Written Testimony of

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Mr. Chairman and Ranking Member Sanchez, 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 14th Ministerial Conference in Yaoundé, Cameroon. I will be focusing today on the developments that have led to the reform efforts now underway at the WTO and that will be a focus of discussion at MC14, along with the substantive issue of extending the e-commerce moratorium. I have been involved in and have followed WTO issues for nearly three decades during which I served as lead U.S. negotiator for the successful WTO Trade Facilitation Agreement, USTR's Legal Advisor to the U.S. Mission to the WTO, and 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. Others, such the upcoming ministerial, have been used to set up further work on key issues. While an important substantive outcome could emerge from MC14 on the long-standing duty moratorium on electronic transmissions – the "e-commerce moratorium" -- the focus beyond that will be on providing direction to Geneva delegates on reforms to the WTO to improve its operation.

Reform discussions in Geneva since June of last year have reflected a deeper appreciation of the urgency of the topic and increasing recognition of the challenges facing the global trading system, including those posed by China's economic model. In introducing reform topics, I will discuss some of what is and isn't working at the WTO and the ongoing value of the organization.

The WTO Rulebook

Much attention has been paid to the WTO's stalemated negotiating process and broken dispute settlement system. However, this overlooks the WTO's most significant ongoing contribution to global economic activity, its extensive rule book. Some of these rules, such as most favored nation treatment and national treatment, have formed the bedrock of the global trading order for the past 70 years. While in need of updating, the WTO agreements cover a broad range of topics that go well beyond tariffs, including disciplines on agricultural subsidies and subsidies more generally, sanitary and phytosanitary measures, standards and technical barriers to trade, trade facilitation, services, and intellectual property, to name a few. This rule book continues to provide a foundation for the vast majority of global trade, even now, and benefits U.S. businesses and exporters on a daily basis, in particular agricultural exporters.

The WTO agreements also serve as the baseline set of disciplines that are drawn from and elaborated upon in free trade agreements and bilateral and regional trade arrangements. U.S. trade agreements incorporate, reference or build on WTO disciplines.

WTO Committee Work

These disciplines and their implementation by WTO Members are the subject of regular committee work at the WTO, most notably those dealing with technical barriers to trade and sanitary and phytosanitary measures. Along with negotiating new agreements and dispute settlement, this committee work is considered one of the three pillars of the WTO.

WTO Members acting through committees have elaborated on the interpretation of the WTO agreements and regularly review concerns relating to specific measures adopted by Members. The United States has used these committees effectively to put a spotlight on foreign trade barriers and to build coalitions to press those maintaining them. WTO committees operate out of the limelight, but their work is valuable and they continue to help resolve trade barriers before there is a need for dispute settlement. The U.S. continues to be deeply engaged in this work at the behest of U.S. stakeholders.

Members have for several years considered how to improve the operation of committees, including through greater enforcement of WTO notification requirements. WTO Members are

required to notify relevant committees of actions they have taken related to committee work, such as new subsidy programs, but compliance has been uneven. The United States submitted a proposal to improve compliance in 2017, including through technical assistance and capacity building for developing countries. Improved transparency, including relating to notifications, has been one of the reform topics to be considered at MC14.

WTO committee work contributes to compliance with WTO rules, even in the absence of a fully functioning dispute settlement system. But an even more fundamental basis for continued WTO compliance is the interest Members have in maintaining a norm of compliance, so that their own businesses benefit from the compliance of others. This dynamic underlay the successes of the WTO's predecessor, the General Agreement on Tariffs and Trade, which lacked the WTO's stronger dispute settlement system, and it continues under the WTO.

WTO Dispute Settlement

With regard to the dispute settlement system, even now WTO Members are bringing and completing disputes, despite the U.S. hobbling the system in 2019 when it blocked appointments to the system's Appellate Body, ultimately resulting in the Appellate Body losing a quorum to make decisions. That 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. While many litigants are appealing into the void, others are using workarounds such as agreeing not to appeal or are referring appeals to ad hoc arbitrators or to a mechanism established by a number of Members to serve as an interim appeal process.

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. While this took place in a number of different areas, a particularly problematic set of decisions involved trade remedies. This included a decision on whether various Chinese economic actors could be considered "public bodies," allowing importing countries to impose countervailing duties to respond to unfairly subsidized goods.

Early efforts to address U.S. concerns that I took part in during the 2000s foundered on the

challenges posed by the WTO's decision-making process, which requires consensus, a topic I'll return to below. The U.S. action in 2019 prompted renewed consideration of reform, which gained significant momentum in the leadup to and following the last WTO Ministerial in 2024, as I outlined in more detail when I appeared before this subcommittee ahead of that meeting. In brief, talks were marked by an unusual level of cooperation, with Members generating a number of textual proposals for process-related improvements to the system. The discussions reflected a greater appreciation of U.S. concerns than had been the case before, with ideas floated for addressing the core U.S. concern of Appellate Body overreach. Discussions have largely been on hold since the end of 2024.

WTO Negotiations and the Challenges of WTO Decision-Making

One of the key topics of reform discussions taking place in Geneva relates to WTO decision-making. While a procedure for voting is on the books, the consistent practice under the WTO and the GATT before it has been decision-making by consensus. That does not require universal support for a decision, but a single member can block one. The United States has long insisted on consensus decision-making, and the WTO ambassador leading reform discussions in Geneva recently noted, "[n]o member challenges decision-making by consensus." Having said that, some Members are proposing that house-keeping decisions such as the appointment of chairs not require a full consensus, and others are proposing guidelines as to when it is appropriate to block a consensus when support is overwhelming. None of these proposals has support of the full membership at this time.

In the context of negotiations, the strength of consensus decision-making is to ensure that all Members feel they have a voice, and to ensure that any agreements that emerge are viewed as legitimate and will be implemented.

Consensus has been elusive in a membership of 166 Members at various stages of development, with diverse interests. In particular, many developing countries have been reluctant to take on additional commitments because of the burdens of implementation. The challenge this creates in negotiations has been magnified by WTO rules that permit members to self-designate as developing. This has led to absurd results as many Members have become wealthier, in some cases high-income countries, but have nevertheless hung onto their

developing country status.

Developing country status has typically entitled a Member to longer transition periods for implementing commitments, but it has also been used as a justification for taking on fewer or no commitments. While such "special and differential treatment" has been non-controversial for most developing countries, it has posed significant hurdles to successful negotiations when it is asserted by major economies that play a significant role in global trade.

That dynamic was illustrated over the course of the Doha Round of negotiations initiated in 2001, whose mandate explicitly acknowledged that developing countries would be expected to make fewer market access or other concessions than developed countries. Like previous rounds under the GATT, the Doha Round sought to achieve progress on a broad range of topics, allowing trade-offs between topics to facilitate gains in areas of interest to each Member, and avoiding a dynamic in which Members with no interest in a topic would be inclined to block progress. However, for that negotiating format to succeed, major trading Members still have to be willing to contribute through market opening or other concessions in order to make the package attractive enough for others to contribute or to take on additional commitments. In the Doha Round, China, India, Brazil, and South Africa were unwilling to do so and justified their position based on their self-designation as developing countries. This contributed to deadlocks in negotiations on the central topics of industrial goods and agricultural market access. As one African ambassador stated at the time, "the elephants are hiding behind the mice."

The WTO nevertheless has succeeded in completing fully multilateral agreements on two topics that emerged from the ashes of the Doha Round, the Trade Facilitation Agreement and the Agreement on Fisheries Subsidies. The secret sauce in both agreements was broad support among the entire Membership, in particular from developing countries. As I observed first-hand in the Trade Facilitation negotiations, virtually every Member saw benefits in the customs and other reforms that would reduce costly delays at borders. The negotiation was also helped by the existence of resources from a variety of sources that were available to assist developing country members with capacity building and implementation.

Likewise, in the Fisheries Subsidies negotiations, the effort to rein in subsidies and practices that contribute to overfishing has broad support. Members concluded a "Fish I" agreement in

2022. While the agreement covered many important topics, including a prohibition on subsidies supporting illegal and unregulated fishing and fishing in over-fished areas, work continues on a Fish II deal on the central issue of subsidies that encourage overcapacity and overfishing. The inability to complete work in one phase was due to a combination of factors that included the reluctance of India and other developing countries to take on new commitments and of efforts by major subsidizers like China to water down disciplines that support their fishing fleets. Work on Fish II continues but is not yet ripe for completion at MC14.

The United States has attempted to address the problem of major trading powers asserting developing country status through a proposal in 2019 that would preclude Members meeting several objective criteria from taking advantage of special and differential treatment in future trade negotiations. While the proposal has not been adopted, it did lead several Members including Brazil, Korea, and Singapore to announce they would not seek special and differential treatment in negotiations. China recently joined their number. This represents at least limited progress.

The conclusion of both the Trade Facilitation Agreement and the Fish I Agreement illustrated another challenge posed by consensus decision-making. In both cases, after agreement had been reached on the substantive obligations of each agreement, India initially blocked formal adoption of the decision to incorporate the agreement into the WTO legal framework, before ultimately yielding in return for agreement to work on one of its priorities. India's main issue has been its public stockholding program for agricultural products for food security purposes. The stockholding itself has not been controversial, but India has insisted on the right to dump excess, subsidized stocks on global markets, harming farmers in developed and developing countries alike. India is seeking a formal carve-out from WTO disciplines to avoid challenges to this dumping.

India has similarly blocked other widely supported decisions, including in connection with WTO Members' efforts to overcome the challenges of concluding fully multilateral agreements on a broad set of talks. Those challenges led Members to pivot in 2017 to efforts to conclude plurilateral agreements among only those Members interested, on topics such as e-commerce,

investment facilitation for development, and services domestic regulation. Participants have largely concluded these agreements and have sought to formally adopt them into the WTO legal framework. But while negotiation of these plurilateral agreements has involved a subset of the total membership, adoption requires consensus of the full Membership. India, South Africa, and Turkey have opposed, arguing that these agreements undermine the multilateral nature of the WTO – despite the existence of other WTO plurilateral agreements covering civil aircraft and government procurement.

And India has consistently stood in the way of decisions on another issue of significance that will be considered at MC14, whether to extend the moratorium on customs duties on electronic transmissions. The moratorium has been renewed for two-year intervals over several decades, generally after agreement on unrelated issues. In the recent past, others have joined India in seeking to block an extension, such as Indonesia, which was contemplating taxing such transmissions. In connection with recent ARTs, however, Indonesia and others including Cambodia, Malaysia, and Thailand have committed not only to support a two-year extension of the e-commerce moratorium, but a permanent extension. A large number of developing countries have likewise supported a permanent extension of the moratorium in the context of the e-commerce plurilateral. Given the broad support for the e-commerce moratorium, there is at least the potential for a valuable substantive outcome at MC14.

One lesson from the record I have described above is that even without formal reform of WTO decision-making, the organization could prove to be a far more successful negotiating venue if India were to no longer routinely block progress on widely supported WTO initiatives. Likewise, were China, which of late has been positioning itself as a defender of the multilateral trading system, to become an advocate of ambition in the Fish II and other negotiations rather than driving down ambition, the organization could achieve more positive results more quickly. This would not solve the problem of the difficulty of coming to consensus on many of the difficult issues now facing the global trading system, but it would demonstrate that on at least some topics, and some configurations of Members, the organization can serve as a useful negotiating forum. And that on even more difficult topics, the organization will be available for negotiations should a consensus emerge.

"Level Playing Field"

Another reform topic worth flagging is "level playing field." While this has meant different things to different Members, for some including the United States and the European Union, it has meant raising the challenges posed by, as the EU phrased it, "heavy state intervention in support of industrial sectors." In other words, China. The EU has proposed work on transparency, disciplines, and remedies to clarify existing rules and to develop new rules. While there is little prospect of developing such rules in the foreseeable future, the acknowledgement of the problem of a shortfall in current rules and continued discussions on the topic at the WTO post-MC14 could prove significant in shining a spotlight on problematic Chinese practices and in shaping debate both in and out of the WTO on how to address China's state-directed targeting of key sectors and the impacts of this targeting on other countries.

Conclusion

Beyond extension of the e-commerce moratorium, MC14's main contribution is likely to consist of shaping further conversations on reform and other negotiating topics. While this would be a modest outcome, the meeting represents an opportunity for ministers to engage with each other to explore how to close gaps in positions and to recommit to further work.

In conclusion, it would be prudent to temper one's expectations for major breakthroughs at MC14. Having said that, MC14 could provide a welcome boost to current reform efforts, which will be critical to restoring the WTO's role as a useful negotiating forum. However, even should that not occur, we should not lose sight of the great value provided by the existing WTO rulebook, and by the ongoing committee work relating to that rulebook.