

United States Senate Committee on Finance
Hearing on The President's 2020 Trade Policy Agenda
June 17, 2020
Questions for the Record for Ambassador Robert Lighthizer

Chairman Charles E. Grassley

Question 1

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 2

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 3

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 4

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.¹ 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 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.

¹ 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.

Question 5

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 6

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 7

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 videoconference with his Kenyan counterpart, Cabinet Secretary Maina. The first round of negotiations via videoconference are slated to run through July 22. 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 8

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.

Ranking Member Wyden

Question 1

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% rather than rise to 25%, 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 2

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 3

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 I trade agreement determined?*

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

Answer: None.

Question 4

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 I 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), 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 5

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 6

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

What teeth does the Phase I 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 7

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 US 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 8

The Phase I 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 I 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: USTR is committed to remain open and transparent with Members on all relevant information related to the enforcement of the Phase One Agreement.

Question 9

The Phase I 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 I 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 underprices 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 10

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 "six 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 11

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 USMCA 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 12

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 US 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 13

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 14

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 26. 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 15

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 16

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.

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² 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.

Question 17

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 18

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 19

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 20

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 21

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 22

The USMCA is scheduled to enter into force on July 1. 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 23

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 24

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 four 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 25

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 26

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 II negotiations with Japan commenced? When does 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 27

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.

Senator Crapo

Question 1

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 2

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 one year. Currently, USTR has several extension dockets open covering multiple tranches of exclusions from multiple lists.

Senator Roberts

Question 1

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 2

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 US 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 3

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. US 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 4

Ambassador Lighthizer, I understand that both US 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 US, along with US 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 US 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 5

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 US-EU trade discussions is and if the new Commission intends to address these long standing systemic issues that needlessly restrict US 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 cancelled 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 6

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 7

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% 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% and a Section 232 retaliatory tariff of 15% on imports of U.S. ethanol. Up until 2016, China imposed an applied tariff of 5%, which had facilitated record exports of U.S. ethanol to China. However, in 2017, the applied tariff was raised to 30%. 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.

Senator Cornyn

Question 1

I was proud to work with Sen. Warner and other colleagues to introduce 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 US-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 2

Ambassador Lighthizer, as the world economy begins to recover and reopen following the public health-forced shutdowns due to 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 US cotton producers and others in the US 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 commitments 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 3

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 4

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 5

USTR has only provided exclusions for products under List 4A, largely consisting of consumer goods, until September 1, 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 one 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 6

Because of the extensive damage that the global pandemic has had on U.S. company's 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 7

What is the current timeline for a trade deal with the U.K.? Has COVID-19 and the upcoming election had an effect on the Administration's willingness to reach a trade deal with the U.K.?

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 8

Some are growing concerned that certain companies are shuttering US 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 US 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 9

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 US 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 II China deal.

Ambassador Lighthizer, can you please provide an update on China's Phase I 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 II 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 10

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.

Senator Burr

Question 1

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 2

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.

Senator Toomey

Question 1

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 2

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 US 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 3

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 4

Ambassador Lighthizer, you suggested to the House Ways & 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 bio-pharmaceutical 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 5

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 6

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 7

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 focuses 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 8

On June 2, 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 9

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 26. 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.

Senator Portman

Question 1

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 enforcement 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 2

I understand language ensconcing 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 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 3

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 4

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 5

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 six 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 six-minute rule nor created new local content requirements, but we are continuing to monitor and to engage bilaterally on these issues.

Question 6

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 20, 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 ten-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 7

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' 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 8

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.

Senator Tim Scott, SC

Question 1

Since USMCA has now entered into force, the automotive rules of origin are in effect. In light of the accelerated timeframe 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 2

We have over 145,000 workers in South Carolina directly employed as a result of international investment and a whopping 52% 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 one year of importation.

Senator Young

Question 1

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 2

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' 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 3

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 4

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 benefitting 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.

Senator Menendez

Question 1

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 ten-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 2

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 US interests, including those of small and medium-size businesses.

Question 3

On June 14, 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 C.F.R. § 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.³

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 one-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 one 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.

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

³ [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)

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.

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 chapter. I also was informed that the individuals had sought ethics advice and reviewed the OGE legal advisory.

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.

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.

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.

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 one 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.

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 4

18 USC 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 one 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.

Please clarify whether the two employees referenced previously will have a one-year cooling off period under 18 USC 207(b) even after USMCA negotiations cease to be "ongoing" or if the one-year cooling off period imposed by 18 USC 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 on ongoing negotiation and the individuals are not subject to the one-year cooling off period in section 207(c). Again, I think there should be a one-year cooling off period in such circumstances and would support efforts to make that happen.

Does the restriction under 18 USC 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 provide a detailed explanation, including the circumstances by which a trade negotiation ceases to be "ongoing" under 18 USC 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.

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 USC 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 C.F.R. § 2641.201(h).

Question 5

India has a host of trade policies that discriminate against US 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 6

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.

Senator Carper

Question 1

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 2

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 U.K. According to the FDA, the U.S., E.U. and Canada together make up 54% of the world's manufacturing facilities that produce active pharmaceutical ingredients (APIs) and 69% 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 3

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 4

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 5

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 6

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 7

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 8

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 9

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.

Senator Brown

Question 1

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 2

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 3

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 ten 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 ten 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 five years.” We will consider all requests for alternative staging in line with the provisions in the USMCA.

Question 4

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 5

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 6

The USMCA implementing legislation (P.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 7

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 8

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.

Senator Casey

Question 1

Ambassador Lighthizer, can you explain why the Phase 1 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, including 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 Organization for Economic Cooperation 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 2

Ambassador Lighthizer, 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.

Senator Hassan

Question 1

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 businesses continue to pay non-exempted tariff rates.

Is USTR contemplating longer-term extensions of the earlier granted exclusions? If 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: (1) 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.

(2) 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.

(3) 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 needed 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 2

The US-Mexico-Canada trade agreement (USMCA) entered into effect on July 1, 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 1, 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.

Question 3

On June 15, 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.

Senator Cortez Masto

Question 1

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 2

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 1. 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 3

More travelers visit Nevada from the U.K. 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 U.K.? 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 4

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 1 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 5

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 ten 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 6

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.

Senator Warner

Question 1

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, Ambassador Lighthizer, 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 2

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 3

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 compensation 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 4

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 extra-judicial demands put on foreign firms.

Unfortunately, the President's Phase 1 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 US and Western vaccine research in connection with the COVID-19 pandemic.

What confidence can we have that a Phase 2 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 longstanding 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 5

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 report, "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 6

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 US 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 1 deal was on the technology transfer front, China still requires US 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 II China deal.

Can you provide us an update today on China's Phase I 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 7

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 ten-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 8

The Trump Administration has touted the purchase requirements included in the “Phase 1” 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 US 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 purchases commitments under the Phase One Agreement.

Question 9

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 three months, and losses could reach as high as \$240 billion by the end of the year. Wine and spirit sales provide on average 25% of a typical restaurant's income, and estimates indicate wine distributor sales have collapsed 50-60% 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 26. 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 10

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 US businesses than those in the EU. When you factor in restaurant sales, estimates indicate up to 85% of the dollars from the sales of these wines stay with US 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 26. 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 11

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 12

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.