

Testimony of Robert E. Lighthizer
Before the U.S. Senate Committee on Finance
March 12, 2019

Chairman Grassley, Ranking Member Wyden, and all the distinguished members of this great committee: I am pleased for the opportunity to testify before you this morning.

You have asked me to come here today to discuss the World Trade Organization. To begin, I should say that the Administration – like all members of this committee – wants an effective international trading system.

Under President Trump’s leadership, U.S. trade has surged. From 2016 to 2018, total U.S. exports grew by 12.8 percent. Over the same period, total U.S. imports grew by 14.8 percent. Last year, Americans exported almost \$2.5 trillion worth of goods and services – an all-time high. Meanwhile, the United States created 264,000 new manufacturing jobs last year – the largest such figure in 21 years – and we had the strongest economic growth of any country in the G-7. These are encouraging figures, but of course we want to do even better. We are working with Congress on the USMCA, which should further spur

production and trade in this country. We continue to seek improved trading rules with China, and we hope to make significant progress this year with Japan, the European Union, the United Kingdom, and other countries.

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

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

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

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

The last major effort to reach such an agreement – the Doha Round – collapsed in 2008, and has now been dead for more than a decade. Despite all the dramatic changes that have taken place in the last quarter

century – the rise of China, the evolution of the Internet, and countless other developments – the WTO is still largely operating under the same old playbook from the early 1990’s. It is now out of date.

Second, much work remains to be done in terms of lowering tariffs – primarily in countries that consider themselves developing. Numerous WTO members continue to have very high “bound” tariff rates that allow them to maintain tariffs significantly above the bound rates that apply to the United States. For example, the average bound tariff rate for all goods in the United States is 3.4 percent. In Brazil, it is 31.4 percent. In India, it is 48.5 percent. In Indonesia, it is 37.1 percent. It is not reasonable to agree that because the United States agreed to such disparities many years ago – when economic and geo-political conditions were very different – that we are stuck with them forever. The rules on tariffs have to keep pace with the realities of the global economy.

Third, too many WTO members are not living up to current obligations. For example, members take on significant commitments to provide regular notifications of subsidy programs and other information

critical to trading conditions around the world. Despite the clear obligation to make such notifications, many of our trading partners – including significant economies like China and India – have a very poor track record of providing this critical information.

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

Fourth, the dispute settlement process at the WTO is being used to create new obligations to which the United States never agreed. Article 3.2 of the Dispute Settlement Understanding plainly states that “Recommendations and rulings of the Dispute Settlement Body cannot add to or diminish the rights and obligations provided in the covered

agreements.” In other words, the dispute settlement process was never intended to make new rules – it was designed solely to help members resolve specific disputes between them.

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

- The Appellate Body has attacked U.S. countervailing duty laws – thus making it easier for other countries to provide market-distorting subsidies.
- The Appellate Body has interpreted WTO rules in a manner that puts our tax system at an unfair and illogical disadvantage compared to that of many trading partners.

- The Appellate Body has interpreted the Agreement on Safeguards in a manner that significantly limits the ability of members to use that vital provision.
- The Appellate Body has interfered with the appropriations process by limiting Congress's ability to spend money collected through antidumping and countervailing duties.

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

A year and a half ago in Buenos Aires, at the first WTO ministerial conference held during this Administration, I clearly set out our position on all of these issues and I invited the WTO membership to join us in

fixing these problems. I would like to include on the record a copy of the remarks I delivered at that meeting.

In spite of the serious challenges we face, the United States is working diligently within the body of the WTO to negotiate new rules in areas heretofore uncovered. To jump-start this negotiating process, we have pushed for important outcomes in talks on digital trade and fishing subsidies. We have highlighted the issue of unequal bound tariff rates, and continue to press other members for additional market access. We have put forward specific proposals to address the concerns resulting from lack of notification and the abuse of developing country status. And we have continued to press longstanding U.S. concerns regarding the dispute settlement process. We have taken these steps not to hurt the WTO – but to ensure that it remains relevant to a rapidly changing world.

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