

**PRESIDENT'S 2020 TRADE POLICY AGENDA**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE**

**UNITED STATES SENATE**

**ONE HUNDRED SIXTEENTH CONGRESS**

SECOND SESSION

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JUNE 17, 2020  
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## **PRESIDENT'S 2020 TRADE POLICY AGENDA**

**WEDNESDAY, JUNE 17, 2020**

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

The WebEx hearing was convened, pursuant to notice, at 3:02 p.m., in Room G-50, Dirksen Senate Office Building, Hon. Chuck Grassley (chairman of the committee) presiding.

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

Also present: Republican staff: Mayur Patel, International Trade Counsel. Democratic staff: Sarah Bittleman, Policy Director for Senator Wyden.

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

The CHAIRMAN. We are glad to have you here, because we face great challenges, whether it is the murder of George Floyd, or whether it is the economic downturn we have because of the pandemic, or the pandemic itself. We have a lot facing our country.

It is not going to be easy to bring us back to the course we were on in February, but I think good trade policy will be one important part of doing so. So I am glad that we will have that discussion today.

Trade policy is immediately significant because we need to make sure that we do not have any unnecessary taxes on goods key to the recovery or in fighting the pandemic. That is why I have asked the International Trade Commission to conduct a study on precisely what those goods are, where they come from, and how much they are taxed. This study, which is ongoing, will provide an independent and transparent snapshot of the medical and PPE supply chains. It is important that we carefully study these supply chains before we rush to judgment and action. We have to take a long, hard look at our ability to protect ourselves in future crises. But we have to find a smart solution that accepts the reality that trade is fundamental to our survival and prosperity.

In the long term, trade is a key part of the solution, because it promotes freedom. It provides customers for our best-in-class agriculture products. It eliminates arbitrary barriers that inhibit entrepreneurship and independence. In particular, trade empowers small businesses that are the backbone of our communities. In fact, 97 percent of the U.S. exporters are small businesses.

A good start to empowering people and fixing our economy is making sure as many people as possible have the option of being their own boss. We owe it to them and their communities to press for even more opportunities. This is especially true because our trading partners already enjoy the fact that we have one of the most open economies in the world.

Ambassador Lighthizer, you have taken important steps to help with these issues I have just raised. I am pleased this year started off with Congress approving the U.S.-Mexico-Canada Agreement. USMCA is expected to spur 176,000 new jobs and create new opportunities with our two most important trading partners.

We are just a couple of weeks away from the USMCA entering into force, and we owe it to our American farmers, workers, businesses, and innovators to make sure this agreement delivers. I look forward to implementing a new era of North American free trade and focusing on the many other issues on the President's trade agenda. The issues are complex and challenging, but the Trump administration is ambitious. If we get them right, the opportunities for Americans are immense. And I want to highlight a few in particular.

First, we have free trade negotiations with the United Kingdom. Good trade relations with the United Kingdom are crucial. In 2017, we exported almost \$126 billion of goods and services to the UK. UK companies in turn have invested more than \$540 billion in the United States.

Unfortunately, those numbers do not reflect our full potential. In large part, EU rules stood in the way. These rules unfairly restricted our agricultural goods without any scientific basis, and required duplicative and unnecessary testing for industrial goods. Now that the UK has been freed from those EU rules, we can bring our economic relationship to a level befitting our longstanding political special relationship. An improved trading relationship with the UK will also signal to the European Union that it is past time for them to start regulating on the basis of sound science.

I am also looking forward to trade negotiations advancing with Kenya, and you had earlier talked to us about that step. We do not have a single free trade agreement with a sub-Saharan country. I applaud the Trump administration for being the first administration to take this on. A high-standard free trade agreement with Kenya can be a model for both good economics and good governance throughout the region.

Third, I am glad the administration remains committed to WTO reform. The rules of that organization, including those on services, agriculture, procurement, and intellectual property, are vital for workers and businesses. They reflect decades of persistent American leadership. We cannot let China take the pen when it comes to writing the rules for that organization. Instead, Congress and the administration must work together to fix this vitally important institution. We will revitalize the WTO's negotiating function so that the rules reflect the modern economy, including e-commerce. Additionally, Congress will continue to insist that rules remain enforceable—and applied as written.

That is why I am glad the trade agenda highlighted the administration's WTO enforcement wins against the EU over its Airbus

launch aid; against China over its policies on wheat, corn, and rice; and India over its export subsidies. There are a lot of problems with the WTO, but it has an important role to play—including through the use of binding dispute settlement. The trick is to make sure those rules are followed, rather than rewritten, by WTO judges.

Mr. Ambassador, I think together we can accomplish this task.

Finally, I note that the trade agenda highlights that the administration took strong action against discriminatory digital services taxes. With the recent announcement of more investigations, the Trump administration is demonstrating that America will not stand for discriminatory treatment that treats American companies as piggy banks. Our businesses are entitled to fair and equitable treatment, and we will defend our rights appropriately.

In closing, I want to emphasize this point: the President has laid down an ambitious agenda that can improve the lives of our fellow citizens. But it will require commitment and cooperation from all of us. The Constitution vests Congress with the authority over trade, not some generalized interest in trade. We cannot simply be passengers along for the ride. We must fulfill our constitutional role so that our trading partners know that Ambassador Lighthizer has the full support and power of the United States behind him.

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

The CHAIRMAN. Senator Wyden?

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

Senator WYDEN. Thank you very much, Mr. Chairman, and welcome to the Ambassador. We can actually see him out there.

This is the Finance Committee's fourth annual hearing on the Trump trade agenda, and that means that it is the fourth time the committee has heard a familiar old routine. Donald Trump is getting tough on China, and he is protecting American jobs everywhere. The President is cracking down, once and for all, big changes around the corner, and an American economy on the brink of transformation. It has been 3½ years of those big promises. So I want to start by laying out the actual results.

The Phase One trade deal with China that the President called, and I quote, "the biggest deal there is anywhere in the world by far" is already coming apart, with China falling behind on commitment. According to an analysis by the Peterson Institute looking at the first 4 months of the deal, China's purchases of U.S. manufactured goods were at 56 percent of the target level set by the Phase One China deal. China's purchases of U.S. agricultural goods were at 38 percent.

President Trump said he would stop the overproduction of steel in China that has wiped out so many steel jobs here in the United States. But, colleagues, mills in China are producing steel at record levels. The President said he would fix the most damaging ripoffs that target American innovation and jobs. But when it comes to IP theft or forced technology transfers, the Phase One China deal recycled existing law and repeated the same promises that China has broken again and again.

According to the Economic Policy Institute, the United States has lost 3.7 million jobs to China in the last 2 decades—three-quarters of them in manufacturing. Donald Trump has not meaningfully changed any of the conditions that allowed these job losses to happen. Now the bottom line with respect to China trade policy is really clear. The status quo under President Trump is good for China, and the Chinese Government is reportedly interested in maintaining it.

Now, on to the new NAFTA. Ambassador Lighthizer and I long agreed that NAFTA needed a major overhaul. It was not built, for example, for an economy to a great extent driven by digital activity and industries, and it was not strong enough on enforcement to protect American workers.

When the Trump administration first brought its renegotiated deal to the Congress, it made some progress on digital issues, but it did not go nearly far enough to protect family-wage jobs and workers with tough rules on labor and environmental protection. In fact, the old, broken-down system of enforcement from the old NAFTA was really pretty much still a part of the Trump administration's approach for the new NAFTA. That meant that all the big claims about getting a great deal for workers were just more of the same old happy talk on trade.

Now when that was brought to the Congress, Democrats in the Senate and House said that it was unacceptable, and we went to work to improve the areas where the President's proposal on NAFTA came up short. Senator Brown and I worked, for example, with our colleagues to develop a faster, more aggressive approach to labor enforcement so that American workers will not have to spend years, literally, waiting for action against the trade cheats and the trade ripoff artists. Ambassador Lighthizer helped us get that done, and now the deal is set to go into effect in 2 weeks.

But the start of the deal, colleagues, means that the work is just getting started. I have major concerns about Mexico's ability to stay on track with implementing their labor obligations, and with our ability to monitor and enforce them. The administration has to hit the ground running on trade law enforcement on day one.

There are a few other areas where American businesses, producers, and workers need more information and more certainty as the agreement heads into effect. Our dairy farmers, for example, need to know that their products will not face unfair discrimination by Canada and Mexico. American innovators need assurances that Mexico will make changes that it promised to its intellectual property laws. Finally, American automakers need to know how USTR and the Department of Labor will apply the auto "rules of origin" which impact their supply chains and their ability to qualify for tariff benefits.

My bottom line on the new NAFTA is that it made real progress on several key issues, and that is why it got overwhelming support from this committee and the Senate. But we understand—which is why this hearing is so important—that this progress can be undone very quickly if the administration does not take the strong steps needed to enforce the deal, particularly using the enforcement tools the Congress created to protect American jobs. And that is going to be a prime focus of our work in the days ahead: to make sure



the administration uses those trade enforcement tools that were given to them.

Finally, let me thank Ambassador Lighthizer for joining us. I am quite certain I am not the only Democrat on this committee who has been appreciative of him constantly reaching out trying to find bipartisan ground, and I think my colleagues know that questions and answers with Ambassador Bob Lighthizer will never be dull.

Thank you, Mr. Chairman.

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

The CHAIRMAN. We have a lot of business to cover. I have only a one-sentence introduction of Ambassador Lighthizer. He was sworn in as the 18th United States Trade Representative on May the 15th, 2017.

Please give us your opening statement, Ambassador Lighthizer.

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

Ambassador LIGHTHIZER. Well, thank you, Mr. Chairman. Mr. Chairman, Ranking Member Wyden, and members of the committee, I wanted to start off by saying I have missed seeing you, but I cannot see most of you in any event. I cannot probably accurately say that. I have Senator Young, whom I can actually see, in this room. This is, for me at least, an unusual experience. But I am assuming you are out there.

We have been going through two crises recently, and these indeed are challenging times. I will not go through all the history of it, but I want to say that I am confident, working together in good faith, we can all help to heal the wounds in this Nation. And I certainly, as the USTR, want to play my part.

In some ways, the problems we have been facing recently make talking about international trade seem less important, but in other ways, perhaps, rebuilding our economy and helping to create good-paying jobs for all Americans, securing fairness for our businesses, and bringing back manufacturing can be some part of the solution.

We have been isolated and quarantined for so long, I fear that we might have forgotten what great achievements we had during the early part of this year—all of us together. Republicans and Democrats, House and Senate, worked closely with the administration to write and pass the biggest, and I would say the best trade agreement in American history—USMCA.

I would like to again thank you for working with me and my team to achieve this historic accomplishment. I would also like to thank you for your support and help as we worked our way to the China Phase One agreement, a very important U.S.-Japan agreement, and numerous other small agreements during this last year. Together, I think we have helped American workers, businesses, farmers, and ranchers. Going forward, there is much to achieve. As you all know, we have an active FTA negotiation with the United Kingdom. We also will very soon, in the next couple of weeks, commence talks with Kenya.

Finally, we have active engagements on trade issues with numerous other countries, and of course I look forward to working with all members on the crucial issue of WTO reform.

Thank you to all the members for working so closely with me, for making time to talk and to meet with me, for having your staffs—which is so crucial to this process—work so closely with USTR, and for making our end product consistently better as a result of your work and your staffs' work.

So that is my statement. But I will just continue for a second, because Senator Wyden was so kind as to bring up what, I agree with the President, is the greatest trade agreement.

So we start off with the proposition that China is a very, very big problem. We move to the next step of the logic, which is that every administration before the President did nothing—absolutely nothing. The problem got worse. None of them did anything.

I am sitting here thinking I feel a little bit like what Roosevelt would have felt like if Hoover came forward and said, “I want to talk to you about depressions,” or if Chamberlain had talked to Churchill about German policy. The reality is, nobody did anything.

There was this great agreement on cybersecurity that the Obama administration did with China. I went and I said, “Show me the agreement.” There is no agreement. It was two press releases that were not even coordinated. There was no agreement. It was nothing.

So we have now a written agreement. I have it right here. It covers more than just purchases. It covers IP, tech transfer, financial services, currency—it covers enormous amounts of ag SPS issues. And China is, for the most part, doing what they said they were going to do.

And in addition, it contains \$370 billion worth of tariffs on China. So to compare this to anything that was done before is just totally unfair. And this business about the purchases, which we get from the Peterson Institute, just so we understand, these are exports, many of which were booked months in advance.

Everybody who knows agriculture knows if you look at what was shipped in March, it was not bought in March. It was bought weeks and weeks before that. So those numbers really are not telling.

I am happy, as questions come, to go through the numbers with members. So with my staid opening comment and then my slightly less staid reaction to my good friend Senator Wyden, I will now stop talking.

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

The CHAIRMAN. Okay. We will start with questions, and we will do 5-minute rounds.

The steel and aluminum tariffs on Canada and Mexico are just one of the factors that delayed USMCA approval last year. I am glad they are gone and that we are about to start a new era of free trade in North America. However, I am concerned that some groups are trying to push to reinstitute tariffs or, if they do not reinstitute them, to find a workaround by putting section 232 tariffs on closely related goods. My view is that any issues concerning steel and aluminum tariffs need to be through the framework of

the May 17, 2019 understanding that you negotiated with Canada and Mexico.

The first question—but do not answer it until I ask the second question—is a commitment from you that the United States would continue to abide by that understanding, and will you also commit to briefing this committee in the event the administration believes that there is a surge in imports, and before any request for consultation is made under the understanding?

[Pause.]

Ambassador LIDTHIZER. I am sorry; I was told not to answer until you asked the second question. Is that all of the questions?

The CHAIRMAN. Yes.

Ambassador LIDTHIZER. We will certainly consult with the committee. I would say there have been surges on steel and aluminum, some from Canada, substantially from Canada; some from Mexico. And it is something that we are looking at and talking to both Mexico and Canada about.

The way the agreement worked is, both countries agreed that they would maintain substantially the same trade as they had before. We are seeing surging in some products. If we in fact put the tariffs back on with those, they cannot retaliate except in that sector. So they cannot retaliate on agriculture and the like.

And I am happy to talk to you, Mr. Chairman, and the ranking member, and other members as they indicate an interest in it. But it is something that is of genuine concern to us now and that we are looking at.

The CHAIRMAN. For clarification, I will read my statement again. My view is that any issue concerning steel or aluminum tariffs needs to be done through the framework of the May 17, 2019, understanding you negotiated. Are you saying “yes” to that?

Ambassador LIDTHIZER. So, yes. The answer is “yes.” So that is our understanding with Mexico and Canada, that we would let them out of the tariffs on the condition they maintain the same trade flows. And if they did not and we put tariffs on because they surged, they would only retaliate in that sector and not in other sectors.

The CHAIRMAN. I am glad that USTR decided to grant exclusions from section 301 tariffs from certain products related to combating the pandemic. I am also glad USTR is accepting public comment until June 25th on what additional medical products could benefit from lifting tariffs. However, some of the exclusions USTR has granted will expire in the next few months.

Can you tell us whether you will consider extending the existing pandemic-related exclusions and granting additional exclusions for relevant products?

Ambassador LIDTHIZER. So what we expect to do, Mr. Chairman, is make an assessment as to whether or not there is a critical need for those products related to the pandemic. If there is, then we will extend them, yes, for sure. If there is not, we will not.

The CHAIRMAN. USMCA had a side letter addressing certain geographic locations. This is a very important issue for our farmers. As your Special 301 report this year noted, the driver of the problem is the EU. The EU is hurting our market access by granting geographic indicators for common food names, or even terms de-

fined in international standards, and also pushing our trade partners to adopt these protectionist measures.

I think the UK negotiations need to reach a more ambitious outcome than the USMCA side letter, since the UK now has the opportunity to roll back these protectionist measures. This outcome needs to include an expanded list of dairy, meat, and wine products, and should be an integral part of the agreement rather than a side letter.

That outcome would be consistent with U.S. law, which uses trademarks to protect consumers and the reputation of businesses, and not to limit legitimate competition. Would you be able to commit to seeking that level of ambition for an outcome on geographic indicators? And if not, why not?

That will be my last question.

Ambassador LIDTHIZER. Thank you, Mr. Chairman. The answer is, yes, I completely agree with your position. But it is a very difficult issue. To the extent that Europe and the UK make a deal, and they give away this space—and it is not clear they will give it away, or whether they will or they will not—but if they do, this is going to be a bigger and bigger problem.

I agree completely on geographic indications, with your position. I agree that it is thinly disguised protectionism, and it is something that we have fought with Europe about and will continue to fight with them about, not just directly, but through proxies. And I agree with your position; whether we get it or not, we will also make an assessment as we move along.

The CHAIRMAN. Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Ambassador, let's start with the new NAFTA. And we have appreciated your working with Senator Brown and I on the Rapid Response Trade Enforcement mechanism, and it is going to be key to coming out of the gate immediately in July and showing that we are serious about that. Because if we do not do that, it just seems to me that Mexico will be back to the same old kind of tactics to delay.

So tell me, if you would first, how you are going to commit to actually putting the Brown-Wyden Rapid Response mechanism in place quickly.

Ambassador LIDTHIZER. Yes; thank you, Senator.

So first of all, I completely agree with your statement. Secondly, I am grateful for the work that you and Senator Brown did—and I would say other members of this committee—on enforcement provisions, Democrats and Republicans. And I agree with you completely that if we do not use the tools of enforcement that we have in the trade agreement, we are breaking our commitment with the Congress, but more importantly with the American people.

So we have—as you know, because we have talked about this—we have made the appointments. We have set up the structure in terms of labor and environment. Both of the interagency committees have already had their first meetings. We expect to be very diligent on this.

Obviously nothing can happen, as you say, until July 1st, but after July 1st I expect to consult with this committee and with the Ways and Means Committee, look at complaints, and begin first

some kind of a consultation process. And then to the extent we have problems, I expect to bring cases.

And I think Mexico understands that—I hope they understand it. I have made it as clear as I can.

Senator WYDEN. Good. Let us go on then to another key enforcement issue, and that is China Phase One.

The first stage of dispute resolution there is basically an escalating set of meetings. They get more and more urgent with influential officials. And my understanding is the agreement specifies that this whole process is confidential.

So my question here is, does this confidentiality arrangement in the China Phase One deal mean that nobody, including members of this committee, will know if the United States is taking enforcement action against China?

Ambassador LIDTHIZER. No, it does not mean that.

Senator WYDEN. Tell me how there is transparency then. Because as I read it, it just looks to me like there is not. And I think it would be helpful for you to be very specific here.

Ambassador LIDTHIZER. Okay; absolutely. I will be happy to do that, Senator.

So here is the situation we are faced with. For the first time, we have a written agreement. For the first time, we have a really, really good enforcement mechanism, one which escalates, and then the United States can take an action if we do not get a satisfactory resolution. And we will not be retaliated against.

So this is a historic thing, and I want to point that out. Then you have the problem, what do you do with a company that comes and says, for example somebody from Oregon will come and say, “I have this problem, USTR, and I want you to raise it. But do not use my name, because if you do, I may be retaliated against,” right? “I am giving you (a) confidential information, and (b) I may be retaliated against.” So what do you do in a situation like that?

We agreed to confidentiality. If you said, is it confidential from you in that case? No, of course not. But we are going to bring these—some of these complaints, depending on the circumstances—as generic complaints rather than individual ones to protect specific American companies. That is the nature of why we put that in there.

And that does not mean, other than business confidential information, which we would not share, that does not mean we would keep the appropriate members of the Congress in the dark. We would not do that.

Senator WYDEN. Let us do this, because I want to get into one other time-sensitive matter. I would like to see in writing how we are actually going to have transparency in a provision that sounds to me like there is not transparency. I get your point with respect to sensitive matters with respect to American companies and American jobs. I think you get my point with respect to transparency. We will keep the record open on that.

One last question, if I might. The chairman and I—and this has been a bipartisan area we have worked on—have been very concerned about these digital services taxes, because they really hit America’s technology companies. Senator Cantwell and I, in our

part of the world, they would hit our companies like a wrecking ball.

And earlier today, the Treasury Secretary notified several of the largest European trading partners that he was going to suspend the multilateral negotiations. So when you hear something like that, it is kind of like, well, hey, we are just walking out of here. We are not going to do anything about the process. What is the administration's plan here to protect these critical industries from discriminatory taxation—taxation that would really devastate our ability to have good-paying jobs at a crucial time. What is the plan to deal with this?

Ambassador LIGHTHIZER. So thank you, Senator. And as you know, I completely share your view. And that is why, as the chairman said, we have already completed a 301 investigation on France, because they were the leader in this area. And now we have started a dozen others, where we are going to have reports on each one of them and authorize ourself to take retaliatory action if they do it.

What Europe—and by the way, it is spreading beyond Europe—what they are doing is fundamentally unfair to American companies. They are picking on them because they are the best, and because they are not their companies. But I was going to say, when I used to sit in this room as a staff person, but it was a smaller room, Senator Long used to say, famously, “Do not tax you, do not tax me, tax the man behind the tree.” This is what everyone is doing. And unfortunately, we are the man behind the tree.

So we put in place 301, as we think is appropriate, and we authorized action. Then the President worked out a deal where they would not collect the taxes, and we would not do anything on 301, and that was going to go on during the course of the negotiations at the OECD.

Unfortunately, the other countries are completely—I am not leading this because it is the Treasury Department, but we are involved—but the other countries are completely dug in on this. We have to show our strength. And what the Secretary said is: “If you all think you are going to get a consensus around taxing our companies unfairly, we are not going to be a part of it.”

So I think that is the nature of it. We still have to, I believe, find the solution, right? And to me, that solution involves a lot of congressional action. It involves a tax scheme that treats everyone fairly internationally. And if we are treated unfairly, then I think the President will make a decision as to whether or not we take action against these people. But I do not think that what happened at the OECD was the end of a process of trying to work out a solution. We still have to do that.

Senator WYDEN. Thank you, Mr. Chairman.

The CHAIRMAN. I think, since Senator Wyden brought that up—and I am glad he did because I have not read this letter that went from the Secretary of Treasury, but I think people ought to know where I stand. The press is reporting that the OECD negotiations on these taxes have hit an impasse, with the United States objecting to interim proposals that would continue to disproportionately target U.S. companies.

I am continuing my consistent support of the Treasury Department to continue these efforts to reach a consensus with the OECD. We are in the middle of an unprecedented health and economic crisis, and our immediate focus needs to stay on the American people and the business community that employs them as we work together to develop solutions to our country's recovery.

Reaching an agreement with the OECD represents the best outcome for resolving the international tax issues presented by our changing global economy, but those negotiations should not be rushed, especially during the current health and economic situation. It is better to take the time necessary to get fair and equitable solutions.

So I support Treasury continuing to negotiate on these important global tax issues and working towards an agreement that does not disproportionately and adversely affect U.S. businesses. I remain firmly opposed to the unilateral measures with which OECD partners discriminate against U.S. businesses.

I am going to name the first four people for questions: Senator Cantwell, then Senator Roberts, then Senator Stabenow, and then Senator Thune.

Senator CANTWELL. Thank you, Mr. Chairman.

Ambassador Lighthizer, I have three issues to cover, so if you could, help me out with that. I wanted to talk about personal protective equipment. I know there are more than 40 countries that have taken steps to eliminate tariffs on PPE.

The United States has a 7-percent tariff on face masks, including N-95 respirators; South Korea temporarily eliminated those tariffs. We have tariffs on gloves, 3 percent. Canada suspended those. We have a 5.3-percent tariff on face shields, and 5-percent on gowns, and 2.5-percent on goggles.

So, while you did waive the 301 tariffs of up to 25 percent on PPE from China, that only lasts through the end of the summer. So to me, why not join some of our allies—Canada and Europe—and just abolish tariffs on these PPE products until we are through the pandemic?

Ambassador LIGHTHIZER. So I would say, first of all, that as you say, we got rid of the tariffs because they would have been a problem, the 301 tariffs. We looked at, in the PPE area, 23 different tariff lines. Of the 23 different tariff lines, there were no tariffs on over half of them. The highest was, as you say, one of the masks, which happens to be the category that has the N-95s in it.

For surgical masks, however, there was none. In my judgment, zero tariffs for sure do not have any impact. Seven-percent tariffs do not have any real impact. And we are better off keeping the tariffs in place and incentivizing American companies to make these products.

At this point, we do not have the same shortage as I understand it—you are more of an expert on this, I am sure, than I am—that we had originally. But the important thing now is that we incentivize U.S. companies, many of which have just started undertaking to get into this business.

Senator CANTWELL. Yes, we definitely have a shortage. And N-95 respirators are needed now. They will be needed in a few months, and they will be in very high demand next fall.

So I just listen to what my Governor says. I listen to him practically every week on his call and, you know, he wants the Defense Production Act. He does not think we are getting the masks. So to me, let us at least get them at a cheaper value than having to pay a tariff.

And look, I feel the same way about a lot of green products. I think we should have zero tariffs, come to a world agreement on zero tariffs on products that would help us reduce carbon emissions.

So, anyway, I just think zero tariffs. But I am more of a trade person on these things than maybe the administration.

Okay, India and apples. The 232 tariffs remain. So India has a 70-percent tariff on apples—so obviously a big product in the State of Washington. What can we do to get those tariffs off of apples in India?

Ambassador LIDTHIZER. As you know, we of course agree with you, and we agree that their regular tariffs are bad. Their retaliatory tariffs are even worse. We are in negotiations with India. We took away their GSP, and we are in the process of restoring it if we can get an adequate counter-balancing proposal from them. Until now, we have not done that. But this is something that we are actively negotiating right now.

Senator CANTWELL. Okay, and then where do we stand with what the ranking member, Senator Wyden, brought up with China and where we are in the Phase One agreement in making ag purchases? Definitely way off where we thought we would be. Where are we on getting those commitments to the Phase One products?

Ambassador LIDTHIZER. That is a really good question because—

Senator CANTWELL. I think they purchased something like \$4.2 billion of ag products out of the \$33.4 billion that was committed to for 2020.

Ambassador LIDTHIZER. So I understand. Let me spend a second on this, if I can. You only have 50 seconds left, but when you decide what the spending is in ag products, I realize we have this Peterson Institute thing, which I would suggest has a very, very failed methodology. What they do is, they look and they say, okay, fine, what was exported by such-and-such a date?

The ag people know—and I know you are an ag person—that that stuff is bought at least 6 or 8 weeks in advance. So what you try to do is develop a methodology that says what actually is the level of purchases.

Remember, this did not even go into effect until February 14th. So anything that came in by March was probably even before the agreement, right? So it is a complicated thing, and they have a childish methodology.

So what we have tried to develop is one that takes actual sales reports, which come out every Thursday for the previous week, and put them together with exports, all right? And the data is not created for this kind of a purpose, to tell on a short term what people are doing. And if you use the methodology that I suggest, which is purchases up till now to the extent you can calculate them—let me give you an example.



Last week, China bought half a billion dollars worth of soybeans. Those might not ship until August, but if you say, well, we are going to gig them for not having purchasing, that is not right either, right? So you have to figure out this new methodology.

If you do this kind of a hybrid methodology—and it is not fool-proof; I do not want to suggest that it is, but it is like a good-faith effort to use the data that we have to try to tell whether they are doing it. I think a fair assessment is that they are clearly trying to meet the targets, particularly given the situation that we have going in the world with this COVID-19.

So you probably got about \$10 billion—I have my notes here—about \$10 billion worth of purchases towards the target of \$40 or \$50, all right? You then would say, okay, maybe \$10 billion additional are going to be at the end of the year on soybeans. And then you have to look at what you purchase kind of between now and then.

And I think if you do, it is reasonable to make the assessment that we are going to get to those numbers, or awfully close to them.

Senator CANTWELL. Well, that is interesting. I definitely want to understand that. We have very highly perishable products from shellfish to cherries and other things, and we definitely want our ag products part of that Phase One purchase. So we will get back to you on the specific details.

Ambassador LIDTHIZER. And I would suggest—I mean, I know your products, but I should work with your staff to make sure that we are putting—we are talking to them all the time about this. And you make a really good point. You have a very seasonal product—well, you have two seasonal products that I can think of, and so we really do have to press them adequately on that.

Senator CANTWELL. Thank you, Mr. Chairman.

The CHAIRMAN. Okay; Senator Roberts?

Senator ROBERTS. Mr. Ambassador, thank you very much. I want to thank you for your perseverance. I was talking to Senator Cornyn here, and I said that Bob Lighthizer probably has more perseverance than any other trade ambassador that I know of. And he sort of asked again, and I said, “Here, look on Google. Look up the word ‘perseverance.’” And by golly, the synonym for perseverance is “Lighthizer,” right there in Google. It just amazed me. So thank you for the job you are doing.

I want to know about Mexico and what you and Ambassador Doud are doing with relation to Mexico and the new policies that do not adhere to the strong science and risk-based framework that we have long shared with them. I am talking about targeting certain tools of modern agriculture, crop protection chemistry, and biotech.

Ambassador LIDTHIZER. So what we have is an administration, I believe, in Mexico for whom part of their philosophy is not to use cutting edge agricultural policy or practices. So for the last year and a half, they have not approved a single biotech application. I know you know this, but I am just sort of saying it for your colleagues. This is something that we find unacceptable.

We have raised it with them. We have complained about it. When the agreement goes into effect, we will then have a mechanism to actually do something about it. My own view is, it is one

of those things. It is like part of their philosophy. And until they lose a case, they are not going to be very flexible. But what you say is a serious, serious problem.

What happens—for the other members—is that you get an application. It is approved over a period of time. Eventually it expires. If you do not get a new application, then that product does not go into Mexico anymore. And it is a question of seeds and the like, but it is also a question of pesticides and chemicals and the like. And we agree with you that it is a violation of USMCA, and we expect to bring an action if the situation continues.

Senator ROBERTS. I appreciate that. I think there is some concern in farm country, when we get on virtual discussions with various ag groups now, and that question has come up a lot with the opportunities coming up with July 1st with regard to USMCA.

I might remind you again that USMCA stands for the United States Marine Corps Always, as well as the good trade agreement. So they sign that, and then they—if they find that this is not working too well in terms of products we usually sell them and the products they need, obviously that is the time that they will probably come to the table.

I want to talk about energy in China. By the way, I want to thank you, and especially Ambassador Doud. He has met with his Chinese counterparts time and time and time again. They are buying more—and I made a list here—pork, beef—not as much beef as we want—soybeans, and then sorghum. The sorghum folks were the first ones hit on the number one trade retaliation, and they are getting some price recovery. Not enough, obviously not enough, but we are making some progress.

But on the energy side of it, they have been increasing purchases of certain products such as crude oil from Saudi Arabia and Russia. And my question is, can you share your thoughts on how you see China reaching the significant purchase targets laid out for the energy products in the Phase One agreement?

Ambassador LIGHTHIZER. First, let me just reinforce what you said about these other products. And if you look—I should have brought the charts. If you put a chart down for 2017, which was our best ag year ever, and now we are going to be 20 percent above that in this deal—but if you do, and this is the line, 2017 best ever, if you look at meats up here already—we are three times what we sold in meats at this time in the year in 2017.

Energy has been a problem. We have been stressing it with them. Energy for us is natural gas and the normal products, but for us at least it also is ethanol, where we need exclusions, and they have granted exclusions on ethanol. So I am hoping to see ethanol sales go up.

But I would say the traditional liquefied natural gas, crude oil, refined products, there is no question they are behind there. It is something that we are stressing. I think it is as much a reflection of their economic situation, and the fact is, as you know well, that the prices just literally a while ago went through the floor. I mean the oil was worth less than the barrel. And I think that also has screwed up the mechanism. But it is something we are stressing with them and are going to continue to stress with them.

Senator ROBERTS. Thank you, Mr. Ambassador. Thank you, Mr. Chairman.

The CHAIRMAN. Now we have Senator Stabenow by TV. And, Senator Stabenow, before you start, can you tell me, do you have—and it would be applicable to everybody else who is going to be on TV, and that is three-fourths of the committee today—do you have a way of telling when your 5 minutes are up?

Senator STABENOW. I do not, and so I was hoping—at one point I thought the committee had a clock as a picture, but I do not see that today. So, Mr. Chairman, I will do my best here.

The CHAIRMAN. Well, listen for the fall of the gavel at 5 minutes.

Senator ROBERTS. Chuck, I can help you with that. She is my ranking member. I can help.

The CHAIRMAN. Okay; I will be glad for the help. Go ahead.

Senator STABENOW. Okay, my 5 minutes starts now, right?

The CHAIRMAN. Okay, go ahead. Yes, right now.

Senator STABENOW. Well, thank you, Mr. Chairman, very much, and thank you, Ambassador Lighthizer, for joining us today. And I do have to join with my partner on the Agriculture Committee. Obviously you know I feel deeply about agricultural issues, and there are a lot of things that we need to continue to be talking about together. So I appreciate your reaching out continually on critical issues, when we agree and when we do not agree as well.

But today I really want to take my time to focus on the pandemic that has highlighted so many risks and vulnerabilities for all of us. And I know that you and I agree we need to make changes so we can manufacture more critical supplies at home and work with our international partners to address the issues in the supply chains.

But I have to say, watching this, particularly on the supply chain front and working with our Governor and her great team in Michigan, that the pandemic has highlighted just massive failures by the Trump administration. And we cannot just blame the supply chain disruptions for the fact that the United States has over 25 percent of the deaths from the pandemic, while we are only slightly over 4 percent of the world's population.

So you said in a recent article in *Foreign Affairs* that the administration's goal is a balanced worker-focused trade policy that achieves broad bipartisan consensus and better outcomes for Americans. And I certainly agree with that statement. But we know that does not happen in a vacuum. And my worry right now is about what is happening—as we talk about workers abroad—what is happening to American workers right now, and how do they have confidence that they are going to be able to be safe at work.

The administration's COVID-19 response has been a mess, frankly, on PPE. There has been no national strategy, as we all know, no transparency related to our country's ability to keep us safe or have the medical supplies and equipment made in America in the future, to be able to do that.

And, while we are in a global economy, we have seen incredible threats to our citizens in relying on other countries for our basic medical needs, among other things. And frankly, if the President has such a great relationship with China, why have we not at least had a national agreement with them to get protective equipment and supplies that we need?

I literally in Michigan, Mr. Ambassador, have been in multiple situations, reaching out to people I know in the medical field, where the conversation was, I know a guy who knows a guy who knows a guy in China, which is how we originally began to get our masks, N-99 and surgical masks and gloves and swabs and other equipment.

So we still do not have enough specific data on the state of PPE, as well as the pharmaceutical drug manufacturing globally as well as in the United States, and frankly, in the USMCA we all remember the Trump administration tried to slip in a special benefit for pharmaceutical companies manufacturing drugs outside our country, which we all objected to.

And so from my perspective, the President, instead of pointing fingers at everybody else and all our Governors trying to do the right thing, he should have been and should now be activating the Defense Production Act to guarantee that critical medical supplies are made in the United States.

So when we look at—you have talked about the dignity of work, and I just want to say, I am from the front lines in Michigan. There is no dignity in nurses and hospital staff being forced to wear garbage bags to treat patients in COVID-19 wards because they have run out of medical-grade protective equipment, most of which is currently made in China.

So how do we have a worker-focused trade policy if the administration's domestic policy fails to focus on keeping our own workers safe right now?

Ambassador LIGHTHIZER. You will not be surprised to know that I do not agree with very much of what you said, except for the point that we want to work together on a worker-focused trade policy.

I think that when this pandemic hit we were in a—this is not my area; I am not an expert at it—we were in a situation where we had depleted reserves of PPE as a result of failure to replace supplies in past, in the past administration.

I think—

Senator STABENOW. If I may just interrupt with just one quick point on that. The former Director of the Stockpile said in 2019, to this administration before the pandemic, that it was well-equipped. So I know there were a few areas where there needed to be more, but just so you know, the former Director of the Stockpile actually said it was well-equipped last year.

Ambassador LIGHTHIZER. Well—

The CHAIRMAN. I will let you answer that, and then we will go to Senator Thune.

Ambassador LIGHTHIZER. I will just say briefly that the President used the Defense Production Act. We have gone all over the world to bring in PPE. I think the job that they have done is absolutely amazing. They created multiple ventilator producers. They have had this land bridge of shipments coming in by the billions. I think it is a very unfair—it is a very unfair criticism, in my judgment.

Senator STABENOW. I appreciate that. There is a totally different picture on the ground. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

Ambassador, thank you for all you are doing to promote U.S. trade around the world. And I know that in testimony earlier today you said that the United States would not agree to a trade deal with the United Kingdom unless the UK lowered barriers and provided fair access for U.S. agricultural products, including U.S. meat imports.

I applaud that position. You and I have talked time and time again about how much our ag producers are hurting, and how we can and should be doing more to help them. One way we can do more is by making sure that our trade agreements require our allies and trading partners to rely on sound science. Do you agree that many food standards are actually disguised protectionism? And the follow-up question is, what is the best way to stop that practice?

Ambassador LIGHTHIZER. So, Senator, I completely agree with you. I made the statement this morning that the European Union has raised this practice of using standards really as protectionism to a high art. And I believe they have.

They now, in terms of some maximum residue levels they actually have, if there is any detection at all, the product is unacceptable. To me, that is just plain protectionism. And making every regulation science-based is the equivalent of getting rid of protectionism. It is the equivalent of getting rid of any other non-tariff trade barrier. And it is something—if anything, I would say Europe is going in the wrong direction and not in the right direction.

They are being controlled by protectionist interests, and—well, let me just leave it at that: protectionist interests. In my judgment, we have to insist on science-based standards for our farmers. And I would say this standard thing is not just ag issues. There are very good standards in industry too. It is not just in ag. It is a higher art in ag, but they use it in industry too. We have to look at that. And to the extent people deny us access, we should not give them trade. And if we do not have trade, then in my judgment we ought to be taking trade actions against them.

And I am looking right now at whether or not some of these actions—I want to consult with you and your staff—whether or not right now we should be looking at a 301 on some of these things. It is getting so far out of control, where they say literally if there is any detectable residue, the product is unacceptable. That has nothing to do with science.

Senator THUNE. Absolutely. Thank you. You have our full support on that. Keep fighting that good fight.

You had talked earlier about the digital services taxes that are being applied in Europe. And I am wondering if you expect the trend in unilateral digital services taxes to worsen due to additional revenue shortfalls resulting from the COVID-19 pandemic. Are we going to see more of this?

Ambassador LIGHTHIZER. I think we are going to see more of it for sure. Whether it is a result of the COVID, I think they were going to do it anyway. I think it is a natural inclination to tax somebody else's citizens if you can do it, because there is no political price for it.

And we have seen it. We just brought 12 more cases, and we are going to continue to bring them as people do it, and we are going

to take action if there is not some agreement internationally that says, here is how we are going to treat companies that make money in your market but do not have a physical presence.

Senator THUNE. And I appreciate all the things your office has done to launch section 301 investigations into those taxes earlier this month.

In your testimony, you suggest that the way to strengthen our existing trade policies to better protect Americans is to tighten de minimis thresholds for imports. And last year, during a USMCA hearing before this committee, we heard from a small business owner who said that the de minimis level helped her grow her business. Rather than hurt small businesses like hers, I would suggest another option you have to strengthen de minimis is to negotiate agreements that increase our negotiating partners' de minimis thresholds. And based on your testimony, it appears that you will have some upcoming opportunities to pursue this other option. And I will add, Congress will be very likely to support you in that effort.

So do you agree with me that there are multiple ways of addressing your concerns related to de minimis?

Ambassador LIGHTHIZER. So, for sure I agree with that. We tried to do it in USMCA. We are at \$800. These are approximate: Mexico is at \$20, and Canada is at \$40, and they doubled theirs. And to me, there may be small businesses—I think we need to study the issue, to be honest. If you look at where countries are, it is unbelievable the difference. We are like, other than Australia, we are much higher than everyone else; we are 20, 50 times more.

I would like to study the issue and have the committee—I think it is costing far more jobs than it is helping. And I think nobody anticipated that, as a result of this, we would have a million packages a day from China take advantage of this \$800—a million a day.

The numbers are staggering. It is 600—depending on how you count—700 million packages a year come into the United States taking advantage of this. We do not know what is in part of them. We do not have any way of checking. They basically avoid Customs. To me, it is a real, real problem.

And I think—if you ask me why every other country keeps it small, it is because their small retailers realize that these online people will put them out of business if they raise it.

So I have exactly the opposite view. I would really love to get involved in this with the committee and have the committee study what the facts on the ground are.

Senator THUNE. We welcome that opportunity. I see my time has expired, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you. Now we will have three people by TV in this order: Portman, Menendez, and Toomey. And as I said to Senator Stabenow by TV, evidently you folks do not have the timer in front of you. So expect at 5 minutes, or until you get done with your question at 5 minutes and the answer, I will rap the gavel and go on to the next person.

Senator Portman?

[No response.]

The CHAIRMAN. Senator Portman?

[No response.]

The CHAIRMAN. Okay. Then how about Senator Menendez?

[No response.]

The CHAIRMAN. Okay, then; what about Senator Toomey?

[No response.]

The CHAIRMAN. Well, we'll have Mr. Carper in person.

Ambassador LIGHTHIZER. Well, we have Senator Menendez.

The CHAIRMAN. Oh, Senator Menendez, go ahead, please.

Senator MENENDEZ. Thank you.

Ambassador, were you in a meeting between President Trump and Chinese President Xi in June of 2019 in Japan?

The CHAIRMAN. I think you have to start over again, Mr. Menendez. We did not get your voice at the beginning.

Senator MENENDEZ. Okay. Can you hear me now?

The CHAIRMAN. Start your 5 minutes over again.

Senator PORTMAN. Did you tell him that I was on, and that they did not—

The CHAIRMAN. Well then, Portman, you are ahead of Menendez. I am sorry for something not working right. You go ahead, Senator Portman. Then Menendez, and then Toomey.

Senator PORTMAN. Okay, can you hear me, Mr. Chairman?

The CHAIRMAN. Yes.

Senator PORTMAN. Okay. I am sorry; there was some reason you could not hear me. And I could not hear Bob part of the time either.

Anyway, one, I want to tell you the clock is in front of us, and we can all see it. So other members were just using that as an excuse to go long; I will try not to do that.

Two, thanks to Bob Lighthizer for being before us again. And there are so many issues I want to talk to him about, but let me just touch on a couple quickly.

One, I know how interested you are in bringing PPE, personal protective equipment, back to the United States and reshoring it. And I would just tell you—this may not be exactly within your bailiwick, but I hope you will engage on this, because we are not going to get things made here, including immediately we are trying to get gowns and textiles made here. Those cannot be made here without long-term contracts. And DLA, the Defense Logistics Agency, the folks at DoD who are in charge of this, are not providing these long-term contracts. So I hope you will weigh in on that. To me that is a bigger issue than any other specific trade-related matter as it relates to this reshoring of our capability to make PPE.

We have to have the market signals that come from longer-term, certain contracts. No comment needed. I just hope you will weigh in.

Kenya. It has not been talked about yet. I know that we have begun the process of looking at Kenya as a potential trading partner. If you could, give us a brief summary of where we are in Kenya.

In the UK, it sounds like we had a good first and second round. I want to be sure that is going to be a comprehensive agreement. And I know there is concern about us cutting some corners there. I want you to reassure us on that. I know how you feel about it.

And then finally, WTO. I have some questions about WTO, but I will ask you to weigh in on Kenya and the UK first.

Ambassador LIGHTHIZER. Thank you, Senator. And I will follow up on the other.

With respect to Kenya, we are going to launch that on, I think it is the 5th or 6th of July. That will be the beginning of that. We have had preliminary discussions, and we expect that to be as ambitious an FTA as you would have under the circumstances with a country with their level of institutional development. So we are excited about that, and I know the Kenyans are excited about it. And I know that President Kenyatta's hope is that we can get this done in enough time so it comes in under his term. So that is where we are on that.

On the UK, yes, as far as I am concerned, it is a comprehensive agreement. I do not know if there is a specific provision that you think we would not cover, but I would expect it to be a comprehensive agreement. And it is going to cover industry, but of course agriculture. When I say "comprehensive," that is not to say I am suggesting going to zero on every tariff. But I expect we should cover every sector.

Senator PORTMAN. Okay. With regard to WTO, as you know, we share an interest in reform of the WTO. I would love to have a discussion about what that means for this administration.

One of my big concerns, which I know you share, is how the Appellate Body has treated us and, frankly, how the Appellate Body has broken down. I also like the fact that you are doing trilateral work with the EU and with Japan on subsidies, particularly state-owned enterprises. It seems to me that is an opportunity for us to bring other parties together, with the exception perhaps of China, to come up with some new rules.

And then finally, what is the future of bound rates? We have relatively low rates that are bound. Other countries have relatively higher rates. That has been good for us in many respects, but it does make it hard for us to negotiate agreements sometimes because we do not have as much play in terms of our tariffs as other countries do.

Could you address those WTO issues briefly and tell us where we are in terms of WTO reform, and what Congress could do? I am looking at some legislation about what Congress could do to be helpful in making the WTO work more effectively for the United States and for the world.

Ambassador LIGHTHIZER. So thank you, Senator. To me, I would say that the WTO is in desperate need of reform. If you asked what are my criticisms, number one is what you just said. And that is to say, we negotiate tariffs and then they are bound. Let me give you an idea.

So, if you take our average tariff on non-agricultural products, that is like 3.2 percent. India's is 34 percent. Indonesia's is 35. Malaysia's is 15. Vietnam's is 11. Europe is slightly above ours. South Korea is at 10. And I could go through this and this and this. Their applied tariffs are higher, but more importantly their bound tariffs are much, much higher. And because we have essentially no tariffs left, there is no way for us to change that.

So we are kind of locked in perpetuity into an unfair, unbalanced situation. I think that something has to be done to change that so



we do a reset on tariffs and everybody comes down to the same tariffs.

Senator PORTMAN. I like the idea of everybody coming down. I do not like the idea of everybody going up.

Ambassador LIGHTHIZER. Well, maybe we will have to meet in the middle; I do not know. But we cannot be locked into this position. And in the past, the negotiations have basically been—the currency has been that the U.S. has paid everyone to lower theirs a little bit, and we have lowered ours a lot.

And just very briefly on the Appellate Body: the biggest single problem there is that you have a group of unelected, unaccountable people who make jurisprudence, which jurisprudence then binds the United States, effects our jobs and businesses, our farmers and our ranchers, and there is nothing that we can do about it.

It is a screwball system where you have these people doing what they were never intended to do—and that is to say, write rules. And that is a large part of the reason why we have had no negotiations in the last 25 years, no real negotiations in the last 20 to 25 years. I could go on, but I will not.

Senator PORTMAN. Thank you, Mr. Chairman. And let us talk about WTO reform going forward, Ambassador Lighthizer, and with Congress. That would be helpful.

The CHAIRMAN. Your time is up. Okay, Senator Menendez.

Senator MENENDEZ. Ambassador, were you in the meeting between President Trump and Chinese President Xi in June of 2019 in Japan?

Ambassador LIGHTHIZER. I do not remember—

Senator MENENDEZ. I cannot hear you.

Ambassador LIGHTHIZER. I am sorry, Senator; you could not hear me because I did not have my microphone on. There was a meeting on the outskirts of the G20 in Osaka between the President and President Xi, and I was in that meeting. I do not know whether that is the one you are referring to, but that is the situation.

Senator MENENDEZ. Well, the reason I ask is, about an hour ago *The Washington Post* published a story that says former National Security Advisor Bolton said that at one point in that meeting President Trump, quote, “turned the conversation into the coming U.S. presidential election, alluding to China’s economic capability to effect the ongoing campaigns, pleading with Xi to ensure he would win.” That is the end of the quote.

Ambassador LIGHTHIZER. Absolutely untrue. Never happened. I was there. I have no recollection of that ever happening. I do not believe it is true. I do not believe it ever happened.

Senator MENENDEZ. Okay, so now you fully recollect that you were there?

Ambassador LIGHTHIZER. No, I was at the meeting. Would I recollect something as crazy as that? Of course I would recollect it. I was at the meeting—

Senator MENENDEZ. You were not sure at the beginning that you were at the meeting. Now that I know you were at the meeting, you in essence dispute Mr. Bolton’s account of what took place, right?

Ambassador LIGHTHIZER. I told—yes, that is correct. I mean, I—I do not want you to create the impression that I am being decep-

tive. I said what meeting I was at, and this never happened in it, for sure. Completely crazy.

Senator MENENDEZ. Okay, I assume it is the same meeting. And if it is not, we will find out. Because if it is true, it shows how clear it is that the administration does not really have any intention of actually solving our trade problems with China.

The tariffs remain in place because China still has not dismantled all the capacity. It has not stopped stealing American intellectual property. It has not stopped subsidizing its own state industries. And so this would be a really outrageous use of presidential power, instead of trying to solve our trade problems.

Let me turn to something else. Shortly after Congress approved the USMCA, Mexico's television regulator issued a new interpretation that severely limits the amount of advertising U.S. media firms can show on their paid TV channels in the country. The U.S. industry argues that this action discriminates against U.S. TV providers in violation of USMCA and will undercut U.S. jobs that support their programming in Mexico.

Ambassador, would Mexico be in compliance with its USMCA obligations if this regulation is not modified by July the 1st?

Ambassador LIGHTHIZER. So I would say, I am aware of this issue. I want to study it. But if you want an answer right now, I would say "no," it would not be in compliance. That is my opinion right now. And I want to study it, but I completely agree with you, Senator.

Senator MENENDEZ. And I agree with you on that. Because the USTR viewed this as a violation of NAFTA 6 years ago and successfully resolved it until this latest change, so we are going to start off on July 1st with Mexico being out of compliance from the very start. That seems like a horrible way to kick off a new agreement.

I hope that—can you commit to us that you will review this and make sure that Mexico is in full compliance with its obligations, assuming that it is the same view USTR had 6 years ago?

Ambassador LIGHTHIZER. Absolutely. And if they are not, we will bring a case against them, Senator. Yes, I will commit to that.

Senator MENENDEZ. Thank you for that answer. I appreciate that.

On Sunday we heard troubling reports that two USTR employees who had been intimately involved in negotiating USMCA had approached companies, offering to serve as paid advisors. Apparently these employees were looking to cash in on helping companies navigate USMCA's complex rules, rules that these employees helped draft. And they even tried to steer companies to a website that they had set up for their future lobbying firm.

Do you know if USTR's ethics office told these employees that they could approach companies for future lobbying work while still on the government payroll?

Ambassador LIGHTHIZER. So—so I read that story, also, Senator. So I would say the situation is this. One, they are career employees. Two, they went through the ethics office at USTR. And three, I am told that career employees, as opposed to political employees, can do things like this.

So I am as troubled by it as you are.

Senator MENENDEZ. Okay. I appreciate that, because I think we should have a very clear understanding of what is and is not acceptable. And I do not care whether you are career or political, it seems to me that if you negotiate elements of an agreement, in this case in the automotive industry, and then while you are still on the government payroll you set up a website and you pursue your own interest, that is the ultimate essence of the revolving door. That is not what makes people have faith and confidence in their government.

I hope you will look at the internal questions and whether that can happen or not, and I would like to follow up with you.

Ambassador LIGHTHIZER. I want to follow up. I completely agree with you—completely.

Senator MENENDEZ. Thank you.

The CHAIRMAN. Okay; before I go to Senator Toomey, Senator Wyden has a request he wants to make.

Senator WYDEN. It is a unanimous consent request. And when I was done, Mr. Ambassador, I saw the same *Washington Post* story that Senator Menendez referred to, and I heard your response. These are obviously very disturbing allegations.

My unanimous consent request is, given the fact that *The Post* is suggesting in effect that Donald Trump offered trade concessions to China for trade benefits for electorally important States, I would just like to—I will be sending you a list of written questions, and I would like a response to the written questions within a week. That is my announcement.

The CHAIRMAN. Is there any objection?

[No response.]

The CHAIRMAN. So ordered.

[The questions appear in the appendix.]

Senator WYDEN. Is that acceptable to you, Mr. Ambassador?

Ambassador LIGHTHIZER. I do not know—I will see the questions. About the week—I will be happy to answer questions. The timing, I will look and see what your questions are.

Senator WYDEN. They are going to refer to this that broke in the paper. There are allegations—and I want to emphasize that—but I would like a response within a week, and we will talk about it further.

Thank you, Mr. Chairman.

The CHAIRMAN. Now we go to Senator Toomey, by TV.

Senator TOOMEY. Thank you, Mr. Chairman. Ambassador Light-hizer, good to see you again. Welcome.

I am going to start with something on which I think you and I agree, and that is that prior to the arrival of the COVID virus, for several years our economy was remarkably strong, really across the board, setting very strong performance records for the last several years.

Where we may not agree, based on the testimony, your testimony I read, I would argue the strength of our economy was not because of tariffs. In fact, the strength of our economy was because, for the most part, we have had the freest trading environment in 100 years. And under that global free trade, certainly much more so than in recent decades, that has enabled us to prosper. In fact, it was the steel and aluminum tariffs and the trade war with China

which began the deceleration of what had been extremely strong growth.

And I have to point out the unintended consequences of these tariffs. You know, in my State of Pennsylvania, we have fewer manufacturing jobs today than we did 3 years ago. We have lost manufacturing jobs. And we have lost a number of them in steel and aluminum industries because far more people are in the business of using steel and aluminum to produce things than the people who actually make steel and aluminum.

And so when tariffs raise the cost of the steel and aluminum, those are higher cost inputs for those manufacturers who then are less able to compete with foreign companies that are not subject to those taxes. So imposing those taxes on American consumers and manufacturers generally makes us less competitive, not more competitive.

I have a point I would like to make on PPE. And that is, I read your comment from earlier today in which you seemed to suggest that you might support higher tariffs rather than lower tariffs on PPE in this notion that that might encourage domestic manufacturing.

I would just urge you to consider, as I think Senator Cantwell did, that right now we are in a desperate crisis still for PPE. We have shortages in Pennsylvania, and probably other places, and it is not helpful to our hospitals, nursing homes, and other health-care providers to have to pay more for this than is necessary.

And what we really need in the long run is diversified sources. We should not be dependent on any one source for PPE, not any one country, not any one manufacturing facility. But if we have lots of sources, including many that can gear up in a hurry, then that is probably the optimal arrangement.

The direct question I have for you is, I would like to get a little bit better understanding of your plans and your goals with the U.S.-UK free trade agreement, which as you know I am enthusiastic about. I would like to better understand what your goal is, what you would like to see, what would be the ideal arrangement. I think I heard you say to Senator Portman that we are not likely to get to zero tariffs on everything, and I wonder, is that just a practical reality given the inevitable reluctance on the part of the UK to give up tariffs on certain things? Or do you go in with a goal of not having zero tariffs on certain things? And if so, which are those things?

I would just like to get a better understanding of how you are approaching this agreement and what you would like to get out of it.

Ambassador LIGHTHIZER. Thank you, Senator.

So first of all, the issue on which we agree. We clearly, demonstrably had the best economy in decades before this pandemic. I think revisionists' views that that was not the case are not supported by any fact of which I am aware.

Secondly, I think that a contributor to that was the President's trade policy. I realize you do not agree with that.

I would point out that before the pandemic, we had brought back more than 600,000 manufacturing jobs—"we" being the President and the President's policy had brought back more than 600,000

manufacturing jobs. And I think you are going to see more coming back very, very quickly once we get past this pandemic.

On the issue of 232, I take your point. I appreciate it. I would say that with the situation we have now, it scares me to think what condition our steel and aluminum industry would be in without those 232 tariffs. It is scary to think about.

When I talked about tariffs on PPE in my testimony this morning, to clarify, what I meant was down the road as an incentive to get there. I am not talking about doing it now, just so that is clear. And I know you understand that.

This idea of diverse sources for PPE, I would just point out that something like 50 or 60 countries took action to stop exports, in spite of their obligations, of PPE because, when they are in a situation where their citizens are going to suffer if they ship something out, they just do not ship it out. And it is a universal trend. So I really think we have to make it in America. But I realize you have a different view on that.

So in terms of the goal on the U.S.-UK, from our point of view we want an agreement that goes across all sectors that is as high a standard as one could have. Do I think we will go to zero tariffs? No, I do not. And will I support zero tariffs in all areas? No, I will not, either. And for example, I think we are going to find agricultural areas—and there are sensitive areas in both our economies—where the secret is to have as much be open and free as we can, given the political circumstances in each country. And I think that a lot of the fight is going to be over SPS issues and things like that, the kinds of stuff where you and I completely agree.

Senator TOOMEY. I see my time has expired. Thanks, Mr. Chairman.

The CHAIRMAN. I apologize to my colleagues. I did not realize his time had expired.

Senator Carper?

Senator CARPER. That is quite all right.

Mr. Ambassador, welcome. It is always good to see you and to work with you and members of your staff.

I just want to start off by thanking you and members of your team. We met recently with a nominee by the President to be one of your two deputies at the Trade Rep's office, and I had a good conversation and was encouraged by that.

But I want to start off by thanking your team for your hard work on the U.S.-UK trade negotiations. As you know, opening up the UK market for U.S. poultry is a priority for a number of us, not just on this panel but in the House and in the Senate, and we think it is important to seize the opportunity to open the UK market to our poultry farmers throughout the country. So thank you for that.

I will probably go to my grave on an issue we do not see eye to eye on, and I will probably go to my grave thinking that we made a big mistake in pulling out of the Trans-Pacific Partnership. The idea of having the U.S. as one of 12 nations together encompassing about 40 percent of the world's trade, and holding China outside of it because of their bad behavior on any number of fronts regarding trade and even encroachments in the South China Sea, demilitarizing the South China Sea—for us to walk away from that, I will

go to my grave wondering why we did that. That is a story for another day.

Having said that, I would like to ask a question relating to cost/benefit analysis with respect to China. Studies by multiple Federal Reserve economists and notable academics have found that American businesses and consumers bear the brunt of the Trump administration's trade war with China. Our farmers, our manufacturers in particular, have been hit hard throughout the country. These tariffs were supposed to force China to make structural changes, as you will recall, to its planned economy. The issues outlined in the USTR's section 301 report included China's government subsidies, state-owned enterprises, technology transfers, among many others.

But as it turns out, the best I can tell, none of these truly tough issues was addressed in the Phase One trade deal. I know there is a technology transfer section, but the half-page of text includes no specifics. And according to people who have read it more closely than I have, it is pretty toothless.

Again, I appreciate how hard you and your team worked, but I ask myself, is the Phase One trade deal worth all of this pain that our farmers and manufacturers have gone through, and in many cases are still going through today? That would be my first question, and I will have a follow-up.

Ambassador LIGHTHIZER. Thank you, Senator. And thank you for meeting with my people. And they also enjoyed the meeting. And, you know—

Senator CARPER. I told your nominee at the end of just a wonderful meeting how much I had enjoyed it. I said, "I will never vote for you"—no, I did not say that. [Laughter.]

Ambassador LIGHTHIZER. Well, I will not go into the details, but he enjoyed the meeting. He thought you were very thoughtful, and it gave him a lot of things to think about. So I—but he did single that out, and I told him that—

Senator CARPER. Did you tell him I must have been having a good day? [Laughter.]

Ambassador LIGHTHIZER. No; I told him you were a wonderful person. And I told him that you had probably forgotten this, that you flew in Vietnam with a college buddy of mine, Bobby Francis.

Senator CARPER. Oh, yes.

Ambassador LIGHTHIZER. I told him that.

Senator CARPER. He and I were just communicating a week ago.

Ambassador LIGHTHIZER. Yes, you guys were up there doing the Lord's work and serving the country so bravely during that time.

So just on a couple of things: one, one of the things on the UK on poultry is going to be this rinse on poultry, this so-called "chlorinated chicken," with these people. It is going to be a huge problem, and I have made it clear that this is not going to be an agreement—I am not bringing back an agreement to the U.S. Congress that excludes our agricultural products on a non-scientific basis.

Senator CARPER. Thank you, very much.

Ambassador LIGHTHIZER. So, on the TPP, I realize you will go to the grave thinking that—I hope it is not soon—and I would just point out that the nub of your argument is, we were going to have 12 countries that were going to keep China out, and we were going

to have this group. China now says they are probably going to join it.

So just remember, when you and I spoke about this 2½ years ago in your office, I said, “What happens if China joins it?” And the whole thing does not have any meaning if they do. And they are talking about maybe doing it.

Senator CARPER. I am not so sure we would sit by idly and say, “Well, you guys are welcome in even though you are doing all this bad behavior.” Well, let us just move on, okay, please?

Ambassador LIDTHIZER. So——

Senator CARPER. I want to go to——

Ambassador LIDTHIZER. Now that we are on China, I would say first of all, I do not know what studies you are referring to. There are these studies that say anything you do on tariffs is bad, and they give no benefit in their cost/benefit analysis to changed bad behavior. So if you are an economist and you start with the proposition that Chinese theft of technology, and of IP, and keeping our financial services out, and currency manipulation and the like are not bad things, then you are going to conclude that doing anything to stop them is a waste.

That is how I think they approach it. The reality is, if you change bad behavior, that has real economic benefit for the United States. That is the nature behind this agreement. It is the nature behind most of our trade agreements.

And this thing that is toothless, I have all these people—and I would not put you in this category—but I have all these people whom I talk to about it, and I say, “Have you read it? Have you looked at it? Have you at least paged through it?”

So on the issue of technology, Senator, it flat says that you are not allowed to use technology transfer to require any person to get a license, to have a joint venture, to have an acquisition, and it goes through it in the clearest possible language.

And I will take a step back and say what I said before. All these critics, nobody did anything in the face of this horrible situation for 25 years—Democrat, Republican, Democrat. And President Trump comes along and people say, “Well, that is not perfect.” And my reaction is, “Lord, nobody did anything in the face of this.”

But I really, really do, Senator, commend you to read this document. This document is real. And I can take you through—not now, because I have already taken up too much time—but I would like to walk you through some of the things that they have done in the structural thing. You know, forgetting this issue of purchasing, just in the structural thing I think you would be impressed, particularly about things you care about like financial services.

They have done a lot of stuff. They have gotten rid of equity caps, and they have just done a whole lot of licensing like American Express. And so I would like to kind of walk you through—not here—but just kind of take you through so you can see that the critics who say that this is not a real agreement are just not being fair.

The CHAIRMAN. Senator Scott, by TV.

Senator SCOTT. Thank you, sir. Good afternoon to everyone. Thank you for giving us an opportunity to continue the discussion that we have been having with the Ambassador.

Ambassador, thank you for joining us this afternoon. I know that there are a lot of critical issues that you face and lots of problems that you are trying to solve. I am going to add a couple more to your plate.

South Carolina is home to many farmers who make the Southeast an agricultural hub, like our famous South Carolina peaches. Unfortunately, the increasing imports from Mexico are imposing serious economic harm on producers in my State and, frankly, around the country. I am hearing from constituents who lost millions of dollars last year alone.

In January, you sent Congress a letter on steps you would take to confront trade-distorting practices that are unfairly distorting agricultural prices here in the U.S. Do you have an update on those commitments that you were talking about—number one. Number two, are you still on track to release a remedy plan by August, which is within the 60-day window of the USMCA's entry into force?

Ambassador LIGHTHIZER. So, thank you, Senator, for the question and for all that you do for all of us. I appreciate that, and I have enjoyed working with you. I have watched what you were doing recently, and I want to just show gratitude for that.

The issue of seasonal fruits and vegetables is something that is a very serious issue. What we have committed to do is, one, have live field hearings in two States. It is going to be in Georgia, and it is going to be in Florida, and we were going back and forth on live or virtual—we are going to have it live, if members decide it is safe. And we are in the process of doing that. But it would have happened by now. We had noticed them, as you probably know, and then this close-down came. But I still think we are better off having real, live, safely done hearings. So we are doing that.

And do I expect to have our plan out in 60 days? Yes, I do expect to have our plan out in 60 days. And I really would like to work with you and your staff on putting that together, because it is a very, very serious problem, and it is in at least four or five States where it is having a huge impact, and it is billions of dollars of sales.

Senator SCOTT. Well, thank you. I will say, Ambassador, sometimes you and I have not agreed on all the issues. You have always been a person of your word, and I truly appreciate you meeting that deadline and frankly, continuing the dialogue and helping me better represent the State of South Carolina.

As you know, the farmers in South Carolina and, frankly, around the country, are having a harder time because of the pandemic. And so this situation is always encouraging when we hear steps in the right direction.

The second issue really has to do with the automotive industry. Do you support my legislation to provide an MPF fixed to the USMCA?

Ambassador LIGHTHIZER. I do not know what it is.

Senator SCOTT. It is aligning the merchandise processing fee refund with all of our FTAs.

Ambassador LIGHTHIZER. So, some of these issues I hook in a different way. The answer is, "yes," we support your legislation.



Senator SCOTT. Okay, great. Finally, transparency is important, especially with how dramatically we have changed the auto rules. Will USTR create a formal mechanism for the automotive industry to consult with USTR as the implementation of the USMCA proceeds?

Ambassador LIDTHIZER. Interesting. I had not thought of that idea. And if you and the members of the committee think it is a good idea, we will do it, yes.

Senator SCOTT. We certainly would love that. Thank God for really smart staff members who have been working on your team and my team. So it helps to have a great team.

Ambassador LIDTHIZER. I agree with that. I know I would be nowhere without mine.

Senator SCOTT. Me and you both. Thank God for Lila. Thank you, sir.

Ambassador LIDTHIZER. Thank you, Senator.

Senator SCOTT. Yes, sir.

The CHAIRMAN. Senator Cardin?

Senator CARDIN. It is Ben Cardin. Can I be heard? I hope I can be heard. I cannot hear back.

Anyway, Ambassador Lighthizer, thank you very much for your service. I appreciate all the help you have given my staff. I just first want to underscore Senator Carper's point in regards to poultry in the UK agreement. There is a great deal of interest to make sure that we make advancements in that regard. So I assure you, you will be hearing from a group of Senators in regards to that issue.

I want to get a little bit more on Kenya. Kenya presents unique challenges for a trade agreement with the United States. You are committed to deal with good governance. You did that in the USMCA. If you use the model of the USMCA, it is going to be a real challenge to see how Kenya complies with those types of commitments on governance.

Can you just share with me how you are going to go about the discussion on good governance and how we can help you in order to make sure that we have the strongest possible provisions as it relates to those issues?

Ambassador LIDTHIZER. So, thank you, Senator. And I appreciate your comments on poultry, and I know how strongly you feel on that issue, and I assure you that it will be a cutting-edge issue, and I agree with you completely.

So, on the issue of governance, one of our objectives with Kenya is to start a process where countries in Africa begin to put in place something closer to what we consider to be the infrastructure, the legal and regulatory infrastructure, to facilitate international trade and what we consider to be kind of best practices in the governance and the corruption area.

I think, as you are suggesting, this is going to be a very difficult issue with respect to Kenya. The first thing you need, though, which we have here, is commitment at the highest level. And we do have that. And that is one of the reasons why we selected Kenya from among the countries that were interested in doing this.

You have to have commitment at the highest level. We believe that we do have that. I think it is going to require some modifica-

tion, some realism, and some phase-in. And all of those things I would like to work with you on, because I know this is one of the areas—I do not think I have ever had a hearing with you, or very many conversations outside the hearing, where you did not raise these all-important issues. And they really are important.

And one of the reasons that we want to enter into this agreement and then have it be a model for other agreements in sub-Saharan Africa, is so that we can put in place the kind of structure that we need for good governance or best practices governance.

So I want to work with you on that. I understand it is a—I agree with you about the importance, and it is something you have focused on, literally your entire career in government. It is very much at the focus of what we are trying to do there.

Senator CARDIN. I can assure you that I enjoy working with your staff on this issue. I think the more transparency you do with Congress as it relates to these provisions, the stronger support you can get on the understanding that you are trying to drive this agreement as a model for other agreements of similarly situated countries. So we look forward to that discussion.

I want to just raise a second issue with the USMCA. There is a chapter dealing with small business. I am the ranking Democrat on the Small Business Committee. COVID-19 has led to havoc with all businesses, but small businesses particularly have been very harshly hit.

I know that you have had a working group. I know that you have had dialogue. Are we on schedule to have a meaningful implementation of the small business provisions of the USMCA?

Ambassador LIGHTHIZER. The answer is “yes,” we expect that we will. We have had good cooperation with both Mexico and Canada on that. And I think we are going to have issues, but I do not think we are going to have issues in that way, in that area.

Now I may be proven wrong. And if I am proven wrong, we are going to take the necessary steps to make sure that the agreement is lived up to. But right now we feel very good about that. And this area is something that both Prime Minister Trudeau and President López Obrador also feel very strongly about. So you have the President of the United States, the President of Mexico, and the Prime Minister of Canada all very much in agreement on the importance of small business. So I expect this to go smoothly.

If it does not, then we will take steps to enforce. And I certainly look forward to working with you on that, in the unlikely event that that happens.

Senator CARDIN. You just have to keep our committee, the Small Business Committee, informed as to how that chapter is unfolding, because there is great interest among members of our committee.

Thank you, Mr. Chairman.

Ambassador LIGHTHIZER. Thank you, Senator.

The CHAIRMAN. You bet. Thank you, Senator Cardin.

Senator Young was going to be here in person. Is he on TV, or should I—okay, then the next one is, by TV, Senator Bennet.

Senator BENNET. Thank you, Mr. Chairman. Can you hear me?

The CHAIRMAN. Yes, I can hear you.

Senator BENNET. Thank you so much for conducting this hearing, and for having all of us under these circumstances. Mr. Amba-

sador, it is good to see you again, even if it is virtual. And I hope you and your family are doing well.

I want to ask you about agriculture, which I almost always do, after the conversation we had some months ago about the cross hairs farmers and ranchers were put in because of retaliatory tariffs. And once again, to me it just feels like they are trapped, our farmers and ranchers are trapped between a rock and a hard place with China. According to, at least the Farm Bureau and I think USDA, Chinese agricultural purchases are off-base to commitments made in the Phase One deal by as much as 60 percent.

I know you dispute those numbers, but that is what we are hearing from our farmers and ranchers. That is what we are hearing from the Farm Bureau and USDA. I would be interested to hear your thoughts about why you dispute that, because of their sense that China is not living up to the deal. This week, a coalition of farm and ag groups asked the administration to stick with the China deal and make sure China holds up its end of the bargain.

So I am really interested in how you expect to hold China accountable without further sacrificing our agricultural market if China fails to fulfill their agricultural obligations. And if they do, how will we know? And will you be transparent about it with the American people? And how are you going to enforce the terms of this agreement in a way that does not boomerang on our farmers? And how quickly do you think our farmers and ranchers could expect the remedy if you decide that China is not complying with the terms of the deal?

Ambassador LIGHTHIZER. Thank you. Thank you, Senator. I appreciate the question. I would say, first of all, that the numbers in this—I went through this before; I will go through it very quickly. I went through it with Senator Cantwell, so I will go through it quickly. The numbers are difficult to calculate. The reason is, you have export shipments, but export shipments will not pick up things that have been purchased by now for at least—it depends on the product—but you can assume a minimum of 6 weeks, and sometimes much longer than that.

So what we have tried to do is put together numbers that are the following. One, export numbers, which we have pretty good numbers on. And then we take the sales reports, and we add to that, making sure we do not double-count; we add to that sales up till now. And then you are only like a week or so behind, as opposed to if you take exit numbers, where you are 6, 8, 10 weeks behind and you really do not have any idea what goes on. So that is the first point I would make.

The second point is, let us remember the agreement was signed on the 15th of January and went into effect on the 14th of February. And it was about March 1st when they started granting the exclusions and giving the licenses and the kinds of things we need.

So I would say those things. The next thing is, the 200 farm groups and farm organizations that sent a letter to the President really were all saying, “This is really a great agreement. Let us stick with it.” So I took that as a very positive letter. I think it was meant to be a positive letter. And I thought it was very complimentary of the President and the deal. And so I get criticism of the deal—

Senator BENNET. Well, I think they said—and I quoted the letter saying that they wanted you to stick with the deal. My question is different from that. Let me ask it this way.

When will you know—adding up the weeks that you are adding up—when will you know whether or not China is upholding their end of this bargain? How will you make that transparent to the American people? And what remedies are available to you if they do not—if, for example, the trends that the Farm Bureau is reporting continue to be the trends, rather than your more optimistic view?

Ambassador LIDTHIZER. Right. So I would say it is enforceable. At some point in a few months we will know. It is a commitment to buy a certain amount by the end of the year. So at some point it is reasonable to say, “It does not look like you are going to meet your deadlines.”

Right now my feeling is, given the limited amount of time that has passed and the circumstances they have, I would say if you use our methodology—and I am not sure exactly which products you are most concerned about, presumably you care about—well, I should not speculate on it. If you look at oilseeds, soybeans, there have been substantial purchases up to and including \$500 million last week.

So those purchases are probably well north of \$3 billion already. And you know that soybean season is really later on. So if you look at 2017—which was the biggest year we ever had with China—you had \$10 billion at the end of the year.

Another way to look at it is this way: in the last couple of months, increases of agricultural sales to China have gone up 34 percent, and the rest of the world has gone down 13 percent. So I think we are seeing a real effort. You know, how much has been shipped by now sort of depends on what you are looking at. If you look at corn accumulated and compare it to—I do not know if you can see this, Senator—but if you compare it to 2017, here is where we are now. Here is 2017, the best year we ever had.

If you look at sorghum, here is another example. Wheat, we are ahead. Sorghum, we are way the devil ahead. Pork, we are just astronomically ahead of where we were. Of course you know there is a lot of reason for that. Beef, which I know you do care about, I mean, it is just literally—there was no beef in the best year ever, and now we are up. It is like our second best beef market right now. Cotton is the same thing. Those are the big products that are ahead.

And the other thing I would ask you really to think about is, there also have been 25 or 30 SPS changes. And to the extent you want to go through these—I will not do it now, but I am happy to do it—there are changes where they have actually given licenses for products and allowed in certain agricultural products for the United States that they have never allowed in before, which were part of the agreement, and they have now formally done so.

So I mean, I am not saying we are out of the water or anything like that. I am saying we have to keep on it. We have to keep looking at it. But it is certainly—if you had to bet right now, you would say they are going to do it.

The CHAIRMAN. Senator Casey by TV.

Senator CASEY. Mr. Chairman, thank you very much for the hearing. Mr. Ambassador, it is good to be with you from a distance. We hope next time it is in a hearing room. Thank you for your work. And especially thank you for the work you have done on the USMCA and working as hard as you did to bring together the parties on that agreement.

If you would indulge me a couple of minutes, I wanted to raise two issues with you that will take the form of bills, two of my bills, and then ask for your assessment of each, or at least your sense of where each policy is. One is on rules of origin. The other is on women's rights to trade. I will start with rules of origin.

As we know, China often rides free on trade agreements, and as much as 70 percent of content can originate from China in goods that enter the U.S. under negotiated tariff rates for trade agreements. This issue was not resolved in USMCA. My bill, the Market Economy Sourcing Act, will establish a secondary rule of origin to prevent free-riding by China or other nonmarket economies.

So I hope you would take a look at this in the context of considering it as an objective in the negotiations with the United Kingdom. And we should try our best, I think, to ensure that benefits are conferred on countries that respect market principles. So that is one issue. And I will ask you in a moment to comment on that.

Then the second bill is on women's rights. Senator Cortez Masto and I have legislation to update GSP to incorporate measures on women's rights, nondiscrimination in the workplace as well, and both of us believe, as I think virtually everyone I know believes, that these are common-sense measures in trade. They should be a part of GSP. Any economy in the world, in my judgment, cannot develop fully or grow in the manner that it should if it does not recognize these rights and has denied equal rights and protections to literally half of that country's population. Nor should we allow discrimination against workers or fail to act to prevent violence and harassment in the workplace.

I hope to be able to discuss both of these bills with you. But what is your sense of what progress we could make both on rules of origin and women's rights?

Ambassador LIDTHIZER. Thank you, Senator. The rules of origin, you know—referring to both of them, I want to study the details of your bills. But certainly I agree with the intent on both of them.

And the rules of origin on USMCA, we increased regional content, as you know. We increased regional content for parts in automobiles. We took a lot of steps in that direction. And a good part of the reason was—the whole reason was to stop free-riders, but a good part of the reason was the specific free-riders.

And to go to Senator Carper's point, one of the reasons that I, for one, thought TPP was such a bad deal was because under those rules of origin, a car could be manufactured 60 percent in China and 40 percent in Vietnam and still qualify. That is how bad the rules of origin were in that.

So I agree completely with you about using rules of origin to make sure we get the appropriate outcomes. And the specifics of it, I would like to, of course, discuss. And in terms of including those concepts in the UK agreement, that is something we are interested

in. Certainly, at least in the auto industry, the situation is very different than it was in North America, where it was kind of an integrated industry.

But that is something I would be—I am not technically familiar with your women’s rights issue and nondiscrimination. Certainly as a matter of principle, I agree with it. The President agrees with it. That is why he put Ivanka Trump in charge of really pursuing this issue, and this is something that she feels very strongly about.

I want to look at it. It is timely. Obviously, the GSP expires at the end of the year and we have to decide now, or very soon, what we want to do on it. And I have a variety of—I have some problems that I have with it right now, to be honest with you. And this could very well be part of a solution.

Senator CASEY. Mr. Ambassador, thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Yes. Now we go to Senator Warner by TV.

Senator WARNER. Thank you, Mr. Chairman. Ambassador Lighthizer, it is great to see you again. Am I looking as foggy there to you guys as I look on my screen? I see Maggie saying “yes,” so my apologies for looking—I am not quite this hazy, although when I raise my question, Ambassador Lighthizer, it may be intervention of the social media companies, because I actually want to talk about a subject we have talked about before, and that is section 230 reform.

As we think about advancing the U.S.-UK free trade agreement, I have had a number of conversations with members of Parliament in both the Labor and Conservative parties in the UK who have expressed serious concerns about the potential inclusion of the 230 safe harbor in any type of U.S.-UK provision.

I think, as you may be well-aware, there is a great deal of bipartisan interest in trying to change around a bit of section 230, from both Democrats and Republicans in the House and the Senate. And let me be clear: I do not favor repeal of section 230, which I understand President Trump recently advocated. And this is both for you, and obviously for Senator Wyden, who has been a great advocate for section 230: I think section 230, at least in theory, is great for startups. It is great in early stages of the development of these platforms. But I have been very concerned that, especially for some of the larger platforms, this provision and this safe harbor have been abused on a fairly regular basis.

I have been joined in these efforts by a series of consumer protection groups, by a series of civil rights groups, that point out that section 230 has undermined a series of efforts to try to hold these platform companies accountable. Because too often groups come on, whether it is facilitating wage discrimination, whether it is facilitating consumer product abuse, whether it is taking on the challenge of actually targeted harassment, online fraud—a host of issues where I think there is meaningful 230 reform that could be done.

So given this bipartisan, bicameral—even our colleagues in the UK from both political parties—and obviously the President’s stated objection to section 230, can you describe USTR’s status of negotiations on this issue with our UK friends?

Ambassador LIGHTHIZER. Yes; thank you, Senator.

First of all, I want to say how disheartening it is to see the actual technology guy in the Senate have a foggy picture. [Laughter.]

Senator WARNER. You know, it may be one of the platform companies knowing I was going to raise 230, either that or Ron Wyden is actually zapping my feed. [Laughter.]

Ambassador LIDTHIZER. So in any event, once I have gotten over that disappointment, I would say, first of all, we ought to take a step back and say, "What do we do in trade agreements?" I know you know this, but I will say it for the other members.

I am not going to write 230, or a change in 230 into a trade agreement and then into U.S. law. What we do is, we take what we think of our U.S. standards that have been arrived at by the U.S. Congress, signed into law by the President at some point which we believe to be best practices—and we try to get other countries to put those into place. And then you say, "Well then, what do you do, Lighthizer, in a situation where there is an unsettled area?" It had been settled. I do not know whether it is settled or not, but your point is a really good one, that there are certainly people who have a different view.

What we try to do is write a trade agreement so that there is policy space in the trade agreement for the U.S. Congress to take action that they think is appropriate. And that is my job. My job is not to resolve this issue. That is between all of you who have been elected to office. I am trying to have our standards adopted and leave you space to do what you think needs to be done. And I think there is a sweet spot there. I think we can work that out. I am not that worried about it.

In terms of where we are right now on the agreement, we have not tabled language on that area yet.

Senator WARNER. Well, Ambassador, I have only a minute or so left, but I would simply say I think there is a way that leaves Congress, leaves President Trump flexibility to put forward his position, does not totally embed a safe harbor that I think would embed the status quo, not give us the freedom and flexibility we need. And I would just appreciate—I know my staff has been working with yours on these consumer and civil rights protections, some of these provisions on online fraud, and some of the harassment issues that I think we all acknowledge are real and present, and I would just appreciate your staff continuing to work with us.

I think we have had language go back and forth even after Memorial Day, so I appreciate that. And I look forward to working with you and hope the next time I see you it will be a little bit clearer, or potentially even in person.

Ambassador LIDTHIZER. Great. Thank you, Senator. I look forward to that.

The CHAIRMAN. Senator Hassan by TV.

Senator HASSAN. Well, thank you, Mr. Chairman. Thank you, Ranking Member Wyden. And, Ambassador, thank you for your work and bipartisan work—

The CHAIRMAN. Senator Hassan, can I interrupt you? There is something with your—I do not know what it is, but you are coming through not clear. And it is not because you are not loud enough, it is something else wrong. Can it be fixed, or—

Senator HASSAN. Well, I do not know. It has been the same all week. We are trying to fix my speaker.

Senator WARNER. Mr. Chairman, this is probably the same group that went after me who are now going after Senator Hassan.

The CHAIRMAN. It is working. Go ahead.

Senator HASSAN. This is working?

The CHAIRMAN. Yes.

Senator HASSAN. Okay; good. Well, I wanted to thank you and the ranking member for holding this hearing, and I want to thank the Ambassador for strong bipartisan work in trying to improve our trade picture in the United States.

But I do want to follow up, Mr. Ambassador, on the issue that a number of my colleagues have raised regarding the current supply of life-saving personal protective equipment as we continue to address the pandemic. And I want to emphasize that this is not just a matter of public and individual health, it is a matter of economic recovery. Businesses need this equipment to reopen. Schools and daycare centers, which will need to reopen if workers are going to be able to return to their jobs, need this equipment. And the cost of this equipment will be borne by America's taxpayers and consumers.

So both supply and pricing are important. And let me be clear about what is happening on the ground. People do not have enough PPE. I just spoke with my nursing home administrators in New Hampshire at the end of last week. They are scrambling in a constant way to find enough PPE. The same can be true for daycare centers.

And the administration finally produced data last week that shows that they do not have a plan for a sustained supply of all the personal protective equipment we will need for the long term, and that they are counting on requiring users to reuse some of the PPE in order to meet even minimal goals of supply.

You mentioned that tariffs would help encourage domestic production. But I have to tell you—and I will echo Senator Toomey on this—all that tariffs do right now is make personal protective equipment more expensive for the many small businesses and hospitals and other users who will need ongoing supplies of it for months, if not years to come.

And States getting PPE have had to rely on informal business connections, paying exorbitant prices to get even a portion of what they need. What would be better is to directly incentivize and support domestic production, as Senator Portman suggests, and do the long-term contracting as he suggested that will increase the supplies here at home.

So to follow up on what Senator Portman asked you to do—he asked you to work with other agencies about the long-term contract issue. But I would like to take a step back. How does USTR coordinate with other agencies such as FEMA on efforts to increase the supply of PPE here at home and preserve the international supply chain? Have you been involved with FEMA's interagency supply chain task force?

Ambassador LIGHTHIZER. So our involvement—let me say, first of all, that of course I disagree with your proposition. I think the administration has done an amazing job, starting with what was basi-



cally an empty closet and then filling it up and getting an enormous supply in a totally unprecedented circumstance. So it is not surprising to you that I do not agree at all with your characterization.

Secondly, when we talked about tariffs, the quote was from my hearing this morning in which I said in the long run I think part of the solution, part of the solution, ought to be rewarding people who manufacture the product in the United States. Two ways to do that. Maybe you do both. One is subsidies, if you decide you want to do that. The other is to have tariffs. Personally, I think you probably need both.

In terms of our involvement, we have worked closely with HHS. We do not really work with FEMA. We work with HHS on what are the tariff consequences, what are the products that people think should get excluded, and then we have excluded the products from the tariffs that we have put into place. And we did this, by the way, in February or early March—I cannot remember, because there were some stages in it for exclusion from our tariffs on all products that touched the PPE space.

So we have worked closely with HHS. We do——

Senator HASSAN. Mr. Ambassador, are you on—have you been involved in the task force?

Ambassador LIGHTHIZER. No.

Senator HASSAN. Okay. Let me move on to one other quick question, and I will just say that hard work that does not get people the PPE they need is not where we need to be. We need to be getting the PPE to people on the front lines in our country.

And let me do this. I will submit—because I am seeing that we only have 20 seconds left on the clock—I will submit my next question about the way the lack of exclusions in the China tariffs is hurting small businesses in the middle of a pandemic. I will submit that in writing, and I will look forward to your response.

Thank you very much, Mr. Chairman.

[The question appears in the appendix.]

The CHAIRMAN. I appreciate that, Senator Hassan.

Now we go to Senator Cortez Masto by TV.

Senator CORTEZ MASTO. Thank you. Thank you, Chairman Grassley. And, Ambassador, thank you so much. It is good to see you again.

Let me just reinforce what Senator Casey talked a little bit about. We are both introducing the Women's Economic Empowerment and Trade Act. It is an important piece of legislation to update the Generalized System of Preferences criteria. I know it expires at the end of the year. But the focus is on worker's rights and the rights of women to have equal protection under the law.

And around the world women are going to disproportionately face challenges in the workplace, including legal barriers to work, restrictions on engaging in collective actions, restrictions on property ownership, educational opportunities, and heart-breaking reports of violence, harassment, and wage discrimination.

We have to tear down these barriers. We have to support our safe workplaces globally, and this legislation includes common-sense measures to strengthen existing standards for GSP and

makes clear that countries need to guarantee the protection of their workers, workers' rights, and women's rights.

So we look forward to working with you on this legislation. So I just wanted to make that clear.

I do want to talk to you about an industry that is important for my State of Nevada, which is the tourism and hospitality industry that is so hard hit during this COVID-19 pandemic. We are literally ground zero for the impact that this pandemic is having on travel, tourism, the hospitality industry, the entertainment industry in Nevada and across the country.

The largest number of visitors to Las Vegas in recent years came overwhelmingly from Canada and Mexico. And the revised de minimis thresholds in the USMCA will surely encourage those visitors each year to spend a little more in our local community.

But my question to you is, looking forward to the 2020 trade agenda, what other policies can we consider to help stimulate and revitalize these sectors of our economy in the wake of COVID-19? I am curious if that is something that you have been looking to address in that particular industry and what you can do to help us revitalize it.

Ambassador LIGHTHIZER. So, thank you, Senator.

First of all, we are happy to work with you on the bill that you and Senator Casey are introducing. As you know—and I am sure you heard my comment to Senator Casey—this is an important part of the President's agenda, and it is very close to the heart of Ivanka Trump who I think has done, I think we would all agree, a remarkable job of emphasizing this area. And we certainly agree with you on the basic equities. So I look forward to that.

Secondly, the tourism and hospitality industry. When people ask me what is the economic effect of COVID and you look at the data and you see approximately a 30-percent or so reduction in exports and something less than that in imports, if you look at just about the single biggest area that is hit, it is in services and it is in hospitality, it is in travel, what they call the travel sector. So I mean we are very sympathetic to what is going on.

We realize that—I do not know if it is the hardest hit sector but, if it is not, it is close to the hardest hit sector. And the United States has a very aggressive policy trying to encourage services trade agreements, trying to come to fundamental agreements on services, getting the USMCA agreement up and active and effective so that we do not have big hindrances there. I think that will be important.

I would be very interested to hear what you think we ought to be doing. If there are things I should be doing, specifically to help the hospitality industry, because that is—I mean, it is huge for Nevada, but it is really huge for the whole country. Anything that you think that I should be doing, I hope you will bring it to my attention, either now or in the future, because I am completely committed with you on this.

I think these people are hurt more than anyone, and they have to come back really, really fast if we are going to get back to where we were.

Senator CORTEZ MASTO. Well, thank you. And I am happy to talk to you about it, because it is not just about the free flow of goods

across our borders. It is the travelers, the free flow of travelers. The international travelers have a major impact on our economy here in the United States, not just in Nevada, but in other States as well.

So I am happy—and thank you for the offer, because we will definitely take you up on that and work with you. I so appreciate it. I notice my time is up. The rest of my questions I will submit for the record. Thank you.

Ambassador LIDTHIZER. Thank you, Senator.

[The questions appear in the appendix.]

The CHAIRMAN. Senator Brown by TV.

[Pause.]

The CHAIRMAN. Senator Brown, are you there?

Senator BROWN. Thank you. Thank you, Mr. Chairman.

Ambassador, I want to start by saying “welcome.” Good to see my friend from Ashtabula. I want to start by saying I read your recent piece in *Foreign Affairs*. I noticed you repeatedly referred to the “Rust Belt.” As someone born and raised in Ashtabula, you should know better than that. That outdated, offensive term demeans workers in Ohio and the Midwest and devalues the work for the industrial heartland, and we are—

[Sound is lost.]

The CHAIRMAN. You turned off. We cannot hear you, Senator Brown.

Senator BROWN. Okay; is it working now?

The CHAIRMAN. Yes. We had you all through “industrial heartland.”

Senator BROWN. Okay; thank you. The workers 60 miles from where you grew up in Lordstown were proud of their work until GM decided to close the factory and take away their jobs.

I want to ask a question on their behalf. The last Cruze rolled off the line at Lordstown on March 6, 2019. GM knew well before that that they were going to close the plant. They announced they were building the Blazer in Mexico the last day. The second shift reported to work June 21, 2018. You know all these dates.

This timeline is important. USTR was writing the rules of origin for the new NAFTA in the first half of 2018. You were closely consulting the car companies throughout the process. The rules of origin determine how much of a car has to be made in the U.S. to qualify for NAFTA benefits. You claim the updated rules will create tens of thousands of new auto jobs in our country.

GM knew what the rules were. In fact, they helped write them. They still decided to close Lordstown and offshore Blazer production to Mexico.

This week there is a news report that USTR staff in charge of writing the rules of origin were planning to start their own business to help auto companies comply with them. Even worse, they were letting the car companies know of their plans while they were still on your payroll.

Many of us have long said that our trade deals are written in secret for corporations, by corporations, and the administrations of both parties—which you have criticized equally—vastly oversell the benefits of trade agreements.

If the auto rules of origin were not strong enough to stop the offshoring of Lordstown jobs to Mexico, and if your staff at USTR were more focused on helping companies for their own personal gain than on helping American workers, why should American workers who lost their jobs at Lordstown believe President Trump's promises that the new NAFTA will actually create the auto-sector jobs that you and he claim?

Ambassador LIGHTHIZER. So, I am going to take that as a slightly tilted question. First of all, the Lordstown thing took us by surprise too. You know how annoyed the President was. The President made a big thing out of it. He called the CEO of General Motors, has on several occasions, and he is trying to fill that spot.

Secondly, with respect to USTR staff, I had the same reaction when I read the article. These were two career staff people—not political people, career staff people—who consulted apparently with our ethics officials, who are career ethics officials. We do not of course appoint the ethics officials. And they at least said it was all right—I do not know anything about the website or what the conversations were between these career ethics people and these two career bureaucrats at USTR. But I had the same sort of reaction that you did in terms of the propriety of it.

I do not know whether the law needs to be changed. I know political people could not do what they did. And if the Civil Service laws need to be changed to prevent that, then I certainly am sure that you and others can do that.

Senator BROWN. All right; I appreciate that. I mean, we feel a sense of betrayal by this administration. The President said, "Do not sell your homes. We are bringing all these jobs back." We differ on how hard the President tried. You know, it is clear that Democrats on this committee demanded stronger labor standards in the new NAFTA. That is why we got Brown-Wyden, as you know.

It is clear that the China Phase One deal did not address provisions of China, did not address, or did not try to address China's low wages or anti-union laws. It is clear this administration negotiated a trade agreement with the next-biggest economy in the world, not protecting workers or raising labor standards. That did not come up.

So outside of trade, outside of the President's talk on trade—and I admire you as a public official. I think you have done your job well. But outside of the President's talk on trade, this is a pro-corporate President who has passed the trillion-dollar tax giveaway, encouraging more companies to move overseas.

He suggested paying for it on the backs of workers who paid into Social Security their whole lives. He has taken every opportunity to attack workers rights to organize and workplace safety standards. Four straight years of Trump's betrayal of workers have culminated in his efforts to force workers, mostly women, disproportionately black and brown workers, back to work in the middle of a pandemic.

Dr. King said, "All labor has dignity." That means all workers, whether you swipe a badge or punch a clock or work for tips or get a salary. And it is pretty clear—you used the term "dignity of work" a number of times, intermittent with your use of the term "Rust Belt." Dignity of work obviously means something very dif-

ferent to me than it does to President Trump, who has just consistently, as we know, betrayed workers in this country.

The CHAIRMAN. Senator Cornyn—

Ambassador LIDTHIZER. No, hold it, Senator. Mr. Chairman, I have to respond to that. That was—I disagree with every single word—

The CHAIRMAN. And when you are done, we are going to go to Senator Cornyn. Go ahead, Ambassador.

Ambassador LIDTHIZER. All right; thank you.

First of all, I disagree with every single thing that you said, Senator. I think it is so unfair. We are being lectured literally by—by Democrats who did nothing for 8 years on the China issue, literally nothing. This President takes charge. He puts in tariffs. He challenges them. He has an agreement. He gets fabulous results. I made this comment before, and I want to make it again.

I feel like I am being—like I am Churchill being lectured by Chamberlain. The fact is—now I realize you did not—you were not in the position of defending the Obama administration, Senator Brown, but the reality is, they did nothing. The Bush administration did nothing. This President has gone after China like no one else before.

And he has changed rules of origin. He has changed these rules of origin that are going to bring back these jobs. Under the previous administration, eight of the previous 11 auto manufacturing plants built in North America were built in Mexico. That has all stopped.

The reality is, he is bringing it back. And the Lordstown plant, there is a lot going on there. There is no way in the world we defend that. We do not defend what General Motors did at all on that. But that was not the result of what happened on our watch. That is what happened on the previous watch.

Senator BROWN. Mr. Chairman, I criticize Presidents when they betray workers, regardless of which party they are in.

The CHAIRMAN. Senator Cornyn?

Senator CORNYN. Well, thank you, Ambassador Lighthizer, for responding. I felt like we were here at more of a political rally than anything else, and certainly not in an effort to get information. But we should be, and I would like to ask you a question to get some information.

So a number of Senators have brought up the fact that the COVID-19 virus has demonstrated the vulnerability of our supply chains in a way that nothing else has. And I read last week an essay that you wrote where you talked about the importance of reshoring our manufacturing base. And you made an interesting statement. You said trade policy alone cannot do that but only as part of a broader suite of tax and regulatory policies designed to encourage investment in the United States.

We have talked a little bit about semiconductors, and I believe you and I talked about that on our conference call in the last couple of weeks. I just want to applaud the work that the administration has done to reduce, in the future, the need to import even sole-source semiconductors from overseas. So far, the President has reduced, and you have reduced the imports from China by half. And so I do think we need to take the next step. Because as you know,

many of the most critical high-end semiconductors were manufactured in Taiwan.

The administration has negotiated the building of a foundry in Arizona, but it is going to require that suite of tax and regulatory policies. So what specific measures would you recommend we use to incentivize production in the United States, including the tax code?

Ambassador LIDTHIZER. First of all, I applaud your bill. I think it is—if we allow ourselves to be, in 10 years, where we cannot make the highest level of semiconductors in the United States, then shame on us.

Everybody who is in political life right now should bear some of that shame. That is something that we—this is one of those things that is predictable. We do know this is going to happen, and we know that no matter what happens, semiconductors are going to be a key part of the economy of the future,

And if you look, for those of you—and I know there are many members who care about artificial intelligence and how important that is for the future of American security as well as industry. Without semiconductors, you are not going to be the leader in artificial intelligence.

So I applaud that. I personally have the view that we have to have manufacturing here, but I think we also have to have American companies have manufacturing here. I have a view in that world—I do not want to be mentioning specific companies, but we all know the leading company traditionally is Intel, and I think they have to be part of the solution. The Taiwan company I agree with you on—

Senator CORNYN. If I could say, I agree with you. And Senator Warner and I have tried to craft the bill in such a way that it would benefit all semiconductor manufacturers, including those already here in the United States, and hopefully create an environment where there is some real competition and multiple sources here in the United States.

But to my question, would you think that—do you agree that we could use or should use the tax code as part of that suite of policies designed to encourage that investment?

Ambassador LIDTHIZER. Well, you clearly need subsidies, right? We all know that. You need subsidies, given the structure and the fact that other people are subsidizing. Whether it is in the form of tax credits or not—there certainly is a long history of using tax credits very effectively in this area. But I do not want to be the spokesman for the administration on all the details of your bill.

I know that, as a general matter, the thrust of your bill is strongly supported in the administration.

Senator CORNYN. Well, thank you. And I did not want to put you in that position, but I was intrigued by your essay. And obviously, since the Finance Committee is the principal tax-writing committee, we are going to play an important role in that. And I know the chairman and ranking member know that as well.

In that same vein, of the 26 multi-billion-dollar microchip fabs under construction in 2019, only one was located in the United States, and 17 were located in China. In the meantime, we are in a race for the next generation of telecommunications networks that

would support 5G. With state-backed firms like Huawei, our ability to produce 5G equipment domestically is extremely limited.

So what can we do, from a trade policy perspective, to constructively bridge the gap with our allies to counter Huawei and China as it relates to 5G?

Ambassador LIDTHIZER. So at this point, I think the administration—through the export controls, which are part security and of course part trade policy—is taking a number of steps to make sure that we protect our own technology and that we use the fact that people need licenses to export and to use U.S. semiconductor manufacturing technology to sell to Huawei and other companies. So I think that is an important thing.

I think when you end up putting together your package—once again you are going to say, “This sounds like Lighthizer,” but I think you have to have tariffs as part of the solution. I think you would want to incentivize.

One of the ways you incentivize people to manufacture in the United States, and have traditionally done it, is through some kind of effective use of tariffs. Another way—straight-up grants, as you proposed in your bill, are another way. And my guess is, the solution is going to end up being a fine combination of all three.

Senator CORNYN. Thank you very much.

The CHAIRMAN. Senator Whitehouse, you have to get the record for being the most patient person. You have been here all afternoon. Go ahead, please.

Senator WHITEHOUSE. I am glad to be here. I thank you, Mr. Chairman, for holding this hearing, and I thank Ambassador Lighthizer, who may hold the record, at least with me, as the most responsive person in the Trump administration. We do not always agree, but you always get back to me.

My question is about the marine plastic progress that was made in the USMCA. The article stipulates that the parties recognize the importance of taking action to prevent and reduce marine litter, including plastic litter and microplastics. And then it goes on to say that each party shall take measures to prevent and reduce marine litter. So I am wondering what measures have been taken pursuant to that paragraph.

It goes on to say, the parties shall cooperate with respect to marine litter, including addressing land- and sea-based pollution, promoting waste management structure, and advancing efforts related to abandoned, lost, or otherwise discarded fishing gear—ghost gear. So I am interested in how you have been cooperating on that. And finally, specifically what have you demanded of Mexico? Because I see the language, but I do not—I am not aware of any activities that ensued.

Ambassador LIDTHIZER. Thank you, Senator.

Senator WHITEHOUSE. So start with what measures each party has taken to prevent and reduce marine litter pursuant to the agreement.

Ambassador LIDTHIZER. So first of all, thank you for that, for the question and also for your contribution to USMCA. It broke my heart, of course you know, when you did not vote for it. But nonetheless, you made a contribution to an important piece of bipartisan legislation that you did not support.

But on——

Senator WHITEHOUSE. I think your heart is very robust, Ambassador. [Laughter.]

Ambassador LIDTHIZER. I have been in town a long time. It is not the first time I have had my heart broken.

I would say we are serious about this. I want to use it going forward. The agreement is not yet in effect. As you know, it goes into effect July 1st. We have an interagency environmental committee, which has already met once, and we should have another meeting, I think, scheduled for the beginning of July. And at that point, we are going to start putting in effect these provisions.

This is something that we—that I think is innovative, and we are going to require action.

Senator WHITEHOUSE. The reason I asked here is because of the July 1st date, because that is kind of our last leverage on that agreement. And once that passes and we have moved on and it has gone into effect, it is a different landscape in terms of trying to push for action and enforcement.

So between now and then—I do not know if you are going to be able to tee anything up before July 1st if part of that task force negotiation is to lay out some of the understandings as to how this will be implemented. I would love to hear about that. If that is not a between now and July 1st problem and you intend to pursue this issue after July 1st, I would like to hear about how. And with a minute and 45 seconds left, I am obviously not going to get a very robust answer here. But perhaps we can follow up to try to make sure that this language just does not go into immediate desuetude and do nothing but be a dust-gathering paragraph.

Ambassador LIDTHIZER. So, you know, I certainly do not want that to happen. And I agree with the spirit as well as the letter of it. I look on it the opposite way. To me, we really do not have any rights under the agreement until the agreement comes into effect. So we cannot really enforce it until it comes into effect.

What we have done, and what we have spent tens of thousands of hours doing over the last several weeks, has been getting in place all the rules, including the Brown-Wyden—in case Senator Brown is still watching—which was a very important enforcement part. It was not the standards part, but it was a very important enforcement part of this, getting those rules in place, setting up the structure so that we can then insist that Mexico do what they have to do. What we had to do was, we had to certify that they have the legal ability to do it in Mexico and in Canada, and when we get to July 1st we can say, okay, fine, there is compliance.

And that interagency committee that we all put together is well-funded and is already staffed, and that committee's responsibility is to make sure—there are a variety of other things—but to make sure that this happens.

And I will certainly—we chair that committee, we, USTR, and also we talk to the person who chairs it, and I am going to ask him precisely what you just asked me about what our timing is.

Senator WHITEHOUSE. And at some point, I guess post-July 1st then, when you are settling into how you are going to impose these measures or effect this cooperation, or demand something of Mexico, perhaps we can have a conversation with whoever in your of-



face has the wheel on that to see how that plan is going to be rolled out.

Ambassador LIDTHIZER. We will do that. And I appreciate your staying on it, because down the road, if members of Congress do not insist on enforcement, there will not be any enforcement, I feel.

Senator WHITEHOUSE. And even sometimes when we do. [Laughter.]

Ambassador LIDTHIZER. And even sometimes when you do.

Senator WHITEHOUSE. Thanks.

Ambassador LIDTHIZER. Thank you, Senator.

The CHAIRMAN. Senator Cassidy by TV.

Senator CASSIDY. Hey, Mr. Ambassador. If this is your second hearing today, and it is now 5:30, you are doing a great job, and thank you very much for your patience and for just hanging in there. You still look fresh.

The thing about going near the end is that most folks have asked questions, but I have one question which has not been asked and another which is more based upon your article.

Investors—talking about the Mexico energy sector—have been seeing that the Mexican Government appears to be tilting the table towards Pemex and CFE, the Mexican utility company, changing the rules for U.S. investors, and this is related to energy exploration or production, the fuel permits downstream to power, and renewables. Again, it seems like they are trying to privilege their state-owned enterprises.

USMCA has specific mechanisms to have a level playing field. Can we expect this to be redressed once the USMCA is put into effect? Are you aware of this?

Ambassador LIDTHIZER. So, I am aware of it. I do not know about every detail, Senator, that you are aware of. I am sure I do not know that much. But I am aware of it. I know it is a problem. It is something that we expect to enforce.

I would say the administration in Mexico, as you know well, very much wants to go in the direction of nationalizing energy production. That is one of the things that they feel very strongly about. And pushing back against that is something that we have done in this agreement, and expect to do. And I think personally—although it is not my business, perhaps—in the long run this is not in Mexico's interest to take competition out of the equation in something as valuable as energy production.

But my impression is that is clearly the direction that that administration down there wants to go in. And to the extent we have tools, we expect to use them to require equal treatment.

Senator CASSIDY. Thank you. Going to your *Foreign Affairs* article, which is an interesting article because you have a lot there which is latent, if you will, but you acknowledge that some supply chains will have at least a portion outside the United States, and at some times that is related to labor costs and to environmental standards.

You are not endorsing—I think you are just acknowledging. I have been thinking that it probably benefits the United States more if those supply chains are in Latin America than if they are in, say China. I say that because it looks like NAFTA—one benefit

from NAFTA is, it stopped net migration from Mexico to the United States.

There are now jobs there, and that in turn has led to higher expectations in Mexico. And I do not know if you have thoughts on that. And, as we talk about bringing the supply chain back from China, at least in part, what are your thoughts about, to what degree it may not be in the United States, at least trying to keep it in Latin America?

Ambassador LIGHTHIZER. Senator, I certainly agree with the thrust of your analysis. I think it is not just China, it is in Asia generally, we are better off having—in the first place, I think all the supply chains ought to run through the United States. I kind of take your point and have acknowledged that there are situations where that is probably not going to happen. In those cases, are there places that are better economically and geopolitically for the United States to have those supply chains? Absolutely.

And I think that is a positive outcome if it works that way. And I think a healthy, peaceful Mexico, for example—and you could, by extension, say other countries in Latin America—is clearly in the interest of the United States, both in terms of creating customers, but also creating good neighbors for all of our States along the southern border.

So I completely agree with the thrust of what you are saying. When you get to the specifics, of course everybody can have their own views. But I think what you are saying is correct. And I am flattered that you read the article, and I hope it made some contribution to the way people think about trade policy generally.

Senator CASSIDY. It was very good. And intuitively—and I do not know this to be the case, but do you have any data that the U.S. has somewhat pulled out of Latin America and moved to Asia? Clearly China has filled the void within Latin America. And it may be beyond the scope of your office to have done an assessment of that, but I think that has been to the detriment of our geopolitical position.

Do you have an assessment of that?

Ambassador LIGHTHIZER. So we have not done an actual study of that. My own sense is that it is more that when, rather than pull out of Latin America and China, rather than do that, at the time that these companies were going, China, and then later Vietnam and a whole variety of others on the next tier, were more hospitable, were more aggressive in terms of getting the supply chain.

So I do not know if there a lot of examples—none pop into my head—of somebody leaving someplace in South America. There may be such cases, but I think the tendency tends to be that, at the time when this happened, that was the place to go.

And to be honest, one of the things I sort of allude to is that you end up with a bunch of business consultants who say, “Here, go there.” And then all of a sudden, everybody goes there. So there was a kind of a lemming effect also.

Senator CASSIDY. Thank you very much. I yield back.

The CHAIRMAN. Thank you.

Senator Lankford, by TV.

Senator LANKFORD. Ambassador, thanks again for the work that you continue to do and for the marathon day today, to be able to talk through all the issues today.

Let me walk through just a couple of issues, and one of them is not going to be a surprise to you, and that is the Pacific. The UK, whom we are now working on a trade relationship with, is also actively working with New Zealand and Australia in trying to be able to focus in on the Pacific Rim on trade agreements. What I want to know is what progress the United States is making on any new trade agreements in the Pacific.

Ambassador LIGHTHIZER. So we have discussions ongoing, as you and I have discussed, on the issue of e-commerce with New Zealand. We have a—of course you know well we have a longstanding FTA, which I personally believe has been one of our more successful FTAs, with Australia.

In terms of trade agreements, I am trying to think—that is probably about it. We have had trade discussions across the board, and those have led to a variety of successes in terms of clearing up a whole variety of impediments to U.S. exports, and in some cases opening up markets to the United States. I could kind of go through those.

It is an interesting thing. People think of the USTR as being involved in these big negotiations, and of course we are involved in big negotiations, but an awful lot of what we do is regular negotiations which we have. But we have a big negotiation with India, which I am sure you are aware of, and potentially even moving to an FTA at some point if we can ever make any headway, and that is Asia.

But we have a lot of ongoing discussions. We call them TIDFs, Trade and Investment Discussion Forums, or negotiating forums, with most of the countries throughout that area. Indonesia, we have been very active; Malaysia—so across the area. There is an awful lot of engagement, but not necessarily leading to an FTA.

Part of the reason for that is, we are trying to clear up specific irritants that we have, or that they have, or impediments to free trade. And also part of it is that it is such a big issue to enter into an FTA, to go through the whole process. So it is something that we tend to do kind of less often.

Senator LANKFORD. Right. Well, there are targeted countries there that we need to work on a bilateral agreement with long-term, and we can continue to follow up on that.

Let me shift into a single issue on this. And that is, still our focused dependence on critical minerals, rare earth minerals coming out of China. Depending what the mineral is, we are still dealing with 60 to 90 percent of our rare earth minerals coming out of one source, out of China, and we have seen them before in 2010 cut off Japan for a season due to a political issue there.

And so they clearly used rare earth minerals as a leverage point in their negotiations in the past. How is it going, working with countries like Australia, other entities, Malaysia, that have a lot of these rare earth minerals as well to be able to expand availability and openness? And then, obviously, we want to be able to do more production here in the United States as well.

What is that conversation like to try to get us away from a single source, a single point of vulnerability with China?

Ambassador LIGHTHIZER. Well, first of all, I completely agree with your assessment of where we are on rare earths. And I have had a number of conversations on those. It is not an area—the solution is not entirely within USTR’s realm, but we have a part of it. The other part of it is also the Department of Commerce, the Department of Defense, NSC, and others. There is a lot of focus on this area right now.

I have talked to a variety of businessmen too. Many of these rare earths, as you know well, we have in the United States but we cannot economically get them out and compete with China. So it is a policy that is being developed. I am not primarily responsible for it. I am very supportive and grateful for your specific emphasis on it, because this is something where there is reasonable thought that there is going to be a train wreck at some point down the road. And people like you and others who are seeing it and working on it are hopefully going to be a part of avoiding that train wreck.

Senator LANKFORD. Yes. One of the things that I have raised over and over again is, if we think it is a problem with China cutting off PPE from us during a pandemic, wait until they cut off rare earth and critical minerals. When that happens, it really is an economic disaster at that point. We do have a single point of failure and a lot of vulnerability there. That is five state-owned entities out of China that are managing that, that we are trying to beat with the prices and with the non-environmental rules, and everything else that they do there. And so it is definitely not a clear trading platform for us in trying to be able to negotiate and for our domestic manufacturing rising up, and it is one of the issues that we are going to have to resolve long-term.

Any focus that you can have, and anything that I can continue to raise on that, we will continue to push on it. So I appreciate your focus and where we can expand that and definitely discourage Australia from allowing Chinese companies to be able to purchase some of their mines and some of their capabilities, because, if that happens, then we will lose one more of our sources to Chinese ownership in Australia.

So I appreciate your engagement. Thanks for all the work that you continue to do.

Ambassador LIGHTHIZER. Thank you, Senator. I appreciate that.

The CHAIRMAN. Senator Daines?

Senator DAINES. Thank you, Mr. Chairman. Ambassador Light-hizer, thanks for coming up here again.

I very much appreciate the work you have done in advancing new agreements with our four largest trading partners. I think we have kind of lost perspective on that. We had these great deals signed, and then we went into impeachment, COVID, and I think we have lost sight about the importance of these four agreements with Canada, Mexico, China, and Japan. So, congratulations on those wins—very important.

They are important for a Senator from Montana because, as we think about the access to our markets, our farmers and our ranchers and our other businesses depend heavily on those markets. And when you step back and think that 95 percent of the world’s con-

sumers live outside the United States, if we are going to grow our businesses, our ag economy, it is going to be highly dependent on growing greater market share with 95 percent of the rest of the world's consumers who live outside the U.S.

As you know, Montana is the number one PLS crop producing State in the country—peas, lintels, soybeans—and India is the world's largest consumer of PLSes and an important market for Montana farmers. Unfortunately, U.S. PLSes face high tariffs and an unfair playing field in India, and that is why earlier this year Senator Cramer and I gave the President a letter urging him to prioritize the issue and raise it directly with Prime Minister Modi. In fact, I was pleased to see the President, President Trump, hand-deliver that letter to Prime Minister Modi. In fact, he sent a picture back handing that specific letter to the Prime Minister and wanted to make sure that we saw it. So I applaud the President's personal leadership there during that state visit.

My question is this: what is the status of negotiations with India? And will you commit to working to remove these tariffs in any ongoing negotiations?

Ambassador LIGHTHIZER. The answer is “yes.” And then I will elaborate.

First of all, I appreciate very much working with you and your sort of dogged insistence on us paying attention to agriculture, and not just PLS, beef, and other products of Montana. And there are three or four—

Senator DAINES. Ambassador Lighthizer, there is another guy who is dogged right here. His name is Chairman Grassley. [Laughter.]

Ambassador LIGHTHIZER. I was just going—

Senator DAINES. We could consider it a tag team here, if we need to.

Ambassador LIGHTHIZER. There are a few of you who every time I go into these negotiations, I normally hear from before and after, and I think about you during. So you really have made an impact in terms of the agreements we have, a lot of them molded by your effort and Senator Grassley's effort, and several on the Democratic side also who were just insistent that we do this. And I think they are all—all the agreements are better because of your involvement in them.

The MFN tariffs that India has are extremely high on PLSes, and on just about everything else. And one of the indictments I have of the WTO is the fact that we find ourselves in this position.

When India joined the GATT, then the GATT, in like 1948, they had a GDP of maybe \$250 billion. Now they are almost \$3 trillion. And they still have a third of their lines of tariffs not bound at all, and a whole bunch of them bound at 100 percent. And there is nothing we can do about that.

How do we change that? And the notion that we are locked into a WTO that says just forever you are stuck with that imbalance, is to me crazy. And we have to do something about it.

In terms of the status, we are ongoing with the negotiations. I think it is clearly taking longer than I would have seen. They are doggedly insistent on keeping their tariffs, and we are dogged in

insisting that we are going to get a fair deal. So we are still working on it very much, and hopefully we will get to a good outcome.

Senator DAINES. Thank you. And again, as the number one PLS producer in the country, we appreciate your determination to move that negotiation to the right place.

I want to switch gears to China Phase One. Ambassador Lighthizer, it is essential that Phase One agreement is implemented as quickly as possible and that China is held accountable for its commitments in the trade deal. My question is this: is China acting in good faith as it relates to the ag purchase commitments in the Phase One agreement?

Ambassador Lighthizer. In my judgment, they are. Remember the timing. This was not in effect until February 14th. February is not that long ago. Given particularly the length of time in terms of ag sales, they started giving the exclusions from their tariffs at the beginning of March. They have granted a great deal of them, including—of interest to the chairman—on ethanol, and I think we are going to start seeing some ethanol purchases, hopefully of significance.

Are they behind? Yes. But you cannot look at it—it is not like they agreed to a certain amount every month, right? So if you think of the deal generally, about a third of the deal, say, is soybeans. And they have already purchased maybe \$3 billion worth of soybeans. But as you know, soybeans tend to be a fall market.

So if you look at—I made this point before—if you look at 2017, we sold \$10 billion worth of soybeans at the end of the year. I would expect that we will see that again.

So are they behind? Yes. Are they making substantial purchases? In the way we calculate it—which is not just what is exported, because that is weeks and weeks before it was bought, but actual purchases—the number is pretty high. The trajectory is good. Last week alone, they bought half a billion dollars' worth of soybeans. They bought a lot of beef. They have beef coming in now for the first time ever.

And if you look at where they are versus where we were in our best year ever, we are ahead of it in almost every single major crop. But we have a long way to go.

Senator DAINES. Well, it has just been since February 14th too, so it has just gotten started here.

Mr. Chairman, can I ask another question? Or is there somebody else in the queue?

The CHAIRMAN. No, you are the last. That will be your last question, and I have one question, and then we will adjourn.

Senator DAINES. Okay; thank you.

I also appreciate your efforts to include polysilicon in the Phase One agreement. For years, the U.S. polysilicon industry has been targeted by China, and retaliatory tariffs are threatening some high-wage manufacturing jobs that relate directly to REC silicon in Butte, MT. Could you provide an update on any developments regarding polysilicon and how China is moving forward with any purchases?

Ambassador Lighthizer. So I will talk to you about that offline. It is something that I know is important to you. It is something,

therefore, that is important to me and that we are working on. I would be happy to talk about it offline.

Senator DAINES. Okay; I will look forward to that conversation. Thanks, Ambassador.

So to conclude, I have seen a pretty impressive result here, and I wanted to really commend you for that. USMCA and the China Phase One deal have garnered much of the attention over the past several months, and that is understandable, but I view the agreement reached with Japan as one of the truly unsung hero stories, and one that is just as important, if not more so for U.S. ag, and particularly for beef.

Japan is our largest beef export market. This agreement helped level the playing field for Montana ranchers in this important market. In the months following the agreement, beef exports—and I have the chart here—beef exports to Japan have increased by nearly 25 percent year-over-year. That is the January to April time frame. So we are up almost 25 percent with our largest beef export market in the world, which we are grateful for.

That is a significant win. I want to thank you and your team for your efforts. My cattle producers are having a hard time right now, whether it is COVID-related or issues with packers. It is nice to see that Japan volume increase by nearly 25 percent. Thank you for the work as you open these markets and reduce these barriers. I think there is a bright future ahead of us in Japan as well.

Ambassador LIGHTHIZER. Great. I just want to thank you again, and tell your ranchers we are thinking about them all the time. And thank them for what they do, because we would not have any of this beef to ship if it was not for them. So thank you.

Senator DAINES. It is the best beef in the world—U.S. beef. So thank you.

The CHAIRMAN. Before I ask my last question, it sounds like I am probably the only one who has not told you I have read your misal. I am about a third of the way through it.

Ambassador LIGHTHIZER. I am honored that you even got that far. So thank you for that.

The CHAIRMAN. I recognize—this is my question. I recognize that many of the USMCA's commitments might be models for other free trade agreements, but not all. For example, USMCA requires Mexico and Canada be a party to the Inter-American Tuna Commission, which concerns management of fisheries in the eastern Pacific Ocean.

It also has measures that are specific to Mexico's recent labor reforms. I do not see those same issues with the UK, which does not border the eastern Pacific and already has pretty high labor standards. On the other hand, there are some unique issues that we have with the UK as a result of their time with the EU, including restrictions on our agricultural products. So I hope you can assure me and the committee that our proposals for the UK agreement recognize these important distinctions.

Ambassador LIGHTHIZER. Absolutely. We absolutely do, Mr. Chairman.

The CHAIRMAN. Then for you, thank you for your appearance today, and in particular to keeping your obligation to consult with our committee on a regular basis. You have surely done that today,

and you spend a lot of time doing it, and I know you have a lot on your plate. We appreciate your willingness to spend time with us, discussing these issues and hearing us out.

So, for my fellow Senators, if you have questions for the record, please submit them by close of business on July 2nd. And with that, I thank you once again, Mr. Ambassador, and the meeting is adjourned.

Ambassador LIDTHIZER. Thank you very much, Mr. Chairman. It was a pleasure to be here.

[Whereupon, at 5:54 p.m., the hearing was concluded.]



## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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

I am pleased to welcome our witness, Ambassador Lighthizer. Mr. Ambassador, thank you for joining us.

I'm eager to have you here, because we face grave challenges. Americans are suffering. The pandemic and long-festering injustices deny too many of our citizens the very promise our country is built upon: that every American has the right to life, liberty, and the pursuit of happiness. It's not going to be easy to bring us back on course. But I think good trade policy will be one important part of doing so. So I'm glad we can have that discussion today.

Trade policy is immediately significant because we need to make sure we don't have any unnecessary taxes on goods key to the recovery or in fighting the pandemic. That's why I've asked the International Trade Commission to conduct a study on precisely what those goods are, where they come from, and how much they're taxed. This study, which is ongoing, will provide an independent and transparent snapshot of the medical and PPE supply chains. It's important that we carefully study these supply chains before we rush to judgment and action.

We have to take a long, hard look at our ability to protect ourselves in a future crisis. But we have to find a smart solution that accepts the reality that trade is fundamental to our survival and prosperity. In the long term, trade is a key part of the solution, because it promotes freedom. It provides customers for our best-in-class agriculture products. It eliminates arbitrary barriers that inhibit entrepreneurship and independence.

In particular, trade empowers small businesses that are the backbone of our communities. In fact, 97 percent of U.S. exporters are small businesses. A good start to empowering people and fixing our economy is making sure as many people as possible have the option of being their own boss. We owe it to them and their communities to press for even more opportunities. This is especially true because our trading partners already enjoy the fact that we have one of the most open economies in the world.

Ambassador Lighthizer, you have taken important steps in that direction. I'm pleased this year started off with Congress approving the United States-Mexico-Canada Agreement. USMCA is expected to spur 176,000 new jobs and create new opportunities with our two most important trading partners.

We are just a couple of weeks away from USMCA entering into force, and we owe it to our American farmers, workers, businesses, and innovators to make sure this agreement delivers. I look forward to implementing a new era in North American free trade and focusing on the many other issues in the President's trade agenda. The issues are complex and challenging. But the Trump administration is ambitious. If we get them right, the opportunities for Americans are immense. I want to highlight a few in particular.

First, we have the free trade negotiations with the United Kingdom. Good trade relations with the United Kingdom are critical. In 2017, we exported \$125.9 billion of goods and services to the UK. UK companies in turn have invested over \$540 billion in the United States. Unfortunately, those numbers don't reflect our full potential.

In large part, EU rules stood in the way. These rules unfairly restricted our agricultural goods without any scientific basis and required duplicative and unnecessary testing for our industrial goods. Now that the UK has been freed from them, we can bring our economic relationship to a level befitting our longstanding political special relationship. An improved trading relationship with the UK will also signal to the EU that it's past time for them to start regulating on the basis of sound science.

I'm also looking forward to trade negotiations advancing with Kenya. We don't have a single free trade agreement with a sub-Saharan country. I applaud the Trump administration for being the first administration to take this on. A high-standard FTA with Kenya can be a model for both good economics and good governance throughout the region.

Third, I'm glad the administration remains committed to WTO reform. The WTO's rules, including those on services, agriculture, procurement, and intellectual property, are vital for our workers and businesses. They reflect decades of persistent American leadership. We can't let China take the pen when it comes to writing these rules. Instead, Congress and the administration must work together to fix this vitally important institution. We will revitalize the WTO's negotiating function so that the rules reflect the modern economy, including e-commerce.

Additionally, Congress will continue to insist that rules remain enforceable—and applied as written. That's why I'm glad the trade agenda highlighted the administration's WTO enforcement wins against the EU over its Airbus launch aid; against China over its policies on wheat, corn, and rice; and India over its export subsidies. There are a lot of problems with the WTO, but it has an important role to play—including through the use of binding dispute settlement. The trick is to make sure those rules are followed rather than re-written by WTO judges. Mr. Ambassador, I think together we can accomplish this task.

Finally, I note that the trade agenda highlighted that the administration took strong action against discriminatory digital services taxes. With the recent announcement of more investigations, the Trump administration is demonstrating that America will not stand for discriminatory treatment that treats American companies as piggy banks. Our businesses are entitled to fair and equitable treatment, and we will defend our rights appropriately.

In closing, I want to emphasize this point: the President has laid down an ambitious agenda that can improve the lives of our fellow citizens. But it will require commitment and cooperation from all of us. The Constitution vests Congress with authority over trade, not some generalized interest. We can't simply be passengers along for the ride. We must fulfill our constitutional role so that our trading partners know that Ambassador Lighthizer has the full support and power of the United States behind him.

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

#### INTRODUCTION

Chairman Grassley, Ranking Member Wyden, and members of the committee, it is a pleasure to appear before you today to testify on the President's 2020 trade agenda.

By placing trade at the center of his agenda in 2019, the President achieved more trade successes over the last year than most administrations achieve over multiple terms. And while the coronavirus has negatively affected the economy in recent months, the benefits of the President's trade and economic policies were unmistakable prior to the onset of the pandemic. Wages were growing faster for nearly all groups, especially those at the lower end of the income scale. Since President Trump took office, average wage growth for Americans without a bachelor's degree has outpaced wage growth for those with a bachelor's degree or higher. Average wage growth for individuals at the 10th percentile of the income distribution has outpaced wage growth for individuals at the 90th percentile. Wealth inequality also declined, as the share of net worth held by the bottom 50 percent of households increased, while the share held by the top 1 percent decreased.

Net worth for the bottom 50 percent of households increased at an annual rate 15 times higher than the average growth seen under the three prior administra-

tions' expansion periods. Average wage growth for African Americans and Hispanics has outpaced overall average wage growth. At more than \$66,000, real median household income hit the highest level ever recorded. 15,000 manufacturing jobs were lost in the 12 months prior to President Trump's election, but more than 500,000 manufacturing jobs were added to the American economy from November 2016 to January 2020. This contributed to unemployment reaching historic lows in 2019, with job openings exceeding people looking for work by more than 1 million.

These figures represent a blue-collar boom under the Trump administration, a boom that will continue as we reopen our economy and establish a path forward that better protects our economic security.

President Trump promised to make fundamental changes to U.S. trade policy to achieve results that benefit all Americans, and the President has kept that promise. The President directly confronted China's abusive trade practices through substantial tariffs, resulting in the groundbreaking Phase One trade agreement signed on January 15th of this year. The agreement secured enforceable commitments from China to cease its abusive trade practices—including intellectual property theft, forced technology transfer, discriminatory regulations, and currency manipulation. It also committed China to significantly increase its purchases of U.S. goods and services by at least \$200 billion over 2017 purchase levels.

By establishing a strong dispute resolution system and maintaining tariffs on approximately \$370 billion in goods from China, the administration has maintained the authority and leverage to enforce China's compliance with the agreement while pursuing additional reforms under a future Phase Two agreement.

On January 29th of this year, President Trump signed the United States-Mexico-Canada Agreement into law after Congress overwhelmingly approved the deal by a vote of 89–10 in the Senate and 385–41 in the House of Representatives. The landmark agreement fulfilled the President's promise to rebalance the U.S. trade relationship with Mexico and Canada while incentivizing manufacturing in the United States, defending our competitive advantage in technology and innovation, protecting workers and the environment, and securing even greater market access for America's businesses, farmers, and ranchers. USMCA was a bipartisan victory for the American people, and I would like to thank all of the members who contributed so much to the negotiations and implementing bill.

Last year, the United States also entered into two agreements with Japan that established preferred or zero-rate tariffs on more than 90 percent of U.S. food and agricultural products imported into Japan and enhanced the existing \$40 billion in digital trade between our countries.

In addition to new trade agreements, the administration has continued to seek strong and effective enforcement of our existing trade agreements and the WTO commitments of our trade partners. Last year, the United States won the largest award in WTO history, obtaining the right to impose countermeasures on \$7.5 billion of goods from the European Union in response to the harms caused by EU Airbus subsidies. The U.S. also secured increased access to the EU's beef market after successfully challenging a non-science-based ban on certain hormones.

In addition, the United States initiated action against France for its "digital services tax," which targeted American technology companies. This action resulted in an agreement to suspend collection of the tax while OECD countries discuss a fairer and more standardized approach. USTR is continuing to analyze similar measures worldwide, and recently initiated section 301 investigations of digital services taxes in ten additional countries.

Furthermore, the United States has successfully challenged distortive Chinese agricultural trade practices; Indian export subsidies for steel, pharmaceuticals, chemicals, information technology products, and textiles; and retaliatory tariffs unfairly levied by five countries in response to the President's steel and aluminum tariffs.

Lastly, the United States has engaged extensively with WTO members on a range of issues. After years of complaints by multiple administrations, the Trump administration took action against WTO Appellate Body abuses by exercising our right to not approve new members. This action has forced the WTO to engage in a long-overdue debate about the role of the Appellate Body.

Alongside this action, USTR issued its report on the Appellate Body, which details how the body frequently fails to apply WTO rules as agreed to by WTO members, imposing new obligations and violating members' rights. The United States also offered a proposal to establish consequences for non-compliance with WTO notification

obligations, as well as a proposed General Council decision that would establish objective criteria for determining which WTO members should qualify for blanket “special and differential treatment.”

#### TRADE POLICY AGENDA

This year, President Trump will continue to pursue new trade agreements that benefit all Americans, aggressively enforce our trade laws, respond to unfair trade practices by other nations, and work toward reform at the World Trade Organization.

The Trump administration has taken numerous steps to pave the way for negotiating a trade agreement with the UK, including a review of public comments, a public hearing, and extensive consultations with congressional and trade advisory committees. USTR published detailed negotiating objectives on February 28, 2019, and aims to reach an agreement with substantive results for U.S. consumers, businesses, farmers, ranchers, and workers as soon as possible.

On February 6, 2020, President Trump announced that the United States intends to initiate trade agreement negotiations with the Republic of Kenya. This action falls in line with Congress’s support for mutually beneficial trade agreements with the countries of sub-Saharan Africa. A trade agreement between the United States and Kenya will complement Africa’s regional integration efforts, including the landmark African Continental Free Trade Area. Such an agreement will also serve as a model for additional agreements in Africa, expanding U.S.-Africa trade and investment across a continent that will account for nearly a fifth of the world’s consumers by 2030.

The United States also seeks to rebalance our trade relationship with the European Union. For many years, U.S. businesses have been at a disadvantage in doing business in the EU. Both tariff and non-tariff barriers in the EU have led to increasing and unsustainable trade deficits with the EU—reaching \$179 billion in 2019. With recent changes in EU leadership, the United States is hopeful for more progress in the coming year.

The United States also seeks to build on the accomplishments of the past year and work toward more comprehensive agreements with Japan and China that promote fairer and more reciprocal trade. In the case of Japan, the two countries intend to enter into further negotiations on customs duties, barriers to trade in services and investment, and other trade restrictions. With China, “Phase Two” will focus on issues of overcapacity, subsidization, disciplines on China’s state-owned enterprises, and cyber-theft.

More broadly, the Trump administration will continue to aggressively enforce U.S. trade laws to protect the interests of American businesses and workers, taking strong actions to ensure America’s trade partners comply with the terms of our trade agreements. The Phase One agreement with China established a strong process for ensuring that China honors its commitments and imposing proportionate measures if it fails to do so. Likewise, the USMCA contains a detailed process for enforcing commitments, and the President has established working groups to monitor the implementation and maintenance of the labor and environmental provisions.

USTR will also pursue formal challenges to acts, policies, or practices of foreign governments that are inconsistent with WTO rules and other recognized standards. For example, USTR is investigating the digital services taxes of ten additional countries, as mentioned above. USTR has also launched eight GSP reviews under this administration, ensuring that countries enjoying favorable tariff rates in the United States follow the clear labor, IP, and market access standards necessary to qualify for the program.

The administration will also look for ways to strengthen our existing trade policies to better protect American producers and consumers. One option is to tighten de minimis thresholds for American imports, including those subject to section 301 tariffs. At \$800, the U.S. de minimis threshold far exceeds that of our major trade partners. For example, the EU threshold is only \$150, while China’s stands at a mere \$7. This results in massive numbers of shipments to the U.S. receiving duty-free treatment and virtually no screening. In FY 2018 and FY 2019, there were a combined 1.2 billion de minimis shipments, with 719 million (or roughly 60 percent) coming from China. In contrast, the U.S. received only 68 million formal entries during this period, with only 7.3 million (or less than 11 percent) coming from China. The disproportionately high volume of these shipments indicates China and

others are likely exploiting the high U.S. de minimis threshold to avoid paying duties.

Lastly, the United States will continue to pursue reforms at the WTO aimed at limiting the organization to its original role as a forum for nations to negotiate trade agreements, monitor compliance, and facilitate trade dispute resolutions. At present, over 150 disputes have been filed against the United States at the WTO, while no other member has faced even 100. Worse, up to 90 percent of these disputes have resulted in a report finding the U.S. at least partially at fault. This averages out to five or six successful WTO disputes against the United States every year.

In other words, the WTO has effectively treated one of the world's freest and most open economies—with an enormous trade deficit—as the world's greatest trade abuser. In so doing, the WTO's Appellate Body has often created new obligations out of thin air, preventing the United States from taking action to address unfair trade practices that hurt U.S. workers, and usurping the U.S. government's accountability to the American people. This situation has also greatly undermined the negotiating process at the WTO, as countries now believe they can obtain better outcomes through litigation than through negotiation, especially with the United States.

In addition to reigning in the Appellate Body, the United States will also seek a broader reset at the WTO. Currently, outdated tariff determinations are locked in place that no longer reflect members' policy choices and economic conditions. As a result, many countries with large and developed economies maintain very high bound tariff rates, far above those levied by the United States. The United States must ensure that tariffs reflect current economic realities to protect our exporters and workers. To that end, the United States will also seek broader support for our proposals concerning notification enforcement and "special and differential treatment" for developing countries.

The President's trade agenda has benefited all Americans, but especially those most harmed by the failed policies of the last 25 years. In the decades following the North American Free Trade Agreement's (NAFTA) implementation and China's accession to the WTO, America lost one in four manufacturing jobs and more than 60,000 American factories were shut down. Over the last 3½ years, that trend has finally started to reverse. President Trump promised to end the disastrous trade deals of the past and put America's workers, farmers, ranchers, and businesses first. He has delivered—and will continue to deliver—on that promise.

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

QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

*Question.* In 2010, you testified before the U.S.-China Economic and Security Review Commission. You noted that the WTO dispute settlement process had shortcomings when it came to China's systemic non-compliance. Nonetheless, you said "we should use that process as aggressively as possible" and that "Congress should give USTR additional resources to increase its ability to try and win new cases."

I thought you were right then, and I think it's still right now. Importantly, Congress acted on your advice and has given USTR more funds, including the enforcement trust fund.

Can you tell me if USTR is using that fund to prepare additional WTO cases?

*Answer.* The administration is committed to using all available tools to enforce U.S. rights and ensure that other members are complying with their WTO obligations. USTR works every day to do just that, supported by the additional funding Congress has provided, including through the Trade Enforcement Trust Fund. We evaluate each enforcement issue based on the particular facts and circumstances to determine the best way forward and will not hesitate to bring offensive disputes whenever we consider WTO action to be the most effective way to protect U.S. interests.

*Question.* There's been a lot of news lately that the administration wants to improve trade relations with Brazil. I'm not averse to Brazil lowering its high tariffs and eliminating other long-standing trade barriers for U.S. exporters. However, I'm concerned that Brazil hasn't done enough to address many of these barriers. Moreover, Brazil and the United States are competitive producers for a lot of the same goods, particularly agricultural goods.

What's the economic case for focusing on trade with Brazil? Please address what, if any, benefits our farmers and ranchers might see.

Answer. I am mindful of Brazil's high tariffs and other longstanding barriers to U.S. products, including regulatory barriers, and the keen competition between our agricultural sectors. I have made it clear with Brazil that any deal with the United States must be based on fairness and reciprocity, and up to the high standards of this administration. I also share the vision of President Trump and President Bolsonaro for a strong economic partnership. The close relationship between President Trump and President Bolsonaro has already shown results—last year, Brazil implemented its WTO tariff-rate quota on wheat, expanding market opportunity for U.S. exports. Currently, our work with Brazil is focused on trade rules and transparency—areas like trade facilitation, good regulatory practices, and anti-corruption—that complement Brazil's economic reforms, cut the cost of doing business, and make it easier for U.S. firms to sell U.S.-produced goods in Brazil.

*Question.* The President's 2020 Trade Policy Agenda and 2019 Annual Report highlight a lot of problems with India. I'm glad the administration is initiating a section 301 investigation into one of those problems, its digital tax or the so-called "equalization levy." That said, I don't want to forget about the rest of our trade concerns, including agricultural market access. I know your team spent a lot of time with Indian counterparts in 2019 negotiating those issues.

What's the status of those negotiations presently, and is it realistic to see any outcomes achieved this year?

Answer. We are in active discussions with the government of India in an attempt to address a broad range of Indian trade barriers. We are working to secure a trade package that resolves longstanding market access issues, including reduction of tariff rates on key U.S. agricultural and industrial exports, and to ensure progress in other areas, such as intellectual property protection and digital trade. While we have made some progress on certain market access issues, India has not yet offered a proposal that would adequately address issues to warrant GSP reinstatement.

*Question.* I'm a strong supporter of reforming the WTO Appellate Body, but I'm worried that we still have not made any concrete proposal of our own for reforming dispute settlement. A number of allies who have been supportive of WTO reform have told me that they are discouraged by the continued lack of a proposal from the United States. Unfortunately, many of these countries are now signing up for the EU's alternative: the Multiparty Interim Arbitration Arrangement.

I believe we need to do more than identify problems. We need to propose and build consensus for solutions that will carry out what Congress understood it approved in 1995: binding dispute settlement on certain rules carefully negotiated by members, not discovered by appointed judges. Accordingly, we need solutions that address overreach and other problems like the AB's failure to follow the 90-day rule.

What efforts are you taking to develop a proposal that we can rally our allies around, and will you commit to working with Congress on it—as is required by the constitution and the law?

Answer. The administration is committed to working with any interested WTO member to find solutions to the failure of the Appellate Body to follow WTO rules. This means first understanding what is the root of the problem: Why has the Appellate Body consistently broken WTO rules—that is, those rules agreed by WTO members in the Uruguay Round and approved by the Congress in the Uruguay Round Agreements Act—despite every effort by U.S. administrations to get it to stop.

By exercising our right not to approve new members to the Appellate Body, the administration has forced the WTO to engage in a long-overdue debate on this problem. My office also comprehensively detailed the Appellate Body's pervasive rule-breaking in its Report on the Appellate Body earlier this year.<sup>1</sup> The report details the concerns expressed by the United States for more than 20 years and the repeated failure of the Appellate Body to apply the rules of the WTO agreements in a manner that adheres to the text of those agreements. The report also highlights several examples of how the Appellate Body has altered WTO members' rights and obligations through erroneous interpretations of WTO agreements.

<sup>1</sup>United States Trade Representative, *Report on the Appellate Body of the World Trade Organization*, February 2020, available at: [https://ustr.gov/sites/default/files/Report\\_on\\_the\\_Appellate\\_Body\\_of\\_the\\_World\\_Trade\\_Organization.pdf](https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf).

Appellate Body overreaching has unfairly taken away U.S. rights and advantaged China. Through a series of deeply flawed reports, the Appellate Body has eroded the U.S. ability under WTO rules to counteract economic distortions caused by China's non-market practices that harm our workers and businesses. For example, the Appellate Body's erroneous interpretation of "public body" threatens the ability of WTO members to counteract trade-distorting subsidies provided through state-owned enterprises, favoring non-market economies at the expense of market economies.

The dispute settlement system should support, rather than weaken, the WTO as a forum for discussion, monitoring, and negotiation. The Appellate Body has facilitated efforts by some members to obtain through litigation what they have not achieved—and could not achieve—through negotiation. If WTO members believe in a rules-based trading system, then we must ensure the dispute settlement system follows the rules that WTO members established. Without understanding the problem of why the Appellate Body has not followed the rules members agreed to for it, simply writing new rules or affirming the existing rules in whatever form will not fix the problem. This is why we have continued to insist that members need to understand why the Appellate Body does not consider itself bound by the rules so that we can find real, lasting solutions.

Unfortunately, some of our trading partners—prominently, the EU and China—continue to deny that the Appellate Body has broken the rules. Rather than seeking reform in the areas of concern raised by the United States and other WTO members, the EU and China have pursued an arbitration arrangement that incorporates and exacerbates some of the worst aspects of the Appellate Body's practices. The numerous departures from agreed WTO rules in the EU-China arrangement highlight a fundamental difference among WTO members: some members prefer an appellate "court" with expansive powers to write new rules and impose new obligations on the United States, instead of the more narrow appellate review as agreed to by members in the DSU.

The United States continues to engage with our trading partners and remains committed to working with any WTO member that acknowledges U.S. concerns and is willing to work together to find real solutions and reform. I look forward to continuing to work with you and the committee on these important issues.

*Question.* As you know, the GSP and Caribbean Basin preference programs expire this year. These preference programs provide certainty to American businesses who utilize them to efficiently import parts and other inputs to operate their businesses while providing economic development for developing countries. Extension of these programs will help to provide certainty and liquidity as the U.S. and other countries begin the economic recovery from the pandemic. The administration has also effectively leveraged these programs to address longstanding trade irritants with many of the eligible countries.

With the expiration of these programs nearing, how do you view the renewal of these preference programs as part of a larger strategy toward recovery from the pandemic? Additionally, please discuss how we can use these programs to achieve our various trade policy objectives, including economic development and removing unnecessary trade barriers.

*Answer.* This administration has worked, and continues to work, within the framework of the Caribbean Basin Trade Partnership Act (CBTPA) and the Generalized System of Preferences (GSP) to effectively address trade irritants with our Caribbean and GSP trade partners, including by securing significant reforms from beneficiary countries on labor rights, intellectual property, and U.S. market access. CBTPA and GSP also helped strengthen U.S. and beneficiary partners' supply chains, which are an important part of global economic development and recovery from the pandemic. I look forward to working with you and other members of Congress as you consider the legislation reauthorizing both CBTPA and GSP.

*Question.* In the USMCA implementing bill, Congress provided USTR a significant increase in funding. We must continue to assess the implications of how it might be effectively and efficiently utilized—including how it would work in conjunction with the existing trade enforcement trust fund.

I'd like to better understand how USTR intends to utilize this sizeable increase in funding.

Please provide a breakdown on how you intend to utilize the funding authorized by USMCA, and what funding has been allocated to date. Identify any new positions that will be created; any spending toward contractors, or any grants provided to any

organizations. Please also provide a breakdown of any use of the trade enforcement fund for USMCA implementation.

Answer. USTR plans to hire four new attorneys for USMCA labor enforcement and four new attorneys for USMCA environment enforcement. USTR is actively soliciting applications specifically for the new USMCA environment and labor trade attorney positions on the USTR website, Internet job sites, and USAJOBS. The Office of General Counsel (OGC) is in the process of interviewing and hiring, and the first new labor enforcement attorney will start in August. In the interim, OGC has assigned two attorneys (one senior and one junior) for USMCA labor enforcement and two attorneys (one senior and one junior) for USMCA environment enforcement.

Actual spending to date on funding authorized by USMCA supplemental appropriations has been limited due to the impact of the pandemic. For example, USTR has not been able to travel to Mexico City to establish the logistics for the USMCA contingent and State Department has therefore not determined USTR's share of the various support costs. USTR will soon obligate approximately \$2.2 million to reimburse the detailees from the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and the Fish and Wildlife Service through FY 2023. Three USMCA environment trade policy analysts and one labor trade policy analyst are now on board, with two labor trade policy analysts in the pipeline. As these new hires joined USTR within just the last few weeks, personnel costs are minimal to date.

*Question.* USTR published its negotiating objectives with Kenya on May 22nd, which would allow negotiations to legally start as early as next week.

Can you please provide a general update on these negotiations and some insight on how quickly you think these negotiations could be completed, including whether it is realistic to expect a deal completed by early next year before the expiration of Trade Promotion Authority?

Answer. On July 8, 2020, Ambassador Lighthizer formally launched the U.S.-Kenya FTA negotiations via video conference with his Kenyan counterpart, Cabinet Secretary Maina. The first round of negotiations via video conference are slated to run through July 22nd. It is difficult to predict how quickly the negotiations could be completed; President Kenyatta has indicated his hope that we can complete the negotiation during his term. We are working to advance the negotiations as quickly as possible, though ultimately the substance will drive the timing.

*Question.* Last October, the U.S. signed an executive agreement with Japan to facilitate increased trade between our two countries. For agriculture, the first phase of this limited agreement has been positive, even though some commodities like rice would still like better access to Japan's market.

Negotiations for stage two of the agreement were supposed to commence this spring. What is the status of negotiations with Japan, and do you remain committed to pursuing a comprehensive trade agreement with Japan as envisaged in your October 16, 2018 letter to Congress?

Answer. Our negotiations with Japan have been delayed due to the coronavirus pandemic, but I expect to start phase-two negotiations with Japan in the next few months. The administration is committed to negotiating a comprehensive trade agreement as set out in my October 16, 2018, notification letter to Congress and as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

#### QUESTIONS SUBMITTED BY HON. RON WYDEN

*Question.* According to former national security advisor John Bolton's recent book, during a dinner between President Trump and Chinese President Xi during the December 2018 WTO ministerial in Buenos Aires, Trump "asked . . . for some increases in Chinese farm-product purchases, to help with the crucial farm-state vote," in exchange for "U.S. tariffs would remain at 10 percent rather than rise to 25 percent, as he had previously threatened." Further, during a meeting between President Trump and Chinese President Xi at the June 2019 G20 Summit, Trump "turned the conversation to the coming U.S. presidential election, alluding to China's economic capability to affect the ongoing campaigns, pleading with Xi to ensure he'd win."



Do you recall President Trump raising farm purchases by China in connection with his electoral popularity during meetings with President Xi in December 2018 or June 2019?

Answer. No.

*Question.* Did President Trump use the trade negotiations with China to seek an electoral advantage? At any time do you recall President Trump expressing to a foreign official the importance of Chinese purchases of soybeans, wheat, or other agricultural products to Trump's electoral interests? If so, please describe.

Answer. No.

*Question.* Important details of the China trade agreement have yet to be released. In order to assure the public that the agreement did not prioritize agricultural products from electorally important states for the benefit of President Trump, please describe how were the purchase obligations in subcategories 1 through 23 of the Phase One trade agreement determined?

What relevance did the state of origin or electoral politics play in determining these purchase obligations?

Answer. None.

*Question.* Please describe any aspects of the Phase I trade deal that were either not recorded in writing or not publicly disclosed, including, but not limited to, agreements regarding ZTE, Huawei, North Korea, Hong Kong, Uyghur detention and forced labor, private business interests, political rivals, or other topics, that influenced the scope and tenor of obligations in the Phase One trade deal.

Answer. The Phase One agreement is a written agreement consisting of a preamble and eight chapters. The Phase One agreement is public and can be found on the USTR website ([https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic\\_And\\_Trade\\_Agreement\\_Between\\_The\\_United\\_States\\_And\\_China\\_Text.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf)), with one exception. The one exception involves Annex 6.1 to Chapter 6. The public version of Annex 6.1, which can be found on the USTR website at the above link, sets forth China's commitments to purchase minimum values of U.S. goods and services in four broad categories in 2020 and 2021. The confidential version of Annex 6.1, which is not public, includes China's additional commitments to purchase minimum values of U.S. goods and services in 23 subcategories that fall within those four broad categories of U.S. goods and services.

*Question.* Regarding forced technology transfer, China agreed that persons shall be able to operate "without any force or pressure" from China to transfer their technology.

How has USTR verified China's compliance with this obligation? Are there regulations, policies, or other measures that have been revised or amended?

Further, China agreed not to "support or direct" outbound foreign direct investment activities aimed at acquiring foreign technology in sectors targeted by their industrial policy.

How does USTR intend to determine China's intent when supporting or directing outbound investment? For instance, when is an investment simply a good deal versus an opportunity to obtain new technology?

Answer. A key concern identified in USTR's section 301 investigation was the informal, unwritten actions that China takes to force or pressure foreign companies to transfer their technology to Chinese entities. Chapter 2 of the Phase One Agreement creates novel, binding commitments to address many aspect of China's technology transfer regime. The Technology Transfer chapter prohibits China from employing a range of acts, policies, and practices to extract technology and intellectual property from U.S. companies.

We continue to closely monitor China's compliance with Chapter 2 and to work closely with U.S. stakeholders. Specifically, we have established a team of trade analysts, economists, lawyers, and China subject matter experts that monitors and reviews relevant Chinese practices and written measures, as well as information received from U.S. stakeholders.

USTR raises implementation issues with our Chinese counterparts, including by using the monthly Designated Officials meetings and the quarterly Deputy-level meetings established by the Phase One agreement. We will use the enforcement

mechanism established by the Phase One agreement as necessary and continue to apply duties to encourage China to change its harmful behavior.

With regard to outbound investment, we closely monitor China's compliance with respect to its commitments in the Phase One agreement. We also work closely with U.S. stakeholders. Our team of trade analysts, economists, lawyers, and China subject matter experts monitors and reviews Chinese measures, public information, and disclosures relating to investments, and information received from U.S. stakeholders.

*Question.* Given the high level of tariffs currently imposed on Chinese goods, and the fact that tariff relief under a Phase Two deal does not seem likely in the near term.

What teeth does the Phase One enforcement mechanism have given that it appears to rely on the threat of imposing a tariff-based remedy? If this remedy is not tariffs, what is it?

*Answer.* The Phase One Agreement's Bilateral Evaluation and Dispute Resolution chapter sets forth an arrangement to ensure the effective implementation of the agreement and to allow the parties to resolve disputes in a fair and expeditious manner. This arrangement creates regular bilateral consultations at both the principal level and the working level. It also establishes strong procedures for addressing disputes related to the agreement and allows each party to take proportionate responsive actions that it deems appropriate. The United States will continue to monitor vigilantly China's progress in eliminating its unfair trade practices and implementing its obligations under the agreement.

*Question.* In response to concerns that China is undermining Hong Kong's autonomy, President Trump announced plans to begin rolling back the city's special treatment under U.S. law.

This process could change U.S. export control, national security reviews of investments in the U.S. from Hong Kong, and end treatment of the city as a separate customs territory from China, exposing its exports to U.S. tariffs on China. What are the next steps in changing Hong Kong's status?

*Answer.* The administration is taking steps in response to China's actions in Hong Kong, including by eliminating policy exemptions that give Hong Kong different and special treatment. USTR would also make two observations on U.S.-Hong Kong trade relations. First, Hong Kong was the 15th-largest U.S. goods export market in 2019, and the United States ran the largest goods trade surplus with Hong Kong of any trading partner in that year, which was close to \$30 billion. Second, Hong Kong does not impose any import duties on U.S. products and the United States imposes the same rate of Most Favored Nation duties on imports of products of Hong Kong and China.

*Question.* The Phase One agreement states in Article 7.4 that "[t]he Appeal and any information and matters related to it are confidential and shall not be shared beyond the Bilateral Evaluation and Dispute Resolution Office, absent the agreement of the Parties." During the Trade Agenda Hearing, Ambassador Lighthizer explained that the purpose of this provision was to protect U.S. businesses who have shared sensitive information with USTR. While the Phase One agreement does at Article 7.3 provide that confidential information need not be disclosed to the other party, Article 7.4 appears to prevent the existence of an "Appeal and any information and matter related to the Appeal" to be disclosed beyond the dispute resolution office without China's consent.

Is the United States required to seek China's permission to share that an appeal has occurred with members of this committee?

*Answer.* Answer: USTR is committed to remain open and transparent with members on all relevant information related to the enforcement of the Phase One agreement.

*Question.* The Phase One agreement with China specifies that "[o]fficial Chinese trade data and official U.S. trade data shall be used to determine whether this Chapter has been implemented." Your testimony however suggests that the administration is considering compliance based on "actual sales reports, . . . together with exports."

Please define "official Chinese trade data and official U.S. trade data."

Please explain USTR's methodology for assessing the current level of purchases for each of the four categories of purchase obligations in the Phase One agreement, as well as the data sources used to make such assessments.

To the extent that data reflecting sales contracts is utilized, please explain USTR's methodology for verifying and rectifying any failed or refused contracts.

Please explain USTR's methodology for determining the value of exported goods where Chinese government contracting devalues or under-prices the goods sold.

Answer. Chapter 6 of the Phase One agreement sets forth China's commitments to purchase U.S. goods and services. Article 6.2.6 of Chapter 6 provides that "[o]fficial Chinese trade data and official U.S. trade data shall be used to determine whether this Chapter has been implemented." The Phase One Agreement does not define the terms "official Chinese trade data" and "official U.S. trade data."

Under the Phase One agreement, China's commitments to purchase U.S. goods and services are annual commitments for calendar years 2020 and 2021, so we will not be able to assess definitively whether China has fulfilled these commitments for 2020 until official trade data for the entire year is published. At the same time, we have been following China's progress in purchasing U.S. goods and services very closely and have been discussing our concerns with our Chinese counterparts as they arise.

In reviewing China's progress in meeting its Chapter 6 commitments relating to manufactured goods, agriculture, and energy, USTR carefully analyzes monthly trade data released by the U.S. Department of Commerce and the General Administration of Customs of China. In addition, USTR works with other U.S. government agencies and the private sector on a continual basis to keep abreast of purchases of U.S. goods by Chinese entities that do not show up immediately in these data releases, such as when a contract has been signed but a shipment will not take place until months later. This type of information is especially useful to keep abreast of the progress being made by China in sectors like agriculture and energy, where it is not unusual for large contracts for the purchase of a commodity to be signed with the expectation that shipment will not take place until later in the year.

In reviewing China's progress in meeting its Chapter 6 commitments relating to services, USTR carefully analyzes data released by the Commerce Department. The Commerce Department releases U.S.-China cross-border trade in services data on a quarterly basis. The Commerce Department releases data on services provided through U.S. affiliates in China only on an annual basis.

While information other than official trade data is useful in understanding the progress being made by China during the course of the year, the Phase One agreement provides that the assessment of whether China has implemented its Chapter 6 commitments in any given year is to be based on official Chinese trade data and official U.S. trade data.

*Question.* Canada's government control of its dairy market has long led to unfair results for U.S. producers. Canada unfairly under-prices skim milk ingredients in milk classes 6 and 7 allowing for under-priced exports to other markets which compete with U.S. milk products, as well as undercutting U.S. products in Canada. In USMCA, Canada committed to eliminate milk classes 6 and 7 "6 months after entry into force," and ensure these products are classified and priced appropriately based on their end use.

Recognizing that there are some interests in Canada that strongly oppose the eliminations of classes 6 and 7, what is USTR doing to make sure Canada and its provinces follow through with this commitment?

Answer. I understand how Canada's classes 6 and 7 dairy pricing policies have adversely impacted the U.S. dairy industry. USTR will be closely monitoring Canada's implementation of all its dairy commitments, and we have conveyed our clear expectations to Canada.

*Question.* Enforcement of our trade agreements and follow-through on what our trading partners do to hold up their end of the bargain is absolutely essential for me. It's how we ensure that what we negotiate for on paper, we actually get in practice. One of the hotly contested issues during negotiations—and one of the important wins the U.S. scored in the ultimate agreement—was on dairy trade with Canada.

On June 15, 2020, Canada issued new regulations describing its updated tariff rate quota (TRQ) administration for dairy products under the USMCA. The TRQ

regulations specify that large portions of the TRQs will be allocated to Canadian “processors” who produce competing products and have a vested interest in limiting imports of competitive products.

Are Canada’s June 15, 2020 TRQ regulations consistent with the text of USMCA’s TRQ administration obligations?

What are you doing to make sure Canada’s TRQ regulations are compliant with USCMA and do not replicate the issues in the EU-Canada agreement?

Answer. A critical component of the market access the United States secured in the USMCA is the ability to export U.S. products duty-free, under tariff-rate quotas (TRQs) directly to retailers and distributors. Such exports maximize profit for U.S. producers and build consumer demand for U.S. products in Canada. We remain committed to ensuring that Canada does not undermine the value of the market access for the United States under the USMCA.

USTR will be closely monitoring Canada’s implementation of all its dairy commitments. We are engaging with our Canadian counterparts and are ready to take enforcement action through the dispute settlement mechanism in the agreement, if necessary.

*Question.* The UK Trade Commissioner said that there was a “shared ambition” to sign a trade agreement before the presidential election in November. The second round of talks for this proposed argument only just began this week. To sign an agreement in November, USTR would need to give Congress notice of an intention to sign by early August and release text of the proposed agreement in September under the 2015 Trade Promotion Authority, leaving only a handful of months to complete negotiations. This timeline would be extremely ambitious, especially if important areas like the digital services tax are to be addressed.

Is the UK’s trade minister’s goal to sign an agreement before the U.S. elections a realistic goal—and shouldn’t the outcome drive timing, not elections?

Answer. While it is possible that an agreement between the United States and the UK could be reached in the next few months, the likelihood of that is low. I am more focused on achieving a comprehensive agreement that delivers real benefits for American workers, farmers, and businesses, rather than achieving a quick deal. That said, our teams are working at an accelerated pace, and I am in regular discussions with UK Trade Minister Elizabeth Truss. We are moving quickly and efficiently, but I will not sacrifice our ambitions for speed.

*Question.* The World Trade Organization is a critical institution for ensuring our trading partners are operating on a level playing field. Moreover, as USTR under the last several administrations has argued, significant reform and a reinvigorated negotiation process are needed. The sudden departure of Director General Azevedo has left the institution without critical leadership.

What characteristics and experience do you view as critical in a new Director General, and how will the United States engage in the search process?

Answer. The United States will participate fully in the selection process for the new WTO Director General. A strong candidate should have knowledge of the WTO, as well as deeply appreciate that the WTO is an institution that needs comprehensive reform for it to remain relevant and effective.

*Question.* The retaliatory tariffs related to the Airbus case are scheduled to carousel again on August 12th. Oregon food importers, restaurants, and retailers are among the hardest hit businesses by the COVID-19 pandemic, and the tariffs that are currently in place aren’t helping. Oregon wine producers are also hurt by the tariffs when they impact their distributors, given the unique organization of the wine supply chain. At the same time, we need to get relief for Boeing and its workers, which the tariffs on wine are not doing so far.

What concrete action are you taking to engage with your European counterparts and how soon will you come to agreement? If tariffs are currently not an effective point of pressure, what other actions are you seeking to force compliance?

Answer. USTR is continuing to press the EU and member States to engage in serious negotiations regarding their illegal subsidies to Airbus. There is no set timeline for coming to agreement, but USTR will continue to act in the manner most likely to bring about resolution of this longstanding dispute. Toward that end, USTR has established a process where interested persons can submit comments on revising existing tariffs, and comments are currently being accepted through July 26th.

USTR will continue to consider public comments concerning potential effects on the U.S. economy when considering any further action to take in the investigation.

*Question.* The WTO is resuming negotiations on fisheries subsidies, which has been one potential bright spot in negotiations in an area of critical importance, particularly since it aligns with goals set at the United Nations on sustainable developments. I am encouraged that these talks are moving forward, though I am also concerned about broad carve-outs for certain subsidies that continue to be part of the conversation.

What is the United States doing to push these negotiations toward an ambitious outcome that applies across to countries across the board? What is the likelihood of coming to an agreement before the rescheduled WTO ministerial meeting?

*Answer.* As the WTO resumes the fisheries subsidies negotiations, the United States stands ready to help bring the WTO fisheries subsidies negotiations to a successful and meaningful conclusion before the rescheduled WTO ministerial meeting, if other members are willing. The United States has played a very active role in seeking a meaningful outcome. For an outcome to be meaningful, it must change the status quo and constrain the largest subsidizers regardless of self-declared developing country status. The United States will continue to press for strong, clear prohibitions on subsidies for illegal fishing, overfished stocks, and fishing in areas beyond a country's own national jurisdiction and control, as well as real constraints on the world's largest subsidizers.

*Question.* For more than a year, this administration blocked approval for new Appellate Body members in an effort to draw attention to concerns regarding the WTO dispute resolution system. I share these concerns, and I want them to be addressed. Last December these concerns captured the world's attention when the Appellate Body became unable to hear new cases after the retirement of two judges left only one remaining judge. The United States has yet to put forward a reform proposal despite opposing other WTO members' reform suggestions.

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

*Answer.* The administration is committed to working with any interested WTO member to find solutions to the failure of the Appellate Body to follow WTO rules. This means first understanding what is the root of the problem: Why has the Appellate Body consistently broken WTO rules—that is, those rules agreed by WTO members in the Uruguay Round and approved by the Congress in the Uruguay Round Agreements Act—despite every effort by U.S. administrations to get it to stop.

By exercising our right not to approve new members to the Appellate Body, the administration has forced the WTO to engage in a long-overdue debate on this problem. My office also comprehensively detailed the Appellate Body's pervasive rule-breaking in its Report on the Appellate Body earlier this year.<sup>2</sup> The report details the concerns expressed by the United States for more than 20 years and the repeated failure of the Appellate Body to apply the rules of the WTO agreements in a manner that adheres to the text of those agreements. The Report also highlights several examples of how the Appellate Body has altered WTO members' rights and obligations through erroneous interpretations of WTO agreements.

Appellate Body overreaching has unfairly taken away U.S. rights and advantaged China. Through a series of deeply flawed reports, the Appellate Body has eroded the U.S. ability under WTO rules to counteract economic distortions caused by China's non-market practices that harm our workers and businesses. For example, the Appellate Body's erroneous interpretation of "public body" threatens the ability of WTO members to counteract trade-distorting subsidies provided through state-owned enterprises, favoring non-market economies at the expense of market economies.

The dispute settlement system should support, rather than weaken, the WTO as a forum for discussion, monitoring, and negotiation. The Appellate Body has facilitated efforts by some members to obtain through litigation what they have not achieved—and could not achieve—through negotiation. If WTO members believe in a rules-based trading system, then we must ensure the dispute settlement system follows the rules that WTO members established. Without understanding the problem of why the Appellate Body has not followed the rules members agreed to for it, simply writing new rules or affirming the existing rules in whatever form will

<sup>2</sup>United States Trade Representative, Report on the Appellate Body of the World Trade Organization, February 2020, available at: [https://ustr.gov/sites/default/files/Report\\_on\\_the\\_Appellate\\_Body\\_of\\_the\\_World\\_Trade\\_Organization.pdf](https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf).

not fix the problem. This is why we have continued to insist that members need to understand why the Appellate Body does not consider itself bound by the rules so that we can find real, lasting solutions.

The United States continues to engage with our trading partners and remains committed to working with any WTO member that acknowledges U.S. concerns and is willing to work together to find real solutions and reform. I look forward to continuing to work with you and the committee on these important issues.

*Question.* When I went back to Oregon after USMCA was passed, along with Oregon dairy producers, labor stakeholders, and service and manufacturers, I stood with a truly amazing Oregon entrepreneur—Rebecca Alexander. She founded AllGo, an online community for plus-size people that relies on user-generated content—like reviews, comments and photos—for its very existence. She created a truly special online space for people that all too often marginalized and unfairly censored. In the U.S., we thankfully have a system where her platform and others can create spaces for people that the established platforms cannot or will not serve. That is the type of business that I want to support and export to the rest of the world. Including limitations on liability in our trade agreements is key to that.

These protections have been in U.S. law since 1996. Can you tell me why you thought it was high time we reflected it in trade agreements?

Answer. We agree that a provision addressing the non-IP civil liability of interactive computer service suppliers can play an important role as an element of comprehensive, high standard digital trade rules designed to facilitate the continued growth of the U.S. economy and to support innovative Internet-based business models like the business that you have described. At the same time, we recognize that such provisions must provide flexibility for the Congress, the administration, and our negotiating partners to evolve policy and law in response to new challenges.

*Question.* The final outcome of the USMCA, after modifications were made to reflect the priorities of congressional Democrats, takes into account the need for a balance between support for innovation in the development of new pharmaceutical treatments and the promotion of access to medicines through greater generic competition. Certain aspects of U.S. law reflect this principle, and recent events have underscored its importance.

Will the United States follow a balanced approach in its negotiations for a free trade agreement with the United Kingdom, given the large bipartisan support for the final USMCA outcome?

Answer. We intend to follow the principal negotiating objectives under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, which calls on USTR to seek standards similar to those found in U.S. law. At the same time, I look forward to engaging with members of Congress on any particular issues of concern.

*Question.* Our trade relationship with India has been challenging for years, but is facing even greater challenges in the last year, between retaliatory tariffs on products important to the Northwest and the new digital tax and protectionist data flows measures. India has also been a hurdle to making progress at the WTO on fisheries subsidies negotiations and a range of other issues. There are reports that you are reengaging with Indian officials this week to take up the prospect of a deal to resolve certain trade issues—which seem to be only multiplying. I share the ambition for advancing the relationship with India so that we can address both old and new issues.

Are you addressing the new protectionist measures India has imposed in the last year, in addition to other longstanding issues?

Answer. India has a long history of protectionism and recent policies enacted by India, including those related to digital economy, continue to be trade restrictive. We are in active discussions with the government of India in an attempt to address a broad range of Indian trade barriers that would expand market access, including reduction of tariffs on key U.S. agricultural and industrial exports, and to ensure progress in other areas, such as intellectual property protection and digital trade. While we have made some progress on key market access concerns, we are still working to achieve a package that is equitable and adequately addresses relevant trade barriers to ensure India meets the GSP eligibility criteria. We have also separately launched a section 301 investigation into India's digital services tax and are relaunching our efforts on intellectual property rights through the Trade Policy Forum's High Level Working Group on Intellectual Property.

*Question.* The European Union continues to use geographical indications to deny fair market opportunities for our agricultural products—not only in the EU, but wherever the EU can convince others to copy its system. We need a more robust approach to dealing with this type of non-tariff trade barrier so that we can effectively tackle it and preserve export opportunities for our ag products. USMCA broke some new ground, particularly with the side letters negotiated with Mexico on this issue. That was a good first step, rather than a great final landing spot. Moreover, this problem is growing rapidly thanks to EU policies proliferating around the world.

What are you doing through FTA and other trade discussions to nail down commitments from our trading partners that they will not block our exports that use everyday food terms widely used by American companies?

*Answer.* The United States continues its intensive engagement in promoting and protecting access to foreign markets for U.S. exporters of products that are identified by common names. The United States is advancing these objectives through its free trade agreements by seeking provisions that ensure trading partners are committed to the principles of procedural fairness and transparency and that help to maintain market and promote access for U.S. producers. In addition to these negotiations, the United States is engaging bilaterally to address concerns resulting from the GI provisions in existing EU trade agreements, agreements under negotiation, as well as other initiatives.

*Question.* The United Kingdom will soon be free to move away from the many protectionist practices of the European Union that have created such an imbalance in agricultural trade across the Atlantic. But the UK remains under pressure from the EU to continue to align its food safety practices with the EU's non-scientific, overly burdensome approach to agricultural trade. That's a huge problem since those existing EU policies have led to a deep Transatlantic dairy trade imbalance of over 10 to 1.

How do we use those UK negotiations to strip away the current protectionist, red-tape model to governing dairy and other agricultural trade, and put in place more reasonable requirements that allow us to sell our safe and high-quality products to that major import market?

*Answer.* During negotiations with the UK, we will be seeking for the UK to make independent decisions regarding food safety, animal health, and plant health, based on science and risk analysis, and not maintain EU regulations that limit market access for U.S. agricultural products.

*Question.* The USMCA is scheduled to enter into force on July 1st. As the Mexican legislature and executive branch rush to implement the agreement, more questions are being raised as to whether it will be in compliance with the agreement on day one on a range of issues, including the treatment of low-value customs entries, discriminatory advertising limitations for pay-TV, and sanitary and phytosanitary measures, to name a few. Section 106(a)(1)(G) of the Bipartisan Trade Priorities and Accountability Act of 2015 and section 101(b) of the USMC Implementation Act require USTR to find that our trading partners have “taken measures necessary to comply with those provisions of the agreement that are to take effect on the date on which the agreement enters into force” before allowing the agreement to take effect. In the past, this requirement has been used as leverage to prod trade partners to make necessary changes to come into full compliance. The President provided this notice despite known deficiencies, and the signals out of Mexico about their posture toward important obligations and principles in the agreement have become alarming with the arrest of Mexican labor lawyer Susana Prieto Terrazas.

How do you plan to promptly address these and any other deficiencies in Mexico's compliance?

*Answer.* The administration is committed to ensuring that Mexico complies with its obligations under the USMCA. We continue to engage with Mexican officials at high levels and will be monitoring Mexico's implementation of the Agreement closely. If we are unable to resolve our concerns, however, we are prepared to take enforcement actions to hold Mexico to its obligations under the agreement.

*Question.* The inclusion in USMCA of the Rapid Response Mechanism, that I worked on with Senator Brown and others, has the potential to be a game-changer for our trade relationship with Mexico, and a template for future agreements. It allows the United States to target imports from bad-actor facilities that fail to uphold worker rights. Together with tough obligations in the agreement and state-to-state

enforcement, it can bring about real on-the-ground improvements for Mexican workers, which will put our workers on a more level playing field. But this depends on the U.S. government actively pursuing these mechanisms.

On June 30, 2020, USTR published guidelines for the submission of petitions and other information to bring actions under the rapid response mechanism and the labor chapter. How will USTR apply the guidelines to ensure rigorous enforcement of the labor obligations in the chapter?

How will USTR work with the Department of Labor to ensure that submissions to the USMCA hotline are fully taken into account in enforcement actions?

*Answer.* The interim procedural guidelines, published by USTR on behalf of the USMCA Interagency Labor Committee (ILC), follow the process and aggressive timeline established by the USMCA Implementation Act. Information regarding labor issues among the USMCA countries may be submitted confidentially to the hotline. As co-chairs of the ILC, USTR and the Department of Labor intend to work together closely to ensure enforcement of USMCA labor obligations. As I stated during my hearing before your committee, we will not hesitate to utilize the USMCA's enforcement tools.

*Question.* The USMCA Implementation Act included funding to ensure that USTR has the capacity, personnel, and resources to monitor compliance with USMCA environmental obligations and pursue enforcement actions if necessary. The bill included \$20 million over 4 years for the Interagency Environment Committee to support, among other things, up to three details to the U.S. Embassy in Mexico from the Fish and Wildlife Service (FWS), Environmental Protection Agency (EPA), and National Oceanic and Atmospheric Administration (NOAA). The bill also included \$40 million over 4 years for USTR's environmental enforcement efforts.

What additional capacity, personnel, or resources has USTR added—or does USTR intend to add—with these funds? Have FTEs been detailed to the U.S. embassy in Mexico, as authorized by the Act?

*Answer.* USTR has worked closely with the U.S. Environmental Protection Agency, the Department of Interior's Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration to identify one expert from each agency to be detailed to USTR and subsequently placed in the U.S. Embassy in Mexico City, Mexico. Two of the attachés have begun onboarding with USTR and the third is in process. USTR also created a Senior Trade Representative position in Mexico City, whose primary role is to coordinate and enhance the work of the labor and environment attachés in Mexico City, and more generally to ensure robust monitoring and enforcement of the USMCA. USTR and the relevant agencies are endeavoring to relocate these officials to Mexico City as soon as possible. Placement in Mexico has been delayed due to the pandemic, however work by the attachés will begin in the interim.

USTR's Office of Environment and Natural Resources has three additional staff to support the work of the Interagency Environment Committee (IEC) and USTR's enhanced USMCA monitoring and enforcement efforts. USTR's Office of General Counsel has assigned two attorneys to work specifically on USMCA Environment and is actively soliciting applications specifically for new environment trade attorney positions.

USTR continues to work with the IEC agencies, including CBP, EPA, NOAA, FWS, and DOJ, to identify opportunities to enhance monitoring and enforcement of USMCA environment obligations, such as increased staffing or improved technology to better target shipments of illegally harvested flora and fauna between the United States, Mexico, and Canada.

*Question.* USMCA includes an updated Agreement on Environmental Cooperation that, among other things, lays out a framework for the governments of Mexico, Canada, and the United States to engage in strategic collaboration on environmental issues that affect North America, including building low-emission, resilient economies; combating illegal logging, fishing, and trafficking of wildlife; and promoting sustainable fisheries management.

Has USTR identified, or worked with EPA to identify, any issues on which the administration intends to engage with Mexico and Canada pursuant to the Agreement on Environmental Cooperation?

*Answer.* The updated Environmental Cooperation Agreement (ECA) identifies EPA as the U.S. lead in the Council for Environmental Cooperation. USTR worked



with EPA to negotiate and agree to strategic priorities for North American environmental cooperation, aligned with the environmental obligations agreed in USMCA Chapter 24 and the ECA. The 2021–2025 Strategic Plan for the Commission for Environmental Cooperation includes as priorities: (1) clean air, land, and water; (2) preventing and reducing pollution in the marine environment; (3) circular economy and sustainable materials management; (4) shared ecosystems and species; (5) resilient economies and communities; and (6) effective enforcement of environmental laws.

The Interagency Environment Committee for Monitoring and Enforcement, led by USTR, is facilitating collaboration among agencies that received USMCA supplemental appropriations to ensure that cooperative activities are coordinated. USTR is also supporting targeted environmental cooperation to strategically address areas of concern related to Mexico's implementation of its USMCA environment obligations.

*Question.* According to USTR's website, a limited agreement between the United States and Japan entered into force on January 1, 2020, and that "the United States and Japan intend to conclude consultations within 4 months after the date of entry into force of the United States-Japan Trade Agreement and enter into negotiations thereafter in the areas of customs duties and other restrictions on trade, barriers to trade in services and investment, and other issues in order to promote mutually beneficial, fair, and reciprocal trade."

Have Phase Two negotiations with Japan commenced? When do the United States and Japan intend to resume these discussions?

*Answer.* Our negotiations with Japan have been delayed due to the coronavirus pandemic, but I expect to start phase-two negotiations for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018, in the next few months.

*Question.* COVID-19 has shown the dependence of our Nation on innovation to secure our futures and save lives. Today, we are counting on science and technology to enable ordinary Americans to keep working safely, see the doctor, and get all the other goods and services they need in their everyday lives.

Do you agree that the deals you are pursuing with the UK, Japan, and other countries must, at minimum, include comprehensive, high standard rules to protect and promote the science, technology, and innovation that we are depending on to get through the current crisis?

*Answer.* Fostering innovation and creativity is essential to U.S. economic growth, competitiveness, and the estimated 45 million American jobs that directly or indirectly rely on IP-intensive industries. To promote innovation, including the research and development of cutting-edge treatments and cures required by the current crisis and in the future, USTR engages with trading partners to ensure that U.S. owners of IP have a full and fair opportunity to use and profit from their IP. In our FTA negotiations, we will follow the objectives set forth by Congress in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, including seeking a standard of protection similar to that found in U.S. law.

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QUESTIONS SUBMITTED BY HON. MIKE CRAPO

*Question.* I support the United States-Mexico-Canada Agreement (USMCA), and I am glad that we are now nearing its implementation. I applaud the administration for its hard work in getting that deal done.

An important benefit of the agreement is the new access it granted to the highly protected Canadian dairy market for U.S. producers, as well as the new rules it put in place to quell the type of trade-distorting practices Canada had used to keep our dairy products out. To that end, I am concerned that Canada is already working to undermine the agreement with its June 15, 2020, tariff-rate quota allocation announcement.

What steps has USTR taken to date to ensure that Canada holds up its end of the agreement on dairy market access? I would like to know more about what we are doing to make sure their commitments are fully realized as we near the agreement's entry into force date.

*Answer.* USTR will be closely monitoring Canada's implementation of all its dairy commitments. We are engaging with our Canadian counterparts and are ready to

take enforcement action through the dispute settlement mechanism in the agreement, if necessary.

*Question.* The COVID-19 pandemic has created economic uncertainty and challenges for many businesses in Idaho and across the country. Coronavirus has impeded the efforts of many of these companies to shift their supply chains away from China and, as a result, they now need more time to do so. I have heard from stakeholders asking for an automatic extension of existing exclusions to help American businesses stay afloat and allow workers return to work during this critical period. USTR just finished processing List 3 exclusion requests in May, with an acceptance rate of just 4.9 percent, and they expire in August.

Is USTR currently considering an automatic extension of previously approved exclusions from the section 301 tariffs on imported goods from China? These exclusions are important to the many U.S. businesses and consumers that are suffering from the effects of the COVID-19 outbreak that has upended global supply chains.

*Answer.* USTR is not considering automatic extension of previously approved exclusions. Rather, prior to a group of exclusions expiring, USTR has issued a Federal Register notice asking the public to comment on whether to extend these particular exclusions for up to 1 year. Currently, USTR has several extension dockets open covering multiple tranches of exclusions from multiple lists.

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#### QUESTIONS SUBMITTED BY HON. PAT ROBERTS

*Question.* The EU's approach to pesticide regulation is based on the precautionary principle rather than risk assessment. This policy has a global effect on agricultural trade, forcing U.S. farmers to choose between preserving export markets and continuing to use safe and effective crop protection products. The recent Farm to Fork strategy could force countries around the world to adopt these policies.

How is the administration addressing this threat to U.S. agricultural production?

*Answer.* We are committed to ensuring fair treatment of U.S. agricultural exports by our trading partners. Discontinuing the use of critical substances without a proper science-based risk assessment to provide justification would have serious adverse effects on agricultural productivity and global markets. USTR shares your concerns that the EU's hazard-based pesticide policy could harm not only U.S. producers, but also could keep safe, modern, innovative tools and technologies from farmers worldwide. As we continue engaging with the EU, we are seeking to address a wide array of non-tariff and SPS barriers, including EU pesticide policy. More broadly, USTR also participates actively in the WTO Committees on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) to raise concerns regarding any potentially unjustified standards-related measures maintained by our trading partners.

*Question.* China's current pesticide legislation requires studies supporting pesticide registration in China to be conducted in China, with no provision to recognize studies conducted in other countries under internationally recognized Good Laboratory Practice (GLP) Standards. Collaboration between China's Ministry of Agriculture and Rural Affairs (MARA) and USTR, USDA and EPA under the Phase One agreement can help encourage China's participation in the international agreement on Mutual Acceptance of Data (MAD) conducted according to those GLP Standards. This will facilitate registration by U.S. companies (and others) of pesticide products in China, with benefits for international trade.

How can this issue be addressed in the Phase One agreement?

*Answer.* Under the Agriculture Chapter of the Phase One agreement, China stated its intention to engage in cooperative discussions related to agricultural pesticides, including registration data and pesticide trial data. The EPA and China's Institute for Control of Agrochemicals, Ministry of Agriculture (ICAMA) have a positive history of working together on technical issues related to pesticides. In the future, USTR, USDA, and EPA plan on re-engaging with ICAMA to discuss the establishment of import tolerances and maximum residue levels for pesticides. USTR, USDA, and EPA agree on the importance of encouraging China to accept field trial data produced outside China.

*Question.* Ambassador Lighthizer, I wanted to follow up regarding your comments on non-science based, *i.e.*, precautionary principle, actions Mexico has taken on both crop protection products and seed traits. U.S. producers and agribusiness companies

are deeply concerned with both these topics. It has been my understanding that you are looking at filing a case under the USMCA dispute resolution process on both crop protection and seeds. In your response, you addressed concerns with both, but your answer also made it appear you were only looking at a case for seed.

Are you looking to address these important issues for both crop protection and seeds under the dispute resolution process?

Answer. Biotech products are of key economic importance to U.S. farmers, and I share your concern with respect to Mexico's treatment. We continue to engage with Mexican officials at high levels to address our concerns. If we are unable to resolve our concerns, we are prepared to take enforcement actions to hold Mexico to its obligations under the agreement, if necessary.

*Question.* Ambassador Lighthizer, I understand that both U.S. and foreign-based crop protection companies are experiencing delays on several dozen product registrations and label changes in Vietnam. Vietnam will not accept data from laboratories in the United States even though they follow internationally recognized good laboratory practices (GLP). Vietnam accepts GLP data from almost all other countries. This is placing GLP labs based in the United States, along with U.S. based companies that tend to generate more data in the United States, at a distinct disadvantage with competitors around the world.

What is USTR and the U.S. Government doing to address this issue with Vietnam?

Answer. We are aware of the concern regarding delays in Vietnam's review and approval of crop protection product registration dossiers from both U.S. and foreign-based companies. In addition, we are concerned that Vietnam does not recognize U.S. laboratories conducting the toxicology tests as GLP-certified laboratories, even though the labs are recognized by the OECD. The U.S. government, including USTR and USDA, has been engaging with representatives from crop protection companies in the United States and Hanoi and the Vietnamese Government and will continue to urge Vietnam to address this issue.

*Question.* The European Union has long imposed unscientific barriers that have both restricted trade and limited commercial opportunities here in the United States. The biotechnology approval process, for example, has been plagued by political interference from the beginning. We hear positive statements from this new European Commission about wanting to have a trade agreement with the United States, but the EU has shown time and time again that they won't uphold commitments in their existing agreements or follow their own law. Most recently, we've seen this new commission repeatedly cancel the critical monthly meetings needed to advance biotechnology applications to approval and is likely to cancel the upcoming July meeting. This could hold up the commercialization of products here in the United States. It is imperative that any trade agreement with the EU build upon the SPS agreement and include disciplines on the approval process for biotechnology.

Could you please tell us what the current state of the U.S.-EU trade discussions is and if the new commission intends to address these longstanding systemic issues that needlessly restrict U.S. farmers' access to technology?

Answer. We share your concerns regarding the commission's actions to cancel the monthly member state committee meetings necessary to advance biotechnology applications to approval. Indeed, the commission recently canceled the meeting previously scheduled for July 10, 2020. There are currently 13 applications of importance to U.S. trade interests that are pending action by the standing committee responsible for biotechnology, two of which have been in the EU approval system for over a decade. We continue to convey these concerns, as well as other concerns regarding systemic burdens and delays in the EU biotech approval process, to the EU, including in the U.S.-EU trade talks.

*Question.* I am very encouraged by negotiations moving forward on a free trade agreement with the United Kingdom. While historical differences in agricultural policies have been challenging to come to a consensus on with European countries, I see a great deal of opportunity in forging a strong framework for agricultural trade with the UK.

How have these discussions been progressing, especially as it relates to strong, science-based policies for food and agriculture?

Answer. The foundation of the U.S.-UK discussions with respect to sanitary and phytosanitary measures (SPS) has focused on the critical importance of countries meeting their WTO commitments to base SPS standards on science and risk assessment.

*Question.* While China announced in February that it would allow an exemption from the section 301 counter-tariffs applied to U.S. ethanol, there continues to be an effective tariff rate of 45 percent on the product as a result of the section 232 countermeasures, and other import tariffs currently being applied by China.

How do we work to enforce compliance with Phase One with regard to products like ethanol, where import tariffs persist to make the U.S. product uncompetitive in China?

Answer. China currently maintains an MFN tariff of 30 percent and a section 232 retaliatory tariff of 15 percent on imports of U.S. ethanol. Up until 2016, China imposed an applied tariff of 5 percent, which had facilitated record exports of U.S. ethanol to China. However, in 2017, the applied tariff was raised to 30 percent. China's commitments to purchase U.S. food and agricultural products are annual commitments for calendar years 2020 and 2021, so we will not be able to assess definitively whether China has fulfilled these commitments for 2020 until the end of this year. At the same time, we have been following very closely China's progress in purchasing U.S. food and agricultural products and have been discussing our concerns with our Chinese counterparts as they arise. We have made it clear that China needs to find a way to satisfy all of its purchases commitments under the Phase One agreement.

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QUESTIONS SUBMITTED BY HON. JOHN CORNYN

*Question.* I was proud to work with Senator Warner and other colleagues to introduce the CHIP for America Act last week. The bill aims to restore semiconductor manufacturing in American, secure supply chain, create American jobs and ensure long-term national security. In the meantime, it is also important to engage our global allies and partners to address threats to the global supply chain in semiconductor industry. Taiwan is a trustworthy partner that supplies top American companies, including my home State, with advanced-technology intermediate goods. Taiwan's leading semiconductor manufacturer just announced its plan to build and operate an advanced fab in the United States last month. Taiwan has expressed its strong interest in a high-standard trade deal with the United States, which I believe would further economic and trade relations between our two countries.

Would you consider Taiwan as a good candidate and prioritize a possible U.S.-Taiwan FTA?

Answer. The trade and investment relationship between the United States and Taiwan is an important one. We are focused on continuing to build a strong bilateral relationship with Taiwan. However, we still face longstanding trade barriers that restrict market access for U.S. beef and pork products, despite previous commitments by Taiwan to fix these problems. Resolving these issues will be critical to deepening our trade and investment relationship with Taiwan.

*Question.* As the world economy begins to recover and reopen following the public health-forced shutdowns due to the COVID-19 pandemic, what is your perspective and outlook for the Phase One agreement with China, and specifically as it relates to the agricultural purchase commitments by China? As you know, given the significance of China as a global importer and user of cotton, and the current economic distress being felt by U.S. cotton producers and others in the U.S. cotton supply chain, it is critical to maintain a robust level of cotton exports.

What are your expectations for China to fulfill its commitments in Phase One for agricultural purchases generally and for cotton and cotton yarn specifically?

Answer. With regard to its commitments to purchase U.S. food and agricultural products, China got off to a slow start at the beginning of this year, but we have seen significant purchases over the last several weeks. With regard to cotton, from January to May 2020, China imported \$440 million of U.S. cotton. While this level is behind China's import level for the 2017 baseline period, China continues to make large purchases of new crop cotton that are being reported by the USDA Export Sales Report on a weekly basis. China's commitments to purchase U.S. food and agricultural products are annual commitments for calendar years 2020 and 2021, so we will not be able to assess definitively whether China has fulfilled these commit-

ments for 2020 until the end of this year. At the same time, we have been following China's progress in purchasing U.S. food and agricultural products very closely and have been discussing our concerns with our Chinese counterparts as they arise. We have made it clear that China needs to find a way to satisfy all of its purchases commitments under the Phase One Agreement.

*Question.* The Treasury Department has jurisdictional authority over Customs and Border Protection's (CBP) Federal Excise Tax (FET) deferral guidelines for beverage alcohol for U.S. importers. The Interim Final Rule (IFR) announced on April 20, 2020, allowing for a 90-day deferral of FET payments, however, was significantly different than the domestic deferral guidelines that the Alcohol and Tobacco Tax and Trade Bureau (TTB) issued for domestic producers on March 31, 2020. In fact, CBP required restrictive hardship tests, while TTB did not.

What is Treasury's rationale for the inequity created between TTB's and CBP's FET deferral guidance given that the Department oversees both?

Further, given that bipartisan members of Congress have sent numerous letters to Treasury on this very topic, will the Department work to rectify the inequity between the two deferral regimes in a timely manner so as not to put U.S.-based importers at a disadvantage?

Answer. I would advise these questions be addressed to Secretary Mnuchin, who is better-suited to answer questions about the Department of the Treasury.

*Question.* During the ongoing health and economic crisis of the COVID-19 pandemic, small and medium-sized businesses across the country state they are being severely harmed by the section 301 tariffs while trying to support their workforce during the pandemic.

Will USTR consider deferring the tariffs or providing more relief for these businesses while they mitigate the harm of the pandemic?

Answer. We are aware of the severe economic effect of the COVID-19 crisis on small and medium-sized businesses and want to do what we can to speed their recovery. At the same time, as envisioned by the section 301 statute, we continue to apply section 301 tariffs to China in order to obtain the elimination of China's practices that cause severe economic harm to U.S. interests, and in the long term, will undermine the competitiveness of the U.S. economy. We also have a process for granting exclusions in which exclusions may be granted for products needed to respond to the pandemic.

*Question.* USTR has only provided exclusions for products under List 4A, largely consisting of consumer goods, until September 1st, and extended certain exclusions under Lists 1-3 only until the end of 2020.

What is USTR's plan to extend these exclusions so as to not harm businesses and consumers while they mitigate the harm of the COVID-19 pandemic this year?

Answer. USTR recently issued a Federal Register notice asking for public comment on whether to extend, for up to 1 year, the initial tranches of exclusions for product under List 4A. USTR plans to issue a second Federal Register notice in the coming weeks for comment on the remaining tranches of exclusions issued under List 4A. At this time, USTR has not decided whether to possibly extend again the exclusions extended until the end of 2020.

*Question.* Because of the extensive damage that the global pandemic has had on U.S. companies and employment, has the administration considered reducing section 232 tariffs or postponing collections of section 232 tariffs in order to help businesses survive?

Answer. The President imposed tariffs on steel and aluminum imports under section 232 because he determined that steel and aluminum articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States. I am not aware that present circumstances have changed this determination.

*Question.* What is the current timeline for a trade deal with the UK? Has COVID-19 and the upcoming election had an effect on the administration's willingness to reach a trade deal with the UK?

Answer. We are about to begin a third set of intensive negotiating sessions with the United Kingdom at the end of July. Our teams have been moving at an accelerated pace and the discussions so far have successfully taken place virtually due to COVID-19. We have never set a deadline for the conclusion of the negotiations, but

while our intent is to move as quickly as possible, I am more focused on achieving an ambitious and comprehensive agreement that delivers real benefits for American workers, farmers, and businesses, rather than achieving a quick deal.

*Question.* Some are growing concerned that certain companies are shuttering U.S. plants and taking advantage of Mexico's 232 exclusions on steel. One such company appears to be shifting its production of oil country tubular goods (OCTG) from plants in the U.S. to Mexico and has laid off more than 900 Americans, including 220 in Texas.

What, specifically, is the administration's plan to prevent this kind of situation in the steel industry?

*Answer.* The President exempted Mexico from the tariffs he imposed under section 232 on the basis of a clear understanding that imports of steel and aluminum from Mexico will remain at historical levels. The administration is closely monitoring imports from Mexico, including imports of OCTG, to identify potential import surges. When imports have exhibited sustained increases, USTR has raised the issue immediately with Mexico. In the event that imports of these products surge meaningfully beyond historic volumes of trade over a period of time, the agreement we concluded with Mexico provides that the United States can re-impose the section 232 tariffs on affected products. The administration is fully committed to ensuring that imports from countries exempt from the tariffs do not undermine the national security objectives of such tariffs.

*Question.* It is no secret that China continues to pose serious threats to U.S. national and economic security, while largely closing or conditioning access to its own domestic market to American companies. One such example of this is cloud services. U.S. cloud providers are some of the world's leading innovators, providing millions of high-skilled and high-wage jobs. While U.S. cloud providers have been at the forefront of the movement to the cloud in virtually every country in the world, China has blocked them. China requires U.S. cloud providers to transfer valuable U.S. intellectual property, surrender use of their brand names, and hand over operation and control of their business to a Chinese company in order to operate in the Chinese market. Chinese cloud providers are free to operate and compete in the U.S. market, and U.S. CSPs should benefit from the same opportunity in China. I strongly believe that it is important for the U.S. government to prioritize this issue in any potential Phase Two China deal.

Can you please provide an update on China's Phase One purchase commitment regarding cloud services, and also commit that addressing market access in China for U.S. cloud service providers will be a priority issue in any Phase Two negotiation?

*Answer.* Under Chapter 6 of the Phase One agreement, China committed to increase its purchases of U.S. cloud and related services substantially in 2020 and 2021. USTR continues to track China's implementation of its services purchases commitments very closely. Official U.S. trade data for the first three months of 2020 indicates that China is making good progress in fulfilling its commitments as they relate to the cross-border supply of cloud and related services.

This administration remains very concerned about China's lack of reciprocity in opening its cloud services market. The United States anticipates that the Phase Two negotiations with China will include a focus on services market access issues that were not addressed in the Phase One agreement, including in the area of cloud services.

*Question.* As you know, the U.S. Foreign-Trade Zones Program was established during the Great Depression to allow U.S. companies to compete more effectively with those in foreign countries. Especially at this point in time, the FTZ program can be a very effective means to boost American manufacturing and employment as we dedicate our energies to recovering from the economic impact of the pandemic. Foreign-trade zones (FTZs) exist in every U.S. State and Puerto Rico, directly support over 440,000 American jobs, generate over half a trillion dollars in U.S.-based, high-value-added manufacturing activity, and account for nearly seven percent of all U.S. exports.

The FTZ program has been particularly vital to the Texas economy. There are 33 foreign-trade zones in Texas, the most of any State in the country, employing over 55,000 Texas with over half of the production activity in the petroleum sector and nearly one-quarter in the electronics sector.

Because of the importance of the FTZ program to Texas and the Nation, I strongly support efforts to make the program stronger and more effective in achieving its objectives—to encourage the location of manufacturing in the United States, support and grow American manufacturing jobs, attract needed investment into American communities, and promote U.S. exports.

Therefore, I was gratified to note that the USMCA Implementation Act made a needed and long-overdue change to the NAFTA Implementation Act that will allow manufacturers in U.S. FTZs to compete more effectively with imported products manufactured in Canada and Mexico. Specifically, the USMCA Implementation Act eliminated the unfair and discriminatory language in the NAFTA statute that prevents products manufactured in a U.S. FTZ that meet the rules of origin from competing on an equal tariff and cost footing in the U.S. market with imports from Canada and Mexico.

This change is consistent with the administration's policy to support U.S. manufacturing and to encourage U.S. manufacturers to take advantage of the USMCA rules of origin, including the use of more domestic content. Are reports accurate that the administration is seeking to reinstate this provision into the USMCA implementing agreement as a "technical correction"?

Answer. One of the key objectives of the USMCA was to incentivize more manufacturing in the United States and North America through stronger rules of origin that further limit the use of non-originating inputs for goods traded under the agreement. Consistent with that objective, it is not the intention of the administration to change the treatment applied to FTZs under the NAFTA.

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QUESTIONS SUBMITTED BY HON. RICHARD BURR

*Question.* I applaud your decision to negotiate a comprehensive trade agreement with the United Kingdom. In addition to being a strong ally, the United Kingdom is one of the top export markets for U.S. goods and services, and U.S. businesses and workers stand to benefit tremendously from an agreement to further lower tariffs and streamline regulations. It is my hope that this agreement will also include robust intellectual property protections, including for biologics, in accordance with Trade Promotion Authority.

Can I have your commitment that in accordance with U.S. law and TPA that you will seek high standards for biologics medicines in the UK trade agreement and future trade agreements?

Answer. We intend to follow the principal negotiating objectives under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, which calls on USTR to seek standards similar to those found in U.S. law. I look forward to engaging with members of Congress on any particular issues of concern.

*Question.* I appreciate USTR's willingness to engage with Mexico on recent actions relating to crop protection tools and biotechnology approvals. While USMCA does include language on dispute settlement for issues such as this, these mechanisms may be a lengthy and expensive process.

Will you commit to working with your Cabinet-level peers at USDA and EPA to seek resolution to these outstanding agricultural trade issues with Mexico?

Answer. USTR will continue work with USDA and EPA, including at the Cabinet level as necessary, to resolve these issues with Mexico.

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QUESTIONS SUBMITTED HON. PATRICK J. TOOMEY

*Question.* As the health-care system responds to the coronavirus pandemic, and as States decide how to safely reopen, it is more important than ever that medical providers and medical equipment manufacturers have the materials they need.

As you know, the International Trade Commission (ITC) recently released a report, requested by the chairmen of the Senate Finance Committee and the House Ways and Means Committee, listing 114 goods vital to the COVID-19 response, including N95 face masks, hand sanitizer, protective garments, and COVID-19 diagnostic test instruments.

As of the release of the report on May 5th, only 15 of the 56 medical products in the report subject to the administration's section 301 tariffs had been granted only a partial exclusion. 28 products received no exclusion.

Which, if any, medical products on the ITC's list are still subject to 301 tariffs?

When does USTR plan to issue exclusions for these remaining necessary products?

Can you explain why these products were not granted exclusions more quickly?

*Answer.* Based on consultations with HHS, USTR did not include numerous medical and health-related products in its actions under section 301 imposing tariffs on China in response to the abuses documented in USTR's section 301 report. In addition, early this year, again in consultation with HHS, USTR excluded numerous other products identified by HHS as relevant to the response to COVID-19. The majority of the tariff lines identified in the ITC report are not subject to China 301 tariffs, and USTR has granted exclusions on the majority of those products identified in the report that were subject to the 301 tariffs. There is no basis to conclude that any products necessary for responding to COVID-19 are unavailable because of tariffs on those products.

*Question.* I am encouraged to see the administration pursuing trade negotiations with the United Kingdom and Kenya. Free trade agreements that substantively lower tariffs and barriers to trade are critical in both increasing market access for American businesses and manufacturers, and improving the overall standard of living for Americans.

Has the administration examined entering trade agreements with additional growth markets of the world for U.S. exporters, many of whom have high tariff walls, such as Brazil, India, and Nigeria?

Recently, the United States has pursued a number of bilateral agreements, but outside of USMCA has not contemplated entering any multilateral agreements. While more difficult to negotiate, multilateral FTAs provide more opportunity for economic growth. What opportunities does USTR see for additional multilateral agreements with emerging market economies?

*Answer.* As you note, we are currently engaged in negotiations for comprehensive free trade agreements with the United Kingdom and Kenya. In addition, I expect to start the negotiations for a free trade agreement with Japan in the next few months. However, negotiating comprehensive free trade agreements is a complex and time consuming process. Our workers, farmers, ranchers, and manufacturers face trade problems and USTR's mission is to seek to resolve those problems as effectively and efficiently as possible. That is why the administration is also engaging regularly with large economies like Brazil and India on specific issues that affect U.S. businesses to find solutions that will increase U.S. exports of goods and services and help to rebalance the U.S. trade deficit. With India, we are pursuing market access concessions that include tariff reductions in our GSP-related discussions, and with Brazil we are working to address regulatory concerns and other barriers to trade. These bilateral discussions allows us to better address the particular needs of our workers, farmers, ranchers, and businesses.

*Question.* Almost all domestic manufacturers import some of their components, and many of these imported component products are subject to high 301 or 232 tariffs. Reducing or eliminating tariffs on these component products would allow many American manufacturers to produce more goods, at more affordable prices.

Has USTR collected data or performed analyses measuring the impact of existing 301 and 232 tariffs on diverse manufacturing sectors? If not, will USTR do so, in order to fully understand which American manufacturers are being hurt by tariffs (and which are benefiting from tariffs)?

*Answer.* Section 301 and section 232 are longstanding features of U.S. trade law meant to deal with major trade policy challenges. USTR administers the section 301 tariffs, which are aimed to obtain the elimination of significant trade issues such as cyber-enabled theft of intellectual property and coerced technology transfer identified in the investigation. Our colleagues in the Commerce Department, which oversees section 232, are addressing national security challenges.

Determining an appropriate action under section 301 involves a balance between the most effective action to obtain the elimination of the unfair act, policy, or practice, and minimizing any adverse effects on the U.S. economy. To assist in achieving the appropriate balance, USTR conducts a notice and comment process on possible trade actions, and carefully considers all public input. In addition, any U.S.-based



manufacturer believing itself hurt by section 301 or 232 tariffs on inputs for which there is no readily available U.S. or alternative source can request exclusions from the tariffs. We have granted thousands of exclusions to U.S.-based manufacturers through this process.

*Question.* You suggested to the House Ways and Means Committee that you may not seek standards in upcoming trade agreements that provide intellectual property protection for biologic medicines. Congress was clear in putting into law the incentives needed for domestic development of biologics, in order to achieve a balance between the challenges in developing biologics and creating a viable pathway for biosimilars. Additionally, in TPA–2015 Congress instructed that USTR must seek to negotiate in support of the inclusion of trade agreement provisions that meet the standards of U.S. law in the area of IP protection for biologics.

Global health developments, including the COVID–19 pandemic, subsequent to the signing of the USMCA have reinforced the importance of strong intellectual property rules, especially in the biopharmaceutical sector. What is USTR doing in ongoing trade negotiations to ensure that trading partners contribute appropriately to COVID–19 solutions, rather than free-riding on American investments in innovation?

Can you commit to seeking high standards for biologics medicines in all future trade agreements, in accordance with U.S. law and TPA negotiating objectives?

Regarding our existing trade agreements, what will you do to ensure our trading partners are enforcing existing commitments and deter countries from weakening such standards in their own IP regimes?

How will you work to encourage those countries cited in the 2020 Special 301 report to make positive changes to be removed from the 2021 list?

Answer: Fostering innovation and creativity is essential to U.S. economic growth, competitiveness, and the estimated 45 million American jobs that directly or indirectly rely on IP-intensive industries. To promote innovation, including the research and development of cutting-edge treatments and cures required by the current crisis and in the future, USTR engages with trading partners to ensure that U.S. owners of IP have a full and fair opportunity to use and profit from their IP. In our FTA negotiations, we will follow the objectives set forth by Congress in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, including seeking a standard of protection similar to that found in U.S. law.

Regarding biologics, in our FTA negotiations, USTR will follow the objectives set forth by Congress in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, including seeking a standard of protection similar to that found in U.S. law.

A top trade priority for the administration is to use all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services and to provide adequate and effective protection and enforcement of IP rights. Toward this end, a key objective of the administration's trade policy is ensuring that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe. USTR will use all appropriate trade tools to ensure that our trading partners are meeting their existing intellectual property commitments. More generally, USTR is committed to holding foreign countries accountable and exposing the laws, practices, and other measures that fail to provide adequate and effective IP protection and enforcement for U.S. inventors, creators, brands, manufacturers, and service providers.

USTR will engage with the countries cited in the 2020 Special 301 Report and will use all appropriate trade tools to ensure that they address U.S. intellectual property protection and enforcement concerns. In particular, the administration continues to closely monitor developments in, and to engage with, those countries that have been on the Priority Watch List for multiple years. For countries failing to address U.S. concerns, USTR will take appropriate actions, which may include enforcement actions under section 301 of the Trade Act or pursuant to World Trade Organization (WTO) or other trade agreement dispute settlement procedures.

*Question.* As we discussed at the hearing, I continue to be concerned that the stated goal of the administration's objectives with a section 232 tariff regime to support domestic steel and aluminum makers is in conflict with an equally important sector of the economy: American manufacturers that need access to a wide range of raw steel and aluminum products.

This is not merely an academic concern in Pennsylvania. I have constituent manufacturers who have had to shut down and lay off manufacturing workers due to unsustainable tariffs on their inputs. To help mitigate this problem, the administration has granted permanent tariff exemptions in exchange for quantitative limitations on U.S. imports of steel from Brazil, South Korea, and Argentina.

Can you provide me with an explanation as to how the determination was made to grant permanent tariff exemptions to Brazil, South Korea, and Argentina?

What steps would need to be taken for USTR to grant a similar tariff exemption on steel imports from Indonesia?

Answer. Exemptions from the section 232 steel and aluminum tariffs are granted by the President. Proclamations that the President has issued relating to these tariffs outline the factors the President has considered in granting such exemptions. These include the existence and nature of a security relationship with a country, as well as whether the United States and a country are able to arrive at satisfactory alternative means to address the threatened impairment of national security caused by imports from that country. On the basis of his assessment of these factors, and in light of the nature of measures agreed with those partners, the President has determined that steel imports from certain countries (including Argentina, Brazil, and South Korea) no longer threaten to impair the national security.

*Question.* The administration has not hesitated to use unilateral trade actions, including tariffs and quotas, to address what they perceive to be national security threats and unfair trade practices, including with respect to U.S. allies. This approach has caused U.S. trading partner to retaliate against U.S. exports, such as agriculture and chemicals, and coordination with allies to address big problems in the trade arena is now much more difficult.

Why is USTR focusing on unilateral action instead of coordinating with our allies to address concerning trade practices?

What is USTR's strategy for replacing market access that U.S. exporters have lost in China, the European Union, and other markets as a result of unilateral tariffs?

Answer. I am committed to using the most effective available tools to address unfair trade policies that harm U.S. workers, businesses, farmers, and ranchers. We have made extensive efforts to coordinate with like-minded trading partners to address trade concerns. For example, I launched a trilateral process with Japan and the EU 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 and discussed various tools needed to deal with these problems. But while discussion can be helpful, it is no substitute for taking effective action that seeks to change China's practices that damage U.S. workers and businesses. I have also not hesitated to take action to directly address unfair and harmful trade policies, such as China's policies regarding technology transfer, intellectual property, and innovation. Our allies, unfortunately, are not always willing to coordinate and work with us, such as the EU's decision to side with China in a WTO dispute on the Section 301 action to address China's forced technology transfer.

The President's trade agreements have resulted in major improvements in market access in key export markets. For example, under the Phase One agreement, China has committed to making unprecedented levels of purchases of U.S. agricultural and industrial products. And under the USMCA and the U.S.-Japan Trade Agreement, our trading partners have agreed to remove major impediments to U.S. exports.

*Question.* One of the key barriers facing American companies seeking to market access and exports are regulations, especially as other countries promote their models of regulation. Other countries, seeking to avoid having to compete with American exports, are increasing the number of domestic sanitary/phytosanitary, labor, and environmental regulations.

How is USTR working with regulators to promote U.S. values of sound science and risk assessment with potential trade partners?

Can you commit to not pursuing provisions in upcoming FTAs that increase the regulatory burden upon American exporters?

Answer. USTR works closely with our colleagues in U.S. regulatory agencies when we engage with foreign governments on issues regarding the adoption, implementation, and enforcement of measures covering food safety, plant health, animal health,

and environmental regulations, to convey the importance of basing measures on science and risk assessment.

FTA discussions with respect to sanitary and phytosanitary measures focus on the critical importance of countries meeting their WTO commitments to base SPS standards on science and risk assessment and to ensure that measures are not more trade restrictive than necessary to meet legitimate objectives, including the protection of human, plant, and animal life and health.

*Question.* On June 2nd, USTR initiated an additional section 301 investigation into digital services taxes that have been proposed or adopted by a number of our trading partners. While I agree with the need to determine whether digital services taxes disproportionately impact U.S. companies, I believe any potential remedial action in accordance with the findings of your investigation, including tariffs, should be balanced and targeted to avoid unduly impacting American consumers. I am concerned tariffs on a broad set of products not directly related to this investigation would further exacerbate the economic uncertainty most Americans face as they continue to navigate the COVID-19 crisis.

Will you commit to ensuring any potential remedial action is targeted to limit the impact on American consumers and sellers?

*Answer.* Determining an appropriate action under section 301 involves a balance between the most effective action to obtain the elimination of the unfair act, policy, or practice, and minimizing any adverse effects on the U.S. economy, including small or medium-size businesses and consumers. To assist in achieving the appropriate balance, USTR conducts a notice and comment process on possible trade actions, and carefully considers all public input.

*Question.* In October 2019, USTR imposed duties on certain European goods in accordance with a WTO ruling that European Union member states unfairly subsidized Airbus. To date, USTR targeted primarily the countries responsible for the Airbus subsidization—France, Germany, Spain, and the United Kingdom.

Will you continue this approach to ensure only products from those countries responsible for subsidization are considered for potential retaliation, rather than unduly penalizing countries not party to the dispute?

Furthermore, in keeping with USTR's latest decision in February, will non-aircraft-related items from countries not party to the dispute be considered for tariffs in the next round?

*Answer.* The European Union as a whole, and France, Germany, Spain, and the United Kingdom, are each party to the underlying dispute and are collectively responsible for the unfair subsidization of Airbus. Because of this, USTR's action in October 2019, and the action taken in February 2020, appropriately focused on the EU member States that subsidize Airbus, and also covered products of other member States of the European Union. Regarding further review of the action, USTR has established a process where interested persons can submit comments on the action, and comments are currently being accepted through July 26th. Among other matters, USTR specifically invited comments regarding potential disproportionate economic harm to U.S. interests, including small or medium size businesses and consumers. USTR will continue to consider public comments concerning potential effects on the U.S. economy, and any other comments, when considering any possible further modifications to this trade action.

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QUESTIONS SUBMITTED BY HON. ROB PORTMAN

*Question.* I was pleased to see China change its regulations concerning intellectual property protection. However, many of the ways that China undermines intellectual property protections are through informal coercion or outright theft.

How does USTR intend to ensure that China complies with its new regulations?

*Answer.* The Phase One agreement requires China both to end its practice of applying informal pressure and coercion to accomplish technology transfer and to revise its legal and regulatory regimes in a number of ways, including in the areas of trade secrets, patents, pharmaceutical-related IP, trademarks, and geographical indications.

In addition, the agreement requires China to make numerous changes to its judicial procedures, to establish deterrent-level penalties, and to ensure the effective en-

forcement of judgments. China also is to take various specific steps to improve civil, administrative, and criminal enforcement against pirated and counterfeit goods.

The United States will vigilantly monitor China's progress in eliminating its unfair trade practices and implementing these obligations. We will use all appropriate trade tools, including the enforcement mechanism under the Phase One agreement as necessary, to ensure that China does not unfairly benefit from the United States' innovations through intellectual property theft or coercion.

*Question.* I understand language enconcing section 230-like protections is being considered as part of the current U.S.-UK trade negotiations. Until recently that was unprecedented. I find that concerning.

Why do you believe that section 230-like protections have not been included in previous trade agreements, across the different administrations (of both political parties), given the fact that section 230 has been part of U.S. law since 1996?

*Answer.* Over the past decade, U.S. Internet platforms have become global leaders in digital trade and are increasingly dependent on foreign markets for their growth and the U.S. jobs they support. Accordingly, we have increased our focus on addressing existing and nascent digital barriers in foreign markets and developing provisions to address them in trade agreements. A provision addressing the non-IP civil liability of interactive computer service suppliers can play an important role as part of a broader set of comprehensive, high standard digital trade rules designed to facilitate the continued growth of the U.S. economy and the global digital economy. At the same time, we recognize that such provisions must provide significant flexibility for the Congress, the administration, and our negotiating partners to evolve policy and law in response to new challenges.

*Question.* I also understand section 230-like protections are also being considered as part of the WTO's e-commerce talks.

Do you believe that including these protections within a WTO agreement would limit the policy space available to the United States Congress when governing as it relates to the Internet, especially given the Appellate Body's interpretations of Article XX of the GATT?

*Answer.* A provision addressing the non-IP civil liability of interactive computer service suppliers can play an important role as one element of a broader set of comprehensive, high standard digital trade rules to facilitate the continued growth of the U.S. economy and to support innovative Internet-based business models. At the same time, we recognize that such provisions must provide flexibility for the Congress, the administration, and our negotiating partners to evolve policy and law in response to new challenges.

*Question.* Recently, a NAFTA binational panel upheld the International Trade Commission's affirmative injury finding in the latest round of the U.S.-Canada softwood lumber dispute. With the failure of Canada's litigation strategy, it may be a ripe time to resolve these persistent issues at a high, political level similar to the resolution of the last round of the softwood lumber dispute 15 years ago.

Can you provide an update on the efforts USTR has taken to resolve this issue?

*Answer.* This administration is committed to the robust enforcement of U.S. trade remedy laws. Ensuring that U.S. softwood lumber producers are able to compete on a level playing field against the injurious effects of unfairly subsidized and dumped Canadian imports is an important priority for the Trump administration. It is my view that U.S. trade remedy laws are working as intended and the U.S. actions are consistent with U.S. international obligations. The administration is open to resolving our differences with Canada over softwood lumber. That would require addressing Canadian policies that create an uneven playing field for U.S. lumber producers.

*Question.* I was very pleased to see the United States-Canada-Mexico Agreement (USMCA) enter into force. I understand that Mexico may still not be in compliance with some provisions of the agreement, especially as it relates to U.S. media firms.

Has USTR engaged with Mexico regarding Mexico's discrimination against American media firms (including the so-called 6-minute rule), and will USTR urge Mexico to cease such discrimination now that the agreement has been brought into force?

*Answer.* USTR has been engaged with Mexico on media issues and will continue to press Mexico to comply with its USMCA obligations. At the moment, Mexico has neither implemented the so-called 6-minute rule nor created new local content re-

quirements, but we are continuing to monitor and to engage bilaterally on these issues.

*Question.* The water treatment industry supports 4,000 jobs in Ohio, and the industry's products are vital for providing clean water to citizens. Pursuant to the section 301 exclusion process, USTR granted an exclusion for water filtration equipment (HTS code 8421.21.0000), which includes "pitchers, bottles, and units designed for incorporation into refrigerators, appliances or sink faucets" and "[f]iltering or purifying machinery or apparatus of any kind used for wastewater treatment." On May 20th, USTR extended the exclusion for the latter, but not the former.

Can you explain the rationale for this decision?

*Answer.* USTR examines whether to extend particular exclusions on a case-by-case basis. Additionally, a 10-digit HTS code may cover a number of exclusions for a number of different products. The products may be produced by the same manufacturer or different manufacturers and may be in the same industry or different industries. As the two exclusions referenced indicates, the 10-digit code for water filters (8421.21.0000) covers a range of products and a range of product specific exclusions. Thus, while two products referenced may be covered by the same 10-digit code, application of the factors examined by USTR on whether to extend an exclusion may result in different results, as it did here.

*Question.* China is pursuing new forms of protectionism and coercive market distortions, such as their Corporate Social Credit System. This raises a number of concerns for American workers and industries. If the Corporate Social Credit System violates most favored nation (MFN), national treatment, or some other WTO commitment, we should go after them with all we've got. However, I must recognize that China may be able to structure the Corporate Social Credit System in such a way that does not violate their WTO commitments.

Therefore, do you believe Congress should be looking at our strategic competitiveness and considering new tools to address unique and unprecedented threats to free markets like the Corporate Social Credit System?

*Answer.* I share your concerns regarding the continued development and deployment of China's Corporate Social Credit System and its potential implications for American companies, innovators, workers, and investors. I welcome Congress's continued attention to China's Corporate Social Credit System and other issues related to U.S. strategic competitiveness.

As you know, President Trump has taken strong action to preserve American competitiveness and rebalance our trade relationship with China. Our negotiations with China are a direct result of USTR's investigation into China's unfair practices with respect to American intellectual property rights, innovation, and technology. We will continue to press China to implement the structural changes necessary to fully resolve our concerns and will continue to consult with and report to you regarding our efforts.

*Question.* The WTO authorizes the use of tariffs to bring about compliance with the rulings of the DSB. Recently, this issue has taken on prominence with wine industry's concerns about inclusion of wine tariffs as part of retaliation in the Large Civil Aircraft case.

Can you elaborate on how WTO-sanctioned tariffs help bring about foreign compliance with DSB rules? What data does USTR use to determine the marginal effectiveness of retaliatory tariffs on specific goods in these instances?

*Answer.* Determining an appropriate action under section 301 involves a balance between the most effective action to obtain the elimination of the unfair act, policy, or practice, and minimizing any adverse effects on the U.S. economy, including small or medium size businesses and consumers. To assist in achieving the appropriate balance, USTR conducts a notice and comment process on possible trade actions, and carefully considers all public input.

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QUESTIONS SUBMITTED BY HON. TIM SCOTT

*Question.* Since USMCA has now entered into force, the automotive rules of origin are in effect. In light of the accelerated time frame through which the entry into force has occurred, unintended repercussions and issues are likely to emerge.

Do you intend to fulfill your commitment offered during the hearing to create a formal mechanism for the automotive industry (both vehicle manufacturers and parts suppliers) to consult with USTR as the implementation of the USMCA proceeds?

U.S. Customs and Border Protection (CBP) has an established Customs Commercial Operations Advisory Committee (COAC) for the USMCA with representatives from the automotive sector. Will USTR create a forum or advisory body through which it can discuss implementation concerns, additional fixes that may be necessary or other relevant concerns?

Additionally, do you commit to keeping my office and staff informed of these consultations and committee formation?

Answer. USTR already maintains formal and informal mechanisms to communicate with and receive concerns from private sector stakeholders in the automotive and truck industries. USTR regularly briefs the Interagency Trade Advisory Committee 2 (ITAC 2), which represents the views of the automotive industry, capital goods sector, and organized labor and is composed of representatives of those sectors. We will continue to work through ITAC 2, related advisory committees, and directly with automotive stakeholders to discuss issues related to USMCA implementation. We will continue to keep your office and staff informed of the results of our consultations with industry representatives.

*Question.* We have over 145,000 workers in South Carolina directly employed as a result of international investment and a whopping 52 percent of all FDI jobs are in the manufacturing sector. South Carolina has seen the benefits of having over 770 international employers call our State home.

How will the administration handle the reconciliation process that existed under NAFTA. Will NAFTA compliance be extended and/or amended under USMCA? If a company does have to go back and correct an entry, the company will have to pay any duties owed but how will interest and fines be handled?

Answer. An importer of goods that entered prior to July 1, 2020 may make a post-importation NAFTA claim within 1 year of importation.

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#### QUESTIONS SUBMITTED BY HON. TODD YOUNG

*Question.* Aluminum is responsible for over 45,000 jobs in the Hoosier State, and over half a million jobs are tied to manufacturing in Indiana alone. I was proud to support USMCA, which included provisions excluding aluminum manufacturers from section 232 tariffs. This has been tremendously helpful to my constituents dependent on a complex regional supply chain that includes Canadian inputs. The USMCA entry into force date occurred on July 1st, and I know aluminum manufacturers in my State of Indiana are looking forward to conducting business in a neutralized playing field, but I have heard concerns about potential action that would disrupt the supply chain balance.

How is USTR engaging with the U.S. aluminum industry stakeholders, particularly those involved in manufacturing aluminum products like sheet, foil, and extrusions, to understand the dynamics of this important exemption?

How does USTR monitor aluminum imports from Canada, and how does USTR factor in the current COVID-19 pandemic effect on increases and decreases in different types of aluminum imports?

USMCA creates new preferences for aluminum produced in the United States or Canada, with new requirements and incentives for automakers and parts manufacturers to source aluminum and steel within North America. How would automakers comply with any new requirements if USTR should impose aluminum tariffs on North American aluminum purchases?

Answer. The President exempted Canada from the tariffs he imposed under section 232 on the basis of a clear understanding that imports of steel and aluminum from Canada would remain at historical levels. The administration is closely monitoring imports from Canada, utilizing information from the U.S. Census Bureau, U.S. Customs and Border Protection, and the Department of Commerce's Steel Import Monitoring and Analysis system. We are assessing these data in the context of broader developments in the U.S. market, including demand contractions resulting from the COVID-19 pandemic.

The President imposed tariffs on aluminum and steel imports under section 232 because he determined that aluminum and steel articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States. The provisions in USMCA that seek to incentivize use of North American steel and aluminum are consistent with and supportive of the objective of the section 232 tariffs. I do not believe that any steps the President may take to ensure the continued integrity of the national security measures he has imposed under section 232 would hinder the ability of automobile manufacturers to comply with USMCA requirements.

*Question.* American businesses are rapidly moving supply chains given the complications of coronavirus. The past few years have demonstrated the need to re-shore manufacturing and it has only become more evident that a diverse supply chain will help address challenges exacerbated by the global pandemic. Obviously, the most admirable goal is to bring production back to American soil; if that is impossible, Congress and the administration should consider policies that at least divert supply chains out of China where feasible. Furthermore, any action from this administration—or any action that Congress takes—should absolutely minimize harm to American businesses and manufacturers. This is especially critical when businesses are already dealing with the negative economic impact from coronavirus.

How can Congress and USTR coordinate on our mutual goal of at least diversifying supply chains or bringing production back to American soil?

What strategies should we consider to spur re-shoring efforts? For companies already moving their supply chain, should extensions for 301 exclusions be on the table as a measure to provide relief from the economic impacts of the coronavirus pandemic?

*Answer.* One lesson to be drawn from the COVID-19 pandemic is that dependence on other countries, especially ones like China, to source goods and key strategic products creates a vulnerability for the United States. This administration's economic and trade policies are helping to overcome that vulnerability by encouraging diversification of supply chains and more manufacturing in United States. I welcome Congress's continued support in our efforts.

One of the factors examined by USTR in determining whether to extend an exclusion is the efforts, if any, the importers or U.S. purchasers have undertaken since imposition of the additional duties to source the product from the United States. This administration will continue to support more manufacturing in the United States and explore strategies to spur our re-shoring efforts.

*Question.* At a time when the United States is trying to improve and gain market access safely, we need to consider that other countries are doing the same, particularly China. Over the past few decades, China's foreign direct investment in South American and Caribbean nations has greatly increased which poses questions about their intentions and objectives. It would appear that China is attempting to reduce reliance on U.S. products and resources as well as find other export opportunities. As Chinese foreign direct investment has increased in the Caribbean through loans for infrastructure projects, trade volumes have risen, albeit in a one-sided fashion. This is concerning as China uses their geopolitical position to influence policies of Caribbean nations that could impact the U.S.'s national security.

As we look ahead to the expiration of the Caribbean Basin Initiative at the end of September, should Congress be concerned about current and growing foreign direct investment from China into Caribbean countries? How can USTR combat Chinese influence in the region?

As coronavirus response continues to negatively impact economies of our neighboring countries, should the U.S. be concerned about an increasing China foothold in trade policies?

*Answer.* The administration is following closely China's engagement in the Western Hemisphere, including in the Caribbean region. Along with many other agencies, USTR is monitoring China's investment activities and working to promote U.S. economic interests and influence in the region. The U.S.-CARICOM Trade and Investment Council have strengthened our partnership with the region and facilitated a dialogue that has resolved trade irritants and increased trade facilitation. During this pandemic, we have worked effectively with our Caribbean trade partners to strengthen hemispheric supply chains and indeed remain CARICOM's top trading partner.

*Question.* Provisions discouraging intellectual property theft should be included in ongoing trade negotiations, and the United States should remain vigilant in enforcing anti-IP theft provisions in existing trade agreements. Biopharmaceutical innovators rely on proper enforcement of these requirements both now and in the future in order to protect investments benefiting both American consumers and businesses.

How will USTR ensure that other nations do not unfairly benefit from the United States' innovations through IP theft?

*Answer.* A top trade priority for the administration is to use all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services and to provide adequate and effective protection and enforcement of intellectual property (IP) rights. Toward this end, a key objective of the administration's trade policy is ensuring that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe. USTR will use all appropriate trade tools to ensure that our trading partners are meeting their existing intellectual property commitments. More generally, USTR is committed to holding foreign countries accountable and exposing the laws, practices, and other measures that fail to provide adequate and effective IP protection and enforcement for U.S. inventors, creators, brands, manufacturers, and service providers.

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QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

*Question.* Africa is a logical destination for many companies looking to diversify away from China. It is critical that Kenya can still draw upon the benefits from other African Growth and Opportunity Act (AGOA) countries. Moreover, AGOA countries must still be able to partner with Kenya. In the end, regionalization will encourage more countries in the region to pursue trade agreements with the U.S.

Will the U.S.-Kenya trade agreement will include flexibilities that promote regionalization?

Do you support early renewal for AGOA, to provide certainty to industry, and provide other African countries a path to follow in Kenya's footsteps towards a trade agreement with the United States?

*Answer.* The administration enthusiastically supports Africa's regional integration efforts. We have identified as one of our negotiating objectives with the Kenyans to support regional economic integration where appropriate.

Regarding a proposal for an early renewal of AGOA, by the time the program expires in 2025 it will have run for 25 years, including a 10-year extension, without having the transformative effect that an FTA can generate. That's why the administration launched an African model FTA initiative. The Kenyan Government has stepped up and some other governments in the region have expressed an interest in being considered next. An early renewal of AGOA would undermine this initiative and offer more of the same.

*Question.* The hospitality industry has been particularly devastated by the COVID-19 pandemic. Necessary social distancing and stay-at-home orders have forced restaurants, cafes, bars and other locations that serve wine and spirits to close or drastically reduce their operations. Hundreds of thousands of establishments have gone out of business leaving millions of Americans out of work. As the businesses that have been able to survive face the daunting task of reopening, the last thing we should be doing is making it more expensive for them to get back on their feet.

Are you considering the impact that tariffs on alcohol imports are having on small independent businesses that have already been stressed by the pandemic?

*Answer.* When taking a tariff action, USTR considers the extent to which the tariff action may disproportionately impact U.S. interests, including those of small and medium-size businesses.

*Question.* On June 14th, *Bloomberg* reported that two employees of the Office of the United States Trade Representative (USTR) who had been intimately involved in negotiating the U.S.-Mexico-Canada Agreement's (USMCA) rules of origin, while still on USTR payroll, had approached private companies offering to serve as paid advisers after they leave government service. When asked about this in the hearing, you suggested that the two employees had sought approval from USTR's ethics office to engage in such conduct and that "career employees—as opposed to political employees—can do things like this."



On what date did these two employees first seek approval from USTR's ethics office to solicit future consulting work from clients that may have had business before USTR? On what date did USTR's ethics office provide such clearance? Please provide copies of any written ethics advice USTR's ethics office provided to these employees?

Answer. USTR's Designated Agency Ethics Official (DAEO) met with the two individuals on February 25, 2020, at which time they said that they were considering leaving USTR to establish a business to provide advice to auto companies on compliance with the USMCA. The DAEO told the employees that the seeking employment provisions of the criminal conflict of interest statute (18 U.S.C. § 208) prohibit an employee from taking official action that can have a financial effect on a post-government employer. The DAEO advised them that if they took action to establish a company like the one they described, then they could not do work for USTR that would affect the company or clients they might solicit. The DAEO told them that the primary applicable post-government restriction (18 U.S.C. § 207(a)(1)) permanently prohibits communications with or appearances before any court or Federal agency with the intent to influence on behalf of someone other than the United States on a particular matter involving specific parties in which they participated personally and substantially while with the government. The DAEO also advised that under the U.S. Office of Government Ethics (OGE) implementing rules (5 CFR § 2641.201(h)), international agreements, such as treaties and trade agreements that address a large number of diverse issues or economic interests, are matters of general applicability that are not particular matters involving specific parties. The DAEO provided a copy of the September 23, 2016 OGE legal advisory explaining the post-government service restrictions.<sup>3</sup>

The DAEO conferred with the two individuals in March 2020 to discuss the steps they planned to take in furtherance of their recusals. In addition, the DAEO conferred with the USTR General Counsel, and the individuals confirmed to the General Counsel in March and June that they had taken all appropriate steps to recuse effectively from specific party issues. Although USTR understood that they intended to leave the agency at the end of March, the individuals postponed their departure date on multiple occasions due to disruptions caused by the COVID-19 pandemic and stated that they were reconsidering their decision to resign from USTR in light of the uncertain business environment resulting from the pandemic.

I have been informed that the individuals, who occupied positions at the GS-15 level, are not subject to the so-called 1-year cooling off period (18 U.S.C. § 207(c)), which prohibits a former "senior employee" from appearing before the department or agency they served for 1 year after their exit date. When I stated in my testimony that career employees "can do things like this," I was referring to the situation where a career employee at or below the GS-15 level still can lobby USTR with certain limits immediately after leaving. I think that is bad policy for all career employees and should be changed.

*Question.* On what date and from which specific subject matters or activities did these employees recuse themselves? Please provide any written documentation of these recusals if any exist. If they had recused themselves from any work, what functions were they assigned to following those recusals?

Answer. The DAEO discussed recusal obligations with the individuals in February and March 2020, and provided a copy of the OGE legal advisory. The two individuals informed USTR personnel in mid-March 2020 of their determination to recuse themselves from working or communicating directly with auto manufacturers and other companies in the auto industry, and on issues pertaining to a specific company, in order to protect their future ability to represent those companies' interests back to the government. Subsequent to that date, the individuals worked on other USMCA implementation issues.

*Question.* On what date did you become aware that these employees had recused themselves from future work on USMCA automotive rules of origin or other issues, as applicable? On what date did you become aware of the ethics advice provided by USTR's ethics office to these employees?

Answer. In mid-March 2020, my staff informed me that the individuals had recused themselves from certain implementation issues related to the USMCA auto

<sup>3</sup> [https://www.oge.gov/Web/OGE.nsf/Legal%20Advisories/3741DC247191C8B88525803B0052BD7E/\\$FILE/LA-16-08.pdf?open](https://www.oge.gov/Web/OGE.nsf/Legal%20Advisories/3741DC247191C8B88525803B0052BD7E/$FILE/LA-16-08.pdf?open).

chapter. I also was informed that the individuals had sought ethics advice and reviewed the OGE legal advisory.

*Question.* At any point during their employment, did these employees use any government time or resources to solicit future business?

*Answer.* My staff and I are not aware of use of government time or resources by the individuals to solicit future business.

*Question.* Are these employees still employed at USTR? If so, are they still permitted to make similar outreach to companies about post-USTR work?

*Answer.* The individuals resigned from USTR effective June 13, 2020.

*Question.* How many current USTR employees are operating under circumstances that could allow them to solicit future private business while still at the agency? Of those employees, how many have used government resources to solicit business for personal ventures?

*Answer.* USTR has a robust ethics program that includes comprehensive new entrant and annual training for all employees. I have full confidence in the USTR ethics team. My staff is unaware of any current USTR employees who may be violating ethical standards.

*Question.* Please provide a detailed legal explanation of the statute or USTR guidance that permits career officials to simultaneously pursue personal business interests involving clients that may have business before USTR.

*Answer.* I have been advised that, like all Executive branch employees, USTR employees are subject to the criminal post-employment restrictions in 18 U.S.C. § 207, and that application of these restrictions varies depending on the responsibilities of the position held by the former employee. As noted above, I was informed that while the law prohibits senior officials from appearing before USTR for 1 year after leaving the agency, it does not impose the same blanket prohibition on less senior employees like the individuals referenced in your questions. In my view, as I stated during my testimony, I think that should be changed and that no former employee should be allowed to lobby their former agency for at least a year after leaving that agency.

*Question.* Have political appointees sought and/or received approval for engaging in similar consulting work? If so, please provide copies of any written ethics advice USTR's ethics office provided to these employees.

*Answer.* My staff and I are unaware of any political appointees or other USTR employees seeking or receiving approval for engaging in consulting work.

*Question.* 18 U.S.C. 207(b) bars executive branch employees who participated personally and substantially in any ongoing trade or treaty negotiation from aiding or advising any other person on an ongoing trade negotiation for 1 year after employment with the United States terminates.

Does this restriction apply to these two employees referenced previously? If not, please provide a legal justification, including an explanation as to whether they have participated in an ongoing trade negotiation within the past year and whether any trade negotiation they participated in within the past year is no longer "ongoing."

*Answer.* I have been advised that section 207(b) applies to all former USTR employees and because the USMCA negotiations ended several months before these individuals announced their desire to leave USTR, it is not an ongoing negotiation. I would support a change to the law to broaden the prohibition.

*Question.* Please clarify whether the two employees referenced previously will have a 1 year cooling off period under 18 U.S.C. 207(b) even after USMCA negotiations cease to be "ongoing" or if the 1 year cooling off period imposed by 18 U.S.C. 207(b) automatically extinguish once the USMCA goes into effect.

*Answer.* I have been informed that section 207(b) does not apply to the USMCA because it is not an ongoing negotiation and the individuals are not subject to the 1 year cooling off period in section 207(c). Again, I think there should be a 1 year cooling off period in such circumstances and would support efforts to make that happen.

*Question.* Does the restriction under 18 U.S.C. 207(b) apply to all current USTR employees with respect to USMCA and negotiations between the United States and the European Union, United Kingdom, China, Japan, and Kenya? If not, please pro-

vide a detailed explanation, including the circumstances by which a trade negotiation ceases to be “ongoing” under 18 U.S.C. 207(b).

*Answer.* Section 207(b) applies to all former USTR employees. I consider negotiations to be ongoing until an agreement is reached or the parties formally announce they are ending the negotiations.

*Question.* Please explain whether the USMCA negotiations and negotiations between the United States and the European Union, United Kingdom, China, Japan, and Kenya are considered particular matters involving specific parties for purposes of 18 U.S.C. 207(a).

*Answer.* I have been advised that the negotiations described in this question are not particular matters involving specific parties for purposes of 18 U.S.C. §207(a), and that under the OGE implementing rules, international agreements, such as treaties and trade agreements that address a large number of diverse issues or economic interests, are matters of general applicability that are not particular matters involving specific parties. *See* 5 CFR § 2641.201(h).

*Question.* India has a host of trade policies that discriminate against U.S. companies, especially for medical devices, which are a key industry in my home State of New Jersey. At the same time, New Jersey has dozens of small and medium-sized companies that import from India and have suffered after India lost its GSP beneficiary status. Some of them were hit hard by the China tariffs moved their sourcing to India, only to find out shortly thereafter that the administration decided to remove India’s trade preferences.

Can you commit to making it a priority to solve our issues with India so they can be quickly reinstated into GSP?

What is the current status of talks with India to resolve the issues raised in the country’s GSP petitions?

What is your plan to get a successful resolution to these issues?

Do you have plans for any direct engagement with your Indian counterparts in the coming months?

*Answer.* We are working to ensure that India addresses market access concerns, which could allow for the reinstatement of the country’s GSP benefits. I have discussed these concerns, including medical device price controls, on recent calls with Minister Goyal and my team is continuing to engage to make progress on a broad range of trade barriers. In order to satisfy the GSP eligibility criteria, the Indian Government must remove barriers that have historically impeded market access for U.S. goods and services so that it is providing reasonable and equitable access to its market.

*Question.* Child labor remains far too common in Kenya. According to the Department of Labor, over 35 percent of Kenyan children ages 5 to 14 engage in some form of work. For the lucky ones, that might include helping on the family farm or minding a store. But for too many Kenyan children, it could also mean sorting through waste for scrap metal, harvesting tobacco, or being exploited in sex trafficking. A trade agreement with Kenya that doesn’t include the proper protections could exacerbate this problem.

How do you think we can best address this issue in our negotiations and will you commit to working with me so the final agreement with Kenya includes the right set of obligations to address the specific challenges of reducing child labor in the country?

*Answer.* I agree this is a serious issue that we must address. The negotiating objectives Congress set out in TPA emphasize the importance of addressing exploitative child labor and the worst forms of child labor, and we will work with Kenya toward ensuring such practices have no place in its economy. I am committed to ensuring that our trade partners understand the extent of their labor obligations and have the tools to respect labor rights in practice, including prohibitions on child labor. We will seek to ensure that Kenya, like other FTA partners, adopts and maintains laws for the effective abolition of child labor and prohibition of the worst forms of child labor, and has the means to enforce those laws. I will work with you and other members of Congress on the United States’ approach to and positions on addressing this challenge during the negotiations.

## QUESTIONS SUBMITTED BY HON. THOMAS R. CARPER

*Question.* I understand that USTR has set up the Interagency Environment Committee and has hired a number of new staff dedicated to environmental enforcement. I also understand that USTR and EPA have agreed that the new Interagency Environment Committee will review all allegations of USMCA environmental violations that are submitted to the Commission for Environmental Cooperation, not only the submissions that result in a factual record. I was pleased to learn of this progress, and I commend you and your team for moving quickly on implementation in this area.

According to the Commission for Environmental Cooperation's online "Submissions on Enforcement Matters Compliance Tracker," there are five active submissions, as well as a number of closed submissions, some of which have resulted in a factual record. Does the Interagency Environment Committee plan to review any of these allegations for potential enforcement actions?

Is the committee open to reviewing direct submissions of alleged USMCA environmental violations from the public for issues outside of the Customs Verification Agreement?

*Answer.* USTR actively participates in the review of environment submissions alleging failures to effectively enforce environmental laws under all of the U.S. FTAs. This practice will continue moving forward and will include a review by the Interagency Environment Committee of public submissions.

USTR has established an email address on the USTR website to receive public comments (USMCAenvironment@USTR.eop.gov). All public comments will be shared with the Interagency Environment Committee for review and, if appropriate further action.

*Question.* I understand that some in the administration are in favor of mandating Buy America requirements for medicines and other products. I'm concerned that this would result in retaliation from our trading partners and set up a situation where every country has to have the ability to produce the same medicines. In my view, we should instead be thinking about cross-border resiliency and leveraging our trading relationships with allies. After all, we're now implementing an updated trade deal with Mexico and Canada, and negotiating a deal with the UK. According to the FDA, the U.S., EU, and Canada together make up 54 percent of the world's manufacturing facilities that produce active pharmaceutical ingredients (APIs) and 69 percent of the world's facilities producing finished dosage forms.

Do you agree that we need to work with our allies and trading partners when it comes to shoring up our supply chains and ensuring supply chain resilience?

*Answer.* I agree to a point. The COVID pandemic has magnified the importance of bringing manufacturing back to the United States to ensure we are able to meet the critical needs of our country and our citizens. It has also highlighted the risks we face due to our reliance on foreign supply chains. During the height of the COVID crisis, even our allies in Europe were restricting supply of personal protective equipment.

USMCA demonstrates how we can work with our allies and trading partners on supply chain resilience and bring manufacturing back to the United States. Ultimately, we need to continue to use all the policy tools available to incentivize U.S. companies to manufacture in the United States.

*Question.* The administration has previously considered and rejected imposing section 301 tariffs on certain medicines and medical products, and has created a special process for excluding COVID-related products from tariffs.

Is this due to a concern that tariffs would negatively impact patients?

Would you agree that we should think differently about health care than about other types of products when it comes to tariffs and trade restrictions, given the impact on patients?

*Answer.* Determining an appropriate action under section 301 involves a balance between the most effective action to obtain the elimination of the unfair act, policy, or practice, and minimizing any adverse effects on U.S. interests. To assist in achieving the appropriate balance, USTR conducts a notice and comment process on possible trade actions and possible modifications to trade actions, and carefully considers all public input. As part of this balance, USTR considers whether a product

may be needed for medical purposes, including to respond to the COVID pandemic. USTR also consults closely with the Department of Health and Human Services.

*Question.* In April of this year, USTR issued a 2020 Special 301 Report reviewing the status of our trading partners' intellectual property (IP) protection and enforcement.

How will USTR work to encourage the countries cited in the report to make positive changes to be removed from the 2021 list?

*Answer.* USTR will engage with the countries cited in the 2020 Special 301 Report and will use all appropriate trade tools to ensure that they address U.S. intellectual property protection and enforcement concerns. In particular, the administration continues to closely monitor developments in, and to engage with, those countries that have been on the Priority Watch List for multiple years. For countries failing to address U.S. concerns, USTR will take appropriate actions, which may include enforcement actions under Section 301 of the Trade Act or pursuant to World Trade Organization (WTO) or other trade agreement dispute settlement procedures.

*Question.* U.S. drug companies continue to face a challenging IP environment in China. The Phase One agreement committed China to protecting the patents of innovative drugs from the U.S., specifically by establishing a patent dispute resolution mechanism for biologic drugs before the end of this year.

What is USTR's plan to engage China to ensure timely and effective implementation of this provision in the Phase One agreement?

*Answer.* Robust protection of intellectual property is critical to incentivizing the development of new and innovative treatments and cures. The intellectual property chapter of the Phase One agreement requires China to establish a mechanism for the early resolution of potential pharmaceutical patent disputes, including a cause of action to allow a patent holder to seek expeditious remedies before the marketing of an allegedly infringing product, so that innovative pharmaceutical companies can effectively enforce their rights. On July 3, 2020, China issued revised draft Patent Law Amendments that begins to outline this mechanism. USTR is regularly engaging with Chinese counterparts to ensure full implementation of China's Phase One agreement obligations in this areas.

*Question.* Last year, the administration terminated India's designation as a beneficiary developing country under the Generalized System of Preferences (GSP) program due to market access issues. Despite ongoing negotiations, from India's actions on data localization, data protection and most recently, digital tax, it appears that the country is increasingly moving in the wrong direction on digital policy in a way that harms U.S. interests.

What is the status of U.S. trade negotiations with India to address India's market access issues and restore the country's participation in the GSP program?

How are these negotiations seeking to resolve India's barriers on digital services?

*Answer.* We are currently engaging the government of India to address a range of trade barriers, including the market access issues that led to the termination of India's GSP beneficiary status. We continue to take actions to address concerns about policies that may discriminate against or disadvantage American companies, including launching a section 301 investigation of India's digital services tax.

*Question.* The coronavirus is a global pandemic affecting the public health and economies of countries around the world, and all countries are in dire need of a vaccine to prevent further deaths and to spur economic growth. In March, President Trump reportedly offered a German company, CureVac, more than a billion dollars to produce a vaccine exclusively for the United States. If true, the President's intervention with CureVac to secure a vaccine exclusively for the United States' use is not only deeply immoral, but it also damages the trust and long-term diplomatic relationships that the U.S. has with our allies.

Are you aware of any past or ongoing efforts by the administration to intervene with vaccine development for the coronavirus in other countries, such as what has been reported with the German company CureVac?

*Answer.* No.

*Question.* In a recent phone conversation with you, I highlighted my concerns that Mexico seems to be moving away from a science based regulatory system to one based on the precautionary principle—similar to the European Union. Since our conversation, we have seen no pullback by Mexico. In fact, recent comments by the

head of Mexico's environmental agency, Secretary Victor Toledo, indicate that at least some in Mexican President Andres Manuel Lopez Obrador's administration are trying to accelerate this movement.

What is USTR's plan for addressing this issue now that USMCA has entered into force?

Answer. We continue to engage with Mexican officials at high levels to address these concerns, aiming to resolve these problems for American agriculture. If we are unable to resolve these issues, we are prepared to take enforcement actions to hold Mexico to its obligations under the agreement, if necessary.

*Question.* It is my understanding that there are dozens of crop protection registrations and label changes currently delayed in Vietnam because Vietnam is refusing to accept data from laboratories in the U.S. and a few other countries that has been generated following internationally recognized good laboratory practices (GLP) standards.

What steps is USTR taking to address this issue that U.S. companies are experiencing in Vietnam?

Answer. We are aware of the concern regarding delays in Vietnam's review and approval of crop protection product registration dossiers from both U.S. and foreign-based companies. In addition, we are concerned that Vietnam does not recognize U.S. laboratories conducting the toxicology tests as GLP-certified laboratories, even though the labs are recognized by the OECD. The U.S. government, including USTR and USDA, has been engaging with representatives from crop protection companies in the United States and Hanoi and the Vietnamese Government and will continue to urge Vietnam to address this issue.

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QUESTIONS SUBMITTED BY HON. SHERROD BROWN

*Question.* It is well-documented that the Chinese government has pursued systemic policies to eradicate the culture and religion of the Uyghurs. Reports indicate that tens of thousands of Uyghurs are subject to forced labor conditions in the Xinjiang Province as part of this Chinese government policy. The Australian Strategic Policy Institute (ASPI) identified 27 factories in the province that contribute to the supply chain of dozens of well-known brands, including Nike, Apple, H&M, and others. CBP has issued two Withhold Release Orders for hair products from producers in the Xinjiang Province on May 1, 2020 and June 17, 2020, but other imports from Xinjiang Province do not appear to be covered by WROs.

Does USTR believe products are being imported to the U.S. that were made with Uyghur forced labor? What actions is USTR taking to address Chinese government-mandated forced labor among the Uyghurs and to prevent imports produced with forced labor from entering the U.S. market? Has USTR raised this issue with any of the retailers named in the ASPI report? If not, why not? Has USTR raised this issue with the Chinese government? If not, why not?

Answer. I take seriously the United States' commitments to address forced labor under U.S. law. USTR officials have had numerous discussions with U.S. businesses regarding forced labor in China. USTR also participates in a number of intra-governmental initiatives that work to address forced labor in China and is part of the U.S. government's whole-of-government enforcement work in this area. USTR is a member of both the Forced Labor Enforcement Task Force and the DHS Forced Labor Interagency Working Group and collaborates with Customs and Border Protection (CBP) on its enforcement of the forced labor import prohibition in section 307 of the Tariff Act of 1930. Since passage of the Trade Facilitation and Trade Enforcement Act of 2015, CBP has issued eight Withhold Release Orders addressing goods made with forced labor in China. USTR also participates in a White House task force to monitor the situation of forced labor in the Xinjiang Province of China. The administration has announced a number of actions in response to the abuses in Xinjiang, including Department of State visa restrictions on Chinese government officials and Department of Commerce entity listings.

*Question.* Recent news reports detailed efforts by two USTR employees—who were responsible for developing the USMCA auto rules of origin—to solicit auto sector clients for a business venture they planned on starting after leaving USTR. The business venture advertised the USTR employees' services to help auto companies comply with the new auto rules of origin in USMCA.

Given these apparent conflicts of interests, what measures is USTR taking to ensure there are no conflicts of interest in USTR's implementation of the auto rules of origin, including in the approval of alternative staging regimes requested by auto companies?

Answer. As I state in my answers to questions from Senator Wyden, I do not think former USTR employees should be able to lobby USTR right after leaving, and I would support efforts to change the rules in order to prevent that from happening. USTR will assess requests for alternative staging regimes submitted by companies consistent with the terms of the USMCA and guidance provided to the public in the Federal Register notice. It will be a fair and neutral process.

*Question.* Article 8 of Chapter 4 of the USMCA provides for the approval of alternative staging regimes that allow auto producers to qualify for USMCA benefits even if they do not meet USMCA's auto rules of origin. Paragraph 3 of Article 8 limits alternative staging regimes to not more than ten percent of a producer's total passenger vehicle or light truck production. The agreement allows the Parties to increase the number of eligible vehicles for a producer if certain conditions are met.

Does USTR expect any of the alternative staging regimes to cover more than 10 percent of an auto producer's total passenger vehicle or light truck production? If so, does USTR expect the majority of approved alternative staging regimes to cover more than ten percent of an auto producer's total passenger vehicle or light truck production?

Did the Parties agree to increase the ten percent limitation on an across-the-board basis? If not, how is an exception to the ten percent limitation being applied?

What was the process by which the Parties agreed to increase the ten percent limitation? Please provide any relevant documentation that reflects the decision-making process between the U.S., Canada, and Mexico on increasing the 10-percent limitation.

Answer. On April 21, 2020, USTR published a notice in the Federal Register that invited interested passenger vehicle and light truck producers to submit requests for alternative staging. The deadline for submissions was July 1, 2020. USTR is currently reviewing all petitions and anticipates making final decisions, based on the criteria in the agreement, by August 31, 2020.

Article 8.3 of the USMCA provides for the parties to accept petitions for alternative staging for more than 10 percent of total North American production, if the producer has a "detailed and credible plan to ensure these vehicles will meet all the requirements set out in Articles 1 through 7 within 5 years." We will consider all requests for alternative staging in line with the provisions in the USMCA.

*Question.* Mexico's labor law reforms took effect on May 2, 2019.

Since the labor law reforms took effect, what are the areas in which USTR believes Mexico has made the most progress in and been the most effective at implementing them? In what areas has Mexico made the least progress and been the least effective at implementing the labor law reforms? Does USTR believe Mexico remains on track to meet its labor obligations under Annex 23-A of the USMCA? What are the biggest impediments to Mexico living up to its obligations under USMCA?

Answer. We believe that the Mexican Government is committed to the labor reform process. Mexico plans to open the new Labor Courts and administrative bodies in one-third of its states by October of this year, which is ahead of what is mandated under the labor reform legislation. Under the May 2019 labor reforms, Mexico's new Federal Center must begin registering unions and CBAs by May 2021, its new local labor courts and local conciliation centers must begin operating by May 2022, and new Federal labor courts and conciliation centers must begin operating by May 2023. The creation of these new institutions is challenging, but we believe that they are on track to meet the required timeline. We are working closely with Mexico and the Department of Labor is providing technical assistance to support this process.

*Question.* Labor lawyer and activist Susana Prieto was arrested nearly a month ago on charges of inciting violence at a protest and threatening public officials. She was released from jail this week, not coincidentally on the day the USMCA entered into force. The charges against her have not yet been dropped, though she denies them.

Did USTR weigh in with the Mexican government on Prieto's arrest? Did USTR ask for her to be released from jail? Does USTR believe Prieto's arrest to be indicative of the Mexican government's commitment to implementing its labor law reforms? If not, why not?

Answer. USTR has worked closely with Department of State staff in the U.S. Embassy in Mexico City and the U.S. Consulate in Matamoros to monitor Ms. Prieto's case. Throughout, we have emphasized to the Mexican government the importance of respect for due process. In that regard, I note that the Mexican Secretariat of Labor and National Human Rights Commission issued statements directed to the Matamoros government to respect Ms. Prieto's constitutional and due process rights. We are continuing to follow the situation closely together with the Departments of State and Labor and other members of the USMCA Interagency Labor Committee.

*Question.* The USMCA implementing legislation (Pub. L. 116-113) provided \$30 million in appropriations to USTR during FY20-FY23 for the purpose of monitoring compliance with labor obligations.

Has USTR developed a spend plan for that funding yet? If so, please provide documentation of that spend plan. If not, when does USTR expect to develop that spend plan?

Answer. USTR is using this funding to increase our capacity to monitor and enforce compliance with USMCA labor obligations in a number of ways. We have hired additional staff in USTR's Office of Labor Affairs and Office of the General Counsel. USTR is dedicating funding to support the work of rapid response mechanism and state-to-state dispute settlement panels for labor cases. We are detailing a Senior Trade Representative to Mexico and will pay the office and logistical support expenses for that person, as well as the USMCA labor and environmental attaches, in Mexico. USTR will fund the operational costs of the USMCA Independent Mexico Labor Expert Board. We also are reviewing investments in technical and technological tracking tools that will facilitate monitoring and enforcing USMCA labor commitments.

*Question.* USTR's published negotiating objectives for the Kenya FTA do not include sustainable or equitable economic development in Kenya as a stated objective of the negotiations.

Is sustainable, equitable economic development in Kenya a USTR objective for the talks? If so, what U.S. FTA, in this administration's view, has best achieved equitable growth in a developing country? On what metrics is that assessment based? Will that FTA serve as model for the Kenya FTA negotiations?

Answer. In pursuing an FTA with Kenya, this administration is responding to the congressional charge, as expressed in the AGOA legislation, to seek reciprocal and mutually beneficial trade agreements that serve the interests of both the United States and the countries of sub-Saharan Africa.

*Question.* Because the Kenya FTA will be the first bilateral FTA with an African nation, the negotiations are expected to be lengthy.

How many years does USTR anticipate the Kenya FTA negotiations will take? What topics will be the most difficult in the negotiations and why?

Answer. It is difficult to predict how quickly the negotiations could be completed, as that will depend on numerous factors. It is similarly difficult to foresee which issues will be the most challenging. As in any such negotiation each side will have its ambitions and its sensitivities, and over the course of the talks we will identify them and seek to work through them.

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QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

*Question.* Can you explain why the Phase One China deal did not include provisions to address China's steel overcapacity?

Answer. The administration is committed to working toward a more fair and reciprocal trade relationship with China. In our negotiations with China, we decided that the best way forward was to take a phased approach to addressing the structural changes needed in China's trade regime. In the Phase One agreement with China, we were able to address a wide range of unfair trade practices, including in the areas of intellectual property, technology transfer, agriculture, and financial services. In Phase Two, we intend to address additional unfair trade practices, in-



cluding those that contribute to excess capacity in the steel sector, among others. We remain fully committed to addressing the issue. USTR is also actively engaged with like-minded trading partners in the Organisation for Economic Co-operation and Development and the World Trade Organization in an effort to bring greater transparency and discipline to the types of market-distorting measures that contribute to excess capacity in steel and other industrial sectors.

*Question.* Pennsylvania's Attorney General, Josh Shapiro, has raised the issue of fake respirator masks and potentially counterfeit or dangerous medicines making their way into Pennsylvania and the United States.

These reports of fraudsters taking advantage of the COVID epidemic to send fake medicines and medical equipment to the United States highlights how critical it is for USTR and Customs to be adequately resourced and for us to support the protections that allow CBP to stop fakes before they reach consumers. Can you discuss the steps are you taking to ensure American intellectual property is protected, and ensure the health and safety of Americans.

*Answer.* The manufacture and distribution of pharmaceutical products, active pharmaceutical ingredients, and medical equipment bearing counterfeit trademarks has been a growing problem that has important consequences for consumer health and safety. Among other things, USTR engages with our trading partners to strengthen border enforcement against counterfeit goods and, working with U.S. Customs and Border Protection as well as other U.S. government agencies, identifies through our annual Notorious Markets List illustrative examples of online and physical markets that reportedly engage in, facilitate, turn a blind eye to, or benefit from substantial copyright piracy and trademark counterfeiting.

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QUESTIONS SUBMITTED BY HON. MAGGIE HASSAN

*Question.* As companies across New Hampshire and the United States take measures to weather this economic crisis, many are also paying substantial tariffs that the administration has imposed on imports from China. The administration's tariffs were already a major burden prior to COVID-19, and I'm concerned about how tariffs are affecting businesses during this crisis.

Has the administration considered revisiting or broadening tariff exclusions to provide relief to small businesses?

Businesses are also paying tariffs on partially exempted products like medical goods and personal protective equipment (PPE) imported to fight and treat COVID-19 and protect American citizens. While USTR granted temporary exemptions on some tariffs levied on imported Chinese PPE and medical goods earlier this year, those exemptions are only temporary, and business continue to pay non-exempted tariffs rates.

Is USTR contemplating longer-term extensions of the earlier granted exclusions? Is so, for what periods and length of time is USTR contemplating for which exclusions?

Is USTR considering granting additional exclusions to PPE and medical goods in addition to those already granted? If yes, what goods are under consideration, and for what length of time? If no, why not?

*Answer.* USTR recognizes the importance of small business and in the exclusions process. Indeed, the exclusion request form asks businesses to identify whether they meet the size standards for a small business, as established by the Small Business Administration (SBA). In the context of examining whether the additional tariffs are causing a company severe economic harm, the size of the company is significant to that analysis. Additionally, USTR has taken steps to ease small business access to the exclusion process. For example, USTR provided a single point of contact to provide individual technical assistance to requesters and collaborated with SBA to help smaller companies navigate the process.

Prior to a group of exclusions expiring, USTR has issued a Federal Register notice asking the public to comment on whether to extend particular exclusions from that group. For the exclusions covering PPE and medical goods, depending on when the exclusion was initially published, USTR has either opened a docket seeking comments on whether to extend the exclusion for up to a year or will be opening a docket in the coming weeks.

In February and March, USTR granted a number of exclusions covering PPE and medical goods needed to respond to the COVID-19 outbreak. In a Federal Register notice published in March, USTR opened up a comments docket to assist in evaluating whether, the COVID-19 pandemic called for possible additional modifications to the China 301 tariff actions. Specifically, USTR requested comments from interested parties with respect to whether a particular product covered by the 301 action is need to respond to the COVID-19 outbreak. USTR is currently reviewing those comments. However, we do not believe that the section 301 tariffs were the reason for any shortages. We also believe that it is important to incentivize domestic producers of these goods, many of whom have just started production.

*Question.* The U.S.-Mexico-Canada trade agreement (USMCA) entered into effect on July 1st, and this bipartisan trade deal included important provisions to cut red tape for small businesses, such as making it easier to file customs forms digitally.

Given how hard small businesses have been hit during this crisis, how is the administration ensuring that these provisions provide relief to small businesses quickly and effectively?

*Answer.* Canada and Mexico are the top two export destinations for U.S. small businesses, with approximately 89,492 U.S. SMEs across the 50 States exporting \$61 billion in goods to Canada, and 53,682 U.S. SMEs exporting \$85 billion in goods to Mexico (2018, latest data available). With entry into force of the USMCA on July 1st, small businesses will be able to take advantage of beneficial provisions such as increased de minimis levels for exports to Canada and Mexico, expanded scope of advanced rulings by customs authorities, expedited release of express shipments, and strong and effective protection and enforcement of IP rights, including by streamlining application procedures that impose disproportionate burdens on small businesses. Additionally, small businesses can find a panoply of interagency information resources on USMCA and additional assistance to help them utilize the agreement at [www.trade.gov/usmca](http://www.trade.gov/usmca).

*Question.* On June 15th, Canada announced how it will allocate dairy tariff-rate quotas (TRQs) among potential Canadian importers of American dairy products. However, American producers have expressed concerns that Canada distributed the TRQs in a way that discourages certain American products from entering the Canadian market. Specifically, American producers are concerned that most of the dairy TRQs were given to Canadian competitors that have no incentive to import American dairy products.

What is USTR doing to evaluate the Canadian dairy TRQ allocations and to enforce the dairy provisions of the USMCA?

*Answer.* USTR will be closely monitoring Canada's implementation of all its dairy commitments. We are engaging with our Canadian counterparts and are ready to take enforcement action through the dispute settlement mechanism in the agreement, if necessary.

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#### QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO

*Question.* Businesses in my State have expressed relief for the waiver and delays on some tariffs as a result of the COVID-19 pandemic, however, many will continue to struggle long after the country proclaims it is open for business and remain uncertain about what the expectations will be going forward.

Have you, or are you planning to, recommend further delays or waivers of tariffs on businesses and industries particularly hard hit by the pandemic?

*Answer.* We are aware of the severe economic impact of the COVID crisis on American businesses and want to do what we can to speed their recovery. At the same time, we want to avoid doing anything that might incentivize imports or undercut the competitiveness of Made-in-USA products.

On April 22, 2020, the Department of the Treasury and the Department of Homeland Security announced a limited duty deferment. The administration believes this limited deferment strikes the right balance between ameliorating financial hardships to U.S. companies resulting from the pandemic and protecting both current U.S. manufacturing and suppliers. With respect to China 301 tariffs, USTR has a process for granting exclusions where a determination can be made that such an exclusion will help our Nation's response to the pandemic.

*Question.* One of the decisive factors in support from members of this committee on USMCA was including strong labor provisions such as those proposed by Senators Brown and Wyden.

What enforcement mechanisms are currently being implemented and what is your timeline to bring all of the provisions online to ensure we are preserving and protecting American labor?

*Answer.* All USMCA enforcement mechanisms are available and ready to be utilized as of the agreement's entry into force on July 1st. This includes the state-to-state mechanism and the rapid response labor mechanism championed by Senators Brown and Wyden. In addition, we have hired additional staff in USTR's Office of Labor Affairs and Office of the General Counsel to increase our capacity for monitoring and enforcement of the USMCA labor provisions. The Department of Labor also has selected three labor attaches to be based in Mexico City and is hiring additional staff in Washington, all to support the Interagency Labor Committee. As I mentioned in my hearing before your committee, we will not hesitate to utilize the USMCA enforcement tools.

*Question.* More travelers visit Nevada from the UK than any other country except for Canada and Mexico. Nearly three quarters of a million people visit Las Vegas alone each year.

Where can the tourism and hospitality industry factor into your negotiations with the UK? What new benefits to the Nevada community, specifically, could come from achieving an agreement with our historical friend and ally?

*Answer.* A comprehensive trade agreement between the United States and the UK will further expand our already deep economic and commercial relationship, including in the important tourism and hospitality industries. This strengthening of our economic relationship should also translate into an increased demand for business travel and tourism as well as more participation in conventions and trade shows in venues across the country, including in Nevada.

*Question.* In testimony, you stated that bilateral trade agreements put forth by the Trump administration have "secured enforceable commitments from China to cease its abusive trade practices," yet evidence suggests that China is falling short of reaching Phase One commitments.

Would these agreements put more pressure to make concessions and be more enforceable if they involved multilateral negotiations, including our allies? How is an agreement that excludes our allies better than one that includes them?

*Answer.* I am committed to using the most effective available tools to address unfair trade policies that harm U.S. workers, businesses, farmers, and ranchers. We have made extensive efforts to coordinate with like-minded trading partners. For example, I launched a trilateral process with Japan and the EU to address China's non-market-oriented policies and practices 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 and discussed various tools needed to deal with these problems. And while discussion can be helpful, it is no substitute for taking effective action that seeks to change China's practices that damage U.S. workers and businesses. I have not hesitated to take action to directly address unfair and harmful trade policies, such as China's policies regarding technology transfer, intellectual property, and innovation. Our allies, unfortunately, are not always willing to coordinate and work with us, such as the EU's decision to side with China in a WTO dispute on the section 301 action to address China's forced technology transfer.

*Question.* Our partners and allies, especially in the Asia-Pacific, are facing increased pressure from China. For example, last month, after the Australian prime minister voiced support for an investigation into the origins of COVID-19, the Chinese Government imposed 80-percent tariffs on Australian barley and stopped accepting beef from four large Australian slaughterhouses. One of the key ways we can counter China's rising influence is to strengthen our partnerships with these countries, which will be critical for our current and future economic outlook.

How is the administration prioritizing working with our Asia-Pacific partners like Australia that are facing Chinese government pressure?

*Answer.* Under the Trump administration's Indo-Pacific strategy, the United States works with countries across Southeast Asia and the Pacific to strengthen regional trade and security. In support of these objectives, the United States regularly

engages countries in Southeast Asia and the Pacific. In addition to the FTAs with Australia and Singapore, the United States currently has bilateral trade and investment framework agreements (TIFAs) with Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, New Zealand, Philippines, Thailand, and Vietnam. The United States also engages the region through the U.S.-ASEAN TIFA, which brings together all 10 ASEAN states for a dialogue on trade and investment.

USTR's activities in the region focused on confronting structural barriers, leveling the playing field for U.S. exporters, countering China's economic influence in the region, and targeting unfair trade practices that underpin trade deficits.

*Question.* The COVID-19 outbreak has shown how much the world relies on China for pharmaceuticals and medical equipment, especially when it comes to active pharmaceutical ingredients for manufacturing drugs. Our allies like Japan and France are also looking at this issue to try to see how they can lessen their reliance on imported medical supplies from China.

Will this issue have an impact on trade negotiations with China? How will the United States and its allies' efforts to improve drug manufacturing independence affect global trade with China?

*Answer.* If there is one lesson to be drawn from this crisis, it is that dependence on other countries, especially ones like China, as the source of key medical products has created a strategic vulnerability for the United States. This administration's economic and trade policies are helping to overcome that vulnerability by encouraging diversification of supply chains and—better yet—more manufacturing in United States.

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QUESTIONS SUBMITTED BY HON. MARK R. WARNER

*Question.* For several months, my staff had sought USTR's response on a number of questions related to USTR's interpretation of the safe harbor and its impact on a number of foreign efforts to hold platforms accountable. After months of silence from USTR, your staff finally responded—just before Memorial Day weekend—to suggest that USTR would potentially consider changes to the safe harbor to address the concerns of members of Congress like me. Over the Memorial Day weekend, my staff worked diligently with civil rights litigators, online abuse experts, and consumer protection advocates to generate a redline to the safe harbor that would address the concerns we have. In the month since we sent that redline, however, we haven't heard anything from USTR.

Have you seen these suggested revisions to the text and are you willing to incorporate them into any safe harbor provision you advance in these negotiations?

*Answer.* USTR appreciates the feedback that you and your staff have provided on the issue of non-IP civil liability provisions in trade agreements, and we look forward to continued engagement on this issue. While a provision addressing the non-IP civil liability of interactive computer service suppliers can play an important role as one element of comprehensive, high standard digital trade rules, we agree that any such provision must provide flexibility for the Congress, the administration, and our negotiating partners to evolve policy and law in response to new challenges.

*Question.* With bipartisan opposition to inclusion of this safe harbor in the U.S. Congress, along with widespread opposition in the British Parliament, why is USTR using considerable political capital—political capital that could be used to achieve longstanding consensus objectives on things like countering Huawei—to include this controversial platform safe harbor?

*Answer.* As noted above in response to your first question, we believe that a provision addressing the non-IP civil liability of interactive computer service suppliers can play an important role as one element of a broader set of comprehensive, high-standard digital trade rules to facilitate the continued growth of the U.S. economy and to support innovative Internet-based business models. At the same time, we recognize that any such provision in a trade agreement must provide flexibility for the Congress, the administration, and our negotiating partners to evolve policy and law in response to new challenges.

*Question.* On what basis do you think it is inappropriate to make clear that the platform safe harbor shouldn't negate anti-discrimination and human rights laws, or immunize platforms where they are actively facilitating—and receiving com-

pensation for—harmful and fraudulent activity like advertisements for online scams?

Answer. We recognize that governments, when developing and instituting safe harbors relating to non-IP civil liability for Internet platforms, should have flexibility to ensure that any such regime can evolve in response to new challenges and can address legitimate public policy goals such as the ones that you have cited. We look forward to continuing to work to ensure that any trade provisions in this area reflect the need for such flexibility.

*Question.* For several years now, I have called for a strong—and ideally multilateral—effort to address the range of unfair and aggressive trade practices of the People’s Republic of China.

Chief among my concerns have been continued use of economic espionage by the Chinese government, significant subsidies—both in the form of economic support and political patronage—for national champions like Huawei, and opaque and extrajudicial demands put on foreign firms.

Unfortunately, the President’s Phase One deal did not make meaningful headway on any of these pressing areas—choosing instead to push China to make a range of purchase commitments on American commodity products. Four months into the agreement, we have seen a range of reports indicating China’s unwillingness to abide by even these commitments—with no meaningful mechanism, aside from consultations, to enforce these commitments.

The lack of focus on China’s continued use of economic espionage has come into sharper focus in recent weeks, after the FBI confirmed that they were investigating Chinese state actors hacking of U.S. and Western vaccine research in connection with the COVID-19 pandemic.

What confidence can we have that a Phase Two deal would meaningfully address economic espionage—and what kind of enforcement mechanism is the administration prepared to push the Chinese to accept?

Answer. The serious problem of economic espionage conducted by China has been identified in a White House report, “How China’s Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World.” I agree with you on the importance of doing all we can to combat China’s actions. While matters related to economic espionage generally fall under the domain of law enforcement rather than trade agreements, our trade negotiations with China have centered on the troubling area of China’s technology acquisition policies.

With regard to our trade negotiations with China, our Phase One agreement not only addressed a range of purchase commitments from China, but also addressed structural reforms and other changes to China’s economic and trade regime in the areas of intellectual property, technology transfer, agriculture, financial services, and currency and foreign exchange.

We address China’s policy goal of technology acquisition in our Phase One agreement in the area of technology transfer, where the agreement addresses several of the unfair trade practices of China that were identified in USTR’s section 301 report. For the first time in any trade agreement, China agreed to end its long-standing practice of forcing or pressuring foreign companies to transfer their technology to Chinese companies as a condition for obtaining market access, securing administrative approvals or receiving advantages from the Chinese government. China also committed to provide transparency, fairness, and due process in administrative proceedings and to ensure that technology transfer and licensing take place on market terms. Separately, China also committed to refrain from directing or supporting outbound investments aimed at acquiring foreign technology pursuant to its distortive industrial plans.

In our Phase Two negotiations with China, we will seek to address additional problematic Chinese behavior, including state-sponsored cyber-theft. Like the Phase One agreement, a Phase Two agreement would need to include a strong enforcement mechanism.

*Question.* What conversations have you had through the inter-agency related to China’s economic espionage efforts relating to vaccine research? Doesn’t this heighten the need for multilateral coordination—as China’s efforts are no doubt aimed at German, French, and British vaccine research as well?

Answer. As noted in my response to the question above, the serious problem of economic espionage conducted by China has been identified in a White House re-

port, “How China’s Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World.” The administration closely coordinates in its interagency and collaborates with other nations where appropriate on these matters, which generally fall under the domain of law enforcement rather than trade agreements.

*Question.* It is no secret that China continues to pose serious threats to U.S. national and economic security, while largely closing or conditioning access to its own domestic market to American companies.

We must strengthen U.S. leadership in key technologies—both at home and abroad. Here at home, I’m working to restore American leadership in semiconductor research, development and fabrication. Last week, together with a bipartisan group of Senators and members of the House, I introduced legislation that will provide tens of billions to help enhance America’s edge in one of the most strategic industries—semiconductors.

The CHIPS for America Act will help to ensure America’s long term national security and economic competitiveness by providing foreign microelectronic companies the incentive to invest in the U.S. as well.

And abroad, we must continue to insist that China open its market to U.S. technology. One such example of this is cloud services. U.S. cloud providers are some of the world’s leading innovators, providing millions of high-skilled and high-wage jobs. While U.S. cloud providers have been at the forefront of the movement to the cloud in virtually every country in the world, China has blocked them.

Showing just how weak the Phase One deal was on the technology transfer front, China still requires U.S. cloud providers to transfer valuable U.S. intellectual property, surrender use of their brand names, and hand over operation and control of their business to a Chinese company in order to operate in the Chinese market.

Chinese cloud providers are free to operate and compete in the U.S. market, and U.S. cloud providers should benefit from the same opportunity in China. I strongly believe that it is important for the U.S. government to prioritize this issue in any potential Phase Two China deal.

Can you provide us an update today on China’s Phase One purchase commitment regarding cloud services, and also speak to your views on restoring American leadership in semiconductor manufacturing?

*Answer.* Under Chapter 6 of the Phase One agreement, China committed to increase its purchases of U.S. cloud and related services substantially in 2020 and 2021. USTR continues to track China’s implementation of its services purchases commitments very closely. Trade data indicates that China is making good progress in fulfilling its commitments as they relate to the cross-border supply of cloud and related services. At the same time, the United States remains very concerned about China’s lack of reciprocity in opening its cloud services market. The United States anticipates that the Phase Two negotiations with China will include a focus on services market access issues that were not addressed in the Phase One agreement, including in the area of cloud services.

I agree with you on the critical importance of America’s semiconductor manufacturing industry. Semiconductors are one of the top five U.S. export sectors, and they are critical to advancing innovation in virtually all sectors of the U.S. economy—from automobiles to cell phones to medical devices. Semiconductors are a specific target of China’s unfair and harmful industrial policies. In fact, China has openly stated its intention of achieving global dominance in advanced technology, as set forth in industrial plans such as “Made in China 2025.” To this end, the Chinese government has launched an initiative to develop an indigenous, self-contained semiconductor industry—an initiative calling for government-directed funding in the tens of billions of dollars, with some estimates of over \$150 billion. If China’s policies go unanswered, the U.S. industry will lose its scientific and technological advantage. In addition, supporting our domestic semiconductor industry to increase and to bring back manufacturing to the United States is a key component to maintain a U.S. technological lead in the future.

*Question.* COVID-19 has refocused many of our priorities. Your office took action in early March to exempt many medical and personal protective equipment items from tariffs. However, the list of approximately 200 goods did not include many desperately needed medical and PPE goods. In late March your office began a review of potentially new PPE exemptions, which recently closed for comments.

What steps has your office taken to exempt critically needed items like tests and personal protective equipment? Why has your office not accelerated these exemptions given the urgent need for readily available PPE?

Answer. As you note, in February and March, USTR granted a number of exclusions covering PPE and medical goods needed to respond to the COVID-19 outbreak. Additionally, in a Federal Register notice published in March, USTR opened a comments docket to assist in evaluating whether, the COVID-19 pandemic called for possible additional modifications to the China 301 tariff actions. USTR continues to consider the comments submitted. However, there is no evidence that the additional 301 tariffs are causing a shortage. In June, the International Trade Commission issued a report identifying COVID-19 Related Goods. Of the 112 10-digit tariff lines identified in the report, more than half of the lines (69) were either never subject to the 301 tariffs or have been excluded entirely, and an additional 18 lines have one or more product exclusions. Additionally, I do believe that it is important to incentivize domestic producers to produce these goods.

*Question.* The Trump administration has touted the purchase requirements included in the Phase One deal with China; however, there is evidence that they have fallen behind on several obligations and particularly on their energy purchases. There are also reports that China has begun sheltering its domestic coal production with import restrictions and that shipments of U.S. coking coal have dwindled in the past few months to essentially zero.

Is your office confident that China will meet its obligations in the light of increased protectionist policies in the energy space? Has your office begun any efforts toward dispute resolution to address the limited Chinese efforts to meet these obligations?

Answer. China's commitments to purchase U.S. energy products are annual commitments for calendar years 2020 and 2021, so we will not be able to assess definitively whether China has fulfilled these commitments for 2020 until the end of this year. At the same time, we have been following China's progress in purchasing U.S. energy products very closely and have been discussing our concerns with our Chinese counterparts as they arise. We have made it clear that China needs to find a way to satisfy all of its purchase commitments under the Phase One agreement.

*Question.* In April 2019, your office initiated a section 301 investigation to enforce U.S. rights in the World Trade Organization dispute against the EU and certain EU member States related to subsidies on large civil aircraft. As part of this action, your office announced tariffs on certain products from the EU, including 25-percent tariffs on wine from France, Spain, Germany, and the United Kingdom. Your office is also regularly reviewing these tariffs and has contemplated tariffs as high as 100 percent on wine from France, Spain, Germany, and the United Kingdom, as well as from places such as Italy and Portugal.

In a separate action earlier this month, your office launched another section 301 investigation with respect to Digital Services Taxes adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. This investigation could presumably lead to the consideration of yet further tariffs on European wines.

Wine imports and related supply chains support millions of American jobs and touch millions of American consumers. In Virginia alone, approximately 60,000 people depend on the production, distribution, and sale of wine and spirits products for their livelihood. As you know, the COVID-19 pandemic has devastated many of these jobs.

COVID-19 has wreaked havoc across the United States. The National Restaurant Association indicates that the restaurant industry has lost \$120 billion in sales during the last 3 months, and losses could reach as high as \$240 billion by the end of the year. Wine and spirit sales provide on average 25 percent of a typical restaurant's income, and estimates indicate wine distributor sales have collapsed 50-60 percent due to restaurant closures.

As part of your review of tariffs in the large civil aircraft dispute, will your office consider the potentially catastrophic circumstances facing the food and wine industry today, the impact that tariffs have on sales, and the industry's capacity to rebuild following these extraordinary events?

Answer. Determining an appropriate action under section 301 involves a balance between the most effective action to obtain the elimination of the unfair act, policy, or practice, and minimizing any adverse effects on the U.S. economy. To assist in

achieving the appropriate balance, USTR conducts a notice and comment process on possible trade actions, and carefully considers all public input. Regarding further review of the LCA action, USTR has established a process where interested persons can submit comments on the action, and comments are currently being accepted through July 26th. Among other matters, USTR specifically invited comments regarding potential disproportionate economic harm to U.S. interests, including small or medium-size businesses and consumers. USTR will continue to consider public comments concerning potential effects on the U.S. economy when considering any further action to take in the investigation.

*Question.* Because of the three-tier system regulating the sale of alcohol in the United States, the section 301 tariffs on imported wines from Europe do more financial harm to U.S. businesses than to those in the EU. When you factor in restaurant sales, estimates indicate up to 85 percent of the dollars from the sales of these wines stay with U.S. businesses.

Is USTR concerned that tariffs on EU wines may not be as effective—causing more harm domestically than on their intended target—and particularly taxing to smaller, independently owned restaurants and small wholesalers and importers, at a time when the hospitality industry is being devastated by the effects of the COVID-19 pandemic?

*Answer.* Determining an appropriate action under section 301 involves a balance between the most effective action to obtain the elimination of the unfair act, policy, or practice, and minimizing any adverse effects on the U.S. economy, including small businesses and consumers. USTR is currently considering a possible modification to the LCA action. Under that process, interested persons can submit comments on the action, and comments are currently being accepted through July 26th. Among other matters, USTR specifically invited comments regarding potential disproportionate economic harm to U.S. interests, including small or medium size businesses and consumers.

*Question.* To what extent does USTR consider downstream American jobs when deciding which tariffs to impose following section 301 investigations? For example, did USTR consider the impact additional tariffs on European wine would have on distributors or the restaurant industry? Does USTR consider information beyond what is submitted through the public comment process?

*Answer.* USTR considers all information provided on the public record, and has received extensive comments regarding possible impacts on wine importers and downstream users.

*Question.* Given the small size of its economy, and the vulnerable situation under the COVID-19 emergency, why is the administration embarking on trade negotiations with Kenya now? How will you ensure that these talks do not undermine national development efforts in Kenya or regional economic integration in Africa? What is USTR's interpretation of the impact of a platform safe harbor on Kenya's disinformation laws, which hold platforms liable for the dissemination of disinformation?

*Answer.* Kenya is an important regional leader and strategic partner of the United States. There is enormous potential for us to deepen our economic and commercial ties. As with all countries, it is facing the challenges posed by COVID-19, but President Kenyatta has expressed that he sees an FTA with the United States as important for his country's economic future. Such an agreement can help create an enabling environment, boost competitiveness, and drive the sort of investment that Kenya seeks. Positive investment spillovers to regional partners will help reinforce the region's economic integration goals.

USTR continues to analyze Kenya's disinformation law, but its impact remains unclear given the ongoing court challenges that this measure currently faces.

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

This is our fourth annual hearing on the Trump trade agenda, which means it's the fourth time the committee will hear a familiar old routine about Trump getting tough on China and protecting American jobs everywhere, the President cracking down once and for all, big changes right around the corner, an American economy on the brink of transformation. It's been 3½ years of those big promises. What are the results?



The Phase One deal the President called “the biggest deal there is anywhere in the world by far” is already coming apart, with China falling behind on commitments.

According to an analysis by the Peterson Institute looking at the first 4 months of the deal, China’s purchases of U.S. manufactured goods were at 56 percent of the target level set by the Phase One deal. China’s purchases of U.S. agricultural goods were at 38 percent.

The President said he’d stop the overproduction of steel in China that has wiped out so many steel jobs here in the United States. But mills in China are producing steel at record levels—up 6.6 percent in 2018 and 8.3 percent in 2019.

The President said he’d fix the most damaging ripoffs that target American innovation and jobs. But when it comes to IP theft or forced technology transfers, the Phase One deal recycled existing law and repeated the same promises China has broken many times before.

According to the Economic Policy Institute, the United States has lost 3.7 million jobs to China in the last 2 decades—three-quarters of them in manufacturing. Donald Trump has not meaningfully changed *any* of the conditions that allowed that to happen. His biggest accomplishment is proving that nobody’s better at hyping up a record of consistent mediocrity like Donald Trump.

Bottom line, the status quo under this President is good for China, and the Chinese Government is reportedly interested in maintaining it.

Now let’s turn to the new NAFTA. Ambassador Lighthizer and I long agreed that NAFTA needed a major overhaul. It wasn’t built for a digital economy, and it wasn’t strong enough on enforcement to protect American workers. When the Trump administration first brought its renegotiated deal to the Congress, it made progress on digital trade, but it didn’t go nearly far enough to protect family-wage jobs and workers with tough rules on labor and environmental protection. In fact, the old, broken-down system of enforcement from the old NAFTA was still a part of the Trump administration’s new NAFTA. That meant that all of the President’s boasting about getting a great deal for workers was more of the same old happy talk on trade.

Democrats in the Senate and the House said that was unacceptable and got down to work improving those areas where the administration’s deal fell short. Senator Brown and I worked with our colleagues to develop a faster, more aggressive approach to labor enforcement so that American workers won’t have to spend years waiting for action against trade cheats. Ambassador Lighthizer helped us get it done, and now the deal is set to go into effect in 2 weeks.

But the start of the new deal means the work is just getting started. Most critically, I have major concerns about Mexico’s ability to stay on track with implementing the labor obligations, and with our ability to monitor and enforce them. The administration absolutely must hit the ground running on enforcement on day one.

There are a few other areas where American businesses, producers, and workers need more information and more certainty as the agreement goes into effect. Our dairy farmers need to know that their products won’t face unfair discrimination by Canada and Mexico. American innovators need assurances that Mexico will make changes it promised to its intellectual property laws. Finally, American automakers need to know how USTR and the Department of Labor will apply the auto “rules of origin,” which impact their supply chains and their ability to qualify for tariff benefits.

The reality is, the new NAFTA made real progress on several key issues, and that’s why it got overwhelming support from this committee and the Senate.

That progress can be undone if the administration fails to enforce the deal—particularly using the enforcement tools the Congress created to protect American jobs. This committee will keep a close watch on these issues in the weeks and months ahead.

With that, let me thank Ambassador Lighthizer for joining the committee today. I know I’m not the only Democrat on this committee who’s grateful for his outreach and all his work on a bipartisan basis over the last few years. Questions and answers with Bob Lighthizer are never dull.



## COMMUNICATIONS

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The American Chemistry Council (ACC) appreciates the opportunity to provide a statement for the record regarding the June 17, 2020 hearings on the 2020 United States Trade Policy Agenda at the House Ways and Means and Senate Finance Committees. These hearings were important opportunities for ACC to reflect on the state of U.S. trade policy and its impact on the operations, planning, and competitiveness of U.S. chemical manufacturers. We would like to offer the following perspectives in response to Ambassador Robert Lighthizer's testimony and responses to questions, in order to further the debate in the Congress on how U.S. trade policy can better serve the U.S. economy, businesses, workers, families, consumers, and communities.

### **Smart U.S. Trade Policy Can Power the Business of Chemistry in the United States**

The U.S. chemical industry is a \$565 billion enterprise, supporting more than 25 percent of U.S. gross domestic product (GDP), and providing over 542,000 skilled, good-paying American jobs, with production in nearly every state. Thirty percent of these jobs are export dependent. And because over 96 percent of manufactured goods are touched by chemistry, the chemicals industry is the foundation of American manufacturing. For the first time in decades, the United States enjoys a competitive advantage in chemicals and plastic production, made possible by affordable domestic natural gas, the industry's primary feedstock.

Since 2010, chemical manufacturers in the United States have announced approximately \$205 billion of investment in new chemicals and plastics domestic manufacturing capacity. More than 60 percent of that capacity stems from foreign direct investment. In 2016 and 2017, the chemical industry accounted for nearly half of all construction spending in U.S. manufacturing. Much of this capacity is intended for export, reflecting investors' understanding that the United States is competitively advantaged in serving the global marketplace. Due to the shale gas revolution, the United States has gone from one of the most expensive places to produce chemicals, to one of the world's lowest cost and most competitive producers.

American chemical manufacturers today produce 15 percent of the world's chemicals. They are one of the top exporting industries in the United States, accounting for 10 percent of all U.S. exports, which amounted to \$136 billion in 2019. The U.S. trade surplus in industrial chemicals was \$35 billion in 2019. Given the competitive advantage created by the American shale gas revolution, that surplus is estimated to grow to \$61 billion by 2024.

In light of the importance that chemical exports have to the industry and the national economy, ACC strongly supports trade policy that both prevents and addresses barriers to trade and investment. For the U.S. chemical industry to succeed in the global marketplace, chemicals trade must be allowed to flow freely in and out of the United States in order to reach a wide range of global consumers—especially in emerging economies—and to compete effectively against significant global competition. Market-opening trade agreements level the playing field, create a shared path to growth and innovation, and fortify our country's relationships with key trading partners. Trade agreements also give U.S. chemicals manufacturers continued access to critical export markets and allow American firms to import materials and

chemicals that are essential to U.S. manufacturing, but which may not be produced or available in the United States.

**U.S. Section 301 and Section 232 Tariffs and Retaliation by Trading Partners Continue to Undermine the Competitiveness of U.S. Chemical Manufacturers**

As of the date of this statement, China is retaliating against over \$11 billion in exports of U.S.-made chemicals in response to the U.S. Section 301 tariffs on imports from China. These tariffs impact \$20 billion in imports of chemicals, many of which U.S. chemical manufacturers rely on to manufacture chemicals in the United States. The European Union, India, and Turkey are applying retaliatory tariffs on \$1 billion in exports of U.S.-made chemicals in response to the U.S. Section 232 tariffs on steel and aluminum imports. The Section 232 tariffs and quotas have increased the cost of building chemical manufacturing plants in the United States and have limited the availability of steel necessary for plant construction and maintenance.

It is possible that additional Administration trade actions under Section 301 and Section 232 impact imports of chemicals from trading partners and result in retaliation by trading partners against U.S. exports of chemicals, further closing markets to U.S. chemical manufacturers and weakening their global competitiveness.

ACC remains concerned about overreliance on tariffs to address unfair trade barriers or other policy issues. Without an effective negotiation strategy to eliminate longstanding barriers to trade, overreliance on tariffs will reinforce a vicious cycle of unilateral U.S. tariff actions and trading partners imposing retaliatory tariffs on exports of U.S.-made chemicals and plastics. This vicious cycle will continue to undermine the competitiveness of the U.S. chemical industry and close markets to exports of U.S.-made chemicals and plastics. U.S. trading partners do not pay U.S. tariffs; tariffs are taxes on imports that Americans pay.

**Tariff Relief Is Essential to the U.S. Chemical Industry and America's Response to COVID-19**

In the days following President Trump's declaration of a national emergency on March 13, 2020, the Department of Homeland Security (DHS) identified the chemical industry and its employees as an industry sector critical to public health, safety, and economic and national security. Since that time, the American Chemistry Council (ACC) and its members have responded quickly to mitigate the impact of COVID-19 by placing an emphasis on safe operations while ramping up the supply of essential ingredients and materials that healthcare workers, consumers, and essential industries need to protect Americans and stop the spread of the virus.

Despite the best efforts of businesses around the country, healthcare workers, consumers, and workers in essential industries are in dire need of products and equipment that can help save lives. Chemicals and plastics specifically have been recognized for their critical role in adding value to the production and distribution of life-saving products:

- For example, chemistry represents 75 percent of the value of cleaning and disinfectant products;
- 27 percent of the value of medical equipment, including face masks, diagnostic equipment, disposable gowns, shoe booties and hoods; and
- 25 percent of the value of material inputs used to make medical supplies such as test tubes, housings for test kits, goggles, surgical gloves, and surgical instruments.

Despite the immense value that chemistry provides to these products, U.S. Most Favored Nation (MFN) and additional tariffs on critical inputs to manufacturing processes, as well as other supply chain disruptions, are limiting their speed of production, availability, and use. These high demand products are in shortage in the United States and around the world. Minimizing existing barriers to trade in these products should be a priority.

To that end, we filed comments with USTR<sup>1</sup> and the USITC<sup>2</sup> asking for tariff relief for specific, essential products under Chapters 22, 28, 29, 32, 34, 38, 39, and 84 of the U.S. Harmonized Tariff System (HTS), in particular from the additional tariffs on imports from China under Section 301 of the Trade Act of 1974. Eliminating ad-

<sup>1</sup> <https://www.americanchemistry.com/ACC-Comments-to-USTR-Seeking-Section-301-Tariff-Exclusions-for-Essential-COVID-19-Fighting-Products.pdf>.

<sup>2</sup> <https://www.americanchemistry.com/ACC-Comments-to-USITC-on-Essential-Chemicals-and-Plastics-Needed-to-Combat-COVID-19.pdf>.

ditional tariffs of 25 percent (for Lists 2 and 3 products) and 7.5 percent (for List 4A products) on imports from China of these chemical and plastic inputs, especially where there is not sufficient domestic production or investment, is one of the quickest, most straight-forward approaches to cutting the costs of making high-demand products in the United States.

To help businesses weather this difficult time, the Administration in April announced a program to allow the deferral on Most Favored Nation (MFN) duty payments. This move was a welcome step to help American companies stabilize their finances and preserve cash during the unprecedented economic crisis resulting from the COVID-19 outbreak. Duty deferral freed up cash for companies to make investments in personal protective equipment and cleaning supplies, pay critical bills, and in some cases avoid default.

However, many companies were not able to avail themselves of the intended relief. To truly fulfill its stated goal, we ask for the Committees' support in urging the Administration to: (1) extend the duty deferral policy to cover imports through at least the summer months; (2) apply the policy retroactively; (3) broaden the scope of duties that may be deferred; and (4) modify the hardship test to allow companies in different circumstances to defer duties.

With tariff relief, our industry can deploy the full power of chemistry to help combat the spread of the novel coronavirus, maintain essential operations and pay our workers, and continue to serve critical sectors of the U.S. economy.

#### **The U.S. Chemical Industry Offers Alternatives for Addressing the Impact of the U.S. China Trade Dispute**

The COVID-19 pandemic has produced significant disruptions in chemical supply chains, including with respect to imports from China that are essential to U.S. chemical manufacturing competitiveness. This situation expands the challenge that U.S. chemical manufacturers have faced for the last two years. Due to the U.S. Section 301 tariffs on imports from China and China's retaliatory tariffs, bilateral chemicals trade is dropping rapidly, resulting in significant loss of market access for U.S. exporters to China and reduced ability to import mission-critical chemicals from China. U.S.-China bilateral chemicals trade is down 19 percent year-on-year in February and down 24 percent year-on-year in March.

We believe the U.S. and China should agree to suspend all the additional tariffs on bilateral trade immediately. Until such an agreement is possible, ACC urges the Administration to:

- Provide indefinite product exclusions for all chemicals and plastics on Lists 1, 2, 3, and 4a (HTS Chapters 28-39)—approximately \$20 billion in imports. This should align with China's tariff exclusion process and encourage China to exclude indefinitely all U.S. chemicals and plastics exports (approximately \$11 billion) from the application of its retaliatory tariffs.
- Eliminate Section 301 tariffs for products in Lists 1, 2, 3, and 4a and are also covered by the Miscellaneous Tariff Bill of 2018 (MTB) and the next MTB bill that the Congress legislates. The Congress in passing the MTB decided that certain imports, including a wide range of chemicals, were essential for U.S. manufacturing competitiveness. The Section 301 tariffs across all four lists have obviated the benefits of the MTB to U.S. chemical manufacturers relying on those imports to manufacture certain chemistries in the United States. Furthermore, it is worth considering whether the next iteration of the American Manufacturing Competitiveness Act should exclude products under future MTBs from the application of Section 301 and Section 232 tariffs.
- Eliminate chemicals tariffs globally, particularly between the top chemical producing countries. Achieving this goal will give U.S. chemical manufacturers the predictability and certainty they need to plan, grow, compete, and succeed in the global marketplace.
- Obtain two binding, enforceable commitments from China in the Phase 2 Agreement negotiations:
  - *First*, China should harmonize its WTO tariff bindings for chemicals and plastics to U.S. levels under the Chemical Tariff Harmonization Agreement (CTHA) at the World Trade Organization (WTO).
  - *Second*, China should work together with the U.S. to bring other markets (*e.g.*, Brazil, India, Kenya, and the United Kingdom) into the CTHA, to broaden the scope of participation in that initiative, bind currently un-

bound tariffs for chemicals and plastics (*e.g.*, for India, Kenya, Malaysia, and Nigeria), and lower both the bound and applied rates for chemicals and plastics for new participants.

Until the U.S. and China tariffs are lifted, we urge the Committees to demand that USTR improve the Section 301 product exclusion process and percentage of approvals so that it provides meaningful relief. We urge the Committees to increase their oversight of the exclusion process and insist that USTR administer the process in a fair, transparent, and efficient manner to ensure that it provides meaningful relief for those bearing the brunt of these harmful tariffs.

### **Avoidance of New U.S. Tariffs and Retaliation Is Paramount to the U.S. Chemical Industry**

In recent months, the Administration has initiated new Section 232 investigations on whether imports of electrical transformers, mobile cranes, and vanadium threaten to impair the national security. If the Administration determines that imports of the above products threaten to impair the national security, it could choose to apply tariffs to adjust imports and address possible national security threats. ACC recently filed comments<sup>3</sup> with the U.S. Department of Commerce regarding possible Section 232 tariffs on electrical transformers, arguing that tariffs will increase costs for U.S. chemical manufacturers with respect to plant construction, operations, maintenance, and further investment expansion. We have similar concerns with respect to possible Section 232 tariffs on imports of mobile cranes and vanadium.

The Administration also on June 3 initiated a Section 301 investigation on whether proposed and in force “digital services taxes” (DSTs) on a range of countries pose unfair barriers to trade. It may be the case that these DSTs are discriminatory, pose unfair barriers to trade, and therefore merit enforcement action. If the Administration determines that the DSTs are unfair barriers to trade, then it may choose to levy additional tariffs as a means of changing the behavior of trading partners. ACC filed comments<sup>4</sup> with USTR regarding France’s DST in January.

The preference of the U.S. chemical industry would be for the United States to come back to the negotiating table at the Organization for Economic Cooperation and Development (OECD), continue negotiations with trading partners seeking to impose DSTs, and reach a fair solution to the international taxation problem at hand, in order to prevent new DSTs and harmful U.S. unilateral trade actions.

The U.S. chemical industry is concerned that Section 301 tariffs on imports of chemicals from the identified U.S. trading partners in the DST investigation may increase the costs of chemicals used as inputs in chemical manufacturing in the United States, thereby further weakening the competitiveness of our industry. Furthermore, given that U.S. trading partners retaliated against exports of U.S.-made chemicals in response to the U.S. Section 232 tariffs on steel and aluminum and the Section 301 tariffs on imports from China, U.S. trading partners will likely retaliate against highly competitive U.S. exports, such as chemicals and plastics. Retaliation will further limit market access in U.S. trading partners such as the European Union (EU) and India.

We also anticipate that if the United States and the EU do not resolve their dispute at the World Trade Organization (WTO) regarding discriminatory subsidies for large civil aircraft prior to the WTO authorizing the EU to impose countermeasure tariffs, the EU could then impose high tariffs of up to 100 percent on U.S. exports of chemicals and plastics. These tariffs would close a critical market to U.S. exports and allow EU and other competitors to eat into the market share of U.S. chemical manufacturers in Europe. ACC filed comments<sup>5</sup> with USTR in June regarding the impact of possible EU countermeasure tariffs on U.S. exports of chemicals and plastics.

### **The North American Chemical Industry Strongly Supports USMCA Implementation**

The USMCA provides needed certainty for the North American chemical industry to further integrate and enhance its competitiveness relative to the rest of the world. ACC and our association partners in Canada and Mexico joined together in asking for USMCA to retain NAFTA’s tariff-free environment; streamline and sim-

<sup>3</sup> <https://www.americanchemistry.com/ACC-Comments-for-Section232-Investigation-on-Imports-of-Transform.pdf>.

<sup>4</sup> <https://www.americanchemistry.com/Policy/Trade/ACC-Comments-on-Section-301-Investigation-of-France-Digital-Services-Tax.pdf>.

<sup>5</sup> <https://www.americanchemistry.com/ACC-Written-Submission-on-Enforcement-of-US-WTO-Rights-in-Large.pdf>.

plify rules of origin for chemical substances; and advance regulatory cooperation amongst the three parties. USCMA met these objectives and others that the North American chemical industry had identified during the negotiations.

ACC and our association partners are proud to support USMCA implementation, particularly regarding the innovative regulatory cooperation provisions, which we hope the Administration can replicate to the greatest extent possible in the new free trade agreements it is negotiating. We also welcome the six-month period for companies to comply with the rules of origin, which will give U.S. chemical manufacturers sufficient time to adjust.

#### **U.S. Chemical Manufacturers Support New Market-Opening Trade Agreements**

ACC welcomes the new U.S. free trade agreement negotiations with the United Kingdom and Kenya. We urge the Administration to ensure that these negotiations yield high standard, comprehensive agreements that eliminate tariffs on chemicals immediately upon entry into force and establish flexible and transparent rules of origin for chemical substances. ACC filed comments with USTR<sup>6</sup> and the USITC<sup>7</sup> on the Kenya negotiations and recently issued joint comments<sup>8</sup> with the UK Chemical Industries Association on our shared priorities for the U.S.-UK free trade agreement negotiations.

These negotiations are also significant opportunities to foster greater regulatory cooperation between U.S. regulators and their counterparts in these markets and promote risk and science based approaches to regulation. Innovative regulatory cooperation provisions in trade agreements, building on the U.S.-Mexico-Canada Agreement (USMCA) and tailored to market conditions, will prevent and address barriers to trade and investment while increasing levels of protection for human health, safety, and the environment. Furthermore, as a result of these negotiations, the Administration should suspend the additional tariffs on imports of steel and aluminum that it imposed in 2018 and 2020. Suspending these tariffs will provide cost relief for chemical manufacturers building innovative new manufacturing facilities in the United States.

We also urge the Administration to continue its negotiations with Brazil, the European Union, India, and Japan, with the view to preventing new barriers to trade, addressing existing barriers to trade, and negotiating high standard, comprehensive, market-opening agreements. Tariff elimination and regulatory cooperation should also be important elements of these negotiations. Any limited trade package should incorporate ongoing dispute resolution mechanisms so that there is a fast-track method to resolve any follow-on trade distorting efforts by our trade partners.

#### **U.S. Membership in the World Trade Organization (WTO) Is Essential to the Global Competitiveness of the U.S. Chemical Industry**

The U.S. chemical industry remains a strong supporter of the WTO and U.S. membership in the WTO. We advocate for greater participation in WTO initiatives concerning tariff elimination and harmonization. We also advocate for strong enforcement of WTO agreements, and in particular, the WTO Agreement on Technical Barriers to Trade (TBT). We advise against abolition of the WTO and withdrawal by the United States from the WTO. We also advise against a reset of U.S. WTO tariff bindings, which will only cause widespread uncertainty throughout the multilateral trading system and retaliation by U.S. trading partners against U.S. exports.

The creation of the WTO in 1995 deeply embedded critical principles from the earlier General Agreement on Tariffs and Trade (GATT) into the multilateral trading system and expanded the number of governments committed to upholding these principles. For the U.S. chemical industry, adherence to the principles created the requisite certainty for expanding into global markets and establishing the United States as a platform for exporting competitively priced, high quality chemicals to trading partners around the world.

Tariff elimination and harmonization with key trading partners through the WTO and the goods market access schedules of WTO members is essential to the global competitiveness of U.S. chemical manufacturers. U.S. global leadership will be es-

<sup>6</sup> [https://www.americanchemistry.com/ACC-Public-Comments-on-US-Kenya-Trade-Negotiations\\_050620.pdf](https://www.americanchemistry.com/ACC-Public-Comments-on-US-Kenya-Trade-Negotiations_050620.pdf).

<sup>7</sup> <https://www.americanchemistry.com/ACC-Public-Comments-on-Impact-of-Tariff-Elimination-under-a-US-Ken.pdf>.

<sup>8</sup> [https://www.americanchemistry.com/US-UK-Chemical-Industries-Joint-Comments-on-Bilateral-Trade-Negotiations\\_200511.pdf](https://www.americanchemistry.com/US-UK-Chemical-Industries-Joint-Comments-on-Bilateral-Trade-Negotiations_200511.pdf).

sential to broad, deep, and durable tariff elimination for U.S.-made chemicals, whether at the WTO, through plurilateral or regional initiatives, or through free trade agreements with key trading partners.

Tariff elimination for chemicals must lead to the lowest possible bound rates at the WTO and the avoidance of additional duties on top of applied duties. High chemicals tariffs around the world impact the ability of U.S. chemical manufacturers to access new markets. They also limit opportunities for buyers of chemicals in key economic sectors (*e.g.*, building and construction, automotive, agriculture, consumer goods, information technology, and civil aviation) from buying innovative attractively priced U.S.-made chemicals.

The WTO's World Tariff Profiles 2019<sup>9</sup> indicates that a number of U.S. trading partners maintain high average bound and most favored nation (MFN) applied duties for chemicals (see Table 1 below). WTO Members participating in the Chemical Tariff Harmonization Agreement (CTHA) have bound their chemical tariffs at relatively low levels, and thus have low average applied tariff rates. Those WTO Members who are not participating in the CTHA have a large percentage of unbound chemical tariffs, meaning that WTO rules do not prevent them from raising tariff rates for certain products to prohibitively high levels. They also have higher-than average bound and applied tariff rates for chemicals. By contrast, the United States average bound rate and applied MFN rate for chemicals is 2.8 percent; 100 percent of our chemical tariffs are bound.

**Table 1: Average WTO Bound Rates and MFN Applied Rates on Chemicals for Certain U.S. Trading Partners Without Free Trade Agreements (CTHA participants in green)**

Country	Average WTO Bound Rate	Average MFN Applied Rate	Percentage of Unbound Chemical Tariffs
Argentina	21.4	8.2	0
Brazil	21.1	8.1	0
China	6.7	6.7	0
European Union	4.5	4.6	0
India	39.6	10.1	11.1
Indonesia	37.9	5.3	4
Japan	2.3	2.1	0
Malaysia	11.5	2.5	24.8
New Zealand	4.3	0.7	0
Nigeria	74.6	Not reported	98.5
Pakistan	57.4	7.9	0.1
Philippines	19.7	3.6	25.5
Russian Federation	5.2	4.6	0
Saudi Arabia	5.4	4.9	0
South Africa	12.4	2.1	0.4
Switzerland	1.0	0.9	0
Chinese Taipei	2.8	2.9	0

<sup>9</sup>[https://www.wto.org/english/res\\_e/booksp\\_e/tariff\\_profiles19\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/tariff_profiles19_e.pdf).



**Table 1: Average WTO Bound Rates and MFN Applied Rates on Chemicals for Certain U.S. Trading Partners Without Free Trade Agreements (CTHA participants in green)—Continued**

Country	Average WTO Bound Rate	Average MFN Applied Rate	Percentage of Unbound Chemical Tariffs
Thailand	29.9	2.6	38.8

Rather than seeing the above asymmetries as examples of unfairness, we urge the Administration to view them as opportunities to provide more market access to U.S. exporters in key markets that will drive global economic growth in the future.

ACC encourages the Administration to recommit to efforts to reform the WTO, especially to ensure that the organization can re-engage on driving common approaches to emerging trade issues. A functioning WTO has the potential to advance market access and commercial opportunities for the chemical industry across a range of issues from regulatory cooperation to digital trade policy to environmental market access for innovative solutions and products.

### Conclusion

Thank you again for the opportunity to provide this statement for the record. We look forward to working with the House Ways and Means and Senate Finance Committees as they work with the Administration to advance and shape the U.S. Trade Policy Agenda. The American Chemistry Council would be pleased to provide more information to Committee staff as necessary.

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The American Farm Bureau Federation submits this statement to the Senate Committee on Finance for the June 17, 2020, hearing on the 2020 Trade Policy Agenda. With the ongoing challenges facing American farmers and ranchers this year, an active trade agenda that seeks to expand market opportunities is critically important. Increasing exports with existing trading partners and working to develop new opportunities are necessary efforts to help revive the agricultural economy and to have agricultural trade be a leading component of broader economic recovery this year and beyond.

### U.S.-China Phase 1 Agreement

Fulfilling the commitments to purchase U.S. agricultural products by China will be a critical component of a trade-oriented economic recovery for farmers and ranchers.

Buying by China that had been slowed due to the coronavirus outbreak is resuming as Chinese ports have reopened and the Chinese economy recovers. Recent purchases of U.S. products include corn, soybeans, sorghum, wheat and pork. The U.S. and China signed the U.S.-China Phase 1 Trade Agreement January 15, 2020. It became effective February 14, 2020. Under this pact, China has agreed to purchase more U.S. agricultural products, up to \$40 billion annually and \$80 billion in total over the next 2 years. According to the agreement, these purchases by China will be on a commercial basis at market prices, and purchases may reflect seasonal marketing patterns. During the first quarter of 2020 the U.S. exported \$3.1 billion of agricultural products to China.

China has been meeting its commitments on standards improvement for various products, including beef, pork, poultry and dairy products, in the Phase 1 agreement. China continues the process of granting tariff waivers upon application by Chinese importers on many U.S. imports, including agricultural products.

The agriculture-related parts of the U.S.-China Phase 1 Agreement hold promise for U.S. agricultural export growth and for improved economics for U.S. farmers and ranchers. The expanded sales to China in the agreement will have a direct impact on the domestic production, processing, and transportation of agricultural goods. The product-specific obligations and regulatory commitments in the agreement will provide new opportunities for growth in many agricultural export categories.

The purchase commitments cover the calendar years for 2020 and 2021. Annex 6.1 of the agreement identifies those products that are included in the commitment.

*Setting the Stage*

In calendar year 2019, U.S. agricultural exports to China (including distilled spirits, fish products and ethanol which are included in the agriculture product category in this agreement) totaled \$14.7 billion, compared to \$10.3 billion during the same period in 2018. The year-to-date export value in 2019 is significantly higher than the previous year because of increased purchases that began in June. U.S. ag exports to China in 2019 increased more than \$4.6 billion, or 43%, from the previous year. However, despite this increase, calendar year 2019 U.S. agricultural exports were still well below calendar year 2017 exports of \$20.8 billion. It is important to keep calendar year 2017 in mind due to its serving as the baseline for the Phase 1 agreement. In January–April 2020, U.S. agricultural exports to China have topped \$4.2 billion. This is an increase of 15% over the same period in 2019, but still well behind the \$6.6 billion in agricultural exports achieved during January–April 2017.

*There's More Than One Way to Peel an Orange*

According to U.S. Trade Representative fact sheets, “China has agreed to purchase and import on average at least \$40 billion annually of U.S. food, agricultural, and seafood products, for a total of at least \$80 billion over the next 2 years.” Further, in Chapter 6 of the agreement, some guardrails around the \$40 billion average are added: “For the category of agricultural goods identified in Annex 6.1, no less than \$12.5 billion above the corresponding 2017 baseline amount is purchased and imported into China from the United States in calendar year 2020, and no less than \$19.5 billion above the corresponding 2017 baseline amount is purchased and imported into China from the United States in calendar year 2021.” Finally, the fact sheet adds, “on top of that, China will strive to import an additional \$5 billion per year over the next 2 years.”

There are several key elements in USTR’s statement. One is the reference to U.S. agricultural imports of “on average at least \$40 billion.” This element is important because it does not commit China to import \$40 billion each year, but rather gives China flexibility for different levels of imports in 2020 and 2021; these could be significantly different. After all, \$1 billion and \$79 billion and \$40 billion and \$40 billion both average to \$40 billion. The key to understanding the Chapter 6 component is knowing that U.S. agricultural exports to China in 2017 were \$20.8 billion. If U.S. agricultural exports in 2020 increase by the \$12.5 billion minimum, that would mean that U.S. agricultural exports to China in 2020 will be at least \$33.3 billion. If U.S. agricultural exports in 2021 increase by the \$19.5 billion minimum, that would mean that U.S. agricultural exports to China in 2021 will be at least \$40.3 billion. If China only imports the minimum amount in 2020 and 2021, the total value of imports over the 2-year period will be \$73.6 billion. This is where the final element of China striving to reach an additional \$5 billion per year comes into effect. If this is achieved, the total value of imports over the 2-year period would reach \$83.6 billion. Certainly, exports closer to \$40 billion each year would seem relatively easier to achieve, but as we watch agricultural exports to China over the next 2 years, we should keep in mind that China has a lot of flexibility in how it achieves the \$80 billion commitment.

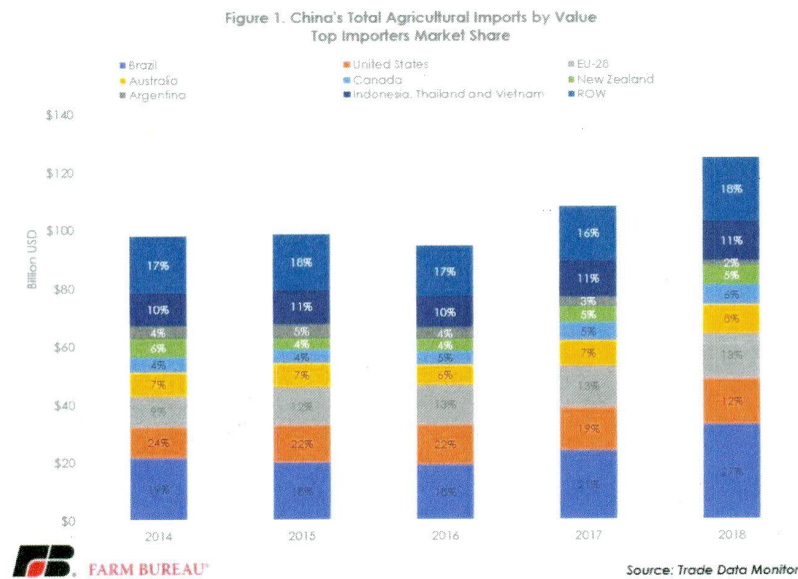
*Full Market Basket*

The agreement between the U.S. and China echoes the purchase value levels discussed in the press for several months. Over this time, there has been considerable discussion about whether \$40 billion–\$50 billion in U.S. agricultural exports to China are feasible. Doubt has crept in for a variety of reasons. One primary concern is the retaliatory tariffs China is still applying on nearly 100% of U.S. ag exports. Though the Phase 1 agreement does not address the tariffs, China’s decision to offer importers exemptions to additional retaliatory tariffs on nearly 700 types of goods from the United States, including farm and energy products for 1 year as it battles the coronavirus outbreak, should help make U.S. products more price-competitive. The second reason is that the U.S. has never come close to exporting \$40 billion in ag products to China. The closest we have ever gotten was around \$27 billion in 2012.

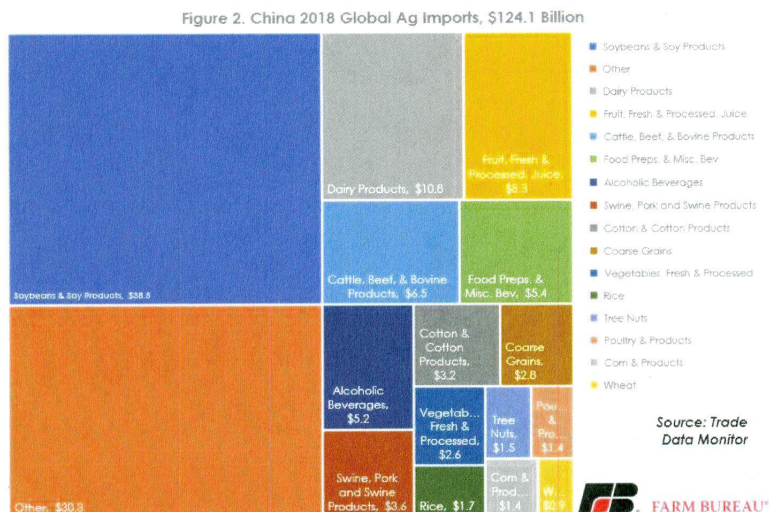
USTR’s fact sheet sheds some light on how \$40 billion could be achieved. The fact sheet states that “products will cover the full range of U.S. food, agricultural, and seafood products.” As mentioned previously, “food, agricultural and seafood products” is a more comprehensive definition of agriculture than is often used. When agriculture-related products, like distilled spirits, ethanol, and fish products, are in-

cluded it is easier to reach the export goal, but \$27 billion is still a long way from \$40 billion.

In order to properly consider whether \$40 billion is achievable, it's important to understand how the U.S. fits in China's overall agricultural import landscape. (For the purposes of discussing overall agricultural imports, the more traditional definition of agriculture, which does not include distilled spirits, ethanol and seafood, is used.) From that perspective, the U.S. is a top-five supplier of agricultural imports to China but has not been the top exporter since 2016. Figure 1 highlights that the top role has belonged to Brazil since 2017 and that competition for Chinese consumer dollars is fierce. In 2018, Brazil, the EU-28, the United States, Australia, Canada, New Zealand, Argentina, Indonesia, Thailand and Vietnam accounted for 82% of China's lucrative \$124 billion agricultural import market. The rest of the world split the remaining 18%. (Full 2019 Chinese import data was unavailable at the time of testimony; therefore, 2018 is used instead.)



Breaking down China's 2018 imports by product category in Figure 2 provides additional insight. Soybeans and soybean products totaled \$38.5 billion in 2018 and accounted for 31% of total agricultural imports. By value, dairy products were the second-largest import category, with imports totaling nearly \$10.8 billion and representing about 9% of total agricultural imports. The third-most valuable import category belonged to fruit, which includes fresh and processed fruits as well as fruit juice. China imported \$8.3 billion in fruit in 2018, accounting for 7% of total ag imports. Global imports of cattle, beef and bovine products were nearly \$6.5 billion and accounted for 5% of China's total ag imports in 2018. Rounding out the top five, prepared foods and miscellaneous beverages (which does not include alcoholic or fruit-based beverages) at \$5.3 billion accounted for 4% of China's total ag imports in 2018. Figure 2 provides global import values for 15 different import categories, plus an "other" category that includes all products not otherwise specified. (The HS6 codes which are included in each product category are defined by USDA Foreign Agricultural Service, following the World Trade Organization Agricultural Total specification available via the General Agreement on Trade in Services database.)



The USTR fact sheet points out that “China and the United States recognize that purchases are to be made at market prices based on commercial considerations.” Between this language and the high-level view of China’s imports, it seems clear that the U.S. is going to have to work to reach \$40 billion in agricultural exports. In order to achieve this level of agricultural exports, the U.S. will have to win market share away from other competitors and the product mix may be different from what the U.S. has exported in the past. Market share will be won on a product-by-product basis, with different competitors for each product.

For example, dairy products are China’s second -largest agricultural import product by value. In 2018, China imported over \$10.8 billion in dairy products, but only 5% of that total came from the United States. Meanwhile, the EU, New Zealand and Australia supplied 48%, 38% and 6%, respectively. In China’s third largest agricultural import category also—fruits, fresh and processed, including juices—the U.S. has a 5% market share, but the top competitors are significantly different. China imported \$8.3 billion in fruit products in 2018, with 24%, 21%, 9% and 9% of that market supplied by Thailand, Chile, the Philippines and Vietnam, respectively. Clearly, Chinese ag imports and the top suppliers are significantly different by product category. However, as we all know, things can change quickly. And because China is such a large market those changes can significantly alter export opportunities, which presents dramatic opportunity for U.S. agricultural exporters.

#### Commitments

For agriculture, China has committed to eliminate market access barriers, shorten the time for products to get to market, increase transparency and encourage the use of international standards.

In biotechnology, the approval process will be more transparent, predictable, efficient and science based. The approval process will take no more than 24 months, and China’s evaluations will be based on international standards.

The agreement streamlines and establishes time frames for regulatory actions by China for meat, poultry, seafood, dairy, infant formula, rice, potatoes, nectarines, blueberries, avocados, barley, alfalfa pellets, hay, feed additives, distillers’ dry grains (DDGs) and pet food.

For poultry, the countries will sign a poultry disease protocol to reduce uncertainty in the case of future outbreaks and follow international standards. China and the U.S. have begun to open their markets to bilateral trade in poultry products. For beef, China will eliminate cattle age requirements, recognize the U.S. beef traceability system and recognize international standards for cattle production. Facility registrations will be streamlined so that imports from U.S.-inspected and approved facilities with the proper certificates will be allowed. China also has committed to implement food safety measures that are science-based and risk-based.

Following the 2019 U.S. win in a WTO case brought against China's administration of tariff-rate quotas (TRQs), China will improve corn, wheat and rice TRQ allocation methodology and will not inhibit the filling of TRQs. For fruits, vegetables and plant-based feed products, China will finalize phytosanitary protocols for potatoes, nectarines, blueberries, avocados, barley, alfalfa hay pellets and cubes, almond meal pellets and cubes, and timothy hay.

The U.S. will have to fight for market share in order to achieve this export goal and the product mix may be different from what the U.S. has exported in the past.

#### **U.S.-Mexico-Canada Agreement**

All three countries have now ratified the agreement and completed further notification processes. The agreement will come into force July 1, 2020. It is expected that the agreement will add \$2.2 billion annually to the existing \$40 billion of U.S. agricultural exports to Mexico and Canada. The continuation of tariff-free trade with Mexico and expanded access to dairy markets in Canada are prominent features of the USMCA for agriculture.

Improvements to the approval process for biotechnology products and the registration of crop protection products by Mexico are of continued interest for U.S. agriculture.

#### **U.S.-Japan Agreement**

The U.S.-Japan Trade Agreement went into effect January 1, 2020. The agreement was signed October 7, 2019. Once the agreement is implemented, the U.S. will have the same level of tariffs into Japan as the CPTPP countries and the EU. U.S. beef had a 38.5% import tariff while countries such as Australia, Canada and the EU nations are paying a 26% tariff into Japan. Already, the impact of the tariff reduction is evident in U.S. beef exports. In January-April 2020, U.S. beef exports to Japan reached nearly \$720 million. This is an increase of \$82.6 million or nearly 13% over the same period in 2019. The tariffs applied to U.S. products are now the same as those of the other countries with a trade agreement with Japan. Tariffs are being reduced or eliminated on a variety of US agricultural exports to Japan.

Four months after the agreement goes into effect (May 2020) the U.S. and Japan may begin talks on the remaining issues, such as Sanitary and Phytosanitary Standards rules, that would lead to a comprehensive FTA between the U.S. and Japan. Rice and most dairy products were not covered in the Phase 1 agreement. The U.S. exported \$11.7 billion in agricultural products to Japan in 2019.

#### **U.S.-European Union (EU) Negotiations**

The U.S. and the EU have differences as to what is to be included in any future trade agreement. The EU wants a narrowly focused discussion without agriculture. Agriculture must be included in any agreement given the long-standing issues regarding tariffs, biotechnology, geographic indications and barriers by the EU to trade in beef, pork and poultry products.

#### **U.S.-UK Negotiations**

The United Kingdom left the political structure of the EU on January 31, 2020. A trade agreement between the UK and the EU will be negotiated throughout 2020 and may be completed by December 31, 2020.

After the UK completes its trade agreement with the EU, it can enter into trade agreements with other countries.

The UK on March 2, 2020, released its negotiating objectives. The U.S. released its trade negotiating objectives with the UK in February 2019. The first round of comprehensive negotiations ran May 5th-15th, virtually. The next round is scheduled to begin June 15th.

The U.S. exported \$1.6 billion in agricultural goods to the UK in calendar year 2019. U.S. agriculture believes that there can be growth in our exports annually to the UK when the old restrictions that the UK had to impose as a member of the EU are lifted. Eliminating and lowering tariffs, removing protectionist barriers on beef, pork and poultry products, addressing biotechnology approvals and removing geographic indications restrictions for dairy and meat products will allow increased trade and greater consumer choice in the UK.

#### **U.S.-Kenya Negotiations**

The upcoming talks with the Republic of Kenya offer the opportunity to address a nation with growth potential for U.S. agricultural exports. The ambitious effort also holds potential for future discussions with other nations in the region. Eliminating

and lowering tariffs, improving science-based sanitary standards, addressing the products of biotechnology and recognizing the common names for food products, not restrictive geographic indications, will allow for continued growth of agricultural trade. The U.S. exported \$52.8 million in agricultural products to Kenya in calendar year 2019. U.S. agricultural exports to Kenya peaked at \$153.7 million in calendar year 2009.

#### **Perishable Products**

The Office of the U.S. Trade Representative had scheduled field hearings in Florida and Georgia earlier this year to gather information from growers about the impacts of seasonal imports on their operations. This issue continues and we strongly support the rescheduling of these hearings as soon as conditions permit.

#### **Conclusion**

Efforts must continue to expand U.S. agricultural exports around the world. Growing market opportunities are necessary for the economic future of U.S. farmers and ranchers.

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AMERICANS FOR FREE TRADE ET AL.

July 1, 2020

The Honorable Chuck Grassley  
Chairman  
U.S. Senate  
Committee on Finance  
Washington, DC 20510

The Honorable Ron Wyden  
Ranking Member  
U.S. Senate  
Committee on Finance  
Washington, DC 20510

**RE: The President's 2020 Trade Policy Agenda Hearing Record, June 17, 2020**

Dear Chairman Grassley and Ranking Member Wyden:

The Americans for Free Trade coalition, a broad alliance of American businesses, trade organizations and workers united against tariffs, respectfully submits this written statement to include in the public record of the Finance Committee hearing on the 2020 Trade Policy Agenda, which took place on June 17, 2020. We appreciate the Committee holding this hearing on this important matter.

Our coalition represents every part of the U.S. economy including manufacturers, farmers and agribusinesses, retailers, technology companies, service suppliers, natural gas and oil companies, importers, exporters, and other supply chain stakeholders. Collectively, we support tens of millions of American jobs through our vast supply chains.

We agree that our trading partners must abide by global trade rules so that American businesses can compete on a level playing field, but we also believe that the tools used to hold trading partners accountable should be strategic, targeted, and serve the best interests of the American people and economy. Accordingly, we support the Administration's efforts to address China's unfair trading practices, including intellectual property violations, forced technology transfer, market-distorting subsidies, and more. We also appreciate the progress made by the "Phase One" agreement with China and lifting a small number of tariffs on Chinese imports. Nevertheless, we disagree with the continued and indiscriminate use of tariffs to achieve those goals and believe that such tariffs cause unnecessary harm to American businesses and consumers while creating little leverage to achieve further concessions. The Administration has committed to keeping the tariffs in place until a "Phase Two" deal with China is reached—a deal that seems less likely with each passing day. Meanwhile, China has lowered its tariffs for competing products from other trading partners to an average of 6.7 percent, which allows them to eat into U.S. shares of China's market.<sup>1</sup> The Section 301 tariffs have sown uncertainty in the world's economy and mistrust with trading partners and have hindered, not helped, the U.S. response to the COVID-19 outbreak. The American economy deserves a better approach.

More specifically, tariffs remain in place on nearly \$370 billion in goods, and it is American businesses, manufacturers, farmers and ranchers, and consumers who pay

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<sup>1</sup>Peterson Institute for International Economics (June 2019), *available at <https://www.piie.com/blogs/trade-and-investment-policy-watch/trump-has-gotten-china-lower-its-tariffs-just-toward#content>*.

these taxes—not the Chinese. While the suspension of the List 4B tariffs and reduction in the List 4A tariffs were welcome steps, they fall well short of alleviating the burden that the tariffs place on Americans. In fact, Americans paid \$72 billion in duties in fiscal year 2019—a staggering 73 percent increase over fiscal year 2018.<sup>2</sup> \$50 billion of this increase is the direct result of the trade war. For U.S. companies importing components or finished products subject to the tariffs, these figures mean higher prices, job losses and reduced investment. Before the COVID-19 outbreak, the Congressional Budget Office estimated that these increased tariffs would cost the average American household \$1,277 in 2020<sup>3</sup>—nearly eliminating any savings enjoyed as a result of the Tax Cuts and Jobs Act.<sup>4</sup> Just recently, the Federal Reserve Bank of New York released a survey finding that “[t]he U.S. trade war with China cut \$1.7 trillion from the market value of listed American firms” and will reduce their investment growth rate by almost 2 percentage points by year end.<sup>5</sup> **We urge Congress to insist that the Administration lift all punitive China tariffs immediately before any further damage is done to the U.S. economy.**

**Until those tariffs are lifted, we urge the Committee to demand that USTR improve the Section 301 product exclusion process and percentage of approvals so that it provides meaningful relief.** Ambassador Lighthizer’s remark during the Ways and Means hearing that he “hope[s]” that the exclusion process is “not too lengthy or too difficult” was stunning. As constituents from around the country have noted in prior hearings, letters, and comments, the exclusion process remains opaque, burdensome, and difficult. In fact, there have been numerous reports<sup>6</sup> regarding the inconsistencies with which the exclusion process has been administered, the opaqueness with which USTR makes decisions on exclusion petitions, and the overall sluggishness of the process. We urge the Committee to increase its oversight of the exclusion process and insist that USTR administer the process in a fair, transparent, and efficient manner to ensure that it provides meaningful relief for those bearing the brunt of these harmful tariffs.

We applaud the Committee’s request for the United States International Trade Commission study seeking to identify these key products. **As a follow-up to the release of that study, we ask for the Committee’s support in urging the Administration to immediately grant product exclusions and eliminate Most Favored Nation (MFN) tariffs for all products—including inputs-needed to respond to the COVID-19 outbreak.** While USTR opened a new comment period for this purpose, the process suffers from the same shortcomings as all previous product exclusion comment periods. In addition, Ambassador Lighthizer shared his view during the hearings that he is “not in favor of reducing tariffs on the things we need” and instead is “far more in favor of increasing tariffs on the things that we need.” That is opposite of the policy we need now and creates little confidence that products needed for the COVID-19 response will receive exclusions from USTR. It also fails to recognize that “[t]rade is not the problem; it is part of the solution.”<sup>7</sup> As companies now focus on reopening their businesses and ensuring the protection of their workers and consumers, we need to make sure we do not increase the costs of these products now for those who need them the most.

Further, we are deeply concerned with Ambassador Lighthizer’s testimony before the Committee that “from now on the extensions of the exclusions will expire at the end of this calendar year and then we’ll decide what happens after that.” Ambassador Lighthizer further stated that companies “have had a year or, in some cases,

<sup>2</sup> CBP Trade and Travel Report, Fiscal Year 2019, p. 1 (January 2020), available at <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/CBP%20FY2019%20Trade%20and%20Travel%20Report.pdf>.

<sup>3</sup> “The Budget and Economic Outlook: 2020 to 2030,” p. 33, Congressional Budget Office, available at <https://www.cbo.gov/publication/56073#:~:text=>.

<sup>4</sup> Laura Davison, “Trump’s Tariffs Have Already Wiped Out Tax Bill Savings for Average Americans,” *Bloomberg* (June 7, 2019), available at <https://www.bloomberg.com/news/articles/2019-06-07/trump-s-tariffs-have-wiped-out-most-families-tax-cut-gains>.

<sup>5</sup> Ben Winck, “The U.S.-China trade war has erased \$1.7 trillion from U.S. companies’ market value, Fed report says,” *Business Insider*, available at <https://markets.businessinsider.com/news/stocks/trade-war-cut-trillion-stocks-market-value-us-federal-reserve-2020-5-1029253690> (June 24, 2020).

<sup>6</sup> See, e.g., Leticia Mjranda, “Amid opaque tariff process, questions arise as to why some companies receive exemptions,” *NBC News* (February 13, 2020), available at <https://www.nbcnews.com/business/business-news/amid-opaque-tariff-process-questions-arise-why-some-companies-receive-n1119071>.

<sup>7</sup> Martin Wolf, “The Dangerous War on Supply Chains,” *Financial Times* (June 23, 2020), available at <https://www.ft.com/content/e27b0c0c-1893-479b-9ea3-27a81c2506c9?63bac0e6-3d28-36b1-7417-423982f60790>.

2 years to make some change in their process so that they don't come under these cases." These statements demonstrate a fundamental lack of understanding regarding the complex business decisions that determine where global supply chains are developed and whether they can or should be moved. Hundreds of companies testified during the Section 301 process discussion regarding the difficulty of shifting supply chains, especially in a short period of time. In addition, it shows little regard for the economic uncertainty faced by American businesses because of the COVID-19 outbreak. Rather than create additional uncertainty by extending product exclusions for a few months, **we ask the Committee to insist that USTR grant extensions for at least 12 months.**

We also are concerned that the Administration believes that a complete decoupling from China is possible or in American interests. We appreciate Ambassador Lighthizer's testimony that a complete decoupling of the U.S. and Chinese economies is not a "reasonable policy option at this point." However, President Trump tweeted just a day later that "the U.S. does maintain a policy option, under various conditions, of a complete decoupling from China."<sup>8</sup> While "decoupling" can mean a range of things, we caution that a forced decoupling from China—or any other country—will harm U.S. companies, American consumers, and the U.S. economy. **Instead, we urge Congress and the Administration to pursue new trade agreements around the globe—including in the Indo-Pacific region—that open new markets to American businesses, manufacturers, farmers and ranchers, and service providers and that leads the world in setting the trade rules for the 21st century.**

As the Committee knows, the COVID-19 pandemic has resulted in a historic closure of businesses, diminished revenues, and significant financial hardship for American companies and their workers. While the U.S. economy has started to reopen, businesses will continue to face liquidity challenges for some time. To help those businesses weather this financially difficult time, the Administration announced a program to allow the deferral on Most Favored Nation (MFN) duty payments. This move was a welcome step to help American companies stabilize their finances and preserve cash during the unprecedented economic crisis resulting from the COVID-19 outbreak. Duty deferral freed up cash for companies to make investments in personal protective equipment and cleaning supplies, pay critical bills, and in some cases avoid default; however, many companies were not able to avail themselves of the intended relief. To truly fulfill its stated goal, **we ask for the Committee's support in urging the Administration to: (1) extend the duty deferral policy to cover imports through at least the summer months; (2) apply the policy retroactively; (3) broaden the scope of duties that may be deferred; and (4) modify the hardship test to allow companies in different circumstances to defer duties.**

Finally, we have attached two documents for your reference: (1) AFT's Tariff Misery Index, which demonstrates the economic impact that the Section 301 tariffs are having on the U.S. economy; and (2) a list of recent studies on the economic impact of the tariffs.

As was noted by the Father of Economics, Adam Smith: "There is no art which one government sooner learns of another than that of draining money from the pockets of the people."<sup>9</sup> But that is just what this Administration has done with these tariffs. Americans have paid more than \$60 billion in tariffs because of the trade war, and these taxes continue to threaten the survival of American businesses already struggling to keep their doors open amid the economic crisis. **The time is now for Ambassador Lighthizer and the Trump Administration to end the tariffs.** We thank the Committee for holding this hearing and for the opportunity provide this statement for the record.

Sincerely,

Accessories Council  
ACT | The App Association

Agriculture Transportation Coalition  
(AgTC)

ALTI—Audio and Loudspeaker  
Technologies International

Beer Institute  
Business & Institutional Furniture  
Manufacturers Association (BIFMA)  
California Retailers Association

Carolina Loggers Association

<sup>8</sup> <https://twitter.com/realDonaldTrump/status/1273706102023237633>.

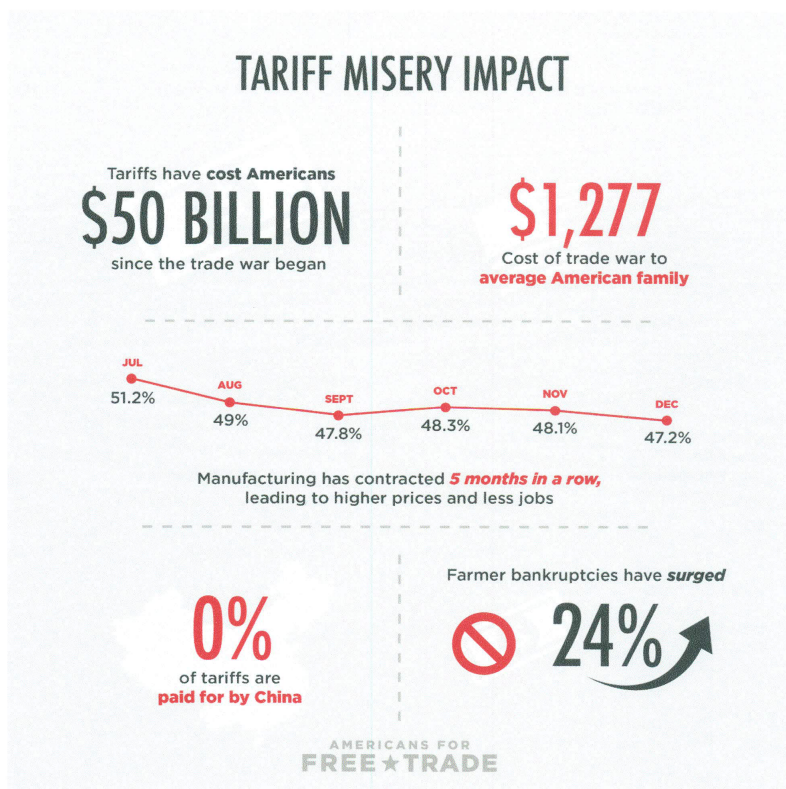
<sup>9</sup> Adam Smith, *The Wealth of Nations*, Book IV, Chapter II, p. 456, ¶ 10 (1776).



American Apparel & Footwear Association (AAFA)	Chemical Industry Council of Delaware (CICD)
American Association of Exporters and Importers (AAEI)	Coalition of New England Companies for Trade (CONNECT)
American Association of Port Authorities	Colorado Retail Council
American Bakers Association	Columbia River Customs Brokers and Forwarders Assn.
American Bridal & Prom Industry Association (ABPIA)	Computer & Communications Industry Association (CCIA)
American Chemistry Council	Computing Technology Industry Association (CompTIA)
American Down and Feather Council	Consumer Technology Association
American Fly Fishing Trade Association	Council of Fashion Designers of America (CFDA)
American Home Furnishings Alliance	CropLife America
American Lighting Association	Customs Brokers & Freight Forwarders Assn. of Washington State
American Petroleum Institute	Customs Brokers & Freight Forwarders of Northern California
American Pyrotechnics Association	Distilled Spirits Council of the United States
American Rental Association	Electronic Transactions Association
American Specialty Toy Retailing Association	Farmers for Free Trade
Arizona Technology Council	Fashion Accessories Shippers Association (FASA)
Arkansas Grocers and Retail Merchants Association	Fashion Jewelry & Accessories Trade Association
Association For Creative Industries	Flexible Packaging Association
Association for PRINT Technologies	Florida Ports Council
Association of American Publishers	Florida Retail Federation
Association of Equipment Manufacturers (AEM)	NAPIM (National Association of Printing Ink Manufacturers)
Association of Home Appliance Manufacturers	National Association of Chain Drug Stores (NACDS)
Auto Care Association	National Association of Chemical Distributors (NACD)
Footwear Distributors and Retailers of America (FDRA)	National Association of Foreign-Trade Zones (NAFTZ)
Fragrance Creators Association	National Association of Home Builders
Game Manufacturers Association	National Association of Music Merchants
Gemini Shippers Association	National Association of Printing Ink Manufacturers
Georgia Retailers	National Association of Trailer Manufacturers (NATM)
Global Chatnber®	National Confectioners Association
Global Cold Chain Alliance	National Council of Chain Restaurants
Greeting Card Association	National Customs Brokers and Freight Forwarders Association of America
Halloween Industry Association	National Fisheries Institute
Hobby Manufacturers Association	National Foreign Trade Council
Home Fashion Products Association	National Grocers Association
Home Furnishings Association	National Lumber and Building Material Dealers Association
Household and Commercial Products Association	National Marine Manufacturers Association
Idaho Retailers Association	National Restaurant Association
Illinois Retail Merchants Association	National Retail Federation
Independent Office Products & Furniture Dealers Association (IOPFDA)	National Ski & Snowboard Retailers Association
Indiana Retail Council	National Sporting Goods Association
Information Technology Industry Council (ITI)	Natural Products Association
International Bottled Water Association (IBWA)	New Jersey Retail Merchants Association
International Foodservice Distributors Association	North American Association of Uniform Manufacturers and Distributors (NAUMD)

International Housewares Association	North Carolina Retail Merchants Association
International Warehouse and Logistics Association	Ohio Council of Retail Merchants
International Wood Products Association	Outdoor Industry Association
ISSA—The Worldwide Cleaning Industry Association	Pacific Coast Council of Customs Brokers and Freight Forwarders Assns. Inc.
Jeweler's Vigilance Committee	Pennsylvania Retailers' Association
Juice Products Association (JPA)	PeopleforBikes
Juvenile Products Manufacturers Association	Personal Care Products Council
Licensing Industry Merchandisers' Association	Pet Industry Joint Advisory Council
Los Angeles Customs Brokers and Freight Forwarders Assn.	Petroleum Equipment & Services Association
Louisiana Retailers Association	Plumbing Manufacturers International
Maine Grocers & Food Producers Association	Power Tool Institute (PTI)
Maine Lobster Dealers' Association	Promotional Products Association International
Maritime Exchange for the Delaware River and Bay	Recreational Off-Highway Vehicle Association
Maryland Retailers Association	Retail Association of Maine
Methanol Institute	Retail Council of New York State
Michigan Chemistry Council	Retail Industry Leaders Association
Michigan Retailers Association	Retailers Association of Massachusetts
Minnesota Retailers Association	RISE (Responsible Industry for a Sound Environment)
Missouri Retailers Association	RV Industry Association
Motor & Equipment Manufacturers Association	The Fertilizer Institute
Motorcycle Industry Council	The Hardwood Federation
San Diego Customs Brokers and Forwarders Assn.	The Toy Association
SEMI	Travel Goods Association
Snowsports Industries America	Truck & Engine Manufacturers Association (EMA)
Software & Information Industry Association (SHA)	U.S. Hide, Skin and Leather Association
South Dakota Retailers Association	United States Council for International Business
Specialty Equipment Market Association	United States Fashion Industry Association
Specialty Vehicle Institute of America	US Global Value Chain Coalition
Sports & Fitness Industry Association	US-China Business Council
TechNet	Virginia Retail Merchants Association
Telecommunications Industry Association (TIA)	Virginia-DC District Export Council (VA-DC DEC)
Texas Retailers Association	Washington Retail Association
Texas Water Infrastructure Network	Window and Door Manufacturers Association
The Airforwarders Association	World Pet Association, Inc. (WPA)

## AMERICANS FOR FREE ★ TRADE



Source: Americans for Free Trade Tariff Misery Index available at <http://americansforfreetrade.com/tariff-misery-impact/>.

### Recent Studies on Economic Impact of Tariffs

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2. May 2020, National Bureau of Economic Research: The Effect of the U.S.-China Trade War on U.S. Investment; Mary Amity, Sang Hoon Kong, and David Weinstein, <https://www.nber.org/papers/w27114>.
3. January 2020, National Bureau of Economic Research: Who's Paying for the US Tariffs? A Longer-Term Perspective; Mary Amity, Stephen J. Redding, and David E. Weinstein, <https://www.nber.org/papers/w26610>.
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10. March 2019, Revised October 2019, National Bureau of Economic Research: The Return to Protectionism; Pablo D. Fajgelbaum, Pinelopi K. Goldberg, Patrick J. Kennedy, and Amit K. Khandelwal, <https://www.nber.org/system/files/working-papers/w25638/w25638.pdf>.
11. March 2019, National Bureau of Economic Research: The Impact of the 2018 Trade War on U.S. Prices and Welfare; Mary Amity, Stephen J. Redding, and David E. Weinstein, <https://www.nber.org/papers/w25672>.
12. February 2019, The Trade Partnership, LLC: Estimated Impacts of Tariffs on the U.S. Economy and Workers, Laura Baughman, <https://www.wita.org/uploads/2019/06/Estimated-Impact-Tariffs.pdf>.
13. December 2018, National Bureau of Economic Research: Macroeconomic Consequences of Tariffs; Davide Furceri, Swamali A. Hannan, Jonathan D. Ostry, and Andrew K. Rose, <https://www.nber.org/system/files/working-papers/w25402/w25402.pdf>.

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#### **Statement of Michael G. Bindner**

Chairman Grassley and the Ranking Member Wyden, thank you for the opportunity to submit these comments for the record to the Committee on Finance. Please see our comments from last year, which are attached with USMCA provisions removed.

The comments on the incompetence of this President are more obvious this year, when trade was put in front of a pandemic, leading to domestic disaster. He then reversed his comments and is inciting more retaliation from this authoritarian opposite in China. Sadly, in the impeachment trial earlier this year, the House did not cite this incompetence nor did the Senate consider it, so here we are again. More's the pity.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

#### **Attachment One—The President's 2019 Trade Policy Agenda**

Trade negotiations with China, Japan, the EU, and the UK threatening tariffs have taken on the character of economic gunboat diplomacy, but without the Navy. These occur because the President is ill equipped by his background as a businessman to work cooperatively, which is the essence of governance in a free society. He has a freer hand in trade negotiations. Sadly, his experience as a CEO has not served the nation well. The modus operandi of most executives is to break things in order to be seen fixing them. This must stop. The public is not amused, including the Chamber of Commerce, farmers and the stock and commodity markets.

The solution to these problems lies not with oversight of trade policy but through using criminal contempt proceedings against the leadership if the Internal Revenue Service, the Secretary of the Treasury and anyone in the White House, possibly, if not probably, including the President for not releasing the tax information requested

by the Chairman. The penalties for refusing to do so are quite clear and the opinion that a sitting President cannot be indicted can no way apply to this matter.

Today's witness is not likely to say his boss is a vainglorious idiot, so allow me to. It is well known that in this Administration, professional diplomatic expertise is not valued. Mr. Trump prefers to shoot from the lip. The incompetence of this president is tragic for our ongoing trade policy, which relies on a high degree of professionalism and careful work over a period of several administrations. NAFTA negotiations and its successor, as well as similar free trade agreements are an example of this. The Trans-Pacific Partnership was one such effort, but it was derailed by presidential politics on both sides. In trade, what is good politics is often not good economic policy.

The interaction of tax and trade is worthy of mention. Attachment Two contains our revised tax reform proposals. Two elements of these proposals are discussed below.

Consumption taxes could have a big impact on workers, industry and consumers. Enacting an I-VAT is far superior to a tariff. The more government costs are loaded onto an I-VAT the better. Indeed, if the employer portion of Old-Age and Survivor's Insurance, as well as all of disability and hospital insurance are decoupled from income and credited equally and personal retirement accounts are not used, then there is no reason not to load them onto an I-VAT. This tax is zero rated at export and fully burdens imports. Seen another way, to not put as much taxation into VAT as possible is to enact an unconstitutional export tax. Adopting an I-VAT is superior to its weak sister, the Destination Based Cash Flow Tax that was contemplated for inclusion in the TCJA. It would have run afoul of WTO rules on taxing corporate income. I-VAT, which taxes both labor and profit, does not.

The second tax applicable to trade is a Subtraction VAT or S-VAT. This tax is designed to benefit the families of workers through direct subsidies, such as an enlarged child tax credit, or indirect subsidies used by employers to provide health insurance or tuition reimbursement, even including direct medical care and elementary school tuition. As such, S-VAT cannot be border adjustable. Doing so would take away needed family benefits. As such, it is really part of compensation. While we could run all compensation through the public sector.

The S-VAT could have a huge impact on long term trade policy, probably much more than trade treaties, if one of the deductions from the tax is purchase of employer voting stock (in equal dollar amounts for each worker). Over a fairly short period of time, much of American industry, if not employee-owned outright (and there are other policies to accelerate this, like ESOP conversion) will give workers enough of a share to greatly impact wages, management hiring and compensation and dealing with overseas subsidiaries and the supply chain—as well as impacting certain legal provisions that limit the fiduciary impact of management decision to improving short-term profitability (at least that is the excuse managers give for not privileging job retention).

Employee-owners will find it in their own interest to give their overseas subsidiaries and their supply chain's employees the same deal that they get as far as employee-ownership plus an equivalent standard of living. The same pay is not necessary, currency markets will adjust once worker standards of living rise. Attachment Three further discusses employee ownership.

Over time, ownership will change the economies of the nations' we trade with, as working in employee-owned companies will become the market preference and force other firms to adopt similar policies (in much the same way that, even without a tax benefit for purchasing stock, employee-owned companies that become more democratic or even more socialistic, will force all other employers to adopt similar measures to compete for the best workers and professionals).

In the long run, trade will no longer be an issue. Internal company dynamics will replace the need for trade agreements as capitalists lose the ability to pit the interest of one nation's workers against the others. This approach is also the most effective way to deal with the advance of robotics. If the workers own the robots, wages are swapped for profits with the profits going where they will enhance consumption without such devices as a guaranteed income.

#### **Attachment Two—Tax Reform, Center for Fiscal Equity, February 21, 2020**

**Individual payroll taxes.** These are optional taxes for Old-Age and Survivors Insurance after age 60 (or 62). We say optional because the collection of these taxes occurs if an income sensitive retirement income is deemed necessary for program acceptance. Higher incomes for most seniors would result if an employer contribu-

tion funded by the Subtraction VAT described below were credited on an equal dollar basis to all workers. If employee taxes are retained, the ceiling should be lowered to \$75,000 reduce benefits paid to wealthier individuals and a floor should be established so that Earned Income Tax Credits are no longer needed. Subsidies for single workers should be abandoned in favor of radically higher minimum wages.

**Wage Surtaxes.** Individual income taxes on salaries, which exclude business taxes, above an individual standard deduction of \$75,000 per year, will range from 6% to 36%. This tax will fund net interest on the debt (which will no longer be rolled over into new borrowing), redemption of the Social Security Trust Fund, strategic, sea and non-contingental U.S. military deployments, veterans' health benefits as the result of battlefield injuries, including mental health and addiction and eventual debt reduction. Transferring OASDI employer funding from existing payroll taxes would increase the rate but would allow it to decline over time. So would peace.

**Asset Value-Added Tax (A-VAT).** A replacement for capital gains taxes, dividend taxes, and the estate tax. It will apply to asset sales, dividend distributions, exercised options, rental income, inherited and gifted assets and the profits from short sales. Tax payments for option exercises and inherited assets will be reset, with prior tax payments for that asset eliminated so that the seller gets no benefit from them. In this perspective, it is the owner's increase in value that is taxed. As with any sale of liquid or real assets, sales to a qualified broad-based Employee Stock Ownership Plan will be tax free. These taxes will fund the same spending items as income or S-VAT surtaxes. This tax will end Tax Gap issues owed by high income individuals. A 24% rate is between the GOP 20% rate and the Democratic 28% rate. It's time to quit playing football with tax rates to attract side bets.

**Subtraction Value-Added Tax (S-VAT).** These are employer paid Net Business Receipts Taxes. S-VAT is a vehicle for tax benefits, including

- Health insurance or direct care, including veterans' health care for non-battlefield injuries and long-term care.
- Employer paid educational costs in lieu of taxes are provided as either employee-directed contributions to the public or private unionized school of their choice or direct tuition payments for employee children or for workers (including ESL and remedial skills). Wages will be paid to students to meet opportunity costs.
- Most importantly, a refundable child tax credit at median income levels (with inflation adjustments) distributed with pay.

Subsistence level benefits force the poor into servile labor. Wages and benefits must be high enough to provide justice and human dignity. This allows the ending of state administered subsidy programs and discourages abortions, and as such enactment must be scored as a must pass in voting rankings by pro-life organizations (and feminist organizations as well). To assure child subsidies are distributed, S-VAT will not be border adjustable.

The S-VAT is also used for personal accounts in Social Security, provided that these accounts are insured through an insurance fund for all such accounts, that accounts go toward employee ownership rather than for a subsidy for the investment industry. Both employers and employees must consent to a shift to these accounts, which will occur if corporate democracy in existing ESOPs is given a thorough test. So far it has not. S-VAT funded retirement accounts will be equal dollar credited for every worker. They also have the advantage of drawing on both payroll and profit, making it less regressive.

A multi-tier S-VAT could replace income surtaxes in the same range. Some will use corporations to avoid these taxes, but that corporation would then pay all invoice and subtraction VAT payments (which would distribute tax benefits. Distributions from such corporations will be considered salary, not dividends.

**Invoice Value-Added Tax (I-VAT).** Border adjustable taxes will appear on purchase invoices. The rate varies according to what is being financed. If Medicare for All does not contain offsets for employers who fund their own medical personnel or for personal retirement accounts, both of which would otherwise be funded by an S-VAT, then they would be funded by the I-VAT to take advantage of border adjustability. I-VAT also forces everyone, from the working poor to the beneficiaries of inherited wealth, to pay taxes and share in the cost of government. Enactment of both the A-VAT and I-VAT ends the need for capital gains and inheritance taxes (apart from any initial payout). This tax would take care of the low-income Tax Gap.

I-VAT will fund domestic discretionary spending, equal dollar employer OASI contributions, and non-nuclear, non-deployed military spending, possibly on a regional basis. Regional I-VAT would both require a constitutional amendment to change the requirement that all excises be national and to discourage unnecessary spending, especially when allocated for electoral reasons rather than program needs. The latter could also be funded by the asset VAT (decreasing the rate by from 19.5% to 13%).

As part of enactment, gross wages will be reduced to take into account the shift to S-VAT and I VAT, however net income will be increased by the same percentage as the I-VAT. Adoption of S VAT and I-VAT will replace pass-through and proprietary business and corporate income taxes.

**Carbon Value-Added Tax (C-VAT).** A Carbon tax with receipt visibility, which allows comparison shopping based on carbon content, even if it means a more expensive item with lower carbon is purchased. C-VAT would also replace fuel taxes. It will fund transportation costs, including mass transit, and research into alternative fuels (including fusion). This tax would not be border adjustable.

**Attachment Three—Employee Ownership from Improving Retirement Security for America’s Workers, Center for Fiscal Equity, June 6, 2018**

In the January 2003 issue of Labor and Corporate Governance, we proposed that Congress should equalize the employer contribution based on average income rather than personal income. It should also increase or eliminate the cap on contributions. The higher the income cap is raised, the more likely it is that personal retirement accounts are necessary. A major strength of Social Security is its income redistribution function.

We suspect that much of the support for personal accounts is to subvert that function—so any proposal for such accounts must move redistribution to account accumulation by equalizing the employer contribution.

We propose directing personal account investments to employer voting stock, rather than an index funds or any fund managed by outside brokers. There are no Index Fund billionaires (except those who operate them).

People become rich by owning and controlling their own companies. Additionally, keeping funds in-house is the cheapest option administratively. I suspect it is even cheaper than the Social Security system—which operates at a much lower administrative cost than any defined contribution plan in existence.

If employer voting stock is used, the Net Business Receipts Tax/Subtraction VAT would fund it. If there are no personal accounts, then the employer contribution would be VAT funded.

Safety is, of course, a concern with personal accounts. Rather than diversifying through investment, however, we propose diversifying through insurance. A portion of the employer stock purchased would be traded to an insurance fund holding shares from all such employers. Additionally, any personal retirement accounts shifted from employee payroll taxes or from payroll taxes from non-corporate employers would go to this fund.

The insurance fund will save as a safeguard against bad management. If a third of shares were held by the insurance fund than dissident employees holding 25.1% of the employee-held shares (16.7% of the total) could combine with the insurance fund held shares to fire management if the insurance fund agreed there was cause to do so. Such a fund would make sure no one loses money should their employer fail and would serve as a sword of Damocles’ to keep management in line. This is in contrast to the Cato/PCSSS approach, which would continue the trend of management accountable to no one. The other part of my proposal that does so is representative voting by occupation on corporate boards, with either professional or union personnel providing such representation.

The suggestions made here are much less complicated than the current mix of proposals to change bend points and make OASI more of a needs based program. If the personal account provisions are adopted, there is no need to address the question of the retirement age. Workers will retire when their dividend income is adequate to meet their retirement income needs, with or even without a separate Social Security program.

No other proposal for personal retirement accounts is appropriate. Personal accounts should not be used to develop a new income stream for investment advisors and stock traders. It should certainly not result in more “trust fund socialism” with management that is accountable to no cause but short term gain. Such management

often ignores the long-term interests of American workers and leaves CEOs both over-paid and unaccountable to anyone but themselves.

If funding comes through an S-VAT, there need not be any income cap on employer contributions, which can be set high enough to fund current retirees and the establishing of personal accounts. Again, these contributions should be credited to employees regardless of their salary level.

Conceivably a firm could reduce their S-VAT liability if they made all former workers and retirees whole with the equity they would have otherwise received if they had started their careers under a reformed system. Using Employee Stock Ownership Programs can further accelerate that transition. This would be welcome if ESOPs became more democratic than they are currently, with open auction for management and executive positions and an expansion of cooperative consumption arrangements to meet the needs of the new owners.

The new House Majority should not run away from this proposal to enact personal accounts. If the proposals above are used as conditions for enactment, we suspect that it won't have to. The investment sector will run away from them instead and will mobilize the next version of the Tea Party against them. Let us hope that the rise of Democratic Socialism in the party invests workers in the possibilities of employee ownership.

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COALITION FOR GSP ET AL.  
1701 K Street, NW, Suite 575  
Washington, DC 20006  
Phone: 202-445-8711

July 1, 2020

The Honorable Chuck Grassley  
Chairman  
U.S. Senate  
Committee on Finance  
Washington, DC 20510

The Honorable Ron Wyden  
Ranking Member  
U.S. Senate  
Committee on Finance  
Washington, DC 20510

The Honorable Richard Neal  
Chairman  
U.S. House of Representatives  
Committee on Ways and Means  
Washington, DC 20515

The Honorable Kevin Brady  
Ranking Member  
U.S. House of Representatives  
Committee on Ways and Means  
Washington, DC 20515

Dear Chairmen Grassley and Neal and Ranking Members Wyden and Brady:

As you know, the current Congressional authorization of the Generalized System of Preferences (GSP) program expires on December 31, 2020. The 250 undersigned companies and trade associations are writing to urge swift passage of legislation extending that authorization. Many U.S. companies are experiencing severe harm from the COVID-19 pandemic and the related economic downturn and are struggling to overcome these challenges, recover losses, and start growing again. Further uncertainty about whether companies will have to pay millions of dollars a day in new taxes in January 2021 is the last thing the American business community needs.

GSP supports American manufacturing by reducing costs of imported inputs, machinery and equipment, and helps American families make ends meet by lowering the costs of consumer goods imported duty free. The GSP program saved American companies over \$1 billion in import duties in 2019. Yet temporary lapses in the past have forced companies to lay off workers, freeze new hires, cut wages and benefits, and delay capital investments while awaiting congressional reauthorization. We cannot afford for that to happen again.

Swift reauthorization is not the only thing that could help recover from the pandemic-related fallout. Lost GSP benefits for India and Turkey cost American companies as much as \$375 million in new taxes between May 2019 and April 2020. A partial suspension for Thailand in April 2020 will add millions of dollars more each month in extra taxes. Similarly, American companies paid about \$100 million in tariffs in 2019 on individual products that meet the statutory thresholds for reinstated GSP benefits, but all redesignation requests were rejected during the current review. Restoring lost GSP eligibility for these products would provide significant benefits to American companies and workers.



The GSP program enjoys strong bipartisan support in Congress and a track record of creating American jobs. The sooner Congress can extend GSP's authorization, and hopefully take other steps to restore critical benefits, the better positioned U.S. businesses will be to grow and thrive again.

Sincerely,

Daniel Anthony  
Executive Director  
E-mail: anthony@tradepartnership.com

American Apparel and Footwear Association	Altray Company, Inc. (Stamford, CT)
American Spice Trade Association	Altuni, LLC (South Hackensack, NJ)
Association of Food Industries	Alum Tech Corp. (West Melbourne, FL)
California Chamber of Commerce	American Omni Trading Company (Katy, TX)
Coalition for GSP	American Trade Sales, Inc. (New York, NY)
Consumer Technology Association	AMJ Gold (Glendora, CA)
International Bottled Water Association	Ammex (Kent, WA)
International Wood Products Association	Andre Prost, Inc. (Old Saybrook, CT)
National Association of Chemical Distributors	Ascena Retail Group, Inc. (New York, NY)
National Confectioners Association	Asian Manufacturing LLC (Rochester Hills, MI)
National Retail Federation	Associated Textile Mills, Inc. (Rye Brook, NY)
Outdoor Industry Association	Auto Glass Components LLC, dba Precision Replacement Parts (Weston, WI)
Promotional Products Association International (PPAI)	B&C Technologies (Panama City Beach, FL)
Retail Industry Leaders Association (RILA)	Babco Foods International (Piscataway, NJ)
RV Industry Association	Bakner Manufacturing (Canton, GA)
Sports & Fitness Industry Association	Bazooka Candy Brands (New York, NY)
The Fashion Jewelry & Accessories Trade Association	Best Deal Imports Inc. (Miami, FL)
The Flavor and Extract Manufacturers Association of the United States	Best Flowers (San Bruno, CA)
The National Fisheries Institute	BFB Enterprises, Inc. (Panama City, FL)
The Oriental Rug Importers Association, Inc.	Boundary LLC (Salt Lake City, UT)
The Vision Council	Bozel North America LLC (Temperance, MI)
Travel Goods Association	Brilliant Imports LLC (Austin, TX)
U.S. Chamber of Commerce	Brockway-Smith Company (Wilmington, MA)
U.S. Fashion Industry Association	BTR International, Inc. (New York, NY)
3V Sigma USA Inc. (Georgetown, SC)	Burriss Company, Inc (Greeley, CO)
A & J Distributors, Inc. (Itasca, IL)	Carroll Companies, Inc. (Boone, NC)
A Simpler Time (Morrisville, NC)	Chantal Corp. (Houston, TX)
Acme Food Sales, Inc. (Seattle, WA)	Ciranda, Inc. (Hudson, WI)
Acumen Electronics Inc. dba Triad Magnetics (Perris, CA)	Classic Stone Inc. (Short Hills, NJ)
Aditya Birla Chemicals (USA) (Florence, KY)	Comeq (White Marsh, MD)
Adrienne Designs (Fountain Valley, CA)	Complete Framer's Supply, Inc. (Fort Lauderdale, FL)
Advanced Marketing International, Inc. (Wilmington, NC)	Con-Tech International (New Orleans, LA)
Aid Through Trade, Inc. (Annapolis, MD)	Cortina Leathers (Conneaut, OH)
Aladdin Gold Creations (Deerfield, IL)	Couplamatic Systems (Scottsbluff, NE)
Albaugh, LLC (Ankeny, IA)	Cummins Inc. (Columbus, IN)
Custom Direct, Inc. (Plano, TX)	Dasan (New York, NY)
Decotone Surfaces LLC (Garwood, NJ)	Deepa Gurnani LLC (New York, NY)
Douglas Autotech Corporation (Bronson, MI)	India Arts, LLC (Hayward, CA)

Dynasty Gold Jewelers, Inc. (Oyster Bay, NY)  
 dZi Handmade (Easthampton, MA)  
 E&H Collections (New York City, NY)  
 Electrosteel USA (Birmingham, AL)  
 Engineered Components Company (Elgin, IL)  
 Eppco Enterprises (Cleveland, OH)  
 ESTAS USA Camshaft Industry (Lake Forest, CA)  
 Eucatex North America (Alpharetta, GA)  
 Fab-Line Machinery, LLC (Nashville, TN)  
 Faci USA Industrial, Inc. (Lufkin, TX)  
 Fahy Leathers (Pacific Palisades, CA)  
 Fancy Imports (Los Angeles, CA)  
 FAZ Marketing LLC (Austin, TX)  
 Felman Trading Americas, Inc. (Miami, FL)  
 First Place Jewelry (Glendale, AZ)  
 Fitec International (Memphis, TN)  
 Fuzion Creations (New York City, NY)  
 Galaxy Imports (New York City, NY)  
 Galaxy Sports, Inc. (South Bend, IN)  
 General Carbon Corporation (Paterson, NJ)  
 Gharda Chemicals International Inc. (Newtown, PA)  
 GJ Chemical (Newark, NJ)  
 Global Digital Instruments LLC (Fairport, NY)  
 Global Links, Inc. (Fenton, MO)  
 Global Product Solutions (Canton, CT)  
 Global Values Inc. (Palatine, IL)  
 Golden Beach Inc. (Torrance, CA)  
 Green Boy Group (Redondo Beach, CA)  
 Halsted Corporation (Cranbury, NJ)  
 Hardware Renaissance (Santa Fe, NM)  
 Herculite Products (Emigsville, PA)  
 Hiblow USA, Inc. (Saline, MI)  
 Hopkins Manufacturing Corporation (Tarpon Springs, FL)  
 HRS Global LLC (Jeffersonville, IN)  
 HSV Automotive Inc (Spring, TX)  
 Hunter Chemical (Fort Washington, PA)  
 Hyline International (Valencia, CA)  
 In3redients, Inc. (Chicago, IL)  
 Monahemi (New York City, NY)  
 Mont Granite, Inc. (Cleveland, OH)  
 Montana Fly Company, Lie (Columbia Falls, MT)  
 Monte Cristo (Southfield, MN)  
 MS International (Orange, CA)  
 Musician's Mall (Berkeley, CA)  
 NAECO, LLC (Peachtree City, GA)  
 National Gold (Los Angeles, CA)  
 Neuchem Inc. (Reno, NV)  
 Indo American Stone (Kearny, NJ)  
 International Durus (Northridge, CA)  
 ISC Industries, Inc. (Carlstadt, NJ)  
 Italian Elegant (New York City, NY)  
 iTi Tropicals, Inc. (Lawrenceville, NJ)  
 JAJ Enterprises, LLC dba Coach Glass (Coburg, OR)  
 Jamtown, LLC (Edmonds, WA)  
 Jane Diaz/New York, Inc. (New York, NY)  
 JBH Intertrade (Garden City, NY)  
 Jelly Belly Candy Company (Fairfield, CA)  
 JK Findings (Rochester, NY)  
 Jubilant Industries Inc. (Yardley, PA)  
 K.G. International, Inc. (Miami, FL)  
 Kamali Group Inc. (Great Neck, NY)  
 Kawasho Foods USA Inc. (New York, NY)  
 Kheops International Inc. (Colebrook, NH)  
 Kirkland Associates, Ltd. (Mcminnville, OR)  
 Kishek International (Costa Mesa, CA)  
 Kona Bicycle Company (Ferndale, WA)  
 KOUBOO LLC (Laguna Beach, CA)  
 Lamex Agrifoods Inc. (Miami, FL)  
 Lawrence & Co., Inc. (New Bedford, MA)  
 Lee's Gold (Los Angeles, CA)  
 Leila's Linen, Inc. (New York, NY)  
 Lewis Trading Corp. (Springfield, NJ)  
 Linbro Inc. (San Rafael, CA)  
 Lipper International Inc. (Wallingford, CT)  
 Mars, Incorporated (McLean, VA)  
 Matr Boomie (Austin, TX)  
 MC Imports, LLC (Medina, MN)  
 MCS Jewelry (New York City, NY)  
 Meadow Stream Distributing (Moline, IL)  
 Media Imports (Los Angeles, CA)  
 Metal Exchange Corporation (St. Louis, MO)  
 Metro Gold (Miami, FL)  
 Meyer Corporation, U.S. (Vallejo, CA)  
 Midas Chain Inc. (Northvale, NJ)  
 Mioro Gold, LLC (New York, NY)  
 Rockford Corporation (Tempe, AZ)  
 Royal Chain Inc (New York, NY)  
 Royal Tropics LLC (McCall, ID)  
 Samick Music Corp. (Gallatin, TN)  
 Samsonite International SA (Mansfield, MA)  
 Schreiber Foods International, Inc. (Upper Saddle River, NJ)  
 Scrimco Inc (Fresno, CA)  
 SIGMA Corporation (Cream Ridge, NJ)  
 Silvoro (Ocala, FL)

Niagara Bottling, LLC (Diamond Bar, CA)  
 Nina Designs Ltd (Berkeley, CA)  
 Noonday Collection (Austin, TX)  
 Nourison Industries (Calhoun, GA)  
 Nova Gas Technologies, Inc. (North Charleston, SC)  
 NOVICA (Santa Monica, CA)  
 Novita (Monrovia, CA)  
 Nutri-Bon Distribution (Torrance, CA)  
 OHM International Inc (Monroe Township, NJ)  
 Omni Surfaces Corp. (Houston, TX)  
 Oro Dynamics (New York City, NY)  
 Oxan Inc. (Buffalo Grove, IL)  
 Pacific Jewelry (Huntington Park, CA)  
 Paradigm Trends (New York, NY)  
 Pieces of Bali (Dripping Springs, TX)  
 Pirate Pete's Soda Pop Co (Northfield, NJ)  
 Plastics Import NA (Wilmington, DE)  
 Polinas Plastics of America (Englewood Cliffs, NJ)  
 PolySource (Independence, MO)  
 Port Plastics (Azusa, CA)  
 Powertex, Inc. (Rouses Point, NY)  
 Primetac (Little Ferry, NJ)  
 Privi Organics USA Corp. (Edison, NJ)  
 Prochimie (Windsor, CT)  
 Quality Marble & Granite (Ontario, CA)  
 R.P. ASSOCIATES, LLC. (Jefferson, LA)  
 Randa Accessories (Rosemont, IL)  
 Raymond Mazza Inc (Brightwaters, NY)  
 Red Mountain Trading Co (Denver, CO)  
 Red V Foods Corp. (Buford, GA)  
 Ritika's Global Grains, LLC (Lexington, MA)  
 US Asian Global Consulting (Prescott Valley, AZ)  
 US Electrofused Minerals, Inc. (Aliquippa, PA)  
 Vail International Corp. (New York, NY)  
 Varaluz LLC (Las Vegas, NV)  
 Village Originals, Inc (Orlando, FL)  
 Vogt Power (Louisville, KY)  
 Vtronix LLC (Weston, FL)  
 Warehouse Associates (Indianapolis, IN)  
 Wearwell, Inc. (Smyrna, TN)  
 Sintex Minerals and Services, Inc. (Rosenberg, TX)  
 SIS Jewelry (Los Angeles, CA)  
 Sophia Foods Inc. (Brooklyn, NY)  
 Spanish Food Solutions LLC (Great Neck, NY)  
 Starz Jewelry (Dallas, TX)  
 Stoeger Industries Inc. (Accokeek, MD)  
 Stoneia (New York, NY)  
 Strategic Sales Partners, LLC (Fort Mill, SC)  
 Sumitomo Electric Wintec America, Inc. (Edmonton, KY)  
 Summit Specialty International, LLC (Atlanta, GA)  
 Sunflex Packagers Inc (Cranford, NJ)  
 Sunset Forest Products (Beaverton, OR)  
 Super Diamond (Long Island City, NY)  
 Tesoros Trading Company (Las Vegas, NV)  
 Test Rite Products, Corp. (Ontario, CA)  
 The Cannon Group (Westerville, OH)  
 The Gap, Inc. (San Francisco, CA)  
 The Home Depot (Atlanta, GA)  
 Thompson Traders, Inc. (Greensboro, NC)  
 Toko Indo (Orleans, MA)  
 Tomoe USA Inc (Houston, TX)  
 TopFlite Manufacturing Inc (Miami, FL)  
 Tarter Corporation (Montville, NJ)  
 Touchstone Crystal (Cranston, RI)  
 Trimaco, Inc. (Morrisville, NC)  
 Trinidad Benham Corp. (Denver, CO)  
 TRInternational, Inc. (Seattle, WA)  
 Triton Stone Group (New Orleans, LA)  
 Tyoga Container Company (Tioga, PA)  
 Universal Arquati Moulding (Santa Clarita, CA)  
 Unlimited Supplies (Burr Ridge, IL)  
 West Coast Trading & Imports, Inc. (San Francisco, CA)  
 Whistler Group (Bentonville, AR)  
 Willert Home Products, Inc. (St. Louis, MO)  
 World Finer Foods, LLC (Bloomfield, NJ)  
 WorldFinds (Westmont, IL)  
 Xena International (Saint Charles, IL)  
 Xpres LLC (Winston-Salem, NC)  
 Yamaha Corporation of America (Buena Park, CA)  
 Zenegroup International Inc (El Monte, CA)

## DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, INC.

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 Fax: (202) 682-8820

**Statement of Robert Maron, Vice President, International Issues and Trade**

The following statement is submitted on behalf of the Distilled Spirits Council of the United States, Inc. ("DISCUS") for inclusion in the printed record of the Senate Finance Committee hearing on the President's 2020 trade policy agenda. DISCUS is a national trade association representing U.S. producers, marketers, and exporters of distilled spirits products. Its member companies represent approximately 60% of all distilled spirits sold in the United States and approximately 75% of total U.S. distilled spirits exports. In 2019, U.S. distilled spirits were exported to more than 130 countries from small, medium, and large distillers located in 45 states. The distilled spirits sector directly and indirectly supports 1.64 million good-paying jobs in every state, from the production, import, wholesale and retail tiers.

**Introduction**

DISCUS and its member companies have strongly supported commitments by the U.S. to liberalize trade through a variety of fora and mechanisms. Our small, medium and large companies, their employees and their suppliers have benefited from the successful efforts to open markets for U.S. beverage alcohol exports. However, the U.S. spirits industry is facing significant challenges threatening to upend the decades of export growth. This decline in exports will continue due to the ongoing application of retaliatory tariffs by key trading partners and the impact of restrictions related to preventing the spread of COVID-19.

Since 1989,<sup>1</sup> the value of global U.S. distilled spirits exports increased by nearly 533%, from \$242 million to over \$1.53 billion in 2019. This increase was driven, in large part, by the U.S. and EU mutual decision to eliminate import tariffs on the vast majority of distilled spirits products in 1997. The tremendous U.S. export growth has resulted in a wide range of products becoming available to adult consumers, which has contributed to evolving consumer tastes and increasing demand. To meet this consumer demand, beverage alcohol companies diversified their portfolios with products from around the world and the U.S. and European Union (EU) spirits sectors, in particular, have become very interconnected. As discussed in detail below, in 2018 the EU imposed a 25% retaliatory tariff on all American Whiskeys. As a result, in 2019 total U.S. spirits exports declined by 14.3% to \$1.5 billion and American Whiskey exports declined by 16% to \$996 million, as compared to 2018. American Whiskey drives U.S. spirits exports and accounted for 65% of total American spirits exports in 2019.

Securing the elimination of tariffs on distilled spirits as states and cities and key trading partners move to slowly reopen bars and restaurants provides an opportunity to support U.S. distilled spirits producers, importers and exporters.

**I. U.S. Spirits Industry Has Benefited from Market-Opening Trade Agreements**

DISCUS and its members have strongly supported comprehensive trade agreements that eliminated tariffs and included other provisions to protect U.S. spirits products, such as recognition for distinctive U.S. spirits (*e.g.*, Bourbon and Tennessee Whiskey). These have been vital to opening new markets and keeping them open for U.S. spirits exports. However, retaliatory tariffs by key trading partners, particularly the EU are eroding the benefits of such trade agreements.

Exports to our trading partners, which have agreed either through multilateral, regional, or bilateral trade agreements, to eliminate tariffs on U.S. spirits reached \$1.2 billion in 2019, accounting for 80% of global U.S. spirits exports. In 2019, U.S. distilled spirits exports to bilateral and regional free trade agreement (FTA) partners totaled \$487 million, accounting for nearly 1/3 of global U.S. spirits exports. In fact, between 2000 and 2019 exports to FTA trading partners have grown at a faster rate (355% increase) than U.S. distilled spirits exports to non-FTA partners (211% increase). Clearly, the elimination of tariffs leads to an increase in U.S. spirits exports.

<sup>1</sup> 1989 is the first year U.S. trade data is available on the U.S. International Trade Commission Data Web.

In particular, the tariff elimination commitments regarding distilled spirits products secured during the Uruguay Round, which led to the development of the World Trade Organization (WTO) in 1994, and subsequent negotiations under the U.S. government's "zero-for-zero" initiative have paved the way for a significant increase in U.S. distilled spirits exports. At the outset, participation in the spirits "zero-for-zero" was limited to the U.S. and the EU. However, other countries, including Japan, Canada, Macedonia, Taiwan, and Ukraine have since also agreed to eliminate tariffs on spirits imports on a Most Favoured Nation (MFN) basis.

Since the "zero-for-zero" agreement came into effect in 1997, the value of U.S. spirits exports to the EU increased by 186%, from \$209 million to nearly \$600 million in 2019. The "zero-for-zero" agreement continues to produce benefits for U.S. spirits exports. Specifically, as countries have joined the EU, they are required to adopt the EU's common external tariff, which, in the case of distilled spirits is zero for practically all spirits. For example, exports to Latvia, which is currently the 10th largest destination for U.S. distilled spirits, increased by almost 2,788%, from \$1.8 million in 2004 when it joined the European Union, to \$52 million in 2019. Similarly, exports to Poland, which is the 14th largest market, increased by nearly 2,155%, from \$1.1 million in 2004 when it joined the European Union to \$53.6 million in 2019. Prior to Poland joining the European Union, U.S. spirits faced tariffs ranging from 75% to 105% ad valorem.

Moreover, since Taiwan eliminated its tariffs in 2002, U.S. distilled spirits exports to Taiwan increased by nearly 260%—from \$1.1 million to \$4.3 million in 2019. In the case of Japan, U.S. distilled exports grew from \$71.8 million in 2002, when the tariff was eliminated, to \$138 million in 2019, representing a growth rate of 92%.

## II. American Spirits Exports Tumble Due to Retaliatory Tariffs

As noted above, trade agreements and the elimination of tariffs on U.S. spirits exports have directly resulted in an increase in U.S. spirits exports. However, in mid-2018, retaliatory tariffs on U.S. spirits were implemented by the EU, Canada, Mexico, Turkey, and China. In May 2019, the United States, Canada, and Mexico reached an agreement that resulted in the repeal of retaliatory tariffs on American Whiskey exports to Canada and Mexico.

Due to the application of retaliatory tariffs by the EU, China and Turkey, U.S. distillers of all sizes have had export contracts canceled and distribution negotiations postponed. In addition, many U.S. distillers have put expansion and investment plans on hold indefinitely. The impact is felt across the U.S. throughout the entire supply chain, from farmers to suppliers. In 2019, there were over 2,000 distillers in the U.S.; American spirits were exported from 45 states and American Whiskeys exported from 39 states. These tariffs are making American Whiskeys less competitive and may result in international spirits consumers choosing other spirits categories that already provide stiff competition in some third markets. These markets may be lost as foreign adult consumers shift to distilled spirits produced domestically or by our global competitors. Below please find a detailed review of the impact of the retaliatory tariffs that are currently being applied to the U.S. spirits exports.

**EU:** Since June 22, 2018, the EU has imposed a retaliatory tariff of 25% on all American Whiskey imports in response to U.S. actions on steel and aluminum. The EU's retaliatory tariff on American Whiskey will increase to 50% in June 2021 if the disputes are not resolved. From January 1997 through June 2018, American Whiskey exports to the EU grew five-fold from \$143 million to over \$750 million. The EU's 25% retaliatory tariff on American Whiskey caused exports to the EU to tumble 333%.<sup>2</sup> The retaliatory tariffs have upended decades of growth for the U.S. spirits sector in the EU market, which accounted for nearly 52% of total American Whiskey exports in 2019. According to an analysis by DISCUS, had the tariffs not been implemented, American Whiskey exports today would be an estimated \$300 million higher.

Below is an illustrative list of small and medium distilleries from across the U.S. describing how their companies have been negatively affected by the EU's retaliatory tariff on American Whiskey:

- **Cedar Ridge Distillery (Swisher, Iowa):** "We were off to a great start with some EU partners but since the implementation of these retaliatory tariffs

<sup>2</sup>June 2018 was the date that the tariffs went into effect. April 2020 is the last month for which data is available. Reflects the value of exports for the 12 month rolling periods July 2017–June 2018 (\$757M) and May 2019–April 2020 (\$504M).

from the EU, our European exports have been flat, at best,” said Jeff Quint, Founder/CEO. “At this point we are really only able to ‘tread water.’ We are trying hard to maintain our EU business, but can’t really grow it unless and until these tariffs go away.”

- **James E Pepper Distillery (Lexington, KY):** Amir Peay, owner said, “Before the EU tariffs on American Whiskey were imposed we had been growing our exports significantly and they accounted for 10 percent of our total business. We were planning on doubling our business in Europe and made significant effects to that end—and then we got hit with the trade war. Since then, we have lost 50 percent of our EU business and continue to face a very difficult and complex market to do business in.”
- **KOVAL Distillery (Chicago, IL):** Sonat Birnecker Hart, president and owner stated, “Our international trade has been dramatically affected, not least because much of the European hospitality sector was closed for business for a number of months due to COVID-19. The tariffs have exacerbated this situation, as many distributors are trying to recoup losses by asking for lower prices. As a distillery that decided not to increase our prices abroad due to the tariffs, in hopes of remaining competitive, we are feeling the effects of them now, more than ever.”

**China:** Since July 6, 2018, China has imposed a retaliatory tariff on American Whiskey and has imposed a retaliatory tariff on rum, gin, vodka, liqueurs, brandy and some “others” since September 24, 2018, in response to the U.S. Section 301 actions. In 2019, U.S. spirits exports to China reached \$17.8 million, down 1 percent from 2018. However, this follows years of steady growth. Over the past 5 years (2014–2019), American spirits exports to China increased by nearly 25% and approximately 127% over the past decade. American spirits exports to China between January–April 2020 (latest data available) are down 47% as compared to the same period in 2019 and 46% compared to the same period in 2018.

**Turkey:** Since June 21, 2018, Turkey has imposed retaliatory tariffs on all U.S. distilled spirits in response to the steel and aluminum tariffs. Originally, Turkey applied a 70% tariff, but increased it to 140% on August 15, 2018. On May 21, 2019, Turkey reduced its tariff to 70%. In 2019, U.S. spirits exports to Turkey reached \$10.4 million, down 40% as compared to 2018.

Additional U.S. spirits may face retaliatory tariffs from the EU in the second half of 2020 in connection with the WTO U.S.-EU civil aviation subsidy dispute. This summer, a WTO Arbitrator will announce a decision concerning the value of U.S. imports upon which the EU may impose tariffs in its case against the U.S. The EU previously indicated it would consider imposing retaliatory tariffs on several categories of U.S. spirits, including rum, vodka, and brandy. In 2019, the value of these exports to the EU was \$38 million.

### III. U.S. Tariffs on EU Distilled Spirits Are Impacting U.S. Jobs

As a result of the important market-opening agreements highlighted above, the U.S. and EU beverage alcohol sectors are deeply integrated with companies owning a range of U.S. and EU spirits. Many companies have made considerable investments in both the U.S. and the EU to successfully create complementary product portfolios with brands from both the U.S. and EU to satisfy consumer demands. While tariffs imposed on EU spirits may appear to only harm EU companies, this is simply not the case. The same is true for EU tariffs on American spirits. Thus, imposing tariffs on imported spirits compounds the negative impact on companies that are already suffering the damaging effect of the EU’s current retaliatory tariff on American Whiskey and the broader impact of the COVID-19 pandemic. Since retaliatory tariffs on imports are, in effect, taxes, imposing tariffs on EU beverage alcohol imports will have the unintended consequence of also harming U.S. consumers of these products.

On October 18, 2019, the U.S. imposed tariffs on certain EU beverage alcohol imports in connection with a 15-year dispute at the WTO concerning civil aviation subsidies. Specifically, the U.S. beverage alcohol industry now faces a 25% tariff on “single malt Scotch Whisky;” “single malt Irish Whiskey” from Northern Ireland, Liqueurs/Cordials from Germany, Ireland, Italy, Spain and UK, and certain wines from France, Germany, Spain and UK. On June 26, 2020 USTR issued a Federal Register notice in connection with the dispute seeking feedback on revising the product list/tariff levels. In addition, USTR included a new “supplemental list” of EU products which, in a troubling development, includes vodka and gin from the

UK, Germany, France and Spain that could potentially be subject to additional tariffs.

Anecdotal evidence is emerging to suggest that the 25% tariff on these specific EU beverage alcohol products is already causing damage to U.S. businesses of all sizes and resulting in U.S. job losses, which is being compounded by the impact of COVID-19. We estimate if tariffs on the spirits and wine products imported from the EU included on the April and July 2019 lists remain in effect or are increased, it could lead to a loss of approximately 11,200 to 78,600 U.S. jobs.

#### **IV. DISCUS Strongly Supports New Market-Opening Trade Agreements**

In light of the significant headwinds the U.S. spirits sector faces, DISCUS reiterates its support for new market-opening agreements. We believe new agreements are vital to help return the U.S. spirits sector to the strong growth it has experienced over the past 30 years. DISCUS supported the Administration's effort to modernize the North American Free Trade Agreement and to secure Congressional approval of the U.S.-Mexico-Canada Agreement (USMCA) implementing bill. DISCUS also supports the Administration's proposal to negotiate trade agreements with the EU, the UK, and Japan and urges the Administration to continue its negotiations with Japan to secure a comprehensive agreement.

DISCUS has had a long and active involvement with the WTO and remains a strong supporter of the organization and ongoing efforts to liberalize global trade further and strengthen the rules-based multilateral trading system. Unquestionably, the package of agreements concluded in the Uruguay Round, which led to the establishment of the WTO in 1994, has significantly benefitted the U.S. distilled spirits sector.

#### **V. Other Trade Barriers Negatively Impacting American Spirits Exports**

In addition to retaliatory tariffs, several priority target markets apply discriminatory spirits taxes in favor of domestically-produced spirits, maintain high tariffs and/or an array of non-tariff barriers to U.S. spirits, which inhibit the sector's long-term growth prospects. For example, India maintains an excessive tariff on imports of bottled spirits of 150% ad valorem, Brazil maintains a tariff of 12% ad valorem for bulk whiskey and 20% ad valorem for other distilled spirit products, and Vietnam imposes a 45% ad valorem tariff. In addition, Thailand, Peru, Brazil, and the EU continue to apply discriminatory spirits taxes in favor of domestically-produced spirits which distort the market in violation of the national treatment provisions of GATT Article III, paragraph 2. Furthermore, labeling requirements under consideration in Thailand, Ireland, South Africa and elsewhere, which are inconsistent with standard international practices, could impose unnecessary barriers to entry for U.S. spirits exporters.

A comprehensive overview of trade barriers to U.S. distilled spirits exports can be found in DISCUS' 2019 National Trade Estimates submission to USTR which can be viewed at the following link: [https://www.distilledspirits.org/wp-content/uploads/2019/11/Distilled-Spirits-Council-of-the-US-NTE\\_2020.pdf](https://www.distilledspirits.org/wp-content/uploads/2019/11/Distilled-Spirits-Council-of-the-US-NTE_2020.pdf).

#### **Conclusion**

In summary, the U.S. distilled spirits industry has benefitted significantly from the comprehensive multilateral, regional and bilateral trade agreements the U.S. has concluded. However, the continued imposition of retaliatory tariffs and the outbreak of COVID-19 are having a significant negative impact on the sector. For these reasons, our top priority is to request Congress continue to urge the Administration to engage with their EU counterparts toward a simultaneous removal of tariffs on U.S. and EU distilled spirits products. In addition, we urge the Administration to pursue new market opening and comprehensive trade agreements for U.S. spirits exports.

Our EU counterparts share our strong opposition to the application of any tariffs on distilled spirits. EU spirits associations are strongly urging the Commission to remove the EU's retaliatory tariff on American Whiskey as soon as possible and not to include U.S. spirits on its final list of products for tariffs in the WTO civil aviation dispute. Removing tariffs on distilled spirits provides an opportunity for both the EU and the U.S. to support jobs on both sides of the Atlantic during this period of tremendous economic uncertainty.

Furthermore, enacting the Craft Beverage Modernization and Tax Reform Act (H.R. 1175/S. 362) to make the current federal excise tax rates permanent and an extension of the duty and excise tax deferral with a broadening of the scope of tar-

iffs that may be deferred and a modification to the “hardship test” will provide significant liquidity and help companies stabilize their finances and long term planning during these unprecedented times.

Thank you again for the opportunity to provide the U.S. spirits sector’s views. Please do not hesitate to contact us if we can provide any additional information.

Thank you very much for your consideration.

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As a non-profit research and advocacy organization focused on promoting innovation policies that support the growth of tech startups, we appreciate your interest in the administration’s trade policy agenda for 2020 and the impact these priorities may have on startups and the technology sector. Beyond core concerns like access to capital and qualified talent, startups currently face uncertainty with respect to anti-tech initiatives by trading partners, like the implementation of discriminatory digital services taxes. Moreover, startups are greatly impacted by the trade agreements to which the United States becomes a signatory, as they rely on certainty in digital trade in order to compete in an increasingly connected world. Engine is grateful for the opportunity to provide feedback on these important aspects of U.S. trade policy.

#### **I. The Impact of Digital Services Taxes on Startups**

As Engine noted in previous comments to the United States Trade Representative (USTR) regarding its 301 investigation into a French digital services tax (DST), the implementation of the French DST would have negative consequences for the United States economy on the whole, would embolden other nations to pursue discriminatory DST regimes, and would have a negative impact on startups seeking to establish themselves and grow internationally.<sup>1</sup> This holds true for other countries seeking to do the same.

Startups and small businesses are drivers of the U.S. economy and represent a large source of job creation in the United States. While the proposed or enacted DSTs of many countries are targeted at only the largest firms that provide products such as online intermediation services and targeted digital advertising sales, Engine remains concerned that these duplicative and discriminatory taxes aimed largely at U.S. companies could ultimately have an outsized and negative impact on the startup community. Initial studies of the proposed French DST indicated that the cost of the tax-while targeted at large companies-would instead largely be borne by the consumers and businesses, like startups, that use their services.<sup>2</sup> Startups often rely on the services provided by large Internet companies to launch their businesses. Passing the tax burden from DSTs onto users will result in higher costs for free or low-cost services that nascent companies currently rely on to grow their businesses, giving these services an outsized value to startups.<sup>3</sup> Therefore, levying a tax on the largest firms could lead to a decrease in overall competition in the digital marketplace, since the largest firms are both in the best position to shoulder an increased tax burden where smaller companies cannot, and because many of these large firms will simply pass the cost of the tax onto their users. Startups with shoestring budgets will simply face greater barriers to market entry, and will likely be unable to afford higher prices for the low-cost services on which they rely.<sup>4</sup> Moreover, many of these taxes-like the French DST-are taxes on revenues as opposed to profits.<sup>5</sup> Shifting the tax burden onto consumers could lead to these low-profit companies no

<sup>1</sup>See Engine’s comments to the USTR regarding their 301 Investigation of the proposed French Digital Services Tax, available at: <http://engine.is/s/Engine-Comments-USTR-France-DST.pdf>.

<sup>2</sup>Deloitte, Taj, “The French Digital Services Tax: An Economic Impact Assessment” (2019), available at: <https://taj-strategie.fr/content/uploads/2020/03/dst-impact-assessment-march-2019.pdf>.

<sup>3</sup>See Engine, *supra* note 1.

<sup>4</sup>*Id.*

<sup>5</sup>Daniel Bunn, “The U.S. Trade Representative Expands Its Digital Services Tax Investigations” (June 2, 2020), available at: <https://taxfoundation.org/us-trade-representative-ustr-digital-services-tax-investigations/>.



longer being competitive, and could cause these high-revenue, low-profit companies to shutter their doors completely.<sup>6</sup>

Earlier this month, the USTR announced a 301 investigation into the proposed or enacted DSTs of several countries and jurisdictions, including: Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey and the United Kingdom.<sup>7</sup> While many of these taxes apply only to companies with significant revenue, some have unclear or lower revenue thresholds. The expansion of India's "equalization levy," targets non-resident companies that sell more than \$267,000 "of in-scope goods or services to Indian customers."<sup>8</sup> While many of these taxation schemes are designed to hold small businesses harmless, taxes that apply to revenue instead of profit may serve to capture newer companies with high funding streams but low profitability.<sup>9</sup> This would have a disparate impact on companies with low margins or net operating losses.<sup>10</sup> When the European Commission was first considering an EU-wide DST, one study found that a three percent tax on the revenue of a company with a five percent profit margin amounted to a corporate tax rate of 60 percent.<sup>11</sup> As Engine previously noted in comments to the USTR, "at a time where Congress and the Administration is investigating the market dominance of a few large digital platforms, enabling a digital services tax that only those few, large platforms can bear or navigate, eliminates new and smaller platforms' ability to compete in the market," and leaves only the largest companies behind.<sup>12</sup>

Moreover, some of the jurisdictions under investigation are discriminatorily implementing taxes only on non-resident companies. That means these countries are trying to give an unfair advantage to the businesses originating within their borders, benefiting their startups and small businesses at the expense of those based in America. As Engine previously stated in regards to France's proposed DST, though "many American startups do not currently fall within the revenue scope outlined by France's DST, the tax does not operate in isolation. It will still have a large and detrimental effect on American startups. It is anti-growth and will increase costs on some of our country's fastest-growing and most innovative companies."<sup>13</sup> The same would hold true for DSTs implemented by other nations. Simply put, DSTs are being proposed and implemented more frequently by a wider range of jurisdictions, and they are disproportionately aimed at large American companies.

While the iterations of the earliest proposed DSTs are and were problematic in and of themselves, Engine only expects to see more discriminatory tax strategies appear—particularly as more jurisdictions seek to implement these tax schemes, and as more jurisdictions face larger budgetary shortfalls due to the COVID-19 pandemic. Moreover, we are concerned that these taxes will begin to apply to companies at even lower revenue thresholds. While the United States and France were able to come to an agreement to postpone the implementation of the French DST earlier this year, it is unclear whether other jurisdictions will also hold off on implementing their DSTs.

We are also concerned that the enactment of DSTs by such a wide range of jurisdictions would result in an extensive patchwork of similar, but materially different, international tax laws. This would not only prove to be costly, but would also present a huge compliance burden for both the companies subject to the tax, and other firms that are uncertain as to whether or not the DSTs apply to them. This potential patchwork of laws might be enough to dissuade smaller digital companies from expanding or possibly even launching, all because of an inability to navigate complex international taxation regimes. Moreover, as Engine has noted in the past, we must consider the effect these taxes will have in the longer term. What will happen to companies that currently do not meet the revenue threshold, but may in the future? Much like the U.S.'s corporate Alternative Minimum Tax did, and the estate tax does now, DSTs could force businesses to undertake complicated and expensive tax planning to avoid the levies, which "could further distort incentives and divert

<sup>6</sup> Matthias Bauer, European Center for International Political Economy, "Five Questions about the Digital Services Tax to Pierre Moscovici" (June 2018), available at: <https://ecipe.org/publications/five-questions-about-the-digital-services-tax/>, and Engine *supra* note 1.

<sup>7</sup> Initiation of Section 301 Investigations of Digital Services Taxes, 85 Fed. Reg. 34,709 (June 5, 2020).

<sup>8</sup> *Id.* and Daniel Bunn, "India Pushes Digital Taxes in a Difficult Time" (March 26, 2020), available at: <https://taxfoundation.org/india-digital-tax-in-a-difficult-time/>.

<sup>9</sup> Bauer, *supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Engine, *supra* note 1.

<sup>13</sup> *Id.*

capital away from research and other growth opportunities to tax planning.”<sup>14</sup> As Engine has previously stated, taxes are powerful disincentives and negative motivators.<sup>15</sup>

Finally, these DSTs may cause uncertainty when it comes to the future options of startups, potentially limiting the exit strategies for some founders. Many startups generate little profit, if any, in their early stages, with founders often choosing to invest capital back into the company. At times, founders choose to sell to or merge with larger companies to offset some of the risks associated with launching their startups. DSTs, however, may place a question mark over the viability of this off ramp. Would a company that was under the threshold for a DST, but is then acquired by or merges with a larger company, then be subjected to a DST? Does the company being acquired have the administrative procedures in place to calculate its liability under the tax? Will the potential to reach the threshold of being subjected to a digital services tax negatively affect a company’s potential for acquisition? Will larger firms not yet subject to DSTs have incentives not to merge with or acquire promising startups, so as to not reach the threshold triggering a DST? That uncertainty, regardless of how the tax itself will affect the economics of acquisition, is enough to make such acquisitions less frequent and less desirable. Taxes create strong incentives and disincentives—that’s why governments often use them to drive policy. As more jurisdictions seek to adopt differing DSTs, American companies could see insurmountable barriers to acquisitions. As Engine previously stated to the USTR, the enactment of DSTs “could mean a net-loss in innovation for the United States. Revolutionary and innovative startups might never find the opportunity to achieve the growth or economies of scale required to share their services and ideas globally.”<sup>16</sup>

Engine is encouraged by the Administration’s strong position in protecting American companies from discriminatory and overly burdensome digital services taxes. Engine recognizes that the growth of the digital age has brought forth a need to reassess the international tax framework at-large, but a country-by-country approach that largely targets American companies is not the way to accomplish this goal. Any decision made with respect to digital services taxes must consider the potential hardship to the U.S. startup ecosystem, and prevent a trickle-down effect of costs that could prevent American digital companies from being globally competitive.

## **II. Intermediary Liability Protections in Trade Agreements Are Integral to Startup Survival**

When the United States negotiates trade agreements, it does so with the purpose of ensuring that American companies—including startups—enjoy a similar legal framework abroad as they do domestically. This certainty is critically important for smaller startups that do not have the ability or the resources to navigate complex and differing international laws, allowing them the opportunity to compete in an increasingly global ecosystem. Including strong digital trade protections in trade agreements gives startups the security they need to grow and expand their reach outside of the United States.

It is essential that intermediary liability protections, which shield smaller digital startups from potentially ruinous litigation for hosting user-generated content, have a place in these negotiations. These protections have been enshrined in U.S. law for over two decades. Similar language was also included in both the United States-Mexico-Canada Agreement (USMCA) and the U.S.-Japan Trade Agreement. Some members of Congress have expressed concern about inclusion of intermediary liability protections for Internet platforms in future trade agreements, incorrectly referring to these as a “gift” to “big tech.” But these provisions are not the “boon” for big tech firms that critics make them out to be; rather, the protections found in CDA 230, 17 U.S.C. § 512, and in Articles 19.17 and 20.88 of USMCA help companies of all sizes host and potentially remove user-generated speech without the fear of facing ruinous, frivolous litigation.

The assertion by some Senators and the Administration that intermediary liability protections should not be included in future trade agreements because the law is contentious is off-base. Ambassador Lighthizer previously indicated that it is generally a goal of trade negotiations to ensure that U.S. law is incorporated into trade agreements. At the hearing, he further iterated this point, stating that it is not the

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

role of USTR to write changes to Section 230 into trade agreements and subsequently into U.S. law, but instead rather to write existing U.S. law into trade agreements.<sup>17</sup> As Engine previously stated, “not including standard provisions of U.S. law in trade agreements because Congress may choose at some point to legislate would result in never or rarely engaging in trade agreements.”<sup>18</sup> Nor does including these provisions tie Congress’ hands in legislating on intermediary liability in the future.<sup>19</sup>

Critics of intermediary liability protections similarly miss the mark when calling for changing or repealing Section 230 and caution against including similar language in trade agreements because of the substance of the language. Intermediary liability protections are not a gift to large tech companies. These large firms have the financial means to survive with or without Section 230 and similar protections included in trade agreements. They can afford to hire an army of content moderators to police user-generated content. They also can afford to invest in costly filtering tools and they have the resources to navigate a patchwork of international laws pertaining to content moderation. These options are generally out of reach for nascent startups operating on bootstrap budgets with minimal staff. Rather, the inclusion of intermediary liability provisions gives startups the certainty they need to expand and operate across an increasingly connected world, with some certainty that they won’t be forced to shutter their doors because of costly litigation stemming from user-generated content.

Some critics of Section 230 and similar language in trade agreements allege that platforms avail themselves of this language to cover up for blatantly illegal activity. This claim, too, is patently false. These protections in no way shield companies from consequences for violating federal criminal law. Instead, peddling this false narrative only further contributes to the uncertainty startups already face when seeking to establish themselves and host user-generated content.

Section 512 of the DMCA, which establishes the notice-and-takedown and safe harbor framework for addressing allegations of online copyright infringement, has and continues to successfully balance the interests of copyright owners, Internet platforms, and the users and small creators who rely on the vibrant innovative and creative ecosystems that §512 makes possible. U.S. law provides emerging Internet businesses with certainty that accusations their users are infringing copyright (infringement the companies have no knowledge of or direct involvement in) does not automatically strap them with unaffordable legal exposure and put them on the fast track to insolvency. Changes to the existing balance—and a failure on the part of the U.S. to push for similar provisions in trade agreements—would have an outsized and negative impact on startups. Here again, large companies may be able to afford filtering technologies that attempt to catch potential infringement, and can afford to defend themselves in litigation. But startups are not able to face those costs. Today’s emerging Internet businesses rely on and need the same certainty afforded to their predecessors.

The average startup launches with less than \$80,000 in capital, a minimal staff, and founders who often do not take a salary.<sup>20</sup> Looking at the U.S. legal system it is clear why these intermediary liability protections are necessary. Maintaining robust intermediary liability protections and expanding these protections to trade agreements to which the United States is a party are essential to ensuring startups can both establish themselves and compete globally. As Engine has stated in the past, “enshrining digital provisions rooted in U.S. law is good for American businesses and is crucial for startups and small businesses to even consider entering a globally competitive marketplace.”<sup>21</sup> Engine encourages policymakers to not simply look at intermediary liability provisions with a focus on large Internet platforms—after all, these platforms will continue to exist with or without the protections. Rather, lawmakers should recognize these intermediary liability provisions are most important for startups to be able to compete both at home and abroad. Eliminating or weakening intermediary liability provisions domestically, and failing to include them in future trade agreements, will only serve to limit competition to

<sup>17</sup> See Oral Testimony of USTR Robert Lighthizer, available at: <https://www.finance.senate.gov/hearings/the-presidents-2020-trade-policy-agenda>.

<sup>18</sup> Jennifer Weinhart, “Trade Agreements Give Startups Certainty” (December 5, 2019), available at: <https://www.engine.is/news/trade-agreements-can-give-startups-certainty>.

<sup>19</sup> *Id.*

<sup>20</sup> Fundable, “Startup Funding Infographic,” available at: <https://www.fundable.com/learn/resources/infographics/startup-funding-infographic>.

<sup>21</sup> Weinhart, *supra* note 18.

the largest Internet platforms. Startups simply will not be able to compete if forced to shoulder the burden of meritless lawsuits pertaining to user-generated content.

### III. Conclusion

Engine appreciates the opportunity to provide comments for the record on the U.S. 2020 trade policy agenda, and is happy to be a resource for the Committee on how American trade policy impacts startups. We look forward to further engaging with the Committee on issues affecting startups in the future.

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#### Statement of Alison Keane, IOM, CAE, President and CEO

My name is Alison Keane, and I am the President and CEO of the Flexible Packaging Association (FPA). FPA, which is the voice of U.S. manufacturers of flexible packaging and their suppliers, continues to be troubled by the President's Trade Policy, specifically with regard to aluminum foil tariffs.

At a time when sterile packaging for food, health and hygiene, and medical equipment is more important than ever, and as U.S. manufacturers are suffering from the worst economy in decades, the Administration should be looking at ways to alleviate supply chain burdens, not increase them. Instead, the Department of Commerce continues to exacerbate our trade war, especially concerning the Section 232 aluminum tariff exclusions and the new monitoring proposal and rumors of the tariff being reinstated on Canadian foil, despite the implementation of USMCA. FPA does not support the additional controls contemplated for the Section 232 exclusionary process and the proposed rule to establish an Aluminum Import Monitoring and Analysis (AIM) system, and is troubled that the President may be considering reinstating tariffs on the industry's biggest trading partner, Canada.

Flexible packaging represents \$33.6 billion in annual sales in the U.S. and is the second largest and one of the fastest growing segments of the packaging industry. The industry employs approximately 80,000 workers in the United States and is deemed an Essential Critical Infrastructure Workforce by the Department of Homeland Security. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products. Concerning the tariff impacts, aluminum foil is used for packaging as it provides the barrier protection needed from oxygen, light, moisture, and bacteria that food, health and hygiene, and medical supplies need to ensure stable shelf life, freshness, and sterility.

The Section 232 investigation on aluminum, which resulted in the 10% tariff on aluminum, including foils produced from that aluminum, was initiated under the Trade Expansion Act of 1962, and was to determine what, if any, effects imports of aluminum have on national security. FPA is not aware of any impacts aluminum foil imports for use in the packaging industry has on U.S. national security and the Department of Commerce Report entitled "Effects of Aluminum Imports on the National Security," (report) did not specify any. Nevertheless, the tariffs were imposed and these import restrictions have had a significant negative impact on the flexible packaging industry and its employment in the U.S.

While FPA supported the adoption of exclusions from the tariffs where aluminum articles are not produced in the U.S. "in a sufficient and reasonably available amount or of satisfactory quality," the process for exclusions is arduous and slow, and in some cases, results in conflicting approvals and denials. Additionally, manufacturers must apply for the exclusion annually, regardless of whether or not there has been a change in circumstances. In the case of fine gauge aluminum foil used by flexible packaging manufacturers, the domestic supply of the product has only gotten scarcer. Despite the Section 232 tariffs, as well as the significant Anti-dumping and Countervailing (AD/CVD) duties placed on Chinese aluminum foil imports, one of the only companies in the U.S. supplying light gauge foil chose to close its doors.

As FPA stated in numerous letters and in its testimony to the Department, there was never sufficient supply in the U.S. of aluminum foil for flexible packaging to begin with, which is why imports were necessary. Instead of production moving back

to the U.S., it simply moved out of China to other parts of the world. Flexible packaging manufacturers have in some cases moved away from foil, substituting non-foil barrier structures, which also does nothing to assist the aluminum industry in the United States. Given that there is not enough supply or quality of the foil to meet flexible packaging manufacturers need in the U.S. As a result, the exclusionary process is the only avenue with which to secure aluminum foil for the packaging that requires its use, especially at this time of national emergency when the public's health and safety are more important than ever.

FPA supports efforts to protect domestic manufacturing and ensure national security. However, aluminum foil used by the flexible packaging industry is not manufactured in the U.S. in the quantities and qualities needed. Since domestic producers made strategic decisions not to participate in the thin gauge aluminum foil market—they cannot now blame imports for filling a void left by their inaction. Failure to invest, and quality lapses, including gauge, width, and lack of appropriate alloys all contribute to the fact that the U.S. producers of aluminum foil are not able to serve the U.S. flexible packaging industry. Flexible packaging manufacturers simply have nowhere to turn but to bring in the vast majority of the aluminum foil they need through imports. Manufacturers often must file exclusions for more than they need to give them options on width and gauge, to plan for price fluctuations and lead times, and to meet increased demand, such as with today's COVID-19 response. To lock into one or more limited suppliers and only file for historical demand means that prices will soar and U.S. manufacturers' flexibility to modify or source new demand will be severely restricted.

For these reasons, FPA does not support the additional controls contemplated for the Section 232 exclusionary process and the proposed rule to establish an AIM system. FPA instead suggests that unless and until the Department can show evidence that aluminum foil for the U.S. flexible packaging industry is manufactured in the U.S. in the quantity and quality needed, these tariffs be suspended in their entirety. This action would immediately free up billions of dollars of working capital for American companies, sustaining and creating thousands of jobs in the U.S., and would provide relief to manufacturers that have no choice but to import to continue to provide for the public demand during this time of national crisis. Similarly, to reinstitute tariffs on Canadian imports, which are covered by the USMCA is not only bad public policy, it is defaulting on an international agreement.

Keep in mind, these are products that you and I use every day—including hermetically sealed food and beverage products such as candy, salty snacks, yogurt, beverages, and infant formula; and health and hygiene items and pharmaceuticals, such as aspirin, shampoo, shaving cream, and yes even flexible packaging for COVID-19 antibody test kits. Aluminum foil is also used by the flexible packaging industry to ensure sterility and efficacy for medical device packaging, enabling the products packaged, such as absorbable sutures, human tissue, and artificial joints, to maintain their efficacy at the time of use. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Carryout, take-out food containers, and e-commerce delivery, which are increasingly important during this time, are also heavily supported by the flexible packaging industry. Thus, the flexible packaging industry is vital to the supply chain when addressing the needs of U.S. consumers in responding to the COVID-19 crisis.

FPA supports efforts to protect domestic manufacturing; however, any such efforts must consider the impact and consequences on all U.S. manufacturing industries. The Administration should find ways to improve our country's competitiveness. Everybody loses in unfair trade cases, especially the U.S. consumer. FPA's members look forward to supporting the new aluminum foil assets coming online in the next few years in the U.S., but until there is enough aluminum foil in the quantities and quality that our manufacturers need through domestic suppliers, they should not continue to be saddled with the cost and administrative burdens that the current tariffs, exclusionary process and proposed monitoring program impose.

## MOTOR AND EQUIPMENT MANUFACTURERS ASSOCIATION

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[www.mema.org](http://www.mema.org)**MEMA and the COVID-19 Challenge**

The Motor and Equipment Manufacturers Association (MEMA) is the leading trade association representing U.S. motor vehicle parts suppliers. Our 1,000 member companies manufacture and remanufacture components, technologies, and systems for use in passenger vehicles and heavy trucks. In total, vehicle parts manufacturers represent the largest sector of manufacturing jobs in the United States, directly employing nearly 900,000 Americans in all 50 states and generating 2.4 percent of U.S. GDP.<sup>1</sup>

MEMA applauds the bipartisan actions of Congress and Trump Administration to address the national health and economic crisis brought on by the COVID-19 global pandemic. While we deeply appreciate the nearly \$3 trillion in relief for the national economic rapidly passed on a bipartisan basis, many motor vehicle parts manufacturers are still struggling. Recently, almost 20 percent of our members reported a severe liquidity crisis that could lead to bankruptcy in the next eight weeks. These manufacturers are primarily mid-size suppliers. If their operations close or slow production, the entire supply base is jeopardized.

Trade must do its part to alleviate the current economic disruptions instead of exacerbating the downturn. Tariff relief should be part of the national manufacturing recovery plan. MEMA does not support the implementation of new tariffs in a time of national crisis.

During the COVID-19 pandemic, MEMA companies and their employees were able to quickly pivot from normal operations to manufacturing critically needed personal protective equipment (PPE). These efforts have been focused on addressing the immediate medical and public health crisis facing the United States. For example, many suppliers have used 3D printing technology and other manufacturing processes to make plastic face masks and shields, while other companies have manufactured plexiglas patient enclosures. Others are manufacturing components for ventilators. Unfortunately, this work is just a small portion of our overall manufacturing footprint. MEMA members need additional COVID-19 assistance now to assure the viability of our sector. We are grateful for all that the bicameral Michigan delegation, bipartisan bicameral leadership, and key committees (including this one) are doing to assist.

MEMA's statement today will focus on the positive aspects of current trade policies, the adverse impacts of others and what changes would be most helpful to restoring growth to our motor vehicle part and component sector, and to manufacturing and to the economy as a whole. Thank you for this opportunity to submit this statement.

**USMCA**

The United States Mexico Canada Agreement (USMCA) will strengthen North American supply chains and U.S. economic growth, starting with the July entry into force and beyond. With 90 percent support in the Congress, the USMCA may prove to be a new model for trade in the hemisphere and beyond the impact of USMCA will be significant. MEMA was one of the earliest supporters of the USMCA as we understood it would enhance the regional economy in our sector.

The Office of the United States Trade Representative (USTR) and the U.S. International Trade Commission (US ITC) estimated job growth of up to 80,000 motor vehicle and parts jobs as a result of this trade deal. We also appreciate the need for increased regional value content, (RVC), new labor value content (LVC), and new steel and aluminum rules. However, these changes will not be without challenges.

MEMA is grateful for the transparent process with which USTR has engaged stakeholders on auto rule of origin (ROO) issues. The continued open door in the development of Uniform Regulations for the three nations, is appreciated by our sector. We look forward to reviewing the domestic labor regulations to implement the

<sup>1</sup>MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Association for Sustainable Manufacturing (MERA); and Original Equipment Suppliers Association (OESA). Suppliers are the largest employers of manufacturing jobs in the United States, directly employing over 871,000 workers with a total employment impact of 4.2 million jobs.

LCV provisions and will pay special attention to making sure that they are practical to implement and do not violate proprietary obligations of our companies. We are also awaiting more details on the USTR/Customs and Border Protection (CBP) informed compliance plans to December 31, 2020 and perhaps beyond. We are appreciative that USTR is willing to provide some flexibility in implementation.

In addition, we appreciate the bipartisan commitment and efforts of the staff of the Finance Committee to fix an inadvertent error and make the merchandise processing fee (MPF) fully refundable after importation of products. We urge you to pass a technical corrections amendment through the Congress on this issue by bring this over the finish line by July 1 or slightly thereafter. This action would make USMCA MPF commitments consistent with all other trade agreements, including the NAFTA. It also relieves a significant financial burden on our companies at a time of liquidity crises, falling profits and economic disruption.

The U.S. must be careful to respect the tri-national values of this agreement. We should not undertake problematic new Section 232 investigations against allies on aluminum or electrical steel or any commodity. If there are issues to be adjudicated, they should be pursued through appropriate multilateral dispute resolution channels.

Finally, we also deeply appreciate all that the U.S. Department of State, USTR and other agencies have done to make sure that Mexican supply chains are up and running during the COVID-19 crisis in the essential auto parts industry. We also appreciate the commitment of the Mexican government to re-open production to keep supply chains fully operational. We would urge all parties to discuss how to best define “essential businesses” for the future and how the parties would coordinate any future crisis that requires the closure of major manufacturing facilities. We urge Ambassador Lighthizer and his counterparts in Mexico and Canada to quickly negotiate North American Cybersecurity and Infrastructure Security Agency (CISA) standards for all three nations so that there is consistency of essential industry and worker designations in national emergencies and pandemics.

#### **TARIFF RELIEF**

The suspension of current China 301 and Section 232 steel and aluminum tariffs for the remainder of the year will have a dramatic positive impact that will provide one means to restore industry growth.

We oppose the imposition of any additional tariffs and are grateful that President Trump recognizes the grave market and overall negative economic impact of imposing Section 232 tariffs on motor vehicles and parts imported from allies. One study done prior to the pandemic projected a job loss of up to 700,000 and motor vehicle price increase of up to \$7,000.

We also urge Congress to develop a plan to permanently phase out existing 232 and 301 tariffs. This could be done as part of important phase two China and Japan trade negotiations and to jump start trade negotiations with the EU.

Last year, the Federal Reserve estimated that tariffs increased since 2017 will lower GDP growth one percent in 2020.<sup>2</sup> Given that the economy is entering a significant recession, these tariffs are only making recovery more difficult.

#### **CHINA**

China’s systemic challenges to the global motor vehicle parts sector are based on market distorting policies such as massive government subsidies to national champion companies, systemic stealing of intellectual property, export performance requirements and a large role for state owned enterprises in our sector and many others. Yet the rapid growth in the Chinese market has necessitated the presence of our member companies in that nation.

While we understand the efforts by the Trump Administration to protect long term investments in China and to level the playing field to engage more production back here in the U.S., MEMA favors the gradual re-orientation of China to market based policies. We urge continued dialogue, building on the success of the Phase One China agreement. While that agreement may not achieve all the progress we anticipated in the first year due to the COVID-19 crisis, we are confident that the scrutiny of this Administration and this Congress will achieve as much progress as possible that can be built upon in 2021.

<sup>2</sup> Feds Note, “Does Trade Policy Uncertainty Affect Global Economic Growth?”, September 4, 2019, the Federal Reserve.

**RE-SHORING MANUFACTURING**

Re-shoring of U.S. manufacturing jobs is rightly an increasing bipartisan public policy priority in Washington. Re-shoring can enhance U.S. global competitiveness and job creation. The USMCA and its regional value content, labor value content and steel and aluminum provisions all encourage re shoring from Europe and Asia.

The best way to encourage job creation at home is by those types of positive incentives, rather than punitive trade measures. The imposition of tariffs will not encourage reshoring. By contrast, that type of action will increase pressures on companies to focus on Europe, China, or other Asian markets.

Approaches that would facilitate resourcing include new tax credits and grants for research and development and capital equipment investment and better new facility development incentives on the federal level. Worker training is even more important in a time when a motor vehicle is now a mobile technology platform. All of these are important federal priorities at a time when states do not have the resources to assist in these areas.

Finally, we urge the establishment of a new federal Automotive Component Technology (ACT) grant program to explicitly encourage relocation to the U.S. of research, development and production of sophisticated transportation-related technologies and components.

Thank you for your leadership in these challenging times and for your consideration of these ideas and requests. We look forward to any follow-up questions and/or reactions. Please contact Ann Wilson, Senior Vice President of Government Affairs at [awilson@mema.org](mailto:awilson@mema.org), or Bill Frymoyer, Vice President of Public Policy at [bfrymoyer@mema.org](mailto:bfrymoyer@mema.org), if we can be of assistance regarding this statement or more broadly on these subject matters.

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July 1, 2020

The Honorable Chuck Grassley  
Chairman  
U.S. Senate  
Committee on Finance  
Washington, DC 20510

The Honorable Ron Wyden  
Ranking Member  
U.S. Senate  
Committee on Finance  
Washington, DC 20510

Re: Hearing on the 2020 Trade Policy Agenda (June 17, 2020)—Submission by the National Retail Federation

Dear Chairman Grassley and Ranking Member Wyden:

In conjunction with the June 17th hearing on President Trump’s “2020 Trade Policy Agenda,” the National Retail Federation (NRF) is pleased to provide the following views on the impacts that agenda is having to date on American consumers and the U.S. retail industry.

The National Retail Federation, the world’s largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, DC, NRF empowers the industry that powers the economy. Retail is the nation’s largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs—52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

The Administration has made trade policy and trade enforcement a priority over the past couple of years. The United States faces a number of sometimes long-standing trade irritants that need new approaches to repair, and the Administration has indeed proceeded to address some of those irritants using tools not heretofore favored by most U.S. policymakers. NRF believes it is imperative that Congress exercise its oversight duties to ensure those approaches consider the impacts of those tools on *all* segments of the U.S. economy, most especially American consumers and families and those employed in services sectors like retailing.



In addition, several pending trade programs that are of importance to retailers must be addressed by Congress and the Administration in the remaining months of this year. Finally, negotiation and implementation of new trade agreements will set precedents for how they will work effectively to the benefit of the U.S. economy and U.S. consumers. Congress must ensure that these agreements fully embrace the elimination of costly bilateral and regional barriers to trade and that implementation does not adversely impact one important segment of the economy (*e.g.*, consumers) in an effort to favor another (*e.g.*, U.S. manufacturers). Similarly, U.S. leadership at the World Trade Organization must be maintained, and threats to pull back from the trade liberalization we have embraced and achieved there or, worse, withdraw from that organization must be defeated.

### Tariff Policy

Concern about China's trade practices and their adverse effects on U.S. companies and investors is nothing new. Calls from industry and even Members of Congress to address those practices with penalty tariffs is also nothing new. But the actual resort to the imposition of tariffs as a way to motivate change by China's leadership, as this Administration has done, *is* new. While the President and Ambassador Lighthizer argue that the tariffs have been successful in motivating real change in China's offensive trade practices and the resulting Phase One trade deal, those tariffs have imposed heavy costs on U.S. companies (most notably, small businesses), workers and American families. Many are struggling today as a result of these extra taxes, which they have had to absorb and can't pass along to their consumers. We are especially concerned about how the exclusion process has worked to date.

The Administration has also imposed tariffs on a range of consumer goods, from food products to housewares, imported from Europe and sold by American retailers. Some of these products (Italian olive oil, French wines) are only available from European suppliers, so retailers are forced to pay the tariffs and either absorb them or pass them on to consumers. And the Administration has threatened to impose tariffs on other U.S. imports from a large number of countries that are contemplating, or have already assessed, digital sales taxes. These U.S. tariffs, threatened or imposed, have had no adverse impacts on the object of the dispute that triggered them—Airbus, or European tax authorities generally—and thus have had no impact that we can ascertain on resolving those disputes.

Similarly, this Administration has sought to address problems associated with oversupply of steel and aluminum by imposing tariffs on U.S. imports of those products from a number of countries. Those trading partners have responded with retaliatory tariffs. Those tariffs have hurt U.S. exports, which include consumer goods made in the United States and sold by U.S. retailers with stores in the retaliating countries.

These tariffs are having a large negative impact on the U.S. economy, workers, retailers and consumers. This has been demonstrated both anecdotally and by a growing body of research by academic economists. Studies find that the tariffs are paid by U.S. importers and others on the U.S. side of the border—not China or Airbus.<sup>1</sup>

The tariffs have imposed a cost to the U.S. economy broadly, and to consumers of some tariffed products specifically.<sup>2</sup> Tariffs have had a negative impact on Amer-

<sup>1</sup> “[T]he U.S. tariffs were almost completely passed through into U.S. domestic prices, so that the entire incidence of the tariffs fell on domestic consumers and importers up to now, with no impact so far on the prices received by foreign exporters.” Mary Amity (Federal Reserve Bank of New York), Stephen J. Redding (Princeton) and David Weinstein (Columbia), March 2019, <https://www.princeton.edu/~reddings/papers/CEPR-DP13564.pdf>; “This nearly complete pass-through of tariffs to the total price paid by importers suggests the tariff incidence has fallen largely on the U.S.” [*emphasis added*], Alberto Cavallo and Gita Gopinath (Harvard), Brent Neiman (University of Chicago) and Jenny Tang (FRB of Boston), May 2019, [https://scholar.harvard.edu/files/CGNT\\_0.pdf](https://scholar.harvard.edu/files/CGNT_0.pdf); “Chinese exporters did not lower their dollar prices by much, despite the recent appreciation of the dollar. . . . In U.S. stores, the price impact is more limited, suggesting that retail margins have fallen. Our results imply that, so far, the tariffs’ incidence has fallen in large part on U.S. firms,” *i.e.*, retailers for consumer goods, wholesalers and other direct importers for other goods. Alberto Cavallo, Gita Gopinath, Brent Neiman and Jenny Tang, Alberto Cavallo and Gita Gopinath (Harvard), Brent Neiman (University of Chicago) and Jenny Tang (FRB of Boston), October 2019, <https://www.nber.org/papers/w26396>.

<sup>2</sup> This site has a table comparing cost per household for a variety of studies. Estimates of the average cost per household for tariffs ranges from **\$500 to \$1,730**, [https://econofact.org/wp-content/uploads/2019/10/2-Edits-Table-of-estimates-1\\_.pdf](https://econofact.org/wp-content/uploads/2019/10/2-Edits-Table-of-estimates-1_.pdf).

ican jobs.<sup>3</sup> Retailers have been uprooting their supply chains to the extent they can, but there are challenges to moving supply chains, if at all possible. It can take months, if not years to find new vendors that meet all of a retailer's requirements, including quality, quantity and safety. Finding capacity and an available skilled workforce in other countries to produce the volumes of products sourced from China at prices consumers will pay is a challenge and not easily done in time to avoid paying tariffs on goods from China. This has certainly become more complicated as a result of the coronavirus and the impact on business operations. Small retailers particularly have no ability to modify their supply chains directly—and 95 percent of retailers are small businesses.

Our efforts to mitigate some of this damage have been challenged at (seemingly) every turn. While the Administration is granting some exclusions from the tariffs on a case-by-case basis, it is by no means granting every exclusion request with merit. The extension of those exclusions that have been granted is also in question. Some extensions have been granted, but only for a period of six months. These extensions must be granted for a longer period of time so companies can continue to try to shift their supply chain, which is not possible for every product. In addition, requests that the Administration lift the tariffs even temporarily as retailers and others grapple with enormous cash-flow issues resulting from the pandemic-triggered near shutdown of the U.S. economy have largely fallen on deaf ears. The temporary duty deferral program that was announced did not provide enough relief for companies that continue to struggle with liquidity issues. It is especially important for the Administration and Congress to consider tariff relief on coronavirus-related medical and PPE products which are so needed right now for retailers to protect their workforce and their consumers. We should lower the cost of these products, not artificially raise them because of tariffs.

We ask Congress to continue to raise our concerns with the Administration and insist that the negative impacts on American companies, workers and families be addressed.

### **Trade Preference Programs**

Pending actions required by the Administration and Congress on U.S. trade preference programs offer an opportunity to support American families and consumers in the difficult economic environment we now find ourselves. These programs are longstanding and should be evaluated in terms of the millions of dollars of benefits they provide to American companies and their workers. As such, efforts to use them as tools to advance other trade agendas should be harnessed.

#### *1. Generalized System of Preferences and Other Trade Preference Programs*

NRF and the retail industry strongly support renewal of the Generalized System of Preferences (GSP) and legislative initiatives to assist Haiti, including the Caribbean Basin Trade Partnership Act (CBTPA). Both await Congressional action. We also believe that preferential duty-free treatment under GSP should be expanded to key product groups such as textiles, apparel and footwear.

With respect to GSP, our immediate concern is that the program is scheduled to expire on December 31, 2020. The retail industry has traditionally accounted for a large segment of American users of the program and has been a consistently strong supporter of its renewal every time it nears expiration. For many retailers, particularly smaller ones, GSP has become a key part of their businesses. Legislation removing the statutory exclusion for travels goods (passed in 2015, with duty-free treatment taking effect in stages in 2016/2017) has increased the importance of GSP to retailers in recent years and has shifted the sourcing of these products.

It is important to note that many consumer goods imported from developing countries are still subject to significant U.S. duties. Therefore, the duty-free benefits of the GSP program provide important savings to U.S. retailers that use the program. GSP has also allowed retailers to provide their customers—American families—better value and selection in the products they sell. By doing so, the benefits of trade through this program flow to the American consumer, to the retailers and other companies that are made more competitive through the program, and to the bene-

<sup>3</sup>“We find that tariff increases enacted in 2018 are associated with relative reductions in manufacturing employment. . . .” Tariffs increased employment in protected U.S. manufacturing sectors by 0.3%, but reduced employment in other sectors by 1.1%, reducing employment on net. Adding in retaliation, the authors found that manufacturing employment declined by 1.4%.

December 2019, Aaron Flaaen and Justin Pierce (Federal Reserve Board), <https://www.federalreserve.gov/econres/feds/files/2019086pap.pdf>.

fiary countries, many of which rely on exports of consumer products for their economic development.

Given these considerations, it is important to the U.S. retail industry that GSP be renewed *before* it expires. The GSP legislative history of expirations and retroactive renewals, including a two-year lapse from mid-2013 to mid-2015, caused a great deal of unpredictability and unnecessary costs for companies that use GSP. Lapses followed by retroactive renewals undermine the utility and benefits of the program. As noted above, retailers already are dealing with tariffs on China and other trading partners, the impacts of COVID-19 shutdowns, and the related economic fallout: The last thing retailers and other businesses need is further uncertainty about potential GSP expiration on January 1st. With retailers typically placing orders six months in advance of delivery, the time for Congress to act is now.

NRF is supportive of efforts to eliminate the GSP statutory exclusion on apparel and footwear, similar to the elimination for travel goods in 2015. It is not our expectation that all apparel and footwear would gain duty-free treatment since individual products would need to go through the petition process. However, extending GSP benefits for certain apparel and footwear would provide retailers with considerably more cost-effective options to shift supply chains out of China in the medium term. GSP for China's competitors also would avoid the higher taxes on American consumers—and retaliatory tariffs on U.S. exports—that are the result of the Section 301 tariffs currently imposed on some of these imports from China. We recognize these changes may not be best suited for a reauthorization bill, just as the travel goods expansion was passed separately from the GSP reauthorization in 2015, but believe they would have significant, long term benefits for American companies, workers and consumers.

NRF opposed the recent termination of GSP eligibility for developing countries such as India and Turkey, and the partial suspension for Thailand. While American companies have paid hundreds of millions of dollars in new tariffs as a result of these actions, tariffs have not led to desired changes in the practices that were used to justify the country practice reviews. The result has been a lose-lose situation for American importers and exporters. To the extent that the Administration is attempting to use tariff policies to encourage companies to move out of China, GSP actions undermine those efforts, as companies lose viable sourcing alternatives when tariffs are raised on China's competitors. The partial GSP suspension for Thailand in April 2020, and pending reviews for other major GSP suppliers such as Indonesia, further limit retailers' ability to make long-term sourcing plans. The complexity of global supply chains, and competing goals of U.S. tariff policy, illustrate why the GSP eligibility criteria should be used with caution.

The GSP program traditionally has been non-controversial and has enjoyed wide, bipartisan support in Congress. We urge Congress to move quickly to extend the current GSP authorization and ensure we do not face another tariff hike on January 1st.

With respect to CBTPA, we have similar concerns associated with its scheduled expiration on September 30, 2020. CBTPA provides duty-free treatment for certain textiles, footwear, tuna, leather goods, travel goods, and watches and watch parts when imported from Barbados, Belize, Curacao, Guyana, Haiti, Jamaica, Saint Lucia and Trinidad and Tobago. We urge Congress to extend the current CBTPA authorization, possibly in conjunction with GSP, to ensure these products do not face higher tariffs starting October 1st.

## *2. Miscellaneous Tariff Bill*

NRF and the retail industry strongly support the congressional passage of the latest Miscellaneous Tariff Bill (MTB), which allows for duty-free treatment for certain products not available in the United States. The current MTB, enacted in 2018, expires on December 31st. The current MTB provides duty-free treatment for certain jackets, babies' garments, hats and other clothing, belts, flat goods, footwear and a range of other consumer goods.

The International Trade Commission (ITC) launched its process for the next MTB bill in October 2019. Many retailers have submitted petitions for new or continued MTBs, and the ITC sent preliminary recommendations to Congress on June 9th. Once the ITC sends its final report, we urge Congress to compile and pass MTB legislation to ensure we do not face another tariff hike on January 1st.

## Trade Agreements

The United States is set today to implement the United States-Mexico-Canada Agreement (USMCA), which will replace the North American Free Trade Agreement (NAFTA). This agreement is being touted as the model for future trade agreements the Administration intends to negotiate, for example with the United Kingdom.

### 1. U.S.-Mexico-Canada Agreement

While in some details the USMCA is a step back for retailers,<sup>4</sup> overall we are supportive of the Agreement and will work with the Administration and our suppliers in Mexico and Canada to seek its smooth implementation. It is important for our customers that the USMCA preserve longstanding supply chains that have developed under NAFTA. For example, jeans made in Mexico contain a large number of U.S. inputs, from cotton and denim fabric to notions and accessories like buttons and zippers.

We ask Congress to ensure both Canada and Mexico's full implementation of their obligations under the Agreement. One area where we have heard concerns about Canada's implementation is specific to cross-border distribution of U.S. TV shopping programs. This was a significant victory that needs to be fully implemented.

We ask Congress to remain vigilant about efforts of some to threaten to raise the costs of seasonal agricultural products imported from Mexico. Some would revise U.S. trade remedy procedures to make it more likely that antidumping duties would be imposed on imports from Mexico of these products. This would have a decidedly adverse impact on American families shopping for tomatoes and other fruits and vegetables during "off seasons," when imports from Mexico make up for the absence of supply from U.S. farmers.

### 2. Other Trade Agreements

As the Administration moves forward with the negotiation of new trade agreements, it has suggested that the USMCA will be something of a template. We hope that Congress will ensure that the Administration does not seek to lower the U.S. de minimis value threshold for its current value of \$800. De minimis is an important tool that benefits many small retailers and other businesses across the United States by cutting red tape at the border while also helping keep prices low for consumers. Congress rightly raised this threshold from \$200 to \$800 in an effort to promote e-commerce and support consumers purchases of low-value goods and continues to show bipartisan support for it.

## World Trade Organization

NRF is watching with alarm the suggestions by some in the Administration that the United States should back away from its obligations to provide most-favored-nation (MFN) tariffs to fellow members of the World Trade Organization (WTO), or that the United States should raise its bound tariff rates, and then move applied tariff rates up to bound rates for certain products imported from certain countries. Even worse, some have suggested the United States pull out of the WTO altogether, which would have the same impact as giving the Administration license to raise its tariffs to exorbitant rates. In both instances, not only would U.S. consumers—and the economy—suffer, but so would U.S. exports as our trading partners retaliate for the higher U.S. import duties.

NRF is also alarmed that some in the Administration and Congress advocate that the United States relinquish its leadership role at the WTO by pulling out of it altogether, or by not participating fully in plurilateral negotiations that may be happening. U.S. leadership at the WTO is a role it has successfully used to cajole tariff and nontariff concessions from many U.S. trading partners to the benefit of U.S. exporters and the economy generally. We ask that Congress keep a close eye on these initiatives, lest they come to pass and seriously damage not only the U.S. economy but our standing in the global economy on not just economic issues but foreign policy and security issues as well.

## Conclusion

In short, there is much for Congress to watch, and much for Congress to do, to ensure that U.S. trade policies contribute positively to growth in the American economy, increase employment and enable American families to purchase affordably

<sup>4</sup>For example, we anticipate that the rules of origin for automobiles will increase the costs of cars sold in the United States relative to what they would have cost under NAFTA. Similarly, apparel rules of origin are more restrictive, which could require cost increases for some products produced in Mexico under USMCA.

priced products. Retailers stand ready to work with you to this end, and look forward to providing you with any information you need to better understand how these issues will affect your constituents.

Sincerely,  
David French  
Senior Vice President  
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**Statement of Bryan Riley, Director, Free Trade Initiative,  
National Taxpayers Union**

I am writing to submit this letter from economists from across the country, including individuals who served Presidents ranging from Jimmy Carter to Barack Obama and two Nobel laureates, regarding the risk of imposing “Buy America” controls on medical goods. Their letter was initially delivered on May 13, 2020.

Mr. President, Speaker Pelosi, and Leader McConnell:

Government mandates, export controls, and other trade restrictions are proliferating around the world as countries confront the COVID–19 pandemic. Generally inadvisable, these actions will undermine a strong recovery.

The United States has already imposed restrictions on the export of health and medical resources. Policymakers are considering the imposition of new Buy America requirements for medical goods and pharmaceutical products, either by executive order or legislation.

Current shortages of critical medical goods in the COVID–19 pandemic have revealed to all the desirability of diversifying sources of supply and increasing inventory of storable medical goods. Diversifying supply sources and increasing inventories will be costly, but a broad Buy America regime will be more costly. The variety, supply, and price of goods available to Americans will suffer under a broad Buy America regime. Taxpayers and patients will pay more for drugs and medical supplies. Smart policies such as federal government stockpiling look more promising.

A Buy America directive can also hamstring the ability of U.S. pharmaceutical and medical equipment manufacturers to meet our future needs if firms are denied access to essential foreign supplies. Moreover, we can expect our trading partners to adopt retaliatory “Don’t Buy American” barriers targeting U.S. exports as this type of retaliation is already occurring between other countries.

The President’s intuition was correct when in 2018 he called for zero tariffs, zero non-tariff barriers, and zero subsidies.

For the United States to make a rapid and strong recovery from the pandemic, we urge leaders to stand strong against those in the United States and abroad who seek to disrupt trade in essential medical products. Instead, the United States and its trading partners should pursue policies that make medical supplies more plentiful and affordable. Costly protectionism should not be foisted on patients at home and abroad.

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These comments are being filed on behalf of the U.S. Global Value Chain Coalition—a coalition of U.S. companies and associations—that is on a mission to educate policymakers and the public about the American jobs and the domestic economic growth our companies generate through their global value chains.

Global value chains include those jobs we traditionally associate with the creation of a product—such as those in a factory or on a farm—as well as those positions involved in the conceiving of and delivery of those products—such as design, marketing, research and development, logistics, compliance, and sales. Simply put, the global value chain accounts for all jobs that add value from beginning to end to the good or service sold in the global marketplace. These positions are essential to the creation or sale of a good or service. Moreover, these jobs are primarily here in the United States and are usually high paying, accounting for much of the value that is paid at the register.

Thank you for holding these important hearings on the U.S. 2020 Trade Policy Agenda and providing the opportunity to provide this statement for the record. We would like to respond to several points on China and trade preference programs that Ambassador Robert Lighthizer made during his testimony.

### **China**

Global value chains are dependent upon trade with China to create jobs and economic opportunities across the United States. For instance, American companies, and their American workers, design and market consumer products that are sold in China, in the United States, and around the world. Although these everyday items—articles such as U.S. branded clothes, shoes, and backpacks—might be physically produced in China, they support millions of U.S. jobs in such disciplines as design, quality control, marketing, and compliance.

Furthermore, chemicals imported from China make their way through a network of U.S. distributors, employing tens of thousands of Americans who reformulate, market, and distribute into American industries, including agriculture, automotive, pharmaceuticals, textiles, plastics, paints and coatings, and more.

The punitive tariffs on U.S. imports from China have been very damaging to these U.S. global value chains. These tariffs have led to considerable costs and uncertainty for our members because tariffs are no more than taxes that U.S. companies pay, which are then passed on to U.S. consumers in the form of higher prices. Even before the coronavirus pandemic, these tariffs have required companies to make painful choices—usually at the expense of American jobs—as they figure out ways to manage these new costs. Now more so than ever, thousands of companies are facing a stark choice of paying their duty bills now or keeping their American workers on payroll.

Despite what Ambassador Lighthizer said, it is not easy for companies to shift their global value chains. While many have worked to diversify their value chains from the start of the trade war, there are others where it is just not feasible in a short period of time—if at all. There are many challenges such as ensuring new vendors can meet capacity, quality, product safety, sustainability, and social responsibility requirements, the availability of a skilled work force, available infrastructure, and testing and auditing capabilities—just to name a few. In some instances, a product may not be available from any other source. Further, the coronavirus pandemic has made shifting supply chains even more complicated with travel essentially shut down due to global stay at home orders and limits on corporate travel. This should certainly be factored in as the Administration reviews current exclusions.

Further, global supply chains have helped, not hurt, the U.S. response to the coronavirus outbreak. Just recently, a study done by the University of Michigan, Yale, and the University of Texas at Austin concluded that while “the average contraction in gross domestic product tied to the COVID-19 shock is expected to be

31.5% with about a third of it attributed to kinks in global supply chains . . . *the average GDP drop would have been 32.3%*” without global trade.<sup>1</sup>

As we work to reopen the U.S. economy and get Americans back to work, we request Congress: (1) demand the Administration lift all punitive China tariffs; (2) improve the Section 301 product exclusion process and grant more approvals in a swift, transparent manner; (3) eliminate Most Favored Nation (MFN) tariffs for all products and inputs for Personal Protective Equipment (PPE); and (4) extend and modify the duty deferral program to cover ALL duties for imports through at least the summer months, allow for retroactive refunds, and improve the hardship test to allow more companies to defer duties.

#### **Trade Preference Programs**

Several trade preference programs are expiring this year and although there has not been a clear signal of support from the Administration, they have bipartisan, bicameral support. We request Congress renew these critical trade preference programs quickly to provide certainty and predictability to American businesses, many of whom are utilizing these programs to help make and distribute urgently needed personal protective equipment in response to the coronavirus outbreak.

#### *Caribbean Basin Trade Partnership Act (CBTPA)*

The Caribbean Basin Trade Partnership Act (CBTPA) recently celebrated its 20th anniversary and is set to expire on September 30, 2020. With the coronavirus crisis, providing continued certainty in this region is needed now more than ever. Our members have been proud to work on, support enactment of, and operate under this program during the past two decades. Since it was enacted, the CBTPA along with the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act, and the Haiti Economic Lift Program (HELP) Act—has provided an important trade policy basis to support U.S. investment in and exports to U.S. allies in the Caribbean Basin.

#### *Generalized System of Preferences (GSP)*

The Generalized System of Preferences (GSP) is set to expire at the end of 2020. The GSP program allows American businesses to use duty-savings to compete internationally, lower costs for American families, hire more American workers, and invest in new products. GSP is also an effective enforcement tool to open foreign markets, protect intellectual property, and improve workers’ rights. With the coronavirus debilitating global value chains, renewing the GSP program will be a critical component to reopening the country and improving the U.S. economy.

Thank you for this opportunity to provide comments on the 2020 U.S. Trade Policy Agenda.



<sup>1</sup>Brendan Murray, “Trade Helped Cushion the World Economy’s Pandemic Plunge,” *Bloomberg News* (May 26, 2020) available at <https://www.bloomberg.com/news/newsletters/2020-05-26/supply-chains-latest-trade-cushioned-the-world-economy-s-fall>.