

**HEARING ON ADVANCING AMERICA'S INTERESTS
AT THE WORLD TRADE ORGANIZATION'S 13TH
MINISTERIAL MEETING**

HEARING
BEFORE THE
SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
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United States House Committee on
Ways & Means
CHAIRMAN JASON SMITH

FOR IMMEDIATE RELEASE
January 31, 2024
No. TR-04

CONTACT: 202-225-3625

**Chairman Jason Smith and Trade Subcommittee Chairman Adrian Smith
Announce Subcommittee Hearing on Advancing America's Interests at the
World Trade Organization's 13th Ministerial Meeting**

House Committee on Ways and Means Chairman Jason Smith (MO-08) and Trade Subcommittee Chairman Adrian Smith (NE-03) announced today that the Subcommittee on Trade will hold a hearing on Advancing America's Interests at the World Trade Organization's 13th Ministerial Meeting. The hearing will take place on **Wednesday, February 7, 2024, at 9:00 AM in 1100 Longworth House Office Building.**

Members of the public may view the hearing via live webcast available at <https://waysandmeans.house.gov>. The webcast will not be available until the hearing starts.

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record can do so here: WMSubmission@mail.house.gov.

Please ATTACH your submission as a Microsoft Word document in compliance with the formatting requirements listed below, **by the close of business on Wednesday, February 21, 2024**. For questions, or if you encounter technical problems, please call (202) 225-3625.

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The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission but reserves the right to format it according to guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Please indicate the title of the hearing as the subject line in your submission. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

ACCOMMODATIONS:

The Committee seeks to make its facilities accessible to persons with disabilities. If you require accommodations, please call 202-225-3625 or request via email to WMSubmission@mail.house.gov in advance of the event (four business days' notice is requested). Questions regarding accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the Committee website at <http://www.waysandmeans.house.gov/>.

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ADVANCING AMERICA'S INTERESTS AT THE WORLD TRADE ORGANIZATION'S 13TH MIN- ISTERIAL MEETING

WEDNESDAY, FEBRUARY 7, 2024

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:03 a.m., in Room 1100, Longworth House Office Building, Hon. Adrian Smith [chairman of the subcommittee] presiding.

Chairman SMITH. Good morning. The subcommittee will come to order.

I appreciate my colleagues. Certainly, thank you to our panel here for being here today.

We meet at an important time for international trade. At the end of the month, the world's economies will meet in Abu Dhabi for the World Trade Organization's 13th Ministerial Meeting.

This ministerial represents both a challenge and an opportunity. On one hand, protectionist nations aim to use the ministerial as a chance to undermine intellectual property rights, fragment the global market, and promote gross protectionism in agriculture. Despite this, the ministerial offers a pivotal opportunity for U.S. leadership. Countless WTO members are looking to our country to defend the free flow of data, protect IP rights, and drive a hard bargain for the new rules against unfair practices, starting with fisheries subsidies.

The purpose of today's hearing is to help us meet this moment and signal to the Biden administration what strong U.S. leadership at the WTO looks like. This should not be a partisan issue.

Since 1947, the multilateral trading rules have been a key element of American competitiveness. Today, 65 percent of U.S. trade is covered exclusively by WTO rules rather than any rules from our free trade agreements. Our farmers, ranchers, small businesses, and workers need strict enforcement of these rules to export competitively.

Yet, the WTO is not without challenges. Negotiations for new trade agreements have stalled as a handful of spoiler countries veto progress on new ag market access or trade in environmental goods. Judicial activism by the WTO's appellate body has undermined confidence in the organization and degraded the ability of the U.S. to hold China accountable for its unfair practices. Many countries, especially China, either do not play by certain rules, such as those

requiring notification of subsidies, or in other cases, engage in predatory, unfair, and anti-free market behavior outside the scope of the WTO's rules. All of these challenges come at a cost to American farmers, workers, and small businesses.

These concerns about the WTO are widely shared, long-standing, and bipartisan. Yet the Biden administration appears poised to cede U.S. leadership.

I was deeply disappointed when the administration withdrew robust digital trade proposals from the, quote, "joint initiative on e-commerce," end quote, negotiations at the WTO. These rules, which received overwhelming bipartisan support in the U.S.-Mexico-Canada Agreement, are key to U.S. innovation leadership. This digital trade abdication does not inspire confidence that the administration will vigorously defend the renewal of the long-standing moratorium on the imposition of customs duties on electronic transmissions.

Similarly, I strongly oppose the waiver of IP rights for COVID-19 vaccines that the Biden administration agreed to at the 12th ministerial. To make matters worse, the administration is considering whether to expand that waiver to the IP for diagnostics and therapeutics. Such a move would be as harmful as it is illogical. Recent independent analysis by the International Trade Commission found that, generally, IP is not a barrier to access for COVID-19 treatments.

At the last ministerial, WTO members finally reached an agreement on fisheries subsidies. While I was pleased to see some progress to limit subsidies for illegal, unreported, and unregulated fishing, the initial agreement does not cover other harmful practices like forced labor or subsidies that contribute to fishing overcapacity. As WTO members discuss a second phase of the fisheries agreement later this month, we need to know that the Biden administration will negotiate aggressively to address these exploitative practices.

I want to thank our witnesses again for their participation, and I look forward to hearing what we can do to ensure continued U.S. leadership at the WTO.

Chairman SMITH. Mr. Blumenauer will be here shortly, and so we will certainly proceed with our witness testimony and then recognize him when he does arrive.

I now have the pleasure of introducing our witnesses.

Dennis Shea is executive director of the J. Ronald Terwilliger Center for Housing Policy at the Bipartisan Policy Center and previously served as deputy U.S. trade representative as a U.S. ambassador to the WTO.

Bobby Hanks is CEO of Supreme Rice and currently serves as chair of USA Rice Federation's International Trade Policy Committee.

Kelly Ann Shaw, no stranger to this committee room, is partner at Hogan Lovells, a lecturer in law at Columbia Law School, and is a former deputy assistant to the President for international economics. Ms. Shaw also served here at the Ways and Means Committee as a trade counsel. Welcome back.

Eddie Sullivan is president of SAB Therapeutics. I appreciate you being here today.

And lastly, Bruce Hirsh is founder of Tailwind Global Strategies, LLC.

Again, thank you for sharing your insights here today. Your written statement will be made part of the record, and you each have 5 minutes to deliver your remarks. You will see the timing light there, and when that turns yellow, if you could bring the flag in for landing, we will be all better off for that.

We do have votes that will be sooner rather than later, so I hope we can get as much done before votes happen.

So, Mr. Shea, you may begin with your 5 minutes.

STATEMENT OF DENNIS SHEA, EXECUTIVE DIRECTOR, J. RONALD TERWILLIGER CENTER FOR HOUSING POLICY, BIPARTISAN POLICY CENTER, FORMER DEPUTY U.S. TRADE REPRESENTATIVE AND U.S. AMBASSADOR TO THE WORLD TRADE ORGANIZATION

Mr. SHEA. Well, Chairman Smith, Ranking Member Blumenauer, and members of the subcommittee, thank you for the opportunity to appear before you today. Let me emphasize I am speaking solely in my personal capacity.

As U.S. ambassador to the WTO during the Trump administration, it was a privilege to work with USTR Bob Lighthizer to try to reinvigorate the WTO through a comprehensive reform agenda that included a major effort to improve transparency, a reaffirmation that market orientation is a fundamental WTO norm, the establishment of objective criteria for determining whether a WTO member may avail itself of special and differential treatment, and a comprehensive critique of the institutional creep of the WTO's appellate body which had done much damage to the interest of the United States.

During my WTO tenure, the U.S. was also an active participant in the JSI on Electronic Commerce, one of the new plurilaterals that emerged from MC11. In this negotiation, we insisted on strong and reciprocally assumed disciplines that protect cross-border data flows, prohibit data localization mandates, and safeguard U.S.-owned source code from forced disclosure.

A major focus of my work was also educating other WTO members about the incompatibility of the state-led nonmarket economy of China with WTO norms of openness, nondiscrimination, and market orientation.

Despite these efforts and the current administration's approach of "WTO-reform-by-doing," it seems very little has changed in Geneva that would signal a sustained upward trajectory for the organization. Recent dispute settlement panel decisions challenging the self-judging nature of the essential security exception in GATT article XXI(b) have set the WTO back further.

So, what can we expect at MC13? To answer this question, let's look first at the outcomes of MC12. In my judgment, the following outcomes were important and gave WTO some—diminished WTO some space to argue for its continuing relevance. I am talking about the 2-year extension of the moratorium on customs duties for electronic transmissions, a new multilateral agreement prohibiting certain harmful fisheries subsidies, and a ministerial decision ex-

empting World Food Program humanitarian purchases from export prohibitions.

One MC12 outcome, however, was decidedly against U.S. interests, a ministerial decision waiving TRIPS Agreement protections for COVID-19 vaccines.

Looking ahead to MC13, the outcomes we can expect are likely to be even less ambitious than those achieved at MC12, and from the U.S. perspective, I think that should be perfectly acceptable.

The one must-do at MC13 is extending the current moratorium on the imposition of customs duties on electronic transmissions until at least the next ministerial. While the prospects of establishing a permanent moratorium at MC13 are remote, another 2-year extension combined with a robust work program should be a good outcome.

A nice-to-have outcome at MC13 would be a follow-up fish agreement that disciplines harmful subsidies that contribute specifically to overcapacity and overfishing. Developing strong disciplines for these types of subsidies has always been a key U.S. negotiating objective, including during the Trump administration.

In terms of must-not-dos, the first is getting pushed into an unacceptable agreement on dispute settlement reform, particularly if it leads to restoration of the appellate body. The U.S. has consistently argued the appellate body's intended mandate was a limited one to correct legal errors by panels and to do so expeditiously. It is clear that some WTO members view the appellate body quite differently as an independent international court charged with establishing binding precedent, filling gaps in the WTO agreements, and creating a global common law of trade, and reconciling this clash of visions can't be papered over with a few word tweaks.

A second must-not-do is expanding the misguided TRIPS waiver to COVID-19 therapeutics and diagnostics as China, India, and South Africa have urged.

With respect to agriculture, the Trump administration advocated for a reset of negotiations based on an updated understanding of the state of agricultural trade. In various fora, we asked how the WTO could credibly negotiate disciplines in agricultural domestic support when we do not have a clear picture of what the largest subsidizers in the world are doing. And similarly, the Biden administration has called for a holistic approach to negotiations.

With very little movement, it appears that the agricultural outcome at MC13 will be limited to a work program leading up to MC14. In the discussions at MC13, the United States should continue to insist on greater transparency and the need to liberalize agricultural trade through lower tariffs and greater market access.

Thank you.

[The statement of Mr. Shea follows:]

TESTIMONY OF DENNIS C. SHEA
BEFORE
THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS & MEANS
SUBCOMMITTEE ON TRADE
“ADVANCING AMERICA’S INTERESTS AT THE WORLD TRADE ORGANIZATION’S 13TH MINISTERIAL
MEETING”
FEBRUARY 7, 2024

Chairman Smith, Ranking Member Blumenauer, and members of the Subcommittee, thank you for the opportunity to appear before you today. At the outset, let me emphasize that I am speaking solely in my personal capacity and not on behalf of any organization.

The process of reforming the World Trade Organization (WTO) began in earnest in December 2017 when U.S. Trade Representative Robert Lighthizer addressed the WTO’s 11th Ministerial Conference in Buenos Aires. In his [remarks](#), he highlighted the poor performance of many WTO members in fulfilling their notification obligations, the absurd situation where some of the world’s richest nations were self-declaring as “developing” and claiming as-of-right exemptions from WTO disciplines, and the fact that the WTO had become much too litigation-focused. The result, he pointed out, was an organization that had long failed to live up to its expected role as a dynamic forum for negotiating new global trade rules that open markets. It was a privilege for me, as U.S. Ambassador to the WTO during the Trump Administration, to work with Ambassador Lighthizer and the other members of the USTR team to try to reinvigorate the WTO through a comprehensive reform agenda. This agenda included the following elements:

- A major effort to improve transparency, including a [proposal](#) to impose monetary penalties on WTO members that willfully and repeatedly failed to fulfill their notification obligations, as well as the use of “counter-notifications” to expose the unreported subsidies and trade practices of other WTO members;
- A proposed General Council [decision](#) reaffirming that “market-orientation” is a fundamental WTO norm and that the international trading system depends on the operation of market-oriented conditions in the economies of WTO members;
- A proposed General Council [decision](#) establishing objective criteria for determining whether a WTO member may continue to avail itself of blanket, open-ended “special and differential treatment” in current and future WTO negotiations; and
- The most [comprehensive critique](#) ever undertaken of the unchecked institutional creep of the WTO’s Appellate Body, which had done much to damage the interests of the U.S. and other WTO members and encouraged a litigation rather a negotiation mindset at the organization.

During my tenure at the WTO, the U.S. was also an active participant in the Joint Statement Initiative on Electronic Commerce, one of the new plurilateral negotiations that emerged from the WTO’s 11th Ministerial Conference. In the e-commerce negotiation, we [insisted](#) on strong and reciprocally assumed disciplines that protect cross-border data flows, prohibit data localization mandates, and safeguard U.S.-owned source code from forced disclosure to foreign governments. Like many others, I was baffled by the Biden Administration’s [decision](#) this past October to abandon these longstanding U.S. objectives in the context of this negotiation.

Finally, a major focus of my work at the WTO was educating other WTO members about the incompatibility of the state-led, nonmarket economy of the People's Republic of China (PRC) with WTO norms of openness, non-discrimination, and market orientation. A discussion of the PRC's nonmarket economic system was the "headline event" for several contentious General Council meetings, the result of the U.S. putting this [subject](#) on the meeting agenda. My understanding is that no previous U.S. representative to the WTO had spoken so directly about the trade-disruptive impact of Chinese policies and practices in this forum.

Despite these efforts and the current Administration's approach of "WTO-reform-by-doing," it seems that very little has changed in Geneva that would signal a sustained upward trajectory for the organization. Recent dispute settlement panel decisions challenging the self-judging nature of the essential security exception in GATT Article XXI(b) have set the WTO back further.

Before exploring how best to advance America's interests at MC13, I would like to highlight an important point made by the *Select Committee on the Strategic Competition between the United States and the Chinese Communist Party* in its December 12, 2023 report, [Reset, Prevent, Build](#). In a section on the WTO and the PRC, the report states: "It is time for likeminded countries to come together and seriously examine how to collectively counter the PRC's approach to economics and the harm it is doing to the global trading system. *If this cannot be achieved within the confines of the WTO*, then a new multilateral effort by likeminded market economies that goes back to first principles is needed, excluding mercantilist non-market economies that reject the basic principles upon which the WTO was established (italics added)."

Based on my experience, I can assure you that effectively countering the harm that the PRC is doing to the global trading system is simply not possible "within the confines of the WTO," at least within any reasonable timeframe. It would therefore be irresponsible for any American leader to outsource U.S. economic security to the organization. In numerous reports over the years, the Office of the U.S. Trade Representative has consistently rated the PRC's compliance with its WTO obligations as "[poor](#)." According to USTR, the U.S. has brought [27 cases](#) against the PRC at the WTO and has "secured victories in every one of its cases that was decided." Yet, these victories have barely moved the needle, as the underlying policies behind challenged practices have remained largely unchanged. In addition, the WTO's consensus principle, which requires unanimous acceptance by all 164 WTO members before adopting a decision, makes the prospect of disciplining the PRC's unfair trade practices through the development and enforcement of meaningful new rules a virtual impossibility.

So, what can we expect at MC13? And how best can we advance U.S. interests?

To answer these questions, I think it is helpful to look first at the outcomes achieved at MC12. In my judgment, the following outcomes served (or at least did not harm) U.S. interests and gave a diminished WTO some space to argue for its continuing relevance:

- A two-year [extension of the moratorium](#) on customs duties for electronic transmissions;
- A new [multilateral agreement](#), concluded after more than 20 years of negotiation, prohibiting certain harmful fisheries subsidies;
- A [Ministerial Decision](#) exempting World Food Program humanitarian purchases from export prohibitions or restrictions; and

- Non-binding Ministerial Declarations on subjects such as the [Emergency Response to Food Insecurity](#), the [WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics](#), and [Responding to Modern Sanitary and Phytosanitary Challenges](#).

One MC12 outcome, however, was decidedly against U.S. interests: a [Ministerial Decision](#) waiving IP protections provided by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) for COVID-19 vaccines.

This [decision](#) cuts against the core U.S. goal of maintaining a robust intellectual property rights system both domestically and in our international arrangements as a way of nurturing our nation's innovators and inventors. Regrettably, it was supported by the United States despite any compelling evidence that IP protections have hindered global access to COVID-19 vaccines. On the contrary, factors such as trade barriers and customs bottlenecks, lack of storage capacity, last-mile distribution challenges (particularly in rural areas), a shortage of well-trained front-line workers, and high levels of vaccine hesitancy in both the developed and developing world have been the primary impediments to vaccine access and vaccinations. It is my understanding that not a single country has attempted to exercise a waiver under the Ministerial Decision or expressed an intention to do so.

Looking ahead to MC13, the outcomes we can expect may be even less ambitious than those achieved at MC12. From the U.S. perspective, that should be perfectly acceptable. The focus of U.S. negotiators should be on achieving one or two small "wins," while pushing back on any Ministerial decisions, declarations, or other actions that may harm our interests.

The Must Do

In my judgment, the one "must do" at MC13 is extending the current moratorium on the imposition of customs duties on electronic transmissions until at least the next Ministerial Conference (presumably occurring in 2026). The moratorium has been in place since 1998 and has been extended numerous times, most recently at MC12, where the members agreed to "[intensify discussions on \[its\] scope, definition and impact](#)" as a condition of extending the moratorium through March 31, 2024. While the prospects of establishing a permanent moratorium at MC13 are remote, another two-year extension combined with a robust work program would be a good outcome.

Since the moratorium was first established, trade in digital products has grown dramatically. [Supporters](#) of the moratorium highlight the need for the unencumbered "cross-border exchange of knowledge, technical know-how, and scientific and commercial information across transnational IT networks," the moratorium's importance to "supply chain resilience for manufacturing and services industries," and the benefits it provides to small businesses seeking access to global markets.

The biggest skeptics of the moratorium are India, South Africa, and Indonesia as well as Pakistan and Bangladesh. At times, they cite the need for greater "policy space" to develop their own digitally-based industries. They also argue that lifting the moratorium and allowing the imposition of customs duties would provide a source of new revenue, though the Organization for Economic Cooperation and Development has [estimated](#) that "[t]he overall revenue implications of the Moratorium are small...." Some WTO members (India, in particular) may use our desire and that of other developed nations for an extension of the moratorium as leverage, a bargaining chip, to achieve other objectives they deem important such as permanent protection for public stockholding programs for food security.

Nice to Haves

At MC12, WTO members adopted the [Agreement on Fisheries Subsidies](#) designed to support the sustainability of marine life and the world's oceans. The agreement specifically curbs subsidies to 1) illegal, unreported, and unrelated (IUU) fishing, 2) fishing on overfished stocks, and 3) fishing on the unregulated high seas. The agreement imposes notification requirements on WTO members beyond what is required by the Agreement on Subsidies and Countervailing Measures.

While the agreement is significantly less ambitious than the initial negotiating texts that were debated prior to MC12, it is nonetheless only the [second multilateral agreement](#) ever reached at the WTO and the first to focus on the environment. A “nice to have” outcome at MC13 would be a follow-up agreement that disciplines harmful fisheries subsidies that contribute to overcapacity and overfishing (like fuel and ship construction subsidies and subsidies that artificially inflate market prices). Developing strong disciplines for these types of subsidies has always been a key U.S. negotiating objective, including during the Trump Administration. I understand that U.S. negotiators in Geneva are hard at work pressing for such an outcome, but I would not hold my breath considering how difficult it was to achieve the more limited outcome at MC12 after a 20-year negotiation. As U.S. Ambassador to the WTO María Pagán [recently pointed out](#) about current negotiations, WTO members have devoted too much time discussing carve-outs from obligations rather than the obligations themselves, and there is a need for greater transparency and data about the subsidizing activities of various members.

During the lead-up to MC12, the Biden Administration sought to inject the issue of [forced labor into the fisheries negotiations](#), seeking (1) the inclusion of effective disciplines on harmful subsidies to fishing activities that may be associated with the use of forced labor; (2) the explicit recognition of the problem and the need to eliminate it; and (3) greater transparency with respect to vessels or operators engaged in the use of forced labor. While this effort was unsuccessful (China, for example, claims that the WTO has no mandate to examine the issue of forced labor), advocating for forced labor provisions in the fisheries context should continue to be a priority for the U.S. at MC13 and beyond.

Must Not Dos

I have identified at least two “must not dos” for MC13.

The first “must not do” is getting pushed into an unacceptable agreement on dispute settlement reform, particularly if it leads to the restoration of the Appellate Body or a second-tier appeals mechanism akin to it. I am pleased that the Biden Administration – through its “interest-based” informal discussions in Geneva – has continued the effort that we began in the Trump Administration to engage the WTO membership about the overreaching of the Appellate Body and its disregard of the clear text of the Dispute Settlement Understanding (DSU). As I often told my foreign colleagues at the WTO, concerns about the Appellate Body were widely shared across the political spectrum in the United States.

I won't provide a laundry list of examples of Appellate Body overreach that harmed U.S. interests and the institutional credibility of the WTO. They are amply documented in [USTR's Report on the Appellate Body of the World Trade Organization](#) (February 2020).

As the U.S. has argued across multiple Administrations, the WTO membership never charged the Appellate Body with creating a corpus of international trade jurisprudence. The Appellate Body's intended mandate was always a limited one – to correct legal errors by panels and to do so

expeditiously. During my tenure at the WTO, it was clear that some important WTO members viewed the Appellate Body quite differently: as an independent international court charged with establishing binding precedent, enforcing “coherence,” filling gaps in the WTO agreements, and creating a global common law of trade. This view was reinforced by what former Appellate Body member Thomas Graham [described](#) as a “prevailing ethos” within the Appellate Body to act like a court that was unaccountable to WTO members along with an unjustified sense of infallibility and an excessive degree of control exercised by its staff.

Reconciling this clash of visions is very difficult, and it can’t be papered over with a few word tweaks to the DSU. Negotiators should be focusing on the big picture of what type of dispute settlement system best serves the interests of WTO members rather than fixating on how to reconstitute the Appellate Body, which would be a grave mistake. Properly addressing erroneous Appellate Body interpretations on a [range of critical issues](#) is also essential.

Finally, let me mention that the [MC12 outcome document](#) committed WTO members “to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024.” Since MC13 is taking place later this month with plenty of running room left in the year, it should not be viewed as a deadline for acting on dispute settlement reform.

A second “must not do” is expanding the misguided TRIPS waiver to COVID-19 therapeutics and diagnostics, as some WTO members (particularly China, India, and South Africa) have urged.

The [Ministerial Decision](#) establishing a TRIPS waiver for COVID-19 vaccines also contemplated that WTO members would decide by December 2022 on whether to expand the waiver to cover COVID-19 diagnostics and therapeutics. This deadline passed but has been indefinitely extended. To help inform the U.S. position on a TRIPS waiver expansion, U.S. Trade Representative Katherine Tai requested that the U.S. International Trade Commission (ITC) investigate the issue and report its findings, which the ITC did on October 17, 2023. While the [ITC report](#) does not take a position on whether the TRIPS waiver should be expanded to cover COVID-19 therapeutics and diagnostics, it does not make the case that an expansion is warranted or necessary. In fact, the report demonstrates that demand for these products has significantly declined. Opponents of the TRIPS waiver expansion at the WTO – notably, the European Union, Switzerland, the United Kingdom, and Mexico – have also pointed out there this no shortage of COVID-19 treatments, with supply far outstripping demand, and that IP protection is not a barrier to the availability of these products.

At MC13, the Biden Administration should strongly resist any effort to expand the TRIPS waiver to COVID-19 therapeutics and diagnostics. Doing so would disincentivize the significant investments necessary to research and develop life-saving medicines, including medicines needed to respond to future pandemics. I will also note that the PRC has [not indicated](#) it will refuse to seek the waiver if extended to cover COVID-19 treatments, a step it would be entitled to take as a self-declared “developing country” at the WTO.

Agriculture

Finally, let me say a few words on agriculture.

During the Trump Administration, the U.S. advocated for a “reset” of agriculture negotiations based on current market realities. To encourage this reset, we submitted numerous analytical papers focused on

market access and tariff issues with the intent of updating the WTO membership's understanding of the state of agricultural trade. In various fora, we asked how the WTO could credibly negotiate disciplines on agricultural domestic support when we do not have a clear picture of what the largest subsidizers in the world are doing. That's why we placed such a great emphasis on the importance of WTO members fulfilling their existing notification obligations and that's why we submitted three counter-notifications on India's market price support programs for wheat, rice, cotton and pulses. We also submitted a [proposal](#) aimed at improving transparency in the implementation of domestic support measures. While endorsing domestic support and market access reform, the Biden Administration has also emphasized the need for a "[holistic approach](#)" to negotiations on agriculture that would simultaneously encompass all relevant issues.

With WTO members apparently taking the same entrenched and divergent positions in Geneva, it appears that the agricultural outcome at MC13 will be limited to a [work program](#) leading up to the next ministerial meeting, MC14. At MC13, there will likely be calls for "more ambition," including specific reduction commitments in domestic support and a permanent solution to public stockholding. In these discussions, the United States should continue to insist on greater transparency and the need to liberalize agricultural trade through lower tariffs and greater market access.

Thank you for this opportunity to share my thoughts with you.

Chairman SMITH. Thank you. Thank you for your testimony.
Mr. Hanks, you are recognized for 5 minutes.

**STATEMENT OF BOBBY HANKS, CEO, SUPREME RICE; CHAIR,
INTERNATIONAL TRADE POLICY COMMITTEE, USA RICE
FEDERATION**

Mr. HANKS. Good morning, Chairman Smith, Ranking Member Blumenauer, and members of the subcommittee. Thank you for the opportunity to testify before you today concerning agriculture and the WTO.

My name is Bobby Hanks. I am the CEO of Supreme Rice, a mill in Crowley, Louisiana, where we process more than a billion pounds of U.S. rice per year. My wife, Molly, and I are proud to have raised our three children in the town of Crowley and to have a business that provides more than 300 critical jobs in rural Louisiana and Arkansas.

I am here today representing USA Rice, the global advocate for U.S. rice industry, a \$34 billion industry representing American rice farmers, millers, merchants, and allied businesses.

Rice is grown on approximately 3 million acres of family farmland across the U.S. About half of our rice is consumed here, while the other half is exported to more than 120 countries around the globe.

It is widely understood and accepted that the global rice market is among the most distorted of any sector, a factor that underscores the vital importance of the U.S. farm safety net for rice farmers. The impact of the price distortion of world rice prices on our industry is the main reason we are represented here today and because the WTO should and could play a vital role in making sure our industry can compete fairly.

Over the last 20 years, rice imports into the United States have grown 286 percent, primarily driven by imports from heavily subsidized Asian rice. Without intervention, this troubling trend is likely to continue.

I acknowledge that the WTO has its problems. Disputes take too long and have too many administrative hurdles, raising costs for both plaintiffs and defendants. We also need to see the WTO members do a better job notifying their policies accurately to the WTO.

Many countries are extremely delinquent or use faulty methodology which obscures the real policy effects. This makes it difficult to monitor policies and negotiate new rules. Without appropriate enforcement around transparency, trust in the WTO system erodes.

This is why USA Rice led the way in bringing together about a dozen other organizations to form a coalition that we call Aggies for WTO Reform, with the goal of encouraging and supporting robust U.S. engagement at the WTO on agricultural issues, including dispute settlement. We want the WTO to work better, to be a place where negotiations can happen, and where rules can be enforced.

One of the coalition's top goals is to avoid backsliding on agricultural commitments, including at the upcoming MC13. We are especially concerned about the insistence of India that their subsidies for commodities like rice should be exempt from the WTO rules. India has threatened to take hostage virtually any outcome at the WTO unless they get what they want. But for our coalition, the

status quo is better than the outcome the Indian delegation at the WTO have proposed.

India tends to demand permanent public stockholding exceptions at MC13 by holding up progress on negotiations across the WTO chapters. By tying public stockholding to unrelated discussions, India may prevent any critical breakthroughs around dispute settlement and the eventual restoration of the appellate body.

India has a limit of 10 percent of the value of production that it can provide to rice specifically. In 2020–2021, they were subsidizing up to 93.9 percent, according to the U.S. That must change.

We are grateful to USTR and USDA for continuing to hold the line and prevent backsliding, but we need the U.S. Government to better engage and lead the way in WTO reform negotiations at MC13 and beyond. USA Rice and some Members of Congress, including members of this distinguished panel, have repeatedly urged USTR to file a dispute against India who, last year, controlled 40 percent of the global rice exports.

This leads us to dispute settlement reforms. U.S. agriculture needs the WTO to have binding dispute settlements where the loser cannot block a decision that is lost. Right now, with no appellate body, WTO members can appeal panel decisions into the void and the case effectively ends.

In summary, the WTO is an irreplaceable asset for U.S. agriculture and rice farmers. It needs to be more effective, not less, and we need more compliance to support global trade, not more so-called policy space to undermine it. It is critical that our competitors abide by the same rules that the U.S. abides by, especially if I expect my business to stay sustainable and profitable and support more than 300 rural jobs in our community.

I would like to thank the members of this subcommittee for their time and attention, and I welcome your questions.

[The statement of Mr. Hanks follows:]

Testimony of

Robert “Bobby” Hanks

Before the House Committee on Ways & Means

Subcommittee on Trade

**Advancing America’s Interest at the World Trade Organization’s 13th
Ministerial Conference**

Washington, D.C.

February 7, 2024

Good morning, Chairman Smith, Ranking Member Blumenauer, and Members of the Subcommittee.

Thank you for the opportunity to testify before you today concerning agriculture and the World Trade Organization (WTO).

My name is Bobby Hanks, I am the Chairman and Chief Executive Officer of Supreme Rice, LLC, a rice mill based in Crowley, Louisiana. In addition to the primary mill site, we also have additional milling and drying facilities throughout the state of Louisiana and in Arkansas. Our mill has been operating since 1936 and has grown during my 25 years of leadership to become Louisiana's largest rice milling operation, processing more than 1 billion pounds of rice annually. We are proudly 100 percent American-owned and privately held and we have hundreds of customers throughout the United States and have exported rice to more than 50 countries throughout the world.

My wife Molly and I are proud to have raised our three children in the town of Crowley and to have a business that provides more than 300 critical jobs in rural Louisiana and Arkansas. The mill operations have expanded over the years across many other rural towns and the families in Crowley and throughout our other locations all rely on us to stay profitable and functioning. Unfortunately, over the last decade, mine and the other 30 plus American rice mills have had our livelihoods jeopardized by trade distortion happening more than 8,000 miles away.

I'm here today representing USA Rice, the global advocate for the U.S. rice industry, a \$34 billion industry representing American rice farmers, millers, merchants, and allied businesses. I currently Chair the USA Rice International Trade Policy Committee and I formerly chaired both the USA Rice Millers' Association (2009-2011) and the USA Rice Federation (2020-2022).

Rice farmers in the United States produce 20 billion pounds of rice annually, which is grown sustainably on approximately three million acres of farmland. About half of our rice is consumed here at home while the other half is exported to more than 120 countries around the globe. Nearly three quarters of the rice consumed in the U.S. is produced and processed domestically.

This rice is produced on family farms across six major rice producing states – Arkansas, California, Louisiana, Mississippi, Missouri, and Texas – as well as a handful of other states, including Florida, Illinois, Kentucky, South Carolina, and Tennessee, with positive economic impacts in nearly every other state. On average, each rice farmer in the U.S. contributes \$1 million to their local economy and employs six people. This equates to more than \$5.6 billion in positive economic impact on the U.S. economy and a total of 31,710 jobs directly supported by growing rice. Also, rice farmers have an additional \$5.5 billion impact on the U.S. economy in value-added and labor income generated by their operations.

After harvest, rice milling, marketing, and movement around the country contributes \$9.34 billion in total output value of goods and services, along with an additional \$5.94 billion to the U.S.

economy through value-added products and labor income in all 50 states and U.S. territories. The broader rice industry supports more than 125,000 jobs nationwide.

However, it is widely understood and accepted that the global rice market is among the most distorted of any sector, a factor that underscores the vital importance of the U.S. farm safety net for rice farmers. The impact of the price distortion of world rice prices on our industry is the main reason we are represented here today, and because the WTO should and could play a vital role in making sure our industry can compete fairly.

American farmers depend on trade. And as mentioned earlier, U.S. rice growers export about half of what we grow, but our industry, and all it provides the U.S. economy, is threatened by trade barriers and distortions around the world. It's easy, and even popular sometimes, for foreign governments to impose trade barriers on food imports because the people directly hurt are usually farmers in other countries, like the United States.

One of the best publicly available resources that outlines the scope and impact of this trade distortion by bad actors like India is the 2015 U.S. International Trade Commission study, Rice: Global Competitiveness of the U.S. Industry. We commend the House Committee on Ways and Means Chair Jason Smith for his unwavering support and letter of request to the Commission to initiate an updated Section 332 study to outline further impacts of over-subsidization by global rice exporters.

And to further illustrate the impact that bad actors have on the global market, one need look no further than store shelves across the United States. Over the last 20 years (2003-2022), rice imports into the United States have grown from roughly 460,000 metric tons in 2003 to a record high 1.32 million metric tons in 2022. This 286 percent increase is primarily driven by imports from heavily subsidized Asian rice. Without intervention, this troubling trend is likely to continue.

Why the WTO Matters to U.S. Agriculture

I acknowledge that the WTO has its problems. Too many countries flout the letter or the spirit of the rules and the negotiating function has mostly ground to a halt, especially on agriculture issues. Even supposed champions of the system, like the European Union, undermine it daily when rejecting the science-based regulatory disciplines of the WTO SPS Agreement. Disputes take too long and have too many administrative hurdles, raising costs of both litigation and exacerbating the economic costs of the policies being challenged. The Trump-Pence and Biden-Harris Administrations have both correctly raised many of these concerns.

We also need to see WTO Members do a better job notifying their policies accurately and to the appropriate WTO committees. Many countries are extremely delinquent or use incorrect methodology, which obscures the real policy effects. This makes it much more difficult to monitor policies and negotiate new rules. It also creates an unpredictable trading environment for businesses. Without appropriate enforcement mechanisms around transparency, trust in the

effectiveness of the WTO system erodes and it encourages industry and governments to tackle trade challenges outside of it.

This system has flaws, but on behalf of your constituents who depend on trade, I'd ask what better system could replace it? USMCA is a good agreement, but the core agriculture and SPS disciplines in USMCA outside of tariffs already apply to more than 160 other countries through the WTO. When the Office of the U.S. Trade Representative (USTR) brought the biotech case against Mexico, virtually every provision of USMCA cited in that case has equivalent language under the WTO – language that was originally pushed by the United States and now applies to 164 countries, not just three.

We certainly would not be able to negotiate bilaterally the agriculture rulebook that we already have in the WTO. U.S. agriculture needs this organization to work effectively.

Aggies for WTO Reform

This is why USA Rice led the way in bringing together about a dozen other organizations to form a coalition that we call Aggies for WTO Reform, with the goal of encouraging and supporting robust U.S. engagement at the WTO on agriculture issues, including dispute settlement. We want the WTO to work better, to be a place where negotiations can happen, and where rules can be enforced.

We were concerned that the WTO was too often seen as an unsuccessful experiment; the Doha Round negotiations had failed and too many countries were flouting commitments. Many in the agriculture sector continue to view it this way. And we agree that those are serious problems, but we also don't salt the field just because the tractor ran out of fuel. There is much work that needs to be done to fix and improve the WTO, including how members negotiate, transparency and compliance with notification obligations, what should be enforced, et cetera. Let's just not destroy the foundation of what administrations and members of Congress of both parties have been building since World War II.

In that spirit, one of the coalition's top goals is to avoid backsliding on agriculture commitments. We are especially concerned about the insistence of India and several other large developing country exporters that their price support programs for commodities like rice should be exempt from WTO disciplines. India has threatened to take hostage virtually any outcome at the WTO unless they get what they want. But for our coalition, the status quo is better than any outcome the Indian delegation at the WTO have proposed, which would be a monumental step backwards on agriculture trade disciplines.

This requires some explanation. The "market price support" programs India wants to exempt are fundamentally different from U.S. farm bill programs like Price Loss Coverage, despite the superficial similarities. These programs don't just pay farmers when prices drop below a certain level; they require state intervention to maintain a minimum price within the domestic market.

Consequently, the government acquires huge quantities of stocks, which are expensive to maintain and exceed market demand. The excess is either sold domestically and displaces import opportunities or is dumped on international markets.

These programs used to be common in the United States, Europe, and elsewhere and led to persistent trade distortions and pervasive subsidies. The WTO negotiators recognized these problems and included a mechanism in the Agreement on Agriculture to penalize these types of programs and encourage countries to reform their support to be less trade-distorting. Instead of doing that, India, China, and others have “doubled down” on market price support programs and want to build exceptions for themselves into the WTO rules.

India intends to demand permanent public stockholding exceptions at the upcoming 13th WTO Ministerial Conference (MC13) by holding up progress on negotiations across the WTO chapters. By tying public stockholding to unrelated discussions, India may prevent any critical breakthroughs around dispute settlement and the eventual restoration of the Appellate Body function.

The United States has shown in several counter notifications¹ why India has sought these exceptions. India has a limit of 10 percent of the value of production that it can provide to rice specifically. In the 2014/15 marketing year, India’s market price support was 78.6 percent of the value of production. In 2020/21 it was up to 93.9 percent, according to the United States and the five other countries that co-sponsored the counter notification.² India should take steps to reform its programs given this trend, but instead it continues to raise subsidy levels while seeking unlimited exemptions through negotiations. That must change.

We’re grateful to USTR and the U.S. Department of Agriculture (USDA) for continuing to hold the line and prevent backsliding on probably the most important provision of the Agreement on Agriculture and we’re encouraging them to continue to do that at MC13. While this issue is arguably most acute for commodities like rice, it is a systemic issue for all agricultural commodities that benefit from a stable global trade environment.

Market Price Support in India and China

This also ties directly to the top enforcement priority for USA Rice, which is India’s rice subsidy violations. India, like every other WTO member, is subject to limits on the support it can provide to its agriculture sector, yet it acts as if these limits do not exist, as demonstrated by the counter notifications. Rice exports have grown with these subsidies, to the point that India has gone from 15 percent of global rice trade in 2008 to nearly 40 percent in 2022. The United States and other countries have repeatedly demonstrated that India’s subsidies violate its limits, but the rules have

¹ India is required to submit notifications on its support levels, but it uses a flawed methodology that obscures the actual level of its support, so the United States submitted a “counter notification” in 2018 (G/AG/W/174) and another in 2023 (G/AG/W/234) that provides a more accurate calculation.

² Australia, Canada, Paraguay, Thailand, Ukraine

not been enforced through dispute settlement. India has learned through our inaction that it can get away with ever-expanding subsidies for rice production.

USA Rice and some Members of Congress, including Members of this distinguished panel, have repeatedly urged USTR to file a dispute against India. The consequences of the failure to do so can be seen in India's growing global market share and the dependence that many countries now have on India's rice exports. The consequences of this dependence were made clear last year, when India pulled the rug out from under the global rice market by banning or taxing most of its rice exports.

This drove up international rice prices, which has temporarily benefited U.S. rice farmers, but unfortunately drives the narrative that relying on international markets is bad. In reality, relying on unreliable suppliers with heavily distorted internal markets and highly interventionist policies is bad, but when those suppliers are allowed to become dominant global players, everyone suffers. Unfortunately, reform has proven politically difficult in India as even small proposed reforms have been met with serious protests. It is time for India's trading partners and competitors to make clear that the status quo is unacceptable and unsustainable and bring a dispute to the WTO.

India is not the only country that internally distorts its rice market through price supports with external consequences. China has very similar policies in place. In fact, the United States won a case brought by the Obama Administration in 2016 and continued under the Trump Administration. China made minor changes that did not fix the problem, but allowed them to claim that they were now in compliance. The United States disagreed, but unfortunately that's where the story stops, in part because that disagreement was drowned out by the broader trade war. However, the dispute, access to the Chinese market, and prevention of dumping remain important to the rice sector.

The issues under dispute are systemically important for measuring market price support and therefore reducing trade distortions. USA Rice would like to see the United States pursue this issue further at the WTO to ensure that this method of pretending to be compliant is no longer seen as a viable option in the future, including with India, and to support the overall effort to reduce the impact of China's subsidies on the global economy, including agricultural trade. However, we are concerned that a win in the compliance stage of the dispute would lead to China appealing to a non-existent Appellate Body, closing off further options.

Dispute Settlement Reform

This leads us to dispute settlement reform. U.S. agriculture needs the WTO to have binding dispute settlements where the loser cannot block a decision that it lost. I can guarantee that on almost any rice trade issue, if we won a dispute, the outcome would be blocked if that were an option for the losing party. Restoring binding dispute settlement should be a priority for the United States.

Right now, with no Appellate Body, WTO Members can appeal panel decisions "into the void," and the case effectively ends. This is the equivalent to the old General Agreement on Tariffs and Trade

(GATT) system, where a single member (usually the loser) could block the adoption of a panel report, and the case would end. This happened frequently in the 1980s, which led to the creation of the “negative consensus” principle in the WTO, whereby a report was deemed adopted unless it was rejected by consensus. It should be a top priority of the United States to restore that negative consensus principle.

There may be cases where the Appellate Body has overstepped, erred in its decisions, and played fast and loose with its rules. Certainly, reforms could be made to discourage this in the future. We support making it easier and faster to bring and resolve disputes as long as there are mechanisms to ensure predictability and legitimacy in the interpretation of the rules.

Another area of concern in dispute settlement reform is what’s called the “essential security” exception. USTR argues that this should be self-executing and non-justiciable. We do not take a position on that, but we are extremely concerned with how this exception could be abused if that is the end of the story. Food security is national security, but that does not mean that invoking national security should be the end of a dispute over a legitimate trade issue (trade is an important part of food security!). If other countries claim that food security qualifies as national security and is therefore nonjusticiable, the WTO’s agriculture disciplines would be practically worthless. Some policies should absolutely qualify as essential security, but dispute settlement reform must not pave the way for countries to invoke this exception for protectionist purposes without consequence.

Trade Enforcement Legislation

USA Rice also supports legislation called the Prioritizing Offensive Agricultural Disputes and Enforcement Act that’s been introduced bipartisanly in the House with more than 20 cosponsors and support from the Almond Alliance, American Farm Bureau Federation, National Association of Wheat Growers, National Chicken Council, and the National Pork Producers Council. The bill would direct USDA to use its resources to help USTR develop offensive disputes on agriculture in consultation with Congress and establish a task force that would regularly provide reports to Congress and stakeholders on prime targets for U.S. agricultural trade disputes. Companion legislation has been introduced in the Senate.

We haven’t seen any agricultural disputes brought against a trading partner outside of North America in nearly a decade, and we’re eager to see a reformed dispute settlement system put to good use.

For far too long, U.S. agriculture has played defense, and this legislation would help encourage and hold USTR accountable for taking more proactive cases in support of American farmers and ranchers.

Conclusion

In summary, the WTO is an irreplaceable asset for U.S. agriculture and rice farmers. It needs to be more effective, not less, and we need more compliance to support global trade, not more so-called “policy space” to undermine it. It is critical that our competitors abide by the same rules that the U.S. abides by. Especially if you expect my business to be sustainable and profitable and support those more than 300 rural jobs in our community.

I'd like to thank the members of this subcommittee for their time and attention, and I welcome your questions.

Chairman SMITH. Thank you.
Ms. Shaw, you are recognized for 5 minutes.

**STATEMENT OF KELLY ANN SHAW, PARTNER, HOGAN
LOVELLS; LECTURER IN LAW, COLUMBIA LAW SCHOOL;
FORMER DEPUTY ASSISTANT TO THE PRESIDENT FOR
INTERNATIONAL ECONOMICS**

Ms. SHAW. Thank you.

Chairman Smith, Ranking Member Blumenauer, distinguished members of the committee, thank you for the opportunity to discuss America's objectives for the forthcoming 13th Ministerial Conference, MC13, in Abu Dhabi.

Prior to my current role in private practice, I was privileged to spend a decade in government service representing the United States in multiple trade negotiations, including at the WTO in Geneva, where I negotiated and litigated WTO disputes on behalf of American workers and businesses. While I will draw on these experiences, I also want to be clear that the testimony I provide this morning is solely my own.

Let me start with the punchline: The WTO is in serious trouble, and when it comes to the upcoming ministerial, there is very little, if anything, on the agenda that will advance U.S. interests.

As someone who spent years working in and around the multilateral system, I wish I could deliver a more positive message this morning. Following World War II, it was the United States and other democratic nations that spent decades building a rules-based global trading system centered around the principles of non-discrimination, whereby participating countries that played by the rules were rewarded with lower barriers to trade in one another's markets. But the WTO in its current form is no longer capable of advancing mutually beneficial concessions or developing new rules that further facilitate trade, address new challenges, and deal with China's unfair trade practices.

As of today, the WTO's negotiating function—its primary and key function—is effectively paralyzed. The WTO's last major negotiating round collapsed in 2011. While some negotiations still continued, most of these focused on narrow, technical issues, only involved a subset of the membership, or simply lacked ambition. In fact, the agenda for the upcoming ministerial demonstrates how limited the role of the WTO has actually become in advancing new trade rules relevant for today's global challenges. Instead, the more ambitious negotiations are occurring completely outside the WTO framework through major bilateral and regional trade deals that, at least right now, do not include the United States.

The key issues on the table for MC13 include renewal of the e-commerce moratorium, efforts by developing countries to expand the TRIPS waiver, India's demands for a permanent waiver for its public stocktaking programs, special and differential treatment for developing countries, a phase II agreement on fisheries subsidies, and various proposals to reform certain WTO functions. With the exception of renewing the e-commerce moratorium, which at this point is uncertain, and a meaningful outcome on fisheries subsidies largely aimed at China and India, which seems unlikely, the over-

whelming number of issues, if agreed, would be detrimental to American workers, innovators, and farmers.

The e-commerce moratorium, for example, which has been consistently renewed since 1998, is critical for American small businesses and consumers alike. Some countries, like India, are actively pushing to terminate the moratorium so that they can impose tariffs and other barriers on electronic transmissions of both digital goods and digital services. And because renewal of the moratorium requires consensus, India in particular is now holding the entire WTO membership hostage in exchange for an agreement on its public stockholding practices that distort global agricultural markets and disadvantage American farmers.

With respect to dispute settlement, the WTO does not need an appellate body or a two-tier dispute settlement system, and we should neither negotiate nor agree to one.

The single biggest challenge facing the WTO is not dispute settlement but, rather, the inability of WTO members to negotiate new rules. A membership of 164 countries has simply proven unworkable. The requirement that decisions be taken by consensus among members, including both India and China, has ground the WTO to a halt.

So, when considering the agenda for MC13, I think it would be fair for the committee to ask what exactly is the point of continuing to invest in a multilateral system when the only issues on the table are largely defensive, don't advance U.S. interests, have little relevance for today's economy, and would largely make Americans worse off.

The answer is that a strong set of multilateral rules is still in America's interest for many of the reasons that I outlined in my written testimony and the reasons that drove us to create the system in 1947 in the first place.

The real question for this committee, along with other WTO members, is whether we are in or we are out when it comes to multilateralism, because the WTO cannot continue down its current path. If we are in—and at least at this point I think we should be—the United States, along with a subset of like-minded allies, needs to pour real resources into renegotiating and fundamentally rebuilding a multilateral framework that addresses modern economic challenges, reflects today's reality, and results in meaningful outcomes for the American people. In other words, a club of truly preferential partners and most favored nations. The current WTO is no longer that.

Thank you.

[The statement of Ms. Shaw follows:]

**Testimony Before the
United States House Committee on Ways and Means Trade Subcommittee**

Hearing on

“Advancing America’s Interests at the World Trade Organization’s 13th Ministerial Meeting”

Testimony by Kelly Ann Shaw

Partner, Hogan Lovells US LLP
Lecturer in Law, Columbia Law School
Former Deputy Assistant to the President for International Economic Affairs and Deputy
Director of the National Economic Council

February 7, 2024

Chairman Smith, Ranking Member Blumenauer, distinguished Members of the Committee, thank you for the opportunity to discuss America's objectives for the forthcoming Thirteenth Ministerial Conference (MC13) in Abu Dhabi, February 26-29, 2024.

Prior to my current role in private practice, I was privileged to spend a decade in government service representing the United States in multiple trade negotiations, including at the World Trade Organization (WTO) in Geneva, and in litigating WTO disputes on behalf of U.S. workers and businesses. While I will draw on these experiences, I also want to be clear that the testimony I provide this morning is solely my own personal views.

Let me start with the punchline: the WTO is in serious trouble and, when it comes to the upcoming Ministerial, there is very little, if anything, on the MC13 agenda that will advance U.S. interests.

As someone who spent years working in and around the multilateral system I wish I could deliver a more positive message. Following WWII, the United States and other democratic nations spent decades building a rules-based global trading system centered around the principle of non-discrimination, whereby participating countries that played by the rules were rewarded with lower barriers to trade in one another's markets. The WTO in its current form is no longer capable of advancing mutually beneficial concessions or developing new rules that further facilitate trade, address new challenges, and deal with unfair trade practices.

As of today, the WTO's negotiating function—its primary and key function—is effectively paralyzed. The WTO's last major negotiating round collapsed between 2008 and 2011, after which negotiators started going home and diplomatic missions in Geneva began to shrink. While some negotiations still continued under the auspices of the organization, most of these focused on narrow technical issues, only involved a subset of the membership, or simply lacked ambition. In fact, the agenda for the upcoming MC13 demonstrates how limited the role of the WTO has actually become in advancing new trade rules relevant for today's global challenges. Instead, the more ambitious negotiations are occurring outside the WTO framework, through major bilateral and regional trade deals that, at least right now, do not involve the United States.

The key issues on the table for Abu Dhabi include renewal of the e-commerce moratorium, efforts by developing countries to expand the TRIPS waiver, India's demands for a permanent waiver for its public stocktaking program, special and differential treatment for developing countries, a phase II agreement on fisheries subsidies, and various proposals to reform certain WTO functions. With the exception of renewing the e-commerce moratorium (which at this point is uncertain) and a meaningful outcome on fisheries subsidies largely aimed at China and India (which seems unlikely), the overwhelming number of issues, if agreed, would be detrimental to American workers, innovators, and farmers.

The e-commerce moratorium, for example, which has been consistently renewed since 1998, is critical for American small businesses, entrepreneurs, and consumers alike. Some countries like India, Indonesia, and South Africa are actively pushing to terminate the moratorium so that they can impose tariffs and other barriers on electronic transmissions of both digital goods and digital services. And, because renewal of the moratorium requires consensus, India in particular is now

holding the entire WTO membership hostage in exchange for an agreement on its public stockholding practices that distort global agricultural markets and disadvantage American farmers. Indonesia is already poised to start collecting duties and has also stated that it will not renew the moratorium, which will result in increased prices for American consumers and threaten supply chains for small business.

While the focus of today's hearing is on MC13, I also wanted to briefly address dispute settlement reform, which may or may not be part of the formal agenda but, nevertheless, receives the lion's share of attention when it comes to the WTO. Despite outcries by many WTO members regarding a so-called "Appellate Body crisis", a functioning Appellate Body—or second level of review—is inconsequential to the organization's future and not worth the time or American political capital to try to "fix". While the Biden Administration agreed to initiate informal negotiations over dispute settlement as part of the previous Ministerial, MC12, formal negotiations between WTO members regarding the functioning of the Appellate Body had already been ongoing for nearly 20 years through a process called the "DSU Review". For nearly two decades, the United States expressed its concerns with the Appellate Body's lack of accountability to members and judicial overreach. Multiple U.S. Administrations tabled proposals to try to fix the problem, which were never taken seriously by many WTO members that—to this day—continue to prefer a system of judge-made rules because those rules constrain the United States to their advantage. There is no path forward on a two-tier dispute settlement system that would advance American interests and the United States should not negotiate or agree to one.

The single biggest challenge facing the WTO is not dispute settlement but, rather, the inability of WTO members to negotiate new rules. In fact, the lack of new rules adds further pressure to the dispute settlement system, as WTO panelists and arbitrators are tempted to engage in judicial overreach and gap filling to resolve conflicts not covered by the current rules. In other words, the WTO is stuck in a bygone era without the tools to address the core set of modern challenges faced by American workers, farmers, and businesses. WTO rules, which were negotiated during the last century, do not address China's industrial subsidies or the role of state capitalism or state-owned enterprises, nor do they address the digital economy or carbon border measures, which simply did not exist when the rules were originally negotiated.

In short, the WTO of today feels a long way off from the promise of its former self.

In considering the agenda for MC13, I think it's fair for the Committee to ask what exactly is the point of continuing to invest in a multilateral system when the only issues on the table are largely defensive, don't advance U.S. interests, have little relevance for today's economy, and would largely make Americans worse off. Why not join other WTO members in abandoning the organization as a forum for developing new rules and disciplines and start negotiating a series of our own bilateral deals?

The answer, in part, is because the United States already tried that approach during the first half of the 20th century when it negotiated a series of bilateral reciprocal trade deals and very quickly learned the problems associated with doing so. First, a bilateral approach is one of a constantly moving target that, over time, leads to a race to the bottom among trading nations and

discriminatory treatment. For example, policymakers learned that if the United States were to negotiate a reciprocal trade deal with country B, there was nothing to stop country B from negotiating an even better reciprocal deal with country C covering the same products. This meant that, overnight, American producers and exporters selling into country B would lose out to exports from country C, despite having just negotiated a trade deal and having given producers from country B preferential access to our own market. Second, because of the sheer number of trade deals required, a bilateral approach also leads to complicated and fractured global markets, which are difficult for American producers to navigate. Third, some issues like rules on industrial and agricultural subsidies, simply require a broader approach since countries outside the agreement are still free to engage in rampant subsidization, distort global prices, and steal markets away from American producers.

The idea of multilateralism was meant to address this. In effect, the 1947 GATT was intended to be a “club” of preferential trading partners – i.e., Most Favored Nations (MFN). For countries in the “club” imports were subject to lower MFN tariff rates and tougher rules to prevent unfair trade. Imports from countries outside the club were subject to higher duties and faced non-preferential access. This format incentivized countries to want to join and, in exchange, lower their own tariff and non-tariff barriers to trade, expanding the market for everyone. After 50 years and eight successive negotiating rounds, the GATT principles were both broadened and formalized into the World Trade Organization and, by 1995, membership had expanded from just 21 to 130 countries. Today, however, a membership of 164 countries has proven unworkable. The requirement that decisions be taken by consensus among members, including China, has ground the WTO’s negotiating function to a halt as the organization has increasingly come to resemble the United Nations.

Yet, a strong set of global and multilateral rules remains in the United States’ interest, since 96 percent of the world’s consumers live outside our borders and some of America’s strongest, most competitive industries – technology, agriculture, aircraft, semiconductors, energy, pharmaceuticals, industrial machinery – depend on exports to global markets. The United States, like other WTO members, is now faced with two choices: we can either abandon multilateralism and return to an aggressive strategy of bilateral trade deals, or we can put real resources into renegotiating and rebuilding a MFN multilateral framework among like-minded trading partners that addresses modern economic challenges, reflects today’s reality, and results in meaningful outcomes for the American people.

To be clear, international trade negotiations take time and are a significant undertaking. It took the GATT 50 years to become the WTO with fits and starts along the way, mirroring political realities and economic challenges by participating countries. While none of this can be done overnight, the WTO in its current form is on a fast track to irrelevance with or without action from the United States. For WTO members who really do believe in the system, it’s time to stop the bilateral trade deal race-to-the-bottom and pour actual resources into completely overhauling a multilateral global trading framework fit for the 21st century. For our part, that also requires a return to American economic leadership, a role we are well-positioned to play.

Thank you for the opportunity to address these issues today. I look forward to your questions.

Chairman SMITH. Thank you.
Mr. Sullivan, you are recognized for 5 minutes.

**STATEMENT OF EDDIE SULLIVAN, PRESIDENT, SAB
BIOTHERAPEUTICS, INC.**

Mr. SULLIVAN. Mr. Chairman, Ranking Member Blumenauer, members of the subcommittee, thank you for this opportunity to share my perspective as the cofounder and president of a small biopharmaceutical company based in South Dakota on the proposed expansion of an IP waiver for COVID-19 therapeutics and diagnostics now before the WTO. The stakes for the United States in our continued global leadership in the life sciences could not be higher, and I commend the subcommittee for airing these issues.

There is no objective evidence suggesting that IP protections have limited patient access to COVID-19 therapeutics around the world. Rather, regulatory barriers, trade restrictions, inadequate investments in health systems, and lack of adequate infrastructure are genuine limiting factors on supply and access. A waiver of IP rights would significantly disrupt the economic model by which innovative biotech emerging companies, like SAB Biotherapeutics, have successfully advanced medical science to meet global health challenges, create jobs, and maintain our country's leadership in this critical field.

SAB Biotherapeutics is a clinical-stage, publicly traded biopharmaceutical company employing around 65 people, primarily in South Dakota, but with employees in Florida, Illinois, Iowa, Kentucky, Massachusetts, Minnesota, Missouri, New York, Pennsylvania, and Utah, uniquely focused on the development of powerful and proprietary immunotherapeutics polyclonal antibodies to treat and prevent autoimmune disorders and infectious diseases. Our development programs harness the body's natural defense systems to address disease that have significant mortality and health impacts on patients, with a current focus on type 1 diabetes.

I have been in biopharma leadership for over 30 years, leading initiatives to develop infectious disease, cancer, and autoimmune therapies, and have raised over \$800 million in capital to develop biopharmaceutical platform technologies.

Underlying our technology platform is a robust IP portfolio, including a patent which has recently been granted by the USPTO, which we have leveraged to secure funding and foster research collaborations related to COVID-19. Our technology platform, with continued research and development, has the potential not only to combat COVID but address other known and novel emerging diseases.

An agreement to waive IP rights for COVID-19 therapeutics at WTO would needlessly expose our company's IP assets protecting our platform technology. A waiver of IP rights could potentially allow our patents to be infringed and our technology platform deployed by competitors to develop COVID treatments or other diseases without meaningful legal recourse.

IP rights are the currency used by innovative biotech companies to encourage investment in new and emerging technologies with significant promise. Biotechnology research and development has a greater than 90 percent failure rate and can take many years and

cost hundreds of millions of dollars. We cannot expect rational investors to fund this work if we cannot demonstrate that we have a secure and enforceable right to our technology. Investors scrutinize our patent portfolio as part of any due diligence. It can make or break a company long before we have our first approved product.

This challenge with access to capital is particularly acute for U.S.-based small- and medium-sized enterprises who led the global R&D campaign to rapidly develop drug candidates to treat COVID-19 and still account for over 75 percent of the projects in global pharmaceutical clinical pipelines.

Most of the innovation in biotech stems from these SMEs, and many of these companies have yet to bring an improved product to market or have a revenue stream. Most are entirely dependent on private capital markets to fund their research and IP in their primary asset—IP is the primary asset.

A waiver of IP at WTO would disrupt the vital funding, acutely impacting U.S.-based SMEs to the detriment of science, public health, and U.S. competitiveness and leadership in the life sciences.

I am happy to say that SAB has recently announced a private placement investment of over \$100 million in our company to advance a disease-modifying immunotherapy to delay the onset or progression of type 1 diabetes, and we just announced the phase 1 clinical trial. If we would have had to disclose a waiver of our IP rights to our COVID-19 portfolio, it would have put our company at serious risk of losing major investments.

The threat to the delicate balance of investment risk cannot be understated in an already competitive environment that could negatively impact companies that respond to the COVID pandemic and perhaps future pandemics. With news of the WHO declaring the end of the COVID public health emergency and with global supply therapies far exceeding demand, a waiver is wholly unnecessary.

Appreciate the time today, but this is a very serious issue. Thank you.

[The statement of Mr. Sullivan follows:]

Testimony of Eddie J. Sullivan
Co-founder and President
SAB Biotherapeutics, Sioux Falls, South Dakota
Committee on Ways and Means
Subcommittee on Trade Hearing on Advancing America's Interests at the
World Trade Organization's 13th Ministerial Meeting
February 7, 2024

Mr. Chairman, Ranking Member Blumenauer, Members of the Subcommittee on Trade, thank you for this opportunity to share my perspective, as the co-founder and President of a small biopharmaceutical company based in South Dakota on the proposed expansion of an IP waiver for COVID-19 therapeutics and diagnostics now before the WTO. The stakes for the United States could not be higher, and I commend this Subcommittee for airing these issues.

There is no objective evidence suggesting a waiver of IP rights would do anything to improve access to COVID-19 therapeutics around the world. Rather, a waiver of IP rights would significantly disrupt the economic model by which innovative biotech startups like SAB Biotherapeutics have successfully advanced medical science to meet global health challenges, create jobs, and maintain our country's leadership in this critical field.

Historically, the United States has been a leader in the promotion of the international rule of law protecting intellectual property. The recent absence of that leadership at the WTO has been a disturbing development that has already undermined the ability of companies like mine to raise the capital necessary to continue our work. It is vital that the U.S. representatives at the 13th Ministerial Conference of the WTO strongly oppose any weakening of the TRIPS agreement and continue U.S. support for strong international enforcement of IP rights.

About SAB Biotherapeutics

SAB Biotherapeutics is a clinical-stage, publicly traded biopharmaceutical company employing around 65 people, primarily in South Dakota, but with employees in Florida, Illinois, Iowa, Kentucky, Massachusetts, Minnesota, Missouri, New York and Pennsylvania, uniquely focused on the development of powerful and proprietary immunotherapeutic polyclonal human antibodies to treat and prevent infectious diseases, immune and autoimmune disorders, and oncology. Our development programs harness the body's natural defense system to address infectious diseases, as well as immunological, gastroenterological, and respiratory diseases that have significant mortality and health impacts on immunocompromised patients, with a current focus on Type 1 Diabetes.

I am the co-founder of SAB Biotherapeutics and have served as President, and formerly as CEO since 2014. I have been in biopharma leadership roles for over 30 years leading initiatives to develop infectious disease, cancer, and autoimmune immunotherapies and have raised over \$800 million in capital to develop biopharmaceutical platform technologies. I am on the Board of Directors of the Biotechnology Innovation Organization (BIO) and founded, served as President, and remain as an advisor to South Dakota Biotech.

SAB Biotherapeutics developed a COVID-19 therapeutic candidate which represents a highly-differentiated treatment option that provides a highly-specific match against the complexity, diversity, and the mutations SARS-CoV-2 presents. Our novel human polyclonal antibody candidate may have value both therapeutically, as a treatment for patients infected with the virus, and for immediate protection (passive immunity) when a vaccine is not an option. Our drug candidate was designed to be produced in large scale without the need for human convalescent plasma, blood donations, or serum.

SAB's technology platform leverages the natural human immune response to develop next-generation, fully human polyclonal antibody therapeutics, extending both the safety and potency of antibodies. These highly efficacious antibodies have proven to neutralize and block disease, and also address future mutations. SAB's platform represents, for the first time, the ability to produce targeted, fully human, high potency polyclonal therapies on a commercial scale.

Underlying our technology platform is a robust IP portfolio, including a patent which has recently been granted by the USPTO, which we have leveraged to secure investment and foster research collaborations related to COVID-19. Our technology platform, with continued research and development, has the potential to not only combat COVID but address other known and novel emerging biodefense threats.

An agreement to waive IP rights for COVID-19 therapeutics at the WTO would needlessly expose our company's IP assets protecting our platform technology which we are using to develop treatments for COVID and for other potential infectious diseases, immune and autoimmune disorders, and oncology. A waiver of IP rights could potentially allow our patents to be infringed and our technology platform deployed by competitors to develop COVID treatments or treatments for other diseases without meaningful legal recourse.

IP and Innovation: IP is the Currency Driving Investment in R&D

While some continue to argue that IP rights hindered the response to the COVID pandemic, in fact that legal architecture provided the basis for the successful R&D behind the vaccines, therapeutics, and diagnostics, and the partnerships that delivered millions of doses around the world with historically unprecedented speed.

As Seth Berkley, the former CEO of Gavi, the Vaccine Alliance, recently said the push for the vaccine IP waiver was a distraction: "You know, it was a challenge. Because here we were in the middle of this emergency, and there was a whole community that said, this is what we have to do, and focused on it and pushed on it, and it was irrelevant."¹

Through the collective research efforts of the global innovative biotechnology community, there have been over 800 independent therapeutic R&D programs initiated since the beginning of the pandemic and hundreds of collaborative, voluntary research and manufacturing partnerships. The global IP framework has enabled this lifesaving innovation and provides a reliable legal foundation for companies to enhance research collaborations globally on a voluntary basis.

IP rights are the currency used by innovative biotech companies to encourage investment in new and emerging technologies with significant promise. Biotechnology research and development has a greater than

¹Jenny Lei Ravelo, "TRIPS Waiver 'Did Nothing' for Vaccine Access, Gavi's Seth Berkley Says" Devex (March 8, 2023) (available at devex.com/news/trips-waiver-did-nothing-for-vaccine-access-gavi-seth-berkeley-says-105091).

90% failure rate, can take many years, and cost hundreds of millions of dollars. We cannot expect rational investors to fund this work if we cannot demonstrate that we have secure and enforceable rights to our technology. Investors scrutinize our patent portfolio as part of any due diligence. It can make or break a company long before we have our first approved product.

I'm happy to say that SAB has recently announced a private placement investment of over \$100M in our company to advance a disease modulating immunotherapy SAB-142 to delay the onset and/or progression of Type 1 Diabetes and we just announced commencement of our Phase 1 clinical trial. If we would have had to disclose a waiver of our IP rights to our COVID-19 portfolio it would have put our company at serious risk of losing a major investment because the waiver would have also exposed all COVID-19 associated IP assets which would have included our novel platform used to develop many kinds of products not just the COVID-19 product.

This risk exposure brought on by the proposed TRIPS Waiver to our IP portfolio, and to the IP portfolios of other U.S. based biotech firms with technologies used to develop COVID treatments, significantly impacts how we entrepreneurs allocate capital to support future R&D efforts and how we approach the investor community to raise funds. The uncertainty around the ability to control and enforce our IP rights globally discourages investment in this space, especially from pre-revenue early-stage biopharmaceutical companies whose most important assets are their IP. The threat to the delicate balance of investment risk cannot be understated in an already highly competitive environment that could negatively impact companies the responded to the COVID-19 pandemic (and perhaps future global health emergencies) in good faith.

U.S.-based small and medium sized enterprises (SMEs) led the global R&D campaign to rapidly develop drug candidates to treat COVID-19 and account for over 75% of the projects in the biopharmaceutical global clinical pipeline. This is where most of the innovation in this field occurs. Many of these companies have yet to bring an approved product to market or have a revenue stream. They are entirely dependent on private capital markets to fund their research. A waiver of IP at the WTO would disrupt that vital funding to the detriment of science, public health, and to the U.S. based biotech companies that led the fight developing treatments against COVID-19.

The innovative U.S. biotech sector, spanning early-stage startup biotech firms, pre-commercial SMEs and larger multinational biotechnology companies not only make incredible contributions to humankind through their scientific research efforts but also contribute to economic growth in the United States, directly employing 2.14 million people and contributing 10.3 million additional jobs resulting in a \$2.9 trillion impact to the U.S. economy.² Reduced investment, brought on by increased risk to underlying IP assets, will affect research and manufacturing jobs in the United States and undermine our ability to harness the innovative potential of the U.S. private sector to timely and robustly respond to future global public health challenges.

The current debate about a potential extension of an IP waiver to include COVID-19 related therapeutics and diagnostics has already influenced how companies like mine are allocating resources to response to future pandemics. As BIO has pointed out in submissions to the USITC, the stock prices of SME biotech firms that have invested in COVID-19 related R&D have on average suffered more (-73 percent) than the average stock in the U.S. (-5.4 percent) and more than the average SME biotech company not working on

² *The Bioscience Economy: Propelling Life Saving Treatments, Supporting State and Local Communities 2020*, TEconomy/BIO, <https://www.bio.org/value-bioscience-innovation-growing-jobs-and-improving-quality-life>

COVID-19 related R&D (-55 percent) since February 2021.³ This capital flight has real world consequences for the advancement of cutting edge science.

Reduced investments in the biotech sector and decisions to scale back certain research and development expenditures in response to a high-risk environment for IP rights brought on by the proposed expansion of the TRIPS waiver disrupts the economics of the U.S. biotech ecosystem and this has broader ramifications to the overall health and resilience of the U.S. economy.

Congress recognized the importance of a strong global IP system when it enacted the Omnibus Trade and Competitiveness Act of 1988, stating “Improved protection and market access for U.S. intellectual property goes to the very essence of economic competitiveness for the United States. The problems of piracy, counterfeiting, and market access for U.S. intellectual property affect the U.S. economy as a whole. Effective action against these problems is important to sectors ranging from high technology to basic industries, and from manufacturers of goods to U.S. service businesses.”⁴ That understanding has always guided U.S. policy and we court disaster if we abandon it now.

COVID-19 Vaccine, Diagnostic, and Therapeutic Supply Has Outstripped Demand

The facts and data clearly establish that protection of intellectual property (IP) rights has been essential to realize significant improvements to patient care and introduction of new medical breakthroughs, including effective medical countermeasure responses to COVID-19. To this end, any effort to circumvent critical IP protections through a TRIPS waiver will undermine American innovation, American leadership in the life sciences, and ultimately fail to meaningfully expand global supply and access.

There is no credible evidence that IP protections have limited patient access to COVID-19 therapeutics. Rather regulatory barriers, trade restrictions, inadequate investment in health systems and lack of adequate infrastructure are limiting factors on supply and access to COVID therapeutics. Accordingly, an IP waiver at the WTO would solve no legitimate issue of public interest. By compromising the legal certainty surrounding COVID-19 related IP, the WTO risks creating genuine barriers that frustrate the ability for biotech companies around the world to rapidly respond to future public health emergencies.

Conclusion

With news of the WHO declaring the end of the COVID-19 public health emergency on May 5, 2023, and with global supply of therapeutics far exceeding demand, a waiver is wholly unnecessary. The persistent pursuit and prioritization of an IP waiver at the WTO demonstrates a lack of concern from this multilateral organization with improving genuine public health bottlenecks affecting the distribution of existing therapeutics. Rather, the debate suggests that proponents of the waiver are keen on leveraging the COVID pandemic to achieve a goal that has been decades in the making – the radical undermining of the existing global IP rights system.

If we want to ensure U.S. companies are at the forefront of delivering innovative countermeasures in response to potential future pandemics and if we want to preserve U.S. leadership in the life sciences, then the U.S. Government must not hesitate in unequivocally expressing its opposition to the proposed

³ Based on period from Feb. 3, 2021 – Dec. 2, 2022 (Source: <https://statista.com/statistics/1104278/weekly-performance-of-djia-index/>)

⁴ S. Rep. 100-71 at 75 (1987).

expansion of the TRIPS Waiver for COVID-19 therapeutics at the upcoming WTO 13th Ministerial Conference.

Thank you for the opportunity to share my perspective on this important issue. I would be pleased to answer any questions you may have.

Chairman SMITH. Thank you.
Mr. Hirsh, you are recognized for 5 minutes.

STATEMENT OF BRUCE HIRSH, FOUNDER, TAILWIND GLOBAL STRATEGIES, LLC

Mr. HIRSH. Mr. Chairman, Ranking Member Blumenauer, and members of the subcommittee, thank you for the opportunity to appear today. My testimony will focus on the prospects for MC13 outcomes on changes to the dispute settlement system.

Under the best of circumstances, WTO negotiations move slowly, constrained by a decision-making process that requires consensus among its 164 members. As a result, those looking to each ministerial with expectations of bold outcomes are often disappointed, and this ministerial is likely to be no exception.

Having said that, even without headline outcomes, ministerials like MC13 can prove important in laying the groundwork for new initiatives and in advancing the ball in ongoing initiatives like dispute settlement reform.

The United States was a driving force behind the creation of the dispute settlement system, viewing it as key to enforcing WTO commitments and ensuring day-to-day respect for the rules. WTO dispute settlement has proven popular, with more than 620 disputes brought since the WTO's creation in 1995, roughly double the count under the previous 50 years of the WTO's predecessor, the GATT.

The system has been hobbled since 2019, when the United States blocked appointments to the system's appellate body, resulting in the appellate body losing a quorum to make decisions. The U.S. did so out of long-standing bipartisan concerns that the appellate body was increasingly straying from its limited role of correcting panel errors to filling gaps in the WTO agreement and otherwise creating new obligations and limiting existing rights. The United States began flagging this concern in the early 2000s but made little progress at the time.

There have been meetings in various configurations since 2019 to better understand U.S. concerns and consider how to address them. The most promising of these has been taking place for the past 2 years: an informal, bottom-up process in which members have discussed their interests in the dispute settlement system and how it can best operate. By virtue of this interest-based approach and at the urging of Ambassador Tai, the process is considering not only U.S. concerns but also how the system can work more effectively for the entire membership, including developing countries.

Recent discussions have been marked by an unusual level of cooperation, with members generating a number of textual proposals on alternatives to litigation and to streamline the system. Discussions on the more contentious U.S. concerns have lagged. The positive news is that members appear to be listening to U.S. concerns in a way they have not in the past.

The prospects for outcomes on dispute settlement reform at MC13 are thus uncertain. There has been some discussion on whether to reach some sort of agreement on the process-related proposals which are furthest along, a prospect the United States has been open to. Other participants have been reluctant to agree

on anything until there is greater certainty on how U.S. concerns with the appellate body might be handled.

Regardless of whether there is agreement at MC13 on some issues, the meeting represents an opportunity for ministers to engage with each other to explore how to close gaps in positions and to recommit to completion of reform discussions. It is important that they do so.

For all of its flaws, the WTO dispute settlement system has played an important role in resolving and containing disputes and, more generally, in reinforcing respect for the rules. The increasing resort by members to appealing into the void; that is, preventing disputes from reaching their conclusion by appealing to the non-existent appellate body, highlights the risk of a more general deterioration of respect for the rules to the detriment of U.S. workers, producers, farmers, and exporters. And, without a functioning dispute settlement system, we are likely to see more tit-for-tat trade wars that involve cascading cycles of retaliation.

In conclusion, it would be prudent to temper one's expectations for a breakthrough on dispute settlement reform issues at MC13. Having said that, MC13 could provide a welcome boost to the current talks, which provide a real opportunity to address U.S. concerns and restore a more effective dispute settlement system.

Thank you very much.

[The statement of Mr. Hirsh follows:]

Written Testimony of
Bruce Hirsh
Before the House Ways and Means Trade Subcommittee
Advancing America's Interests at the World Trade Organization's
13th Ministerial Meeting
Wednesday, February 7, 2023

Mr. Chairman and Ranking Member Blumenauer, thank you for inviting me to appear at this hearing today. I appreciate this opportunity to provide testimony on the World Trade Organization's (WTO) upcoming 13th Ministerial Conference in Abu Dhabi. My testimony will focus on the prospects for outcomes on changes to the dispute settlement system. I have been involved in and have followed this topic for more than two decades since I served as USTR's Legal Advisor to the U.S. Mission to the WTO and as USTR's Chief Counsel for Dispute Settlement, and later as a WTO negotiator and as Chief International Trade Counsel at the Senate Finance Committee.

By agreement, the WTO holds meetings of its Member economy trade ministers every two years. These Ministerial Conferences represent the WTO's highest decision-making body. Past Ministerial Conferences have been used to advance or conclude ongoing negotiations and to initiate and guide new talks. Even under the best of circumstances, WTO negotiations move slowly, constrained by a decision-making process that requires consensus among its 164 Members. As a result, those looking to each Ministerial with expectations of bold outcomes are often disappointed. This Ministerial is likely to be no exception.

Having said that, even without headline outcomes, Ministerials like MC13 can prove important in laying the groundwork for new initiatives and in advancing the ball on key ongoing initiatives, providing energy and guidance to negotiators working day-in and day-out in Geneva and in capitals around the world.

Much of that work over the past few months has been directed at agreeing on how to improve

the WTO's dispute settlement system. The system has been hobbled since 2019 when the United States blocked appointments to the system's Appellate Body, ultimately resulting in the Appellate Body losing a quorum to make decisions. This has created the option for a losing party to a dispute to appeal its first level panel decision "into the void," preventing the completion of the dispute. As detailed further below, the U.S. decision to block Appellate Body appointments grew out of long-standing, bipartisan concerns that the Appellate Body was increasingly straying from its limited role of correcting panel errors to filling gaps in the agreement and otherwise legislating to create new obligations and limit existing rights.

Restoring the dispute settlement system to full functionality has been a priority for most WTO Members and the question of how to do so an active topic, in particular over the past two years. The recent discussions have been marked by an unusual level of cooperation, with Members generating a number of textual proposals for process-related improvements to the system. While discussions on solutions to core U.S. concerns have lagged, this should come as no surprise given the wide gaps in positions and the need for additional groundwork to bridge those gaps. Indeed, while WTO Members at MC12 agreed to conduct discussions "with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024," the United States has been clear that it did not view this as meaning completing discussions by MC13 in February 2024.

Before addressing different positions and future prospects, it is worth providing some background on the system and how we got to this point. The WTO's dispute settlement system is one of the three pillars of the WTO, alongside its negotiation and monitoring functions. It is tasked with facilitating "the prompt settlement of disputes"¹ and "to secure a positive solution to a dispute," preferably "a solution mutually acceptable to the parties and consistent with [WTO rules]."² Claims are initially heard by three *ad hoc* panelists, with losing parties then free to seek review by the Appellate Body. The Appellate Body is a standing body with seven members who are selected by the membership. Its mandate is limited -- to review "issues of law covered in the panel report and legal interpretations developed by the panel"³ and to

¹ Dispute Settlement Understanding (DSU), Art. 3.3.

² DSU Art. 3.7.

³ DSU Art. 17.6.

“uphold, modify or reverse” the panel’s legal findings and conclusions.⁴ Under dispute settlement rules negotiated as part of the WTO’s creation, panels and the Appellate Body may not “add to or diminish” WTO rights and obligations.⁵

The United States was a driving force behind the creation of the dispute settlement system, viewing it as key to enforcing WTO commitments and ensuring day-to-day respect for the rules. Frustrated throughout the 1980s and early 1990s by the ability of losing parties to block panel establishment and panel findings under the dispute settlement procedures of the WTO’s predecessor, the General Agreement on Tariffs and Trade (GATT), the United States insisted that panels be automatically established upon request and that panel findings could not be blocked, nor could requests for authorization to raise duties on parties who fail to come into compliance after adverse panel findings.

In the later stages of negotiating these rules, the United States and others concluded that the new rules on automatic adoption of panel reports created the potential for panel errors to go unaddressed, and therefore added the Appellate Body to the new procedures.

WTO dispute settlement has proven popular, with more than 620 disputes brought since the WTO’s creation in 1995, roughly double the count under the previous 50 years of the GATT. While this has generally been viewed as a sign that WTO Members find the system useful in resolving disputes, others question whether at least some of these disputes have been brought in an effort to achieve through dispute settlement what litigants could not achieve through negotiation. This concern became greater as the WTO’s negotiation function stalled out in the Doha Round, which was launched in 2001. A dynamic developed in which litigants pursued aggressive arguments that were accepted by the Appellate Body, inviting further aggressive argumentation.

The U.S. criticism of the Appellate Body stems in large part from its observation that the Appellate Body took advantage of automatic adoption of its reports to expand its mandate from correcting panel errors to fillings gaps in agreement text and in some cases narrowing the agreed scope for Members to implement their commitments, particularly, but not exclusively,

⁴ DSU Art. 17.13.

⁵ DSU Arts. 3.2 & 19.2.

in the area of trade remedies. The Appellate Body and its supporters justified its actions as consistent with one of the dispute settlement system's functions, to clarify existing obligations, but it became increasingly clear over time to many observers in the United States and elsewhere that the Appellate Body had crossed a line into rule-making, most clearly when it took upon itself the right to extend the deadlines Members had established for it to complete its work -- without authorization by the litigants -- and when it increasingly opined on legal issues not related to the dispute at hand, that is, it provided advisory opinions.

This is not to say that every report of the Appellate Body indulged in overreach from 1995 on, or that the Appellate Body made no positive contributions to the functioning of the system. Its early insistence on legal rigor generally raised the quality of panel reports. And in the early days of the system, Appellate Body reports were generally restrained, in some cases explicitly reflecting an appreciation of the dispute system's limited role of enforcing existing obligations, not creating new ones.⁶ But over time this self-restraint fell away, to the point that in 2016 the Appellate Body included in one of its reports 46 pages opining on the meaning of agreement provisions not relevant to the dispute at hand.⁷

Along with gradually taking an expansive view of its approach to disputes, the Appellate Body from 2008 insisted that its word was the last word, that its findings in effect constituted binding precedent. The dispute settlement rules Members agreed to make clear this was not to be the case. Structurally, panel and Appellate Body reports have no legal status until the full WTO membership adopts them, albeit through a virtually automatic process (Members can, by consensus, reject the reports). And WTO rules are clear – Members have the exclusive authority to adopt interpretations of the WTO Agreement or to amend it,⁸ and, as previously noted, panel and Appellate Body findings may not add to or diminish Member rights and obligations.⁹ Panels are not tasked with following earlier conclusions of the Appellate Body;

⁶ See Appellate Body Report, *United States — Import Measures on Certain Products from the European Communities*, WT/DS165/AB/R (2000), at 26.

⁷ See Statement by the United States at the Meeting of the Dispute Settlement Body on May 9, 2016 (WT/DSB/M/378), available at <https://geneva.usmission.gov/wp-content/uploads/sites/290/May-9-DSB.pdf>; Appellate Body Report, *Argentina — Measures Relating to Trade In Goods And Services*, WT/DS453/AB/R (2016).

⁸ Marrakesh Agreement Establishing the World Trade Agreement (“WTO Agreement”), Arts. IX:2 & X.

⁹ DSU Arts. 3.2 & 19.2.

rather, they are required to examine agreement provisions in accordance with customary rules of interpretation of public international law – even when this yields a result at odds with Appellate Body precedent. The Appellate Body’s insistence that panels follow its precedent has locked in mistakes, especially in the area of trade remedies, and forced it to subsequently engage in legal acrobatics to revise its reasoning without acknowledging it is doing so.

This is a brief summary of U.S. concerns with the Appellate Body. The United States comprehensively laid out its concerns in a paper USTR issued in 2020 and which is available on USTR’s website.¹⁰

From the early 2000s, the United States began flagging its concerns with the direction the Appellate Body was heading. In the mid-2000s, the United States submitted proposals I was involved in drafting that attempted to address U.S. concerns as part of a review of the dispute settlement system’s operation. That process suffered from the same fate as many of the WTO’s negotiating efforts, as the need for consensus prevented agreement on a common set of reforms.

Over the years, others at the WTO have shared U.S. concerns and have on occasion joined the United States in expressing them, usually in the context of specific disputes, but there has rarely been a groundswell. Often this was out of a sense of resignation that little could be done given the requirement of a consensus to reject a panel report or to consider reforms. At other times it was because many favored the substantive outcome in the dispute and remained quiet, even if they understood the questionable interpretive approach that achieved that outcome. And many Members have been constrained in their criticism and reluctant to openly join the United States because they believed that whatever the system’s flaws, it was overall operating well and they were reluctant to undermine its credibility through criticism.

Still other Members have been in philosophical agreement with the Appellate Body’s aggressive approach and have dismissed U.S. criticisms as a case of sour grapes at losing. But from my own experience I can tell you that the U.S. criticisms were directed not only at

¹⁰ “Report on the Appellate Body of the World Trade Organization,” Office of the United States Trade Representative (2020), available at <https://www.ustr.gov/sites/default/files/enforcement/DS/USTR.Appellate.Body.Rpt.Feb2020.pdf>.

avoiding and correcting mistakes, but at saving the system from itself, because the USG realized that the Appellate Body's activism could eventually undermine the credibility of and support for a useful and necessary part of the WTO system. And that is what ultimately happened.

WTO Members were shocked in the last years of the Obama Administration when the U.S. blocked reappointment of an Appellate Body member who had been involved in a number of activist Appellate Body reports. And WTO Members were more than shocked during the Trump Administration when the United States blocked the Appellate Body appointment process, causing the Appellate Body to lose its quorum, despite the increasingly detailed and specific critiques the United States offered leading up to that action, including lengthy ones my fellow panelist Ambassador Shea delivered.

While the U.S. tactics were not appreciated, they did get Members' attention. There have been meetings in various configurations since 2019 to better understand U.S. concerns and consider how to address them. The most promising of these has been ongoing for the past two years, an informal process under the direction of the Deputy Permanent Representative of Guatemala to the WTO, Marco Molina. The process has developed in stages, with Members first laying out their interests in the dispute settlement system and how those interests are or are not reflected in the current operation of the system, then considering proposed solutions. Those solutions with broad support have moved forward to the drafting stage. The process has operated through a bottom-up approach, with Members working in small groups to develop textual proposals which are then reviewed by the broader group.

By virtue of this interest-based approach, and at the urging of Ambassador Tai, the process is considering not only U.S. concerns, but more broadly how the system can work more effectively for the entire Membership, including for developing countries whose limited resources have at times left them unable to make use of the current system and its increasingly lengthy, complex, and resource-heavy legal proceedings. In connection with this concern, and with a focus on the system's core purpose of helping Members resolve disputes, the talks have included discussions and proposals on alternatives to litigation, seeking more effectively to operationalize provisions in the original dispute settlement rules on good offices, conciliation,

and mediation. And the talks have reportedly also included a number of proposals to streamline the current operation of the system to better achieve the tight deadlines included in dispute settlement rules and to reduce the burden on litigants. These process-related topics are reportedly furthest along in discussions. Discussions on more contentious topics are reportedly less developed, like those on how to handle what the U.S. considers past erroneous interpretations and how to reform the panel review mechanism – or whether to dispense with it altogether. Most Members have yet to be persuaded to abandon a review mechanism like the Appellate Body altogether, though many have signaled a willingness to undertake changes. The positive news is that Members appear to be listening to U.S. concerns in a way they have not in the past.

Added to the challenge facing negotiators, two panels in late 2022 and early 2023 found against the U.S. position that panels may not second-guess a Member's decision to take a measure for national security purposes. This long-standing position dates back to 1947, and numerous Members, including ones now challenging the U.S. position, have expressed the same view at one time or another. While there is no scenario in which the United States will back away from this position in current talks, the United States has in the past acknowledged that others may retaliate against national security measures and has been willing to litigate the amount of retaliation. Formalizing that approach might be one way forward on the issue.

The prospects for outcomes on dispute settlement reform at MC13 are thus uncertain. There has been some discussion on whether to reach some sort of agreement on the process-related proposals which are furthest along in their development, a prospect the United States has been open to. Other participants have been reluctant to agree on anything until there is greater certainty on how U.S. concerns with the Appellate Body might be handled. WTO Members are now engaging in very intensive talks to close gaps and determine a way forward on remaining issues.

Regardless of whether there is agreement at MC13 on some of the issues under discussion, the meeting represents an opportunity for Ministers to engage with each other to explore how to close gaps in positions and to recommit to completion of discussions. It is important that they do so. For all of its flaws, the WTO dispute settlement system has played an important role in

resolving and containing disputes and more generally in reinforcing respect for the rules. The increasing resort by Members to appealing into the void, that is, preventing disputes from reaching their conclusion by appealing to the non-existent Appellate Body, highlights the risk of a more general deterioration of respect for the rules, to the detriment of U.S exporters, producers, and their workers. And without a functioning dispute settlement system, we are likely to see more tit-for-tat trade wars that involve cascading cycles of retaliation.

In conclusion, it would be prudent to temper one's expectations for a breakthrough on dispute settlement reform issues at MC13. Having said that, MC13 could provide a welcome boost to the current talks, which provide a real opportunity to address U.S. concerns and restore a more effective dispute settlement system.

Chairman SMITH. Thank you, Mr. Hirsh.

Thank you to all of our panel here again today. You bring some very relevant issues and timely as well.

I will now recognize Mr. Blumenauer, ranking member, for his opening statement.

Mr. BLUMENAUER. Thank you very much, Mr. Chairman. I apologize for the delay.

But I very much appreciate the testimony from our witnesses suggesting that we temper our expectations but that we stay with the process. I strongly support the WTO but, sadly, the limitations that have been mentioned are ones that challenge that optimism. It is important that we remain relevant by addressing the issues that they mentioned: the nonmarket practices, forced labor, climate change, and women's economic empowerment.

I really appreciate Ambassador Tai and her team in Geneva, led by Ambassador Pagan, for the robust agenda at the upcoming WTO ministerial. It includes numerous pressing topics that I support, such as addressing harmful fishing subsidies, an area of some progress, and extending the e-commerce moratorium. Substance, not arbitrary deadlines, should drive the outcomes at the ministerial.

I urge the Biden administration to resist any efforts from our trading partners, including some of our closest allies, to agree to outcomes that do not fully reflect American interests just for the sake of agreeing and getting along.

The success should be measured by the ability of the WTO members to craft a forward-looking vision for the WTO that takes into account the needs of the least-developed countries. In this regard, two least-developed countries, Comoros and Timor-Leste, will become the newest WTO members of MC13. These two countries are a welcome addition to the organization.

I also support reforming the WTO by equipping it to addressing the climate crisis. The agreement that established the WTO recognizes the multilateral trade system should seek to protect and preserve the environment. I would like to hear from our witnesses how we can form this recognition into concrete commitments.

Another important WTO reform that has been addressed by our witnesses is the dispute settlement system. For over 20 years, multiple administrations and the United States Congress have raised concerns for the WTO dispute settlement system, especially the appellate body. We are going to hear from today's witnesses about how the WTO appellate body has gone beyond WTO rules in a variety of areas, ultimately restricting the ability of the United States to regulate in the public interest as well as protecting American workers and businesses.

And speaking of unfair trading practices, the WTO reform must also address the disruption caused by nonmarket economies. Non-market practices are fundamentally inconsistent with the norms of the WTO. China, which continues to discriminate against American companies and subsidizing its case, is the most egregious example. WTO reform needs to address harmful nonmarket practices.

I appreciate the clear-eyed suggestions from our witnesses that we approach this in a realistic sense, tamp down our expectations, but nonetheless, understand, despite the frustrations, it is worth

our being involved. And I appreciate their guidance in terms of our being realistic, but we need to continue moving forward. I think this hearing is a small step in that direction.

Thank you, Mr. Chairman.

Chairman SMITH. Thank you, Mr. Blumenauer.

We will now move to questions from members. And, again, thank you for your insights. Thank you to our panel.

Mr. Sullivan, I want to talk to you about the expansion of the TRIPS waiver. As you know, the TRIPS waiver is a process that waives the protection of intellectual property so that other countries would have access to this intellectual property, through no expense of their own, despite the fact that a great expense has been had by American companies as they develop the intellectual property.

It concerns me that the Biden administration appears to believe that waiving IP rights is actually in our national interest. They supported a waiver 2 years ago for COVID-19 vaccines, and they very well may support an expansion of a similar waiver to diagnostics and therapeutics. At least we have no reason to believe they would head in a different direction.

From interchangeable parts to the steel plow, for example, or the intricate details in intellectual property of vaccines, innovation has always been a very helpful tool, a very useful tool of American competitiveness. Giving away that innovation actually undermines incentives to continue in an innovative trajectory.

It is clear to me that IP giveaways would not end with COVID-19 or health-related products. In fact, last year, the director general of the WTO was asked if she would support a TRIPS waiver beyond what is currently being contemplated such as for green technologies. She said, and I quote, "I could not agree more." Very concerning to me.

Mr. Sullivan, you are an innovator. I salute you for your efforts to find a better way of doing things and to ultimately help people, especially in the healthcare arena. Explain to us, perhaps, how a TRIPS waiver would impact your business and the broader innovation ecosystem later on.

Mr. SULLIVAN. Thank you, Mr. Chairman. And I certainly do share your concerns for what the waiver could mean from the broadest perspective. But as an innovator and as a pre-revenue company—and, by the way, 75 percent of new biotechnologies come from companies just like ours—75 percent. That is the majority of new and innovative medicines that help save lives.

We rely on investment dollars in order to be able to advance these technologies. These investment dollars allow us to go through the very rigorous process of getting a new medicine from the research bench all the way through to a licensure and into the hands of patients.

When we go in and walk into a room to talk to investors, one of the first things that they ask us is, what is the intellectual property portfolio of this particular asset that you are asking us to risk our investment in, remembering that nearly 90 percent of new innovation that happens actually doesn't survive. It is only the 10 percent that survives. So these are high-risk investments, and the investors are interested in how we protect those rights, not just in

the U.S. but globally, in order to ensure that that investment is done in a way that they can rightfully expect some return on that investment sometime, perhaps decades in the future.

And so it is very, very important that we realize that it is not just about what this means in its intent to get drugs into the hands of patients, but what it means even on the innovation level and being able to get these drugs to market. So it is very, very important.

And USITC basically said, look, it is not IP rights that are holding this back. There are other issues that we need to be talking about to get these innovations into the hands of people all over the world.

Chairman SMITH. Thank you. Thank you.

Ms. Shaw, I want to turn to you about the importance of what is referred to as the e-commerce moratorium or certainly a moratorium on, say, duties on e-commerce. And this has been an issue that I have been focused on for a long time and certainly my colleagues, Mr. LaHood and Ms. DelBene, are very focused on this issue as well.

We all know that allowing countries to impose tariffs on data would uniquely hurt our country economically, among other ways. Our tech firms, farmers, manufacturers, and service providers all rely on the free flow of data to be successful.

In addition to the critical importance to the U.S., I am convinced that developing countries actually benefit greatly from this moratorium as they seek to advance their own industries in the modern economy.

What I think is less appreciated, however, is the strategic threat posed by a failure to renew this moratorium. Can you explain to the committee how failure to renew the moratorium actually helps China at the expense of U.S. competitiveness?

Ms. SHAW. Thank you so much for the question. And just to be clear, China currently is not supporting India, Indonesia, and South Africa in this crusade at the WTO, which should be pretty shocking because this is even a bridge too far for China. That is how bad this policy is.

But when you look at the possibility of losing the e-commerce moratorium, coupled with the administration's decision to support the TRIPS waiver and the possibility of expanding that waiver to cover diagnostics and therapeutics, as well as the October decision to withdraw from long-standing bipartisan U.S. views on the importance of the free flow of digital trade, it paints a very alarming picture, not just for commercial reasons, as you point out, but also for our national security objectives and broader values.

And so what the administration is pointing at policy space, is the same policy space that the CCP uses to steal American intellectual property, censor its citizens, to restrict the free flow of information, and to build its state-directed economic model.

This is not consistent with American democratic values with the free flow of information, the exchange of ideas that we are accustomed to. And it is certainly concerning not just to bipartisan members of the dais and us here in this room, but also to our allies who don't understand what we are doing.

It is leading to an increasing fracturing of the global trading system as well. I think we really need to strongly rethink these policies and go back to the free flow of data, a system that is consistent with American values and a partnership with our allies.

Thank you.

Chairman SMITH. Thank you very much for your insight.

I now recognize Mr. Blumenauer for his questions before we proceed. Thank you.

Mr. BLUMENAUER. Thank you, Mr. Chairman.

Ms. Shaw, you sort of laid it out in terms of the alternatives that we face, and your conclusion is that we ought to put real resources into renegotiating and rebuilding the MFN multilateral framework, like-minded trading partners that address modern American economic challenges, reflect today's reality, and result in meaningful outcome for the American people.

Can you elaborate on what actually that would look like?

Ms. SHAW. Yeah. Thank you so much for the question. So the WTO is facing an existential crisis, as is the United States and other members who are serious about seeing the system survive and thrive.

I appreciate your views that we need to invest in the system, and I share them. But we have a choice right now. Either we continue to pursue things on a bilateral basis or take unilateral action when it comes to trade policies, or we invest in a system with other like-minded allies to address things like China's unfair trade practices, to address concerns we have with labor and the environment, to address digital trade and new economy issues. And, if we don't do that with the group of countries who are willing to invest and support those ideas, we are going to have an increasingly fractured trade regulatory system that is going to disadvantage and discriminate our workers, our businesses, and our companies. I don't think that is a best-case scenario or a desired outcome.

But part of the challenge is trying to get other members of the WTO to agree with that approach. And so, if they don't, you know, we are left in sort of a bilateral world, a go-it-alone approach. But, ideally, we can work with those members to build something greater, but the current paralysis of the negotiating function of the WTO is just not sustainable.

Thank you.

Mr. BLUMENAUER. Mr. Hirsh, could you comment on the second phase of the fisheries subsidies negotiations as being critical? This initial round appeared to be one of the bright spots of the WTO. Where is this going to lead us?

Mr. HIRSH. Thank you for the question. The resulted MC13—the first phase of the negotiation—was, in fact, historic. It proved that the WTO can get something done and get something done in the environment area.

The second phase is really where the rubber is going to hit the road, though, because it is going to be dealing with those subsidies that are contributing to overcapacity and overfishing very directly.

You know, right now, these subsidies are resulting in too many boats chasing an increasingly dwindling supply of fish, threatening fish stocks collapse. This is bad for the environment. It is bad for farmers. And so it is going to be critical to get this one right.

You know, the work is not far enough along at this point to have result here at MC13, but, you know, the fact that we did get phase I done is, you know, a source of optimism that phase II can get done eventually as well.

Mr. BLUMENAUER. Mr. Hirsh, you heard my question to Ms. Shaw. Do you have a reaction to her reaction?

Mr. HIRSH. You know, as I mentioned in my statement, it is frustrating to try to accomplish things at the WTO. It takes time. I had the good fortune, when I was in government, to be involved in a couple of negotiations where I had the wind at my back: fish subsidies and trade facilitation. So it is, with patience, possible to get things done.

But, more importantly, you know, the WTO provides a real baseline of—you know, for the operation of the international trading system. As was pointed out by Chairman Smith, 65 percent of our trade is done under the WTO rules only. So, you know, we do have to continue to invest in the institution and make it reflect our priorities. Certainly, this does not exclude the possibility of working with like-minded allies outside to resolve and to deal with many of the challenges of today, but we have to recognize that if we are to be like-minded with those allies, we are going to need to continue to commit to the WTO because they all are very much committed to the WTO.

So, you know, I don't think it is mutually exclusive. You know, we should be working with our allies on initiatives, but we can't leave the WTO behind.

Mr. BLUMENAUER. Thank you, Mr. Chairman.

Chairman SMITH. Thank you.

I now recognize the chairman of the full committee, Jason Smith.

Chairman SMITH of Missouri. Thank you, Subcommittee Chairman Smith and Ranking Member Blumenauer, for leading this hearing today just a couple weeks away from the World Trade Organization's 13th Ministerial Conference.

The United States must lead at the WTO. We cannot afford to cede the playing field of setting and enforcing global trade rules to China. While the Biden administration has maintained President Trump's blockade of the appellate body, until we see real reforms to address judicial activism at the WTO, the administration has also—and the administration has also pulled back on reform proposals related to transparency and the ability of WTO members to self-declare as developing countries. Both issues are key to leveling the playing field with China.

The agreement that was finally reached on fisheries subsidies failed to include important provisions on forced labor and subsidies that contribute to overcapacity. There has also been no progress on agriculture, even as many nations undermine the competitiveness of our farmers and growers with unfair and protectionist barriers.

After backing a waiver to the TRIPS Agreement to give away U.S. intellectual property on COVID-19 vaccines, the administration is now considering expanding that waiver to cover diagnostics and therapeutics as well. USTR even colluded with progressive activists to cede U.S. leadership on digital trade, proposals that enjoyed enormous—enormous bipartisan support in USMCA to China.

So I am glad we are hearing from witnesses today who can help us chart a better path forward. That starts with tearing down unfair barriers to U.S. exports.

Mr. Hanks, as you know, southeast Missouri, my home, is home to 187,000 acres of planted rice, making the State fourth in production in the entire country, and all that production is only in our congressional district. It generates over \$150 million for the local economy.

I regularly meet with Missouri rice producers who have consistently told me that they face a very unlevel—unlevel playing field abroad. U.S. export opportunities are being diminished by foreign competitors and flawed WTO rules and unfairly—unfairly subsidized rice production. India has been the most egregious violator, flaunting both the letter and spirit of WTO rules.

That is why this week I requested the United States International Trade Commission conduct an investigation into the global competitiveness of the U.S. rice industry. This report would include analysis of India's distorted public stockholding policies and other subsidies.

So, Mr. Hanks, can you speak to the impact that these policies have on U.S. workers and the importance of USTR pushing back on India's efforts to further weaken WTO rules in their favor?

Mr. HANKS. Sure. Thank you for the question. I think the answer is it is a job killer. It is an investment killer. It is making our U.S. rice farmers unprofitable.

As I mentioned in my statement, India is controlling 40 percent of the global trade. We compete with them and many countries, and it is becoming—all the market share in those countries are becoming inaccessible because of their cheap subsidies flooding into their rice production and that correspondingly flooding into those markets. Rice farmers don't want handouts. They want opportunity.

The USITC study that you mentioned—the update of that study is going to be very eye-opening. In 2015, that study revealed that U.S. rice farmers are very, very competitive and given an equal playing field that we can compete in the global market, including our own market here in the United States.

We have won two victories at the WTO against China, and those cases are still in the void, as we say. And we don't know what victory looks like when we bring cases to the WTO because their bad behavior is still ongoing. They are dumping rice into Puerto Rico as we speak.

So we are just looking for a level playing field, and we appreciate the study being updated. So thank you.

Chairman SMITH of Missouri. Thank you, Mr. Hanks.

I want to thank all the witnesses for being here.

And thank you, Chairman Smith.

Chairman SMITH. Thank you.

I now recognize Mr. Kildee from Michigan for 5 minutes.

Mr. KILDEE. Thank you, Mr. Chairman, and to the ranking member, for holding this important hearing.

One persistent problem that I have been focused on for the time that I have been here in Congress, both in the United States trade agreements and broader trade agenda, is the issue of forced labor.

Across the globe, an estimated 28 million people work in conditions of forced labor. Forced and slave labor, as a matter of fact. Whether it is taking place in Xinjiang, China or in the Dominican sugar industry, it is a violation of basic human rights. All workers deserve basic labor protections, and institutions like the WTO should be working to uphold those protections around the world.

We have seen through our own trade agreements, like the U.S.-Canada-Mexico Agreement, that clear, enforceable labor standards help protect the basic rights of workers abroad, and importantly—I think most importantly, in some ways—support workers right here at home in the U.S.

To that end, I support the United States' efforts to encourage WTO members to address forced labor on fishing vessels, for example, and hope that the U.S. Trade Representative will continue seeking opportunities to address forced labor and workers' rights at the WTO.

So if I could turn to Mr. Hirsh. I wonder if you might describe the United States' efforts to address the issues of forced labor with WTO members and how these efforts support American workers, the challenges associated with that initiative, of course, and how the efforts can protect workers around the world.

Mr. HIRSH. Thank you very much for the question. You know, the Biden administration has been working to broaden the consensus on the importance of considering labor issues generally as well as forced labor specifically. You know, in the WTO, in the context of the fisheries negotiations, they have put forward a proposal specifically on forced labor and are advocating for it. There is obviously pushback right now, as there are in a lot of aspects of the negotiation, but they are showing no sign of letting up on it.

Mr. KILDEE. Thank you.

I wonder if you could further comment. As you may recall, when Congress passed the Uruguay Round Agreements Act, the legislation that affirmed our participation in WTO, it directed the President to establish—to seek to establish a working party at the WTO to examine the relationship between international trade and worker rights, including the trade impacts of systemically denying workers their basic rights, an initiative that obviously would facilitate addressing some of these issues.

And I wonder if you would comment on what you know about the status of the development of this working party and what actions the U.S. has taken or what we might take, particularly in this upcoming ministerial, to advance the development of that working party.

Mr. HIRSH. Well, over the years, USTR and the U.S. Government has raised the issue, has pushed for the issue, but unfortunately, there has been pushback. And as we have been discussing today, decisions at the WTO are made by consensus. So, unfortunately, to date, that has not been set up.

However, the administration is continuing to push. President Biden, last fall at the UN General Assembly, raised the issue on the importance of introducing labor into WTO discussions, and Ambassador Tai regularly raises this issue and, in fact, has tied it to the interest in reform at the WTO.

Mr. KILDEE. Thank you, Mr. Hirsh.

I wonder, Ms. Shaw, given your testimony and your commentary particularly on some of the sort of natural limitations that come with an organization as diverse and broad as the WTO, if you might comment on what you think the capacity of the WTO might be to address something as fundamental as basic worker rights, forced labor, child labor, those sorts of issues.

Ms. SHAW. Thank you for the question. I think at 164, soon to be 166 members, the odds of that happening are pretty much zero because the WTO makes these decisions by consensus.

You know, historically, the WTO has been allergic to addressing issues related to labor within the auspices of the organization. It was one of the reasons we created the International Labor Organization to specifically address those. But I think your point is fair in that there is certainly an economic relationship when it comes to forced labor and the disadvantages and the discrimination that our own producers face when we pay our workers a fair wage and other countries don't.

So there is certainly a trade argument to be made for why the WTO should be considering some of these issues, and when it comes to forced labor, it is just clearly the right thing to do. But in its current makeup, I think you will find that quite challenging.

Mr. KILDEE. I appreciate that.

And I do think it is important that you point out that we all recognize that this is not just about the fundamental question of human rights, but the economic interest of American workers is served by making sure that we have enforcement mechanisms to prevent exploitative efforts like what we see across the globe when it comes to forced labor and slave labor, et cetera.

Thank you, Mr. Chairman. I appreciate the hearing. I yield back. Chairman SMITH. Thank you.

I now recognize, from Illinois, Mr. LaHood for 5 minutes.

Mr. LAHOOD. Thank you, Mr. Chairman.

And I want to thank our witnesses for your valuable testimony here today.

I would like to first focus on the issue of digital trade and the recent decision by the Biden administration to abandon long-held bipartisan digital trade proposals at the World Trade Organization. The sudden change in policy without any consultation with Congress represents a troubling trend to walk back American leadership and creates an opportunity for countries, particularly China, to influence the rules of the digital economy.

The administration attempted to justify this abandonment by clinging to the belief that the WTO Joint Statement Initiative on Electronic Commerce does not allow for domestic regulations to be put in place. This approach, in my view, is misguided, and we see the continued proliferation of the new restrictive regulations, digital services taxes, and restrictions on data flows abroad, which all run counter to our U.S. interests.

Last November, Rep. DelBene and I co-led a letter, along with 36 of our House colleagues, to Ambassador Tai underscoring how USTR's decision emboldens adversaries like the CCP, the Communist Chinese Party, to advance a model of digital governance that permits censorship and surveillance. It also promotes human

and worker rights abuses and forces unwanted technology transfers through initiatives like the Digital Silk Road.

Mr. Chairman, I would ask unanimous consent that this letter be entered into the record, the one I just referenced.

Chairman SMITH. Without objection, so ordered.

[The information follows:]

Congress of the United States

Washington, DC 20515

January 17, 2024

The Honorable Katherine Tai
United States Trade Representative
600 17th St NW
Washington, DC 20006

Dear Ambassador Tai:

We write to express support for the World Trade Organization (WTO) Moratorium on Customs Duties on Electronic Transmissions (the Moratorium) and urge the Biden administration to make its renewal a top priority at the thirteenth WTO Ministerial Conference (MC13).

Since 1998, the United States and all other WTO members have agreed to refrain from imposing tariffs on electronic transmissions. WTO members have extended the Moratorium at subsequent WTO Ministerial Conferences, most recently in June 2022. The Moratorium covers electronic transmissions of both digital goods (e.g., e-books, music, movies, and video games) and digital services (e.g., software, emails, and text messages), enabling a stable environment for growing digital trade and American jobs.

The international flow of digital goods and digital services has become increasingly vital to American workers and businesses of all sizes, including the countless small businesses that use digital tools to export products and services across the globe. Failing to renew the Moratorium for the first time in a quarter century would undermine the strength of the American economy, jobs, and innovation.

If the Moratorium is not renewed, governments around the world would be free to impose tariffs and other trade barriers on numerous American industries that transmit products and services electronically and rely heavily on the free flow of data around the globe, including manufacturing, agriculture, entertainment, software, financial services, semiconductors, aerospace, autos, robotics, and medical devices. The Moratorium is particularly beneficial to small and medium sized businesses and entrepreneurs who use digital tools to reach new customers overseas and cannot set up physical operations in every country in which they sell in order to avoid duties imposed on electronic transmissions.

Unfortunately, countries are actively seeking to exploit a potential lapse in the Moratorium. For example, Indonesia has already adopted a customs regime to impose tariffs on certain digital goods and services. If the Moratorium is not extended, new digital trade barriers will likely proliferate. Such barriers could harm American exports, disrupt supply chains, increase prices for American consumers and businesses, and risk potential retaliation.

Although some countries have advocated to end the Moratorium on the grounds that it deprives them of tariff revenue, studies¹ have consistently found that countries applying customs duties on electronic transmissions

¹ Tibor Hanappi, Adam Jakubik, Michele Ruta, "Fiscal Revenue Mobilization and Digitally Traded Products: Taxing at the Border or Behind It?," *International Monetary Fund* (September 2023), <https://www.imf.org/en/Publications/IMF-Notes/Issues/2023/09/07/Fiscal-Revenue-Mobilization-and-Digitally-Traded-Products-Taxing-at-the-Border-or-Behind-It-538487>; Andrea Andrenelli and Javier Lopez Gonzalez, "Electronic Transmissions and International Trade – Shedding New Light on the Moratorium Debate," *OECD* (November 2019), https://www.wto.org/english/tratop_e/ecom_e/ecom_webinar_13jul2020_e/lopez_gonzalez.pdf; Hosuk-Lee Makiyama and Badri Narayanan, "The Economic Losses from Ending the WTO Moratorium on Electronic Transmissions," *European Centre for International Political Economy* (August 2019), <https://ecipe.org/publications/moratorium/>.

would lose considerably more in broader economic growth than they would gain in tariff revenue. Additionally, many stakeholders² across developing countries strongly support an extension, emphasizing the Moratorium's importance to small businesses in particular. To that end, we appreciate Ambassador Pagán's recent comments noting that extending the Moratorium "can be a concrete step that WTO Members take to foster robust digital economic activity and support digital inclusion that encompasses the developing world."³

The United States has been a consistent defender of the Moratorium, and we urge your continued support and advocacy at MC13. Thank you for your attention to this important matter.

Sincerely,



Darin LaHood
Member of Congress



Suzan K. DelBene
Member of Congress



Adrian Smith
Member of Congress



Earl Blumenauer
Member of Congress



Randy Feenstra
Member of Congress



Bill Pascrell, Jr.
Member of Congress



Brian Fitzpatrick
Member of Congress



Jimmy Panetta
Member of Congress

² "Global Industry Statement on the WTO Moratorium on Customs Duties on Electronic Transmissions." https://www.wto.org/english/thewto_e/minist_e/mc12_e/global_industry_statement_wto.pdf.

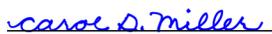
³ "Remarks by Ambassador Maria L. Pagan at Virtual World Trade Organization mini-Ministerial." USTR (December 2023). <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2023/december/remarks-ambassador-maria-l-pagan-virtual-world-trade-organization-mini-ministerial?source=email>


Dwight Evans
Member of Congress


Bradley Scott Schneider
Member of Congress


Nicole Malliotakis
Member of Congress


Ron Estes
Member of Congress


Carol D. Miller
Member of Congress

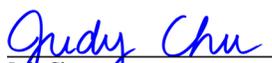

Michelle Steel
Member of Congress

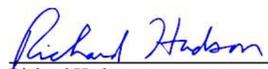

Kevin Hern
Member of Congress


Mike Carey
Member of Congress


Lloyd Smucker
Member of Congress


Daniel T. Kildee
Member of Congress


Judy Chu
Member of Congress


Richard Hudson
Member of Congress


Stacey E. Plaskett
Member of Congress


Linda T. Sánchez
Member of Congress


A. Drew Ferguson IV
Member of Congress

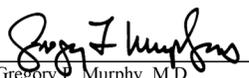

Brad R. Wenstrup, D.P.M.
Member of Congress


Donald S. Beyer Jr.
Member of Congress


Beth Van Duyne
Member of Congress


John B. Larson
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John Rose
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Gregory F. Murphy, M.D.
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Vern Buchanan
Member of Congress


Mike Kelly
Member of Congress


Jodey C. Arrington
Member of Congress

Mr. LAHOOD. Thank you. While I agree that we should bolster consumer data privacy and cybersecurity safeguards, we can do so without giving the impression to the world that the United States will no longer protect our industries and workers against unfair practices.

Mr. Shea, my question, how does USTR decision to walk away from these digital trade proposals not only undermine broad American interests, but also threaten American workers?

Mr. SHEA. Well, thank you for the question, Congressman. When we joined the JSI on digital trade, my mandate at the WTO was to insist on high ambition, so that meant strong prohibitions against forced disclosure of source code, prohibitions against cross-border data interference, prohibitions against data localization, and make sure that these agreements were reciprocally assumed by every member of the Joint Statement Initiative.

We took very strong positions. I think it was well-appreciated by the leaders of the JSI, Australia, Japan, and Singapore. And I think people are probably just at the WTO shaking their heads, what did the U.S. just do? They just did a 180. And we kind of did a 180 on the TRIPS waiver for COVID vaccines.

So, I think it damages U.S. perception at the WTO, and I think we are ceding the field to countries like China, who have what I would describe as a Stalinist approach to information control. So they are the—you know, we are kind of dumbing down the negotiation, which was a big, big mistake.

Mr. LAHOOD. Thank you for that.

On a related note, following up on the comments by Chairman Smith, I would like to underscore how important renewing the e-commerce moratorium will be for Americans' small- and medium-size enterprises and the countries they do business in.

Last month, I, along with subcommittee Chair Smith, Ranking Member Blumenauer, and Rep. DelBene, along with 28 House Members, sent a letter to USTR urging the administration to support a renewed e-commerce moratorium at this year's WTO ministerial.

Mr. Chairman, I would ask unanimous consent that this letter be entered in the record as well.

Chairman SMITH. Without objection, so ordered.

[The information follows:]

Congress of the United States

Washington, DC 20515

November 15, 2023

Ambassador Katherine Tai
United States Trade Representative
600 17th St NW
Washington, DC 20006

Dear Ambassador Tai:

We write to express our opposition to the Office of the U.S. Trade Representative's (USTR) decision to abandon important bipartisan digital trade proposals at the World Trade Organization (WTO). This action, which was made without sufficient consultation with Congress, runs counter to the interests of American workers and businesses of all sizes and cedes more leverage to other foreign powers, including the Peoples' Republic of China (PRC), that seek to write the rules of the 21st-century digital economy. We urge the administration to reconsider its approach.

Digital trade is vital to American workers and businesses of all sizes and virtually all industries, and the growth of e-commerce has only accelerated in recent years. In 2021, the U.S. digital economy produced \$3.70 trillion in gross output, a 36-percent increase from 2016, and the sector supported over 8 million jobs. Further, U.S. digital services exports equated to more than 75 percent of total services exports or \$594 billion in 2021. Digital trade is more critical than ever, impacting the competitiveness of nearly every American industry, from manufacturing and traditional technology to agriculture and services.

We are concerned by an increasing number of policies and proposals around the world that unfairly target American businesses and workers and threaten to undermine the leading position U.S. innovators have achieved. These policies include restrictive data localization requirements that fail to advance legitimate public policy objectives, controls on cross-border data flows, intellectual property theft and the forced transfer of technology, discriminatory regulations and digital service taxes, web filtering, and cybercrime.

American leadership in shaping digital trade rules is critical for competing globally in the long-term and countering the unfair trade practices of other foreign powers, including the PRC. We are especially concerned by the PRC's efforts to advance a model of digital governance domestically and through its Digital Silk Road Initiative that permits censorship, surveillance, human and worker rights abuses, forced technology transfers, and data flow restrictions.

We wholeheartedly agree that the United States and our allies must maintain sufficient room to regulate the digital economy in a fair and transparent manner. Further, we agree that consumers must be protected as they interact with the digital economy, including by bolstering consumer data privacy protections and cybersecurity safeguards. That said, the U.S. can regulate companies within our borders without giving foreign countries, including our adversaries, the impression that the United States will no longer protect our industries and workers against

discrimination, push back against the PRC's model of data censorship and surveillance, promote the free and secure flow of data across borders, and defend American companies against source code theft.

To combat these challenges, we have encouraged the Biden administration to embrace a bold digital strategy that puts American values front and center. We continue to support an approach that ensures fair competition by addressing protectionist data flow and localization restrictions, prohibiting web blocking, and protecting against forced source code transfer as a condition of market access. All these objectives were advanced by successive administrations, implemented in the bipartisan United States-Mexico-Canada Agreement, and previously supported by the United States in the WTO Joint Initiative on E-Commerce.

These provisions maintain broad support in the United States, and we are troubled that USTR has abandoned these positions without meaningful consultations with Congress and without putting forth any alternative approaches to advance the key objectives we outline above. The void created by this decision will harm American workers, companies, security, and innovation, while benefitting our largest competitors in the digital space. We reiterate our request for the administration to reassess its decision.

Sincerely,



Darin LaHood
Member of Congress



Suzan K. DelBene
Member of Congress



Adrian Smith
Member of Congress



Terri A. Sewell
Member of Congress



Vern Buchanan
Member of Congress



Donald S. Beyer Jr.
Member of Congress



Mike Kelly
Member of Congress



Bradley Scott Schneider
Member of Congress



David Schweikert
Member of Congress



Jimmy Panetta
Member of Congress



Brad R. Wenstrup, D.P.M.
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Gregory W. Meeks
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Jodey C. Arrington
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Ami Bera, M.D.
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A. Drew Ferguson IV
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Gerald E. Connolly
Member of Congress



Ron Estes
Member of Congress



J. Luis Correa
Member of Congress



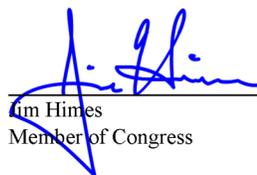
Lloyd Smucker
Member of Congress



Josh Gottheimer
Member of Congress



Carol D. Miller
Member of Congress



Jim Himes
Member of Congress



Brian Fitzpatrick
Member of Congress



Ann McLane Kuster
Member of Congress



Claudia Tenney
Member of Congress



Rick Larsen
Member of Congress



Michelle Fischbach
Member of Congress



Mike Quigley
Member of Congress



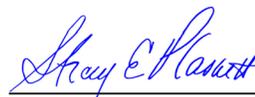
Blake D. Moore
Member of Congress



Scott H. Peters
Member of Congress



Michelle Steel
Member of Congress



Stacey E. Plaskett
Member of Congress



Beth Van Duyne
Member of Congress



Kim Schrier, M.D.
Member of Congress



Randy Feenstra
Member of Congress



Marilyn Strickland
Member of Congress



Mike Carey
Member of Congress



Eric Swalwell
Member of Congress

Mr. LAHOOD. As our witnesses today have highlighted, the e-commerce moratorium has been renewed at each WTO ministerial since 1998. However, countries like India and Indonesia are threatening to depart from this established understanding to impose tariffs and regulations that would disproportionately harm U.S. businesses.

Ms. Shaw, can you expand on your written testimony on this issue and discuss how these efforts by countries like India and Indonesia can be viewed as a direct threat to small businesses and workers in the United States?

Ms. SHAW. Yeah. Thank you for the question. Absolutely. I think loss of the e-commerce moratorium would be absolutely devastating, in particular for the United States who has built this services and digital economy for the globe, but also, in particular, for small- and medium-size enterprises who rely on the internet to buy and sell goods and to set up businesses.

But it wouldn't just impact those individuals in the United States; it would also disproportionately impact women around the world who haven't traditionally had access to the formal economy but can use their phones to start a business and start a life for themselves and their family.

I just think that this policy is so absurd, and clearly, the data doesn't support it. The small amount that would be collected in tax revenue does not even amount to a drop in the bucket compared to the cost that it would take to administer this policy. The United States should fight hard to maintain the moratorium.

Mr. LAHOOD. Thank you. I yield back.

Chairman SMITH. Thank you.

Next, I recognize from California, Mr. Panetta, for 5 minutes.

Mr. PANETTA. Thank you, Mr. Chairman.

Thank you, Ranking Member Blumenauer.

Thank you to all of our witnesses. Appreciate your time today.

One of mine, well, I guess as you are hearing, one of our concerns is illegal, unregulated, and unreported, IUU fishing, which I think we can all agree is prevalent on the high seas and taints our seafood supply chains. IUU fishing is linked to overfishing, environmental degradation, and, of course, forced labor.

Now, exposing these concerns, there has been many articles, be it by The New Yorker, or by The Economist, which has found direct evidence of forced migrant labor on fishing vessels and in seafood processing and China, including those tied to Uyghur labor. Now, these stories are pretty bad, I think as you will all admit, and compel us to address what drives these abuses.

We know that one of the contributors to IUU fishing and the forced labor connection are these subsidies from foreign governments. Thankfully, USTR has been pushing for a strong WTO fisheries agreement that prohibits subsidies that contribute to overfishing, including subsidies to vessels engaged in IUU fishing, fishing on over-fished stocks, and fishing on the unregulated high seas.

Now, I am proud that the U.S. has already gotten 57 countries to ratify this agreement and encourage them to continue to build support for it. However, the agreement does fall short in some ways: One, it does not directly address forced labor on fishing vessels; and two, China, it allows China, which has the largest distant

water fleet in the world, to be treated as a developing country despite its massive subsidies.

Ambassador Shea, I just kind of want to go to you, and just briefly, if you could, one, give me your summary of why it is important to continue to prioritize the inclusion of forced labor provisions in the fisheries subsidies agreement; two, why have countries been so darn reluctant to agree to higher standards, especially when it relates to forced labor and IUU fishing, and have they given any justifications for their opposition?

Mr. SHEA. Well, basic humanity is the first. We should be supporting people, helping people who are subject to these conditions. That is number one. Number two, it does have a trade impact, trade disruptive impact. If producers use forced labor, that makes their goods cheaper, and as a result, that has an anti—that spills over.

I will make a point, every 2 years, there is a discussion around cotton at the WTO. Everything is supposed to be on the table. I wrote a piece a couple years ago, I said forced labor should be on the table in Xinjiang, because that definitely impacts the global price of cotton.

So China insists that forced labor should not be an issue at the WTO, does not belong at the WTO, belongs at ILO or, you know, other organizations. It is ridiculous that China is treated as a developing country, and it has the right automatically to say it is exempt from certain rules.

The problem with the fishery subsidies negotiations, a lot of major fish producers, or fishers, are developing countries at the WTO, so they are constantly seeking carveouts from the rules.

Mr. PANETTA. Okay. Thank you, Mr. Shea.

Let me move on to another, going from fishing, going to agriculture. I was proud to launch the Ag Trade Caucus with Chairman Adrian Smith and Congressman Costa and Congressman Dusty Johnson, a bipartisan effort. Obviously, as we know, trade barriers not only hurt American farmers, but more importantly, they contribute to global food insecurity. American farmers can feed the world, but, if there are markets abroad and science-based SPS standards that can hurt it, opposition to agricultural biotechnology in particular hinders our ability to develop and export heartier and more nutritious crops.

Thankfully, there is the WTO SPS agreement, which could help address these issues, but even that agreement can be undermined by trade partners such as the EU, the European Union.

Mr. HANKS, what can be done to reform the WTO to improve compliance with initiatives like the SPS agreement?

Mr. HANKS. Well, as I said in my statement, you know, the subsidies portion of agriculture really needs to be the focus of, you know, the U.S. and other WTO members. What we see globally is our inability to compete specifically as a result of many countries, in particular, India, China, a lot of Asian countries that are heavily, heavily subsidizing and violating their WTO commitments.

So holding those countries to their commitments I think, we think, is vital to a working WTO.

Mr. PANETTA. Thank you. Thanks to all the witnesses.

Mr. Chairman, I yield back.

Chairman SMITH. Thank you.

I now recognize from Kansas, Mr. Estes, for 5 minutes.

Mr. ESTES. Thank you, Mr. Chairman.

And thank you to our distinguished panel for joining us today. I am glad that you and my colleagues touched on the disastrous precedent set by the TRIPS waiver. It is ridiculous that our current administration is willing to allow other countries to steal the intellectual property of American businesses.

I want to touch on this as well, but from a broader perspective, on U.S. R&D competitiveness, and the tax consequences of forced technology transfers, localized operations, and data localization. Intellectual property is a direct result of research and development. Our current tax system has incentivized the execution of R&D in several ways. The first is the immediate R&D expensing, which we will hopefully get over the finish line with the Senate soon with the bill we just passed the House last week. This is complemented with an R&D tax credit that is especially useful to small- and medium-size businesses that engage in cutting-edge research. Additionally, our global tax system contains the Foreign-Derived Intangible Income, FDII, deduction that rewards companies for domiciling IP in the United States.

As strong as these incentives are, I believe that the administration's active participation in IT theft is a massive disincentive for American businesses to conduct R&D here. The TRIPS waiver has put us on a slippery slope. We now have countries at the WTO proposing more tech transfers, localized operations, and data localization, in short, to complete abandonment of U.S. digital trade priorities.

Ms. Shaw, what do you believe the overall effects on U.S. economy and research and development if the administration fails to oppose foreign government demands on localization?

Ms. SHAW. Thank you so much for the question. And, you know, it is bewildering to me that an expansion of the TRIPS waiver is even being considered at the WTO, in particular, considering the Biden administration and the World Health Organization have already declared the COVID pandemic over. There doesn't seem to be any justification for this discussion that is happening.

And I think we have talked about this morning a number of the negative impacts that the TRIPS waiver would have, the chilling impact on R&D, and the potential, as you say, for a slippery slope for this to expand to other types of either medical devices or topics altogether.

The United States is going down an alarming path right now, between the TRIPS waiver, the possibility of losing the e-commerce moratorium, and the reversal of longstanding bipartisan proposals on digital trade. And we are positioning ourselves to be more like China than the western alliance that we have been part of for so long.

So I strongly support efforts by the administration to push back on the TRIPS waiver and to kick it out of the WTO altogether. Thank you.

Mr. ESTES. All right. Thank you.

This concerns me not just from a trade perspective but from a tax perspective as well. On the surface, these proposals may result

in U.S. companies having permanent establishments in foreign countries, ceding primary taxing right to those countries, causing jobs to migrate away from the United States, and decreasing payroll taxes remitted to the U.S. Treasury.

However, what is most alarming to me is the interaction of the WTO policies with our global tax system and OECD's Pillar Two. When we addressed international tax in the Tax Cuts and Jobs Act in 2017, we created the FDII and GILTI regimes, which basically function as a carrot and a stick. If you have IP in the U.S. and sell overseas, those profits are taxed at a lower rate; if you have IP overseas, those profits are taxed at a higher rate. This system has been successful in bringing IP back to the United States and stopping corporate inversion. However, the success of this system relies on the U.S. retaining primary taxing right on IP within the United States.

As many of my colleagues know, I have been adamant in opposition to the OECD's Pillar Two for a variety of reasons. In relation to this topic, what concerns me the most is the qualified domestic minimum top-up tax, the QDMTT. A QDMTT would be assessed by foreign countries on U.S. companies with a physical presence in that country if it is determined that that company's effective tax rate is under 15 percent.

Due to OECD's ordering rules and the U.S. Treasury not defending our tax system, QDMTTs are given priority over GILTI and FDII. Any QDMTT paid by a U.S. company would generate a foreign tax credit, which would be an additional drain on the U.S. Treasury.

With this additional information, Ambassador Shea, what do you think would be the overall effects on the U.S. tax base, and will U.S. tax receipts be increased or decreased?

Mr. SHEA. With respect to OECD?

Mr. ESTES. Yes.

Mr. SHEA. I just am not confident to answer that question. I am not familiar with the Pillar Two.

Mr. ESTES. Right, okay. Well, obviously that has an impact on our trade just because of the way it is discussed. And, I mean, the work that you have done so much on WTO has been so beneficial in highlighting the weaknesses there.

Mr. SHEA. Well, it is great to—I remember you visiting us, so it is good to see you again.

Mr. ESTES. It is good seeing you, too, as well.

So, you know, in summary, I think we need to have the USTR focus on policies that are beneficial for the United States and utilizing what WTO was originally crafted to be to help us in international trade. Thank you.

Mr. SHEA. Thank you.

Mr. ESTES. I yield back.

Chairman SMITH. Thank you.

I now recognize from Washington State, Ms. DelBene, for 5 minutes.

Ms. DELBENE. Thank you, Mr. Chairman.

And I just want to thank all of our witnesses for being with us today.

I wanted to start with the nexus of trade and climate. In 2022, Democrats passed the Inflation Reduction Act, which is the most significant Federal investment in U.S. history to tackle the climate crisis, and to strengthen American energy security. It enables the U.S. to cut greenhouse gas emissions by 40 percent and invest billions of dollars to enable American manufacturers of steel, cement, aluminum, and other high-emitting industries to decarbonize.

So combined with the bipartisan infrastructure law, the industrial sector is expected to see the largest emissions reduction after the power industry. Many businesses across the country are doing the right thing by using green energy and making processes more efficient, but their competitors in certain foreign countries are taking advantage of weaker environmental regulations to undercut American industries.

And, as a result, American jobs in important sectors have been lost to countries like China and India, where production is three to four times as carbon-intensive. That is why I believe that Congress should act to pass legislation, like the Clean Competition Act that I recently introduced with Senator Whitehouse and Representatives Don Beyer, Kathy Castor, and Ami Bera, to drive down carbon emissions globally, and level the playing field for American workers by imposing a border fee on high carbon products.

Ambassador Shea, in a 2022 Politico article, your former boss and our former trade representative Bob Lighthizer, under President Trump, he was quoted as saying, “When you let polluters sell in your market without a border adjustment, you are losing U.S. jobs in competing industries, and essentially, you are subsidizing the polluters. This makes no sense.”

And I wondered just kind of, what are your general views about the value of a carbon border adjustment tariff, and how do you think we should move forward?

Mr. SHEA. Well, thank you for the question, Congresswoman. As a general matter, I don’t have a problem with the carbon border adjustment. If countries have very low environmental standards and are getting an advantage on price and export trade as a result of that and hurting U.S. producers who have to abide by higher environmental standards, I think a carbon border adjustment properly structured, you know, could help level the playing field, both for businesses and workers in the United States.

I know that at the WTO, before we left, we submitted a proposed general counsel decision that would clarify that the agreement on subsidies and countervailing measures would allow a member to bring a countervailing duty against another member, who had an environmental regime below a fundamental threshold of acceptability. So I agree with—generally agree with—you know, of course, I agree with Bob Lighthizer, my former boss, but I think carbon border adjustment, I am glad to see there is more bipartisan support growing around that concept—

Ms. DELBENE. Thank you.

Mr. SHEA [continued]. In Congress.

Ms. DELBENE. Thank you.

Mr. Hirsh, could you discuss how potential U.S. carbon border adjustment policy would interact with existing international trade rules at the WTO?

Mr. HIRSH. Sure. And just, first, let me say that, you know, given the nature of the climate challenge, we have to look at every option, and this is certainly one of them. You know, there are others who are probably more steeped in the technical details than I am on that issue, but, I mean, from what I understand there should be a way to design a carbon border adjustment that would be consistent with trade rules.

You know, Ambassador Shea mentioned properly designed, and, you know, there is always some work to take a look at it and make sure that we are actually—accurately reflecting what the carbon loads are of goods and how our regulations, for example, are taking that into account. And it is work. Your legislation obviously is a start in getting that work done, but, you know, with that work it probably can be done.

Ms. DELBENE. Thank you.

Just a real quick question for Ms. Shaw, and kind of following up on earlier conversation around the e-commerce moratorium: It has been reported that certain countries, including India, South Africa, and Indonesia, may be trying to use that moratorium as a negotiating leverage to exact concessions from the U.S. And I wondered, what do you think—what strategies should the U.S. employ to ensure that the moratorium is extended?

Ms. SHAW. Yeah. Thank you for the question. And I am also from the great State of Washington, so very much appreciate your views.

You know, this is a tough issue, right. The administration should certainly go to the mat on this, right. This is probably the most important issue in terms of advancing U.S. interests in the WTO for this ministerial. That said, the more the United States wants something, the more other countries are going to ask in exchange, right.

So we need some other point of leverage over India, Indonesia, South Africa, and others who are looking to flout WTO norms and rules, and whether that is the threat of retaliation, whether that is the ability to impose taxes on, say, Bollywood or some of India's telecommunications and computing products, we have to think creatively out of the box to give the administration more tools to be able to get the outcomes we need. But certainly, pushing the administration to fight for it is step one.

Ms. DELBENE. Thank you.

I yield back, Mr. Chairman.

Chairman SMITH. Thank you.

I now recognize from West Virginia, Mrs. Miller, for 5 minutes.

Mrs. MILLER. Thank you, Chairman Smith, Ranking Member Blumenauer.

As we say down south, and thank you all, all y'all, for being here today and sharing your expertise on this critical topic.

This year, we have witnessed the consequences of disjunctive, contradictory international trade policies in the Middle East, the Red Sea, and our adversaries who want to see the demise of the U.S. economy. This is why this ministerial conference is critical to coordinate with our allies and set ourselves and the world up for continued success.

Ms. Shaw, you have worked extensively with the WTO as well as USMCA's dispute resolution mechanisms. From your experience and knowledge regarding trade disputes, what impact do these disputes have on long-term consumer prices, and what mechanisms should the World Trade Organization implement to ensure effective and timely resolutions?

Ms. SHAW. Thank you so much for the question, Congresswoman. So dispute settlement, whether it is at the World Trade Organization or under one of our FTAs, like the USMCA agreement, is fundamentally our stick, right. It is the tool that we have to hold our trading partners accountable for the discriminatory practices that they may adopt that disadvantage U.S. workers, businesses, farmers.

So on that basis, you know, what impact does it have on consumer prices? Sometimes policies that are employed by certain nations result in increased consumer prices, and that is one of the reasons that we may bring a dispute at the WTO or under one of these other forums. But the flip side that I will offer is, fundamentally, we are trying to enforce the rules, and the tool that we have to enforce the rules is tariffs, right.

So, if we win a case at the WTO or win a case under USMCA or any of our other FTAs, the reward that we get is the ability to impose retaliation until that country eventually complies. And there are sometimes impacts on consumer prices because tariffs are the tool that we use for that purpose. But fundamentally, in thinking about the effectiveness of dispute settlement, it should be, are we getting a result, are we putting pressure on the other party, and how quickly are we able to give relief to our producers. So those are the types of things that you think about in terms of bringing a dispute. Thank you.

Mrs. MILLER. Thank you.

Mr. Sullivan, I was glad to hear your testimony regarding the U.S.-based small- and medium-sized enterprises, such as your own, dominating the COVID-19 response in the biopharmaceutical industry. We have long been aware of the capabilities of our American entrepreneurs and small business owners to enact global change. We have a deep responsibility to protect them from bad actors. And I am extremely concerned that our own administration isn't doing enough to protect our intellectual property protections.

Apparently, it is looking at possibly expanding the TRIPS waiver to diagnostics and therapeutics. Can you explain how this action might impact the ability of U.S.-based companies to invest in further development of lifesaving cures without the certainty that your IP is protected, and how this action might actually impact the ability of U.S.-based biopharmaceutical companies to collaborate with domestic and international partners in the development of lifesaving products and cures?

Mr. SULLIVAN. Thank you for the question. I think this is such a critical issue when it comes to how innovation is done and why the U.S. leads the world in innovation and in biotechnology and other industries. It is because we have always stood for strong intellectual property protections.

You know, I work with brilliant scientists all over the world, and so when we talk about some of those that are in favor of these kind

of intellectual property waivers, like China, India, and South Africa, they have absolutely brilliant scientists as well, many of whom I have had the opportunity to work with, both in their country, as well as those that have come to the U.S. to work alongside of us.

And I have often wondered, why is it that innovation is so powerful here in the U.S., and it is because we have always stood for strong intellectual property rights for people to be incentivized to own what they have invented, and that also translates into being able to find funding associated with those.

And so, it is a delicate ecosystem that we have created in this country that has allowed us to be the world leader in innovation in these kinds of industries, in high-tech industries and in biotechnology, in medicines and developing these things. And we saw it displayed during COVID where companies all over the U.S. stood up and said, “We want to help find solutions.” And so, it is important to understand that this is what keeps us as the innovative leader of the world, and we should not weaken that by agreeing to TRIPS waivers.

Mrs. MILLER. Thank you. I yield back.

Chairman SMITH. Thank you.

Now, pursuant to committee practices, we will go two to one. I will next recognize from Pennsylvania, Mr. Smucker, for 5 minutes.

Mr. SMUCKER. Thank you, Chairman Smith, for providing this opportunity to share with the administration and with our counterparts around the world what our congressional trade priorities are in regard to MC13. And I just want to sort of associate myself with the remarks of the last two questioners on this side regarding the proposed TRIPS—waiving of the proposed TRIPS protections for the COVID-19 treatments, and now diagnostics.

You know, we have already seen this waiver expanded since the initial proposal focused on vaccines, and I think it just sends a really, really bad sign to the industry, and perhaps every industry that cares about protecting personal property, and I think it will have a dampening effect on companies’ willingness to innovate and to invest.

And Mr. Sullivan, you just said that very, very well.

And so, you know, if we have a future pandemic, if we are just giving away the intellectual property, I don’t think we would have quite the impact or quite the investment in innovation that we saw here. But I am also concerned, would this set a precedent? And anyone can address this, or is anyone worried about the precedent that would set if we do this? Like we have other national initiatives, you know, green technology, AI, electric vehicles, whatever it may be, you know, if we are giving away intellectual property, I think we are also giving away that American leadership.

So, Mr. Shea.

Mr. SHEA. Yeah, I just want to echo the point that Chairman Smith made. The current director general at the WTO earlier, sometime last year, suggested that there could be a TRIPS waiver for green technology, and apparently, the U.N. General Secretary agreed with that position in this conversation. It was a press report. So I agree, I am glad the chairman brought that up, and setting the precedent, a bad precedent, is a really important point to make.

Mr. SMUCKER. I think it goes against the very system that our economy is based on, why we see innovation here in America in so many different sectors. And so, I think this is really, really an important issue beyond just the pandemic and healthcare-related innovations.

We also know—and I will open this to anyone. Certainly, as we are updating systems at the WTO to better address modern challenges that we are faced with, the U.S. has an important and an influential role. And with 65 percent of U.S. trade covered by WTO rules, what role can we play in the U.S., how can we best position ourselves, and what role maybe can Congress play to support our efforts to make necessary changes at WTO? And I will open that up to anyone. And I will call on Ms. Shaw, if—go ahead.

Ms. SHAW. I was just about to call on Ambassador Shea.

Mr. SMUCKER. I will drag you into it if you need, yeah.

Ms. SHAW. Sure. Right. So the first step is, you know, coming up with a vision for what we want the 21st century World Trade Organization to look like. And in my testimony, I have extensively outlined some of the challenges that we are facing, in part because I am a lawyer, and I am used to being a wet blanket, but also because I care a lot about the system and I want to see it survive and thrive. And I just don't think, in its current permutation, it is equipped to do that.

So some of the issues that we have been spending a lot of time talking about within the committee, as well as with the administration, are issues related to China's unfair trade practices, the challenges of state-directed economic activity, forced technology transfer, and some of the issues related to supply chains, industrial policies, and the other challenges that we are facing with labor and environmental concerns.

Those are the types of issues that the WTO should be addressing. We shouldn't be spending our time talking about whether or not we are going to update committee minutes in time, which is actually one of the agenda items for this ministerial. The WTO is just completely divorced from what is actually happening on the ground and what is impacting everyday Americans.

And so, from that perspective, we need an ambitious negotiating agenda, and that is not going to happen among 164, soon to be 166, members. While I wish it were, that is not possible in a consensus-based system. So we need to find like-minded allies who want to undertake that exercise with us.

And negotiations take a very long time. It was 50 years, between 1947 and the time that the WTO was established after eight successive negotiating rounds. This is not a small endeavor. It is a significant one that I am recommending. Nevertheless, I think it is the next step, and it is the only way that the WTO survives.

Mr. SMUCKER. Thank you.

Mr. Shea, in 20 seconds, anything to add, how can Congress influence—

Mr. SHEA. Well, I think we need to have very low expectations for the WTO. Two-thirds of the members don't have to abide by the rules, LDC, self-declared developing countries. And then, the Chinese system, the largest trader in the world, second largest econ-

omy in the world, their system is fundamentally at odds with WTO norms, so that is the WTO.

Mr. SMUCKER. Thank you.

Chairman SMITH. Thank you.

I now recognize from Virginia, Mr. Beyer, for 5 minutes.

Mr. BEYER. Mr. Chairman, thank you very much.

And thank you very much for being here with us today.

Mr. Hirsh, you mentioned that—you talked about the dispute over whether the WTO panels can second guess a member's decision to take a measure for national security purposes. Clearly, this happened in the Donald—President Trump's administration. This administration has held fast the position that national security concerns remain sacrosanct and out of bounds for multilateral body to consider.

You suggest maybe there is a way to formalize this, but have we created this huge hole in the WTO rules? What is to prevent self-attestation from any given country to choose any given thing? For example, to Mr. Hanks' concern, why couldn't India say that they have a national security exemption for rice?

Mr. HIRSH. You know, that is an excellent question. And, you know, there is clearly attention between treating national security issues and self-judging and the potential for a big loophole. But this has been the case since 1947. This has been on the books since 1947. The U.S. has taken this position since 1947. And what held it back, really, from becoming this kind of loophole was this mutual recognition, this norm that it should not be overused.

Now, you know, we are in a situation where it is increasingly being used. So what can we do? For one thing, the U.S. has never denied that when a member invokes national security that another member is entitled to retaliate. This is frankly the end point of any dispute.

So what the U.S. really has done in the past is just skip over the middle, skip over the notion that trade experts can sit in judgment on a member's national security decisions, and just cut right to the chase and say, Okay, you want to retaliate, this was the impact of our measure, you may retaliate up to that point. And so, when I talk about formalizing that process, that is what I am referring to. You know, that ability to retaliate should serve as some disincentive, but—

Mr. BEYER. Let me interrupt for one second.

Mr. HIRSH. Yeah.

Mr. BEYER. Do you consider the Trump/Biden use of this exemption for steel and aluminum an overuse?

Mr. HIRSH. You know, I don't want to, you know, opine on that. I mean, I think that this problem—the problem of over-capacity in steel and China's contribution to that, you know, has been going on for an extended period of time. And there have been many, many, many international discussions on this issue that simply we are getting nowhere. You know, this is, you know—again, the judgment we have made is that it is a national security issue, and at the end of the day, that has to be respected by virtue of the way the disciplines at the WTO are set up.

Mr. BEYER. Thank you very much.

Ms. Shaw, I was fascinated by your testimony. I am very impressed by it. To quickly quote, "It is fair for the committee to ask what exactly is the point of continuing to invest in a multilateral system when the only issues on the table are largely defensive, don't advance U.S. interests, have little relevance for today's economy, and would largely make Americans worse off." You move on to say, "We should put real resources into renegotiating and rebuilding an MFN multilateral framework."

Mr. Shea, you were a wonderful host for us a couple of years ago in Geneva. What is your perspective on Ms. Shaw's recommendation?

Mr. SHEA. I agree. I mean, the—but I am not sure how many people would come along with us, at least initially. I think this sort of may be a midterm to longer term. I think that there is such a wedded nature—so many members, particularly like the European Union, even Australia, Japan, they are wedded to the WTO, and they are even—they are very reluctant to take actions, for example, against China, whose system I believe is completely incompatible with WTO norms.

So I generally—I definitely agree with the sentiment. I am a little skeptical that we would get a lot of players joining us, at least initially. There have been some interesting commentary, Clyde Prestowitz and Rob Atkinson, for example, suggest that we create a DATO, a NATO for trade, where like-minded market economies would join together when they are attacked through economic policies by China or other places, and come together and take collective action in response. So that is an interesting idea that has been on the table for a few years.

Mr. BEYER. Thank you.

Ms. Shaw, do you have any quick response to Mr. Shea's skepticism about your fascinating suggestion?

Ms. SHAW. Well, I mean, my honest view is that whether the United States does anything or not, the WTO is going to wither off into irrelevance. So this is a last-ditch effort to try to save the organization, that ultimately, I think, if it works, is going to be strongly in the interest of the United States.

A purely bilateral strategy where we are just negotiating one-off with individual countries without a multilateral framework proved to result in discrimination to U.S. producers, farmers, exporters. We tried that in the first half of the last century. That is why we came up with this whole project and idea in the first place. So as hard as it is going to be, and I am under no illusions that this is going to be easy, I think it is our only option.

Mr. BEYER. Thank you very much.

Mr. Chairman, I yield back.

Chairman SMITH. Thank you.

I now recognize from North Carolina, Dr. Murphy, for 5 minutes.

Mr. MURPHY. Thank you, Mr. Chairman.

Thank you all for coming here today.

Ms. Shaw, I liked the phrase of a "wet blanket." I didn't quite know what that was. I had to—actually, I had to look it up, and I kind of feel like I am a wet blanket too. But that is what skeptics do, because sometimes unbridled enthusiasm, as we have seen with the TRIPS waiver, leads to absolute disaster.

And so we had the Inflation Reduction Act, which was the pill penalty that now CBO thought it would be one fewer molecular cut, as far as new medicines, now it has been close to 200. This is where unbridled enthusiasm had a motion to overtake reality and a rational thoughts, where we, yeah, want to share the vaccines with the world. But let's think about—instead of just feeling better about ourselves, let's think about the consequence.

I can't think anything more destructive than the TRIPS waiver for American innovation. I just absolutely can't, because what are we going to do? What is the next extension with these types of things that we are going to start giving our technology away? It is an absolute national security issue. Yeah, fine, well, we have Chinese spying on us. Hell, they would get our innovation anyway. Why are we just giving it away? Next thing we are going to be telling them what the battle plans are for our Abrams tanks and all this stuff. It is just—it makes us feel better about ourselves, but it is destructive to American innovation and American society.

Mr. Sullivan, you know, I am a physician, been one for 30-plus years, still practice, and I have relied for innovation throughout the years, seen an absolute explosion in this, especially in the last decade. So to bring a pandemic, a COVID-19 therapeutic or diagnostic to market, how much does that cost?

Mr. SULLIVAN. Well, to just—

Mr. MURPHY. Briefly. I mean, hundreds of millions of dollars.

Mr. SULLIVAN. It is literally hundreds of millions of dollars—

Mr. MURPHY. Right.

Mr. SULLIVAN [continuing]. In the neighborhood, even approaching \$1 billion, perhaps.

Mr. MURPHY. Right.

Mr. SULLIVAN. And the reason that that is so daunting is because we have to remember that not only are we paying for the successes, but we are also paying for the failures.

Mr. MURPHY. Sure.

Mr. SULLIVAN. And that is the system that we live in to innovate and find the really good 10 percent that make all the difference in the world. And we do end up paying for failure—

Mr. MURPHY. Sure, because every molecule—

Mr. SULLIVAN [continuing]. And we don't like to talk about that.

Mr. MURPHY. No. For every molecule, you know, what is it, 10-to-1, at least, or if not, on some things—

Mr. SULLIVAN. That is correct. That is correct.

Mr. MURPHY [continuing]. That is absolutely done. And so, you know, you have to plan years in advance. These are not just singular, "Hey, let's just do this tomorrow." It takes years in advance to do this. And to literally give away American technology, American investment to make us feel better about ourselves is absurd, no matter what field that we are dealing with, no matter what field. It is just beyond me, we have somebody in the White House and in the administration that just wants to give America away. It is a national security issue. It is absolute national security.

I just want to shift to one thing about fishing. Ms. Shaw, I am going to kind of ask this to you. We are one of the world's greatest producers in seafood in my district, in North Carolina. You know,

we have to fight the guys from Florida and so many other places, but we always try to win our best. They come up to our places to fish. And so, I have the second-most coastline district in the country.

We saw major breakthroughs in the twelfth ministerial meeting where countries reached an agreement on some fishing subsidies. We still have, you know, some of the Asian countries coming off our coast and doing so much of this. This year, WTO members are negotiating a second fisheries agreement to cover the additional unfair practices.

And I want to, Ms. Shaw, in your opinion, do you think this is going to be a good outcome for the United States? You know, now what is it, we get 92 percent of our seafood from overseas, and it is done with slave labor and some of these bad practices. What do you think is going to happen with this second agreement?

Ms. SHAW. I think if the agreement landed where the U.S. wanted it to, it would be a good agreement for America. The problem is, we are not the only one at the table. And, as of now, it seems very unlikely that we are going to get any outcome on overcapacity, overfishing subsidies, which is really the heart of what the fishery subsidies negotiations were about. If anything, it looks like we may land on something related to transparency, effectively just knowing what the subsidies are. And that is a pretty basic step. While helpful, in terms of driving negotiations forward, it is not really going to be a home run in terms of what America takes home.

Mr. MURPHY. Well, I just have a problem, because, you know, like Trump, no Trump, whatever, it is just the whole deal of negotiation. We should negotiate in all of our different industries regardless from a point of strength, not from a point of weakness. And yes, we want to be fair, et cetera, et cetera. But when we have China, when we have so many other countries taking advantage of our weakness, meaning our empathy, it destroys American innovation, it destroys American industries.

Thank you, Mr. Chairman. I will yield back.

Chairman SMITH. Thank you. I next recognize from Florida, Mr. Steube.

Mr. STEUBE. Thank you, Mr. Chairman.

I have been in here almost the entire hearing, and I had some planned remarks, but I kind of want to go a different direction. Each of you did not speak positively of the WTO. I can guarantee the people in southwest Florida don't think we should be a part of the WTO. If I polled my district, they would think why are we wasting millions of dollars. I just had my staff look up the numbers. So, in 2022, U.S. gave \$23 million, which was about 12 percent of the budget; China gave 10 percent of the budget; Germany 7 percent of the budget; everybody else is less than 4 percent. So we basically are the large—correct me if I'm wrong, these are numbers that I was given, we give the most money. Yet, each of you say we basically—even the Democratic witness is like, we don't have the best of results.

Mr. Hanks, the rice farmers, we are getting stuck by China and India and some of these other people who aren't following.

Mr. Shea, you say two-thirds of the people don't even have to follow the rules that are part of the WTO. I mean, that is very fascinating to be part of an organization that you don't have to follow the rules for.

Ms. Shaw, I follow your line of thinking, but my question to you—and I am going to, like, give you the platform, and I want to start with Ms. Shaw and then Mr. Shea—explain to me how I should explain to the farmers in my district, and I used to have one of the largest ag districts; after redistricting, I don't have as much ag, but citrus is—I am from Florida, so citrus is huge, beef cattle, dairy.

Explain to me how I should explain to my farmers why we should even be part of an organization where we spend the most money and get absolutely nothing back when we can go and have the USMCA and have—like we just passed part of a Taiwan tax deal in the last tax bill that we just passed. There are all these different things that we can unilaterally do with other countries that aren't China and competing with us and agree with us on the way that we approach policy and economic interests and trade and want to help each other and be successful. So help—I guess, argue to me why the United States should still be an active partner when just about every one of you have said that it is pointless.

Like, Mr. Hanks, you said that you won. You beat—and then it goes into this—you described it as a void. So like, what are we doing? I mean, like, why are we doing this when we can go out—we are the United States; we can go out and negotiate with whoever we want to negotiate with for trade deals. So explain to me why we should still be a part of it and give them millions of dollars?

I will start with Ms. Shaw, and then I will go to Mr. Shea.

Ms. SHAW. Thank you. Well, first of all, I think it is a fair question, right. I mean, you have heard for—

Mr. STEUBE. And explain it to the farmer, like you are talking to a farmer in my district who grows citrus. Try to explain to his level.

Ms. SHAW. Absolutely. Well, first of all, 96 percent of the world's consumers live outside the United States, so your farmer needs an export market, right. We need markets to sell our agricultural products into. But part of the problem with just doing bilateral deals, if we do a deal with Brazil, we do a deal with Argentina, we do a deal with the EU, is that nothing prevents them from giving another country an even better deal.

So after we have finished negotiating that deal with the European Union, if they cut Brazil a better market access rate, U.S. producers are immediately disadvantaged. That is why we came up with this multilateral system in the first place.

Mr. STEUBE. That is not working.

Ms. SHAW. Not working, okay. Well, we need the markets. The WTO is fundamentally flawed, but I can—we can do better, and a multilateral system is the most effective way to give a broader market to our farmers.

Mr. STEUBE. And you think by doing better is just dumping more resources in—I mean, my remarks about how horrible the Biden administration has taken a turn from what Mr. Shea and

Lighthizer and what the Trump administration did on trade. But like what would that look like, dumping resources in it?

Ms. SHAW. Not as it stands, no. That would be a massive waste of money. I think we need to have real conversations with our trading partners about whether they are serious about going and creating the same project we are. And if they are not, I agree with you; we are better off on a bilateral route. But I think we are better off, ultimately, if we can get a group of like-minded allies, a subset of the WTO, a WTO-plus group, to go forward with more ambitious rules who really want to see the system move forward. And, if not, you are right. Let's go the bilateral route.

Mr. STEUBE. Mr. Shea.

Mr. SHEA. I agree with—it is a great question. I agree with a lot with what Kelly says. But the WTO is also a place where members can come together and discuss trade problems informally, not necessarily in a formal setting. So there is value in that as well. At the same time, there have been some good outcomes: The moratorium on customs duties on electronic transmissions, that has been in place since 1998; the very limited fish deal in the last ministerial, I think, is a positive thing. So positive things do come out, but, as I say in my testimony, I would never outsource U.S. economic security to this organization. We need to do what we need to do, and that is just the way it is.

Mr. STEUBE. Mr. Hanks, you have got a couple seconds.

Mr. HANKS. Yeah. I just want to make one comment about the alternatives, because as Ms. Shaw mentioned before, that, you know, when you have a victory in the WTO the victory manifests itself in the form of tariffs, and so, that—you know, nobody wants to spend more money for goods.

There are other—I get this same question from farmers in my office all the time: Why are we even engaged in the WTO? What other options do we have? And I will just use this opportunity to plug the farm bill. For agriculture that is one mechanism that we can use that helps offset, to some degree, the egregious behavior of some of these folks in the WTO.

Mr. STEUBE. Yeah, but if somebody like China can obfuscate tariffs and just dump rice into Brazil or Puerto Rico, and then go around the tariffs that are in place, there is no teeth in that, right?

Mr. HANKS. That is correct. And we fight it day in and day out, and we are looking for help from you folks to solve this problem.

Mr. STEUBE. I yield back.

Chairman SMITH. Thank you. We currently have votes on the House floor, so we will stand in recess and reconvene immediately after the last vote.

[Recess.]

Chairman SMITH. The committee will come back into order. Appreciate the patience of our panel as House votes were called.

Without objection, I would like to submit Ms. Sewell's statement for the record.

[The statement of Ms. Sewell follows:]



Ways and Means Trade Subcommittee
Advancing America's Interests at the World Trade Organization's 13th Ministerial Conference
2/07/2024 at 9am ET

Suggested Remarks and Questions (5 minutes)

First, I would like to thank all our witnesses for joining us today for this timely conversation as we approach the upcoming MC-13 Ministerial Conference.

We all can agree that reforms are needed at the WTO. However, while changes need to be made, I remain a strong supporter of the mission of the WTO, and I believe that American workers and businesses benefit from a rules-based trading system that encourages open markets and combats unfair trading practices.

Moreover, while the previous administration was focused on dismantling the WTO, I am grateful that the Biden Administration and Ambassador Tai are attempting to have constructive discussions about how to reform the WTO and make it relevant and impactful in the 21st Century.

To accomplish this, the WTO must address issues like forced labor, women's empowerment, food security, climate change, and unfair trade practices. Moreover, we must find a path forward on reforming the broken WTO Dispute Settlement System, and I want to commend Ambassador Tai for her constructive efforts to address the Appellate Body's judicial overreach.

Q1 for Bruce Hirsh: In order for the WTO to live up to its mission, I believe the organization needs to focus on inclusivity. At the 11th Ministerial Conference, 118 WTO Countries supported the Declaration on Trade and Women's Economic Empowerment. Sadly, the Trump Administration failed to support the declaration.

Thankfully, Ambassador Tai has corrected this misguided policy and recently submitted a communication to the WTO Informal Working Group on Trade and Gender stating the United States' commitment to trade policies that empower women.

Mr. Chairman – I ask for unanimous consent to enter into the record the January communication to

the WTO on Inclusivity in Trade and Investment Policy.

- *PAUSE – (Chair will say “So Ordered”)*

Mr. Hirsh, could you talk about the importance of women’s empowerment efforts at the WTO, and why having the United States leading this discussion at the WTO is so important?

Q2 for Bruce Hirsh or Eddie Sullivan: Last November, Representative Lizzie Fletcher and I brought together the New Dem Healthcare and Trade Task Forces to host a roundtable discussion on the COVID-19 TRIPS Waiver and how we can prepare for future pandemics. Right now, we have an important opportunity to review lessons learned

from the COVID-19 response. While many have focused on a potential waiver for therapeutics and diagnostics, the recent USITC also found that inadequate health infrastructure impeded access in some countries.

Debate around TRIPS waiver will continue, but how can USTR constructively shape the WTO's MC-13 agenda by leading the discussion on the lessons learned from this pandemic to inform preparedness for future pandemics?

Q3 for Bruce Hirsh: There are many longstanding issues with the WTO Appellate Body and the Dispute Settlement Mechanism. Therefore, I think we need to be realistic and understand that the Dispute

Settlement Mechanism will not be fixed by the conclusion of the next Ministerial Conference. However, if USTR hopes to make substantive progress at the next meeting, what issues should they focus on?

**PRACTICAL INTEGRATION OF INCLUSIVITY IN TRADE AND INVESTMENT POLICY:
SHARING EXPERIENCES FROM APEC AND THE SAN FRANCISCO PRINCIPLES**

COMMUNICATION FROM THE UNITED STATES

The following communication¹, dated 19 January 2024, is being circulated at the request of the delegation of the United States.

1 INTRODUCTION

1.1. The United States believes that an inclusive and equitable international trade and investment environment is critical to achieving the objectives of the WTO Agreements and to advancing sustainable and inclusive economic growth and development. The United States is pursuing reforms of the WTO that support, facilitate, and promote more inclusive trade and investment policies.

1.2. WTO Members have acknowledged the importance of inclusivity in a number of ways, including in the MC12 Outcome Document where Ministers resolved to strengthen the inclusiveness of the multilateral trading system with the WTO at its core. Some Members have submitted communications expressing, for example, a desire to improve the inclusiveness of trade policy development, examine the distributional effects of trade and trade policy on different peoples and their communities, and improve the WTO's ability to support fact-based deliberations through increased external engagement. The United States welcomes these communications and seeks to collaborate with other WTO Members to advance work improving the inclusivity of the multilateral trading system.

2 CONTRIBUTIONS FROM APEC 2023

2.1. As host economy for APEC in 2023, the United States worked alongside other economies to advance trade and investment to equitably benefit APEC economies and people, including women; micro-, small-, and medium-sized enterprises (MSMEs); and those with untapped economic potential, including Indigenous Peoples, persons with disabilities, and people from rural and remote areas.

2.2. In November 2023, leaders of the APEC economies recognized that, while trade and investment has contributed to rapid economic growth, increased living standards, and expanded economic opportunities for our citizens, more focus is needed on advancing policies aimed at growing economies in ways that advance sustainability and resilience to ensure that the benefits of trade and investment extend to all our peoples. APEC leaders acknowledged that trade and investment policies should be a driver of inclusive and sustainable growth in the region, and that policies that support a free, open, fair, non-discriminatory, transparent, and predictable trade and investment environment contribute to uplifting livelihoods and sustainable economic growth for the region. APEC leaders also recognized that the way to achieve economic inclusion and sustainability for each of the APEC economies may differ depending on what each economy and society looks like, reflecting a shared

¹ This communication has also been issued as [WT/GC/W/921](#), [G/C/W/842](#), [S/C/W/463](#), [WT/COMTD/W/288](#) document.

desire for a balance across economic, social, and environmental dimensions in line with each economy's circumstances.

2.3. Through the [San Francisco Principles on Integrating Inclusivity and Sustainability into Trade and Investment Policy](#), APEC leaders took an important step in recognizing that the following principles support the practical integration of inclusivity and sustainability into trade and investment policy:

- Recognize the important roles of inclusivity and sustainability in the development and application of trade and investment policies that support strong, balanced, secure, sustainable and inclusive economic growth, positive environmental outcomes, and social well-being of all our peoples;
- Incorporate environmental sustainability and inclusion as important, complementary criteria, to amplify the benefits of economic initiatives and improve opportunities for all;
- Recognize that valuing inclusion in trade policy, and fostering cooperation on this in APEC, can maximize available talent and innovation to overcome shared challenges, including climate change and other challenges to the region;
- Foster the use of open, transparent, predictable, and participatory processes for the development and implementation of trade and investment policies and consideration of proposed policy actions, including publishing proposals or plans, public consultations, with a particular focus on inclusion of those who face barriers to economic participation.

In accordance with economies' laws and regulations, this may include:

- Making information available on (1) public consultation and engagement opportunities and (2) the issue under consideration, in a manner that is timely, clear, accessible and freely available online and in other media accessible to a range of interested and affected persons and groups;
 - Conducting public consultations and engagement on trade policies and proposed trade policy actions in a transparent and inclusive manner; allow adequate time for interested persons to submit comments, accounting for the complexity or possible impact of the policy proposal; and consider comments received;
 - Ensuring consideration of particular perspectives and interests which can include MSMEs, working people, consumers, women, persons with disabilities, rural and remote populations, and Indigenous Peoples as appropriate, in the development, implementation, and monitoring of trade policies and trade policy actions.
- Strengthen cooperation within APEC to support circular economy approaches and to underscore the importance of facilitating trade and investment in environmental goods and services, as a means to support our clean energy transitions, improve our environmental and economic performance, halt and reverse biodiversity loss, contribute to green growth and decent work, and better address global and regional environmental challenges while collaborating to improve opportunities for MSMEs to be competitive, specialized, innovative and expand into international markets;
 - Deepen understanding of the challenges and barriers facing groups with untapped economic potential, including those related to accessing international trade and investment opportunities;
 - Recognize the importance of improving the quality, scope, timeliness, disaggregation, availability and sharing of qualitative and quantitative open and publicly available data to understand and monitor the economic, environmental, and social impacts of trade policy on different peoples and their communities; identify data gaps and endeavor to develop and strengthen data collection, research, and analysis;
 - Explore opportunities to utilize economy-specific analyses, experiences and best practices regarding the distributional effects of trade and trade policies, including by disaggregated population groups.

3 RELEVANCE AND APPLICABILITY TO WTO WORK

3.1. Many of the practical steps and actions included in the San Francisco Principles have significant overlap with, or are complementary to, WTO rules and practices. Therefore, the San Francisco Principles may serve as a useful contribution to efforts WTO Members are considering to improve inclusivity in the WTO's work and to ensure that the benefits of multilateral action are more widely shared.

3.2. In particular, WTO rules include fundamental notice and comment obligations, which could be examined and improved from an inclusivity perspective. Members could share experiences and lessons learned on their own domestic efforts to make trade-related information and documentation more accessible, to broaden and deepen consultation mechanisms and dialogues with impacted persons or stakeholders, and to conduct outreach to underserved, marginalized, disadvantaged or under-represented communities to improve access to trade policy decision-making processes. Transparency is another fundamental pillar of WTO rules that could be strengthened and enhanced through WTO discussions, including the sharing of approaches to improving access to publicly available and government data, with a particular focus on improving the data available to better analyze and assess the social impacts of trade policies on different people and communities.

4 SHARING DOMESTIC EXPERIENCES AS A NEXT STEP

4.1. The United States is undertaking its own reforms to improve inclusivity in its trade and investment policy making processes. The United States is committed to thorough and thoughtful engagement in the development and implementation of its international trade policy agenda. Inclusive engagement is a key component to ensuring that resulting U.S. trade policies are durable and equitable, and to building trusted, sustained lines of communication with all communities in the United States that could be affected by trade and investment policy decisions.

4.2. The United States intends to contribute to ongoing discussions in the WTO on strengthening inclusivity in the multilateral trading system, including by sharing its own experiences and the practical steps taken by the United States to improve inclusiveness in its international trade and investment policy decision making process.

4.3. The United States believes the San Francisco Principles can be a useful and practical contribution to WTO discussions. The United States welcomes and encourages contributions from other Members on practical steps they are taking or challenges they are facing in improving inclusivity. These exchanges may enhance our understanding of how common challenges are being addressed and create opportunities to learn from other Members in an open and constructive dialogue.

Chairman SMITH. And with that, I will recognize from Illinois, Mr. Schneider, for 5 minutes.

Mr. SCHNEIDER. Thank you. And first, let me thank the chairman for recognizing me, but also the witnesses for your patience and also your insights and sharing your perspectives.

A point of personal privilege, as the newest member of the subcommittee, I am grateful to be here, and I look forward to working together. I have worked on a lot of these issues as a telegraph in particular with TRIPS, so I may be asking you about TRIPS in particular, but I am excited to be a part of the committee.

I want to thank the chair and ranking member for hosting this hearing, and the witnesses for being here. The wealth of knowledge that you share from the executive branch to experience in industry has been very helpful and helps inform our decision-making.

Regardless of our party, Republican, Democrat, in this Chamber, specifically Ways and Means, we have historically agreed on the importance of U.S. leadership in global trade. I have always said the world is safer and more prosperous when America leads, and the need for America and American leadership is no greater at this moment than I can think of, certainly any time in my lifetime, and probably any time going back to the last world war.

Our economy has been through the wringer the last number of years with the pandemic, but thanks in part to the fast action of Congress and other decisions, we were able to weather that storm to stimulate demand, and the United States economy proudly is the economy others are looking to see who can recover or how to recover.

We addressed a lot of challenges from the supply chain to the infrastructure bill. We have passed some successful legislation with the CHIPS and Science Act, the infrastructure bill, and inflation has now cooled, so things are looking up. But the world continues to see broad systemic challenges as the rules-based international order is increasingly contested and undermined by our strategic adversaries, as we have talked about today.

The WTO was intended as a pillar of the order, and America has to lead in strengthening and reforming—I believe, in strengthening and reforming the WTO to address the challenges of the 21st century. We have talked about a number of things, from the ascension of Comoros and Timor-Leste, and their interest shows that the WTO remains important. But to keep it important, to succeed and to achieve American goals, protect American interests, we need to reform the WTO, and take a lot of steps. So, as we look to the MC13—I will open up to the panel—we have talked about some of the challenges, I appreciate in the testimony the what to do, what not to do, but measuring expectations or metering expectations to this is not going to be a crossroads.

What do you think we can do best to make sure that American interests are at least advanced in this ministerial and set us up for where we need to go in the future? And maybe I will go right to left. So, Mr. Hirsh, start with you.

Mr. HIRSH. Thank you very much. I think that what we can do is largely what we are trying to do. Ambassador Pagan referred to below-the-radar screen conversations, and a lot of what is going to be accomplished at this ministerial will be in bilaterals and in

small groups, and we won't see it. But hopefully it will result in real reforms that come through, and ones that will make the organization operate more effectively, and create an organization where we can get things done. So I think those conversations, again, will be hard to gauge after it is done, but hopefully they will be successful.

Mr. SCHNEIDER. Mr. Sullivan, first, let me say, I have worked with my colleagues on both sides of the aisle expressing our thoughts to the administration on TRIPS. I am proud of the fact that as the world looks for inoculation to vaccines for COVID, it is the U.S. who led that way; and as the world looks for treatments, it is the U.S. who continues that way, and it is our intellectual property system. But to have success, what are the things you would suggest that we focus on?

Mr. SULLIVAN. And I think it is important to recognize, first of all, that all of us have the interest of solving issues when pandemics hit. That is absolutely first and foremost.

Mr. SCHNEIDER. You saw that in the actions—

Mr. SULLIVAN. And we saw that. And industry stepped up to really be able to solve what could have been a serious issue, and quite frankly, I believe, saved millions of lives. But we have to continue to focus on the things that prevent medicines from getting to people. And, you know, it certainly is my belief, and certainly the belief of what I have seen from bodies like the USITC that intellectual property is not the issue, and so focusing on the issues that really matter first, and that is what we need to do.

Mr. SCHNEIDER. And I am at the end of time, so I apologize, but I don't want to keep you late, but I will finish with two thoughts. Mr. Sullivan, you said innovation 90 percent of the time fails. I always quote Thomas Edison: "I didn't fail 90 percent of the time. I learned new ways how not to, and that is equally important."

And, Ms. Shaw, your remarks are the last thing we need to do is a race to the bottom, so whatever approach we take in approaching trade and working with our allies' data, whatever we call it, has to be a way that lifts up the United States and with 96 percent of consumers outside the United States lifts up the world.

And with that, I yield back.

Chairman SMITH. Thank you.

I now recognize from Minnesota, Mrs. Fischbach.

Mrs. FISCHBACH. Thank you very much. I appreciate it.

And thank you, guys, for hanging in there. I appreciate that. But, you know, I just—I want to let you know, I am an agriculture district, heavy agriculture, mostly rural district, so trade is obviously very important to us, and as with many of the members of the Ways and Means Committee. And so, I really appreciate that this is part of this conversation.

And, you know, I just want to—I appreciated Mr. Steube's discussion about, you know, what do we tell our farmer, you know, what is really the value to them of the WTO. And I will start with Mr. Hanks, and maybe if anybody else wants to jump in, because this is going to be your last chance, guys, to say anything that you want to say, and I bet there won't be any objection if we go a little bit over.

But with the lack of ability to adequately enforce and pursue trade objectives through the WTO, countries, including our own, have pursued these goals through bilateral and multilateral agreements amongst themselves. From a farmer's perspective, do you believe these agreements could ever replace the value of the functional WTO, or are they supplemental to the WTO as an enforcement negotiation dispute settlement body, or are they just preferred over anything with the WTO?

And so, I threw a lot out there, and I think it goes a little further than Mr. Steube was talking about, but, Mr. Hanks, if you want to start.

Mr. HANKS. Sure. I think, you know, we've had many successful bilateral and multilateral agreements that have benefited agriculture, rice in particular, USMCA obviously being renegotiated. We do a lot of trade with Mexico and Canada and rice, but also CAFTA-DR has done a really good job of opening up markets for our farmers.

These bilateral and multilateral trade agreements do provide market access, but, I think, to Ms. Shaw's earlier comments, it doesn't address the subsidies that are impacting.

So, for example, what India does, what China does in their dumping of rice into certain markets, a bilateral or multilateral trade agreement won't address that. So the WTO is necessary to focus on those aspects of trade and how they distort trade, but, you know, having another mechanism to do that would certainly be welcomed by agriculture.

Mrs. FISCHBACH. So potentially, you could see, as a marriage, you know, you have got NAFTA, you have got WTO, you have got whatever—you know, and I use NAFTA as an example. But you see it more of working hand-in-hand, enhancing potentially?

Mr. HANKS. I do, because, you know, there is lots of trade agreements that are being proposed at the moment, but still, none of them that I am aware of would address some of the challenges that we are experiencing, and particularly in rice, and so, therefore, the WTO would be the mechanism where we need to address this.

Mrs. FISCHBACH. Thank you.

And I think Mr. Shea was—

Mr. SHEA. Yeah, thank you, Congresswoman. One of the key functions of the WTO is monitoring the activities of WTO members. Unfortunately, that monitoring pillar is not working as it should, but the WTO does serve as a function for greater transparency if it were working the way it should be, as a way of greater transparency, knowing what our trading partners are doing in terms of subsidies and market access.

When I was the representative there under the Trump administration, we filed several counter notifications dealing with India's subsidies and trade practices, I think for rice was one of the products we covered, and also, highlighting their way of calculating domestic support was inaccurate and understated the level of domestic support. So the WTO provided a forum for the provision of that type of information, and dissemination among other countries who share our interests.

Mrs. FISCHBACH. Thank you.

And, Ms. Shaw.

Ms. SHAW. Thank you for the question. And I appreciate the sentiment, along with your colleagues, about the interest of U.S. agriculture. And just to say, you know, what is in the first interest of our agricultural producers, farmers, ranchers, is for a functioning WTO or WTO-plus system. Now, shy of that, we can look at alternatives.

But if the United States were to leave the WTO today and to just say, we are just not going to deal with, it is not working well, it would present a huge vacuum that China and other countries who are massive subsidizers would fill. It would create rules around us that would severely prejudice the United States, not just in terms of our interactions with third countries but even our own trading partners, who would feel pressure from those markets to get preferential access to China and others.

There is also a lot of technical work that happens. And we talked sort of about the big sexy issues here, like what is on the negotiating agenda. But as Dennis pointed out, there is a tremendous amount of value in some of the technical discussions that happen every day between our SPS experts, our USDA experts and their counterparts to try to resolve issues and head them off before they become discriminatory policies against our farmers.

So there are a couple of different things happening from that respect. But what I would say is we need to demand more. The United States needs to express leadership, we need to have an agenda fit for the 21st century, and we need to work with strong allies within the context of the WTO if possible to advance these rules, to stop the cheaters from cheating, and if not, then we will look at alternative formats. Thank you.

Chairman SMITH. Thank you.

Mr. Sullivan.

Mr. SULLIVAN. Yeah, I just want to mention one important point, and it is how the technologies behind everything that we do in building biotechnology and innovations in healthcare also relate to agriculture and the environment, because it is—you know, I am a member of the Biotechnology Innovation Organization. I sit on the board, and I am a former member of actually the agriculture and environmental section of BIO, and it is because many of the technologies that we use to develop drugs are also important in agriculture, also important in green energy, all of these types of things. So these issues are absolutely related, and we protect American interests and innovation by supporting strong intellectual property. Thank you.

Mrs. FISCHBACH. I appreciate that.

And, Mr. Hirsh, I guess you get the last word. Look at that.

Mr. HIRSH. Thank you very much.

Well, I mean, I think we have all been discussing today, you know, the challenges in developing new disciplines. Everyone has spoken to that. And we certainly hope that we will be able to move the organization in a direction where they can start developing new initiatives, but we can't lose sight of the existing rule book and the importance of that existing rule book.

You know, the WTO agreement is extensive, and the disciplines in that agreement, for example, on SPS are really the basis of

every one of our bilaterals. We don't generally go beyond the WTO. Subsidies are—the WTO is the place to deal with it, and while we needn't do disciplines, the existing ones are important.

So I would just, you know, recall—it is important to recall, as we are talking about the challenges of developing new disciplines, to remember the ones that are currently providing a lot of stability to international trade and for our farmers.

Mrs. FISCHBACH. And, Mr. Hanks—

Mr. HANKS. Just one quick follow-up.

Mrs. FISCHBACH. Thank you.

And, Mr. Chair, thank you for your indulgence.

Mr. Hanks.

Mr. HANKS. Sorry. One quick follow-up.

I think another important point is that we need to be going on the offensive. We spend a lot of time being on the defense, watching other countries, all these other bad actors, subsidize and violate their WTO commitments.

I think we need—the USITC updated study for rice is a good first start to do that, but we need to do more of that where we are on the offense and not on the defense.

Mrs. FISCHBACH. Thank you very much.

And thank you very much.

And, with that, Mr. Chair, I yield back, and I appreciate it.

Again, thank you all for being here.

Chairman SMITH. Thank you.

And thank you, Mrs. Fischbach, for sticking around and wrapping things up here.

Again, thank you to our panel. I think that the timing of this issue and this discussion is important heading into the next ministerial, but even in a broader set of issues, the need to address our concerns is very acute, and so your perspectives and insights are especially helpful as we tackle these difficult issues.

Please be advised that members of the committee have 2 weeks to submit written questions to be answered later in writing. Those questions and the panel's answers will be made part of the formal hearing record.

With that, the subcommittee stands adjourned.

[Whereupon, at 11:37 a.m., the subcommittee was adjourned.]

QUESTIONS FOR THE RECORD

Committee on Ways and Means
Subcommittee on Trade
Hearing on Advancing America's Interests at the World Trade Organization's 13th Ministerial Conference
Questions for the Record for Bruce Hirsh from The Honorable Linda T. Sánchez

Question: Unfortunately, I was unable to attend the recent Ways and Means Trade Subcommittee hearing on the upcoming 13th WTO Ministerial Conference. I was pleased to hear that the Biden Administration is advocating for meaningful dispute settlement reform at the WTO. Yet, I remain deeply concerned with the use of forced labor and other abusive labor practices by our trading partners. These practices are not only morally repugnant, but they create unfair competition.

Can you expand on the importance of dispute settlement reform to addressing our ability to create a more level playing field?

Response: Dispute settlement reform will be essential to creating a more level playing field for U.S. workers, producers, and exporters. The WTO dispute settlement system plays a critical role not only in resolving individual disputes, but more generally in enhancing the credibility of, and compliance with, the WTO's broad rulebook, which lies at the heart of the multilateral effort to create a level playing field in international trade.

The reforms now being contemplated would, among other things, facilitate faster resolution of disputes both through alternatives to litigation and through more streamlined litigation. And a successful reform effort would restore the system to its intended role of preserving the rights and obligations that WTO Members agreed to. The WTO Appellate Body crossed the line from enforcing the current rules to changing those rules, including by restricting the right of Members to create a more level playing field through use of national trade remedy laws. The United States is seeking to prevent a recurrence of that problem as part of the reform talks.

Question: In addition, we know that China has a history of refusing to change its illegal, unreported, and unregulated (IUU) fishing operations to abide by international regulations, including labor standards. IUU fishing often involves forced labor and other associated labor abuses. China's distant water fishing fleet was also reported to try to evade detection by turning off its satellite systems at the edge of Argentina, Uruguay, and Peru's maritime borders, where it illegally harvests critical populations such as shortfin squid, sharks, dolphins, sea turtles, and billfish.

Could you lay out the risks of China failing to abide by concrete commitments and disciplines on harmful fisheries subsidies at the WTO and the implications this behavior would have on the conservation of fish stocks and labor protections globally?

Response: The WTO Agreement on Fisheries Subsidies is a landmark achievement, demonstrating that the WTO can deal with important environmental issues. The agreement reached at the 12th Ministerial Conference in 2022 will, once it enters into force, discipline subsidies that contribute to and magnify the impact of IUU fishing. The number of WTO Members formally accepting the agreement continues to approach that required for entry into force.

China's current IUU fishing operations are a major contributor to the depletion of fish stocks that the WTO negotiations are intended to address, and, as the question notes, often involve forced labor and

other associated labor abuses. Chinese compliance with obligations in the Agreement on Fisheries Subsidies and in the additional commitments now under negotiation would therefore be an important step toward addressing these overfishing and labor problems, particularly if there are forced labor provisions, as the United States has proposed. Ambassador Tai has stated that the United States is strongly committed to its forced labor proposal.

The prospect that China may nevertheless fail to abide by these commitments only underscores the importance of successfully reforming the dispute settlement system so that it may serve as an effective incentive for WTO Members, including China, to fully comply with their obligations, and as a tool to enforce those obligations if they do not. China's continuing non-compliance would see world fish stocks continue to decline on their unsustainable path and abusive labor practices on fishing vessels likewise to continue.

PUBLIC SUBMISSIONS FOR THE RECORD



Statement for the Record

National Association of Manufacturers
733 10th Street, NW, Suite 700
Washington, DC 20001

House Ways and Means Committee
Subcommittee on Trade
Advancing America's Interests at the World Trade Organization's 13th Ministerial Meeting
Feb. 21, 2024



Statement for the Record

House Ways and Means Committee Subcommittee on Trade

Advancing America's Interests at the World Trade Organization's 13th Ministerial Meeting

FEB. 21, 2024

The National Association of Manufacturers appreciates the opportunity to submit comments for the record following the Feb. 7 House Ways and Means Trade Subcommittee hearing on "Advancing America's Interests at the World Trade Organization 13th Ministerial Meeting."

The NAM is the largest manufacturing association in the U.S., representing companies of all sizes, in every industrial sector and across all 50 states. Manufacturing employs nearly 13 million workers, contributes more than \$2.85 trillion to the U.S. economy annually and is one of the largest sectoral multipliers in the economy.

International trade is vital for manufacturers in the U.S. Trade enables access to basic manufacturing inputs from the global supply chain that are not available domestically and it gives companies the opportunity to sell to billions of consumers outside of the U.S. The resulting economic activity supports job creation, increases in worker productivity and innovation here at home. Trade has driven manufacturers in the U.S. to create new products and technologies that improve human health, protect the environment and boost physical and human infrastructure.

In recent decades, manufacturers in the U.S. have increased their exports significantly; in 2023, they exported \$1.6 trillion worth of goods abroad. Manufacturers in the U.S. export more than half of U.S. value-added output, and exports support more than 6 million well-paying, high-skilled manufacturing jobs in this country. To support these jobs and grow our economy, manufacturers need a robust and modern rules-based global trading system. The WTO is a lynchpin for this system. When properly functioning, the WTO is a critical forum that can support the advancement of liberalized trading rules and the enforcement of fair trade. As a central element of U.S. trade policy, and in advance of the 13th WTO Ministerial Meeting, the U.S. should energetically seek the modernization and revitalization of the WTO system. If not, manufacturers in the U.S. risk falling behind their global competitors.

The NAM believes that several reforms are necessary to modernize and revitalize the WTO. For example, the WTO rulebook must be updated with new disciplines in areas such as digital trade, state-led competition and distortive subsidies that are critical for a fair and fully functioning global trading system. Concurrently, the WTO will need to strengthen its enforcement mechanisms so that countries like China cannot flout core WTO disciplines. This will require the WTO to have a strengthened and robust dispute settlement system that ensures transparent and prompt compliance with WTO rules. The NAM favors vigorous U.S. government use of WTO dispute settlement procedures to ensure foreign compliance with multilateral obligations and to eliminate unfair practices. A revitalized WTO should also deliver broad trade liberalization, including through plurilateral and sectoral agreements. Such trade liberalization is especially overdue between the U.S. and leading global economies.

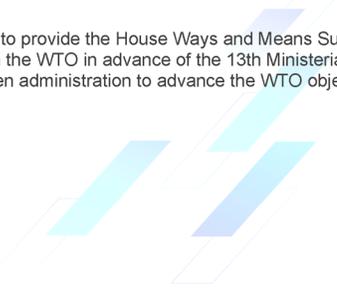
For the NAM, there are additional objectives that the U.S. should pursue at the 13th WTO Ministerial Meeting. For instance, the U.S. should oppose any potential expansion of a waiver of key intellectual property commitments under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to include broad categories of COVID-19 diagnostics and therapeutics. The proposed expansion of the waiver would jeopardize American innovation and endanger U.S. jobs, undermine future domestic investment in products that are fundamental to fighting global crises, including many diseases and health conditions other than COVID-19, and pose serious safety concerns. An expanded waiver would also raise broader systemic risks, undermining U.S. technology leadership against global competitors such as

China by allowing them a channel to unfairly seize American innovation to benefit their own domestic economies and workers. In addition, an expanded waiver would embolden countries to replicate the IP waiver concept in other international fora and for different types of technologies, including potentially energy and environmental technologies. This approach threatens U.S. manufacturing innovation and aids foreign competitors that want to chip away at American innovation.

In addition, the NAM strongly holds that the Office of the U.S. Trade Representative should reverse its October 2023 decision to drop the longstanding digital trade position of the U.S. at the WTO. This longstanding position, which has clear bipartisan support from the U.S. Congress, seeks to protect cross-border data flows, prohibit costly data localization requirements abroad, defend American digital products from discrimination and protect American IP. Manufacturers in the U.S. continuously innovate and advance technologically in a way that depends on digital trade and information flows, global communication networks and cross-border data flows. Yet these manufacturers also face growing challenges in foreign countries where restrictive digital trade and e-commerce measures impede the movement of data and information across national borders. These digital barriers severely undermine the global competitiveness of manufacturers in the U.S. and their ability to sustain and grow manufacturing by reaching new customers abroad. USTR should reverse its decision to pull back from longstanding U.S. digital trade objectives.

The NAM also believes that the U.S. should push for the permanent institution of the e-commerce moratorium at the WTO. The moratorium on customs duties for electronic transmissions is critical for manufacturers that rely on the flow of research, design, data and software in markets around the world. Allowing the moratorium to expire would inject uncertainty and impose unfair burdens on manufacturers in the U.S. If the moratorium were to be lifted, manufacturers would face new taxes in markets around the world and added costs to navigate and comply with the new customs duties. Such barriers to trade would threaten to impede the ability of manufacturers to buy, sell and operate their businesses in the U.S. and globally.

The NAM appreciates the opportunity to provide the House Ways and Means Subcommittee on Trade with perspectives of manufacturers on the WTO in advance of the 13th Ministerial Meeting. We respectfully urge you to press the Biden administration to advance the WTO objectives laid out in this statement.





 nam.org



February 16, 2024

The Honorable Adrian Smith
 Chairman
 Subcommittee on Trade
 Committee on Ways and Means
 Washington, District of Columbia 20515

The Honorable Earl Blumenauer
 Ranking Member
 Subcommittee on Trade
 Committee on Ways and Means
 Washington, District of Columbia 20515

RE: Testimony for the record of Morgan Reed, president of ACT | The App Association, regarding the February 7, 2024, hearing on Advancing America's Interests at the World Trade Organization's 13th Ministerial Meeting

Dear Chairman Smith and Ranking Member Blumenauer:

Thank you for the opportunity to uphold the needs of small businesses at this hearing. My name is Morgan Reed, and I am the president of ACT | The App Association, a trade association representing micro, small, and medium-sized businesses in the app economy. The community I represent contains the U.S. startups and small businesses that drive equitable economic growth, competition, innovation, and export of countless consumer and enterprise products and services. They make software, hardware, and internet of things (IoT) solutions and systems for agriculture, education, healthcare, manufacturing, public safety, and countless other examples. They employ tens of millions of Americans who live and work in communities in every state of the nation and are responsible for adding more than \$2.41 trillion to the American gross domestic product.

I thank you for your focus on recent decisions by the U.S. Trade Representative (USTR) to withdraw support from agreements on digital trade. The U.S. government's consistent furtherance of policies that reduce artificial barriers to digital trade has long provided an important foundation for even the smallest American companies' competitiveness abroad. As the digital transition has continued and regulators abroad have increasingly sought to exclude American small business and startup innovators from their markets, this federal backing has never been more important. Unlike larger companies, smaller businesses with few product or service lines usually cannot shoulder the extra costs of data localization, technology transfer, prohibitions on encryption, and arbitrary application of regulation to American firms.

American small businesses need support from the U.S. government to continue to innovate, create well-paying jobs, and contribute to both the domestic and international economy. Another vital issue for our member companies is the extension of the e-commerce moratorium at this month's World Trade Organization (WTO) ministerial conference. The 1998 Declaration on Global Electronic Commerce's moratorium on

tariffs and customs formalities on electronic transmissions, including content, has underpinned growth and job creation across consumer and enterprise markets, and remains vital to supporting startup innovation as well as the digital transition writ large. The moratorium has enabled startups and small businesses around the world to equitably and efficiently reach new markets, driving competition and innovation.

The imposition of tariffs and customs duties is already well known to raise costs for consumers, lower output, and reduce productivity. In addition, the moratorium's expiration would lead to a new range of customs administrative requirements that small business innovators like our members will need to navigate and comply with. As organizations that are already resource-constrained and unable to distribute risk across numerous product lines in comparison to large businesses, the impact on small businesses and startups will be far more pronounced and burdensome in comparison to larger companies.

I have included the text of two letters the App Association has recently sent on these topics. Both letters were collaborations with other entities both in the United States and globally, demonstrating the strong interest from businesses and organizations in the app economy. They highlight key reasons for the United States to continue its support for digital innovators and small businesses everywhere and urge officials to uphold these agreements. We urge Congress to continue its vocal support for pro-business trade negotiations by conducting continued oversight of USTR and its decisions on digital trade.

Sincerely,

A handwritten signature in cursive script that reads "Morgan Reed".

Morgan Reed
President

ACT | The App Association

November 3, 2023

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue, NW
Washington, District of Columbia 20500

Re: The Imperative for U.S. Government Support of Startups, Small Businesses, and Entrepreneurs in the Global Digital Economy

The undersigned, representing a broad and diverse community of entrepreneur, small business, and startup innovators, collectively share our deep concern with the United States Trade Representative's (USTR) decision to withdraw its support for foundational positions on digital trade policy within the World Trade Organization (WTO).

The communities we represent and support are the U.S. startups and small businesses that are the driving force behind equitable economic growth, competition, innovation, and export of countless consumer and enterprise products and services. They make software, hardware, and internet of things (IoT) solutions and systems for agriculture, education, healthcare, manufacturing, public safety, and countless other examples. They employ tens of millions of Americans who live and work in communities in every state of the nation and are responsible for adding more than \$2.41 trillion to the American gross domestic product.

The U.S. government's consistent support for policies that reduce artificial barriers to digital trade has long provided an important foundation for even the smallest American companies' competitiveness abroad. As the digital transition has continued and regulators abroad have increasingly sought to exclude American small business and startup innovators from their markets, this support has never been more important. Unlike larger companies, smaller businesses with few product or service lines usually cannot shoulder the superfluous costs of data localization, technology transfer, prohibitions on encryption, and arbitrary application of regulation to American firms.

We are therefore significantly concerned with the USTR's October 25, 2023, announcement in a press statement of its withdrawal of support for foundational digital trade policies, including with respect to enabling cross-border data flows, avoiding forced data localization mandates, protecting source code, and ensuring that digital products are not unduly discriminated against. Stepping away from the negotiating table weakens the global competitiveness of U.S. startups and small businesses and cedes leadership to countries like China that remain at the table, buoying anti-democratic and oppressive governance proposals and policies that directly contradict U.S. policies, including those just agreed to by the United States in the G7. The contradictory announcement also damages U.S. leadership and standing across multilateral policy fora like the WTO as well as in bilateral negotiations with important trading partners. The decision further sets a concerning precedent that may not end with digital trade priorities,

including affecting enforcement of the United States-Mexico-Canada Agreement (USMCA) and creating a potential path for USTR's reversal on advancing American trade interests in other areas.

At this pivotal moment, it is vital that the Administration reassure the American small business community, trading partners, and others that its support for digital trade policies will continue. At minimum, the Administration should complete appropriate interagency processes and formally seek public input before initiating sweeping policy changes on digital trade.

We welcome your partnership in supporting U.S. entrepreneurs, startups, and small businesses' equitable participation in trade.

Sincerely,

365.Training

ACT | The App Association

Allied for Startups

Center for American Entrepreneurship

Colorado Technology Consultants

Connected Commerce Council

Developers Alliance

Dogtown Media

Engine

Epic Reach

FMS, Inc.

Global Innovation Forum

GlobalForce Tech Consulting

MotionMobs

SheerID

Small Business & Entrepreneurship Council

Vemos

February 2, 2023

***Open Letter to World Trade Organization Members:
Supporting Micro, Small, and Medium-Sized Business and Startup Growth and
Job Creation by Making the WTO Moratorium on Customs Duties on Electronic
Transmissions Permanent***

The undersigned, representing a broad and diverse global community of micro, small, and medium-sized (MSME) business entrepreneurs and startup innovators collectively urge World Trade Organization (WTO) members to make the Moratorium on Customs Duties on Electronic Transmissions permanent during the 13th WTO Ministerial Conference (MC13) in Abu Dhabi.

The communities around the world that we represent and support are the small businesses and startups that are the driving force behind the export of countless consumer and enterprise digital products and services, powering equitable economic growth, competition, and innovation. Across developed and developing nations, the global digital economy, valued by the WTO at over US\$ 3.8 trillion, has become the primary channel for affordable and accessible digital products and services that have benefitted countless populations and other businesses, as well as providing an unparalleled means of empowerment and equity.

The WTO's longstanding moratorium on tariffs and customs formalities on electronic transmissions, including content, has underpinned our growth and job creation across consumer and enterprise markets, and remains vital to supporting MSME and startup innovation as well as the digital transition writ large. The moratorium has enabled startups and MSMEs around the world to equitably and efficiently reach new markets, driving competition and innovation.

Allowing the moratorium to expire would subject MSMEs and startups to digital protectionism measures such as tariffs, which are demonstrated to discourage entrepreneurship and competition, undermining WTO members' goal of supporting and promoting their country's growth as well as the relevance and credibility of the WTO itself. The imposition of tariffs and customs duties is already well known to raise costs for consumers, lower output, and reduce productivity. In addition, the moratorium's expiration would lead to a new range of customs administrative requirements that MSMEs will need to navigate and comply with. As organizations that are already resource-constrained and unable to distribute risk across numerous product lines in comparison to large businesses, the impact on MSMEs and startups will be far more pronounced and burdensome in comparison to larger companies. Unleashing this negative dynamic on MSMEs and startups powering digital economy growth would be particularly poorly-timed given the need to attain economic growth amid challenges such as the lingering impact of a global pandemic.

Our communities call on each WTO member to support equitable participation in digital trade for each and every startup and MSME. It is vital that each WTO member support in making the Moratorium on Customs Duties on Electronic Transmissions permanent during MC13.

Sincerely,

ACT | The App Association

AfICTA - Africa ICT Alliance

AINAKI - Indonesia Animation Industry Association

Allied for Startups

APDSI - Associação para a Promoção e Desenvolvimento da Sociedade da Informação

Asociación Española de Startups

Coalition for Digital Prosperity for Asia

Engine

Federation of Finnish Enterprises

Global Innovation Forum

InnovUp

Roma Startup

Small Business & Entrepreneurship Council

Startup Verband

Swedish Federation of Business Owners



U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

June 7, 2024

The Honorable Jason Smith
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Adrian Smith
Chairman
Subcommittee on Trade
U.S. House of Representatives
Washington, DC 20515

The Honorable Earl Blumenauer
Ranking Member
Subcommittee on Trade
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Smith and Smith and Ranking Members Neal and Blumenauer:

The U.S. Chamber of Commerce welcomes the opportunity to offer testimony for the record for the February 7 hearing of the House Ways and Means Subcommittee on Trade on “Advancing America’s Interests at the World Trade Organization’s 13th Ministerial Meeting.”

The World Trade Organization (WTO) will hold its 13th Ministerial Conference (MC13) on February 26-29 in Abu Dhabi, UAE. Held about every two years, these meetings bring together representatives of the WTO’s 164 member countries, business leaders, and civil society representatives to press for progress on trade negotiations and to show support for the global rules-based trading system.

The WTO’s continued success is critical to the U.S. business and agriculture communities. The global rules-based trading system the WTO embodies has benefited countries around the world—but none more than the United States. (See “The Value of the WTO” below.)

However, the agenda in Abu Dhabi will likely focus on a small number of hot button issues. The Chamber’s priorities for MC13 include the following:

First, Do No Harm

Unfortunately, proposals to spur global economic growth by opening the doors of trade—and pushing back against protectionist impulses—are less prominent on this occasion. On the contrary, some WTO members are pressing to end the two decade-old moratorium on duties on electronic transmissions, known as the “e-commerce moratorium.” Ending the moratorium, and subsequent moves by its opponents to tax data flows and electronic

transmissions, would strangle one of the biggest drivers of growth in the world today—at least in the countries that choose such a self-destructive path. (See “The E-Commerce Moratorium” below.)

A second ill-considered proposal would expand the earlier waiver of commitments under the WTO’s Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement related to COVID-19 vaccines to also include therapeutics and diagnostics. Such a move would further entrench an already damaging precedent without addressing the real barriers to patient access. An expansion of the waiver would undermine IP-driven innovation and potentially force the transfer of technology and know-how to competing firms in China and elsewhere. (See “The TRIPS Waiver” below.)

No False Choices

There’s also concern that proponents of these two harmful proposals may seek to compel WTO members to choose between them, pressing the United States and other countries that have traditionally championed digital trade and intellectual property rights to select at least one dish from this poisoned menu. For the U.S. business community, this is unacceptable: There is no connection between these issues, and the Biden administration has an obligation to defend the commercial rights of industries that employ millions of Americans.

Shoring Up the System

The business community is also pressing for progress in fixing the WTO’s dispute settlement system, which is compromised by the shuttering of the Appellate Body. As a result, when a WTO dispute settlement panel issues a ruling, the losing party can simply appeal it into the void—and pretend it has no real obligation to comply. This undermines compliance with the WTO agreements and may contribute to creeping protectionism around the globe. Finding a way to repair WTO dispute settlement is a priority.

Finally, WTO members are seeking to conclude the second phase of an agreement to curb fisheries subsidies that contribute significantly to the depletion of fish stocks worldwide. This is a clear instance where the WTO can directly aid in addressing an important sustainability issue, and it would build on an agreement made at the last ministerial to ban subsidies that support illegal, unreported and unregulated (IUU) fishing. An agreement is within reach; negotiators need to get it done.

BACKGROUND**The Value of the WTO**

While the WTO was created in 1995, it built on the foundation of the 1947 General Agreement on Tariffs and Trade (GATT). Combined, the WTO and the GATT have revolutionized global commerce. Eight successful multilateral negotiating rounds have helped increase world trade from \$58 billion in 1948 to well above \$25 trillion today. This 40-fold increase in real terms has brought a rising tide of commerce, job creation, and rising incomes.

It isn't just the tariff elimination brought about under the GATT and the WTO that benefits American companies and the workers they employ. WTO rules have historically protected U.S. firms operating abroad from unfair, discriminatory treatment. American firms rely on these rules every day of the year.

It's become commonplace to say the WTO's accomplishments are long in the past, but this isn't so. The past decade has seen new WTO agreements to facilitate trade through customs streamlining, eliminate tariffs on tech products, open government procurement markets, and enhance the transparency and predictability of services regulation.

Most recently, WTO members agreed in July 2022 to prohibit harmful subsidies to illegal, unreported, and unregulated fishing, which is a major driver in the widespread depletion of the world's fish stocks. Just over 50 WTO members have ratified this first half of what proponents hope will be a broader agreement to discipline fishing subsidies.

The E-Commerce Moratorium

Retaining the moratorium on customs duties on electronic transmissions—often called the e-commerce moratorium—is critical to global commerce. In the early days of the digital era, WTO members agreed that for internet-based commerce to flourish, it made sense not to impose the kind of fees known as customs duties that are levied on conventional goods traded across borders. Instead, countries would let electronic transmissions be transferred duty-free. By keeping costs low and eliminating the need for paperwork, the WTO's 1998 decision to establish this moratorium helped usher in an era of rapid expansion in global access to internet services and communication tools.

Unfortunately, that time-tested approach is under fire. Some governments are questioning if they should continue to support the arrangement that keeps electronic transmissions duty-free. A small group of countries is seeking to end the moratorium, arguing that imposing duties on digital transmissions would be a revenue generator for governments; by hiking the cost of competing foreign products, they say, duties would give a leg up to local industries.

However, there is ample evidence that the moratorium remains sound public policy, judged by the economic and social benefits. Research has clearly documented the net benefits

of the e-commerce moratorium. An [OECD study](#) found that putting duties on electronic transmissions would exact greater costs than any marginal gains in tariff revenues. The OECD's analysis indicated that countries that began imposing duties on electronic transmissions would face a net loss in consumer welfare and export competitiveness. These findings are consistent with earlier [research from the European Centre for the International Political Economy](#) (ECIPE), which likewise showed an economic benefit for countries that maintain the moratorium.

The agreement to protect digital trade from tariffs has stood the test of time. Digital trade has transformed consumer access to online products and services and boosted economic competitiveness around the world. From the Chamber's perspective, abandoning an approach that has worked so well for so long would be a costly mistake.

The TRIPS Waiver

As MC13 has approached, the Chamber has been particularly concerned about the proposal to waive the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) beyond the scope agreed at the 12th WTO Ministerial Conference in June 2022. Extending this waiver beyond COVID-19 vaccines to include therapeutics and diagnostics would undermine the U.S. manufacturing base, harm American workers, and erode the innovation ecosystem that enhances American prosperity.

The Chamber described the WTO's June 2022 decision as a "a solution in search of a problem." Intellectual property rights enabled investment in innovative vaccines, therapeutics, and diagnostics and the ability to deliver them rapidly to global consumers, which underpinned the global response to COVID-19. As the recent [U.S. International Trade Commission \("USITC"\) report](#) rightly notes, many factors—including slow regulatory approvals, last-mile delivery issues, and trade related barriers—limited availability of the latest medical technologies in global markets, and IP rights were not among them. Notably, no WTO member has utilized the existing waiver, a fact that affirms IP rights never posed a barrier to access.

Yet, the previously agreed waiver on vaccines has set the precedent that IP rights can be undermined whenever it is politically convenient to do so. Indeed, the waiver's proponents are already pushing for future waivers or forced technology transfer for green technology or climate change-related solutions. A failure to preserve the legal and financial framework that enables private sector investment in innovation will only leave the global community less prepared to tackle our next shared global challenge.

In the U.S. context, the Chamber views efforts to extend the waiver to new areas as antithetical to the Biden administration's sustained efforts to cement the strength of the U.S. industrial base, cultivate critical workforce skills and the American jobs they support, and secure U.S. supply chains. As the Chamber wrote in a September 2022 [letter](#) to senior administration officials:

"We are confused by the administration's contradictory stance on this issue. On the one hand, the administration has prioritized domestic investment in cutting-edge

technologies and innovative manufacturing. As President Biden frequently says: “Make It in America’ is no longer just a slogan; it’s a reality in my administration,” and the administration is rightly proud of the expansion of American manufacturing output and employment over the past 18 months. On the other hand, expanding the TRIPS waiver would undermine those investments by abrogating IP rights and expediting the transfer of U.S. innovative technologies to foreign governments.”

The Chamber is urging WTO members to reconsider the effort to expand the TRIPS waiver and is optimistic that members have increasingly recognized the validity of our arguments.

Dispute Settlement

In addition to serving as a forum for negotiations, the WTO also has a critical role in dispute settlement. The WTO’s Dispute Settlement Understanding outlines procedures for panels to rule on disputes brought by its member states, and it also established an Appellate Body in the event panel decisions are appealed.

The United States has been a major beneficiary of WTO dispute settlement, bringing and winning more cases than any other WTO member. In fact, the United States has won or favorably settled [93 of the 97 completed WTO cases](#) it had brought as of 2021. The U.S. record in WTO dispute settlement with China is especially strong: As the Peterson Institute for International Economics has [reported](#), U.S. officials had challenged Chinese practices 23 times in the WTO as of 2019—and won 20 times, with the other three cases pending.

However, the benefits of this system go much further. The fact that the WTO’s rules are enforceable under its dispute settlement system motivates governments to adhere to the commitments they have undertaken without resort to litigation.

U.S. administrations over the past 20 years have raised concerns about “overreach” in Appellate Body decisions, arguing that some are not clearly supported in the WTO agreements and that the slow pace of its operations saps its utility. The Trump administration’s response was to block Appellate Body appointments to the point that, by December 2019, the retirement of term-limited Appellate Body members had left it without the quorum it needs to function. This allows parties that lose a panel ruling to appeal it into the void as if they had no obligation to comply.

As a result, the United States has been unable to use the WTO to secure relief from discriminatory treatment abroad or to address instances in which a trading partner has otherwise violated its WTO obligations. The price of allowing this impasse to linger could be high. Executives with American companies fear that other countries’ compliance with the WTO agreements will decline over time if its dispute settlement system is no longer binding. They are concerned that new trade barriers and discriminatory treatment will become more common.

The Chamber has urged the administration and other WTO members to engage substantively on U.S. concerns and restore a binding dispute settlement system, as members committed to do at MC12. The stakes are high, but the door is open for reform of WTO dispute settlement. The U.S. Chamber of Commerce and the U.S. business community stand ready to support this important undertaking.

Sincerely,

A handwritten signature in black ink, appearing to read "John Murphy", with a stylized, wavy flourish at the end.

John Murphy
Senior Vice President
International Division
U.S. Chamber of Commerce

cc: Members of the House Committee on Ways and Means Subcommittee on Trade

CTA Statement for the Record for House Ways & Means Trade Subcommittee Hearing on Advancing America's Interests at the World Trade Organization's 13th Ministerial Meeting

February 15, 2024

The Consumer Technology Association appreciates the opportunity to submit this statement for the record regarding the United States' leadership at the World Trade Organization's 13th Ministerial Conference on February 26-29 in Abu Dhabi. CTA strongly supports the WTO and the multilateral trading system and urges the Congress to oversee the Administration's efforts to strengthen and reinvigorate this critical institution.

To assist the Ways and Means Committee's efforts to work closely with the Biden Administration on MC 13, CTA offers the following recommendations:

1. **The U.S. government must ensure that the long-standing and essential moratorium on customs duties on electronic transmissions is renewed.** As numerous studies have shown, the moratorium has enabled the rapid growth of the internet and the digital economy. In particular, a recent study from the Progressive Policy Institute ("Duty-Free Cyberspace: Why The WTO Should Continue The E-Commerce Tariff Moratorium")¹ highlights the significant benefits of the moratorium to U.S. small businesses and startups across all sectors of the economy. Failure to renew the moratorium will harm U.S. interests, damage U.S. credibility, and undermine the WTO as an institution. Ending the moratorium will also further diminish the WTO as an effective and relevant organization in the eyes of the U.S. and global business communities. The United States should also seek to make the moratorium permanent in the ongoing Joint Statement Initiative on e-commerce at a minimum and multilaterally at the WTO if possible.
2. **The Administration must come back to the negotiating table in the Joint Statement Initiative on E-Commerce to be the lead advocate on the core digital trade policy provisions that it abandoned in 2023.** The Biden Administration reversal on digital trade at the WTO in October 2023 signaled that it is considering its own digital trade restrictions. It also signaled to our trading partners that it may refuse to address barriers to digital trade in other markets. Rather than retreating from the global stage through its "pause", USTR should continue to advocate for the highest standard provisions on prohibiting 1) restrictions on cross-border data flows and data localization requirements; 2) government mandates that companies must turn over their software source code as a condition of market access; and 3) discriminatory treatment of digital products. These **digital trade policies are good for America and Americans**, to our small businesses, our startups, and our workers across all sectors of the U.S. economy. USTR should also be a fierce advocate for U.S. companies facing digital trade barriers in other markets, which will bolster U.S. credibility for democratic norms and human rights across the world. Robust U.S. leadership at the WTO on digital trade will prevent other governments from discriminating against U.S. companies or otherwise impeding digital commerce with the United States.

¹ <https://www.progressivepolicy.org/pressrelease/duty-free-cyberspace-why-the-wto-should-continue-the-e-commerce-tariff-moratorium/>

3. **The U.S should work with its allies at the WTO to ensure that existing consumer technology tariff commitments are met and eliminate more tariffs on consumer technology products.** Broad tariff elimination will reduce costs of technologies and democratize their availability and use across the world. There is one WTO agreement that has achieved these goals: the 1997 Information Technology Agreement (ITA) and its expansion in 2015 (ITA-2). These WTO agreements provided considerable benefits to the U.S. technology sector, sectors consuming technology products, and consumers themselves. The United States played an outsized leadership role to negotiate the ITA and its 2015 expansion. However, we should not take these foundational agreements for granted. Some WTO Members, most notably India and Indonesia, are brazenly violating the ITA by imposing tariffs on products above their bound rates. The EU, Japan, and Taiwan won dispute settlement case against India last year, but the United States did not join them in this endeavor. India, Indonesia, and Vietnam also did not join the 2015 expansion, choosing to shield their producers from international competition. More recently smaller countries such as Lao PDR and Timor Lesté acceded to ITA-1 and ITA-2. While the Congress provided authority for USTR to update the ITA when it passed the Uruguay Round Agreements Act in 1994, USTR has shown no interest in a second product expansion. It's far past time for the United States to reclaim its ITA leadership mantle and seek further tariff elimination for technology products across the world.



Statement of the E-Merchants Trade Council, Inc.
House Ways and Means Trade Subcommittee Hearing on
Advancing America's Interests at the World Trade Organization's 13th Ministerial Meeting

February 21, 2024

On behalf of the E-Merchants Trade Council, Inc. (EMTC), I am Marianne Rowden, CEO of EMTC and respectfully submit this statement for the record. EMTC appreciates the opportunity to comment concerning the topics covered in the hearing on "Advancing America's Interests at the World Trade Organization's 13th Ministerial Meeting" held on February 7, 2024.

EMTC was formed in July 2021 to represent the interests of the e-commerce industry by creating a global community of micro, small and medium size enterprise (MSMEs) e-sellers, marketplace platforms, and service providers to resolve trade, tax and transportation challenges. EMTC's advocacy mission is to support national and international policies that simplify cross-border transactions of physical and digital goods. EMTC facilitates dialogue among the E-Merchant worldwide community and global regulators.

As a trade association representing companies concerned about the cross-border movement of physical and digital goods, EMTC is alarmed by the U.S. abandoning its role as global leader driving trade liberalization at the World Trade Organization (WTO). It is critical for the Subcommittee to understand that e-commerce enables micro, small and medium-size enterprises (MSMEs) to engage in global because customers drive demand for online sales.

EMTC's comments are focused on two (2) issues: completing the WTO e-commerce agreement; and the U.S. digital trade policies.

1. Completion of WTO E-Commerce Agreement

EMTC has submitted numerous statements and comments to this Subcommittee with proposals on customs modernization, specifically how to integrate e-commerce into the U.S. customs statute through the 21st Century Customs Framework (21CCF). While EMTC believes that 21CCF could serve as a model for other countries on how to modernize customs laws at the national level, EMTC believes such national efforts are no substitute for binding international trade rules at the WTO.

Despite the long-term efforts on the Work Programme on E-commerce, most recently as the Joint Statement Initiative (JSI), progress on the agreement has been painfully slow. E-commerce by its very nature is global and dynamic, so e-sellers seek an agreement on the basic trade rules and cross-border treatment of goods without national discrimination.

EMTC believes that the U.S. must prioritize the completion of this agreement at the WTO's 13th Ministerial Meeting.

2. U.S. Withdrawal of Digital Trade Policies

EMTC was surprised when the Office of U.S. Trade Representative announced on October 25, 2023, that it was withdrawing support three key digital policies (i.e., cross-border data flows, prohibition of data localization mandates, and protection against access to source code). Cross-border e-commerce of physical goods also depends on the free flow of digital information cross-border.

All of the parties in the e-commerce ecosystem (e.g., e-sellers, third-party marketplace platforms, logistics companies, etc.) rely upon the free flow of data to execute online sales, ship and deliver goods to customers. A result of USTR's change in policy is that the JSI could not be completed at the WTO's 13th Ministerial Meeting.

EMTC hopes that the Subcommittee continues to urge USTR to support liberalized digital trade policies so that the WTO can bring the JSI to a successful conclusion.

3. Conclusion

In summary, EMTC believes that the Trade Subcommittee should continue close oversight over U.S. trade policy at the WTO as American businesses (including MSME e-sellers) depend upon global trade rules to access foreign markets.

EMTC appreciates the opportunity to comment on the hearing on Advancing America's Interests at the World Trade Organization's 13th Ministerial Meeting, and we are happy to discuss the ideas expressed above in more detail.

