

SENATE FINANCE COMMITTEE

Hearing to Consider the Nomination of Maria L. Pagan, of Puerto Rico, to be a Deputy United States Trade Representative (Geneva Office), with the rank of Ambassador

Hearing Date: October 26, 2021

Questions for the Record

Chairman Wyden

Question 1:

Ms. Pagán, the WTO dispute settlement system has played an important role in holding Member countries accountable for their trade policies, but the Appellate Body has fallen short of its promise by overstepping its mandate and engaging in judicial overreach -- hampering the application of U.S. trade enforcement laws, and leaving American workers and businesses to pay the price.

I believe the future of the WTO rests with achievable reforms that create trust in the Appellate Body as a functional dispute settlement mechanism. The Appellate Body can no longer disregard the rules that apply to it and the imbalance in the application of those rules.

Ms. Pagán, if confirmed, how will you ensure that Appellate Body reform is a top priority for the WTO?

Answer: I share the longstanding, bipartisan concerns expressed by the Congress about the Appellate Body. We have seen how Appellate Body overreach has undermined and weakened the WTO's ability to negotiate and monitor. Appellate Body overreaching has also shielded China's non-market practices and hurt the interest of U.S. workers and businesses. Reforming the dispute settlement system in a way that addresses these problems is a top priority. But as Ambassador Tai said in her recent keynote speech in Geneva, reforming dispute settlement is not about restoring the Appellate Body for its own sake or going back to the way it used to be.

Instead, the dispute settlement system can and should better support the WTO's negotiating and monitoring functions. We want a WTO that serves as a venue for discussion and negotiations, rather than being imbalanced towards dispute settlement or litigation.

We have already started engaging with some WTO Members, and we intend for the reform conversation to be inclusive so we can approach the question of WTO reform in a holistic way. A WTO dispute settlement system that helps to shield China's non-market distortions is not in the best interest of any WTO Member.

Ranking Member Crapo

Question 1: Special and Differential Treatment

One of the major elements for reform at the World Trade Organization (WTO) must be reform of “special and differential treatment” (S&D)—exemptions and flexibilities from WTO obligations intended to assist developing countries. The fact that WTO rules allows countries to decide for themselves whether they are developing—and thus eligible for S&D—undermines the effectiveness of the WTO system. Specifically, it undercuts the utility of S&D for countries that truly deserve such flexibilities and enable major powers to avoid taking on meaningful commitments. In particular, it defies belief that China—the second largest economy in the world and a country classified by the World Bank as an upper-middle income country—claims it is a developing countries entitled to S&D.

If confirmed, do you commit to pushing WTO Members to adopt objective criteria regarding whether a Member is developing or not, and thus eligible for S&D?

Answer: If confirmed, I will push WTO Members to establish objective criteria for determining whether a WTO Member may avail itself of blanket “special and differential treatment” (S&D) in current and future WTO negotiations. The United States is actively engaged in the discussion on how to reform special and differential treatment and would like it to be part of the overall reform agenda at the WTO.

Question 2: Sanitary and Phytosanitary Measures

One of the most important WTO agreements is the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The SPS Agreement facilitates agricultural market access by ensuring that measures taken to protect human, animal or plant life or health are supported by scientific evidence. Various WTO Members have sought to undermine the effectiveness of the SPS Agreement including by failing to notify their SPS measures to the WTO and making spurious claims about the SPS Agreement’s rules, including in the WTO SPS Committee.

If confirmed, will you be a vigorous champion for ensuring the science based disciplines in the SPS Agreement are not compromised, and effectively enforced?

Answer: USTR is committed to ensuring that our trading partners live up to their WTO commitments, including their WTO obligation to base their SPS measures on scientific principles, and to base measures on international standards where they exist, or on risk assessments. I am committed to hold accountable countries that establish non-science based measures that are inconsistent with international standards, or that establish unjustified barriers to safe U.S. agricultural products.

Question 3: Dispute Settlement

During the hearing, you noted that WTO rules “needed to be enforced.” I agree. The impasse over the Appellate Body has brought dispute settlement to a stand-still—and thus rules are not being enforced. I appreciate that reforming the Appellate Body will not happen overnight, but neither does litigation before a WTO panel, which can take over a year before there is anything

to appeal at the Appellate Body. We have a number of potential disputes we could initiate at the WTO while the United States tries to find a way forward on the Appellate Body.

Do you agree that the United States needs to start moving forward on WTO enforcement against foreign trade barriers concurrently with reform of the Appellate Body?

Answer: I believe the United States should continue to bring disputes to the WTO when we consider WTO dispute settlement to be the most effective way to enforce U.S. rights under the WTO covered agreements. The objective of dispute settlement is to facilitate mutually agreed solutions between Members. Dispute settlement remains capable of supporting that objective for the United States and other WTO Members, irrespective of the status of the Appellate Body. When it is appropriate to do so, we should continue to use WTO dispute settlement to ensure that our trading partners live up to their WTO commitments.

Senator Menendez

Question 1

Article 23.3.1(b) of the USMCA states

“1. Each part shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Rights at Work:

(b) the elimination of all forms of forced or compulsory labor;”

Given this provision, as I raised in my questions during the hearing, is human trafficking a violation of the USMCA?

Answer: Under the USMCA, one right that each Party is required to maintain in its statutes, regulations, and practices is the elimination of all forms of forced or compulsory labor. Human trafficking of anyone to Mexico is a violation of Mexico’s anti-trafficking laws and should be investigated by Mexican authorities. Human trafficking is an issue that USTR and the entire Administration take very seriously, and if confirmed, I am committed to working with inter-agency colleagues, allies, stakeholders, Members of Congress, and others to combat human trafficking.

Question 2

The chapter on Cuba in the Department of State’s 2020 Trafficking in Persons Report raised numerous concerns about the Cuban regime’s foreign medical missions, including the fact that the missions subject Cuban doctors and medical personnel to human trafficking and forced labor conditions.

Do you agree with the Department of State’s assessment about Cuba’s foreign medical missions?

Answer: USTR is a member of the President's Interagency Task force on Human Trafficking. USTR regards the Department of State's Annual Trafficking in Persons Report as an important tool to inform USG efforts to combat human trafficking in the United States and abroad. We are aware of the indicators of forced labor as they relate to Cuba's foreign medical missions and will continue to work with the Department of State and other interagency partners on this issue.

Question 3

Given provisions in USMCA on forced labor and what is known about the forced labor conditions present in the Cuban regime's foreign medical missions, *does Mexico's decision to host a Cuban medical mission amount to a violation of USMCA?*

Answer: Human trafficking is an issue that USTR and the entire Administration take very seriously, and if confirmed, I am committed to working with inter-agency colleagues, allies, stakeholders, Members of Congress, and others to combat human trafficking and forced labor. We are aware of the indicators of forced labor as they relate to Cuba's foreign medical missions and will continue to work with the Department of State and other interagency partners on this issue.

Senator Thune

Question 1

In December, China will have been a member of the World Trade Organization for 20 years. In that time, China has become the WTO's largest trading nation and the second largest economy in the world – all while doubling down on a state-led, non-market approach to trade.

It makes no sense that a country like China should continue to be able to self-designate as a developing country at the WTO to gain unfair trade advantages, especially as the Chinese Communist Party takes advantage of actual developing countries through the predatory lending of the Belt and Road Initiative. I have introduced a bipartisan resolution to address this issue at the WTO, and I think this is a commonsense reform to strengthen the global trading system.

Do you believe that China declaring itself as a developing country at the WTO misidentifies its economic stature and corrodes trust in the rules-based trading system?

Answer: Yes, the United States is very concerned that China continues to seek developing country status at the WTO, including in ongoing negotiations. We have made that clear to China on several occasions, most recently during China's October 2021 Trade Policy Review at the WTO.

Question 2

One of the problems the U.S. faces at the WTO is that a lot of countries are not transparent and we don't know what policies they have in place that might affect U.S. agriculture exports.

If confirmed, what actions would you take to make sure that members are living up to their agricultural trade commitments?

Answer: Transparency is key to being able to understand the global agricultural trade landscape and the challenges facing U.S. agricultural exports. In addition, without adequate transparency we will be unable to make progress in agricultural trade reform efforts. If confirmed, I will work closely with like-minded Members to improve transparency, which is widely recognized as lacking in the WTO. I will use a variety of tools, including counternotifications, formal WTO Committee Q&A processes, and bilateral engagement to bring more clarity regarding Members' policies and practices that may impact U.S. agricultural exports. In addition, I will continue to press for reform of the WTO's negotiating and monitoring arms, including by enhancing U.S.-led efforts to improve the operation and effectiveness of notification requirements in order to facilitate greater transparency in the WTO.

Senator Portman

Question 1:

One of the challenges facing the World Trade Organization (WTO) is the breakdown in the WTO's ability to facilitate the negotiation of new agreements, especially to write new rules to constrain non-market behavior.

In my WTO resolution with Senator Cardin, I articulated a set of proposed reforms to the WTO aimed at addressing the loss of the negotiating function. One of these reforms was the use of plurilateral agreements without Most Favored Nation (MFN) requirements.

Do you agree that non-MFN plurilateral agreements can be a helpful tool to work with like-minded countries to restore purpose and relevance to the WTO?

Answer: The United States believes that plurilateral negotiations at the WTO can be a useful means to advance issues of interest to Members and to keep the WTO relevant. We do not view plurilateral negotiations and outcomes as undermining multilateral ones. Rather, plurilateral initiatives can foster new ideas and creative, flexible approaches that can build momentum toward multilateral outcomes.

Question 2:

Alongside the decrease in successful negotiation, there has been an increase in litigation at the WTO. This has led to concerns about activism by the Appellate Body (AB). In an attempt to stop activism by the Appellate Body both the Obama and Trump administrations blocked new appointments to the AB. The loss of the AB is problematic, yet we should also not restart the AB without correcting the long-standing flaws that the United States has articulated.

Will you commit to working with WTO members to address AB activism in an effort to restart the Appellate Body? How do you propose WTO members can work together to reduce judicial activism by the AB?

Answer: I share the longstanding, bipartisan concerns expressed by the Congress about the Appellate Body. We have seen how Appellate Body overreaching has undermined the WTO's functioning and weakened the WTO's negotiating and monitoring functions. At the same time, Appellate Body overreaching has shielded China's non-market practices and hurt the interest of U.S. workers and businesses. Reforming the dispute settlement system in a way that addresses these problems is a top priority. But as Ambassador Tai said in her recent keynote speech in Geneva, reforming dispute settlement is not about restoring the Appellate Body for its own sake or going back to the way it used to be.

Instead, the dispute settlement system can and should better support the WTO's negotiating and monitoring functions. We want a WTO that serves as a venue for discussion and negotiations, rather than being imbalanced towards dispute settlement or litigation.

We have already started engaging with some WTO Members, and intend for the reform conversation to be inclusive so we can approach the question of WTO reform in a holistic way. A WTO dispute settlement system that helps to shield China's non-market distortions is not in the best interest of any WTO Member.

Senator Toomey

Question 1

So far, the US has mainly relied on unilateral tariffs under Section 301 to push for market-oriented reforms to the Chinese market – but these measures hurt Americans, while not having much effect on Chinese trade practices. Instead of unilateral measures, the US has the option of working with key allies and utilizing the WTO rules to encourage China to adopt reforms. While the WTO needs reform in some key areas, the United States has previously utilized the WTO to win a significant number of cases against China – especially as the complainant, but also as respondent. Uncovering China's WTO violations is challenging but possible, and the US can use the WTO to hold China accountable, particularly in relation to the areas of intellectual property protection, forced technology transfer, and subsidies.

- *How can the US better utilize the WTO dispute settlement system in addressing the challenges with China's non-market trade policies?*

Answer: Ambassador Tai recently underscored her intent to use the full range of tools we have, but also to develop new tools as needed to defend American economic interests from harmful policies and practices, which include China's unfair economic practices. I believe the United States should continue to bring disputes to the WTO when we consider WTO dispute settlement to be the most effective way to enforce U.S. rights under the WTO covered agreements. When it is appropriate to do so, we should continue to use WTO dispute settlement to address WTO-inconsistent measures of our trading partners – including China.

However, even when we have secured victories in our disputes against China, we have seen that China's follow-through was inconsistent and that it did not change the underlying policies. At the same time, we have seen how Appellate Body overreaching has shielded

China's non-market practices and hurt the interest of U.S. workers and businesses. This overreaching by the Appellate Body has undermined our ability to protect U.S. workers and businesses from those non-market practices. That is why reforming the dispute settlement system in a way that addresses these problems is a top priority. A WTO dispute settlement system that continues to shield China's non-market distortions is not in our interest.

- *For those areas of contention that are not well covered by WTO rules, how can the United States work with our allies within the WTO to develop new rules?*

Answer: To protect ourselves against the damage China continues to inflict through its non-market practices – including, among other things, through industrial planning and targeting, preferential treatment of state-owned enterprises, massive subsidization, forced technology transfer, cybertheft and inadequate intellectual property enforcement – we need to be prepared to deploy all tools and explore the development of new ones, including through collaboration with other economies and countries. We are already engaging with allies to address China's harmful non-market policies and practices.

Additionally, in the G7, G20, and at the WTO, we are discussing market distortions and other unfair trade practices, such as the use of forced labor in the fisheries sector, and in global supply chains, and the use of non-market financing. We will continue to work closely with our allies and like-minded partners towards creating a more level playing field in the 21st century, including by developing new tools and negotiating new rules where appropriate.

- *What are the limits of the WTO in dealing with China, and how can the US help facilitate reforms to strengthen it?*

Answer: The consensus nature of the WTO limits our ability to forge new rules in that forum that would address challenges raised by China's embrace of state capitalism and its litany of unfair trade practices. Moreover, over time, the core functions of the WTO – monitoring, negotiating, and dispute settlement – have become imbalanced towards dispute settlement and that imbalance towards litigation has advantaged China. Dispute settlement was never intended to supplant negotiations, yet China has been able to get around the hard part of diplomacy and negotiation by securing new rules through litigation. At the same time, Appellate Body overreaching has undermined the WTO's functioning and weakened the WTO's negotiating and monitoring functions. This imbalance has harmed U.S. interests and advantaged China, helping to shield its non-market distortions. Efforts to reform the dispute settlement system – and bring about WTO reform more generally – must address these problems. Over time, the core functions of the WTO – monitoring implementation of existing commitments, negotiating new commitments, and dispute settlement – have become imbalanced towards dispute settlement and that imbalance towards litigation has advantaged China.

Question 2

There have been two recent cases at the WTO that have challenged the broad applicability of the General Agreement on Tariffs and Trade (GATT) Article XXI, the “national security exception” in the WTO, as well as Article 73 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

A 2020 WTO ruling in a case brought by Qatar against Saudi Arabia stated that Saudi Arabia cannot use “national security” (TRIPS Article 73) as an excuse for failing to protect the intellectual property of Qatari rights holders from piracy of their broadcast rights for sports, movies, and television programming.

Additionally, a 2019 WTO ruling on a case between Russia and Ukraine clarified the limits of “national security” as a defense for breaking WTO rules against unjustified barriers to trade, stating that any such claim should be “objectively” true, relating to weapons, war, fissionable nuclear materials or an “emergency in international relations”. The panel concluded that governmental actions for which a national security exception is claimed must “meet a minimum requirement of plausibility in relation to the proffered essential security interests.”

However, the Trump Administration disagreed with both rulings claiming that measures taken by members for the purposes of national security are non-justiciable and cannot be reviewed by a WTO dispute settlement panel – siding with Russia and Saudi Arabia in the aforementioned disputes.

- *Do you believe that actions taken under GATT Article XXI or TRIPS Article 73 are reviewable by the WTO? If not, please explain why.*
- *Do you believe that WTO members should explain a rationale for why they are invoking GATT Article XXI/TRIPS Article 73, or are these provisions fully “self-judging”?*

Answer: Since the negotiation of the GATT in 1947, through the establishment of the WTO in 1995, and to the present day, the United States has maintained a consistent position: Issues of national security are political matters not subject to review or capable of resolution by GATT/ WTO dispute settlement. Every Member of the WTO – including the United States – retains the authority to determine for itself those matters that it considers necessary to the protection of its essential security interests, as is reflected in the text of Article XXI of the GATT 1994. In other words, Article XXI(b) of the GATT 1994 and Article 73(b) of TRIPS – which mirrors Article XXI(b) – are self-judging. That was the U.S. position during GATT 1947 negotiations, and in 1949, when the United States invoked Article XXI(b) in a dispute with Czechoslovakia. That was also the U.S. position in 1982, when the European Communities and its member states, Canada, and Australia invoked Article XXI to justify their application of certain measures against Argentina. The United States also expressed similar views in 1985, after Nicaragua asked the GATT Council to condemn a U.S. embargo and to request that the United States revoke these measures immediately.

Article XXI(b) provides that “[n]othing in this Agreement shall be construed to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests.” Fundamentally, Article XXI(b) is about a Member taking an action “which it considers necessary”. Whether the Member “considers” that action necessary for protection of the acting Member’s essential security interests is a subjective question. The text also specifies that it is “its essential security interests”—the Member’s

in question—that the action is taken for the protection of. In identifying such security interests, therefore, it is the judgment of the Member that is relevant. Only a Member like the United States – and not WTO adjudicators – can determine for itself what comprises that Member’s essential security interests. Therefore, a WTO panel may not second guess a Member’s determination of what it considers necessary for the protection of its own essential security interests. Nor may a Member be required to furnish reasons for or explanations of an action for which Article XXI is invoked. While a Member invoking Article XXI may nonetheless choose to make information available to other Members, in the absence of language imposing a requirement to furnish reasons, no such obligation may be imposed on a Member through dispute settlement.

Senator Lankford

Question 1

As our Ambassador to the WTO, you’ll be joining the negotiations that the Biden Administration is supporting regarding the waiver of TRIPS protections for COVID-19 vaccines.

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. Are there any elements of India and South Africa’s request that you would consider a non-starter or a red-line in your negotiations?

Answer: If confirmed, I look forward to hearing more from Members about concerns about specific proposals and will be clear eyed about the potential risks.

D. 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 believe strongly in intellectual property protections and the importance of safeguarding American innovation from illicit acquisition. If confirmed, as I work with members of the World Trade Organization, I will be clear-eyed about potential risks that you have raised.

Question 2

My primary frustrations with WTO litigation in recent years have been the slow pace of the dispute settlement process, as well as instances of judicial activism by the Appellate Body that disadvantage U.S. interests.

A. *What are your ideas to speed up the dispute settlement process at the WTO and how do you plan to build consensus in Geneva towards that end?*

Answer: There have been longstanding, bipartisan concerns with the way that the dispute settlement system has been functioning and for years the United States has been saying there needs to be a course correction. The objective of the dispute settlement system is to facilitate mutually agreed solutions between Members, yet over time, it has become synonymous with litigation that is prolonged, expensive, and contentious. Reforming dispute settlement requires finding ways to create more opportunities for disputing parties to come together and be incentivized to solve the problem instead of prolonging litigation for its own sake. We want a WTO that serves as a venue for discussion and negotiations, rather than being imbalanced towards dispute settlement or litigation. For years, Appellate Body overreaching provided WTO Members with the wrong incentives and worsened that imbalance. We have already started engaging with some WTO Members, and we intend for the reform conversation to be inclusive so we can approach the question of WTO reform in a holistic way.

B. *What specific reforms is this Administration seeking to the Appellate Body before it begins providing consent to Appellate Body vacancies?*

Answer: This Administration shares the longstanding, bipartisan concerns expressed by the Congress about the Appellate Body. I believe the WTO must undertake fundamental reform if the dispute settlement system is to remain viable and credible. We have seen how Appellate Body overreaching has undermined the WTO's functioning and weakened the WTO's negotiating and monitoring functions. At the same time, Appellate Body overreaching has shielded China's non-market practices and hurt the interest of U.S. workers and businesses. Reforming the dispute settlement system in a way that addresses these problems is a top priority. But as Ambassador Tai said in her recent keynote speech in Geneva, reforming dispute settlement is not about restoring the Appellate Body for its own sake or going back to the way it used to be. A WTO dispute settlement system that continues to shield China's non-market distortions is not in our interest.

Senator Young

Question 1

In your opening statement, you mentioned that the WTO needs to be reformed in order to stay relevant for the future. However, there are limits as to what the WTO can and should do regarding various trade and non-trade issues. If the role of the WTO is too weak, then major markets will likely continue to react unilaterally. But if the organization is too strong, it may become overstrained and overbearing on major markets.

(a) *In your opinion, what do you believe are the key issues surrounding WTO reform?*

Answer: The reality of the WTO today is that the organization does not match the ambition of its goals. The WTO has rightfully been accused of being insulated from reality, slow to recognize global developments, and not grounded in the experiences of working people. To build a more viable and durable multilateral trading system, reform is needed throughout the organization. This includes working to address problems that have undermined the negotiating function, including certain Members' lack of transparency and unwillingness to make contributions commensurate with their role in trade and the global economy. It also includes efforts to revitalize the underappreciated monitoring and deliberating function, where Members increasingly are not responding meaningfully to concerns raised with their trade measures. Further, it involves fundamental reform to dispute settlement, which has been used to supplant the negotiation of new rules through prolonged and contentious litigation, rather than to facilitate mutually agreed solutions between Members.

(b) Do you believe the WTO should create a new system of governance with new rules or focus on greater policy coherence with stronger enforcement?

Answer: I see a need for reform in all three pillars of the WTO, so that the organization can achieve its founding goals: trade that raises living standards, ensures full employment, pursues sustainable development, and protects and preserves the environment. Refocusing on these goals requires that Members deliberate issues and monitor compliance with existing rules; negotiate new rules that respond to the issues we face today, such as the need to protect our planet, address widening inequality, and increase economic insecurity; and have opportunities to reach mutually agreed solutions to the issues between us.

Question 2

One of the more troublesome issues with the WTO is its inadequate methods for addressing the challenges that China presents in regards to IP protections, excessive subsidies, and the predatory practices of state-owned enterprises.

If confirmed, how do you plan to work with Ambassador Tai on these concerns when negotiating new WTO rules that address China's predatory practices?

Answer: In a recent speech, Ambassador Tai underscored her intent 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, which include China's unfair economic practices you mentioned. As part of that approach, we will continue to work through multilateral channels, as well as bilateral and regional channels, to cooperate with like-minded partners who share our strong interest in ensuring that the terms of competition are fair. I intend to work with other WTO members to rebuild confidence in the system and boost motivation for creating a more level playing field in the 21st century, including by negotiating new rules where appropriate.

Question 3

Since the debate on WTO reform started, China has been proactively engaged. It continues to give the portrayal of guardian status among the global trading system, but China's pattern of

vague commitments and adverse actions against the United States and like-minded nations speaks otherwise.

(a) *In your opinion, what role does China play – or should it be playing – in reforming the WTO given its economic weight in the world economy?*

Answer: China is the world’s largest trader in part because of the benefits that WTO membership has provided. When China acceded to the WTO 20 years ago, WTO Members expected that the terms set forth in China’s Protocol of Accession would permanently dismantle existing Chinese policies and practices that were incompatible with an international trading system expressly based on open, market-oriented policies. But those expectations have not been realized. The United States will continue to use all available mechanisms to move China to uphold its WTO obligations.

(b) *Can the WTO be reformed to accommodate two different economic regimes – especially with China’s stance to safeguard its system of state capitalism?*

Answer: The Administration is committed to working closely with our allies and like-minded partners, including at the WTO, towards building a truly fair international trade system that enables healthy competition.

Senator Barrasso

Question 1

Members from both sides of the aisle have made it very clear that the World Trade Organization is in dire need of reform.

What specific reforms do you believe are needed in order to prevent the WTO’s appellate body from acting as a rulemaking body?

Answer: The WTO must undertake fundamental reform if the dispute settlement system is to remain viable and credible. Over time, certain WTO Members discovered they could get around the hard part of diplomacy and negotiation by securing new rules through litigation. Dispute settlement was never intended to supplant negotiations – and the reform of these two core WTO functions is intimately linked. We have seen how Appellate Body overreaching has undermined the WTO’s functioning and weakened the WTO’s negotiating and monitoring functions. At the same time, Appellate Body overreaching has shielded China’s non-market practices and hurt the interest of U.S. workers and businesses. Reforming the dispute settlement system in a way that addresses these problems is a top priority. But as Ambassador Tai said in her recent keynote speech in Geneva, reforming dispute settlement is not about restoring the Appellate Body for its own sake or going back to the way it used to be. A WTO dispute settlement system that continues to shield China’s non-market distortions is not in our interest.

Question 2

The U.S. sugar industry generates 142,000 jobs in 22 states and nearly \$20 billion in annual economic activity. These are good paying jobs and critical to the local economies in many rural and urban communities. U.S. sugar policy is critical to the health of this industry.

The current world sugar market is highly dysfunctional, driven by production and trade distorting practices employed by nearly all sugar-producing countries. It is more important than ever that the United States maintain its current no-cost sugar policy which provides a stable and predictable economic environment for U.S. producers, an environment necessary for capital investments and long-run sustainability. Then Ambassador-designate Tai indicated during the QFR process that any reforms she would pursue regarding the global sugar market would be "consistent with maintaining the current no-cost U.S. sugar policy," and that she would "work with like-minded partners to ensure that any new rules are consistent with U.S. domestic sugar goals."

Given the current challenges facing the WTO, do you believe the organization is equipped now, or can be made equipped going forward, to effectively address the full scope of underlying issues that have created the existing distortive global sugar market?

Answer: To address the full scope of these underlying issues that have created the existing distortive global sugar market, one must consider both the policies and practices that currently skirt existing WTO rules, as well as those that do not necessarily contravene WTO rules but are nevertheless distortive and detrimental to U.S. interests. I believe more work is needed to reform the WTO to properly address these issues. If confirmed, I will re-engage like-minded partners who also recognize the importance and necessity of reform of the WTO. This will be difficult work, but I remain hopeful that with proper U.S. leadership, we can achieve the necessary reform that will address such global trade distortions.

Do you agree that the U.S. should not unilaterally disarm regarding existing U.S. sugar policy until such time other countries abandon their trade distortive production and export subsidies?

Answer: If confirmed, I will support and defend the U.S. sugar program, including as prescribed in U.S. Farm Bills enacted by the U.S. Congress.

Question 3

I'm concerned about the lack of action taken to date by this administration to open new markets for U.S. ranching and agriculture products. Wyoming's farmers and ranchers take great pride in their work. Our beef, barley, sugar, grain, feed and other agriculture products are second to none. In order to showcase these products around the world, Wyoming's producers need access to international markets.

If confirmed, will you commit to fighting for fair market access for America's farmers and ranchers; and

Answer: The Biden-Harris Administration is committed to rebuilding America's international alliances and partnerships, and developing a trade policy that increases opportunity across the agriculture industry.

I know how important trade is to America's farmers and ranchers, and there are several key tools we can use to create opportunities for the agriculture industry. We can enforce our existing agreements so that our producers can fairly compete, and we can upgrade and expand existing trade frameworks to deliver market access opportunities.

Will you aggressively highlight and push back against market access barriers that disadvantage producers in Wyoming and across the country.

Answer: We will use both bilateral and multilateral tools to enforce existing agreements, and to eliminate market access barriers that disadvantage American farmers and ranchers. As Ambassador to the WTO, I will ensure that we use the WTO bodies, such as the Sanitary and Phytosanitary Committee, the Technical Barriers to Trade Committee, the Committee on Agriculture, and the Dispute Settlement Body to highlight and eliminate unfair trade barriers.

Question 4

U.S. businesses are often at a disadvantage vis-à-vis state-owned enterprises (SOEs) that are not guided by market principles. Such SOEs benefit from environmental, health and labor standards below that of publicly-traded companies. The uranium miners in Wyoming know this only too well, as U.S. mining has come to a standstill at the hands of increased imports from places like Russia, Uzbekistan and other countries where the Chinese have significant mining investments. U.S. trade policy needs a clear strategy for addressing the SOE imbalance.

Can you describe in detail how you would approach the WTO with respect to the challenges facing U.S. companies with respect to SOEs?

Answer: We have committed to use the full range of tools we have, including those of the WTO, and to develop new tools as needed to defend American economic interests from the harmful economic and trade policies and practices of others. The Marrakesh Declaration and WTO Agreement, on which the WTO is founded, begins with the recognition that trade should raise living standards, ensure full employment, pursue sustainable development, and protect and preserve the environment. We believe that refocusing on these goals can help bring shared prosperity to all. The Administration is committed to working with like-minded partners to seek to update the WTO rulebook with more effective disciplines on industrial subsidies, unfair behavior of state-owned enterprises, and other trade and market distorting practices.