

SENATE FINANCE COMMITTEE

Hearing to Consider the Nomination of Marisa Lago for Under Secretary of Commerce for International Trade

Hearing Date: November 16, 2021

Questions for the Record

Chairman Wyden

Question 1: U.S.-EU Privacy Shield

Ms. Lago, ITA is negotiating a new “Privacy Shield” agreement with the European Union to ensure market access for U.S. companies while addressing the Europeans’ concerns about U.S. government access to their data.

If confirmed, how would you ensure that any Privacy Shield agreement is not one-sided, and also protects Americans’ data from unreasonable surveillance by European government agencies?

Answer: The United States and the European Union share a deep trade and investment relationship, which sustains millions of jobs on both sides of the Atlantic. Transatlantic data flows are an essential component of that two-way trade and investment. The original Privacy Shield decision was invalidated by the Court of Justice of the European Union (CJEU) based on concerns about government access to personal data. If confirmed, I would work with my counterparts across the U.S. government and within the European Commission to find a sustainable solution that addresses the legal and also the economic ramifications of the CJEU’s ruling. If confirmed, I look forward to working with you, your staff, and the interagency to consider how best to protect personal data on both sides of the Atlantic.

Senator Cantwell

Question 1

China is no doubt one of our most important trading partners and was the third largest export market for American products last year. In 2020, we exported \$26.5 billion worth of agricultural products and \$40.4 billion worth of service goods to China.

My home state of Washington is a major exporter to China as well, exporting \$9 billion worth of goods in 2020, making China Washington state’s largest trading partner. The agreements outlined in the China Phase One Purchasing Agreement would benefit Washington state’s

economy. That being said, reports have shown that China is not on track to meet its purchasing targets. China is Washington state's third largest trading partner for agricultural products. In 2020, Washington state exported \$518 million worth of agricultural goods to China. Top Washington state agricultural exports include \$83 million worth of fish and seafood, \$54 million worth of frozen potatoes, \$51 million worth of cherries, \$25 million worth of wheat, and \$13 million worth of beef.

China should have purchased \$29.8 billion worth of agricultural products by the end of September to meet the target, but instead fell short at purchasing only \$26.7 billion worth. The agreement was supposed to offset some of the effects of the trade conflict, so we need to ensure that China is on track to achieve the targets that they agreed to.

USTR Ambassador Tai also agreed during her speech on the Administration's China trade policy that we must hold China accountable to their commitments, and that certain provisions in the phase one agreement will need to be revisited.

In your opinion, what can be done to improve China's performance in terms of the purchasing targets that they agreed to?

Are the goals of the agreement realistic? Are there areas of the agreement that you think need to be reassessed or renegotiated?

How do you plan to work with USTR to enforce the targets of the agreement without imposing economic harm to U.S. industries?

Answer: If confirmed, I would work closely within ITA and with the U.S. Trade Representative and others in the U.S. Government as appropriate to ensure that the Chinese government is held accountable for its commitments.

In October, the Biden-Harris Administration outlined the initial steps to realign U.S. trade policy towards China, which included China's performance under the Phase One Agreement. It is important that the Chinese government adhere to the commitments it made, and it is my understanding that USTR Tai is engaged in discussions with the Chinese government to that end.

It is also important to note that many concerns with respect to the Chinese government were not addressed in the Phase One Agreement, such as state-owned enterprises, subsidies, limiting market access, and other distortive and coercive economic practices. If confirmed, I look forward to working with the U.S. Trade Representative and others in the U.S. Government on these issues, as appropriate, and would work to ensure that workers and firms can compete on a level playing field. If confirmed, I look forward to working with you and your staff on this issue.

Question 2

Among your responsibilities is the U.S. and Foreign Commercial Services. The FCS as it is known is a great service to US companies working in foreign markets. I particularly would note how helpful the FCS is for US small businesses seeking to enter and develop the Chinese market. Washington State exports \$9 billion in goods in 2020, making China the largest trading partner for my state.

In light of the current stress in the relationship, how can the FCS help to improve trading relationship – in a positive, constructive way – for the U.S. and China?

Answer: U.S. exports can create high-paying U.S. jobs. China is our nation’s third largest trading partner, taking over \$120 billion in goods exports alone in 2020. While the Chinese market holds opportunities for U.S. exporters, there are still numerous non-tariff barriers to trade, as well as anti-competitive actions that need to be addressed – including the Chinese government’s theft of intellectual property, forced technology transfer, and subsidies for its businesses. If confirmed, I would work with the trade specialists and commercial diplomats in ITA on these issues.

Question 3

In 2019, digital services exports accounted for 59 percent of all U.S. services exports, generating a U.S. digital trade surplus of \$220 billion that is shared by small and large companies and workers far outside the traditional tech sector. One in three small and medium-sized businesses report that they would not have survived the pandemic without digital tools, and two-thirds of small business employers say that technology can help them overcome export barriers. My home state of Washington is responsible for nearly 5 percent of the entire country’s digital export volume, which directly and indirectly supports nearly 250,000 jobs across the information, technology, and communications sector.

It is clear, especially over that last year that without the ability to trade digitally, American workers and businesses would have been put at a significant disadvantage. It is imperative that we create more opportunities for U.S. exporters to harness digital trade and push back on the growing threat of digital protectionism.

I believe we need a bold new strategy on digital trade; one that modernizes our existing Free Trade Agreements, and seeks new bilateral and plurilateral digital rules that ensure America stays competitive in the 21st Century and our workers and that businesses can compete on a level playing field. That is why I was pleased to hear that the U.S. and several European countries were able to come to an agreement on eliminating Digital Service Taxes recently.

Beyond dealing with foreign Digital Service Taxes, what do you think are the most important digital trade issues that the United States must engage with trading partners on?

The U.S.-E.U Trade Technology Council hosted its first summit in Pittsburgh two months ago, and released a joint statement detailing a framework that would promote trade and innovation in the IT industry.

- *Do you think the agreements in the joint statement adequately address U.S. – EU technology trade issues?*
- *In your opinion, are there any areas that need improvement?*
- *How do you plan to incorporate the working groups established in the joint statement in your work to promote bilateral trade and enforcement of trade agreements?*
- *Privacy is extremely important to me. We are working hard on getting a good bill out of the Commerce Committee. Do you see a clear path forward toward an agreement between the U.S. and the EU on Privacy?*

Answer: The U.S.-EU Trade and Technology Council (TTC) encompasses a wide range of bilateral policy issues, which necessitates a whole-of-government approach and continued stakeholder engagement to refine broad priorities into actionable outcomes. If confirmed, I would work with my colleagues within the Commerce Department and the interagency to build on the Pittsburgh Ministerial and facilitate continued collaboration with our U.S. agency counterparts, businesses, and other stakeholders. If confirmed, I look forward to working with you and your staff on these issues.

There are significant commonalities between the TTC’s 10 issue-oriented working groups and ITA’s daily work in expanding export opportunities for American businesses and mitigating unfair trade practices that disadvantage our businesses and workers. If confirmed, I look forward to working on issues that can directly benefit our companies and workers and would support the objectives of the TTC to reducing commercially significant barriers to trade that impact companies of all sizes.

It is also my understanding that the Commerce Department and agencies across the U.S. government are working to find a sustainable solution that addresses the legal and also the economic ramifications of the ruling of the Court of Justice of the European Union to invalidate the U.S.-EU Privacy Shield Framework. If confirmed, I look forward to working with you and your staff on these issues.

Question 4

The United States and Canada have been engaging in a long-term trade conflict over softwood lumber that dates back to the 1980s. Despite many rounds of negotiations and agreements, little progress has been made to reach a permanent solution. The previous agreement to suspend tariffs expired in 2015 and anti-dumping and countervailing duties have been in place since 2017. This trade conflict not only hurt the timber industry but also contributed to a shortage of lumber in the United States, raising home construction costs for producers and consumers.

Washington state has 22 million acres of forestland and a robust timber industry. My home state is also the second largest producer of lumber in the United States and the sector supports approximately 42,000 workers, generating \$28 million in revenue annually.

While I support the effort to level the playing field for the U.S. timber industry and ensure U.S. competitiveness, I also believe that trade conflicts cannot continue indefinitely. We must work with Canada, a valuable and trusted trading partner, to reach a long-lasting solution.

In your view, what are the main issue areas that need to be resolved first before an agreement could be reached with Canada?

If confirmed, what would be your plan to negotiate a solution for ending the lumber conflict?

Large trade conflicts that drag out over several years hurt the economy and the relationship that we have with the opposing country. How would you work to expedite the process for ending trade conflicts in a timely manner?

Answer: The determinations in U.S. AD and CVD proceedings are the culmination of a quasi-judicial investigative process that is mandated by U.S. law. The Commerce Department bases its findings on the factual information on the records of its proceedings, following methodologies provided under the law, regulations, and long-standing practices. It is my understanding that while the Commerce Department would be involved in any formal consultations on this trade dispute with Canada, the U. S. Trade Representative is the lead agency with respect to the formal initiation of any potential negotiated settlement. If confirmed, I look forward to working with you and your staff on this issue.

Senator Young

Question 1

Ms. Lago, if confirmed, understanding and advocating for American enterprises will be a key pillar of your job. For years, Hoosier businesses in Indiana have been confronted with major barriers to market access, particularly at the hands of China, and are often pressed to make trade-related concessions. For instance, businesses are forced to entertain outrageous demands like surrendering intellectual property or technology in exchange for access to Chinese markets. These moves are designed to benefit China's state-owned enterprises while keeping U.S. manufacturers at a disadvantage.

How do you plan to tackle the market access barriers forced onto American businesses by the Chinese Communist Party?

Relatedly, what are some key strategies that you believe would be beneficial to addressing this adverse action against American businesses?

Answer: The Chinese government engages in anti-competitive and coercive practices that harm American workers and businesses. For example, intellectual property theft, subsidies, cyber-based economic espionage, and other barriers undermine the competitiveness of U.S. firms. These policies create unlevel playing fields for U.S. workers and businesses. Many of our allies and partners share similar concerns with respect to the PRC's unfair economic practices. If confirmed, I would use all tools at ITA's disposal to address these issues. I would also work with Commerce staff and, when appropriate, the Office of the U.S. Trade Representative and other departments and agencies on these matters.

I believe that we should approach trade barriers faced by American businesses through direct engagement with 1.) U.S. stakeholders and the business community to help identify anti-competitive practices and non-tariff barriers, and 2.) the Chinese government to hold them accountable for disruptive trade practices. This will involve engagement with the U.S. Trade Representative, the Department of State, and other U.S. Government agencies to address the core structural concerns posed by China's state-directed economic approach and distortive trade practices, which harm competition, businesses, and workers. If confirmed, I look forward to working with you and your staff on these issues.

Question 2

As we have all experienced, the pandemic has accelerated the already existing squeeze of supply chain networks. Global disruptive events – like natural disasters, shipping container blockages, port shutdowns, and cyberattacks – are now more persistent and severe, which only illustrates the need to lessen our dependency on multiple foreign suppliers and complex supply chains.

If confirmed, what is your strategic plans to monitor and address our nation's supply chain challenges?

How will you review and address regulatory issues to ensure our domestic supply chains are secure and cost-effective?

Answer: If confirmed, I would work to support and build upon the efforts that are already underway across the executive branch to assess supply chain vulnerabilities under the President's Executive Order on supply chains. For example, I would work to support the Commerce Department's efforts on semiconductors. The Department led the development of a semiconductor supply chain 100-day report, which was published in June of this year. I also look forward to working with the Department of Homeland Security to publish the 1-year report on supply chains in the information and communications technology space in February. While government does not run these supply chains, the Biden Administration

is using every tool available to help make our supply chains more resilient over the long term.

One of my top priorities would be to ensure that the International Trade Administration fully supports the White House and Commerce Department's efforts and any subsequent policy implementation to help address supply chain concerns. I would also support Secretary Raimondo's efforts in her role as a co-lead of President Biden's Supply Chain Disruptions Task Force to address near-term supply chain concerns. If confirmed, I look forward to working with you and your staff on these issues.