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Hatch Statement at Finance Confirmation Hearing for USTR

WASHINGTON – Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a hearing to consider the nomination of Robert Lighthizer to be the United States Trade Representative (USTR):

Today we will consider the nomination of Mr. Robert Lighthizer to be the United States Trade Representative.

The last time this committee considered a nominee for USTR was in July of 2015.

Unfortunately, under the last administration, failure to promptly nominate appointees to leadership positions at USTR became the norm. As a result, it is a sad truth that the Office of USTR has not had a fully confirmed bench of nominees since Ambassador Kirk resigned in January 2013. The difficulty USTR had during the past four years in advancing an ambitious, pro-growth trade agenda was in no small part due to this lack of leadership.

As Chairman of this committee, I hope that we will be able to change that, starting today. All told, this committee must consider and report six positions at the Office of the U.S. Trade Representative. Unfortunately, as with most of President Trump's nominees, we are off to a slow start. I hope that with today's hearing, we can begin the process of moving these trade nominees more quickly.

Mr. Lighthizer is indisputably qualified to serve as USTR, and I believe he has a strong base of bipartisan support. If we keep this process focused on Mr. Lighthizer and the position he has been nominated to fill, there is no reason he should not be approved by this committee and confirmed by the Senate in short order.

Unfortunately, there have been suggestions that extraneous issues – issues that are entirely unrelated to Mr. Lighthizer – may be attached as conditions to the Senate's consideration of the nominee. Let me address this briefly before returning the discussion to the

nominee's qualifications and the sizeable agenda and challenges facing the next USTR.

Mr. Lighthizer has spent almost his entire career in public service – including as staff director for this committee and as a Deputy USTR – and in private practice fighting against unfair imports. In 1995, Congress passed an amendment that prohibits an individual from serving as U.S. Trade Representative or Deputy U.S. Trade Representative if that person has “directly represented, aided, or advised a foreign entity” in “any trade negotiation, or trade dispute, with the United States.”

While in private practice, Mr. Lighthizer represented a small number of foreign clients in the late 1980's and early 1990's, well before passage of the 1995 amendment. Because of this work, some of our Democratic colleagues have argued that Mr. Lighthizer requires a waiver to serve as USTR.

Mr. Lighthizer does not believe that his work falls within this statute. The Office of Legal Counsel at the Department of Justice has indicated that they share that opinion. So, it's not at all clear that a waiver under the 1995 statute is necessary in Mr. Lighthizer's case.

This is not the first time the committee has had to deal with this type of question. And, in the past, we've always been able to work through it.

In 1997, President Clinton nominated Deputy U.S. Trade Representative Barshefsky (BAR-CHEF-SKI) to serve as USTR. This committee was chaired by Senator Roth, and Chairman Roth and the Republican majority worked constructively to support President Clinton's nominee. Chairman Roth wasn't certain that this statute applied to Ms. Barshefsky, but he agreed to work with Senator Moynihan to consider a waiver so that Ambassador Barhsefsky might assume her position as U.S. Trade Representative without controversy.

As far as the record shows, there were no extraneous conditions attached to the waiver, and it passed on the floor by a vote of 98 to 2.

Similarly, in 2007, President Bush nominated Deanna Tanner Okun for the position of Deputy U.S. Trade Representative. Although neither she nor the General Counsel at USTR believed that the statute covered her prior work, Chairman Baucus and Ranking Member Grassley worked in a bipartisan fashion to advance a waiver through the committee in order to ensure that all necessary bases were being covered.

No extraneous conditions were demanded in exchange for approving the waiver, and it was approved by the committee by voice vote.

Today, we are faced with very similar circumstances.

Once again, it is not clear that the statute applies to Mr. Lighthizer's work in the 1980's and 1990's. In fact, we have what appears to be a well-reasoned opinion from OLC that it does

not.

Nevertheless, Democratic committee members are asserting with absolute certainty that Mr. Lighthizer needs a waiver in order to be confirmed. And, at the same time, these same members are refusing to approve a waiver unless the committee also moves a piece of legislation that is entirely unrelated to Mr. Lighthizer or the Office of USTR.

This kind of legislative hostage-taking certainly is not unheard of in the Senate, but in the context of consideration of a nominee for the Office of U.S. Trade Representative, it is totally unprecedented.

I have stated publicly that I am willing to work with Ranking Member Wyden and others on the committee who believe a waiver is necessary. But, I'll be honest, at this point, it appears that my colleagues' insistence on the waiver at the committee level has more to do with their demands for an unrelated ransom than any concern about the applicability of the statute. I hope I'm wrong about that.

Let's be clear what is at stake here. By statute, the U.S. Trade Representative is the lead official for developing, coordinating, and implementing U.S. international trade policy; serving as the principal trade advisor to the President; leading international trade negotiations; and serving as the President's primary spokesperson on international trade. Moreover, the statute creating the position makes it clear that the Trade Representative is accountable not only to the President, but also to Congress.

There is a lot of debate today about the direction of U.S. trade policy. In fact, the President is currently considering some of the most significant trade policy decisions in decades, including whether and how to upgrade the North American Free Trade Agreement, whether and how to launch additional trade negotiations with parties to the former Trans-Pacific Partnership, and whether and how to continue negotiations for a Trade in Services Agreement, an Environmental Goods Agreement, and an agreement with the European Union. And he is doing so without the advice of his chosen USTR, not because the nominee is unqualified, but because some Democratic Senators see the nomination as an opportunity to advance a wholly unrelated legislative priority.

Moreover, at a time when Congress is demanding greater input into trade policy-making and stronger enforcement, our principal liaison in the administration is being blocked from even assuming the office.

Once again, this is unprecedented.

It is time to move this nomination. Actually, to be blunt, it's well past time.

It has been more than 50 days since Mr. Lighthizer was nominated by the President. This is the longest gap between nomination and committee consideration of a USTR since at least

2001.

Before concluding, let me briefly touch on some trade priorities I expect the next USTR to address.

It will not be surprising to many of you that I expect this nominee and this administration to be strong advocates for U.S. intellectual property rights. Intellectual property is the backbone of our economy. It affects large and small companies across America. It is a key part of our economic growth. In my home state of Utah, for example, half a million jobs and 67 percent of our exports are connected to intellectual property. It must be a higher priority.

Second, I expect quick and effective use of Trade Promotion Authority, or TPA. President Trump benefits significantly by coming into office with TPA already in place. As a country, we have a unique opportunity to lock-in strong trade agreements that meet the high standards of TPA. But, trade negotiations are long-term endeavors, and, to be successful, we must begin soon.

As the Administration updates existing agreements and negotiates new ones, I hope that they will be able to rebalance the Obama Administration trade agreement template. In my view, President Obama continually sacrificed U.S. commercial interests at the negotiating table in favor of a liberal social agenda. Some of the areas that I believe need higher priority include the need to: reflect a standard of protection for U.S. intellectual property rights similar to U.S. law; seek the elimination of price controls; work for better market access for our farmers and ranchers, including stronger provisions on sanitary and phyto-sanitary measures; include enforceable provisions ensuring greater transparency and accountability in government reimbursement regimes; negotiate strong and enforceable provisions on anti-corruption; provide greater protection for trade secrets; and include provisions that help strengthen good governance, transparency, the effective operation of legal regimes, and the rule of law.

Finally, we must do a better job of holding our trading partners accountable. More effective monitoring of our trading partners' existing commitments, along with full implementation of these commitments, is critical to maintaining political support for a robust trade agenda here at home.

Mr. Lighthizer, I commend you on a stellar career in international trade. It is my hope that you will use your expertise to advance a strong U.S. trade agenda that can help grow our economy and instill faith in the American people in the ability of international trade and trade agreements to provide new opportunities for working Americans.

I look forward to hearing your testimony today.

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