

United States Senate Committee on Finance
Hearing on The President's 2019 Trade Policy Agenda and the United States-Mexico-Canada Agreement
June 18, 2019

Questions for the Record for Ambassador Robert Lighthizer

Chairman Grassley

Question 1 – USMCA De Minimis

USMCA raises Canada and Mexico's *de minimis* threshold. While these respective increases are not as high as we would have liked, it is a move in the right direction. I am concerned by rumors that the Administration is seeking the ability to reduce our own *de minimis* threshold, which has been a great boon to American small businesses, manufacturers, and ecommerce companies. There is no appetite for that in Congress.

Will you commit that the Administration will not seek to reduce our de minimis threshold as part of the USMCA ratification process, or through any other vehicle?

Answer: As noted in the Administration's submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. These consultations are underway, and I look forward to working with you and other Members on this important issue.

Question 2 – Biologics

The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA) directed the President to achieve intellectual property commitments that would ensure standards of protection that are similar to those set forth in U.S. law. With respect to regulatory data protection (RDP) for biologics, that standard of protection as set forth in the Biologics Price Competition and Innovation Act (BCPIA) is 12 years. That 12 year term had broad bipartisan support. You achieved 10 years of RDP in the United States – Mexico – Canada Agreement ("USMCA).

Wasn't this outcome necessary in order to reflect, as TPA calls for, a standard of protection that is similar to that found in US law?

Answer: In the USMCA negotiations, we followed the objectives set forth 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. As you know, the 12-year data protection term was passed as part of the Affordable Care Act during the Obama Administration. The 10-year standard in the USMCA for data protection for biologics is the closest that we have ever come in a free trade agreement to reflecting U.S. law. Notably, nothing in USMCA prevents Congress from modifying the term of data protection in the future.

Question 3 – China Negotiations/Tariffs as Enforcement

If a deal is reached with China, I understand that tariffs may be used as an enforcement tool. My own preference is that once a deal is reached, all tariffs are suspended.

If tariffs are used as an enforcement tool, will you commit that there will be Congressional consultations, hearings and public comment before deciding which tariff lines will be used for enforcement?

Answer: Tariffs have been an effective tool in our negotiations, and USTR has implemented them consistent with Congress' delegation in Section 301 of the Trade Act. USTR will continue to follow all procedural requirements for tariff remedies with respect to consultations, hearings, and public comment as set forth in the Section 301 statute.

Question 4 – China Negotiations/Rare Earths

There have been rumors that China may try to leverage its control over the rare earths market to obtain leverage in our negotiations. The United States previously won a major case along with the EU and Japan that saw China remove its prior restrictions on rare earth exports.

What steps are you taking or prepared to take in the event China tries to use its control over rare earths to improve its bargaining position?

Answer: The Administration continues to closely monitor China's trade policies and practices. Where China engages in unfair or trade restrictive conduct, we will take necessary action to address that conduct. At the same time, the Administration is taking steps to protect against the disruption of critical supply chains as a result of foreign government action or other events. In this regard, the Administration recently released a Federal Strategy to Ensure a Reliable Supply of Critical Minerals, including rare earth elements. Developed at the direction of the President, the Strategy outlines a coordinated approach by the Federal Government to reduce the Nation's vulnerability to disruptions in the supply of critical minerals.

Question 5 – China/Section 301 Exclusion Process

Americans working in businesses of all sizes have expressed concerns to me about the exclusion process for Section 301 duties. In particular, they note they have to wait months to get a decision, and struggle to understand how USTR is applying the discretionary exclusion criteria. In fact, there are exclusion requests still pending from the first tranche of duties.

What additional support does USTR need to ensure a timely and effective exclusion process, and what resources are currently focused on the exclusion process? In particular, please provide:

- (a) the number of employees(full-time equivalent) dedicated to the Section 301 exclusion process;*
- (b) an approximation of the number of hours they have spent to date establishing and administering the Section 301 exclusion process; and*
- (c) if USTR has used any funds from the Trade Enforcement Trust Fund to improve the exclusion process and, if so, the amount of such funds.*

Answer: Approximately 35 USTR attorneys, paralegals, trade analysts, and contractors with experiences in law, industrial sectors, tariff classifications, and data analysis work on the exclusion process. Additional staff, including analysts on detail from the Departments of Treasury, Commerce, and Agriculture, are assisting on the exclusions process, particularly for List 3. The majority of these personnel work on the exclusion process on a full-time basis. Furthermore, we intend to use a staffing contract that is in development to hire additional contract analysts to ensure that we can be timely and responsive to applications for exclusions.

USTR presently intends to carry out its Section 301 exclusion process at our current level of funding, including resources from the Trade Enforcement Trust Fund. Given the substantial level of resources necessary to implement the List 3 exclusion process, USTR will closely monitor the exclusion process to assess whether additional funding is necessary.

Question 6 – China/Section 301 Exclusion Process

Stakeholders have informed me that they are not receiving guidance from USTR as to what precisely satisfies the exclusion criteria. For example, what is “severe economic harm?” For a small business with limited resources, a burden of a few thousand dollars could force a difficult decision to lay off workers or shut down.

Will USTR provide additional guidance on the exclusion criteria? What does USTR consider to be “severe economic harm” when evaluating a Section 301 exclusion request?

Answer: USTR has published its guidance on the factors it considers in 84 FR 29576.

With respect to analyzing severe economic harm, we first consider the information that each requester has submitted about the effect of the additional tariffs. If appropriate, we may conduct additional research about the requestor’s size, revenues, number of employees, base of operations, and other market information.

Question 7 – Agriculture Trade with the EU

American farmers have long suffered from a number of trade barriers in the EU. Yet the EU thinks it can negotiate a deal with the United States without reaching any agreement on agriculture.

Will you vigorously pursue a deal with the European Union that addresses the many tariff and non-tariffs barriers to American agriculture exports?

Answer: EU Trade Commissioner Cecelia Malmstrom and I have discussed the scope and timing of potential trade discussions, but the EU Commission’s current negotiating mandate specifically excludes agriculture from any market access negotiations. I have been very clear with the Commissioner that a broad-based U.S.-EU trade deal must include agriculture.

Question 8 – WTO Dispute Settlement

I appreciate that we have challenges with the WTO dispute settlement system. In particular, we recognize that the Appellate Body has overreached in some instances, particularly with respect to trade remedy laws. But we’ve also had some important wins that have opened up markets.

The administration to date has not filed many WTO disputes, and it seems WTO enforcement to open new markets has fallen short.

Additionally, there are a number of problematic barriers to U.S. agriculture exports that we need to act on, including those identified in USTR’s National Trade Estimate.

Will you seriously consider launching new offensive WTO cases, including cases against barriers faced by our farmers?

Answer: The Administration is committed to vigorous enforcement action to ensure our workers, farmers, ranchers, and businesses can compete on a level playing field and obtain all the market access to which they’re entitled under our trade agreements. The WTO is one tool the

Administration uses to achieve this. At the WTO, USTR raises issues in relevant WTO committees and, if necessary, through the dispute settlement process in order to remove barriers to agricultural trade. For example, we have submitted counter notifications in the Committee on Agriculture on India's domestic support for rice, wheat, cotton and pulses. The Administration had WTO panels established to consider China's excess agricultural domestic support and its failure to administer its tariff-rate quotas (TRQs) for wheat, rice, and corn consistent with WTO rules. USTR recently prevailed in both disputes, and we will closely monitor China's implementation to ensure it brings its measures into full compliance with WTO rules. The Administration also initiated a process to reinstate Section 301 tariffs and was able to obtain agreement with the European Union on a country-specific beef TRQ allocation to the benefit of U.S. ranchers. USTR is continuously assessing agricultural issues to determine the most effective ways to advance U.S. economic interests, including those of U.S. workers, farmers, ranchers, and businesses.

Question 9 – WTO Appellate Body

The Appellate Body will no longer have a quorum by mid-December 2019. I support the Administration in seeking WTO reform. However, many of our trading partners are now suggesting we have not presented actual demands for reform. They allege we simply want the system to shut down.

Please identify what actions you have taken to date to secure meaningful reforms to the WTO Appellate Body, what you are seeking from other WTO members, and how you would like those actions to be executed.

Answer: The Administration's steadfast position is that the WTO dispute settlement system should operate as specified in the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU). These are the rules agreed to by WTO Members in the Uruguay Round, and the rules which were approved by Congress in the Uruguay Round Agreements Act.

For over 15 years, and through multiple Administrations, the United States has repeatedly expressed concerns with the WTO Appellate Body's activist approach, which has involved overreaching on procedural issues, its interpretative approach and its findings on substantive matters. In short, the Appellate Body has failed to apply the WTO rules as written and agreed to by the United States and other WTO Members.

In 2018 and 2019, the United States made a series of statements at DSB meetings detailing the Appellate Body's disregard for the rules agreed to by the WTO Members and the Appellate Body's attempts to add to or diminish rights or obligations under the WTO Agreement. The issues addressed included the Appellate Body's disregard for the mandatory 90-day deadline for appeals,¹ allowing persons to serve on appeals after their Appellate Body term has ended,² the Appellate Body's unauthorized review of panel factual findings (including on domestic law),³ the Appellate

¹ DSU Article 17.5. Statement by the United States Concerning Article 17.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Meeting of the DSB on June 22, 2018, available at: https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB_.Stmt_.as-delivered.fin_.public.rev_.pdf.

² DSU Articles 17.1, 17.2. U.S. Statement at the August 31, 2017, Meeting of the DSB, available at: https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB_.Stmt_.as-delivered.fin_.public.pdf and U.S. Statement at the February 28, 2018, Meeting of the DSB, available at: https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb28.DSB_.Stmt_.as-delivered.fin_.public-1.pdf.

³ DSU Article 17.6. Statement by the United States Concerning Article 17.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* and Appellate Review of Panel Findings of Fact, Including

Body's issuance of advisory opinions on issues not necessary to resolve a dispute,⁴ and the treatment of prior Appellate Body reports as precedent.⁵

The United States also has been expressing deep concerns for many years with the Appellate Body's overreach in areas as varied as subsidies, antidumping and countervailing duties, standards under the TBT Agreement, and safeguards. Such overreach restricts the ability of the United States to regulate in the public interest or protect U.S. workers and businesses against unfair trading practices.

To identify a solution, it is important that WTO Members understand how it is that we have come to this point where the Appellate Body, a body established by Members to serve the Members, is disregarding the clear rules that were set by those same Members. In other words, Members need to engage in a deeper discussion of why the Appellate Body has felt free to depart from what Members agreed to. We must have that understanding in order to know how we can prevent this from happening again in the future. If WTO Members believe in a rules-based trading system, then they bear a collective responsibility to ensure that the WTO dispute settlement system, including the Appellate Body, abides by and respects those rules.

Question 10 – WTO Agriculture Subsidies Notifications

For many years now, many of our trading partners have failed to properly notify their subsidies, including agricultural market support. USTR has rightly identified this as a serious problem.

Please tell me what actions you are taking or intend to take to address this problem.

Answer: USTR is working hard to address market-distorting and unfair trade practices of certain trading partners that adversely affect U.S. farmers and ranchers. We continue to press WTO Members to submit their domestic support notifications. Recently, the United States has submitted counter notifications in the WTO Committee on Agriculture showing that India provided significant market price support, far in excess of India's self-reported levels, for certain commodities. Due to the leadership of the United States, other WTO Members have joined our efforts to promote compliance by trading partners with WTO commitments on domestic support. We will continue to press WTO Members to abide by their WTO obligations with respect to domestic support.

Question 11 - WTO: E-Commerce Negotiations

In order for a WTO agreement on e-commerce to be most impactful to American businesses, it needs to be ambitious and improve the entire e-commerce ecosystem that enables U.S. companies to access to global markets. This ecosystem includes services, data flows, transparency in regulations, and customs and trade facilitation. Impediments at the border can be a significant barrier to trade, especially for American small and medium-sized enterprises (SMEs) that rely heavily on the internet to reach customers around the world.

Domestic Law, Meeting of the DSB on August 27, 2018, *available at*: https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB_.Stmt_.as-delivered.fin_.rev_.public.pdf.

⁴ DSU Articles 7.1, 11, 17.6. Statement by the United States Concerning the Issuance of Advisory Opinions on Issues Not Necessary to Resolve a Dispute, Meeting of the DSB on October 29, 2018, *available at*: https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB_.Stmt_.as-delivered.fin_.rev_.public.pdf.

⁵ DSU Article 3.9, WTO Agreement Article IX:2.

How do you intend to make the outcomes of the e-commerce negotiations benefit all American businesses, including SMEs?

Will you focus on achieving meaningful commitments on physical trade barriers at the border as well as barriers to digital trade as the WTO negotiations unfold?

Answer: The WTO digital trade initiative will only be successful if it can deliver commercially significant outcomes for a broad range of firms and consumers in the digital sphere. SMEs would be a key beneficiary of such outcomes. We are working closely with like-minded partners to gain support for high-standard outcomes based on the USMCA Digital Trade Chapter, which we view as a model for core digital trade rules in this negotiation and in future agreements. This approach would provide significant benefits both to firms engaged in trade in physical products as well as those engaged in trade in digital products and services.

Question 12 - WTO: Moratorium on Customs Duties on Digital Transmission

Foreign governments are considering imposing tariffs on digital products and other electronic transmissions as the WTO moratorium on imposing such duties is set to expire at the end of this year.

What steps have you taken ensure that the moratorium is continued at the WTO, and that countries like Indonesia don't move forward on imposing customs duties on streaming content, digital downloads, and other content from the United States?

Answer: The WTO moratorium on customs duties on electronic transmissions has supported the growth of the digital economy for over twenty years and has been replicated in numerous bilateral and regional trade agreements. The Administration is working with a broad group of like-minded countries that are committed to pursuing a consensus for the continuation of the moratorium and to addressing the potential challenges within the WTO Membership. Such a moratorium is also part of our negotiating position in the ongoing plurilateral WTO digital trade negotiations.

Question 13 – Section 232 Exclusion Process

Stakeholders have raised with us a significant problem with the quota arrangements that USTR has negotiated in response to the 232 steel and aluminum tariffs. Specifically, even those products that the administration has determined warrant an exclusion can count against the quota, and U.S. business therefore are delaying those imports until the quota is full. This makes little sense. The exclusion was granted because an American person demonstrated insufficient domestic supply or national security interests justified the exclusion.

Will you be negotiating a resolution with the exporting countries so that it's clear that products that have been granted exclusions will not count against any quota?

Answer: The quota regime established in the proclamations issued by the President imposes no constraint on when U.S. businesses can import steel and aluminum products for which the Department of Commerce has granted an exclusion. U.S. businesses can import these products at any time, whether or not the quota for the products in question has been filled.

Question 14 – Digital Services Tax

I am deeply concerned by attempts around the world to impose discriminatory taxes on digital services provided by American companies. This is a significant 21st century barrier to trade. The President's

Agenda correctly notes that Americans are leaders in this sphere, and that many current international rules are outdated. However, I was disappointed to see nothing mentioned about what USTR will do to tackle some of the most potent threats like discriminatory taxation that targets American companies.

Please tell me what you intend to do to combat attempts by our trading partners to tax digital trade.

Answer: The Administration shares your concern that proposals by several countries to impose unilateral measures on revenues from certain digital services are deeply flawed as a matter of policy and may be designed to target U.S. companies. USTR flagged concerns with these digital services taxes (DST) in the National Trade Estimate report and continues to look seriously at all of the tools available to address such potential trade barriers. Specifically, in response to the passage of legislation by the French legislature to adopt a unilateral DST, the United States Trade Representative has initiated an investigation under Section 301 of the Trade Act of 1974 to determine whether the French DST is actionable under that provision.

Question 15 – USTR Role in OECD Accessions

The administration has pledged to support the candidacy of certain countries to accede to the Organization for Economic Cooperation and Development (OECD). The OECD accession process includes reviews of the compliance of each candidate country’s policies with OECD standards and best practices in the areas of international trade and investment. USTR has led executive branch efforts to use the OECD accession process to encourage candidate countries to improve their international trade and investment policies to comply with international standards and obligations, such as your recent efforts in the context of Colombia’s accession to the OECD.

What will be USTR’s role in U.S. participation in the processes by which “prospective Members” pursue accession to the OECD? By what means will USTR consult with Congress and U.S. stakeholders regarding USTR’s involvement in OECD accession processes? What are USTR’s positions on international trade and investment with regard to the candidacy of each current “prospective Member” of the OECD (Argentina, Brazil, Bulgaria, Croatia, Peru, and Romania)?

Answer: While USTR is the lead for the OECD Trade Committee, the Department of State is responsible for the overall U.S. position on OECD enlargement. Any decision by the OECD on its enlargement, including on which countries will next be invited to begin the OECD accession process, requires consensus of all 36 OECD Members. Through the OECD Trade Committee, USTR will engage closely with Congress and U.S. stakeholders regarding trade-related aspects of OECD accessions as prospective Members are invited to begin the accession process.

USTR, in conjunction with the Department of State and other U.S. agencies, supports the OECD’s high standards for accession. These standards – including like-mindedness, commitment to democracy, and economic openness and governance – ensure that the United States, its workers, and its businesses benefit from principles and practices that make markets fairer and more efficient. USTR is committed to ensuring that accession countries meet these standards before they join the OECD in order to ensure equal opportunities and fair treatment for American workers and businesses.

Question 16 – Brazil Ethanol TRQ

U.S. ethanol exports to Brazil are currently subject to a tariff of 20% after exports surpass 150 million liters per quarter. There is some speculation that when this tariff rate quota (TRQ) expires in early August, Brazil may change from a TRQ to a straight tariff of 20% on all U.S. ethanol exports.

What has USTR done to date and what can USTR do going forward to engage Brazil on ITS treatment of U.S. ethanol to ensure equal opportunity of exports between our two countries?

Answer: USTR and USDA have engaged extensively with Brazil since the temporary, 24-month TRQ was implemented in September 2017, including two high-level delegations to Brasilia led by USTR Ambassador Doud and USDA Under Secretary McKinney to express strong U.S. opposition to the measure. Although the 20% above-quota tariff is within Brazil's WTO bound rate of 35% on ethanol imports, the United States will continue pressing Brazil to allow the measure to expire after 24 months, as originally announced by Brazil in September 2017, and return to the free trade of ethanol between Brazil and the United States. USTR continues to engage in discussions within the Administration about the viability of the candidacies for the prospective Members you noted above.

Question 17 - China Market Access for Ethanol

China has an E10, or a 10% ethanol policy for gasoline, that is scheduled to be fully implemented by 2020. Since China is the second largest gasoline market in the world, the E10 market there represents a great opportunity for U.S. ethanol producers and corn farmers.

Has USTR raised ethanol in the ongoing trade negotiations with China to ensure the U.S. ethanol industry will have access to China's market in the future?

Answer: The United States has been negotiating with China to resolve a large number of unwarranted and longstanding trade barriers to U.S. agricultural exports. We are encouraging China to demonstrate real structural changes across a wide range of unfair policies and practices that will yield actual, verifiable, and enforceable results for American farmers, ranchers, workers, and businesses.

Ranking Member Wyden

Question 1

We have heard from this Administration that the purpose of the various tariffs is to open markets and create a level playing field for U.S. exports. And yet, markets are more closed to U.S. exporters than they have been in decades, due to retaliatory tariffs from China to the European Union to India. Further retaliation hangs over our heads if the Administration makes good on its threat to slap tariffs on Mexico over immigration, or Japan and the EU over the so-called national security threat that their U.S.-made autos inexplicably pose.

When President Trump pulled out of the TPP he promised that he would get better deals by bilaterally negotiating them. I appreciate that he renegotiated NAFTA, but the Mexican and Canadian markets were already open. Japan is willing to talk with us, but only about tariffs. And the EU will only discuss tariffs on industrial goods.

What is the timeline for the completion of comprehensive agreements with the TPP partners, including Japan, as well as the EU?

Answer: Regarding Japan, this negotiation is a high priority for the Administration, and we are working to achieve results on an initial agreement soon. At the same time, the Administration seeks to pursue other, much broader objectives for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

Members of the Committee are aware that we have not begun comprehensive tariff negotiations with the EU because the EU has not agreed to negotiate reductions in tariffs on agricultural goods. It would not be acceptable to Congress, the Administration, or our stakeholders to conclude a tariff agreement limited to industrial trade. Despite this impasse, we continue to work constructively with the EU on non-tariff barriers that impede U.S. exports to the EU. We have made some progress in these discussions, but we are not in a position to predict when we might reach any agreements. We have also intensified our collaboration with the EU on Chinese trading practices that have adversely impacted U.S. and EU firms and workers.

Question 2

While we have reviewed USTR's detailed negotiating objectives for a U.S.-Japan Trade Agreement, there also appears to have been some discussion of a tariff-only agreement which would avoid congressional approval.

Have the United States and Japan agreed to the scope of the U.S.-Japan Trade Agreement (or a preliminary U.S.-Japan Trade Agreement)?

Answer: Discussions regarding the precise scope remain ongoing. The Administration is seeking an early outcome from the negotiations to ensure, among other things, that U.S. agricultural exporters have a level playing field in terms of access to Japan's market.

Do you intend to reach an agreement that does not require Congress's approval?

Answer: As reflected in my October 16, 2018, notification of the President's intent to initiate negotiations of a United States-Japan Trade Agreement, and the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018, we are committed to working closely with Congress and to following the requirements of the Trade Priorities and Accountability Act. We

may seek to pursue negotiations with Japan in stages, as appropriate, including to ensure that U.S. agricultural exporters can compete on a level playing field in Japan.

Can you explain the value of such an agreement, if it doesn't address trade barriers, such as TBT or SPS measures that exclude or restrict U.S. agricultural products, cars, and other products from the Japanese market regardless of the applicable tariffs?

Answer: As suggested in the September 2018 Joint Statement by President Trump and Prime Minister Abe, the Administration has envisioned the possibility of a staged negotiation, with an initial, limited outcome designed, in part, to help U.S. exporters put at a disadvantage by Japan's other trade agreements. At the same time, the Administration seeks to pursue other, much broader objectives for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

Additionally, in your view, will a tariff only agreement include obligations on TRQ administration?

Answer: We plan to achieve market access in Japan for U.S. exporters in line with the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

Question 3

As you know, I don't think tariffs are an appropriate tool for addressing concerns with immigration - so I was pleased when President Trump found a reason not to impose tariffs earlier this month. However, Trump's deal with Mexico appears to call for revisiting the immigration situation in 45 days with a possible revisit to the tariff threat.

Does this mean the tariffs could be re-imposed around the time that you may be asking Congress to consider the renegotiated NAFTA?

Can you clarify what specific action or inaction may trigger the imposition of tariffs under the immigration agreement?

Answer: I am focused on getting the USMCA through Congress, and of course continue to fully support the President as he uses the tools available to him to address the border emergency. I recommend directing specific questions on addressing the emergency at the Southern Border to the White House.

Question 4

House and Senate Democrats have outlined concerns about new NAFTA's dispute settlement, labor, environment, and pharmaceuticals provisions. You have recognized these concerns and in our most recent hearing affirmed your willingness to do whatever it takes to address key concerns. House Democrats are leading the effort to find solutions through their working group process which has gained momentum in recent weeks.

Will you commit to work constructively with Congress to resolve concerns and not prematurely submit the implementing bill cutting short discussions on how to address common concerns?

Answer: As I have done throughout the negotiation of USMCA, I will consult with Congress on content and process. In particular, I am working closely with leadership in the House to ensure that we are ready with an implementing bill when the Speaker is ready to move forward.

Question 5

Mexico has now passed a significant labor law required by the new agreement and in line with constitutional reforms made during the negotiations of TPP. As you recognize, this is not the end of the story, these reforms must be meaningfully implemented and enforced. Unfortunately, given the poor track record of labor enforcement in past agreements, many Members are skeptical that the Mexican reforms will bring meaningful change.

Do you agree that labor obligations in U.S. trade agreements have not been adequately enforced in the past, and that additional enforcement tools should be brought to bear to make ensure that American workers are not undercut by the oppression of labor rights in Mexico?

Answer: I agree completely. I am committed to vigorously enforcing our trade agreements, including the labor obligations, and agree that lower labor standards in Mexico affect American workers and businesses. I also believe that the USMCA and other trade agreements must strengthen our trading partners' labor standards and ensure a level playing field for U.S. workers. The Administration worked very closely with the Government of Mexico to ensure that Mexico's labor reforms met the obligations of the USMCA Labor Chapter and Annex on Collective Bargaining. On May 1, 2019, Mexico's Congress passed legislation that complies with its USMCA labor commitments, and I will continue to work with you and other Members of Congress to discuss options and policy tools for monitoring the implementation of these important reforms and enforcing Mexico's obligations under the USMCA.

Question 6

At the hearing, you signaled a willingness to address concerns regarding the functioning of the new agreement's dispute settlement mechanism. Due to flaws in the existing agreement, no panel has been formed since the United States blocked the formation of a panel in 2001.

Can you confirm that you are willing to discuss solutions with Mexico and Canada to prevent the blocking of panels and the resolution of disputes through the dispute settlement?

Answer: Yes. I believe there is room for plus ups and I am happy to work with members to define what those should be, in order for me and my team to then engage with Mexico and Canada on this issue.

Question 7

I know that you share my concerns about a number of European countries' proposals to implement a tax on digital services. These taxes appear to be designed specifically to target American companies. France is the closest to adopting a version of the digital services tax, and could implement as soon as this summer.

We need a strong response to France in order to show other countries that we are serious about these discriminatory policies. At the March hearing, you told me that you were looking at actions that might be available under our trade agreements to address this trade barrier.

Since then, have you identified trade agreements under which we could bring a case?

If so, will you commit to bringing a timely case to enforce our rights and send a message to the other countries considering a similar tax?

Answer: The Administration is very concerned about the French Digital Services Tax (DST) bill. On July 10, I initiated an investigation under Section 301 of the Trade Act of 1974 of the French DST, as set out in the bill agreed to by the joint committee of the French National Assembly and Senate. There will be a public hearing on August 19. The investigation will determine whether the DST is actionable under Section 301. Actionable matters include where the rights of the United States under any trade agreement are being denied or where an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce. The outcome of the investigation will determine what, if any, action we will take vis-à-vis the French measure.

Question 8

The President recently returned from a state visit to the UK, where he promised that the U.S. and UK will reach a “phenomenal trade deal” after Brexit.

As you know, the UK government has announced that it will introduce a new digital services tax in April 2020. This is a tax designed to erect a new barrier to trade and to discriminate against American companies. It seems to me that we have a lot of leverage with the UK, which is eager to enter into negotiations after Brexit to shore up its trade relations.

Would you agree that we should not start trade talks until the UK agrees to drop their digital services tax?

Answer: The UK government recently published the 2019-2020 draft Finance Bill, which includes draft Digital Service Tax (DST) legislation. The UK draft DST legislation would apply a 2% tax on revenue to businesses with at least \$625 million of worldwide digital revenue and over \$31 million of UK digital sales. The draft DST legislation is subject to a public consultation period until September.

I am concerned about the potential for the UK tax proposal to unfairly target U.S. services providers, many of which are global leaders. This proposed tax will certainly be a topic of discussion with the United Kingdom.

On a related note, as you know, France will soon enact DST legislation, and I have initiated an investigation under Section 301 of the Trade Act of 1974 of the French legislation. Section 301 and related provisions of the Trade Act (codified as amended in 19 U.S.C. §§ 2411-2417) give the USTR broad authority to investigate and respond to a foreign country’s unfair trade practices. The United States will continue its efforts with other countries at the OECD to reach a multilateral agreement to address the challenges to the international tax system posed by an increasingly digitized global economy.

Question 9

In response to legitimate concerns regarding IP theft and tech transfer, the Trump Administration imposed three rounds of tariffs on \$250 billion of Chinese goods (with corresponding rounds of retaliatory tariffs placed on U.S. goods by the Chinese). Although currently on hold, tariffs on an additional \$300 billion of Chinese goods may be imposed if talks with China break down.

Tariffs have also been imposed on steel and aluminum imports from China and our allies in response to a perceived national security threat. These too have invited retaliatory tariffs on U.S. exports of agricultural and other goods by China, the EU, Russia, and Turkey and until recently by Mexico and Canada.

Recently, India announced retaliatory tariffs on U.S. products, including apples, walnuts, lentils, and almonds.

This Administration has further threatened to place tariffs on cars and car parts due to a perceived national security threat from foreign-owned car brands, and most recently, all imports from Mexico based on a manufactured national emergency. Trump truly is a “tariff man.”

What are the concrete market openings or changes in foreign country behavior on trade-related matters that have resulted from the imposition of tariffs to date with respect to China and the EU?

If talks with China break down again, how long would the administration maintain tariffs on the full range of imports from China?

Answer: With regard to China, the Administration is committed to working toward a more fair and reciprocal trade relationship with China. In the current negotiations with China, we are seeking to address a wide range of unfair trade practices, including those that support non-market forces in order to create conditions for fair competition, including through structural reforms. China should have responded to the findings in the Section 301 investigation and the U.S. tariff actions by undertaking the necessary economic and policy reforms needed to end its trade-distortive practices. Instead, China retaliated with tariffs on U.S. products. Currently, the Administration’s use of tariffs under Section 301 of the Trade Act of 1974 is providing the United States with an important source of leverage to bring China to the table to negotiate an enforceable agreement that will address China’s unfair trade practices. The Administration does not have a predetermined timetable for how long it will be necessary to leave these tariffs in place.

With regard to the EU, the tariffs imposed by the President on imports of steel and aluminum under Section 232 of the Trade Expansion Act of 1962, as amended, are based on a finding by the Secretary of Commerce that the quantity and circumstances of these imports threaten to impair our national security. We have urged partners such as the EU to work with us to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American farmers and workers.

The President’s imposition of tariffs on steel and aluminum imports has spurred several of our trading partners, including the EU, to take more aggressive action to inoculate their own markets from the pernicious effects of global excess capacity, thereby enhancing international focus on the root cause of the problem.

Question 10

Last year, when tariffs were first put in place on Chinese imports, we were told that you were imposing tariffs in such a way as to have maximum impact on China and minimal harm to U.S. purchasers and consumers. Although the new tariffs are currently delayed while talks with China resume, if those talks break down again, additional tariffs may be back on the table.

With tariffs now proposed to cover the vast majority of U.S.-China trade, do you have any room to minimize negative effects on U.S. consumers?

How are you weighing the potential impact on consumers, schools, hospitals, and other entities who might not have submitted comments to USTR?

Answer: There has been no decision with respect to the proposed additional tariffs. The President will provide his direction at the appropriate time based on the state of the negotiations with China.

Any changes in the rate of duties may affect some businesses more than others. We have tried to mitigate potential negative effects, including by undertaking a fair and transparent process through which we receive comments from as many stakeholders as we can. We have heard from over 300 witnesses during seven days of public hearing and received close to 3,000 comments regarding the proposed additional duties. We also received recommendations from interagency subject-matter experts through the Trade Policy and Staff Committee and confidential advice from the various trade advisory committees.

I will consider all these comments, recommendations, and advice before taking action on the proposed additional tariffs.

Question 11

I agree with the Administration that tough action is required to address China's practices related to forced technology transfer and intellectual property protection. That said, the significant tariffs imposed by the President have yet to yield any meaningful agreement regarding reform of China's treatment of U.S. business and IPR. Further, the proposed \$300 billion in additional tariffs will put a severe burden on U.S. families and businesses, including in Oregon.

For tranche 3 exclusion requests and comments to tranche 4, is USTR considering any of the following factors, if not please explain the reasoning:

(a) whether a business has attempted to source outside China, including in the United States, and has been unable to do so;

(b) whether a business is already paying tariffs under Section 301 and/or Section 232 and the impact of those tariffs;

(c) whether a business has taken appropriate steps to protect their IPR in China; and

(d) whether a business competes in downstream product lines with third country and Chinese producers.

Answer: USTR is considering these four issues in the context of the factors set forth in 84 FR 22564 and 84 FR 29576.

Question 12

News reports indicate that China has been developing an "unreliable entities" list of U.S. companies to blacklist from doing business in China.

Please provide any information that USTR has about that list and whether China has agreed to refrain from any actions against U.S. companies pending further negotiations.

Answer: On May 31, 2019, China's Ministry of Commerce announced that China would be creating an "unreliable entities list" that would include foreign companies and individuals that "fail to comply with market rules, deviate from the spirit of a contract, block supplies to Chinese companies for non-commercial purposes, or discriminate against Chinese enterprises." To date, China has not issued a measure implementing an "unreliable entities list."

Question 13

The President has said on numerous occasions that businesses and consumers can avoid the impact of the tariffs by purchasing goods made in the United States. They may also avoid tariffs by purchasing goods manufactured in third countries.

Has USTR analyzed whether the tariffs are benefiting third-country producers and what steps are you taking to avoid harm to U.S. producers who manufacture in China where the primary beneficiary of increased tariffs on Chinese products is third-party markets?

Answer: The imposition of tariffs can have many effects, including modifications to supply chains. I have closely followed reports of manufacturing coming back to the United States from China or going to third countries in some instances.

Question 14

In written responses to this Committee, you indicated that the aim of an agreement on currency with China is to “refrain from competitive devaluations in currency and to agree to a certain level of transparency that would be enforceable under the agreement.”

Can you clarify whether the obligations would apply to the United States, as well as China, and which obligations would be enforceable?

Answer: Ensuring that China implements its commitments in any agreement is crucial, and we are therefore determined to include an enforcement mechanism that makes China’s commitments fully enforceable and subject to responsive action by the United States in the event of non-compliance. I am happy to discuss with you any potential U.S. obligations under an eventual agreement.

Question 15

Some news reports suggest that in your talks with China you are negotiating provisions on a range of topics that will be binding on the United States. I understand you believe your authority for these negotiations is Section 301 and the agreement is intended to settle a dispute over China’s trade action. For this reason, I am concerned about the United States taking on any substantive obligations. Even if the United States is already subject to identical obligations, we have to think through the implications of giving new potential tools to China to break into our market.

Please confirm whether the United States is conditioning the lifting of tariffs on China on issues outside of the 301 report?

Given that negotiations are based on the findings of the 301 Report, what authority are you using to negotiate a broader based agreement? Are there any limitations on this authority?

Why is it appropriate to provide this quid pro quo where the United States takes on binding commitments in an agreement that is supposedly settling complaints against China?

Answer: The current negotiations with China are an attempt to reach an executive agreement that would be entered into under the existing authority of the President and USTR. Any agreement will not require changes to U.S. law. The President will provide direction at the appropriate time on whether and if any current tariffs on China should be removed.

Question 16

This Administration has touted - often with few specifics - that as part of its trade agreements, China, the EU, Mexico and others have agreed to purchase large quantities of U.S. agricultural products. Our

farmers want less state direct and state-owned enterprise involvement in trade in agricultural products; these farmers want to fairly compete on quality and price for consistent foreign customers - not be sustained from year to year by temporary government purchases.

How do foreign government commitments to purchase U.S. ag products support open and free trade in agricultural goods in the long run, particularly if our trade deals with China, Japan, or the EU are not addressing SPS, TRQ administration, or other market access restrictions that our farmers face?

Answer: Regarding China, the United States has been negotiating to resolve a large number of unwarranted and longstanding trade barriers to U.S. agricultural exports. While in an ideal world Chinese buyers would use market mechanisms, China has historically purchased many agricultural goods from U.S. producers through state-owned trading companies, including before our negotiations ever started. We are encouraging China to demonstrate real structural changes across a wide range of unfair policies and practices that will yield actual, verifiable, and enforceable results for American farmers, ranchers, workers, and businesses.

Negotiating and passing high-standard trade agreements like the USMCA is the best way to ensure our farmers have continued and expanded access to foreign markets. The USMCA is the most comprehensive and high-standard trade agreement ever negotiated, and includes a modernized SPS chapter and strong TRQ administration rules.

In addition, USTR's negotiating objectives for a U.S.-Japan Trade Agreement, released December 21, 2018, include Administration priorities in areas such as SPS and TRQ administration, and USTR remains committed to achieving those objectives with Japan.

Question 17

Last month the Department of Commerce announced it would place Huawei on its Entity List effectively banning U.S. companies from selling components to Huawei without a license and separately, an executive order was issued to bar Huawei from accessing the U.S. telecom market. By all accounts these actions are based on a legitimate national security risk created by Huawei and not just an attempt to create leverage in an ongoing trade negotiation.

Nonetheless, the Administration reversed course last week after meeting with President Xi at the G20. President Trump tweeted that China will begin purchasing large amounts of agricultural products, while the United States would remove the Entity List restrictions from Huawei as negotiations continue.

The Administration appears ready to give up our national security for literal peanuts.

Is it appropriate to involve matters of national security in trade negotiations? Can you cite past examples of national security matters being a subject of such negotiations?

Has the intelligence assessment or national security needs of the United States changed since May 21 so as to justify the reversal in position on Huawei?

Answer: As you know, Huawei is currently on the Entity List. I recommend directing any questions regarding Huawei to the Department of Commerce.

Question 18

It is my view that even if national security was on the table in the negotiations with China, trading U.S. safety for status quo exports is hardly the "art of the deal." In 2018, China purchased \$9.2 billion in U.S.

agricultural products and was the number 5 export market for U.S. agricultural products, according to USDA. This was down from \$21.4 billion in 2016, when China was the number 1 agricultural export market for the United States.

When the President touts China's proposed purchases of agricultural products, does the Administration anticipate returning to the volume of agricultural product exports maintained prior to the imposition of tariffs and retaliatory tariffs (\$21.4 billion), or does the Administration expect the trading of U.S. national security to garner greater agricultural access to China's market? If so, how much?

Answer: The United States has been negotiating with China to resolve a large number of unwarranted and longstanding trade barriers to U.S. agricultural exports. We are encouraging China to demonstrate real structural changes across a wide range of unfair policies and practices that will yield actual, verifiable, and enforceable results. The Administration has been clear in demanding that China make substantial purchases of U.S. agricultural products and remove technical and regulatory barriers that impede U.S. agricultural exports to China.

Please indicate the agricultural products which China has agreed to begin purchasing. Has China agreed to purchase products other than soybeans, such as wheat, corn, rice, tree fruit, nuts, or other specialty crops?

Answer: The United States continues to engage in conversations with China concerning purchases of agricultural products. As you know, the United States is demanding that China make substantial purchases of U.S. agricultural products, in addition to making structural changes across a wide range of unfair policies and practices.

Question 19

We understand that you have been working on a trilateral basis with Japan and the EU in undertaking measures to combat the non-market oriented policies and practices of countries such as China. The trilateral discussions also were intended to explore ways to prevent forced technology transfer and possible new rules on industrial subsidies and state-owned enterprises.

What concrete progress has been made in the trilateral discussions with the EU and Japan?

How close are you to having text to share with Congress?

What next steps are expected for the trilateral group?

Answer: The trilateral process has been useful to reconfirm our shared understanding that market-oriented conditions are fundamental to a fair, mutually advantageous global trading system. Non-market oriented policies and practices, forced technology transfer, state-owned enterprises, and industrial subsidies are critical concerns in light of China's overall non-market economic system. On each element of the trilateral discussions, the focus has been to analyze the nature of the problems in China to identify effective means to address our shared concerns. This may include individual, coordinated, or joint enforcement actions, developing shared norms on fair trade, and exploring possible new rules in those areas. Any new rules must be ambitious, high standard, and effective in curbing China's unfair practices. We will continue to work with our partners and engage with other key WTO Members with the aim of taking the work forward more broadly.

Question 20

I have long said that it is important to bring our allies along to help address China issues - particularly issues related to overcapacity - that is why I am glad the Administration has reached a deal to drop the tariffs against Mexican and Canadian steel and aluminum. However, according to some reports, Chinese steel production has actually increased since the tariffs have gone into place.

What is your assessment of the success of the tariffs on addressing China's overcapacity?

Answer: The tariffs imposed by the President under Section 232 of the Trade Expansion Act of 1962, as amended, are based on a finding by the Secretary of Commerce that the quantity and circumstances of steel and aluminum imports threaten to impair the national security. The purpose of the tariffs is to address this threat. At the same time, USTR is actively engaged with like-minded trading partners in an effort to address persistent excess capacity in China. This includes an effort to address subsidies and other non-market-oriented policies and practices that are the root cause of the problem. The tariffs have been very successful as we have seen new investment in these industries in the United States, which has resulted in the preservation and creation of jobs in these sectors.

Question 21

It is hard for me to see the national security threat created by a Camry manufactured in Kentucky or a Honda Accord manufactured in Ohio. Nonetheless, Trump's May 17th Proclamation provides you 180 days to negotiate limits on the importation of autos and auto parts into the United States on the basis of the supposed threat created by foreign-owned auto producers.

What import limits are you considering and how will you make sure these limits do not affect the ability of foreign-owned manufacturers to continue to manufacture cars here?

When does the administration intend to make the 232 Report on Autos and Auto Parts public as required under the statute?

Answer: The President's proclamation addresses imports of automobiles and certain automobile parts that are important for maintaining America's technological leadership in automotive research and development that supports national security. The President has directed me to pursue negotiation of agreements with countries that I deem appropriate to address the threatened impairment to our national security. The Administration has a longstanding policy of not negotiating in public and, at this time, we cannot comment further on the scope of these negotiations. I of course am happy to discuss this matter with you in more detail

Question 22

For more than a year this Administration has been blocking the approval for new Appellate Body Members in an effort to draw attention to concerns regarding the WTO dispute resolution system. I share your concerns, and I want to see them addressed. While your prior written responses to us claim that the "United States is at the forefront of the reform effort in Geneva," the United States to date does not appear to have put forward a written proposal on AB reform.

(1) Does the United States have a reform proposal to address the concerns outlined by the United States regarding the Appellate Body?

(2) Have you shared a plan with other Members regarding how to ensure AB Members follow the procedural rules set forth in the DSU?

(3) *The United States recently appealed findings in the Turkey Tubes dispute (DS 523). Where will a non-functioning dispute settlement system leave that case?*

(4) *What are the next steps in addressing the problems at the WTO?*

Answer: The Administration's steadfast position is that the WTO dispute settlement system should operate as specified in the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU). These are the rules agreed to by WTO Members in the Uruguay Round, and the rules which were approved by Congress in the Uruguay Round Agreements Act.

For over 15 years, and through multiple Administrations, the United States has repeatedly expressed concerns with the WTO Appellate Body's activist approach, which has involved overreaching on procedural issues, its interpretative approach and its findings on substantive matters. In short, the Appellate Body has failed to apply the WTO rules as written and agreed to by the United States and other WTO Members.

In 2018 and 2019, the United States made a series of statements at DSB meetings detailing the Appellate Body's disregard for the rules set by WTO Members, and the Appellate Body's attempts to add to or diminish rights or obligations under the WTO Agreement. The issues addressed included the Appellate Body's disregard for the mandatory 90-day deadline for appeals,⁶ allowing persons to serve on appeals after their Appellate Body term has ended,⁷ the Appellate Body's unauthorized review of panel factual findings (including on domestic law),⁸ the Appellate Body's issuance of advisory opinions on issues not necessary to resolve a dispute,⁹ and the treatment of prior Appellate Body reports as precedent.¹⁰

The United States also has been expressing deep concerns for many years with the Appellate Body's overreach in areas as varied as subsidies, antidumping and countervailing duties, standards under the TBT Agreement, and safeguards. Such overreach restricts the ability of the United States to regulate in the public interest or protect U.S. workers and businesses against unfair trading practices.

To identify a solution, it is important that WTO Members understand how it is that we have come to this point where the Appellate Body, a body established by Members to serve the Members, is

⁶ DSU Article 17.5. Statement by the United States Concerning Article 17.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Meeting of the DSB on June 22, 2018, available at: https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB_.Stmt_.as-delivered.fin_.public.rev_.pdf.

⁷ DSU Articles 17.1, 17.2. U.S. Statement at the August 31, 2017, Meeting of the DSB, available at: https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB_.Stmt_.as-delivered.fin_.public.pdf and U.S. Statement at the February 28, 2018, Meeting of the DSB, available at: https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb28.DSB_.Stmt_.as-delivered.fin_.public-1.pdf.

⁸ DSU Article 17.6. Statement by the United States Concerning Article 17.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* and Appellate Review of Panel Findings of Fact, Including Domestic Law, Meeting of the DSB on August 27, 2018, available at: https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB_.Stmt_.as-delivered.fin_.rev_.public.pdf.

⁹ DSU Articles 7.1, 11, 17.6. Statement by the United States Concerning the Issuance of Advisory Opinions on Issues Not Necessary to Resolve a Dispute, Meeting of the DSB on October 29, 2018, available at: https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB_.Stmt_.as-delivered.fin_.rev_.public.pdf.

¹⁰ DSU Article 3.9, WTO Agreement Article IX:2.

disregarding the clear rules that were set by those same Members. In other words, Members need to engage in a deeper discussion of why the Appellate Body has felt free to depart from what Members agreed to. We must have that understanding in order to know how we can prevent this from happening again in the future. If WTO Members believe in a rules-based trading system, then they bear a collective responsibility to ensure that the WTO dispute settlement system, including the Appellate Body, abides by and respects those rules.

Question 23

I am encouraged by the ongoing discussion at the WTO regarding the e-commerce initiative and support the strong proposal of the United States and your leadership on this issue.

In your view, what are the next steps in building broad support for an ambitious outcome and what challenges must be overcome?

Answer: The WTO digital trade initiative will only be successful if it can deliver commercially significant outcomes for firms and consumers in the digital sphere. We are working closely with allies to gain support for high-standard outcomes based on the USMCA Digital Trade Chapter, which we view as a model for core digital trade rules in this negotiation and in future agreements. The large number of participants, including China, adds challenges and complexity. We must ensure that broad participation does not lower the initiative's level of ambition. Our intent is to achieve a high-standard, high-quality agreement, even if that objective ultimately results in the participation of a smaller number of like-minded countries committed to high standards.

Question 24

European cheesemakers can sell their asiago, parmesan, and feta in the United States, but U.S. cheesemakers are not allowed to sell their cheeses using these common cheese names in Europe because of the EU's geographical indication (GI) rules. Industry estimates that we're running a \$1.4 billion dairy trade deficit with the EU; the EU's GI rules are one of the key barriers helping drive this deficit. Adding insult to injury, the EU is taking steps to impose those same types of product bans on cheese names and wine terms in other markets around the world as well.

What steps are you currently taking to stop the spread of this practice with trading partners?

Are GIs part of your discussions with Japan?

What are you going to do to address this with the EU directly in talks with them?

What are you going to do to address this with the EU directly in talks with them?

Answer: The United States and the EU have long-standing differences over the scope and level of intellectual property rights protection for geographical indications (GIs). This is an important concern, and USTR is pressing the EU both bilaterally and in multilateral fora to expand market access for U.S. producers into the EU. The EU's actions are also concerning where there are existing international Codex Alimentarius standards, such as for certain cheeses. USTR is working to safeguard third country markets, including removing barriers such as over-broad GI protection for EU products that serve to block U.S. producers and traders using common food names or who have prior trademark rights. As for Japan, the Administration's U.S.-Japan Trade Agreement Negotiating Objectives, published in December 2018, include a negotiating objective related to GIs that aim to achieve a level playing field for our dairy and cheese producers.

Question 25

The trade relationship with India appears to continue to deteriorate. The United States is imposing tariffs on India's steel and aluminum exports, and has removed India from the GSP program. India has imposed retaliatory tariffs on U.S. apples, walnuts, and other products. Further non-tariff issues related to dairy imports, medical devices, and other products continue to impact U.S. exports.

What are the next steps in addressing ongoing trade concerns with India and opening up that market for U.S. exports?

Answer: We remain engaged with India and are committed to address outstanding trade concerns. I have already spoken to the new Indian Commerce Minister, and a USTR team recently visited New Delhi to meet with a variety of Indian government officials in an attempt to make progress on the broad range of trade barriers we have highlighted. Our objective is for the Indian government to finally move toward pulling down many trade barriers that have historically stifled market access there for U.S. goods and services.

Question 26

China has long claimed that its Protocol of Accession to the WTO requires all countries to treat it as a market economy in antidumping investigations. China initiated disputes against the EU and the United States at the WTO contesting the continuing treatment of China as a non-market economy in our anti-dumping and countervailing duty proceedings. China has since withdrawn the dispute against the EU.

What is the status of this dispute? What steps will you take to ensure our major trading partners continue to take appropriate action against dumped Chinese product - and where appropriate use a non-market economy methodology?

Answer: As you know, China recently requested the panel to suspend its work in the proceeding against the EU, and on June 14, 2019, the panel informed the WTO Dispute Settlement Body (DSB) of its decision to grant China's request and suspend its work. China has not moved forward with a request for panel establishment against the United States. As we have done throughout the non-market economy dispute, the United States continues to work closely with the EU and other trading partners to confront shared challenges with China. The Administration is committed to ensuring the vigorous enforcement of U.S. trade remedies laws, including the use of appropriate methodologies to address distortions caused by non-market economic conditions. Additionally, within the USMCA, the United States, Mexico and Canada set forth high standards aimed at combating non-market practices such as currency manipulation and state-sponsored subsidies. The Administration will continue to actively engage with our allies and trading partners on these shared challenges. This is particularly true with respect to the trilateral process, where we are coordinating with the EU and Japan on non-market economy issues.

Question 27

As part of the new NAFTA signed on November 30, 2018, the United States and Canada signed a letter stating that "no later than November 1, 2019," "[British Columbia] shall eliminate the measures which allow only BC wine to be sold on regular grocery store shelves while allowing imported wine only to be sold in grocery stores through a so-called "store within a store," and those contested measures shall not be replicated." This letter entered into force "on the date of [Canada's] reply."

Can you confirm that this letter is in force and provide an update on British Columbia's efforts to remove its measures discriminating against Oregon and other U.S. wine?

Answer: On July 8, 2019, British Columbia amended its Liquor Control and Licensing Regulation governing the sale of wine in grocery stores. USTR is continuing to review the amendments to assess whether British Columbia has implemented changes necessary to carry out the commitments in the USMCA side letter.

Question 28

It has been widely reported that USDA is moving the Economic Research Service (ERS) to Kansas City, Missouri. Public reports suggest that the staffing levels at ERS had already declined by one third over those during the Obama Administration.

Has USTR or USDA evaluated the impact of further declines in ERS staff levels attributable to the proposed relocation on the ability of this Administration to investigate and enforce violations of WTO or FTA obligations? What effect does USTR anticipate from these declines?

Answer: Over the years, USTR has worked with USDA to perform economic analysis for various agricultural trade issues and negotiations, including in support of enforcement actions related to obligations under WTO and FTA agreements. USTR expects to continue receiving this type of support from USDA regardless of the location of USDA employees. We do not believe the proposed relocation of ERS employees to Kansas City will have any effect on our ability to continue this interagency cooperation.

Question 29

I am very concerned with the lack of timely and detailed briefings by the Administration on its trade initiatives. Broad descriptions of the President's trade goals and quick calls with Members are not a substitute for briefing staff, especially staff of Committee members, on the details of negotiations and providing text of proposed deals when shared with the appropriate safeguards.

Will you commit to having your staff brief staff of members of the Committee before and after each round of meetings with China, Japan, the EU, and the UK?

Answer: I and my staff have dedicated thousands of hours during the course of this Administration to briefing Members and staff on trade agreements, negotiations, and other initiatives. I am happy to report that we regularly receive positive feedback from Members of both parties acknowledging our transparency and candor with respect to the development and execution of trade policy. I will continue to have USTR staff brief Committee staff as new developments arise in ongoing trade matters.

Senator Crapo

Question 1

Many U.S. companies rely on access to customers and markets across the globe, especially so in China. Unfortunately, however, there are U.S. firms that have been caught in the crossfire between the U.S. and China, and those companies – and industries – are suffering as a result. Ultimately, we must reach a meaningful and enforceable agreement with China to allow American businesses to once again compete and thrive in the global marketplace.

What steps is the Administration taking to ensure American companies are protected against any retaliatory actions or increased pressures they may face while negotiations with China continue?

Answer: Through our ongoing negotiations with China, we are seeking structural changes in China that will help level the playing field for U.S. companies. China should have responded to the findings in the Section 301 investigation and the U.S. tariff actions by undertaking the necessary economic and policy reforms needed to end its trade-distortive practices. Instead, China retaliated with tariffs on U.S. products. Currently, the Administration's use of tariffs under Section 301 of the Trade Act of 1974 is providing the United States with an important source of leverage to bring China to the table to negotiate an enforceable agreement that will address China's unfair trade practices. In our negotiations with China, we are pressing China to remove its retaliatory tariffs entirely.

Question 2

The dairy industry needs greater access to export markets, including China. The U.S. is well positioned to provide China the dairy products their consumers will demand in the future. However, to successfully compete for this business, the U.S. dairy industry must be able to compete on a level playing field. In order to do so, duty-free access for U.S. dairy, along with the removal of retaliatory tariffs, are needed as part of any deal struck with China.

Will the U.S. dairy industry be considered a priority in future negotiations with China?

Answer: U.S. dairy producers face a great number of structural issues that limit their access to China's dairy market, including complicated registration, import licensing, and labeling requirements. We have discussed dairy extensively with China over the course of our conversations this year. We are committed to addressing issues that impede market access in China for U.S. dairy producers.

Question 3

A free trade agreement (FTA) with Japan is critical for the U.S. dairy industry. Not only would a Japan FTA provide American firms with new market opportunities in Japan, but it would help to avoid losing current sales. Due to Japan's agreements with the E.U. and with Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) countries, U.S. producers are beginning to fall behind in terms of exports and market access. As negotiations with Japan continue, drawing upon the best terms from both agreements will be critical to ensuring that the U.S. is able to secure a strong, competitive position in what would be a key market.

Will you prioritize both the need for a timely agreement and the inclusion of provisions that will allow U.S. dairy to compete with global competitors in the Japanese market?

Answer: It is a top priority of the Trump Administration to negotiate a trade agreement with Japan to advance the interests of our farmers, ranchers and food processors in this important market. I have met several times with my Japanese negotiating counterpart in recent months to advance these discussions, including at the G-20 meetings in Osaka in late June. A top objective of these negotiations is to ensure that U.S. agricultural exporters, including U.S. dairy suppliers, are not disadvantaged by Japan's other trade agreements.

Question 4

The sportfishing industry has been negatively affected by the Section 301 tariffs on China. Recreational fishing is enjoyed by over 600,000 Idahoans each year, which contributes \$1.1 billion to the state's economy and supports roughly 8,400 jobs. Much of the fishing equipment used by Americans is made in China, with few alternative sources produced outside of China. Shifting supply chains cannot be done quickly or without cost. Moreover, fishing equipment purchases are subject to a ten percent excise tax, the revenues of which fund fish and wildlife agencies through grants distributed via the Sport Fish Restoration and Boating Trust Fund. Tariffs on fishing equipment are borne not only by recreational anglers but by the state wildlife agencies that manage fishery projects, boating access and aquatic education.

Has USTR examined the impact that Section 301 tariffs may have on the sportfishing industry? If not, will USTR do so in the future?

Answer: USTR has received comments and heard witness testimonies from the sportfishing industry during the notice and comment process. I will consider these comments and testimonies before taking action on any additional tariffs.

Senator Roberts

Question 1

From 2017 to 2018, the value of agricultural exports from the U.S. to China decreased 53 percent from \$19.5 billion to \$9.2 billion. For nearly a decade, China has consistently been ranked either the first or second export destination for U.S. agricultural products. However, in 2018, they fell to fourth. Given the need to feed a large population in China, the lost value in agricultural exports from the U.S. to China has to be sourced somewhere from within the global marketplace.

If the trade war with China continues to drag on and as China continues to work more closely with other countries in the global marketplace to source their agricultural products, how can we ensure that the U.S. does not lose long-term market share to a country that U.S. farmers have relied on?

Answer: The U.S.-China economic relationship is very important, and the Trump Administration is committed to reaching meaningful, fully-enforceable commitments to resolve structural issues and address our persistent trade deficit. This of course includes removing impediments to trade in agriculture with China. U.S. agricultural producers face a great number of barriers that limit their access to China's agricultural markets. We are encouraging China to make real structural changes, across a wide range of unfair policies and practices that will yield actual, verifiable, and enforceable results.

Question 2

At the end of last year, the countries that ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) began to utilize its market access. Each day this agreement is in effect, is another day the U.S. is trailing behind our competitors that are taking advantage of this agreement.

I'm aware you cannot share specific details about ongoing trade negotiations—such as those with Japan, the UK, and the EU, but I am interested in hearing how USTR is ensuring the United States continues to be competitive and achieve a level playing field with countries that are utilizing new trade agreements forged around the globe.

Answer: The administration's aim in negotiations with Japan is to address both tariff and non-tariff barriers and to achieve fairer, more balanced trade. As suggested in the September 2018 Joint Statement by President Trump and Prime Minister Abe, the Administration has envisioned the possibility of a staged negotiation, with an initial, limited outcome designed, in part, to help U.S. exporters put at a disadvantage by Japan's other trade agreements. At the same time, the Administration seeks to pursue other, much broader objectives for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018. Eliminating any disadvantage with competing agriculture exporters is a key goal and is the primary objective of any early outcome with Japan.

At this stage, we are focusing with the EU on several key impediments to U.S. exports in the EU market. The EU protects its market with high tariffs on a wide range of agricultural products and on selected industrial products. These tariffs limit U.S. exports in sectors where U.S. producers and firms are globally competitive or dominant. Members of the Committee are aware that we have not begun comprehensive tariff negotiations with the EU because the EU has not agreed to negotiate reductions in tariffs on agricultural goods, and it would not be acceptable to Congress, the Administration, or our stakeholders to conclude a tariff agreement limited to industrial trade.

Despite this impasse, we continue to work constructively with the EU on non-tariff barriers that impede U.S. exports to the EU.

As the UK prepares to leave the EU, we intend to negotiate a comprehensive agreement that provides a high level of access to the UK market and a level playing field for U.S. exporters.

Senator Cornyn

Question 1

USTR recently withdrew India's benefits under the Generalized System of Preferences (GSP) program over their failure to provide fair market access to U.S. products. I also understand that USTR is considering launching a Special 301 investigation that could result in additional tariffs on Indian goods.

- *Have you been in contact with the new Indian Commerce Minister to discuss these matters?*
- *What is USTR's plan to reduce trade tensions with India and get back to the negotiating table?*

Answer: Yes I have spoken to Minister Goyal. A USTR team also recently visited New Delhi to meet with a variety of Indian government officials in an attempt to make progress on the broad range of trade barriers we have highlighted. We remain committed to finding solutions to the myriad of trade concerns we have with India. I hope that the Government of India demonstrates a comparable commitment to resolving our concerns.

Question 2

I strongly support the Administration's effort to address China's predatory trade practices. It is clear that China is making every effort to vacuum up sensitive U.S. technology and erode the technological gap. However, I am also hearing from numerous Texas companies who are being forced to divert funds from other operating expenses – primarily R&D – in order to pay for the tariffs.

- *Has USTR carefully considered the impact of tariffs on U.S. industry, particularly the impact that less R&D can have on our overall competitiveness?*

Answer: USTR has received comments and heard witness testimonies regarding the tariffs' effect on R&D during the notice and comment process for the tariff actions on Lists 1, 2, and 3 as well as the proposed tariff action for List 4. I will consider these comments and testimonies before taking action on any additional tariffs for List 4. In addition, with respect to Lists 1, 2, and 3, USTR is conducting an exclusion process that allows for a case-by-case assessment of tariff impacts based on factors laid out in Federal Register notices.

Question 3

The U.S. dairy industry applauded USDA's announcement of up to \$16 billion in relief to U.S. agriculture as retaliatory tariffs from trading partners continue to disrupt U.S. export activity especially USDA purchases of dairy products including fresh, nutritious milk to benefit food banks and food insecure Americans. However, dairy companies need better access to export markets including China. The U.S. is well positioned to provide China the dairy products their consumers will demand in the future. However, to successfully compete for this business, the U.S. dairy industry must have a level playing field which means any trade deal with China must include duty-free access for U.S. dairy products and the removal of China's retaliatory tariffs.

- *Will dairy be included as a priority in the negotiations?*

Answer: U.S. dairy producers face a great number of structural issues that limit their access to China's dairy market, including complicated registration, import licensing, and labeling requirements. We have discussed dairy extensively with China over the course of our conversations

this year. We are committed to addressing issues that impede market access in China for U.S. dairy producers.

Question 4

Can you please elaborate on the extent to which the negotiations with China have focused on renewed access for U.S. cotton? Has there been any discussion to date about the possibility of greater purchases of cotton, even during the interim while tariffs are in place?

Answer: The United States has been negotiating with China to resolve a large number of unwarranted and longstanding trade barriers to U.S. agricultural exports. We are encouraging China to make real structural changes across a wide range of unfair policies and practices that will yield actual, verifiable, and enforceable results. We intend to secure a result that provides real benefits to U.S. cotton producers.

Question 5

Given the current trade dispute with China, the Asia-Pacific continues to become an increasingly important market for U.S. goods and services.

Can you please share some detail on the scope of the negotiations with Japan?

Answer: As suggested in the September 2018 Joint Statement by President Trump and Prime Minister Abe, the Administration has envisioned the possibility of a staged negotiation, with an initial, limited outcome designed, in part, to help U.S. exporters put at a disadvantage by Japan's other trade agreements. At the same time, the Administration seeks to pursue other, much broader objectives for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

Senator Thune

Question 1

Page 22 of the May 30, 2019, Draft Statement of Administrative Action states: “Between the submission of this draft SAA and the submission of the final implementation package, USTR intends to continue consultations with Congress on potential changes to section 901 of the Trade Facilitation and Trade Enforcement Act (19 U.S.C. 1321) to implement Article 7.8.1 (Express Shipments) [of the United States-Mexico-Canada Agreement].” While I appreciate your continued willingness to consult Congress on any potential changes to the current U.S. de minimis threshold, I believe Congress has already spoken conclusively on this matter. Beyond the unilateral de minimis threshold increase set forth in TFTEA, which Ranking Member Wyden and I helped spearhead, in the past year, you have received numerous letters from Congress urging you not to deviate from Congress’ well-established position on de minimis. In fact, since November 2018, you have explicitly heard from more than ten Republican and Democrat members of this Committee, including the Chairman and Ranking Member, all of whom have asked you not to derogate from the current threshold.

Based on your consultations with the House Ways and Means and Senate Finance Committees, do you agree that strong bipartisan majorities of the House and Senate oppose lowering the current U.S. de minimis threshold of \$800, even if Canada and Mexico are unwilling to raise their de minimis thresholds to reciprocal levels? If so, what, if any, other changes to the current U.S. de minimis threshold are you contemplating?

Answer: As noted in the Administration’s submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. As you note, these consultations are underway, and I look forward to working with you and other Members on this important issue.

Senator Burr

Question 1

As you know, exports are critically important to agriculture. According to the most recent data from the North Carolina Department of Agriculture, North Carolina exported nearly \$3.5 billion in agricultural products, supporting nearly 70,000 jobs. However, I continue to be concerned about the effects of retaliation across the globe, including most recently the EU's list of targeted U.S. exports that included sweet potatoes and tobacco.

Can you describe your plans to ensure markets are open to American agriculture exports, including addressing potential retaliation, and also through negotiations on additional free trade agreements?

Answer: I understand your concern about the impact of the retaliatory tariffs on U.S. exports of agricultural products. Countries have wrongly imposed retaliatory tariffs on a range of U.S. exports, including agricultural products, and we have initiated WTO disputes to defend the United States.

With respect to negotiations on new trade agreements, we are engaged in active discussions with Japan and China, and hope to conclude these in the near future. In the case of the United Kingdom, we have completed the necessary steps under Trade Promotion Authority, including notification to the Congress of U.S. negotiating objectives. We are ready to start trade negotiations with the United Kingdom once it leaves the European Union. We have taken similar steps to prepare for negotiations with the European Union. However, the European Union has so far been unwilling engage in a negotiation that includes agriculture.

Senator Isakson

Question 1

Ambassador Lighthizer, I'd like to first applaud you and the President for your efforts in renegotiating NAFTA and producing USMCA. I believe the new agreement will have an overall positive affect on U.S. agriculture. However, you've heard me discuss my concern that USMCA does not address the issue of Mexican producers engaging in targeted, seasonal dumping of fruits, vegetables, and other perishables into U.S. markets. Georgia's fruit and vegetable farmers already find themselves in fragile circumstances in the wake of Hurricane Michael. They will not be able to sustain indefinite market turmoil.

In March, you said the Trump Administration was exploring ways to assist the domestic fruit and vegetable industry. Can you provide me with an update on these efforts?

Answer: We continue to consider the seasonality issue and explore possible solutions with Members and stakeholders. We look forward to working with you and other Members of Congress to address the seasonality issue in a way that properly considers the wide range of views and impacts across the U.S. fresh fruit and vegetable industry.

Question 2

Strong foreign markets are essential for Georgia's agriculture economy. Commodities such as poultry, cotton, peanuts, and many others depend on access to markets abroad and, without these markets, I fear that the already vulnerable farm economy will continue to decline. As I've said before, I applaud the administration's efforts to level the playing field with bad actors like China. However, I'm wary of an ongoing trade war where farmers, consumers, and businesses owners in both countries lose.

Can you provide an update on the progress of current negotiations as well as an update on how USTR is working to establish new agriculture markets in the near future?

Answer: We are engaged in active trade negotiations with Japan, and hope to conclude these in the near future with a robust outcome on agriculture. In the case of the United Kingdom, we have completed the necessary steps under Trade Promotion Authority, including notification to the Congress of U.S. negotiating objectives. We are ready to start trade negotiations with the United Kingdom once it leaves the European Union. We have taken similar steps to prepare for negotiations with the European Union. However, the European Union has so far been unwilling engage in a broad-based trade negotiation that includes agriculture.

Every day USTR and USDA work to resolve trade barriers to U.S. agricultural products, and have had success in many sectors and countries, such as poultry to Tunisia, or pork to Argentina. We currently have ongoing discussions with a number of countries on specific bilateral issues to address market access impediments affecting U.S. farm products. Examples of such bilateral work includes market access for poultry in India, wheat in Brazil, rice in Korea, and horticultural products in Indonesia.

Question 3

Ambassador Lighthizer, like you, I believe that all aspects of our trade relationship should be on the table when negotiating trade agreements with entities such as the European Union.

What is USTR doing to ensure that previously "off-the-table" aspects of a productive trade agreement, such as agriculture, are up for negotiation? Has USTR considered engaging other non-EU countries in

Europe, such as Switzerland, that have indicated interest in negotiations on all aspects of a trade relationship?

Answer: We have made it abundantly clear to both the European Commission and to EU Member States that we will not begin tariff negotiations with the EU until agriculture is on the table. In the meantime, we continue our joint efforts to address other matters of importance to the transatlantic trade relationship, including work on non-tariff barriers to trade and specific trade concerns.

We continue to evaluate potential FTA discussions with a number of countries, including Switzerland. The decision on whether to launch any negotiations must be based on an assessment of whether we will have an end result in which more U.S. businesses are selling more of their goods to the country in question. Our end goal in any negotiation is always to make American workers and farmers better off than they were before. If we decide to start such negotiations, we would intend to follow the TPA process as appropriate.

Question 4

I understand that USTR is preparing to open the exclusion process for products falling under List 3 of the China 301 tariffs. Furthermore, USTR recently ended public hearings on a 4th list of tariffed goods, which may go live in the near future.

Are you confident that USTR will be able to handle the list 3 and 4 exclusion processes considering the length of time exclusions were and currently are being processed for list 1 and 2?

What is being done to ensure that American businesses are not left in limbo for months after submitting exclusion requests? Furthermore, does USTR plan to give expedited treatment for companies that wish to renew their granted exclusion past the first year?

Answer:

Approximately 35 USTR attorneys, paralegals, trade analysts, and contractors with experiences in law, industrial sectors, tariff classifications, and data analysis work on the exclusion process. In the coming weeks, we anticipate onboarding additional staff, including analysts on detail from the Departments of Treasury, Commerce, and Agriculture, that will assist on the exclusions process, particularly for List 3. The majority of these personnel work on the exclusion process on a full-time basis and collectively have spent thousands of hours reviewing and processing exclusion requests.

USTR presently intends to carry out its Section 301 exclusion process at our current level of funding. Given the substantial level of resources necessary to implement the List 3 exclusion process, USTR will closely monitor the exclusion process to assess whether additional funding is necessary.

USTR is reviewing various courses of action with respect to whether and how to renew the exclusions granted for Lists 1 and 2.]

Question 5

The Caribbean Basin Trade Partnership Act (“CBTPA”) program is an important program for U.S. cotton growers and U.S. textile producers because CBTPA requires beneficiary countries to use U.S. made yarns. It supports U.S. manufacturing jobs and strengthens U.S. supply chains. Additionally, the program is critical to the garment industries in beneficiary countries, as it allows them to compete with Chinese

and other major suppliers and develop local economies. However, CBTPA is currently set to expire on September 30, 2020. Current uncertainty about the program's continued existence is damaging both beneficiary countries and U.S. companies. Business decisions for late 2020 and beyond are being made now and certainty is necessary. A bipartisan bill to extend CBTPA through 2030 – H.R. 991 – has been introduced in the House and I am working to introduce similar legislation in the Senate.

Will you work with me and my colleagues in the House and Senate to support a swift extension of CBTPA?

Answer: I look forward to working with you and other Members of Congress as you consider legislation extending CBTPA.

Senator Portman

Question 1

USMCA proposes to raise the exclusivity for biologics protection in Canada and Mexico. Without getting into whether U.S. drug exclusivity law should be changed as a matter of policy, I wanted to ask about the effect such a change would have on U.S. obligations under USMCA.

If USMCA were to be implemented and the United States were to change its own exclusivity – currently 12 years – to a different number of years, would the United States no longer be compliance with its USMCA obligations? Why or why not? And if the United States were to be out of compliance with its commitments, would the United States be obligated to take steps to remain in compliance, and if so, what would those steps be?

Answer: The USMCA Intellectual Property chapter does not require any changes to current U.S. laws, including those regarding data protection for pharmaceutical products. Our free trade agreement obligations do not restrain Congress’s authority to change U.S. law. Moreover, if Congress were to reduce the data exclusivity term, it is highly unlikely that Canada or Mexico would bring a challenge under the USMCA.

Question 2

Some assert that the exclusivity provisions for biologics will increase drug prices in the United States.

Can you outline the theoretical and empirical arguments for why these exclusivity provisions will actually reduce drug prices in the United States?

Answer: The USMCA exclusivity provisions will not drive an increase in U.S. drug prices because it does not change any rules that influence the U.S. pharmaceutical market. The USMCA does not require any changes to U.S. laws on pharmaceutical intellectual property rights in order to comply with the IP Chapter, including with respect to data protection for new biologics products, and will not lead to higher prices on drugs for U.S. consumers. At the same time, the USMCA significantly increases the level of protection that U.S. biologics innovators receive in Mexico and Canada. Research and development into new pharmaceuticals is costly, time-intensive, and risky, particularly for cutting-edge pharmaceutical technologies such as biologics. As the President noted in the May 2018 Blueprint to Lower Drug Prices, unfairly low prices in foreign markets “places the burden of financing drug development largely on American patients and taxpayers, subsidizes foreign consumers, and reduces innovation and the development of new treatments.” The USMCA raises the standards for data protection of new biologics in Mexico and Canada, while not affecting their protection in the United States.

Question 3

Article 3.7 in the appendix entitled Provisions Related to the Product-Specific Rules of Origin for Automotive Goods requires that for a vehicle to be originating the core parts enumerated in Column 1 of Table A.2 must be originating. However, Article 3.9 permits producers to bundle the parts under Column 1 together as a “super core” part when calculating the value of non-originating material (VNM).

What is the justification for allowing producer’s to bundle Column 1 parts together when calculating the VNM? What are some scenarios in which a producer would elect calculate the VNM of Column 1 parts as separate rather than together as a “super core” part? Can you describe how Article 3.9 strengthens, rather than weakens, the automotive rules of origin?

Answer: Many vehicle producers do not segregate core parts when producing vehicles, but use or bundle them within different modules along the production line. The “super core” calculation allows such producers to meet the core parts requirement without having to segregate each of the parts and do separate, burdensome calculations. The super core calculation incentivizes U.S. producers to use more originating content and maintains their competitiveness without accruing any possible efficiency losses from having to segregate core parts.

Question 4

The recent agreements with Canada and Mexico to lift the Section 232 tariffs on steel and aluminum provide that the parties to these agreements will implement measures to prevent the importation of steel and aluminum that is unfairly subsidized or dumped, prevent the transshipment of steel and aluminum from outside Canada and Mexico, and monitor for surges of steel and aluminum imports from Canada and Mexico.

What specific action does USTR intend to take to ensure effective and comprehensive implementation of these commitments?

Answer: The Administration will be vigorously enforcing the outcome of the understandings the United States arrived at with Canada and Mexico with respect to the tariffs on steel and aluminum imports. Working with interagency partners, USTR will be closely monitoring trade statistics to identify any problematic changes in trade patterns at an early stage. We will also be engaging regularly and often with stakeholders and with the Canadian and Mexican governments to ensure that we have the latest information on market developments, and to ensure ongoing compliance with the terms of the understandings.

Question 5

In response to a question for the record that I submitted after the March 2019 hearing on World Trade Organization (WTO) reform (page 18), you noted that international trade agreements, and especially those involving new provisions lacking provenance, must be drafted with “great precision and clarity.” Furthermore, you noted that we must ensure that those “called upon to interpret the text must not add to or diminish” the agreed upon commitments.” And yet operationalizing these goals in order to – as T.S. T.S. Elliot wrote in *Choruses from the Rock* – create “as systems so perfect that no one will need to be good” has proven elusive.

Assuming that semasiological drift is not intrinsic to international trade agreements, and can be prevented through precise drafting and restrained interpretation, in the context of the World Trade Organization, what mechanisms should be created to ensure that those who interpret such agreements remain faithful to the text of the agreement and neither expand or diminish obligations created by the agreement?

Answer: The Administration’s steadfast position is that the WTO dispute settlement system should operate as specified in the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU). These are the rules agreed to by WTO Members in the Uruguay Round, and the rules which were approved by Congress in the Uruguay Round Agreements Act.

For over 15 years, and through multiple Administrations, the United States has repeatedly expressed concerns with the WTO Appellate Body’s activist approach, which has involved overreaching on procedural issues, its interpretative approach and its findings on substantive

matters. In short, the Appellate Body has failed to apply the WTO rules as written and agreed to by the United States and other WTO Members.

In 2018 and 2019, the United States made a series of statements at DSB meetings detailing the Appellate Body's disregard for the rules set by WTO Members, and the Appellate Body's attempts to add to or diminish rights or obligations under the WTO Agreement. The issues addressed included the Appellate Body's disregard for the mandatory 90-day deadline for appeals,¹¹ and allowing persons to serve on appeals after their Appellate Body term has ended,¹² the Appellate Body's unauthorized review of panel factual findings, including on domestic law,¹³ the Appellate Body's issuance of advisory opinions on issues not necessary to resolve a dispute,¹⁴ and the treatment of prior Appellate Body reports as precedent.¹⁵

The United States also has been expressing deep concerns for many years with the Appellate Body's overreach in areas as varied as subsidies, antidumping and countervailing duties, standards under the TBT Agreement, and safeguards. Such overreach restricts the ability of the United States to regulate in the public interest or protect U.S. workers and businesses against unfair trading practices.

To identify a solution, it is important that WTO Members understand how it is that we have come to this point where the Appellate Body, a body established by Members to serve the Members, is disregarding the clear rules that were set by those same Members. In other words, Members need to engage in a deeper discussion of why the Appellate Body has felt free to depart from what Members agreed to. We must have that understanding in order to know how we can prevent this from happening again in the future. If WTO Members believe in a rules-based trading system, then they bear a collective responsibility to ensure that the WTO dispute settlement system, including the Appellate Body, abides by and respects those rules.

Question 6

Foreign trade barriers can be very costly to U.S. exporters, increase the trade deficit, and make American workers and firms less competitive.

¹¹ DSU Article 17.5. Statement by the United States Concerning Article 17.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Meeting of the DSB on June 22, 2018, *available at*: https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB_.Stmt_.as-delivered.fin_.public.rev_.pdf.

¹² DSU Articles 17.1, 17.2. U.S. Statement at the August 31, 2017, Meeting of the DSB, *available at*: https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB_.Stmt_.as-delivered.fin_.public.pdf and U.S. Statement at the February 28, 2018, Meeting of the DSB, *available at*: https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb28.DSB_.Stmt_.as-delivered.fin_.public-1.pdf.

¹³ DSU Article 17.6. Statement by the United States Concerning Article 17.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* and Appellate Review of Panel Findings of Fact, Including Domestic Law, Meeting of the DSB on August 27, 2018, *available at*: https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB_.Stmt_.as-delivered.fin_.rev_.public.pdf.

¹⁴ DSU Articles 7.1, 11, 17.6. Statement by the United States Concerning the Issuance of Advisory Opinions on Issues Not Necessary to Resolve a Dispute, Meeting of the DSB on October 29, 2018, *available at*: https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB_.Stmt_.as-delivered.fin_.rev_.public.pdf.

¹⁵ DSU Article 3.9, WTO Agreement Article IX:2.

Do you believe the National Trade Estimate (NTE) report should include estimates for the cost of identified foreign trade barriers as measured by potential lost U.S. exports? What resources would USTR need to include this information in the NTE?

Answer: The NTE report, wherever possible, presents estimates of the impact of specified foreign trade barriers and other trade distorting practices on U.S. exports, foreign direct investment or U.S. electronic commerce. Quantitatively calculating estimates of the effects of particular barriers and practices is time and data intensive, involving analysis by many subject experts and economists from several U.S. government agencies. In certain cases where consultations related to specific foreign practices are proceeding at the time of the report's publication, estimates are omitted from the NTE to avoid prejudice to the consultations. The NTE's Introduction describes this estimates process in more detail.

Question 7

As I understand it, there is a USTR Attaché in China, but not a permanent negotiator.

Do you agree that USTR should have a permanent negotiator at the U.S. Embassy in Beijing to quickly address emerging trade disputes and also to monitor enforcement with any concluded Section 301 agreement with China?

Answer: Currently, USTR officials in Washington work closely with the USTR officials and officials from other U.S. government agencies resident at the U.S. Embassy in Beijing to monitor Chinese trade policies and practices. USTR officials in Beijing also engage and, where needed, negotiate with Chinese government officials in Beijing, subject to direction from USTR's leadership in Washington. I agree that ensuring that China implements its commitments in any agreement is crucial, and we are therefore determined to include an enforcement mechanism that makes China's commitments fully enforceable and subject to responsive action by the United States in the event of non-compliance. We will continue to use all available U.S. government resources, including USTR officials based at the U.S. Embassy in Beijing, in these efforts.

Question 8

Monopsony is a market condition where there is a single dominant buyer. In many sectors, China is the largest single purchaser of a particular good. For example, according to the International Trade Administration, China was the top market for semiconductors with 29 percent of the global market in 2015. Such semiconductor consumption is almost entirely import-based; imports constituted 91 percent of China's semiconductor demand, with 56.2 percent of demand coming just from U.S. imports.

Do you believe that China possesses monopsony power in certain sectors? If so, are you concerned about the impact such monopsony power would have for American exporters? What do you believe should be done to address China's potential monopsony power?

Answer: The Administration monitors China's policies and practices in key sectors, including with regard to whether China possesses or is using monopsony power in its purchasing of imports. In our negotiations with China, we are trying to address as many of China's non-market oriented policies and practices as possible.

Question 9

China has taken a keen interest in the international standards setting process. For example, in 2018, China had 8 of the 39 available leadership positions, the most of any country, at the International

Telecommunications Union (ITU) 5G-related bodies. The United States had only a single representative. At the International Standards Organization (ISO), last year China was in third place and the United States was tied for 16th place, with Finland, for the most participants.

Do you agree that China's efforts to "flood the zone" on standards setting reduces American competitiveness and can create future barriers to American exports? Do you believe that the United States government should take a more active role when it comes to U.S. membership on international standards setting bodies? What ways do you believe USTR can be helpful to ensure standards setting bodies are not weaponized by foreign countries seeking to establish new trade barriers?

Answer: China uses participation in standardization as a strategic part of its industrial policy, and it invests significant resources in participating in the development of international standards. These efforts can and do create barriers to American exports. Currently, the U.S. Government also takes an active role in standardization to the extent agency resources are available to participate. USTR does not participate directly in international standardization organizations, except Codex Alimentarius. USTR participates in the American National Standards Institute's (ANSI) policy council that develops U.S. positions in the International Organization for Standardization (ISO), and the committee that monitors foreign and regional policies on standardization. USTR also reviews trade concerns to make sure China and other countries follow the World Trade Organization's (WTO) Agreement on Technical Barriers to Trade's (TBT) Code of Good Practice during national adoptions of voluntary standards, and the WTO TBT Committee Decision on international standards when implementing a standard in a technical regulation or conformity assessment procedure. The U.S. standards-setting system consists of numerous private bodies, with some government involvement. This system has largely developed organically and haphazardly over many years without a coherent governing principle for dealing with current international challenges, and the system might benefit from a U.S. Government role to become more effective on the international stage. However, any such initiative should be careful to minimize increases in unnecessary regulations or bureaucracy.

Question 10

In fall of 2018 the European Union (EU) considered a digital services tax that appeared to discriminate against U.S. technology companies.

Do you believe that any country that implements a digital services tax that substantially resembles the EU proposal from fall 2018 would violate that country's World Trade Organization (WTO) commitments? If a country were to implement such a tax, would USTR consider using Section 301 to address the resulting inequities or discrimination? In such a scenario, what factors would USTR consider when deciding whether to take unilateral action under Section 301 or to pursue dispute settlement at the WTO?

Answer: On July 10, I initiated an investigation under Section 301 of the Trade Act of 1974 of the French Digital Services Tax (DST), as set out in the bill agreed to by the joint committee of the French National Assembly and Senate. The French DST shares many elements of the EU proposal. The investigation will determine whether, and on what basis, the DST is actionable under Section 301. Actionable matters include where the rights of the United States under any trade agreement are being denied or where an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce. The outcome of the investigation will determine what action, if any, we will take vis-à-vis the French measure. If other EU countries enact DSTs, we will review them on a case-by-case basis and consider appropriate action to respond to them.

Question 11

It is exciting it is to see talk of a U.S.-Switzerland trade agreement back in the news. As chair of the Senate Swiss Caucus, I believe a U.S.-Switzerland trade agreement would open up new agricultural markets and help “test drive” what a broader agreement with the EU might look like.

Do you agree that a U.S.-Switzerland trade agreement should be a priority? What is USTR doing to prioritize a trade agreement between the United States and Switzerland?

Answer: We continue to evaluate potential FTA discussions with a number of countries, including Switzerland. The decision on whether to launch any negotiations must be based on an assessment of whether we will have an end result in which more U.S. businesses are selling more of their goods to the country in question. Our end goal in any negotiation is always to make American workers and farmers better off than they were before. If we decide to start such negotiations, we would intend to follow the TPA process.

Question 12

In response to a question for the record (QFRs) submitted after the March 2019 hearing on World Trade Organization (WTO) reform (page 17), you noted that the “Administration is pressing China to remove these retaliatory tariffs entirely.”

Given that the administration has suggested that some U.S. retaliatory tariffs may remain in place even after an agreement has been reached, do you have confidence that China would withdraw its counter-retaliatory tariffs in such a scenario?

Answer: In the prior response that you reference, I explained that the goal of the Section 301 investigation is to change China’s unfair and market-distorting behavior. China should have responded to the findings in the Section 301 investigation and the U.S. tariff actions by undertaking the necessary economic and policy reforms needed to end its trade-distortive practices. Instead, China retaliated with tariffs on U.S. products. In our negotiations with China, we are pressing China to remove its retaliatory tariffs entirely. As you know, the negotiations are ongoing and involve numerous issues. At this time, it is difficult to single out a particular issue and predict how the negotiations will ultimately deal with it, but I can assure you that we will continue to press China to remove its retaliatory tariffs entirely.

Question 13

A number of products that were removed from the supplemental \$200 billion trade action as a result of the comment period held by USTR, have reappeared on the proposed supplemental \$300 billion trade action.

What is the justification for adding products to the proposed supplemental action that USTR has already determined to merit removal from the existing supplemental action?

Answer: During the notice and comment period, USTR has received comments and heard testimonies regarding products that were previously removed from Lists 1, 2, or 3 but were included on the proposed list for the supplemental \$300 billion trade action. I will consider these comments and testimonies before taking any action on the additional tariffs.

Question 14

I have heard from many constituent companies who are frustrated with the slowness and uncertainty of the Section 301 exclusion process.

What is the administration's proposal to ensure that existing and future Section 301 exclusion processes provide timely relief to applicants? Will USTR consider exempting certain industries which can demonstrate that they will not be able to survive the burden of the China tariffs? Does USTR plan to devote additional resources to existing and future exclusion processes? Does USTR need additional funding and resources to be able to implement and conduct exclusions processes efficiently?

Answer: Approximately 35 USTR attorneys, paralegals, trade analysts, and contractors with experiences in law, industrial sectors, tariff classifications, and data analysis work on the exclusion process. USTR is working expeditiously to process all product exclusions requests and will continue to issue determinations on pending requests on a rolling basis. USTR carefully considers each request under the product exclusion criteria set forth in the Federal Register notice. USTR takes into account all available information, including information submitted by the requester and by other interested parties that may comment on specific requests.

In the coming weeks, we anticipate onboarding additional staff, including analysts on detail from the Departments of Treasury, Commerce, and Agriculture, that will assist on the exclusions process, particularly for List 3. The majority of these personnel work on the exclusion process on a full-time basis and collectively have spent thousands of hours reviewing and processing exclusion requests.

USTR presently intends to carry out its Section 301 exclusion process at our current level of funding. Given the substantial level of resources necessary to implement the List 3 exclusion process, USTR will closely monitor the exclusion process to assess whether additional funding is necessary.

Question 15

As the nation's number one producers of Swiss cheese, Ohio is a top dairy state.

To that end, has market-access for dairy been included in the scope of current talks with China?

Answer: U.S. dairy producers face a great number of structural issues that limit their access to China's dairy market, including complicated registration, import licensing, and labeling requirements. We have discussed dairy extensively with China over the course of our conversations this year. We are committed to addressing issues that impede market access in China for U.S. dairy producers.

Question 16

The Aruna Project is an Ohio-based nonprofit that utilizes the Generalized System of Preferences (GSP) to import athleisure wear made by Indian women who are sex trafficking survivors. Loss of the GSP preference has had a critical impact on The Aruna Project and their ability to provide opportunities, financial security, and education for women transitioning out of slavery and into freedom. Imports from humanitarian organizations like The Aruna Project constitute a negligible amount of GSP-related trade with India.

Will you commit to establishing a "humanitarian exception" to the termination of India's GSP privileges so as to allow the small portion of "humanitarian" GSP trade with India to continue to enter the United States duty free?

Answer: President Trump decided to fully remove India from the GSP program following its failure to provide the United States with assurances that it will provide fair and adequate market access. Restoration of some or all of India’s GSP benefits is only possible if it meets the eligibility criteria for the program as established by Congress.

Question 17

On June 13, 2019, USTR granted an exclusion from the Section 201 solar safeguard to bifacial solar panels that consist of bifacial solar cells.

What was USTR’s rationale for granting this bifacial exclusion, and what is the data behind that rationale? Does USTR anticipate that this bifacial exclusion will undermine the safeguard by increasing imports of low-cost, bifacial solar panels? How does USTR plan to address concerns about the circumvention risk posed by this exclusion, given that it is difficult to distinguish the physical appearance of bifacial solar panels from monofacial solar panels?

Answer: As the U.S. International Trade Commission recognized during its investigation under Section 201 of the Trade Act of 1974, bifacial solar products represent a small percentage of the global solar market, roughly less than 3 percent. We have been actively working with stakeholders to assess the effect of the exclusion. USTR will continue to monitor the effects of the safeguard measure, including the exclusions granted from its application, and will take action if necessary to prevent circumvention of the remedy.

Question 18

Forced data localization poses a major trade barrier for many sectors of the economy. Language in USMCA tackling forced data localization for all sectors, including financial services, is a valuable part of the agreement and sets a helpful precedent for future agreements.

Is it your intention to include similar language in future trade agreements?

Answer: The USMCA includes a number of state-of-the-art provisions that will help to expand U.S. services exports, including in the area of digital trade. Those high-standard digital trade provisions, including rules on cross-border data transfer and data localization in the financial services sector, served as a template for the U.S. negotiating position in the ongoing WTO digital trade initiative negotiations and will likewise serve as a model in future U.S. agreements.

Question 19

Congress made clear in section 901 of the Trade Facilitation and Trade Enforcement Act of 2015 that higher *de minimis* thresholds have value for small businesses and manufacturers, and I support the good work you have done to secure increased *de minimis* thresholds in Canada and Mexico as part of the U.S.-Mexico-Canada Agreement (USMCA).

Given that changes to section 901 are not necessary to implement Article 7.8.1 on Express Shipments in the USMCA, will you commit to not make changes to section 901?

Answer: As noted in the Administration’s submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. These consultations are underway, and I look forward to working with you and other Members on this important issue.

Question 19

Operated by the National Oceanic and Atmospheric Administration (NOAA), the Fisheries Finance Program, provides low-interest long-term loans to the commercial fishing industry. Last fall, NOAA proposed to expand the Fisheries Finance Program to fund loans for the construction of new fishing vessels.

Given that the United States has consistently held the position that overcapacity leads to overfishing, does the adoption of a capacity increasing policy by the United States undermine the U.S. negotiating position on fisheries subsidies both bilaterally with trading partners and multilaterally at the World Trade Organization? Did NOAA seek insight, expertise, or technical assistance from USTR as part of the development of their proposed rule? If so, did USTR provide insight, expertise, or technical assistance to NOAA?

Answer: The Fisheries Finance Program has been barred from financing any project that could lead to increased harvesting capacity of any fishery. Congress authorized the modifications to allow the financing of new vessels in a limited access system, and USTR worked closely with NOAA on the proposed rule to ensure that the proposed change would continue this policy and be consistent with U.S. trade obligations.

In particular, we note several aspects of the proposed rule to ensure the rule change does not increase harvesting capacity. Eligibility is restricted to limited access fisheries that are neither overfished nor subject to overfishing. In addition, the replaced vessels must be named at the time of application and must meet one of the following three conditions:

- 1. It must be scrapped, or**
- 2. It must continue to operate in a federally-managed fishery under limited access, or**
- 3. It must have its federal fishery endorsement permanently cancelled. In this instance, the vessel is permanently prohibited from fishing or providing support to fishing activities anywhere in the world, and the vessel's title is marked to prohibit the vessel's transfer to any foreign flag.**

NOAA sought insight, expertise and technical assistance from other U.S. agencies, including USTR, as well as the public, as part of its rulemaking. NOAA is currently reviewing all comments received and will continue to coordinate with USTR on the draft final rule.

Question 20

USMCA includes prohibitions on harmful fisheries subsidies. Article 24.20, section 1 states: "The Parties recognize that the implementation of a fisheries management system that is designed to prevent overfishing and overcapacity ... must include the control, reduction, and eventual elimination of all subsidies that contribute to overfishing and overcapacity."

Given that the proposed change to the Fisheries Finance Program would constitute a capacity-enhancing subsidy, and assuming USMCA is ratified – is the proposed change to the Fisheries Finance Program consistent with U.S. obligations under USMCA?

Answer: USTR has reviewed the eligibility requirements of the proposed rule and determined that they are consistent with U.S. obligations under the USMCA. Although it may be possible for a loan to be provided to build a fishing vessel that is capable of harvesting more seafood more efficiently, the fishery in which it participates must be limited access and not be overfished or subject to

overfishing. The proposed rule also places constraints on the replaced vessels to ensure those vessels also do not contribute to overcapacity in a fishery.

Senator Toomey

Question 1

The renegotiated NAFTA agreement contains a new mechanism called “Review and Term Extension,” i.e. a sunset provision, which is codified at Article 34.7 of USMCA. The sunset provision requires that USMCA’s “Free Trade Commission” (as outlined in Chapter 30) meet to conduct a “joint review” of the agreement six years after entry into force. As part of the joint review, “each Party shall confirm, in writing, through its head of government, if it wishes to extend the term of the agreement for another 16-year period.” If a Party does not agree to extend the agreement at the six year review, the Commission must conduct joint reviews every year, until the agreement is extended or terminates.

As you know, USTR’s draft statement of administrative action (SAA), which outlines in part the administration’s view on how the implementing legislation for the agreement will change or effect existing law, was transmitted to Congress on May 30, 2019. While the draft SAA details numerous changes to U.S. law that are “strictly necessary or appropriate” to implement the agreement, it does not include any changes to U.S. law in order to implement the sunset provision.

- a. *Please explain why the administration feels that no changes to U.S. law are required to implement the agreement’s sunset provision.*
- b. *Assuming that “Party” refers to each USMCA country’s government—e.g. the Government of the United States of America—per the agreement’s preamble, what should the internal process be for the United States to decide whether it wishes to stay in the agreement at the first six year review?*
- c. *Does the administration believe that Congress is included in USMCA’s definition of “Party” as “the Government of the United States of America”? If not, why not? What role should Congress have in determining whether or not the U.S. chooses to extend its participation in the agreement at each joint review?*
- d. *Chapter 30 of USMCA states that the Free Trade Commission tasked with joint reviews shall be composed of “government representatives of each Party at the level of Ministers or their designees.” In the draft SAA, the administration states that the U.S. Trade Representative (or his or her designee) will represent the U.S. on the Commission. How will USTR ensure that the views of Congress are accurately represented at each joint review?*

Answer: The USMCA’s review and term extension mechanism will help ensure that the agreement is working as intended and continues to serve the interests of the United States. I look forward to working with you and other Members to ensure that Congress’s views are appropriately accounted for as part of this review process.

Question 2

USMCA significantly scales back NAFTA’s Investor-State Dispute Settlement (ISDS) mechanism, which is designed to ensure that U.S. investors are treated fairly when they invest in Canada or Mexico. With respect to Mexico, full ISDS treatment is extended only to a handful of sectors (oil and gas, power generation, telecommunications, transportation, and some infrastructure). With respect to Canada, ISDS is completely eliminated within three years of entry into force.

- a. *Please explain USTR’s rationale for eliminating from ISDS NAFTA’s Minimum Standard of Treatment (MST) obligation protections (Article 1105) for most investors, particularly in light of the fact that American investors have filed 38 NAFTA ISDS cases claiming an MST violation.*

- b. *Please explain USTR's rationale for eliminating from ISDS NAFTA's protections against indirect expropriation (Article 1110) for most investors, particularly in light of the fact that American investors have filed 31 NAFTA ISDS cases claiming indirect expropriation.*
- c. *Please explain USTR's rationale for eliminating from ISDS NAFTA's protections against performance requirements (Article 1106) for most investors, particularly in light of the fact that American investors have filed 11 NAFTA ISDS cases involving a performance requirements claim.*
- d. *Trade Promotion Authority includes as a principal negotiating objective a directive that U.S. negotiators "secure for investors important rights comparable to those that would be available under United States legal principles and practice," including fair and equitable treatment (covered by NAFTA's MST clause), the elimination of performance requirements, and compensation for expropriation. How does the explicit removal of these ISDS protections from the current NAFTA comply with TPA?*
- e. *Why was the term "infrastructure" removed from the list of covered sectors with full access to ISDS in Mexico during the legal scrub of USMCA?*
- f. *Has USTR assessed whether the weakening of NAFTA's investor protections in USMCA will result in a reduction in U.S. investment in Canada and Mexico? If so, how great does USTR estimate that reduction to be?*

Answer: USMCA's substantive investment rules accord with the highest international standards of investment protection, including prior U.S. international investment agreements, and provide rights consistent with key U.S. legal principles and practice. The more limited availability of ISDS under USMCA reflects the Administration's broader efforts to ensure that our trade and investment rules respect our sovereignty and the right to regulate, reduce defensive litigation exposure, and reduce or eliminate incentives to outsource production and jobs. Under USMCA, U.S. investors in all sectors have the ability to bring ISDS claims against Mexico for violating the national treatment, most-favored nation treatment, and expropriation obligations after litigating in Mexican court. Because U.S. investors contracting with the Mexican government in sectors such as oil and gas, power generation, and telecommunications, may face unique political risks to long-term, capital-intensive projects, USMCA provides those investors access to ISDS for a broader scope of obligations, including MST, indirect expropriation, and performance requirement claims. Similarly, State-to-State dispute settlement procedures are available to bring claims relating to any obligation in the investment chapter.

Question 3

On May 30, 2019, President Trump announced that he would impose blanket 5% tariffs on all goods imported into the United States from Mexico if Mexico did not take steps to address illegal immigration. While I was glad to see that the President ultimately did not impose these tariffs, it is concerning that U.S. FTA partners like Mexico have been threatened with unilateral tariffs as a tool for achieving non-trade related policy objectives.

- a. *Should there be assurances to Mexico and Canada codified in U.S. law that prevent the unilateral imposition of tariffs on them and, thereby, guarantee that the U.S. will adhere to its tariff-free treatment obligations under the agreement?*

- b. *If Congress does not prohibit the unilateral imposition of tariffs on Canada and Mexico in the USMCA implementing legislation, how is tariff-free treatment among the three parties otherwise assured?*

Answer: The safety and security of the United States will always be a priority for the President. The President’s authorities for responding to emergencies and national security issues are outside the scope of trade agreements.

Question 4

On May 16, 2019, President Trump met with Swiss President Maurer to discuss a possible FTA with Switzerland. As you know, trade with Switzerland supports nearly 28,000 jobs in Pennsylvania, particularly in the chemicals industry.

- a. *What are the prospects that USTR will open trade negotiations with Switzerland?*
- b. *If negotiations are opened with Switzerland, will you commit to following TPA procedures and submitting any agreement to Congress for ratification?*

Answer: We continue to evaluate potential FTA discussions with a number of countries, including Switzerland. The decision on whether to launch any negotiations must be based on an assessment of whether we will have an end result in which more U.S. businesses are selling more of their goods to the country in question. Our end goal in any negotiation is always to make American workers and farmers better off than they were before. If we decide to start such negotiations, we would intend to follow the TPA process.

Question 5

As you know, USMCA includes a narrow exemption from Canada’s cultural exceptions for broadcasting. Specifically, USMCA provides that “Canada shall ensure that U.S. programming services specializing in home shopping, including modified versions of these U.S. programming services for the Canadian market, are authorized for distribution in Canada and may negotiate affiliation agreements with Canadian cable, satellite, and IPTV distributors.”

- a. *How does Canada plan to implement this exemption?*
- b. *If USMCA enters into force, how long will it be before home shopping networks like QVC may broadcast into Canada?*

Answer: Canada has several options it can use to amend its regime to allow for the distribution of U.S. home shopping networks in Canada, including those with modified signals. We are closely monitoring developments in Canada, including its implementing legislation and its discussion with its stakeholders. Once USMCA enters into force, commitments will be fully enforceable. The U.S. certification process will ensure that Canada has completed implementation by entry into force, which will allow U.S. networks to take advantage of the new opening in the USMCA.

Senator Scott

Question 1

South Carolina is home to rapidly expanding innovation and trade across multiple sectors, both commercial and small business oriented. While much of that trade occurs on the commercial level, increasing numbers of small businesses across the state utilize e-commerce platforms and rely on *de minimis* threshold shipments. In 2016, Congress recognized the importance of raising the *de minimis* threshold to better facilitate these expanding and innovative industries and manufacturers that rely on low value inputs. The Trade Facilitation and Trade Enforcement Act of 2015 codified a new *de minimis* threshold of \$800, a boon for many in our supply chain. However, I remain concerned with the *de minimis* footnote that was included in Article 7.8(1)(f) of the Customs and Trade Facilitation chapter of the U.S.-Mexico-Canada Agreement (USMCA), and potential circumvention of Congressional intent. I would not support any changes to section 901 of the Trade Facilitation and Trade Enforcement Act of 2015 (19 USC 1321), and I would not agree that any such changes are necessary to implement Article 7.8.1 on Express Shipments.

Will you commit that you will not make changes to section 901, having heard consistently from bipartisan members of both chambers that there is no support for such a change?

Answer: As noted in the Administration's submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. As you note, these consultations are underway, and I look forward to working with you and other Members on this important issue.

Question 2

American innovation is a key driver of our robust economic growth. To that end, I commend the Administration's efforts to safeguard American intellectual property from theft and forced technology transfers by the Chinese. Now is the time to strike a strong and enforceable deal with China. At the same time, we must ensure we are not punishing the good actors. To that effect, I am concerned by the efficiency of USTR's Section 301 exclusion process as many companies struggle with delays on exclusion requests. We know certain companies and small businesses are enduring the added pressure, while they have waited several months to a year or more for an exclusion. Moreover, many businesses that secured exclusions for lists 1 and 2 face significant uncertainty about whether they will be renewed. Many of those businesses, not unreasonably, could not readjust supply chains in only a year.

Do you commit to ensuring a timely exclusion process for list 3 (\$200 billion) products, given the large volume of products included? Furthermore, do you intend to establish an expedited process for renewing exclusions granted for lists 1 and 2?

Answer: For Lists 1 and 2, USTR has granted over a thousand of exclusion requests. The exclusion process for List 3 products is well underway, and it is more efficient than our process for Lists 1 and 2 given the establishment of a new online portal. I understand your view on extending exclusions granted for Lists 1 and 2. Our hope is that businesses have taken action during the period of their exclusion to adjust to the tariffs. At this time, USTR has not determined a course of action with respect to extension of the exclusions, all of which will have been available for a year (and longer in many cases)..

Question 3

South Carolina is one of the greatest exporting states in the country. To us exports equal jobs. The more we can export the more jobs that can be created. USMCA for the auto industry is mostly about localization since the agreement requires 75 percent North American content. My question, and my concern, is that these companies are the experts and so have determined the right formula based on their particular business case for exporting. Further localization likely means more expensive production costs. Higher costs make these companies less competitive globally and risks this incredible export growth we've been experiencing.

Can you tell me how you see USMCA benefitting US exports? Is there room in this agreement for high volume exporters to get credit for their exports?

What is the impact of the auto rules of origin in USMCA on new auto manufacturers? How are you handling new plants that just came online and sourced their suppliers based on the old NAFTA rules? Will there be a clear grandfather?

Answer: There is no question that NAFTA drove auto and auto parts jobs and investment away from the United States and to Mexico. The USMCA rules of origin will benefit U.S. production and exports by incentivizing the production of more auto parts and other content in the United States. Based on auto producers' own information, we expect that the new rules will incentivize additional U.S. capital investments of \$34 billion and U.S. automotive parts purchases of \$23 billion, some of which will likely be exported. The rules make North American auto production more competitive as a region, and the United States in particular is poised to benefit by way of new jobs and investment. Many auto producers have already announced new investment here in the United States, which is particularly notable given the weakness of auto production in markets such as China, the EU, and South America.

Under the USMCA rules of origin, new auto producers in North America will get incentives if they make investments and parts purchases in the United States. This is different from the incentive schemes for new producers under NAFTA, which largely incentivized additional investments in and outflow of jobs to Mexico and allowed increasing content from non-NAFTA countries. Producers who are sourcing content based on the old NAFTA rules will get an extended transition period to meet the USMCA rules if they provide a detailed and credible plan to ensure that their production meets the new rules.

Senator Young

Question 1

First, let me reiterate my congratulations on your successful USMCA negotiations. Securing high pharmaceutical IPR standards through USMCA, including 10-years of regulatory data protection for biologics is important for the state of Indiana and serves as a strong foundation for future agreements with Japan, the European Union, and the United Kingdom.

Furthermore, establishing 10 years as the global floor for protection is critical to maintaining the long-term viability of the innovative U.S. industry at a time when China looks to further develop its own competing industry. China has targeted the biopharmaceutical industry as a strategic growth sector. It wants to encourage domestic innovation through, for example, proposing a 12-year period of regulatory data protection for biologics, if those products are first developed and introduced into China.

Can you reassure us that this will continue to be a priority for USTR in future negotiations?

Answer: USTR is committed to following the intellectual property-related negotiating objectives contained in Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

Question 2

Reports have suggested the United States is considering entering into limited trade negotiations with the likes of Japan or the European Union. My hope is that as a part of our trade dialogues with both the EU and Japan that we are pressing for comprehensive trade negotiations. Given the urgent need for the United States to open up new markets for Indiana manufacturers and farmers alike, I believe that anything less than a comprehensive trade agreement represents a missed opportunity.

Can you ensure that any trade agreements with either Japan or the European Union will not be limited in their scope? That they will be comprehensive trade agreements?

Answer: As suggested in the September 2018 Joint Statement by President Trump and Prime Minister Abe, the Administration has envisioned the possibility of a staged negotiation, with an initial, limited outcome designed, in part, to help U.S. exporters put at a disadvantage by Japan's other trade agreements. At the same time, the Administration maintains other, much broader objectives for a comprehensive trade agreement with Japan, as outlined in the U.S.-Japan Trade Agreement Negotiating Objectives published in December 2018.

In our negotiations with the EU we seek to reduce or eliminate both tariff and non-tariff barriers that are significant obstacles to U.S. exports. We will not enter into a trade agreement with the EU that does not achieve those goals. We seek comprehensive tariff negotiations with the EU, covering agricultural as well as industrial products. Members of the Committee are aware, however, that we have not begun tariff negotiations because the EU has not agreed to negotiate agricultural tariffs, and it would not be acceptable to Congress, the Administration, or our stakeholders to conclude a tariff agreement limited to industrial products. Despite this impasse, we continue to work constructively with the EU on non-tariff barriers that impede U.S. manufactured exports to the EU.

Question 3

Indiana is home to numerous RV manufacturers and their downstream supply chain. Their industry association resubmitted a Competitive Need Limitation waiver for lauan at the 10-digit level and I hope

that USTR will give this request due consideration. This waiver updates a request made in 2018 to a much narrower group of products that are essential to RV manufacturers located in Indiana.

Since the removal of this product from GSP for Indonesia, imports have grown despite an eight percent tariff, showing that there is no other viable source for this product. This costs RV manufacturers in Indiana and across the country almost \$1 million each month.

Will you promise to work with my office to review this issue, and direct your staff to work with the RV industry and the ITC to help this innovative and uniquely American sector remain competitive?

Answer: I have requested that the USITC study the RV's industry's GSP petition for a CNL waiver on lauan wood. Under the GSP statute, the USITC must do an independent analysis of the request, including whether a like or directly competitive product was produced in the United States within the last three years. The analysis will be complete by early September.

Question 4

I have been informed that some tool manufacturers are facing tariff rates of more than 50 percent on tool sets that include items from List 1 and List 3 because Customs and Border Protection (CBP) stacked the Section 301 tariffs from List 1 and List 3 together for some sets that include items from both lists. It is my understanding that CBP has interpreted USTR's 301 notifications to mean that toolsets from List 3 that contain a product from List 1 are subject to the 25 percent duty rate for the List 1 tariff, and additionally the List3 tariff duty rate (CBP ruling HQ H299857). Stacked together, this is essentially a 50 percent duty rate, plus the ad valorem duty, rather than the normal duty rate of the product with the highest duty rate in the set, or 25 percent. I am told CBP suggested they believe they are interpreting the application of the Section 301 tariffs appropriately, and would need guidance to change their current approach.

With negotiations with China ongoing and the prospects of List 4 being applied to a new set of goods, I am concerned that what is now an issue impacting one industry could impact other industries.

Is USTR familiar with the CBP ruling and that some Section 301 tariffs are being applied in this manner? Does USTR agree with CBP's interpretation of its Section 301 notifications and agree that Section 301 tariffs are to be stacked in this manner?

Answer: USTR is aware of this issue with respect to applying Section 301 tariffs to tool sets. We are currently reviewing this issue.

Question 5

There seems to be some question as to whether vehicles that are produced in the U.S. only for the U.S. market will be subject to the qualifying rules of origin requirements in USMCA. In an April Politico story, a senior USTR official indicated that auto manufacturers have to qualify their entire North American fleet under the new auto rules of origin, which seems to imply that 100 percent of U.S. produced vehicles must meet USMCA rules of origin even if the vehicles are only sold in the U.S. and not traded.

Is it USTR's intention that all vehicles produced in the United States meet this requirement even if they are not exported to Canada and Mexico? Can you explain how this process would work and USTR's authority to enforce such a requirement?

Answer: This is a misunderstanding by Politico. Only vehicles traded among the United States, Canada, and Mexico may claim USMCA preferential treatment and are subject to the USMCA's rules of origin. In order for a producer to receive an extended transition period to meet the USMCA rules, a vehicle producer must provide a detailed and credible plan based on their entire North American production indicating how their production, with averaging, meets the new rules. However, only those vehicles for which companies make a claim of preferential tariff treatment would need to meet the rules.

Question 6

One of the longstanding European Union trade barriers that concerns me is the EU's application of prohibitive duties on imports of U.S. fertilizers, which represent an important agriculture market in Indiana. The EU is an important market for American nitrogen exports, with our lower feedstock costs and transportation advantages over exports from other countries.

However, the EU continues to impose a protectionist duty of 6.5 percent on most U.S. nitrogen fertilizers. To make matters worse, the EU recently imposed an antidumping duty on imports of U.S. urea ammonium nitrate (UAN) fertilizer, making the total import duty level of over 29 percent prohibitive for U.S. UAN exports.

As such, I ask if the US-EU trade negotiations progress, will you make the reciprocal access for fertilizer trade between the United States and the European Union a priority in the negotiations?

Answer: USTR staff have been consulting with U.S. fertilizer producers and monitoring developments in the EU tariffs on fertilizer inputs and products. Addressing fertilizer tariffs will be an important objective of any comprehensive U.S.-EU trade negotiation.

Question 7

I continue to maintain concerns regarding the *de minimis* footnote that was included in Article 7.8(1)(f) of the Customs and Trade Facilitation chapter of the U.S.-Mexico-Canada Agreement. I continue to hear from Indiana stakeholders regarding the importance of maintaining a high *de minimis* threshold of \$800, a Congressional priority that I helped include within the confines of the Trade Facilitation and Trade Enforcement Act of 2015. In fact, the importance of the *de minimis* issue was raised with you in a letter from 25 bipartisan Senators last November. Your subsequent January response to the letter did little to assuage the concerns of me or my Indiana stakeholders who support high a *de minimis* threshold.

*Will you pledge to work with our Mexican and Canadian counterparts to improve their *de minimis* rules further, rather than lowering levels as the footnote proposes doing?*

Answer: As noted in the Administration's submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. These consultations are underway, and I look forward to working with you and other Members on this important issue.

Senator Menendez

Question 1

The Administration and the Department of Commerce developed an exclusion process to hold harmless U.S. companies inadvertently affected by the Section 232 steel quotas. As you and the Department of Commerce are aware, my constituent company, Micro Stamping Inc., was one of a few companies to receive favorable exclusion decisions under this order. However, during calendar year 2019, Micro has not been able to use these exclusions to import much-needed product.

How will your office and the Department of Commerce expedite a resolution to this situation?

What options are available to the Department of Commerce to immediately allow the company to exercise their exclusions to import the product they need to continue manufacturing critical medical devices?

Have you discussed this company's specific situation directly with Korean trade officials?

What is the status of those discussions?

Answer: USTR staff, as well as officials of the Departments of Commerce and Homeland Security, have met on several occasions with Micro Stamping and its representatives to hear the company's concerns and answer its questions about the quota. The quota regime established in the proclamations issued by the President imposes no constraint on when U.S. businesses can import steel and aluminum products for which the Department of Commerce has granted an exclusion. U.S. businesses can import these products at any time, whether or not the quota for the products in question has been filled. We have relayed to Korean trade officials the concerns Micro Stamping has raised with respect to the commercial decisions of Korean exporters about whether to supply the company. We understand the company is in direct contact with Korean industry and government representatives.

Question 2

Ambassador Lighthizer, we can both agree that 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, we have dozens of small and medium-sized companies in New Jersey that import from India and are struggling to adapt to the sudden loss of trade preferences. Some of them that were hit hard by the China tariffs moved their sourcing to India, only to find out shortly thereafter that the Administration is removing trade preferences there. In short, the status quo isn't an acceptable solution for any of my constituents.

Can you commit to making it a priority to solve our issues with India so they can be reinstated into GSP?

What are the criteria that India has to meet to be reinstated?

Moving forward, what is your plan for getting a successful outcome?

Answer: The decision to terminate India's GSP beneficiary status was not taken lightly and was in accordance with the Congressionally-mandated GSP eligibility criteria that govern the program. For many years, India has prevented effective access for many U.S. goods and services while simultaneously benefiting from largely open access to the U.S. market, including the extension of special preferences under GSP. India's failure to provide fair and adequate market access was

harmful to U.S. interests and it was important that we enforce the statutory criteria for these benefits.

Looking ahead, we remain engaged with India and are committed to address these issues. I have already spoken to Minister Goyal, and a USTR team recently visited New Delhi to meet with a variety of Indian government officials in an attempt to make progress on the broad range of trade barriers we have highlighted.

Question 3

It is my understanding that books have long been able to be imported into the U.S. duty free. This is largely because Americans understand that we all benefit from a free flow of knowledge and information.

Given literature's ability to enrich our political, religious, and cultural discourse, and promote literacy and learning for children, do you believe imposing tariffs on books is consistent with American values?

Do you believe tariffs on books are in America's self-interest?

Do you believe tariffs on books will alter Chinese behavior in ways tariffs on other goods will not?

Answer: There has been no decision with respect to the proposed additional tariffs. The President will provide his direction at the appropriate time based on the state of the negotiations with China.

During the notice and comment period, USTR has received comments and heard testimonies regarding the potential effects of the proposed tariffs on books. I will consider these comments and testimonies before taking any action on the additional tariffs.

Question 4

Ambassador Lighthizer, when President Trump moved to increase Section 301 tariffs to 25 percent on the third tranche of Chinese products on May 10, USTR clarified that shipments from China that had already been shipped would be excluded from this tariff rate increase. Later, Customs and Border Protection issued guidance indicating that this exception would only apply if the goods also entered the United States before June 1. On May 31, USTR revised its guidance, noting that covered products exported from China to the United States before May 10 will remain subject to only the additional 10 percent tariff if they enter into the United States before June 15. While I appreciate USTR's extension, I have heard from constituents that there were shipments containing covered products that were exported from China to the United States before May 10 that did not enter into the United States before June 15, simply because they were headed to ports on the East Coast and encountered transit delays.

Why did USTR choose June 15 as the deadline for in-transit shipments to benefit from the old 10 percent tariff rate?

Are you aware that there are some shipments containing covered products that were exported from China before May 10 that did not enter the United States before June 15?

Will USTR allow these shipments to benefit from the 10 percent tariff rate?

Answer: USTR relied on U.S. Customs and Border Protection to identify an effective date that was consistent with historical shipping data from goods on the water between China and the United States. Covered products that were exported from China to the United States prior to May 10, 2019 will remain subject to an additional 10 percent tariff if they enter into the U.S. before June 15, 2019. As noted, originally, the deadline to enter the U.S. before the goods would be subject to an

additional 25 percent tariff was June 1, 2019. This limited extension further accounted for customs enforcement factors and the transit time between China and the United States by sea.

Pursuant to 84 FR 20495 and 84 FR 26930, shipments that were shipped from China before May 10 and entered the United States after June 15 will be subject to the additional duty rate of 25 percent.

Senator Carper

Question 1

Ambassador Lighthizer, when you testified at the Finance Committee's 2018 Trade Agenda Hearing, I asked about USTR's position on restarting the Trade in Services Agreement negotiations, which stalled at the end of the Obama Administration. You told me you were looking into it. I want to reiterate what I said last year, which is that the U.S., and my state of Delaware in particular, has a strong comparative advantage in service exports, and we should be doing everything we can to expand trade opportunities for our services.

Now that a year has passed, can you share the Administration's position on restarting the Trade in Services Agreement?

Answer: The Administration places a high priority on continuing to expand U.S. services exports and services trade, recognizing that services are a key driver of our economy. The USMCA, for example, includes a number of state-of-the-art provisions that will help to expand U.S. services exports, including in the area of digital trade, and will serve as a template for future agreements. We are also currently pursuing the negotiation of high standard digital trade rules that would significantly benefit U.S. services suppliers in plurilateral WTO digital trade initiative negotiations. We continue to evaluate other potential negotiations to further expand U.S. services exports.

Question 2

I appreciate that USTR previously recognized the potential risks of Section 301 China tariffs on medical products that are necessary to respond to manmade and natural disasters as they removed related products from prior tariff lists. I am concerned that List 4 includes the return of a number of key personal protective equipment items, including gloves and gowns, which had been removed from previous lists.

Can you explain USTR's justification for re-including on List 4 these and other goods that were dropped from previous lists?

Has USTR fully considered the risk of imposing tariffs on personal protective equipment to ongoing patient treatment and care, as well as the impact possible shortages may have on the country's ability to respond to public health events such as the forthcoming flu season, hurricane season, and possible spread of Ebola to American shores?

Answer: There has been no decision with respect to the proposed additional tariffs. The President will provide his direction at the appropriate time based on the state of the negotiations with China.

During the notice and comment period, USTR has received comments and heard testimonies regarding the products that were previously removed from the previous lists and the potential effects of the proposed tariffs on personal protective equipment. I will consider these comments and testimonies before taking any action on the additional tariffs.

Senator Brown

Question 1

You have mentioned that there are reformers in China that want to use the U.S.-China trade talks as an opportunity to push the country toward a market-oriented economy.

Is China's complete transition to a market-oriented economy a U.S. objective in the talks? If so, what specific policy changes in China will be critical to achieving that objective?

Answer: In our negotiations with China, we are trying to address as many of China's non-market oriented policies and practices as possible. Among other things, these policies and practices unfairly skew the playing field against U.S. companies and workers. For example, China's pervasive subsidization of its domestic industries is a key issue in our ongoing bilateral negotiations. These and other market-distorting practices have caused unfair competitive disadvantages for U.S. manufacturers and workers for decades. This Administration is determined to take action to address these issues.

Question 2

As you know, China's steel state-owned enterprises account for 8 of the 10 biggest steel producers in that country and are a big part of the steel overcapacity problem. Steel overcapacity – and the corresponding threat to steel jobs in the U.S. – cannot be resolved if these SOEs continue to operate as business as usual.

What specific policy changes must China enact in order for the steel SOEs to operate according to commercial consideration? How long do you think it would take to implement those policy changes?

Answer: The United States, working with international partners, has identified a number of market-distorting measures, the elimination of which would help restore market functioning and reduce excess capacity in the global steel sector. These include a range of measures that implicate state-owned enterprises operating in China, such as preferential financing, debt forgiveness, and other financial support measures; the assumption of liabilities by the government or government-related entities; the provision of goods and services preferentially or at non-market rates; subsidies and tax rebates that favor domestic production for export; and the selective application and enforcement, or non-application and non-enforcement, of laws and regulations. The United States has pressed China to adopt these policy recommendations swiftly and in full.

Question 3

In the course of the China trade talks, has the U.S. asked China to commit to reducing its net steel capacity? If so, has the U.S. developed a mechanism for monitoring China's compliance with that commitment?

Answer: In our ongoing negotiations with China, we are seeking to address excess capacity in many different industries, including steel. We are determined to ensure that any commitments that we are able to secure from China will be subject to a strong enforcement mechanism.

Question 4

In the hearing, I asked if you were building an international coalition to help apply pressure to China. You mentioned the U.S. is working with the EU and Japan. I know the U.S. is cooperating with the EU and Japan within the context of the WTO to combat non-market-oriented policies of third countries.

Can you explain how that trilateral WTO collaboration is giving the U.S. leverage in the U.S.-China talks? Given that the WTO is a consensus organization, is it your belief that a trilateral coalition is sufficient to convince China it must transition to a market economy? Is the U.S. reaching out to any other countries to join this coalition? If so, which countries?

Have the imposition of tariffs or the threats of tariffs on imports from Japan and the EU affected the two countries' willingness to collaborate with the U.S. on non-market-oriented policies?

Answer: The trilateral process put the EU and Japan on record with a shared understanding that market-oriented conditions are fundamental to a fair, mutually advantageous global trading system. Non-market oriented policies and practices, forced technology transfer, state-owned enterprises, and industrial subsidies are critical concerns in light of China's overall non-market economic system. On each element of the trilateral discussions, the focus has been to analyze the nature of the problems in China to identify effective means to address our shared concerns. This may include individual, coordinated, or joint enforcement actions, developing shared norms on fair trade, and exploring possible new rules in those areas. Any new rules – on subsidies, for example – must be ambitious, high standard, and effective in curbing China's unfair practices. We will continue to work with our partners and engage with other key WTO Members with the aim of taking the work forward more broadly.

Question 5

As you know, I have long been concerned about the business model of U.S. companies moving production – and U.S. jobs – overseas to countries like China only to ship goods back in the U.S. Low wages are a major driver of this business model. You previously stated that you are not addressing China's suppression of worker's rights in China in the trade talks.

Does the Administration view China's low wages as a contributing factor to U.S. job loss to China? If so, what is the Administration's strategy for closing the U.S.-China wage gap?

In the context of the U.S.-China trade relationship, what policies is the Administration pursuing to stop this business model of off-shoring production and shipping products back into the U.S.?

Answer: As set forth in USTR's 2018 Report to Congress on China's WTO Compliance, the Administration has a number of concerns regarding problematic Chinese labor laws and practices, including China's lack of adherence to certain internationally recognized labor standards. These shortcomings adversely affect American workers and businesses. I remain committed to working with Members of Congress to discuss options and policies for addressing these important labor issues.

Through our ongoing negotiations with China, we are seeking structural changes in China that will help level the playing field for U.S. companies and help remove artificial incentives and other unfair policies and practices that influence their decisions to establish production facilities in China rather than the United States. For example, addressing China's pervasive subsidization of its domestic industries is a key objective of our ongoing bilateral negotiations. These and other market distorting practices have caused unfair competitive disadvantages for U.S. manufacturers and workers for decades. This Administration is determined to take action to address the issue.

Question 6

Section 301 tariffs on imports from China have been in place for nearly a year.

What changes, if any, has China made to its industrial policies since the Section 301 tariffs took effect? Are there any other policy changes made by the Chinese government that can be attributed to the imposition of U.S. tariffs on Chinese imports?

Answer: Currently, the Administration's use of tariffs under Section 301 of the Trade Act of 1974 is providing the United States with an important source of leverage to bring China to the table to negotiate an enforceable agreement that will address China's unfair trade practices, including in the area of industrial policies. Since the start of the negotiations, China has issued or revised a handful of relevant measures, such as a new Foreign Investment Law and a revised Trademark Law. We continue to press China to add specificity to these measures to address our most important concerns.

Have there been significant shifts in global supply chains in any sectors as a result of the tariffs? If so, please identify the specific changes to global supply chains that involved the reshoring of jobs to the U.S. Is it your belief that changes to global supply chains as a result of Section 301 tariffs are permanent changes?

Answer: It appears that the tariffs imposed by the United States pursuant to Section 301 of the Trade Act of 1974 have contributed to companies' decisions regarding their global supply chains. Over the past year, numerous companies that had invested in China have relocated, or have begun the process of re-locating, some or all of their manufacturing facilities to countries other than China. Some companies have moved production to the United States, and other companies appear to be moving production to countries in Southeast Asia. It appears that many companies are no longer comfortable with investing heavily in China and are making forward-looking decisions to protect themselves against trade frictions that may emerge between China and its trading partners.

Question 7

In the hearing, I asked you if the Administration had a Plan B instead of the tariffs in case the U.S.-China talks do not result in an agreement. You stated that you are open to alternatives but have not heard of a better idea than tariffs. The president recently stated that his Plan B for China is more tariffs.

Is USTR actively exploring alternative non-tariff-related ways to gain leverage with China?

Answer: We believe that the additional tariffs currently in place on Chinese goods are helping to create leverage and have played a role in China's decision to engage in serious discussions with the United States. If we conclude that an agreement is not possible under these circumstances, we will consider other possible means for creating the leverage necessary for achieving a successful and meaningful agreement with China.

Senator Bennet

Question 1

Nearly two years ago, you told me that the Administration would do no harm to agriculture. You committed to maintaining markets that our farmers and ranchers already had access to, and expanding new export opportunities. One year after that, you admitted that farmers are getting the short end of the stick and offered your sympathies. And now the situation is worse.

- *How much of the damage to American agriculture is irreparable?*
- *Is a return to “status quo” the best that our farmers and ranchers can hope for?*
- *How many new bilateral deals have been finalized since the start of this Administration and how have farmers and ranchers benefitted?*

Answer: The Administration has prioritized opening markets for agricultural and has had success across a range of sectors and in many countries, such as poultry in India and pork in Argentina. As you note, some of our trading partners have engaged in illegal retaliation on their imports of U.S. agricultural products in response to lawful U.S. initiatives to bring balance to our trading relationships. These countries can immediately rectify this situation by negotiating a solution rather than retaliating. Our trading relationships, including with respect to agricultural exports, have flourished with countries that have chosen to resolve these trade irritants.

Question 2

Right now, American consumers are paying for the President’s tariffs; farmers and ranchers are paying for retaliatory tariffs; and taxpayers are footing the bill for tens of billions of dollars of USDA trade aid. I’ve said it before, this trade war is not without consequence.

How would you characterize the cost of your approach to farmers and ranchers?

What steps are you taking to restore certainty into agricultural markets?

Answer: As noted by several studies and news outlets, the impact of tariffs is widely dispersed and largely affects exporters seeking to maintain market share in the United States. This is particularly true with respect to China, where the state manages much of the economy and is not particularly responsive to market forces. Many countries around the world continue to use high tariffs and a multitude of non-tariff trade barriers to impede access to U.S. agricultural products. This status quo is not acceptable. The United States continues to explore and negotiate market opening agreements for agriculture with our trade partners. The International Trade Commission estimates our agreement with Canada and Mexico will increase U.S. agricultural exports by \$2.2 billion. Upon completion of the current negotiations with Japan, U.S. farmers and ranchers will experience significant new opportunities for U.S. agricultural exports. And resolving China’s longstanding SPS issues with respect to agricultural will benefit farmers seeking to sell into that market.

Senator Casey

Question 1

The administration's 301 actions were undertaken in response to China's long history of forced tech transfer, industrial espionage, and market restrictions. The threats and challenges that China poses as it relates to these issues are not unique to the United States.

In the context of China and the 301, please provide a summary of your engagement with the EU and our other allies, as you were undertaking the 301 investigation.

Answer: From the start of the Administration, we worked closely with the EU and other partners that we know share our concerns about China's unfair trade practices, exploring strategies to respond to those practices. We had multiple engagements with the EU on China at the senior leadership and technical level during the 301 investigation. We have a trilateral group with the EU and Japan that meets quarterly and has been very vocal in taking a unified stand against forced technology transfer. Both the United States and the EU have brought cases at the WTO against Chinese practices in this area, and we continue to explore new rules on industrial subsidies with our partners. It should also be noted that in the USMCA we agreed with Canada and Mexico to provisions disciplining state-owned enterprises, currency manipulation, and other non-market practices.

Question 2

In the context of China and the 301, please provide a summary of your engagement with the EU and our other allies in time since the conclusion of the 301 investigation, regarding to the ways in which we can work together to coordinate our efforts to address the challenges posed by China.

Answer: Since the March 2018 Section 301 report, USTR has continued our steadfast engagement with the EU and other allies to coordinate our efforts to address the challenges posed by China. We share similar views with the EU on the challenges that China poses to our economic and commercial interests.

As part of the trilateral process, I met with the EU Commissioner and the Japanese Minister of Economy, Trade and Industry on May 23 in Paris, where we advanced our shared objectives to address non-market orientated policies and practices of third countries. The trilateral discussions have been constructive and throughout we have reviewed our concerns and ongoing work. Our discussions have focused on nonmarket policies and practices, market-orientated conditions, forced technology transfer policies and practices, industrial subsidies and state-owned enterprises, WTO reform and digital trade and e-commerce. The EU agreed to a joint statement effectively affirming the outcomes of the Section 301 report, and as noted above, brought their own case at the WTO targeting these practices by China. We look forward to our ongoing cooperation with our like-minded partners.

Question 3

The 232 is a critical tool to address overcapacity, but we must also ensure our domestic steel industry can compete on a level playing field globally. And global overcapacity of steel and aluminum remains an issue.

Can you discuss how you are engaging with China and our allies to address global overcapacity head on?

Answer: The Administration is working with a broad range of partners in an effort to address the causes and challenges of massive and persistent excess capacity in the global steel and aluminum sectors. In the OECD and G20, for example, the United States is working with partner governments in an effort to bring greater transparency to capacity developments and government support measures in these sectors, and to articulate principles that governments should adhere to in order to ensure proper market functioning. We are also working with like-minded partners such as Japan and the European Union to develop stronger international disciplines on industrial subsidies and state-owned enterprises. The role of market-distorting forces, including subsidies and state-owned enterprises, in creating excess capacity has also been an element of the negotiations we have undertaken with China over our bilateral economic relationship.

Question 4

In the context of overcapacity, please provide detail regarding the direction the President has given you and how he has empowered you to work with our allies to address global steel overcapacity.

Answer: The United States has been an active and committed participant in international fora directed at addressing the challenge of global steel overcapacity, such as the Steel Committee of the OECD and the Global Forum on Steel Excess Capacity. President Trump and his fellow G20 Leaders have repeatedly called on members of the Global Forum to fulfill the commitments they have undertaken as part of that process. Unfortunately, we have not seen an equal commitment to that process from all Forum members. Progress on this issue will only occur when those that have created the problem of massive excess capacity act to remove subsidies and other measures that distort markets and create serious global imbalances.

Question 5

The 301 negotiations with China encompassed all manner of activity, going beyond the scope of the 301 investigation, including market access for agricultural goods.

Did your negotiations with China ever include efforts to reach meaningful reform on steel and aluminum overcapacity?

Answer: The negotiations with China over the trade relationship between our two countries have covered a wide range of issues, including how market-distorting forces in China, including subsidies and state-owned enterprises, can lead to excess capacity. In the context of these discussions and multilateral discussions, we have urged China to remove market-distorting measures that contribute to overcapacity.

Senator Warner

Question 1

In a recent briefing for Congressional staff, USTR indicated that it was in the process of hiring additional employees to assist in the review of applications for exclusions to 301 tariffs. USTR has mostly finalized review of the *first* tranche of tariffs. It is *nearing* completion of review of applications related to the *second* tranche. But a process for the *third* tranche hasn't even been finalized yet. And the announcement of a *fourth* tranche in May foreshadows what will be yet another round of applications. Most troublingly, each of the 3rd and 4th tranches is *more than an order of magnitude larger* than either the 1st or 2nd tranche in terms of goods impacted. This does not bode well for the Administration's ability to develop a coherent trade agenda.

How can Virginia businesses have confidence that USTR will work expeditiously in developing a process for, and subsequently reviewing, deserving applications for exclusions?

As USTR is only now hiring additional employees to meet the inevitable larger volume of exclusion requests, how expeditiously are you shaping the hiring and training process for new employees?

How will the larger tranches impact the length of time USTR takes to grant an exclusion?

Answer: Approximately 35 USTR attorneys, paralegals, trade analysts, and contractors with experiences in law, industrial sectors, tariff classifications, and data analysis work on the exclusion process. USTR is working expeditiously to process all product exclusions requests and will continue to issue determinations on pending requests on a rolling basis. USTR carefully considers each request under the product exclusion criteria set forth in the Federal Register notice. USTR takes into account all available information, including information submitted by the requester and by other interested parties that may comment on specific requests.

In the coming weeks, we anticipate onboarding additional staff, including analysts on detail from the Departments of Treasury, Commerce, and Agriculture, that will assist on the exclusions process, particularly for List 3. The majority of these personnel work on the exclusion process on a full-time basis and collectively have spent thousands of hours reviewing and processing exclusion requests.

USTR presently intends to carry out its Section 301 exclusion process at our current level of funding. Given the substantial level of resources necessary to implement the List 3 exclusion process, USTR will closely monitor the exclusion process to assess whether additional funding is necessary.

Question 2

Developing a coherent agenda to counter China's efforts to undermine the rules based trading system – and beyond that, on security issues – is something I have been calling for a number of years now. Crucially, this means working with allies – and particularly regional allies. However, I'm concerned that the Administration is pursuing an *ad hoc* trade strategy that has the effect of *isolating* regional partners.

Did the Administration consider the impact of suspending India's participation in the GSP, in the midst of a major election cycle in India, on securing India's future cooperation with respect to China?

Secretaries Ross and Pompeo are going to India to meet with new Government; will USTR be sending officials too?

Do you agree with the President's assessment that Vietnam "takes advantage of [the United States] even worse than China"?

Answer: For years, U.S. exporters have faced significant barriers in India to their goods and services while India benefited from unilateral trade concessions by the United States. The Administration's decision to enforce the GSP statutory criteria for market access was long overdue. The Administration gave due consideration to timing of the decision on India's GSP benefits. The President made the final decision to withdraw GSP benefits for India well after the Indian elections were over and there was a decisive result.

I have already spoken to Minister Goyal, and a USTR team recently visited New Delhi to meet with a variety of Indian government officials in an attempt to make progress on the broad range of trade barriers we have highlighted.

Likewise, U.S. businesses face a host of unfair trade barriers in Vietnam. The United States has been clear with Vietnam that it has to take action to reduce the unsustainable trade deficit, including by expanding its imports of goods from the United States and by resolving market access restrictions related to goods, services, agricultural products, and intellectual property.

Seeking resolution of trade issues with these partners does not preclude cooperation with them on other fronts, particularly in dealing with China. We continue to coordinate closely with the State Department and other relevant agencies as we seek to prioritize U.S. interests globally.

Senator Whitehouse

Question 1

The new environment chapter in the renegotiated NAFTA has some positive elements in it—the provisions on marine debris, fish subsidies, and combatting IUU fishing in particular. But the words on paper are only as good as enforcement on the ground and on the water. I'm concerned about the enforceability of the agreement broadly, but particularly with respect to the environment. Mexico has a lot of work to do, and the United States can be a partner in this work. I'd like to be a partner with you to identify where enforcement is going to be a challenge and how the U.S. can close gaps in terms of monitoring and capacity building so that Mexico lives up to its obligations and we aren't left with trade disputes over whether Mexico is abiding by its commitments.

Will you commit to working with Congress to determine how we and our Mexican partners can best allocate resources to ensuring these provisions of the agreement and fully enforced?

Answer: Yes, I am committed to working with you and other members of Congress to ensure effective implementation and enforcement of the USMCA Environment Chapter.

Question 2

The entry into force of increased Section 301 tariffs on List 3 imports from China earlier this month has dramatically increased the number of U.S. companies whose products are implicated in the ongoing trade war. The Rhode Island Manufacturing Association and many RI companies are concerned about their ability to seek tariff relief, as well as the fairness and objectivity of the exclusion review process. As we wait for the exclusion review process for List 3 items to be published in the coming weeks, I'd like to understand why such a process should not already exist when new tariffs are announced.

Will you commit to making public the application process for tariff exclusions at the same time that any future Section 301 tariffs are announced?

What have you learned from the tariff exclusion application and review process for List 1 and List 2 products? How can USTR improve the service it provides to U.S. companies when considering such exclusion requests?

Answer: There has been no decision with respect to the proposed additional tariffs, including any exclusions process. The President will provide his direction at the appropriate time based on the state of the negotiations with China.

The exclusion process for List 3 has started and is in full operation. USTR considered the feedback we've received with respect to the exclusion process for List 1 and List 2 in developing the exclusion process for List 3. As a result, USTR created a new, user-friendly online portal that makes the submission process easier and revised the request form. USTR is also improving its coordination with the ITC and CBP to ensure efficient decision-making. We look forward to continuing to consult with the Committee on any future exclusion processes.

Question 3

Many of the Rhode Island manufacturers that have contacted me about tariff exclusions are small businesses with limited resources, and are thus disadvantaged by comparison with large corporations when collecting information and filling out forms required to seek exclusions.

What steps can USTR take to ensure a level playing field for U.S. companies of all sizes seeking relief from tariffs?

Answer: My office has made considerable efforts to facilitate the access of small businesses to the product exclusion process. Those efforts include the following:

- **Single Point of Contact and Technical Support:** We designated a single Section 301 hotline to take inquiries from the public. USTR trade specialists staff the hotline during business hours and respond to all voicemail messages within 24 hours. We provide a full spectrum of technical services to the public, including helping interested persons submit their exclusion requests, answering questions about the products subject to the additional tariffs, and making referrals to other government agencies on collateral issues. We receive, on average, 20 to 25 calls per day from interested persons. Furthermore, we have worked individually with requesters (mostly small businesses) to correct deficiencies in approximately 1,700 requests.
- **Collaboration with the Small Business Administration (SBA):** We have worked extensively with the SBA throughout the Section 301 investigation, including on the product exclusion process. For example, we assisted the SBA Office of International Trade on publishing a primer on the recent tariff actions: <https://www.sba.gov/blogs/what-small-businesses-should-know-about-tariffs>. We also conducted an agency-wide product exclusion process briefing to SBA district officers from the field offices and briefed state and local level trade officials. At the request of SBA, USTR also created Frequently-Asked-Questions to address small business concerns. Furthermore, we have advised SBA on additional resources for small business counselors.

- **Notice and Dissemination of Information:** We conducted an extensive notice and comment process throughout the investigation that included four public hearings, more than 500 witnesses, and approximately 10,000 comments. In addition, we created information papers and a searchable database to facilitate public access to information regarding the products and requests. We published the information and tools on a designated Section 301 investigation page: <https://ustr.gov/issue-areas/enforcement/section-301-investigations>.
- **Online Portal:** For List 3, USTR created a new, user-friendly online portal that makes the submission process easier.

We look forward to continuing to work closely with the Committee on any future exclusion processes.

Senator Hassan

Question 1

Ambassador Lighthizer, as you know, in 2015, as part of an overwhelmingly bipartisan effort, Congress increased the United States de minimis threshold to \$800 dollars, and American consumers and small businesses have greatly benefited from reducing this friction at our border.

I am not looking to rehash the NAFTA renegotiations. Rather, I have a simple question for you regarding footnote 3 to Article 7.8(1)(f) of the Customs and Trade Facilitation Chapter, which, as you know, implies that the U.S. could lower our thresholds to match the Canadian and Mexican levels.

Will the implementing legislation the Administration sends to Congress include language that lowers our threshold? If so, will this language apply only to Canadian and Mexican trade or will it have a global application?

Answer: As noted in the Administration's submission to Congress on changes to existing law required to bring the United States into compliance with the obligations of the USMCA, we identified this as an issue for consultation with the Committee on Ways and Means of the House and the Committee on Finance of the Senate. These consultations are underway, and I look forward to working with you and other Members on this important issue.