbott@electran.org](mailto:stalbott@electran.org).

Sincerely,

Scott Talbott  
Senior Vice President of Government Relations  
Electronic Transactions Association

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My name is Alison Keane, and I am the President and CEO of the Flexible Packaging Association (FPA). FPA is the voice of U.S. manufacturers of flexible packaging and their suppliers. The association's mission is connecting, advancing, and leading the flexible packaging industry. Flexible packaging represents over \$31 billion in annual sales in the U.S. and is the second largest, and one of the fastest growing segments of the packaging industry. The industry employs over 80,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

On behalf of the FPA membership, I am urging you to support the U.S.-Mexico-Canada Agreement (USMCA). This agreement is critical to our economic future because it will preserve and strengthen U.S. trade ties to Canada and Mexico, our two biggest trading partners. FPA was very pleased with the decision by the Administration to eliminate the steel and aluminum tariffs on both countries and their responding elimination of the retaliatory tariffs. Aluminum, specifically aluminum foil, is particularly important to the FPA membership, as it is a critical component in food and medical device packaging, providing the sterile barrier necessary to keep these products safe and shelf-stable.

This packaging includes everyday food and beverage products such as candy, salty snacks, yogurt, and beverages; as well as health and beauty items and pharmaceuticals, such as aspirin, shampoo, and shaving cream. Aluminum foil provides the barrier protection from oxygen, light, and bacteria that these products need to ensure stable shelf life and freshness. Aluminum foil is also used by the flexible packaging industry for medical device packaging to ensure that the products packaged, such as absorbable sutures, human tissue, and artificial joints, maintain their efficacy at the time of use.

Aluminum foil used by the flexible packaging industry is not manufactured in the U.S. in the quantities and qualities needed. Failure to invest and quality lapses, including gauge, width, and lack of appropriate alloys all contribute to the fact that the U.S. producers of aluminum foil are not able to serve the U.S. flexible packaging industry. For many packaging manufacturers, those that did not receive exemptions from the tariffs, the damage from them and the reciprocal trade actions far outweighs any benefit that may have accrued to the U.S. aluminum industry. Thus, FPA supports approval of the USMCA in order to continue to provide a level playing field for all manufacturers and their trading partners.

The U.S. Chamber of Commerce reports that more than 12 million American jobs depend on trade with Canada and Mexico. U.S. manufacturer's export more made-in America manufactured goods to our North American neighbors than they do to the next 11 largest export markets combined. The USMCA will help U.S. companies and the workers they employ compete in our top two export markets. The case for the agreement's approval is strong. We urge Congress to approve USMCA as soon as possible.

Thank you.

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June 18, 2019

The Honorable Chuck Grassley (R-IA)  
 Chairman  
 U.S. Senate  
 Committee on Finance  
 135 Hart Senate Office Building  
 Washington, DC 20510

The Honorable Ron Wyden (D-OR)  
 Ranking Member  
 U.S. Senate  
 Committee on Finance  
 221 Dirksen Senate Office Building  
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*RE: Comments of TechNet for the June 18, 2019 hearing of the Senate Committee on Finance titled, "The President's 2019 Trade Policy Agenda and the United States-Mexico-Canada Agreement"*

Dear Chairman Grassley, Democratic Leader Wyden, and Distinguished Members of the Committee on Finance:

As the committee meets today for a hearing to discuss the 2019 trade agenda, we welcome this opportunity to express the tech industry's support for the U.S.-Mexico-Canada Agreement (USMCA) and encourage Congress to ratify it this year.

TechNet is the national, bipartisan network of innovation economy CEOs and senior executives. Our diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over three million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Much has changed in our economy since the North American Free Trade Agreement (NAFTA) was ratified 24 years ago. Since then, the Internet has revolutionized the way we do business, and digital trade has become a major driver of economic growth worldwide. Online platforms have helped local American entrepreneurs and small businesses reach new markets and grow, tearing down barriers to entry that once prevented them from growing beyond their communities. Advancements in cloud technologies have facilitated the transfer of data, goods, and services at speeds once thought unimaginable, a phenomenon that has generated enormous economic value: the U.S. runs a \$159 billion trade surplus in digitally-deliverable services, and these services are responsible for 7.1 percent of U.S. gross domestic product (GDP) and nearly 6.7 million American jobs.

When the Trump Administration announced its intention to renegotiate NAFTA in May 2017, we saw an opportunity to update the trade agreement to account for the many transformative changes that have upended global commerce. A little more than a year later, the leaders from the U.S., Canada, and Mexico realized this goal with the signing of the USMCA on November 30, 2018. The USMCA makes significant progress in eliminating barriers to digital trade and promoting economic growth and opportunities that benefit American workers, businesses, and entrepreneurs. We fully support its ratification.

We understand that some lawmakers have outstanding concerns they want resolved before they can support the agreement, and we encourage members of both parties and the Trump Administration to continue working in good faith to accomplish this. We were encouraged that, in April, one important concern was addressed by the Mexican government's passage of labor reform legislation.

As you consider this issue, below are several reasons we support the USMCA because it will promote economic growth and opportunities that benefit American workers, businesses, and entrepreneurs.

A top objective of any trade agreement entered into by the U.S. must be to **reduce tariff and non-tariff barriers** to information and communications technology products, services, and investments. We support the USMCA's provisions allowing for freer trade in remanufactured goods, greater flexibility in approaches to telecommunications regulation, light-touch approaches to value-added telecommunications services, and safeguards to help protect technology choice. Greater economic competition and growth will also be enhanced in this agreement by binding Mexico to its 2013 telecommunications reforms.

In the modern digital economy, **protections for the free flow of data across borders, strong protections for intellectual property (including source code), and safeguards against intermediary liability** are essential. We support the USMCA's provisions restricting the three governments' ability to constrain cross-border data flows, the absence of duties on digital products, improved protections for intellectual property rights (including criminal and civil prosecution of trade secret misappropriation), allowing products with commercial encryption to be traded freely, and improved market access for trade in all services, including those that are digitally delivered. Together, these measures will facilitate digital trade between the U.S., Mexico, and Canada and result in greater economic growth for our nations' digital economies in the years to come.

In the nearly two and a half decades since NAFTA was ratified, global supply and value chains have become highly prevalent in international production and trade. They have proven to be essential for global innovation, as the production process for complex technology products is increasingly spread out across several countries and, in some cases, continents. Innovators face challenges and higher costs, however, when these chains are disrupted by localization requirements, including forced technology and investment conditions that discriminate against U.S. interests. The USMCA preempts this potential problem and streamlines the supply and value chains in North America in part by **prohibiting governments from requiring localization of communications infrastructure**.

Each new trade agreement is an opportunity to modernize customs systems in ways that facilitate trade. For the digital economy, **customs modernization and the promotion of open payment systems that support digital trade flows, particularly by small and medium-sized enterprises (SMEs)**, are especially important. The USMCA succeeds on both counts. One critical way the agreement enhances customs-related trade facilitation is by providing for advanced rulings and requiring governments to post trade documentation online.

It is important that trade agreements address **cybersecurity**, given the economic harm that cyber-attacks can inflict. In 2016, more than four billion records were stolen by cyber-criminals, and cyber-crimes were estimated to cost the American economy between \$57 and \$109 billion. By the end of 2019, cybercrimes are expected to be a \$2.1 trillion problem for the global economy. As our three nations are poised to become even more integrated as a result of the USMCA, we must be prepared to protect against the cyberthreats we will continue to face. We are encouraged that the USMCA promotes the use of risk-based approaches to cybersecurity and requires governments to recognize telecommunications certification test reports from each other's countries. This is an important step to ensuring the proper protocols are in place to protect the flow of information across our borders.

In sum, the USMCA makes important progress in eliminating barriers to digital trade and promoting economic growth and opportunities that benefit American workers, businesses, and entrepreneurs. It represents a significant upgrade from NAFTA on issues important to the digital economy, including protections for intellectual property rights, the facilitation of cross-border data flows, and cybersecurity standards, among others.

Thank you for considering our industry's perspective. We welcome the opportunity to serve as a resource as the committee, its members, and both the House and Senate chart a path forward on the USMCA.

Sincerely,

Linda Moore  
TechNet President and CEO

CC: Senator Michael Bennet (D-CO)  
Senator Sherrod Brown (D-OH)  
Senator Richard Burr (R-NC)  
Senator Maria Cantwell (D-WA)  
Senator Ben Cardin (D-MD)  
Senator Tom Carper (D-DE)  
Senator Bob Casey (D-PA)  
Senator Bill Cassidy (R-LA)  
Senator John Cornyn (R-TX)  
Senator Catherine Cortez Masto (D-NV)  
Senator Mike Crapo (R-ID)  
Senator Steve Daines (R-MT)  
Senator Mike Enzi (R-WY)

Senator Maggie Hassan (D-NH)  
Senator Johnny Isakson (R-GA)  
Senator James Lankford (R-OK)  
Senator Bob Menendez (D-NJ)  
Senator Rob Portman (R-OH)  
Senator Pat Roberts (R-KS)  
Senator Tim Scott (R-SC)  
Senator Debbie Stabenow (D-MI)  
Senator John Thune (R-SD)  
Senator Pat Toomey (R-PA)  
Senator Mark Warner (D-VA)  
Senator Sheldon Whitehouse (D-RI)  
Senator Todd Young (R-IN)

