

SENATE FINANCE COMMITTEE

Hearing to Consider the Nomination of Christopher S. Wilson, of the District of Columbia, to be Chief Innovation and Intellectual Property Negotiator, Office of the United States Trade Representative, with the rank of Ambassador

Hearing Date: October 26, 2021

Questions for the Record

Chairman Wyden

Question 1: Engaging Stakeholders and Balancing Private and Public Interests

If confirmed, you'll be the first 'Chief Innovation and Intellectual Property Negotiator' in U.S. history -- just in time to support the historic investments of the Biden Administration's Build Back Better agenda. The Biden Administration has championed a "worker-centric" trade policy - a commitment to ensuring that everyday Americans' interests are represented when we talk about trade.

On intellectual property, it's critical that all stakeholders have a seat at the table -- everyone from large and small businesses and creators, to libraries, the disability community, and the general public. All these perspectives are important to achieving balanced IP policies that protect creators, incentivize innovators, and benefit the public at large.

Mr. Wilson, if confirmed, how do you plan to strike the right balance among the interests of varied stakeholders, including those in the public and private sectors?

Answer: Ambassador Tai has noted that creating a more inclusive process is the first step to achieving a worker-centered trade policy that delivers shared prosperity for all Americans. If confirmed, I will engage and consult with a wide range of stakeholders, including those from traditionally underrepresented or underserved groups, on innovation and intellectual property issues.

Question 2: Copyright Limitations and Exceptions

U.S. law, as well as international agreements like the TRIPS Agreement and Berne Convention, allow for certain limitations and exceptions to copyright. In the United States, these provisions serve a vital public function: they support the preservation of works by libraries and the access to those works by scholars, students, and the public; allow fair use, such as the creation of transformative works and reproduction for educational purposes; and ensure accessibility for people with disabilities.

Mr. Wilson, if confirmed, will you support efforts by our trading partners to adopt copyright limitations and exceptions that align with U.S. law and are consistent with international obligations?

Answer: If confirmed, I will aim for our trading partners to adopt or maintain a standard for intellectual property protection similar to that found in U.S. law and will carry out my duties as directed by relevant U.S. law. I will also engage and consult with a wide range of stakeholders, including those from traditionally underrepresented or underserved groups, on innovation and intellectual property issues.

Ranking Member Crapo

Question 1: Enforcement

Congress established the Chief Innovation and Intellectual Property Negotiator in the Trade Facilitation and Enforcement Act of 2015 in part to “take appropriate actions to address acts, policies, and practices of foreign governments that have a significant adverse impact on the value of United States innovation.” This is no surprise as American innovation is critical to our economic and strategic strength. Indeed, IP intensive industries generate over 38 percent of U.S. annual GDP.

Do you agree that the following matters are precisely the types of issues that a Chief Innovation and Intellectual Property Negotiator needs to “take appropriate action to address?”

- *The Cyberspace Administration of China’s cybersecurity reviews, which appear to target foreign companies in order to secure their proprietary information including source code;*
- *India’s attempt to amend Section 31D of its Copyright Act to incorporate “internet or digital broadcasters” (i.e., streaming services), which would result in price controls that would adversely impact American creative content;*
- *The European Union’s proposed Digital Markets Act, which would require U.S. companies to disclose proprietary intellectual property, including source code for algorithms;*
- *The failure of various countries, including China and India, to take meaningful action against websites hosting pirated content; and*
- *High foreign tariffs on IP-intensive goods, including agricultural biotechnology, pharmaceuticals, medical devices, and Information and Communications Technology (ICT) products.*

Answer: I understand how protecting U.S. innovation through intellectual property rights is key to our nation's economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests and will take appropriate actions to address acts, policies, and practices of foreign governments that have a significant adverse impact on the value of United States innovation. I will consult with you and other Members of this Committee on your views regarding priority IP issues.

Senator Burr

Question 1:

The Biden Administration has announced its support for a waiver of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement in relation to the prevention, containment, or treatment of COVID-19 that is being negotiated at the World Trade Organization (WTO).

If you are confirmed, what will you do to ensure that such a waiver does not have a negative impact on America's world-leading biopharmaceutical industry, or undermine our preparedness for future public health threats?

Answer: If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests. I am familiar with the discussions around promoting innovation and intellectual property interests, in the context of public health crises, as reflected in agreements such as the United States-Mexico-Canada Agreement. Given this history, I will be cleared eyed about the potential risks to our biopharmaceutical industry, as well as the goal of addressing preparedness for future public health threats.

Question 2:

According to law, the Chief Innovation and Intellectual Property Negotiator “shall be a vigorous advocate on behalf of United States innovation and intellectual property interests,” and is responsible for protecting the intellectual property of American innovators in accordance with trade agreements and addressing practices that have a significant adverse impact on the value of U.S. innovation.

How will you advocate for US innovation and the intellectual property rights of COVID-19 vaccine manufacturers?

Answer: If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests, including through outreach to allies and partners.

In what specific ways does handing over the intellectual property of the makers of our COVID-19 vaccines protect the value of U.S. innovation meet the mission of the office you aspire to hold?

Answer: Given my prior service in the intellectual property office, I understand how protecting U.S. innovation through intellectual property rights is key to our nation's economic success. I am clear-eyed about the potential risks of a COVID-19 waiver on innovators. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests.

Senator Portman

Question 1:

As you know, the origin of the China tariffs, and the Phase 1 Agreement, was China's rampant violation of intellectual property rights, including forced tech transfer. While there has been a lot of focus lately on China's failure to fully live up to its purchasing commitments, we shouldn't lose sight of the IP issues at stake.

How do you propose we get China to live up to its Phase 1 commitments on IP?

Answer: The United States has been closely monitoring China’s progress in implementing its numerous commitments under the Phase One Agreement. We have been regularly engaging with China using the extensive consultation processes established by the agreement to discuss China’s implementation progress and any concerns as they arise. In addition, the United States and China have also held numerous technical-level meetings. We will continue to stay in close touch with U.S. stakeholders on their concerns to ensure that China adheres to the obligations set forth in the agreement.

Senator Toomey

Question 1

The United States-Mexico-Canada Agreement (USMCA) added several positive improvements to the North American Free Trade Agreement’s (NAFTA) intellectual property (IP) chapter on geographical indications, patents, and more. Initially, it also included ten years of IP protection for biologics - one of the most promising categories of new medicines.

These protections were trying to level the playing field for U.S. companies by making Mexico protect U.S. companies’ IP. However, at the last minute, House Democrats eliminated this provision in closed-door negotiations. This removal went against decades of U.S. trade policy supporting expanding IP protection for American technology-based businesses. Trade agreements should encourage the development of the American biologics and innovation market, instead of allowing other countries to rip us off.

- *Your job charges you to be “a vigorous advocate on behalf of United States innovation and intellectual property interests.” Does renegotiating trade agreement text to remove pre-existing IP protections for biologics benefit U.S. innovation interests?*

Answer: I understand how protecting U.S. innovation through intellectual property rights is key to our nation's economic success. If confirmed, I look forward to consulting with you to better understand your concerns regarding intellectual property protections for biologics.

- *As Chief Innovation and Intellectual Property Negotiator, you will have significant influence in negotiating the intellectual property (IP) provisions of any future FTAs. Do you agree that we should include IP protections for biologics in future FTAs?*

Answer: If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests and will consult closely with this Committee on future trade agreement negotiations.

Question 2

Both Republicans and Democrats agree that we must promote technological innovation and encourage the development of important, high-knowledge industries based in the United States. Intellectual property protections are an indispensable part of attracting these critical industries to our country.

The Biden Administration has stated that they want to pursue a “worker-centered” trade policy. IP-intensive industries employ over 45 million Americans, in high-paying domestic jobs. The

average worker in an IP-intensive industry earned about 46% more than his counterpart in a non-IP industry.

- *Do you believe that protecting IP-intensive industries is beneficial for U.S. workers?*

Answer: I understand how protecting U.S. innovation through intellectual property rights is key to our nation's economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests.

Senator Lankford

Question 1

As we discussed in your nomination hearing, your role will be to protect American innovation from bad actors seeking to steal our intellectual property and undercut U.S. economic leadership.

- A. *Do you understand the concerns that members of this Committee have expressed about the TRIPS waiver?*

Answer: Yes. If confirmed, I will consult with Members of this Committee to further understand the concerns that they have expressed.

- B. *In your assessment, what potential pitfalls (if any) does a waiver of TRIPS protections for COVID-19 vaccines pose to future pharmaceutical and biomedical innovation?*

Answer: If confirmed, as I work with members of the World Trade Organization, I will be clear-eyed about potential risks that you have raised. I am committed to keeping Congress fully informed of developments in the process in the WTO.

- C. *Do you believe it is in the national interest for China and Russia to have access to the proprietary information behind the COVID-19 vaccine? Why or what not?*

Answer: I understand how protecting U.S. innovation through intellectual property rights is key to our nation's economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests.

- D. *Since your portfolio exclusively deals with protecting American innovation and intellectual property, can I count on you to push back against the pursuit of TRIPS waivers - even if others in leadership at USTR are advocating for a waiver of IP protections?*

Answer: If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests. I am committed to keeping Congress fully informed of developments in the process in the WTO.

Question 2

Business leaders in Oklahoma agree the biggest foreign threat to American innovation is China. China's regulatory structures force U.S. businesses to choose between access to the Chinese

market and protection for their intellectual property. Beijing uses its market access as leverage to coerce mandatory disclosure of IP and/or full technology transfers to Chinese entities. The CCP also engages in strategic acquisitions and heavy subsidies to compete with American IP, as well as cyber intrusions to steal U.S. trade secrets and other confidential business information.

A. *How do you intend to protect American IP and challenge the PRC's economic and technological predations?*

Answer: As Ambassador Tai made clear in her October 2021 speech on the U.S.-China trade relationship, the United States continues to have grave concerns about the impact of China's state-led, non-market economy, including Chinese practices such as industrial planning and targeting and cybertheft. Addressing these issues remains a top priority in our work with China. In addition, I understand how protecting U.S. innovation through intellectual property rights is key to our nation's economic success. If I am confirmed, one of my first priorities would be to open up the toolbox that we have at USTR, evaluate the existing tools, decide whether new tools are needed, consider where they can be used most effectively, and consult with the Committee on how we do that.

B. *Given that China and Taiwan both recently submitted requests to join CPTPP, do you believe China's record on IP protections meet the standard required by CPTPP?*

Answer: I understand that in the 2021 Special 301 Report, USTR noted that severe challenges persist in China because of informal pressure and coercion to transfer technology to Chinese companies, continued gaps in the scope of IP protection, incomplete legal reforms, weak enforcement channels, and lack of administrative and judicial transparency and independence.

C. *How do you intend to leverage US influence in entities like WIPO to advance American leadership towards strong IP protections?*

Answer: If confirmed, I will work with my U.S. government interagency counterparts on how to best leverage U.S. influence at international organizations, including WIPO, to advance U.S. innovation and intellectual property interests.

Question 3

In the "Phase One" trade agreement negotiated by President Trump's team, China committed to referring all cases of IP theft to criminal authorities, establishing criminal penalties for trade secret misappropriation, and establishing a mechanism for resolving pharmaceutical patent disputes.

A. *In your assessment, has China kept its commitments on the IP provisions of the Phase One agreement?*

Answer: China has taken a number of steps to implement its commitments under the Intellectual Property Chapter of the Phase One Agreement. The United States will

continue to closely monitor China's progress in implementing its commitments under that chapter of the agreement.

B. What tools do you plan to utilize to enforce compliance – and punish noncompliance – with the terms of this agreement?

Answer: The United States has been regularly engaging with China using the extensive consultation processes established by the Phase One Agreement to discuss China's implementation progress and any concerns as they arise. In addition, the United States and China have held numerous technical-level meetings. We will continue to stay in close touch with U.S. stakeholders on their concerns to ensure that China adheres to the obligations set forth in the agreement.

C. Please describe what your priorities would be in a potential "Phase Two" agreement with China in IP.

Answer: We do not have plans to negotiate a Phase Two Agreement. We are focusing on enforcing the terms of the Phase One Agreement while also raising with China our concerns with its state-centered and non-market trade practices that were not addressed in the Phase One deal. I intend to use the full range of tools we have and develop new tools as needed to defend American economic interests from harmful policies and practices.

Question 4

President Trump's team completed seven rounds of FTA negotiations with the United Kingdom, but the Biden Administration has not resumed those negotiations or sought to conclude them.

Do you agree that the UK is a valuable trading partner with strong intellectual property standards on par with US standards, and that it would be in the national interest to complete these negotiations and ratify a Free Trade Agreement?

Answer: I understand that Ambassador Tai is currently in the process of reviewing the state of the UK negotiations and that any path forward would be done in consultation with Congress, and will reflect the Biden Administration's commitment to a trade policy that is worker-centered. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests, including when conducting trade negotiations.

Question 5

The Biden Administration has displayed a troubling lack of initiative in pursuing new trade agreements, either bilaterally or multilaterally, with allies.

A. Do you agree that the most effective way to isolate the impact of China's forced technology transfers and other IP theft is to establish agreements with other nations on IP protections?

Answer: If I am confirmed, one of my first priorities would be to open up the toolbox that we have at USTR, evaluate the existing tools, decide whether new tools are needed, consider where they can be used most effectively, and consult with the Committee on how we do that. I will also consult closely with this Committee on future trade agreement negotiations.

B. How will you use your position to apply pressure on China to choose between changing its practices or facing a degree of economic isolation?

Answer: As Ambassador Tai highlighted in her October speech on the U.S.- China trade relationship, the United States is currently raising its concerns with China's non-market approach to trade and the economy directly with China. Where China does not make needed changes, we are prepared to use all tools at our disposal, including the development of any new tools that may be necessary, to seek to pressure China and protect U.S. interests. I will support that work in any way possible.

C. What would you recommend to the President and to Ambassador Tai as the appropriate next step to strengthen IP protections among allies and partners?

Answer: I understand how protecting U.S. innovation through intellectual property rights is key to our nation's economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests, including through outreach to allies and partners, and look forward consulting further with Members to prioritize the most urgent issues.

D. What role should new trade agreements play in securing strong IP protections with our trading partners, particularly countries in the Indo-Pacific with whom we don't have an FTA?

Answer: If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests and will consult closely with this Committee on any future trade agreement negotiations, including with countries in the Indo-Pacific.

Senator Young

Question 1

Intellectual property (IP) protections play a vital role in the American enterprise. It is because of IP protections that our businesses stand out and lead the world in innovation. However, our businesses rely on market access to prosper and due to the unfair concessions they have to make, particularly at the hands of China, many jobs and business models are under threat.

(a) How will you seek to hold China accountable for unfair actions, and advocate for critical IP protections?

Answer: If I am confirmed, one of my first priorities would be to open up the toolbox that we have at USTR, evaluate the existing tools, decide whether new tools are needed,

consider where they can be used most effectively, and consult with the Committee on how we do that.

(b) *Do you believe there is a sense of urgency to address instances of malpractice?*

Answer: I understand how protecting U.S. innovation through intellectual property rights is key to our nation's economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests and look forward consulting further with Members to prioritize the most urgent issues.

(c) *Do you believe there is value in the United States setting forth principles to promote integrity within digital trade?*

Answer: Our approach to digital trade will be to pursue growth that is inclusive, fair, sustainable, and advances the quality of life of human beings.

Senator Barrasso

Question 1

Strong intellectual property protections in the United States are critical for the invention and manufacturing of innovative medicines and medical technologies. It is not a coincidence, therefore, that the United States leads the world both in terms of inventing and manufacturing these products and providing intellectual property protections that incentivize innovation. I remain deeply concerned about the Administration's efforts to waive IP protections for COVID vaccines. I think this is a mistake and one that should be corrected.

How do you intend to protect American intellectual property abroad and ensure that our trading partners value the important contributions of America's innovative industries;

Answer: I understand how protecting U.S. innovation through intellectual property rights is key to our nation's economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests and will consult with Members on how to best do that.

And do you think the pursuit of a Trade Related Intellectual Property Rights waiver will impact future investment and research in the United States?

Answer: There is this tension between the need to reward innovation through intellectual property, and the equally important objective of being able to ensure access to the products of that innovation. It has been and will continue to be a struggle to get the balance right. And if confirmed, I'd work very closely with you and others on the committee to make sure that we're getting as close to that balance line as we can.