

United States Senate Committee on Finance
Hearing on “Approaching 25: The Road Ahead for the World Trade Organization”
March 12, 2019
Questions for the Record for Ambassador Robert Lighthizer, USTR

Chairman Chuck Grassley, Iowa

Question 1

The original 81 charter members agreed to join the WTO, voluntarily, seeing it as an improvement over the GATT.

What aspects of the WTO and the multilateral rules based system that derived from the GATT most benefit the United States, U.S. companies, and farmers? What improvements could be made to the WTO to enhance those benefits?

Answer: The WTO provides multiple tools for the United States to counteract trade concerns that negatively impact U.S. production and jobs in manufacturing, agriculture, and services. The United States aggressively utilizes these tools in an effort to ensure U.S. exports have the same access and ability to compete on a level playing field abroad that we allow imports here in the United States.

The WTO committee system enables the United States to build coalitions or act alone to address and resolve other Members’ trade actions that do not comply with their WTO obligations. For example, the Sanitary and Phytosanitary (SPS) Committee is important to U.S. efforts to prevent Members from establishing and maintaining non-science based measures that are inconsistent with international standards and that block imports of safe U.S. agricultural products. The Technical Barriers to Trade (TBT) Committee plays a key role in U.S. efforts to reduce regulatory and other technical barriers, such as discriminatory standards and unnecessary or duplicative testing requirements, in order to increase exports of U.S. manufactured and agricultural goods. When such efforts are not successful, and USTR assesses that a WTO Member may be in breach of its WTO obligations, the United States aggressively uses the dispute settlement system to obtain a finding of WTO-inconsistency to persuade that Member to remove the barrier.

In addition, the WTO provides the United States with a platform to export its views on trade policy.

That said, the WTO that we intended to create, and the WTO we seek, is in key respects not the WTO we have today. This is not a new or sudden development. For years, the United States and many other Members have voiced concerns with the WTO system and the direction in which it has been headed.

First, the WTO dispute settlement system has strayed far from the system agreed to by Members. It has appropriated to itself powers that WTO Members never intended to give it. This includes where panels or the Appellate Body have, through their findings, sought to add to or diminish WTO rights and obligations of Members in a broad range of areas.

Second, the WTO is not well equipped to handle the fundamental challenge posed by China, which continues to embrace a state-led, mercantilist approach to the economy and trade. China’s actions

are incompatible with the open, market-based approach expressly envisioned and followed by other WTO Members and contrary to the fundamental principles of the WTO and its agreements.

Third, the WTO's negotiating arm has been unable to reach agreements that are of critical importance in the modern economy. Previous negotiations were undermined by certain Members' repeated unwillingness to make contributions commensurate with their role in the global economy, and by these Members' success in leveraging the WTO's flawed approach to developing-Member status.

Fourth, certain Members' persistent lack of transparency, including their unwillingness to meet their notification obligations, have undermined Members' work in WTO committees to monitor compliance with WTO obligations. Their lack of transparency has also damaged Members' ability to identify opportunities to negotiate new rules aimed at raising market efficiency, generating reciprocal benefits, and increasing wealth.

The United States is at the forefront of the reform effort in Geneva. We are working with a diverse group of Members to advance a proposal aimed at improving Members' compliance with their notification obligations. In February, we submitted a proposal to the General Council to promote differentiation of development status in the WTO to reflect today's realities.

We are pursuing reform-related discussions in other configurations, as well. In December 2017, Ambassador Lighthizer and the trade ministers of Japan and the EU announced new trilateral cooperation to undertake measures to combat the non-market-oriented policies of third countries. Discussions are continuing under the trilateral configuration, focused on promoting market-oriented policies and practices, preventing forced technology transfer from foreign companies to domestic companies, and exploring possible new rules on industrial subsidies and state-owned entities.

Question 2

The U.S. just won a case at the WTO against China related to its subsidies for corn, wheat, and rice. Congratulations on that victory, it is a great example of why we need the WTO. It is also an example of how long these cases can take, as the case was initiated by the Obama Administration.

Will the Administration continue pushing China to change its domestic agriculture support system through the traditional WTO process or the ongoing Section 301 negotiations?

Answer: A WTO panel found that China provided trade-distorting domestic support to its grain producers well in excess of its commitments under WTO rules, and we will monitor China closely going forward to ensure its compliance with panel rulings. The Administration will take whatever steps are necessary to enforce its trading rights, and hold China accountable to the rules on global trade to help ensure that American farmers compete on a level playing field in the global market place.

Question 3

I want to commend you and your staff for U.S. leadership at the WTO on a forward-looking e-commerce agenda. We were pleased to see the United States join the announcement at the World Economic Forum in Davos that countries would initiate negotiations on trade-related aspects of e-commerce. Plurilateral negotiations have been an effective way to achieve liberalization in goods in areas such as the Information Technology Agreement (ITA).

What is the Administration doing to ensure that a plurilateral path will lead to a high-standard agreement on e-commerce that includes strong rules on cross-border data flows, data localization, a moratorium on e-commerce duties and trade facilitation? What are the prospects for a high standard agreement if China is part of the negotiation?

Answer: For the WTO digital trade initiative to be successful, it will need to deliver commercially significant outcomes with the same high-standard rules applicable to all participants. Accordingly, we are advocating the high-standard rules and working closely with allies to gain support for this approach, focusing in particular on key USMCA digital trade outcomes. China's participation in any such negotiation will, of course, add challenges and complexity; we need to ensure that China's participation does not lower the level of ambition for this initiative. Our intent is to have a high-standard, quality agreement even if it means fewer countries participate.

Question 4

The rise of state owned enterprises, (SOEs) has caused a number of challenges for private industry and regulators. These market participants often pursue political goals over market signals and have advantages like access to low cost capital. The rules to define SOEs are not easy to write, on top of the fact that many SOEs are opaque in their operations.

What do you think are the most important factors the WTO should consider for new rules to address the increasing role SOEs have started playing in the global economy?

Answer: Any new rules addressing the growing importance of SOEs and the market-distorting behavior of state enterprises should ensure that such entities are not advantaged by the government and act in accordance with market principles. We need to consider stronger subsidy rules that would prohibit government financing of entities unable to obtain commercial financing on their own. SOEs should also be required to act consistent with the normal commercial considerations of private entities and not to discriminate in the purchase and sale of goods and services.

Ranking Member Ron Wyden, Oregon

Question 1

The digital economy is a major driver of economic growth for Oregon, for the United States and for the global economy. I believe the Internet represents the Shipping Lane of the 21st Century.

The state-of-the-art Digital Trade chapter of the revised NAFTA was a major achievement and I think it serves as a template for the current WTO talks on e-commerce, or digital trade. Some are concerned that the inclusion of China in these talks could lead to a less ambitious outcome given that China aggressively discriminates against non-Chinese companies and manages a mass Internet censorship program known as the Great Firewall.

Can you assure us that you will not accept a watered-down agreement on e-commerce just to keep China in it?

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 likewise view as a model for this negotiation and future agreements. China's participation in any such negotiation will, of course, add challenges and complexity; we need to ensure that China's participation does not lower the level of ambition for this initiative. Our intent is to have a high-standard, quality agreement even if it means fewer countries participate.

Question 2

The U.S. and Japan are like-minded on digital trade issues. Japan has worked alongside us in the WTO, in the TPP negotiations, and elsewhere to push for strong digital trade rules.

Would you agree that having a high-standard digital trade agreement with Japan — perhaps one that other like-minded countries could join over time — would send a powerful message to the EU, China, and other countries participating in the WTO e-commerce talks while also establishing strong rules on digital trade?

Answer: In USTR's detailed negotiating objectives for a U.S.-Japan Trade Agreement, released December 21, 2018, several digital trade objectives were included, on issues such as customs duties, data flows, and forced data localization. USTR's intention is to work with Japan to develop high-standard digital trade provisions in the U.S.-Japan Trade Agreement outcomes. Along with the USMCA digital trade provisions, negotiations with Japan offer an opportunity to continue to set high standards on these important issues going into WTO talks and other trade discussions.

Question 3

The WTO 'moratorium' against imposing customs duties on electronic transmissions has helped American companies expand digital trade worldwide. This moratorium is particularly important to me because when I co-wrote the 1998 Internet Tax Freedom Act, I included a provision directing the President to seek to remove global barriers to e-commerce at the WTO, and the WTO moratorium on e-commerce duties was agreed to that same year.

Today, however, I'm concerned that more countries seem to be taking steps to reassess or undermine the moratorium at the WTO. This is a new threat to America's digital trade and digital content.

What steps will you take to ensure that the moratorium is continued at the WTO and that countries like India and Indonesia do not move forward on imposing customs duties on streaming content, digital downloads, and other content from the United States?

Answer: The WTO moratorium on imposing customs duties on electronic transmissions, including content transmitted electronically, has over the last twenty years supported the growth of the digital economy and has been replicated in numerous bilateral and regional trade agreements. The Administration is working with a broad group of like-minded countries to ensure the continuation of the moratorium and to address potential challenges within the WTO Membership. This moratorium also will be part of our negotiating position in the WTO e-commerce talks.

Question 4

A number of European countries are moving ahead with proposals to implement a tax on digital services that appears to be designed to specifically target American companies. These digital services tax proposals are discriminatory, which raises concerns about whether they are compatible with WTO obligations. In January, Chairman Grassley and I wrote to Secretary Mnuchin to let him know our concerns about countries moving forward unilaterally to implement digital services taxes.

How do you intend to take on these discriminatory, anti-American taxes that are being pursued by European countries?

Answer: The Administration shares your concern that proposals by several countries to create new taxes on revenues from certain digital services, including the proposed law currently under consideration by the French legislature, are deeply flawed as a matter of policy and may be designed to target U.S. companies. We publicly flagged concerns with these taxes in our recent National Trade Estimate report. USTR is looking seriously at all of the tools available to address such potential trade barriers. We are engaged in the research and analysis necessary to evaluate any actions that might be available under U.S. law and any applicable trade agreements.

Question 5

U.S. cloud service providers support thousands of American jobs and bring cutting-edge technology to markets all over the world. But, in China, U.S. cloud service providers are now facing major barriers that prevent them from operating or competing fairly.

China has proposed new regulations that would effectively require foreign cloud service providers to turn over all ownership and operations to a Chinese company. Moreover, these new restrictions would force U.S. cloud service providers to give valuable U.S. intellectual property to China. It seems to me that these are exactly the type of unfair trade practices that you identified in the recent Section 301 investigation of China.

What outcomes on cloud services are you seeking in the current China discussions?

Answer: The Administration places a high priority on the elimination of foreign equity limitations, discriminatory licensing requirements, and technology transfer requirements and incentives in China, including in the cloud services sector. In this sector, we are seeking commitments that permit U.S. firms to compete on a level playing field with their Chinese competitors and that also reflect the access that Chinese companies have today to offer cloud services in the United States.

Question 6

The EU is taking a range of actions targeted at U.S. technology companies and impeding digital trade. On March 26, 2019, the European Parliament narrowly passed a copyright directive that diverges from copyright norms. The directive may have broad economic and social consequences.

These new rules substantially threaten digitally-enabled services that U.S. firms export annually to the EU, and will make it harder for small and large American businesses and startups to compete in Europe. The U.S. government's silence on this issue is deafening and there now appears to be an open door to both a 'link tax' and attacks on open platforms and the free speech they promote.

What steps will you take to ensure that implementation of ambiguous language in the copyright directive at the member state level will not result in additional barriers for U.S. service providers and online collaboration?

How do you intend to ensure that Europe's misguided approaches to copyright do not infect policy approaches by other countries, as has been the case with geographic indicators?

Answer: USTR has been closely tracking the progress of the Directive and has followed its development with great interest. We intend to monitor the implementation of the Copyright Directive in the Member States of the EU, particularly with regards to provisions in the Directive that may have an impact on U.S. suppliers in those markets. We have already recognized in recent National Trade Estimate Reports that measures requiring remuneration or authorization for short excerpts of text may raise concerns. We will also be focused on ensuring a fully transparent implementation process – one with ample opportunities for all U.S. stakeholders to have opportunities to provide input, in a public manner, about their concerns regarding possible barriers to trade and any other concerns on the policy being espoused by the Directive.

Question 7

In February, President Trump announced that the U.S. and China had reached an agreement on currency manipulation as part of the ongoing negotiations.

How does this currency agreement with China differ from the currency chapter in the renegotiated NAFTA?

Will all of the obligations in the currency agreement be enforceable?

If so, will those obligations be enforceable by China against the United States?

Answer: The Secretary of the Treasury is responsible for evaluating the currency practices of the United States' major trading partners. With respect to the China negotiations, the talks are still underway, but address a range of issues including, currency practices. The aim is to reach agreement to refrain from competitive devaluations in currency and to agree to a certain level of transparency that would be enforceable under the agreement.

Question 8

Fishing and fisheries play an important role in the Pacific Northwest economy, and we need to ensure that other countries — like China — play by the rules to ensure a fair playing field for Oregon’s fishing industry. Preventing overfishing and illegal fishing is also critical to protect our ocean environment. That’s why I was glad to see that the new NAFTA has an environmental chapter with strong commitments to address fisheries subsidies.

At the WTO, members have been negotiating some form of a comprehensive agreement on fisheries subsidies since the Doha Ministerial Conference in 2001. Today, our coastal state economies and our environment can’t afford to wait too long to achieve an enforceable fish subsidies agreement.

Do you agree that we should have an aggressive negotiating schedule to wrap up this agreement within the next year, assuming we can achieve a high-standard agreement? If so, what steps are you taking towards that goal?

Answer: The Trump Administration supports strong prohibitions on harmful fisheries subsidies, including those that contribute to overfishing and overcapacity and those that support illegal fishing activities. The recently concluded USMCA Environment Chapter contains the strongest set of internationally agreed obligations to prohibit harmful fisheries subsidies, and provides an important benchmark for the WTO negotiations. Establishing these prohibitions in the WTO so that they apply to all WTO Members, including the largest subsidizers, will help level the playing field for the U.S. fishing industry. To help advance the WTO negotiations, the United States recently joined Australia in tabling an innovative new proposal that would further limit and reduce the fisheries subsidy programs of some of the largest players in the seafood sector, including China and Indonesia. While there is an aggressive WTO negotiating schedule and we are making progress, we still have a long way to go to achieve meaningful disciplines on the most harmful fisheries subsidies due to intransigence on the part of some of the most problematic actors. I look forward to working with you and other Members and stakeholders as we advance these negotiations.

Question 9

The United States has an American advantage in trade in services. The U.S. service sector supports millions of American jobs and is at the forefront of innovation, especially in digital services. Last year, I asked you whether you had a strategy to revive the “Trade in Services Agreement” negotiations in Geneva, and you responded that you were still evaluating options for expanding U.S. services exports.

What are your plans to resume these negotiations, which could complement the work in the WTO e-commerce negotiations?

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 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 serve as a template for the U.S. position in the WTO e-commerce negotiations and in future U.S. agreements. We continue to evaluate other potential negotiations to further expand U.S. services exports.

Question 10

Last summer (August 30, 2018), President Trump threatened to withdraw from the WTO if it doesn’t “shape up.”

Has the WTO shaped up since then in the President's view?

Please describe any request to you by the President to 1) examine implications or consequences of a U.S. withdrawal from the WTO and/or 2) take any actions or steps to initiate or advance U.S. withdrawal from the WTO.

Answer: The WTO that we intended to create, and the WTO we seek, is in key respects not the WTO we have today. This is not a new or sudden development. For years, the United States and many other Members have voiced concerns with the WTO system and the direction in which it has been headed.

First, the WTO dispute settlement system has strayed far from the system agreed to by Members. It has appropriated to itself powers that WTO Members never intended to give it. This includes where panels or the Appellate Body have, through their findings, sought to add or diminish WTO rights and obligations of Members in a broad range of areas.

Second, the WTO is not well equipped to handle the fundamental challenge posed by China, which continues to embrace a state-led, mercantilist approach to the economy and trade. China's actions are incompatible with the open, market-based approach expressly envisioned and followed by other WTO members and contrary to the fundamental principles of the WTO and its agreements.

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The United States is at the forefront of the reform effort in Geneva. We are working with a diverse group of Members to advance a proposal aimed at improving Members' compliance with their notification obligations. In February, we submitted a proposal to the General Council to promote differentiation of development status in the WTO to reflect today's realities.

We are pursuing reform-related discussions in other configurations, as well. In December 2017, Ambassador Lighthizer and the trade ministers of Japan and the EU announced new trilateral cooperation to undertake measures to combat the non-market-oriented policies of third countries. Discussions are continuing under the trilateral configuration, focused on promoting market-oriented policies and practices, preventing forced technology transfer from foreign companies to domestic companies, and exploring possible new rules on industrial subsidies and state-owned entities.

Question 11

Section 125 of the Uruguay Round Agreements Act states that Congressional "approval" of U.S. participation in the WTO "shall cease to be effective if, and only if" a joint resolution withdrawing

Congressional approval is enacted by Congress.

Would you agree that, per the Uruguay Round Agreements Act, the president may not withdraw the United States from the WTO without the approval of Congress?

Answer: As noted in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), and approved by Congress along with the Act, section 125 establishes an expedited procedure permitting Congress, following the submission of every fifth annual report required by section 124, to adopt a joint resolution revoking Congressional approval of the WTO Agreement. The provision creates a mechanism that will permit periodic Congressional review of U.S. participation in the WTO. Section 125 specifies the procedural rules that apply to consideration of any such joint resolution, including time limits for action, automatic discharge provisions, and rules for consideration of the joint resolution in both Houses.

Question 12

While much has changed in the global economic scene since the inception of the WTO, the WTO's rules have not been updated to adapt to these changes. For example, the WTO does not seem to have mechanisms to address China's failures to adopt more market-oriented policies and to stop government intervention in business activities. I am glad to see you working with allies, like the EU and Japan, on some of these issues, but ultimately, the adoption of new rules will require the consensus of all WTO members.

How do you see the WTO being able to adopt these kinds of critical rule changes when the institution currently require the unanimous consent of all WTO members to adopt changes?

Answer: Our long record of leadership at the WTO makes us clear-eyed about the challenges ahead. In our assessment, Members are in the early stages of grappling with our collective failure to confront problems that have been growing for years. The United States is committed to working with like-minded Members to address our concerns with the functioning of the WTO. Some of this work will happen in Geneva, as we and other like-minded Members put forth concrete proposals and work to build support for our ideas across the Membership. Some of this work will happen in other configurations, such as our trilateral cooperation with the EU and Japan and our bilateral engagements. We of course are committed to meaningful action regardless of the WTO membership's willingness to act. Ultimately, all Members must recognize it is in their self-interest to address the current issues at the WTO if the organization is to function properly.

Question 13

Changes to the dispute settlement process have been sought for many years by multiple administrations. While I appreciate that the U.S. has been successful in drawing attention to the need for reform, some question how the reforms can be instituted before December, when the Appellate Body will no longer have the number of panelists it needs to do its job. While I am not a fan of all of the decisions coming out of the WTO dispute settlement system, the U.S. is its biggest user—with a relatively high success rate.

What way forward do you see for these issues to be resolved so that the U.S. will agree to the appointment of new Appellate Body members?

Where will a non-functioning dispute settlement system leave the cases that the U.S. has brought, including the case brought against China concerning the protection of intellectual property rights?

In the event that the Appellate Body ceases to have the minimum number of members needed to act, what options will this leave the U.S. and others who want to ensure that other members live up to their obligations?

Answer: For many years, and in multiple Administrations, the United States has repeatedly expressed concerns with the WTO Appellate Body's activist approach, which has involved overreaching on procedural issues; interpretative approach; and 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.

During 2018, 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, the Appellate Body's unauthorized review of panel findings on domestic law, the Appellate Body's issuance of advisory opinions on issues not necessary to resolve a dispute, the treatment of prior Appellate Body reports as precedent, and allowing persons to serve on appeals after their Appellate Body term has ended.

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.

The responsibility to address these problems is not that of the United States alone, rather, it is the collective responsibility of all WTO Members to ensure the proper functioning of the WTO dispute settlement system, including the Appellate Body.

Regardless of the progress in reforming the dispute settlement system, the United States will remain committed to fulfilling its obligations under WTO Agreement, while rejecting efforts by the WTO Appellate Body to create new obligations to which WTO Members have not agreed. We likewise expect U.S. trading partners to continue to fulfill their own obligations under the WTO Agreement. In the event that a Member fails to fulfill its commitments, I will continue to use existing tools under U.S. law to enforce U.S. rights under the WTO Agreement.

Question 14

Last November, Senator Stabenow and I sent you and Secretary Ross a letter about the economic impact of the rules of origin for autos in the revised NAFTA agreement. The president has said that this agreement will "incentivize billions of dollars in new purchases of U.S.-made automobiles" and create "far more American jobs." USTR's fact sheet says that the new rules will "transform supply chains to use more United States content." I share your support of a strong auto manufacturing sector in the United States, but I have not yet seen any quantitative analysis that backs up these assertions.

Will you commit to providing this critical analysis to Members of Congress so that we can fully understand the potential impact of these changes?

Answer: Over the past months, I have frequently discussed auto rules of origin with Members of Congress and explained how they will benefit U.S. autoworkers and the industry. Earlier this month, we provided Senate Finance trade staff with a white paper containing additional quantitative analysis and provided them with a briefing on the basis of our estimates.

How do you square these projected positive impacts on the U.S. auto sector with the Commerce Department's investigation about how future imports of automobiles and auto parts constitute a national security threat?

Answer: The President is considering the findings of the Department of Commerce's report. As you know, at the time we signed the USMCA, we also had an exchange of letters with Mexico and Canada regarding automobiles.

Question 15

The revised NAFTA includes some clear improvements over the status quo, especially in the Digital Trade chapter. But I remain concerned about the deal's enforceability. The agreement does not resolve all of the flaws in the state-to-state dispute settlement chapter in the current NAFTA. This includes loopholes that allow parties accused of violating their obligations to delay or even block the formation of a panel. Under NAFTA, no dispute settlement panel has been formed since 2000, and the dispute settlement system generally has been ineffective as a tool to ensure compliance with the agreement. Without effective enforcement, American workers, farmers, and businesses will not see the benefits of this new deal.

Recent trade agreements have avoided the NAFTA loopholes with improved dispute settlement procedures. For example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) closed these loopholes, ensuring that parties cannot unreasonably delay or avoid the formation of a panel. Both Mexico and Canada have ratified the CPTPP.

Would you be opposed to clarifying that the text of Chapter 31 of the revised NAFTA is not meant to allow panel blocking?

Answer: The text of Chapter 31 of the United States – Mexico – Canada Agreement (USMCA) is not meant to allow panel blocking. Indeed, panels have been successfully formed under Chapter 20 of the NAFTA (its precursor). As we move forward with Congressional consideration of the USMCA, we look forward to discussing this and any other issues related to enforcement with you and your colleagues.

Question 16

Many members of Congress, myself included, are concerned about Mexico's enforcement of its new labor obligations under the revised NAFTA. Under this agreement, Mexico agreed to pass key labor reform legislation to implement those commitments by January 1, 2019. As of March 26, Mexico still has not passed this legislation.

How can we have confidence that Mexico will enforce the new labor commitments in the revised NAFTA when Mexico still has not passed the necessary legislation to put the reforms into effect?

Answer: The Administration has worked very closely with the Government of Mexico to ensure that Mexico's labor legislation meets the obligations of the USMCA Labor Chapter and Annex, and is enacted before the trade agreement is considered by the U.S. Congress. On April 29, 2019, Mexico's

Congress passed legislation that complies with its USMCA labor commitments, and I am committed to working with you and other Members of Congress to discuss options and policy tools for monitoring the implementation of these important reforms.

Question 17

Recent OECD studies suggest that over half of Mexico's labor force is employed in the informal economy. Jobs in the informal economy are not formally regulated by the Mexican government. As a result, Mexico's commitments in the Labor Chapter of the new NAFTA — including its commitment to adopt regulation on acceptable minimum wages and hours of work — will not extend to workers in Mexico's informal economy.

How do you expect Mexico to fully enforce its labor laws given the high proportion of workers employed in the informal economy?

Answer: The Mexican Congress has passed labor reform legislation that provides workers with fundamental labor protections, whether they have formal employment contracts or not. For example, workers have the right to join authentic unions and engage in true collective bargaining with their employer, and Mexico's labor authorities are obligated to ensure the protection of these rights regardless of an employer's status in the formal economy. The USMCA labor obligations also include specific commitments for Mexico to create specialized administrative and judicial bodies to implement and enforce fundamental labor rights.

In which ways do you expect the new NAFTA to promote and expand Mexico's formal economy?

Answer: The USMCA will increase formal sector employment by requiring the elimination of undemocratic unions and collective bargaining agreements that "protect" employers from real collective bargaining. Authentic unions and collective bargaining will allow Mexico's workers to demand that employers provide wage benefits and other formal employment benefits such as affiliation to social safety nets, which in Mexico include government sponsored pensions and health care. This will improve the respect for labor rights of Mexican workers, and level the playing field for workers in the United States who will no longer compete against exploited workers in Mexico.

Question 18

Please address the following inconsistencies between U.S. law and the revised NAFTA text:

- a. *Definition of a biologic:* U.S. law exempts chemically synthesized polypeptide from the definition of a biologic (PHS Act § 351(i)(1)). Drugs that fall into this class are used by patients who, for example, are living with cancer and diabetes, two diseases that already cause a significant economic burden. The new NAFTA text's definition of a biologic (20.F.14.2) does not exempt drugs in this class, increasing the cost for patients.

Please explain this inconsistency and why this class of drugs would not be exempted, as they are in U.S. law.

Answer: U.S. law is fully consistent with the USMCA IP Chapter provisions, and nothing in the newly negotiated USMCA will require changing U.S. laws on pharmaceutical intellectual property rights. The plain meaning of the treaty text is that Article 20.49 of the USMCA describes biologics as including products "produced through biotechnology processes," as distinguished from "chemically synthesized" products, such as chemically synthesized polypeptides.

- b. *Market vs. Data Protection:* Article 20.F.14 of the revised NAFTA refers to Article 20.F.13.1 and states that a Party must “provide effective market protection through the implementation” of that article. Although this provision refers to “market protection,” Article 20.F.13.1 refers to data protection, and to a period of 5-year data protection. This could appear to conflict with the 4-year “data protection” period under the Biosimilars Act (PHS Act § 351(k)(7)(b)) preventing a BLA submission. Furthermore, to the extent this provision allows for a 10-year period of “data protection” prohibiting a BLA submission, it could conflict with the Biosimilars Act.

Please explain these inconsistencies.

Answer: U.S. law is fully consistent with the USMCA IP Chapter provisions, and nothing in the newly negotiated USMCA will require changing U.S. laws on pharmaceutical intellectual property rights. Articles 20.49 and 20.48 are without prejudice to a Party’s ability to stipulate a period of time during which an application for a follow-on biologic product that relies on the innovator’s safety and efficacy data may not be submitted and do not conflict with the cited provisions of the Public Health Service Act.

- c. *Expanding biologic exclusivities:* The new NAFTA also has the potential to conflict with the way FDA has interpreted the transition rules under the BPCIA governing biologics approved as NDAs. Footnote 46 of the agreement includes its own transition rules for biologic products, which allows biologic applicants to seek approval on or before March 23, 2020 under the procedures set forth in Article 20.F.13.1 (and thus be eligible for, or subject to, 5-year and 3-year exclusivity) under certain circumstances. But footnote 46 does not state whether new biologic applications submitted during this period will be eligible upon approval for 5-year exclusivity under Article 20.F.13 only, or if they will also be eligible for 3-year exclusivity under Article 20.F.13, or if they will also be eligible for 10-year exclusivity under Article 20.F.14. Therefore, there is a concern that the revised NAFTA could conflict with the way FDA interprets the transition rules under Section 7002(e) of the BPCIA if footnote 46 were interpreted such that a new biologic sponsor may be eligible for exclusivities available under both Article 20.F.13 and Article 20.F.14, and thus entitled to both 5-year exclusivity under one pathway and at least 10 years of exclusivity under another (though these would likely overlap), and also to 3-year exclusivity for each new indication, formulation change or method of administration.

Please explain the inconsistency between the transitions rules as described in the BPCIA and in the revised NAFTA text.

Answer: U.S. law is fully consistent with the USMCA IP Chapter provisions, and nothing in the newly negotiated USMCA will require changing U.S. laws on pharmaceutical intellectual property rights. We have a robust interagency process, including with the Department of Health and Human Services, with respect to developing and negotiating FTA provisions. In particular, the USMCA IP Chapter is consistent with the Biologics Price Competition and Innovation Act, as well as FDA’s interpretation of that Act.

Question 19

Last week, President Trump met with President Bolsonaro of Brazil at the White House. According to a joint statement, President Trump noted his “support for Brazil initiating the accession procedure to become a full member of the OECD” and President Bolsonaro agreed that “Brazil will begin to forgo

special and differential treatment in World Trade Organization negotiations.” Brazil currently maintains high tariffs and restrictive trade policies. Previously, the United States withheld support for Colombia’s OECD accession until Colombia agreed to remove certain trade irritants subject to enforceable dispute resolution under our bilateral free trade agreement.

Please describe any specific commitments that the United States made to Brazil with regard to Brazil’s OECD accession.

Please describe what specific commitments Brazil has made to address key barriers to trade with the United States.

Answer: When President Trump and President Bolsonaro of Brazil met on March 19, 2019, President Trump welcomed Brazil’s ongoing efforts regarding economic reforms, best practices, and a regulatory framework in line with the standards of the Organization for Economic Cooperation and Development (OECD). President Trump noted his support for Brazil initiating the accession process to become a full member of the OECD. 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.

The United States has high expectations for any country seeking OECD Membership. We intend to bilaterally deepen our engagement with Brazil, including through our bilateral dialogue mechanism and look forward to Brazil demonstrating in action its commitment to open its market to U.S. goods. Importantly, it should be noted that Brazil agreed to forgo seeking special and differential treatment in current and future trade negotiations, which we would expect of any aspiring OECD Member.

Question 20

The Trade Enforcement Trust Fund (TETF) was established by Congress specifically to provide resources needed to support trade enforcement efforts. USTR’s FY 2020 Budget Justification Summary notes that “USTR collaborated with OMB to propose language in the FY 2020 Budget that will fix ongoing technical issues with the TETF that prevent the Fund from functioning as intended.”

Describe the challenges you face with the current approach to funding the TETF.

Answer: The proposed language fixes a minor technical issue with the TETF’s execution. Congress appropriates funding from the TETF each year. As it currently operates, any unspent funding cannot be used after the year of its appropriation, but continues to count against the TETF’s \$30 million cap for 5 years. While the presence of unspent funding does not prevent USTR from using its FY19 appropriation, there are implementation challenges in obligating the appropriation without hitting the cap.

Describe the technical issues, as well as the proposed fixes, referenced in the Budget Justification Summary.

Answer: As noted, USTR continues to have discussions with Congressional staff and OMB as to how to improve the TETF. The FY2020 budget recommends removing investment authority from the TETF. This will allow unused funding in the account to expire preventing prior year unobligated funds from counting against the \$30 million cap.

Senator Pat Roberts, Kansas

Question 1

As we have discussed previously, agriculture faces a number of non-tariff barriers to trade. Often, sanitary and phytosanitary (SPS) measures are used by other countries to conceal protectionist trade policies, ultimately, discriminating against U.S. agriculture products and hindering market access. The WTO is one mechanism the United States has successfully used to further its SPS goals.

At this time, against the backdrop of largely dormant WTO activity on multi-lateral market access, how can USTR advance the United States' SPS agenda at the WTO? Is our current best option largely limited to bringing SPS cases against certain trading partners, such as the EU, when they fail to abide by sound science on issues such as pesticides and biotechnology?

Answer: The Administration is pursuing an active agenda to advance U.S. interests on SPS in the WTO. In many countries, regulatory barriers lacking scientific justification block farmers' access to safe tools and technologies. We have initiated a series of joint activities with other WTO Members on the safe use of biotechnology and pesticides as a means to support all farmers, including small holders. In 2018, 13 countries supported an international statement on agricultural applications of precision biotechnology to foster the use of the new tools, including genome editing. We joined with five African and Latin American countries on a WTO initiative regarding regulatory responses to the destructive pest fall armyworm. In recent years, we have built a coalition of over 30 countries to raise concerns with the EU's hazard-based approach to pesticides. We are also working with other countries to advance implementation by WTO Members of regionalization measures for animal and plant health. We will continue to use the WTO in new and creative ways to advance U.S. interests on SPS.

Senator Johnny Isakson, Georgia

Question 1

Mr. Ambassador, during the hearing, you heard me discuss my unease with the current status of the Section 232 tariffs on steel and aluminum as well as my concern that the 232 tariffs will be removed in name only and replaced with a quota system. In response to my comments, you mentioned that it was your hope to remove the steel and aluminum tariffs on Canada and Mexico and replace them with a different mechanism that will protect the integrity of the program without hurting American companies downstream. I believe that import quotas often lack transparency and may run counter to the administration's monumental effort to re-establish free trade between the U.S, Canada, and Mexico.

Can you offer more details on what this future program will look like? What will USTR do beforehand to ensure that Americans aren't unduly hurt by this program?

Answer: As I noted during the hearing, our objective in discussions with Canada and Mexico is to find an alternative to the Section 232 tariffs that addresses the threatened impairment of U.S. national security caused by imports of steel and aluminum. The types of issues we are considering in these discussions include the need to avoid import surges and prevent transshipment; the need to reduce excess production and capacity in overseas markets; and possible mechanisms for contributing to increased capacity utilization in the United States. From the outset, the Section 232 steel and aluminum measures have been constructed in a manner that is mindful of the needs of consumers of these products. At the time he imposed the Section 232 tariffs, the President authorized the Secretary of Commerce to provide exclusions from the tariffs for articles for which there is a lack of sufficient U.S. production; in August of last year, the President extended this authority to enable the Secretary to provide exclusions from steel and aluminum quotas imposed under Section 232. These considerations will continue to guide the Administration's approach to the program.

Question 2

Similarly, I have serious concerns over the administration's potential move to use Section 232 to impose tariffs on U.S. automobile imports. Recently, the President was asked whether autos and auto parts pose a national security risk, and his response was simple: "Well, no."

Do you agree with that answer? If so, would you agree with me that Section 232 is not an appropriate tool for imposing tariffs on autos?

Answer: The Secretary of Commerce, who helps administer Section 232, has submitted his Section 232 report on the national security implications of automotive imports to the President. The President is reviewing the analysis and will determine any appropriate course of action.

Question 3

I remain concerned that USMCA does not address an important issue affecting a large portion of Georgia's agriculture economy. Georgia's fruit and vegetable growers, as well as other seasonal growers, are constantly dealing with targeted subsidized imports of fruits, vegetables, and other perishables from Mexico. Due to the seasonal nature of these businesses as well as the very short window in which they are able to sell their products, Georgia's fruit and vegetable farmers don't qualify for U.S. AD/CVD mechanisms since they're unable to demonstrate adequate injury as defined by current U.S. law. In turn, our trade deficit in fruits and vegetables with Mexico continues to widen as more and more Georgia

producers are forced to shut down their operations. I have heard from growers in my state who oppose moving forward with USMCA without an effective mechanism to contest these unfair practices.

Can we count on you and the administration to address this issue in the coming months?

Answer: This issue is not addressed in existing U.S. law or the current NAFTA. However, the Administration is exploring ways to assist the fresh fruit and vegetable industry and address the challenges it is facing from Mexican imports.

Question 4

Georgia is the second largest cotton-producing state in the country. Like many other members of the U.S. agriculture community, the Chinese government has targeted the cotton industry with retaliatory tariffs and Georgia's farmers and Georgia companies using their products are suffering the consequences. I'm happy to hear that market access for U.S. agriculture products is at the forefront of your negotiations with the Chinese Government, and I applaud your efforts to prioritize such an important sector in Georgia's economy.

To what extent has cotton been discussed in these meetings?

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 addressing our persistent trade deficit to improve trade between our countries. China has committed to resolving outstanding issues in our agricultural trade relationship, including through immediate purchases of a wide variety of U.S. agricultural products, such as cotton. The U.S. cotton industry has longstanding relationships in the Chinese market, and we are optimistic the proposed Agreement, if reached, would help maintain and strengthen these relationships for the long term.

Question 5

As the number one forestry state in the country, Georgia depends on fair market access for timber products and the 25% tariff on exports of US Southern Yellow Pine imposed by China is causing unnecessary strain for my state's foresters and the markets they supply. In the absence of a fair trade agreement, my constituents are losing market share to foreign competitors on a daily basis.

Will immediate removal of this tariff, along with other tariffs on US timber exports, be part of any agreement you strike with the Chinese?

Answer: 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. The Administration is pressing China to remove those retaliatory tariffs entirely.

Senator Rob Portman, Ohio

Question 1

At the hearing you noted your concerns about moving away from consensus at the World Trade Organization (WTO) because doing so could come back to haunt the United States in the future. To get philosophical for a moment:

When you think about reform how do you balance the conflicting desire for progress with the need to preserve sovereignty? What heuristics should be used to evaluate whether the present need to accomplish something outweighs the need to mitigate against future blowback?

Answer: We cannot conceive of any form of sustainable progress that would require us to relinquish sovereignty. Any attempt to identify U.S. priorities must begin with a thorough understanding of U.S. national interests and an articulated strategy to advance them, particularly where competing objectives are in play. On that foundation, the value of consensus-based or joint action can be evaluated in terms of their efficacy in advancing U.S. interests and their likelihood of success.

Question 2

Some provisions of the Uruguay Round commitments are very obvious. Yet, the meaning of some Uruguay Round commitments has drifted from the commitment's original – or even plain – meaning towards judicially created meaning.

Do you believe that this is because of some inherent flaw in the drafting of the Uruguay Round documents? Or is it because of human error – either intentional or not – that new meaning has been imbued to what was agreed to in the Uruguay Round? What does this mean for the ability of WTO reformers to secure new written commitments to which parties textually adhere? How do you propose Uruguay Round parties develop, or write, new commitments that are impervious to judicial drift?

Answer: Negotiating and drafting international trade agreements is certainly a difficult task that must be undertaken with great care. Reliance on certain long-standing principles can be helpful, but new commitments must be written with great precision and clarity, bearing in mind the principles of treaty interpretation that may be subsequently employed. We must also ensure, however, that those called upon to interpret written text must not add to or diminish the rights and obligations as agreed upon by the negotiating parties. Additionally, we must ensure that relevant international institutions are not empowered in a way that infringes on U.S. sovereignty.

Question 3

The Information Technology Agreement (ITA) provided that it would only enter into force when participants whose economy totaled 90 percent of world trade in covered products joined the agreement. Critical mass requirements that are this high can give countries like China a de facto veto over the creation of future plurilateral agreements.

Should plurilateral agreements have lower critical mass requirements? Are there other critical mass requirements – other than just a percentage of global trade – that should be considered?

Answer: As part of our effort to improve the functioning of the WTO, we are thinking carefully about a number of pertinent issues, including the requirements for plurilateral negotiations. We are interested in exploring options for WTO Members that want to advance negotiated outcomes to do

so. A current example of this is the WTO digital trade initiative, in which we are exploring options for moving forward in this important area on a plurilateral basis.

We note that “critical mass” requirements are often features of so-called “open” plurilateral agreements, and they are negotiated among the parties with the objective of minimizing the risk of free ridership that is inherent to such agreements.

Question 4

Although expired, provisions related to dark amber subsidies contained a rebuttal presumption that such subsidies caused serious prejudice.

Do you believe that the resuscitation of rules for dark amber subsidies are still relevant at today’s WTO?

Answer: Bringing back the dark amber category of subsidies is an interesting idea. While a rebuttable presumption may not be a panacea, it may be helpful in identifying some of the more egregious subsidy types and providing for a more easily obtainable remedy.

Question 5

To be effective, any commitments reached as part of current negotiations with China must be enforceable. Now expired, Section 421 was a China-specific safeguard that was created – pursuant to China’s World Trade Organization (WTO) Accession Protocol – as an extraordinary trade enforcement tool designed to guard against increased imports from China. While not a panacea for enforcement, the resuscitation of Section 421 may have a useful place back in our trade enforcement toolkit.

Do you believe that Section 421 should be revived? Do you believe that, in order to be WTO compliant, the revival of Section 421 must be accompanied by China’s consent? Do you believe Section 421 can be revived unilaterally under U.S. law and without China’s consent? Is Section 421 currently part of the scope of talks with China?

Answer: Section 421 of the Trade Act of 1974, as amended, was created specifically to implement the anti-surge mechanism established under the Protocol of Accession of the People’s Republic of China to the WTO. According to the terms of the Protocol, the anti-surge mechanism expired on December 10, 2013—12 years after the date of entry into force of the Protocol for China. Section 421 has not been part of our current discussions with China on the enforcement mechanism. I am always interested in discussions with Congress regarding additional enforcement tools.

Question 6

As you know, the President has received the report pursuant to the Section 232 investigation into the national security threat posed by imports of autos and auto parts.

Have you seen the report? Do you concur in its findings? Do you concur in its potential recommendations for import restrictions?

Answer: The Secretary of Commerce, who helps administer Section 232, has submitted his Section 232 report on the national security implications of automotive imports to the President and the President is reviewing the analysis and will determine the appropriate course of action. I am not in a position to comment on its findings and recommendations. As you know, at the time we signed the USMCA, we also had an exchange of letters with Mexico and Canada regarding automobiles.

Question 7

The 301 exclusion process is helpful for some companies to seek a refund of the duties paid on tariffed imports from China.

Will USTR continue to operate the exclusion process during negotiation and successful implementation of any agreement with China in order to give U.S. companies using the exclusion process a chance for retroactive relief?

Answer: We are working on exclusions for the products on the \$34 billion and \$16 billion tariff lists and will continue to do so. We will consult with your office if there are any new developments.

Question 8

China was the third largest export market for the U.S. dairy industry in 2017. However, current counter-retaliatory tariffs are squeezing dairy market access. Dairy is roughly a \$10 billion market in China with most of that access going to the European Union and New Zealand because of the new tariffs faced by U.S. dairy exporters.

In current negotiations with China, is market access for dairy part of the talks, either in terms of expanding market access through reduction of tariffs and nontariff barriers, or increasing Chinese purchases of U.S. dairy exports?

Answer: We continue to negotiate with China to achieve greater market access for U.S. exports and fair and reciprocal treatment for U.S. farmers, and businesses. We seek substantial and immediate purchases of a wide variety of U.S. agricultural products, such as dairy, as well as the removal of technical and regulatory barriers that impede such purchases.

Question 9

USTR proposed a welcome and bold agenda in terms of new trade negotiations, and USMCA contains a high-quality digital trade chapter. Provisions like those in USMCA are all the more important as digital protectionism increases around the world.

Is USTR prepared include digital trade within stage one talks with Japan, should negotiations with Japan take a staged approach? Do you agree that the early negotiation of high-quality digital trade provisions in a US-Japan agreement would help set a needed example for subsequent WTO talks potentially commencing later in 2019, and for other discussions?

Answer: In USTR's detailed negotiating objectives for a U.S.-Japan Trade Agreement, released December 21, 2018, several digital trade objectives were included, on issues such as customs duties, data flows, and forced data localization. USTR's intention is to work with Japan to develop high-standard digital trade provisions in the U.S.-Japan Trade Agreement outcomes. Along with the USMCA digital trade provisions, negotiations with Japan offer another opportunity to set high standards on these important issues going into WTO talks and other trade discussions.

Senator Pat Toomey, Pennsylvania

Question 1

In your written testimony, you stated, “if we did not have the WTO, we would need to invent it.” As you know, one of the primary reasons why the United States championed the WTO as a successor to the GATT was because the GATT lacked an enforceable dispute settlement system. As a result, GATT member countries—notably the U.S.—resorted to unilateral trade actions, including liberal use of Section 301 tariffs, to pry open markets and enforce global trade rules.

The Uruguay Round addressed this flaw in the GATT system by establishing a binding dispute settlement function, including the WTO Appellate Body. I am concerned that the WTO’s dispute settlement mechanism will soon fail to function if the administration continues to block the appointment of judges to the WTO’s appellate panel.

The Appellate Body currently has just the bare minimum of three judges required to hear an appeal. The terms for two of these judges expire on December 10, 2019. If these terms are permitted to expire without any new judges installed, any country that loses a WTO dispute settlement case could block the ruling against them by appealing to the Appellate Body. And because the winning country may not retaliate under WTO rules until after the Appellate Body has completed its review of an appeal, the entire ruling would be effectively blocked. This result would functionally take us back to the days of the GATT, when dispute settlement compliance was essentially voluntary.

Do you believe that the WTO can continue to function effectively without a binding dispute settlement system? If so, why?

I understand your concerns about Appellate Body overreach and jurisprudence. Hypothetically, if we were to eliminate all WTO judicial precedent and return to the rules as written in 1995, how would this be implemented? Would every single dispute settlement decision that has already been rendered, including for countries that have fully complied, be unwound? What happens to those rulings that have been favorable to U.S. interests?

Answer: Our 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.

The DSU states that that panels and the Appellate Body must apply customary rules of interpretation of public international law in interpreting the WTO Agreement. Those customary rules start with the text of an agreement, and do not provide for reliance on any interpretations made by an adjudicator in a prior dispute. Furthermore, the WTO Agreement explicitly reserves authoritative interpretations to the WTO Ministerial Conference or WTO General Council. And the DSU explicitly notes that the dispute settlement system operates without prejudice to this interpretative authority.

The DSU makes clear that the dispute settlement system was created not to adopt binding interpretations, but rather to assist in resolving specific disputes between Members. As envisioned by WTO members, the dispute settlement system can usefully serve this role, without any sort of binding precedent. Rather, in each dispute, a panel must make an objective assessment of the matter before it, based on the facts and arguments presented by the WTO Members involved in the dispute. Of

course, it is important to note that even if the United States wins a case at the WTO, countries frequently do not comply with the results.

Question 2

Prior to the WTO, the U.S. regularly used Section 301 to enforce GATT rulings. However, as part of the “grand bargain” to set up the WTO, which included the WTO’s binding dispute settlement system, the U.S. agreed not to use Section 301 to address trade violations that fell within the scope of WTO commitments. In other words, the U.S. must—not may—address violations of WTO commitments through the WTO’s Dispute Settlement Understanding (DSU).

This legally binding commitment is codified in the Statement of Administrative Action (SAA) that accompanied the Uruguay Round implementing legislation. The SAA states that in such cases “that involve an alleged violation of a Uruguay Round agreement or the impairment of U.S. benefits under such an agreement,” the U.S. Trade Representative will “invoke DSU settlement procedures.”

You have asserted that the WTO is not equipped to deal with Chinese trade policy practices. While this may be true in some cases, there are other problematic Chinese practices identified in your agency’s Section 301 report that do, in fact, appear to be explicitly covered by WTO disciplines.

Has USTR determined that China’s IP abuse falls outside the scope of the WTO’s Trade-related Aspects of Intellectual Property Rights (TRIPs) Agreement? If so, how did USTR reach this conclusion?

Has USTR determined that China’s practice of technology transfer falls outside the scope of its commitments in China’s Accession Protocol and the Binding Working Party Report? If so, how did USTR reach this conclusion?

Is your agency concerned about a possible domestic legal challenge to the administration’s use of Section 301 on the basis that 301 tariffs are being used to enforce trade commitments already covered by the WTO?

Has USTR prepared any legal memoranda to justify its unilateral use of Section 301 against China’s trade practices? If so, please explain how USTR justified its current use of Section 301 in such documents.

Answer: When we initiated the 301 investigation in August 2017, we had not yet determined which of the issues could be addressed through WTO dispute settlement, or rather would be addressed bilaterally under Section 301 procedures.

In the course of the investigation, we received extensive public input, including in a public hearing at which U.S. stakeholders and Chinese representatives appeared. No stakeholder suggested any concrete means to address the issues under investigation through WTO proceedings. We also conducted our own research, drawing on the expertise of a wide range of government agencies.

After careful review, I determined that three of the four issues under investigation involved Chinese Government-directed conduct that could not be addressed through application of WTO rules, and thus would be addressed bilaterally. Those three issues are China’s use of multiple types of government approval processes to require or pressure foreign investors to transfer technology to Chinese partners; China’s government-directed or government-financed investments in U.S. firms for the purpose of obtaining cutting edge technology; and China’s government-directed or government-supported cyber-theft of technology from U.S. computer networks and U.S. firms. It should not be

surprising that these types of issues are not directly addressed by WTO rules. The WTO Agreement—unlike, for example, the USMCA—does not have extensive investment obligations. And with regard to cybertheft, the WTO Agreement was negotiated before the Internet era.

The fourth issue under investigation is that the Government of China interferes in the ability of U.S. firms to set market-based terms for licensing technology and intellectual property. For this issue, we identified a set of technology regulations (TIER) that apply to private parties, and discriminate against foreign owners of intellectual property. After careful review, we determined that we could address these aspects of China's TIER regulations through a WTO challenge under the TRIPs Agreement. Accordingly, we launched a WTO dispute challenging the TIER regulations in March 2018 before taking any bilateral action under Section 301.

Question 3

Enshrined at Article 1 of the GATT is the “most-favored nation” (MFN) principle, which was also adopted by Congress in 1922 as official U.S. trade policy. MFN is a simple principle stating that WTO member countries cannot charge different countries different tariff rates for the same product. This principle helps guarantee non-discrimination against U.S. exports, has facilitated a long-term reduction in global trade barriers since the 1940s, and has promoted efficiency across the global trading system.

The administration is currently supporting legislation, the United States Reciprocal Trade Act (H.R. 764), that would upend this basic principle. Although I recognize that the ultimate goal of this legislation is to reduce tariff barriers, I have concerns that it would simply amount to “dumping rocks in our harbors because other nations have rocky coasts.” In addition, it is misleading to criticize other nations for imposing high, protectionist tariffs on specific products, when the U.S. engages in the same exact practice.

Please provide some examples of specific products for which the U.S. has a “reciprocally” higher tariff than those of many of our trading partners.

Answer: We clearly do not enjoy reciprocal tariff treatment among our trading partners. The United States has more than 11,000 tariff lines in its Harmonized Tariff Schedule, and in relation to any other trading partner, it is likely that there are some U.S. tariff rates that are higher. For example, the U.S. most-favored-nation (MFN) duty rate for tungsten powders (HS 8101.10) is 7 percent; China's duty rate is 6 percent; the EU and India rates are both 5 percent. The U.S. duty rate for bovine carcasses (HS 0201.10) is 26.4 percent; Kenya's duty rate is 25 percent; and China's is 20 percent.

However, thanks to FTAs and preference programs such as the Generalized System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA), not all U.S. imports of these products are actually subject to MFN tariffs. In addition, some higher duty rates are on tariff lines for goods that do not necessarily have a high demand in the United States, such as cornbrooms with a duty rate of 32 percent and cathode-ray television tubes at 15 percent.

Finally, U.S. tariffs are applied at the rates the United States bound at the World Trade Organization (WTO) as a result of the Uruguay Round in 1994, and our overall average bound and applied tariff rates are both 3.4 percent. Many of our trading partners apply tariff rates that are lower than their bound rates, which means that they can raise those tariff rates at any time and remain within their WTO commitments. For example, Brazil's average bound rate is 31.4 percent, China's is 10 percent, India's is 48.5 percent, and South Africa's is 19.2 percent. Unlike other trading partners, the United

States has maintained consistent MFN tariff rates since the Uruguay Round, resulting in more predictability for traders and importers.

If the United States were to enact H.R. 764 and suddenly stop ignoring its MFN commitments, what kind of retaliation would US exporters face from our trading partners? Would such retaliation be justified or not on the basis of our WTO commitments under Article 1 of the GATT?

Answer: The United States Reciprocal Trade Act would provide an important tool to bring foreign countries to the negotiating table and to reduce their tariffs and non-tariff barriers on U.S. products. While the United States has one of the most open economies in the world, other countries impose high tariffs and other trade barriers that drive up our trade deficit and make it difficult for our farmers and manufacturers to do business. We would not consider retaliation for seeking fair trade deals to be justified.

Question 4

I have been clear in my view that the President does not have the unilateral power to terminate NAFTA without the consent of Congress. As you know, Article I, Section 8 of the Constitution explicitly vests Congress with trade responsibilities, and there is no explicit language anywhere in U.S. statute that delegates to the executive the ability to unilaterally withdraw from trade agreements.

If Congress fails to ratify USMCA, will you recommend to the President that he unilaterally withdraw from NAFTA?

If so, has your agency developed any internal legal documents to justify such a withdrawal attempt? Please provide a copy of any such memoranda.

Answer: I am optimistic that, working together with the Administration, Congress will approve the USMCA as it represents a significant improvement over the current situation. Therefore, I prefer not to speculate about what could happen under a different scenario.

Senator Tim Scott, South Carolina

Question 1

I want to flag an emerging concern in Canada that directly impacts our U.S. insurers and reinsurers. Despite strong concerns from the U.S. insurance industry and the Canadian insurance industry, I understand that Canada's financial regulator is moving forward with plans to severely restrict cross-border reinsurance trade. This would only make it more difficult for U.S. insurers to do business in Canada.

Not only would those measures harm the U.S. insurance industry and reduce our insurance trade surplus with Canada, it would raise concerns about inconsistency with Canada's commitment under the WTO General Agreement on Trade in Services (GATS) and best practices for insurance regulation.

Has USTR been in touch with the Canadian authorities to protest the direction Canada is headed?

Do you see a path forward for working with the Canadian authorities to make sure that insurance trade flows between the U.S. and Canada aren't adversely effected by these measures?

Answer: The Administration is aware of industry concerns with respect to proposals to change aspects of insurance regulation in Canada. We are continuing to monitor the situation and for potential market access consequences for U.S. firms, and look forward to staying in touch with Members of Congress on this issue.

Question 2

While we wait to see an outcome from the proposed President's summit with President Xi later this month, constituents in South Carolina continue to face not only tariffs imposed by this Administration, but our farmers face Chinese retaliatory tariffs on cotton and soybeans, just to name a few.

So as South Carolinians wait to see if there's a resolution, this brings me to another concern. The US has two pending WTO disputes against China on ag products.

As you pursue these cases, what assurances can you give us that the U.S. will find a favorable outcome?

Because, if you are successful, China would have to vastly reduce subsidies and reform its TRQ regime to comply, in both cases creating new opportunities for U.S. farmers to export to China.

How do you expect them to comply?

Answer: On February 28, 2019, a WTO panel issued a report in favor of the United States, finding that China provided trade-distorting domestic support to its wheat and rice producers well in excess of its commitments under WTO rules. On April 18, 2019 a WTO panel issued another report in favor of the United States challenge to China's administration of its tariff-rate quotas (TRQs) for wheat, corn, and rice, finding that China is acting inconsistently with its obligations to administer TRQs on a transparent, predictable, and fair basis, using clearly specified procedures that will not inhibit the quotas from filling. In both cases, we will work bilaterally and multilaterally to ensure China respects WTO rules so that China's domestic support and TRQ administration measures no longer impede imports of U.S. commodities.

Senator Debbie Stabenow, Michigan

Question 1

In the hearing, you testified that China has requested that we make some additional concessions aside from addressing the 301 tariffs, including specific market access provisions.

Can you specify what sectors or products are being considered for this additional market access?

Answer: The goal of the Section 301 investigation is to change China's unfair and market-distorting behavior. The focus of our negotiations from China's perspective is dealing with the 301 tariffs. As I noted in the hearing, China has raised other market access requests, but from the U.S. perspective, our overarching focus in the negotiations is assuring that China undertakes the necessary economic and policy reforms needed to end its trade-distortive practices.

Question 2

Thank you for your ongoing efforts to address the challenges Michigan's cherry industry is facing with imports from Turkey. My understanding is that USTR has been pressing Turkey specifically on their export subsidies for processed agricultural products, including processed fruit.

Is USTR aware of export subsidies for processed specialty crops in other countries? Will you consider including a review of such programs in the next National Trade Estimate Report?

Answer: We are aware of four countries, which have notified to the WTO export subsidies for certain processed specialty crops: Norway, Turkey, Switzerland, and Colombia. As a result of the WTO Ministerial meeting in 2015, WTO Members agreed to eliminate export subsidies for agricultural products. Developed country members were to have eliminated export subsidies in December 2015, developing country members were to have done so by December 31, 2018. That WTO decision had certain exceptions for certain countries, including for processed products where a country had a notified export subsidy for a specified period prior to 2015. Developed country Members, including Norway and Switzerland, with those programs have until 2020 to eliminate the export subsidy, and developing country Members, including Turkey and Colombia, have until 2022 to eliminate export subsidies for products or groups of products for which they have notified export subsidies for a specified period. USTR will carefully monitor implementation of these commitments, and will be sure to take appropriate steps to address any concerns. We welcome any specific information that the Senator or stakeholders may have as well for further investigation.

Question 3

As you are aware, the Administration recently entered into an agreement with Qatar, where in addition to being more transparent, they also agreed they had no plans for additional 5th freedom flights. However, Qatar purchased a 49% stake in Air Italy to perform 5th freedom flights into the United States using aircraft leased from Qatar Airways. I have long been concerned about unfair competition U.S. aviation workers face from carriers like Qatar Airways.

What action has the Administration taken and what further action is the Administration considering in order to make sure that Qatar abides by the agreement?

Answer: The Administration takes seriously concerns regarding the Gulf carriers and state-support for airlines. We continue to be committed to ensuring fair competition for U.S. airlines in international

markets. Last year, the Department of Transportation concluded understandings with both Qatar and the United Arab Emirates (UAE) that committed their governments to improve financial transparency of their airlines, move to arms-length dealing between state-owned enterprises, and ensure that subsidies were not providing their airlines the ability to launch new services that would not otherwise be financially viable. To follow up on those understandings, an interagency delegation led by the Department of State met with Qatari counterparts on January 10, 2019. Similar follow-up meetings with the UAE are now being scheduled to take place in June. The Administration is aware of the concerns raised about Air Italy and is scrutinizing this issue.

Question 4

Thank you for your engagement on polysilicon market access issues with China. I want to reiterate the grave situation our U.S. polysilicon industry faces because of this long-standing issue. It is critical, for jobs in Michigan and across the country, that a resolution be reached that reopens market access for U.S. polysilicon producers.

Can you provide an update on your discussions with Chinese officials on the issue of polysilicon market access?

Answer: When President Trump announced section 201 safeguard relief for U.S. manufacturers of solar cells and modules in 2018, he committed that “[t]he U.S. Trade Representative will engage in discussions among interested parties that could lead to positive resolution of the separate antidumping and countervailing duty measures currently imposed on Chinese solar products and U.S. polysilicon. The goal of those discussions must be fair and sustainable trade throughout the whole solar energy value chain, which would benefit U.S. producers, workers, and consumers.” USTR has been engaged in discussions with U.S. stakeholders in an effort to find a solution that is beneficial to both the U.S. solar industry and the U.S. polysilicon industry, and which would be acceptable to China. USTR also is pressing our concerns specifically about China’s duties on U.S. polysilicon as part of the negotiations launched by Presidents Trump and Xi on December 1, 2018.

Senator Robert Menendez, New Jersey

Question 1

Ambassador Lighthizer, during the hearing you stated that USTR is hoping to obtain an enforcement mechanism that would require periodic meetings at the Office Director level, Vice-Minister level, and Minister level to work through specific problems that companies bring to USTR's attention that may be in violation of the agreement. You further stated that if the two sides cannot agree on a resolution, it is your view that the US should retain the right to act unilaterally to encourage China to address the issue.

If you do reach a final agreement with the enforcement mechanism you described, how will USTR prioritize which issues to solve in a situation where multiple US firms are asking the administration to address multiple different problems?

In instances where a problem cannot be resolved through these meetings, how would you decide how and when to pursue unilateral action?

How do you intend to keep Congress apprised of potential violations and enforcement actions?

How does this enforcement mechanism differ from past dialogues, such as the Joint Commission on Commerce and Trade, the Strategic and Economic Dialogue, and the Comprehensive Economic Dialogue, that also provided periodic opportunities for US officials to seek resolution of troubling Chinese practices raised by US firms?

Answer: If an agreement were to be reached between the United States and China, it will have to be one that is enforceable. In my testimony, I described a mechanism in which there would be monthly, quarterly, and semiannual meetings with counterparts at China, including at the vice-premier level to address issues. To the extent that there are issues that cannot be resolved at the vice-premier level, then the United States would have the right to act unilaterally to enforce. This mechanism I described did not exist in past dialogues. I and my staff will continue to consult with Congress, as we always have, on issues related to potential violations and enforcement actions. We will prioritize issues on a case-by-case basis. We intend to monitor compliance closely and take strong enforcement measures when necessary.

Question 2

Ambassador Lighthizer, a key component of the U.S.-China trade talks is to have the Chinese government and Chinese firms respect the intellectual property (IP) that's been developed and patented by U.S.-based companies. And with this comes a desire from many U.S.-based companies who are engaged in the research and development of standard essential patents (SEPs) related to advanced wireless technology to have their IP properly licensed by Chinese original equipment manufacturers (OEMs) who use this American technology in the devices they sell in the U.S. and around the world. Ambassador, I'm sure you'd agree that by not paying proper license fees, Chinese OEMs are taking advantage of the work done by U.S. companies. By implementing this technology into the devices they sell to make billions of dollars of profits, these Chinese OEMs are effectively stealing US technology.

What specific language are you seeking to secure in this potential trade agreement with China to protect these US-based companies and to ultimately require Chinese OEMs to sign and abide by proper license agreements for American wireless SEP technology?

If a Chinese OEM does not sign a proper license agreement with an American owner of SEP technology, how will USTR use your proposed enforcement mechanism to hold the Chinese firm accountable and to ensure that such a Chinese OEM is not allowed to sell infringing product in the U.S.?

Answer: The talks thus far have covered a wide range of issues, including the need for stronger protection and enforcement of intellectual property rights in China. For a constructive process, we will not discuss specifics or negotiate publicly. For these negotiations to be successful, China must demonstrate real structural changes across the range of unfair policies and practices that yield actual, verifiable, and enforceable results. This includes in the area of IP rights. We are encouraged by our negotiations with China and will continue to work with them in good faith. However, we will not compromise on achieving greater market access for U.S. exports and fair and reciprocal treatment for U.S. businesses.

Senator Ben Cardin, Maryland

Question 1

Mongolia describes the United States as its most important “third neighbor,” but United States-Mongolia trade is substantially lower than many other bilateral trading relationships, and trade has declined in recent years. Agriculture is Mongolia’s second most important sector, with its livestock sector accounting for 87 percent of the country’s agricultural production and roughly one-third of the working population; however this sector has been heavily impacted by challenges associated with climate change.

Since the 1940s, the annual mean air temperature in Mongolia has risen at three times the global rate. Average precipitation is declining and extreme weather disasters are more frequent, posing acute challenges for livestock herding in the country. In 2017, an estimated 700,000 of the country’s livestock population were killed due to the post-drought extreme winter phenomenon known as “dzud.” This phenomenon is unique to Mongolia and has increased in frequency and severity in recent years, causing a rise in livestock mortality and diminishing livelihoods for herders, which has led to widespread rural poverty and a contraction in the national economy.

Mongolia would greatly benefit from preferential treatment for United States imports of certain Mongolian products — particularly cashmere — to help address some of the economic impacts of the dzuds. Currently, the U.S. buys nearly all of its cashmere products from China, which imports the majority of its raw cashmere from Mongolia.

Do you see an opportunity to extend to Mongolia a WTO waiver that would help address some of these impacts, similar to the waiver extended to Nepal in the wake of the April 2015 earthquake and aftershocks?

Answer: Single-country preference programs contravene rules at the WTO requiring non-discriminatory treatment of countries benefiting from preferences. As a result, with regard to Mongolian cashmere, the United States would be required to seek a waiver from its existing WTO treaty commitments. Securing approval for a WTO waiver would be challenging, as it requires consensus from the full WTO membership (164 economies). Following passage of the Nepal program, an increasing number of countries have approached USTR requesting their own single-country preference programs, based on arguments that their countries also face unique circumstances and are strategic partners of the United States.

If yes, do you see an opportunity to offer trade preferences specific to Mongolia’s livestock industry? To its cashmere industry in particular? If no, will you please elaborate on why you don’t think Mongolia should be eligible for certain trade preferences?

Answer: As we understand it, Mongolia is not seeking trade preferences for its livestock, but rather for textile products, such as sweaters and jackets, that are made of the cashmere wool harvested from its livestock.

Mongolia is currently designated as a beneficiary developing country under the U.S. Generalized System of Preference (GSP) program, and it therefore has the right to export about 3,500 products duty-free, in addition to the 4,000 tariff lines already duty-free on a most-favored-nation basis. In 2018, Mongolia exported to the United States only 10 of the 3,500 GSP lines, with 97 percent of the

\$3.2 million value coming in a single product (tungsten concentrate). It would be useful to explore the reasons for Mongolia's limited current use of the GSP program and attempt to address them.

How else can USTR help mitigate impacts of climate change on Mongolia's agricultural sector?

Answer: USTR does not have responsibility for climate policy. The question on climate policy more appropriately should be directed to other Administration officials.

Senator Sherrod Brown, Ohio

Question 1

You and I share concerns about the WTO and its failure to discipline China's unfair trade practices. I am particularly troubled that the WTO has tolerated China's market-distorting state-owned enterprises.

As part of the U.S.-China trade negotiations, is the U.S. seeking commitments from China to convert its state-owned enterprises into private companies? If so, over what timeframe?

Answer: Under President Trump's leadership, the United States 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 involving state-owned enterprises. I am committed to working with you and other Members of Congress to discuss the policy tools available to address these important issues, including section 301 of the Trade Act of 1974.

Question 2

I'd like to know the extent to which China's WTO commitments are part of the negotiations.

Is the U.S. seeking commitments from China to drop its non-market economy case against the U.S. and the EU (DS 515 and DS516)? Is the U.S. asking China to self-designate as a developed country under the WTO as part of the negotiations? Is the U.S. asking China to provide a comprehensive list of subsidy programs as part of their concessions in any agreement? Additionally, are you seeking any commitments from China to stop bringing WTO cases against our legitimate use of trade remedy laws? If the answer to any of these questions is no, why not?

Answer: Under President Trump's leadership, the United States 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 create or support non-market forces. I am committed to working with you and other Members of Congress to discuss the policy tools available to address these important issues, including section 301 of the Trade Act of 1974.

Question 3

I am concerned that there has been an emphasis on the one-time purchases of agriculture commodities in the U.S.-China trade negotiations. I want the Chinese to buy American soybeans, preferably from Ohio, but the connection between one-time agricultural purchases and ongoing intellectual property violations or unfair trade practices is unclear to me.

How did one-time agriculture purchases come to be part of the negotiations? Did the U.S. ask China to make the purchases or did China offer them as a concession? Do you believe negotiations on agricultural purchases have come at the expense of negotiations on other, more long-term changes China could make?

Answer: As President Trump and President Xi agreed in Buenos Aires on December 1, 2018 the United States and China are engaged in high-level discussions to work toward a fair and reciprocal trade relationship between our two countries. Our current discussions focus on numerous, critical structural, regulatory and technical issues, embedded in many sectors in China, including in

agriculture. The discussions seek to address the tremendous imbalance in our trade relationship, which results in part from these structural issues.

Question 4

I understand that the Chinese government stopped using the term Made in China 2025 after criticism from the U.S., perhaps to garner good will in the talks.

Does the Administration believe the Chinese government has abandoned its plans to become globally dominant in the Made in China 2025 sectors?

Answer: We see no evidence that China has abandoned the substance of the Made in China 2025 industrial plan. Addressing the market-distorting and harmful forces created by industrial plans like Made in China 2025 is a key component of our ongoing bilateral negotiations with China.

Question 5

China's lax labor and environmental standards amount to subsidies for any corporation who does business there. USTR's most recent report on China's WTO compliance discusses the fact that the Chinese government denies workers the right to organize and collectively bargain and, in doing so, places significant "institutional restraints," as you call them, on wage rates.

Given that China's denial of worker rights is in effect a subsidy, what commitments are you seeking from the Chinese government in the trade talks to protect workers' right to collectively bargain and to stop suppressing workers' wages?

Answer: Under President Trump's leadership, the United States 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. Although we are not currently directly addressing labor standards, I am committed to working with you and other Members of Congress to discuss options and policy tools for addressing these important issues.

Question 6

I know you have said that you do not think an agreement between the U.S. and China will need congressional approval because it will be an Executive Agreement; however, the scope of the potential agreement you described during the hearing seems very broad.

Are you of the belief that any agreement with the Chinese will be considered an Executive Agreement, regardless of its scope? Further, will you commit to giving the members of this committee, and their staffs, the opportunity to read and review it before the U.S. enters into it?

Answer: Consultation with Congress is an important part of addressing the challenge from China. My staff and I have frequently sought input from Members of both the House and the Senate during the course of the Section 301 investigation and during this phase of negotiation with China. Any resulting agreement would reflect that input. 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.

Senator Robert Casey, Pennsylvania

Question 1

Ambassador, the United States is not alone in concerns about China's practices, such as forced technology transfer and outright theft of intellectual property.

Can you discuss how you are engaging with our allies at the WTO and more broadly to address China's behavior.

Answer: The Administration works extensively with our allies and trading partners to confront shared challenges with China at the WTO. As I noted in the hearing, I think the way forward for the WTO is to take small groups of countries that have something in common and work together. For example, I meet regularly with my counterparts in the European Union and Japan to address non market-oriented policies and practices of third countries that lead to severe overcapacity, create unfair competitive conditions for their workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade, including where existing rules are not effective.

Question 2

Mexico has a long history of intimidation of democratic unions and union organizers. In January, 2019 José Luis Solorio Alcalá, the former General Secretary of the Union of Workers of Honda of Mexico, was arrested, as I understand without due process. Given Mexico's long history of union intimidation, I am concerned by that these recent actions may portend Mexico's level of commitment and adherence, in spirit and in law, to labor law reforms and practices.

I would appreciate your providing any relevant information pertaining to your engagement with Mexico on their practices following this arrest.

Answer: The Administration has been monitoring the case of Mr. Solorio Alcala and the U.S. Embassy in Mexico City has informed us that he was freed on bail in March, and is currently appealing the charges against him with the support of the Union of Workers of Honda. USTR will continue to monitor the situation along with the U.S. Department of Labor, and my staff and I would be happy to keep you updated on this matter as we receive more information. We are also encouraged by the progress of labor reform through the Mexican Congress.

Senator Mark Warner, Virginia

Question 1

A key pillar of the rules-based global trading system is transparency so that trading partners and their firms have predictability and certainty in another country's legal and regulatory system. Unfortunately, China's opaque and often vague regulatory system is a maze to navigate, with ambiguous legal provisions often providing a pretextual basis for sweeping enforcement measures meant to protect domestic firms or force technology transfer from U.S. firms. China's poor record of adhering to its transparency obligations as a WTO member has only exacerbated this problem.

How is China failing to obey its transparency obligations under the WTO and what are the impacts on U.S. firms and investors? Does the U.S. have a concerted strategy to respond to China invoking their anti-monopoly laws on a pretextual basis to force U.S. technology firms into unfair licensing or technology transfer agreements?

In the digital economy, China's regulatory regime is even more non-transparent – with multiple agencies with overlapping jurisdiction regulating internet commerce and U.S. firms subject to dynamically changing edicts.

What is the effect of China's opaque and often arbitrary implementation of internet regulations on Western firms' ability to compete?

Answer: China's systematic lack of transparency continues to have wide-ranging effects on U.S. business in China. In the current negotiations with China, the United States is committed to addressing this and other structural issues and unfair trade policies and practices, including the many ways in which U.S. companies are pressured to transfer technology to Chinese companies. U.S. suppliers of Internet-based services do not receive fair and reciprocal access to China's market. China's Internet regulatory regime is restrictive and non-transparent and adversely affects a broad range of commercial services activities conducted via the Internet, including retail websites, search engines, audio-visual and computer gaming services, and electronic mail and text. Complicating matters further, this regime is overseen by multiple agencies without clear lines of jurisdiction. U.S. suppliers continue to encounter major difficulties in attempting to offer Internet-based services, both through a commercial presence and on a cross-border basis.

Question 2

China's trade practices threaten the U.S., our allies, and the global trading system. The Administration has been trying to deal with China's unfair trade practices through Section 301 tariffs and unilateral negotiations. You have been critical of WTO as an avenue to address our problems with China. A recent USTR report stated, "It is unrealistic to expect success in any negotiation of new WTO rules that would restrict China's current approach to the economy and trade in a meaningful way." However, diplomats and trade officials say that the U.S.' unilateral actions are also violating WTO rules because it is imposing tariffs without first adjudicating its grievances. China has consistently violated WTO rules, and its retaliation to the U.S.' Section 301 tariffs continues this trend. However, if the globe also perceives the U.S. as violating WTO rules, the WTO's value and relevance come into question.

Do you believe that negotiating with China to deal with its unfair trade practices – such as forced technology transfer – is more effective unilaterally or in concert with our allies?

Answer: I believe that combating China’s unfair trade practices is something we need to do both unilaterally and in concert with our allies and trading partners. We are using Section 301 enforcement tools where Chinese practices are problematic but not covered by the WTO agreements. In other instances, we have used the WTO dispute settlement system where appropriate. In addition, the Administration works extensively with our allies and trading partners to confront shared challenges with China. For example, I meet regularly with my counterparts in the European Union and Japan to address non market-oriented policies and practices of third countries that lead to severe overcapacity, create unfair competitive conditions for their workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade, including where existing rules are not effective. 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 actively engage with our allies and trading partners on these shared challenges.

Question 3

In your testimony before the Committee, you outlined your problems with the WTO and countries’ ability to flout the rules, stating that the Administration is currently “shedding light” on the WTO’s issues such as those countries that self-designate as developing nations. You suggested some countries are coming around to the U.S. view that WTO reforms are needed. You also highlighted the trilateral partnership with the EU and Japan as a successful example of a multilateral approach that is dealing with China’s forced technology transfer and other trade abuses.

What changes are needed to WTO rules to address the myriad ways in which China provides subsidies to its companies (whether through non-market energy sources, cheap financing, or official practices that discriminate against foreign competition)?

Can you provide an update on the status of the trilateral partnership with the EU and Japan and elaborate more specifically on actions that may have resulted from the five meetings?

Answer: It is our view that the WTO rules need to be significantly strengthened by clearly identifying particularly egregious subsidy types and establishing much tougher rules for such subsidies that will act as a deterrent and make obtaining a remedy in dispute settlement far less burdensome.

In the most recent meeting of the trilateral partnership, Ministers confirmed that market-oriented conditions are fundamental to a fair, mutually advantageous global trading system; instructed their staff to finalize trilateral text-based work in industrial subsidies; and, in the area of force technology transfer, confirmed their agreement to cooperate on enforcement, on the development of new rules, on investment review for national security purposes and on export controls.

Question 4

The Administration has declared that “strategic engagement with like-minded trading partners” is a central part of the U.S. strategy on China. This Administration has imposed Section 232 steel and aluminum tariffs on our closest allies and frequently criticized them. The administration is threatening further action under Section 232 on autos and auto parts, an issue of grave concern to the EU and Japan. Further, last year the President stated the EU is perhaps “as bad as China” when it comes to upholding the rules-based trading system. Our allies, including EU Trade Commissioner Cecilia Malmström, have criticized the U.S.’ steel and aluminum tariffs and warned action on autos could undermine U.S.-EU

cooperation. Meanwhile, last week, Italy became the first G7 nation to sign up for China's Belt and Road Initiative, signaling that some EU nations are moving closer to China.

Does the imposition or threat of tariffs on our allies under Section 232 affect their willingness to work with the U.S. on China issues?

Answer: The President's actions under Section 232 of the Trade Expansion Act of 1962 to address the threat to national security presented by certain imports are not preventing our allies from working with us in any area where our interests align. This includes allies working with us in various configurations on the fundamental challenges posed by China's array of non-market industrial policies and other unfair competitive practices aimed at promoting and supporting its domestic industries while simultaneously restricting, taking advantage of, discriminating against, or otherwise creating disadvantages for foreign companies and their goods and services.

Can you speak to the threat that China's Belt and Road Initiative poses to the U.S.' alliances and our ability to address China's unfair trade practices?

Answer: In recent years, China also has been exporting its non-market economic model to other countries through its Belt and Road Initiative. As is now well known, China invokes this initiative and offers to build large infrastructure projects in countries throughout Asia and other parts of the world, especially in strategically located or developing countries. China claims that the Belt and Road Initiative is open to all, but virtually all projects are financed by Chinese banks, run by Chinese state-owned enterprises, and built by Chinese workers. The Belt and Road Initiative is especially important to the Chinese Communist Party, which has incorporated the Belt and Road Initiative into its Constitution and has called for using this initiative to develop relations with surrounding countries through discussion, collaboration, and unity. However, Belt and Road Initiative projects are often opaque, one-sided, and divisive. These projects generally ignore market principles and fail to adhere to internationally accepted best practices in financing, infrastructure development and government procurement. Too often, these projects also create unsustainable debt burdens for the recipient countries. For these reasons, the Belt and Road Initiative threatens to have a chilling effect on other countries' ability to speak out and challenge China's unfair trade practices.

Do you agree with the President that the EU is "as bad as China" when it comes to upholding the rules-based trading system?

Answer: Despite this significant trade volume, U.S. exporters in key sectors have been challenged by multiple tariff and non-tariff barriers for decades, leading to chronic U.S. trade imbalances with the EU. For example, in 2018, the U.S. trade deficit in goods with the EU was \$169.3 billion. Further, the EU has been slow to comply with certain WTO cases where the U.S. prevailed. Following the joint statement issued by President Trump and European Commission President Jean-Claude Juncker following their July 25, 2018 meeting, the United States and the EU have been working on ways to reduce barriers, increase trade, and strengthen their trade relationship to the benefit of all American and European citizens. In its discussions with the EU, the United States seeks to support higher-paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities for trade and investment with the EU.

Question 5

On March 4, 2019, the administration notified Congress of their intent to terminate GSP (Generalized System of Preferences) for India and Turkey. These changes will not take effect until at least 60 days after the notification. The administration stated that India and Turkey no longer comply with the statutory eligibility criteria. The U.S. launched an eligibility review of India's compliance with the GSP market access criterion in April 2018. According to USTR, "India has implemented a wide array of trade barriers that create serious negative effects on U.S. commerce." The withdrawal of these duty concessions will mean Indian exports of eligible products to the U.S. will become more expensive. According to the Confederation of Indian Industry, U.S. importers saved \$894 million in 2017 under the GSP benefits from India.

Can you explain the timing of this announcement so close to India's national election and how the Administration is using the suspension of GSP preferences as leverage in our trade negotiations? Given the U.S. designation of India as a major defense partner, how does the revocation of GSP impact our larger strategic partnership with India and will this decision have repercussions for our defense partnership?

Answer: Based on a thorough United States government review of India's compliance with the GSP market access criterion, the President determined that India is not meeting the statutory criteria for GSP eligibility. Despite intensive engagement with the Government of India since April 2018, India has not assured the United States that it will provide U.S. exporters with equitable and reasonable access to its market. Nevertheless, USTR continues to press India to resolve an array of trade barriers so that it can meet the GSP eligibility criteria.

On March 4, 2019, the President notified Congress and the Government of India of his intent to terminate GSP benefits for India. By statute, India's removal from the GSP program may not take effect until at least 60 days after the notifications to Congress and the Government of India. Once the 60-day period is over, the President can implement his decision by issuing a Presidential Proclamation or Executive Order. The exact timing of India's removal from the GSP program, therefore, is for the President to determine.

As you mentioned, the United States has a strategic and defense partnership with India. I encourage you to discuss these aspects of the relationship with the Secretaries of State and Defense. In my view, it is important that we do not give trade preferences to countries that do not meet the statutory criteria set out by Congress, including the criterion to provide equitable and reasonable market access. That is unfair to U.S. workers, farmers, ranchers, and businesses.

Question 6

The digital economy is increasingly inseparable from the wider global economy. In the last two decades, there has been an exponential growth in U.S. and global e-commerce. E-commerce is one area in particular where American innovation has flourished. In 2018, the U.S. joined a group of 76 countries – including China – to announce negotiations on a set of e-commerce rules to establish a multilateral legal framework to make it easier and safer to buy, sell, and do business online.

Can you provide a status on the negotiations and the U.S.' objectives for them? Can you also give an update of Chinese commitments to observe intellectual property protections—including against counterfeit goods sold online?

Answer: Throughout 2018, the United States participated in exploratory work at the WTO on the possibility of a plurilateral digital trade negotiation. In January 2019, the United States joined 75 other economies in confirming our intention to launch negotiations. We are now preparing for these negotiations, working closely with allies to gain support for high-standard outcomes based upon the USMCA Digital Trade chapter, which we view as a model for this negotiation and future agreements.

We are encouraged by our negotiations with China and will continue to work with them in good faith. The President promised to fix the broken trading relationship and end the theft of American innovation, and he is committed to seeing that through. We need to see China implement their commitments and create conditions for fair competition, including through structural reforms.

The state of intellectual property (IP) protection and enforcement in China, and market access for U.S. persons that rely on IP protection, reflect China's failure to implement promises to strengthen IP protection. China has failed to take decisive action to curb the widespread manufacture, domestic sale, and export of counterfeit and pirated goods. While the proportion of counterfeit and pirated goods and services is difficult to assess precisely, a Chinese government agency has reported that more than 40 percent of goods that were purchased online during a survey were "not genuine." Although some leading online sales platforms claim to have streamlined procedures to remove offerings of infringing articles, right holders report that the procedures are still burdensome and that penalties do not deter repeat infringers, including those selling compromised log-in credentials online. Given the scale, IP infringement in China's massive online markets causes deep losses for U.S. right holders involved in the distribution of a wide array of trademarked products.

Question 7

Fintech represents one of the most dynamic and innovative areas in the U.S. with traditional and emerging companies, alike, developing innovative new solutions to make payments faster, easier, and more mobile. China made commitments to open its electronic payments market in 2006, a commitment that was remade following a WTO ruling in 2012. However, no foreign electronic payment providers are able to operate in China to this day. At the same time, one of the largest pharmacy chains in the U.S. has just announced a deal to roll out Alipay at thousands of pharmacies across the U.S.

Do you believe the U.S. is operating on a level playing field when Chinese electronic payments platforms are rolling out across the U.S. at the same time that U.S. firms are still barred from the Chinese market? Fintech innovation depends on network effects and scale. If U.S. companies cannot enter China, the world's largest market for digital payments, does this give Chinese electronic payment incumbents an advantage globally?

Answer: I agree that U.S. companies do not enjoy a level playing field in China with respect to electronic payments. The United States is fully engaged on this issue and has been working closely with relevant stakeholders to ensure a level-playing field for retail electronic payment services suppliers in China, as well as other foreign markets. It is a priority for this Administration that China complies with and implements its obligations, including its WTO obligations, in the electronic payment services sector. We welcome the opportunity to stay in touch with Members of Congress on this important issue.

Question 8

Throughout its history, U.S. strategy has involved developing closer relationships with like-minded trading partners. This approach must be part of an effort to counter China's mercantilist economic

policies. With regards to the internet, there are increasingly two versions that are being promoted. The first, led by China, centers on harnessing technology for surveillance and social control. The second model, long championed by the U.S., is based on a free and open internet, with user trust and security included as important objectives. China's model poses significant risks for the future of the internet. If data cannot flow freely, 21st-century commerce cannot occur.

A perceived failure to maintain sufficient data protection standards has jeopardized transatlantic data flows in the past. As we see our allies harmonize around a set of data security and privacy principles, is having consistent privacy and data security rules in the U.S. helpful in digital trade?

Might adopting a common, pragmatic set of data security and privacy commitments – the kind that free and open societies and market economies can comply with but that closed and state-driven economies would have a hard time abiding by – offer a useful basis for countering China's control of digital technologies?

Answer: The Administration supports continued work with like-minded trading partners in support of high-standard rules on digital trade that facilitate the expansion of an open digital economy that serves as a key driver of U.S. and global economic growth, while also ensuring flexibility to address evolving challenges in areas such as data privacy and security. The USMCA Digital Trade Chapter serves as the strongest template to date for such rules in the WTO and in future agreements. In addition, the United States has long supported frameworks such as the NIST Cyber Security Framework and the APEC Cross-Border Privacy Rules System that offer effective approaches to ensure security and privacy in conjunction with the movement of data across national borders.

Question 9

Increasingly, countries are considering opportunities to enhance data protection and privacy regulations worldwide. For example, the EU recently moved forward with the General Data Protection Regulation. However, approaches like data localization requirements – while pretextually based on privacy concerns – can pose major barriers to trade.

Do you agree that countries can promote data security and privacy without imposing onerous data localization requirements?

Answer: Data localization is in no way essential to the protection of data and, in fact, onerous data localization requirements can add additional points of attack to a network, thereby reducing the level of security around data. The United States has long supported frameworks such as the NIST Cyber Security Framework and the APEC Cross-Border Privacy Rules System, which offer effective approaches to ensure security and privacy in conjunction with the movement of data across national borders.

Question 10

Reports suggest the WTO is expected to issue a ruling this month on the invocation of Article 21's "national security" justification relating to a Russia-Ukraine border dispute case. The U.S. position is that in a WTO dispute a claim of national security cannot be challenged. If the U.S. position wins out, it is essential to the basic functioning of the WTO that each country restrain itself in what it deems vital to its national security interest. National security cannot simply mean "the economic well-being" of the country, otherwise, the exception will swallow the rule and undermine the international framework for trade.

Do you agree that it is important for countries to demonstrate restraint in what they term vital to their national security? Do you believe that domestically, Congress should pass legislation that provides a definition for “national security” – that extends beyond simply the economic wellbeing of the country – so that U.S. tariffs imposed in the name of national security are not flouting international rules?

Answer: Across multiple Administrations, the United States has made clear that it and other WTO Members each have the right to determine what it considers in its own essential national security interests. This has been the understanding of the United States for over 70 years, since the negotiation of the General Agreement on Tariffs and Trade (GATT). That understanding has been shared by every WTO Member whose national security action was the subject of complaint. Despite this understanding, certain WTO Members are urging the WTO to review a Member’s determination of its own national security interests. Such a decision by the WTO to second guess a Member’s national security determinations would threaten serious damage to the multilateral trading system.

Question 11

There is broad consensus that rules shielding internet platforms from liability for user-generated content were pivotal in facilitating the innovative digital economy we now enjoy. At the same time, the speed with which these products have grown and come to dominate nearly every aspect of our social, political, and economic lives has obscured the shortcomings of their creators in anticipating the harmful effects of their use. Such protections can, in fact, limit our ability to make platforms internalize many of the negative externalities currently borne by users and society stemming from their exploitation and misuse.

At a time when there are increasingly domestic concerns with the moral hazard of broad safe harbors, is it appropriate to include similarly broad safe harbors in our trade agreements? Will you work with me and other members on the Committee to ensure our trade rules balance the competing priorities of enabling innovation while at the same time ensuring platform accountability protections? Would it be possible to address concerns with the consequences of a sweeping safe harbor on platform accountability through a side letter?

Answer: The Administration is committed to working with you and other members of Congress to ensure that efforts to address online harms are not constrained by trade rules. We believe that there is an important role for a (non-IP) safe harbor as part of a comprehensive set of rules on digital trade, as demonstrated by the outcome of the USMCA negotiations. But we agree that any such rules should allow for the development of domestic measures promoting platform accountability and USMCA reflects this. We would be pleased to work with you and other members of Congress as you develop ideas in this area to ensure that our trade agreement proposals are consistent with and complement your goals.

Question 12

In your opening statement, you highlighted the “surge in U.S. trade” under this Administration, noting that total exports and imports have grown by 12.8 percent and 14.8 percent, respectively. The President has focused heavily on trade deficits as a measure to gauge our trade relationships with other countries and on shrinking U.S. trade deficits with other countries. Despite this focus, the U.S. trade deficit in goods hit an all-time record in 2018, growing by 10 percent according to recent Commerce Department data.

Can you explain why the trade deficit has grown despite the Administration's efforts to decrease it? If other factors such as the U.S.' economic growth have contributed to the growth of the trade deficit rather than the Administration's trade policies, do you continue to believe that trade deficits are one of the most important metrics in measuring whether other countries' trade relationships with the U.S. are beneficial?

Answer: Trade deficits remain an important metric because in trying to shrink the deficit, we are working to ensure that American farmers and workers have places to sell their products or services, competitively. Trade rules are an important factor in our trade balance, along with issues such as currency, foreign tax regimes, and others. The Administration's trade policies are contributing to the strong economy, along with other factors such as tax reform and rolling back of burdensome regulations.

Senator Catherine Cortez Masto, Nevada

Question 1: Intellectual Property Theft

Finance Committee staff relayed to our team that the enforcement component of the US-China trade negotiations is still poorly developed. In addition, recent public comments from Chinese government officials indicate that they are not willing to fully police IP theft issues in China.

In the current trade talks with China, what do the enforcement and verification mechanisms look like? Would you condition removing section 301 tariffs on seeing verifiable progress on IP theft?

Answer: I am happy to discuss the enforcement component in the U.S.-China negotiations as well as conditions for removing tariffs with you privately in more detail. As a general matter, enforcement of U.S. interests under a potential U.S.-China agreement will be done through intense consultations and, where necessary, unilateral action by the United States. The theft of American IP is something that needs to be addressed, and as I've indicated, we are making progress in negotiations on this and other structural issues.

Question 2: Section 232, Steel and Aluminum Tariffs

As you know, there are a number of legislative proposals about the President's power to impose tariffs for national security reasons, including from a number of my colleagues on this Committee. Chairman Grassley even called for the Section 232 steel and aluminum tariffs on Canada and Mexico to be removed before Congress considers passage of the new NAFTA. Both Canada and Mexico have retaliated against the U.S. tariffs by slapping duties on U.S. farm goods and other exports. Even while calling the steel and aluminum tariffs necessary to protect national security, the President has touted them as leverage in negotiating a new NAFTA. The same could be said about using threats of 232 tariffs on autos as leverage in trade discussions with the EU and Japan.

How do you think that the President's use of Section 232 tariffs has affected your negotiations with like-minded countries on WTO reform proposals?

Answer: As I testified, USTR is actively engaged at all levels of the WTO and is working with other member states to address what we see as systemic issues, such as concerns with the Appellate Body. These issues have resulted in an organization that works very differently from how it was intended to work. USTR sees the Department of Commerce's and the President's Section 232 national security investigations as a separate issue and independent of our goals at the WTO.

Question 3: 301 Tariffs with China Impact on Small and Medium Sized Enterprises

In Nevada, a significant proportion of previous foreign direct investment has come in the areas of renewable energy. I am concerned that the President's rhetoric, and decisions like pulling the United States out of the Paris Climate Agreement, have signaled to companies that the United States is less friendly to foreign direct investment, directly affecting our state economy.

Does the Administration commit to continue efforts to increase foreign direct investment, including in the renewable energy sectors and small enterprises?

Answer: The Administration recognizes the importance of foreign direct investment in supporting economic growth in Nevada and across the United States. The Administration supports efforts to increase foreign direct investment that benefits the U.S. economy and U.S. workers, including

investment in small- and medium-size enterprises and the renewable energy sectors. The Paris Climate Agreement is not related to our investment climate. Indeed, the U.S. economy is growing and many economic indicators are at all-time highs.

Question 4: 301 Tariffs with China Impact on Small and Medium Sized Enterprises

In Nevada, 87% of our exports are by small and medium sized enterprises.

Can you provide greater detail of USTR's role in opening foreign markets to small and medium sized enterprises, like those in Nevada or those impacted by the 301 tariffs? Will the Administration commit to continue efforts to increase foreign direct investment, including in the renewable energy sectors and small enterprises?

Answer: Small businesses are the backbone of the U.S. economy. Tariff and non-tariff barriers in foreign markets can disproportionately burden the over 280,000 U.S. small businesses exporting from across the 50 states. Across our policy activities, we are continuing to better integrate small- and medium-size enterprise (SME) issues and priorities into U.S. trade policy activities, increase our agency outreach to small businesses, and improve coordination across U.S. trade policy and promotion activities relating to SMEs. Issues of particular interest to U.S. SMEs include SME chapters in new and modernized trade agreements such as USCMA, to help ensure that SMEs have the online tools and resources they need to navigate foreign markets, and an ongoing SME Dialogue, open to participation by SMEs to provide views and information to government officials on the implementation the agreement to help ensure that SMEs continue to benefit. USTR is also working to address SME priorities such as digital trade issues, customs and trade facilitation measures, reduction of regulatory barriers, and protection of intellectual property rights abroad with trading partners around the world. USTR also supports efforts to increase U.S. foreign direct investment that benefits the U.S. economy and U.S. workers, including investment by SMEs in the renewable energy sectors.

Question 5: Chinese Internet Censorship as Trade Barrier

In the USTR's 2016 annual report, the office listed Chinese government internet censorship as a trade barrier for the first time. The report argued that "China's filtering of cross-border internet traffic has posed a significant burden to foreign suppliers, hurting both internet sites themselves, and users who often depend on them for their business." Technology companies have complained about censorship, but it is unclear whether the Trump Administration is including the issue in the current trade talks with China.

Is the Administration discussing Chinese internet censorship, and the challenges it poses for US businesses operating in China, as a part of the current trade talks?

Answer: The Administration continues to be concerned about China's Internet-related restrictions, such as restrictions on cross-border transfers of information and restrictions on access to certain websites, among other restrictions, as is explained in USTR's 2019 National Trade Estimates Report. The Administration is seeking to address many of China's Internet-related restrictions as part of the current negotiations with China.

Question 6: U.S. Technology Companies Operations in China

In your conversation with Ely Ratner, he indicated U.S. technology companies have historically been resistant to incorporating "American values" of freedom of information into their operations in China.

In your trade talks with China, are you looking at how we can support American companies that seek to operate in China, but still uphold American values like freedom of speech and privacy in their global operations? Do you agree that American companies that rely on the U.S. government to enforce trade rules and protect their intellectual property should support American values like freedom of speech and privacy in their operations abroad?

Answer: Under President Trump’s leadership, the United States is committed to working toward a 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. The benefits of a successful agreement will ideally accrue to all U.S. companies. I would be pleased to work with you and other Members of Congress to discuss how we can best promote American values in our trade agenda.

Question 7: Non-Binding Agreements on Section 232 Country Exemptions

Last spring, the Administration announced agreements with Australia, Argentina, and Brazil that would exempt those countries from Section 232 tariffs on steel and/or aluminum. As you know, under the Case-Zablocki Act, the Department of State must send Congress the text of any international agreement – including an oral agreement – to which the United States is a party no later than sixty days after the agreement enters into force. When my colleagues on this Committee wrote to the State Department to request the text of these agreements, State responded that these agreements are not legally binding international agreements. Instead, they are “political or personal” agreements, and therefore the administration does not have to share the text with Congress.

Why did USTR not pursue binding agreements with these countries?

Do you anticipate that future agreements to lift Section 232 tariffs on imports from specific countries will be concluded as legally binding international agreements?

If not, would you still commit to send the text of these agreements to Congress?

Answer: By statute, the Secretary of Commerce helps administer Section 232. The Administration will continue to act consistent with the Case-Zablocki Act in respect of any agreements concluded with foreign countries that fall within its scope.