

**UNITED STATES SENATE  
COMMITTEE ON FINANCE  
HEARING ON THE PRESIDENT'S 2013 TRADE AGENDA  
MARCH 19, 2013  
QUESTIONS FOR AMBASSADOR DEMETRIOS MARANTIS**

**Questions from Chairman Baucus**

**Question 1**

The Administration set forth an ambitious trade agenda this year, which I commend. It is important that we keep working to expand opportunities for U.S. exporters and create American jobs here at home. I am pleased to see that the Administration will work with Congress on Trade Promotion Authority and Trade Adjustment Assistance. TPA expired in 2007, and TAA expires at the end of the year. It is critical that Congress extend both TPA and TAA. Will you commit to working with me and with my colleagues to get TPA and TAA enacted?

**Answer:**

Yes. We have received your clear message that Trade Promotion Authority is a priority for the Senate Finance Committee this year. We are ready to begin our work with you and others in Congress on Trade Promotion Authority legislation and to talk about the issues you have raised. As you know, in his most recent Trade Policy Agenda, the President noted the importance of Trade Promotion Authority to support jobs-focused trade initiatives. We also will address trade adjustment assistance expiration this year, to keep our own commitment to Americans in trade-impacted industries working to connect them and other displaced workers and businesses with employment services in their communities. So we are prepared for the conversation you have requested and we are looking forward to beginning to work with you.

**Question 2**

U.S. innovators are the best in class. They provide our economy with significant growth and many high paying jobs. Yet many countries have made a policy out of trying to free ride on U.S. innovation. For example, China and India are adopting policies that require U.S. companies to transfer their technology to local companies as a condition for market access, and governments appear to be supporting the theft of trade secrets. We have to put an end to economic espionage and the whole array of foreign government measures that erode U.S. technological competitiveness. Please explain to me what USTR is doing to end the theft of U.S. innovation.

**Answer:**

The Administration is determined to ensure that rules-based international trade promotes innovation and competition to the benefit of all businesses and consumers worldwide. That is why the Administration is tackling emerging problems that increasingly affect trade in the 21st century, including the serious threat to U.S. innovation from both localization barriers to trade and the theft of trade secrets and other forms of intellectual property.

We are actively combating “localization barriers to trade” – i.e., measures designed to protect, favor, or stimulate domestic industries, service providers, and/or intellectual property (IP) at the expense of goods, services, or IP from other countries. The use of these kinds of measures has increased in the last few years, especially in some of the world's largest and fastest growing markets. Building on progress made in 2012, the localization taskforce will coordinate an Administration-wide, all-hands-on-deck approach to tackle this growing challenge in bilateral, regional, and multilateral forums, and through trade agreements, enforcement, and policy advocacy.

The United States will continue to defend aggressively millions of American jobs threatened by the wholesale theft of U.S. intellectual property, using the “Special 301” process and a broad array of other trade policy tools to identify and resolve intellectual property rights issues and related market access issues of concern.

On the issue of trade secret theft, for example, USTR is leading additional trade policy efforts to promote adequate and effective protection and enforcement of trade secrets pursuant the Administration Strategy on Mitigating the Theft of U.S. Trade Secrets. These efforts include deeper cooperation with trading partners that share U.S. interests; targeting weaknesses in trade secret protection through enhanced use of the annual Special 301 process and related tools to gather and, where appropriate, act upon information about the adequacy and effectiveness of trade secret protection by U.S. trading partners; using USTR-led trade negotiations such as for the Trans Pacific Partnership agreement to seek new provisions on trade secret protections requiring parties to make available remedies similar to those provided for in U.S. law; and continuing to raise trade secret protections as a priority issue in all appropriate bilateral, regional, and multilateral trade discussions and appropriate trade and IP-related forums.

### **Question 3**

Last week, Japanese Prime Minister Abe announced Japan’s interest in joining the TPP negotiations. With Japan’s participation, the TPP would account for nearly forty percent of the world’s GDP. Japan has taken some important steps in the past year. I was pleased by Japan’s decision in February to begin accepting imports of beef up to 30 months in age. That was a big step in the right direction, but we still need to make sure Japan is ready to take on the TPP’s high standard commitments. Do you think that Japan is ready to join the negotiations?

#### **Answer:**

We have been engaged in bilateral TPP consultations with Japan since February 2012. In addition to raising bilateral concerns, the other key area of our work has been on Japan’s readiness to meet the comprehensive, high-standard objectives of the TPP agreement. We welcomed the statement that Japan “would join others in achieving a comprehensive, high-standard agreement, as described in the Outlines of the TPP Agreement announced by TPP Leaders on November 12, 2011,” which was included in the February 22, 2013 Joint Statement by the United States and Japan. Our bilateral consultations remain ongoing.

#### **Question 4**

With Canada now a part of the TPP negotiations, it is important to lumber producers in Montana that we push them to go beyond their NAFTA lumber commitments. First, it is important that any antidumping and countervailing duty cases involving lumber be dealt with in U.S. courts, rather than in binational panels under the NAFTA. Second, it is also important that Canada abolish its restrictions on Canadian timber exports. Our lumber mills would love to have access to Canada's virtually unlimited supply of timber. Can you assure me these issues will be raised with Canada?

#### **Answer:**

The United States is seeking to negotiate a high-standard, comprehensive agreement in the TPP negotiations. In doing so, we intend to maintain our strong trade remedies laws and are not considering any proposals that would change or weaken them.

With respect to the North American Free Trade Agreement (NAFTA) review and dispute settlement in antidumping and countervailing duty provisions and our lumber trade with Canada, we are not considering changes to trade remedy provisions of this or other agreements.

On Canadian timber export restrictions, the United States will continue to press Canada with regard to its export policies on logs harvested from public land.

It is important to bear in mind that U.S. log exports from federal lands are currently restricted under 16 U.S. §§ 620-620j (Forest Resources Conservation and Shortage Relief (FRCSR) Act of 1990), 36 CFR 223.201 (Limitation on unprocessed timber harvested in Alaska) and 15 CFR 754.4 (Unprocessed western red cedar). As we have done in previous FTAs, the United States is seeking an exception in TPP to retain U.S. log export restrictions.

USTR continues to devote significant resources to ensuring that softwood lumber imports from Canada comply with the requirements of the 2006 Softwood Lumber Agreement (SLA). The SLA was recently extended until mid-October 2015 with the support of domestic lumber producers. As such, we do not anticipate that the provisions being negotiated in TPP will have any impact on the 2006 SLA.

#### **Question 5**

I appreciate the letter of response I received from Acting USTR Marantis regarding U.S. wheat exports to Canada. The Canadian varietal registration and grading system are putting Montana producers at a disadvantage, and it is a problem that must be addressed. The letter mentioning this issue has been raised at previous meetings of the United States – Canada Consultative Committee on Agriculture. Can I get your commitment to press this issue at those meetings until it is resolved?

#### **Answer:**

USDA and USTR will continue to raise concerns with Canada's requirements related to varietal registration and grading, and with its proposed phytosanitary requirements for weed seeds, at

meetings of the U.S. – Canada Consultative Committee on Agriculture and also will continue to raise these issues with Canadian officials until they are appropriately addressed.

Question: The letter also mentions the Canada-United States Grain and Seed Trade Task Group which is working to identify recommendations on how to remedy this issue. Can I get your commitment to help expeditiously implement any recommendations that will help resolve this issue?

**Answer:**

USTR welcomes the initiative of U.S. and Canadian grain and seed producers to establish the U.S.-Canada Grain and Seed Trade Task Group. On March 26, members of my staff were pleased to participate in a meeting of this group in Washington, DC. USTR has a longstanding record of supporting efforts to open foreign markets to U.S. grain and seed exports. We look forward to working closely with U.S. industry as they develop proposals within the U.S.-Canada Grain and Seed Trade Task Group. USTR will continue to press the Canadian government to eliminate the varietal restrictions.

**Question 6**

I am glad the President has decided to pursue a trade agreement with the EU. This provides an opportunity to address long-standing EU barriers that are keeping out U.S. beef and other agricultural products. This will be a tough negotiation. Can I get your commitment that USTR is not going to leave U.S. farmers and ranchers on the sidelines when the going gets tough? Will you fight for market access and against non-science-based regulations?

**Answer:**

The final report of the High Level Working Group on Jobs and Growth recommended that the United States and the European Union (EU) launch negotiations on a comprehensive trade and investment agreement, including the elimination of all duties on bilateral trade with a substantial elimination of tariffs upon entry into force, and a phasing out of all but the most sensitive tariffs in a short time frame. Both sides understand that a comprehensive agreement will have to include the agriculture sector. We have made it clear to our EU partners that we will press not only for the elimination of tariff and quota barriers facing our agricultural exports, but also for substantial progress in reducing SPS and TBT barriers to those exports.

While we anticipate difficult negotiations, we have made some recent progress in addressing specific EU sanitary and phytosanitary (SPS) barriers. For instance, beginning on February 25, 2013, the EU now allows the use of lactic acid as a pathogen reduction treatment for beef. We expect that this will increase the amount of high-quality beef that the United States can export to the EU. And we are hopeful that this progress can translate into productive engagement with the EU on other existing SPS barriers and on trade agreement provisions that make the development and application of these types of barriers less frequent.

### **Question 7**

Although there has been much progress on implementing the U.S.-Korea Free Trade Agreement, there have also been some challenges. One particular issue of concern is Korea's failure to implement fully its commitment related to software utilization by government entities. How will the Administration address this important issue with Korea, and ensure that we do not encounter similar problems with other FTA partners?

#### **Answer:**

As with all our FTAs, both past and future, we work to ensure that the commitments are implemented, and, if not, that we vigorously enforce our rights. With respect to the United States-Korea Free Trade Agreement, the Administration has expressed its concerns numerous times to senior levels of the Korean government regarding the Korean government entities' use of unlicensed or under-licensed software. Consistent with the United States.-Korea Free Trade Agreement, Korea issued a Presidential Decree requiring that government entities only use legal software. The Administration is making progress in working with Korea to resolve this issue and ensure that the Presidential Decree is enforced.

### **Question 8**

Patent protection plays a critical role in ensuring the competitiveness of U.S. innovators, and creating jobs and growth in my home state of Montana and across the United States. The WTO Agreement on Trade-Related Aspect of Intellectual Property (TRIPS) and the North American Free Trade Agreement (NAFTA) both require signatory countries to make patents available for all inventions that are new, non-obvious and useful. Canadian courts, however, have developed a heightened standard for usefulness that diverges significantly from that of other countries. The application of this new standard has now resulted in the invalidation of patents held by U.S. pharmaceutical companies, and created significant uncertainty for U.S. companies seeking patent protection in Canada. What is USTR doing to address this problematic interpretation and application of Canadian patent law?

#### **Answer:**

As you know, we have had longstanding concerns on IP issues with Canada, as well as some recent notable improvements. With respect to the emerging utility test that Canadian courts have been applying to pharmaceutical patents in some cases, we are troubled by the negative consequences this test is having on U.S. patent holders. USTR is working with representatives of the affected companies and industries to ensure that we fully understand the issue and its possible solutions, and to engage with the government of Canada with a view to ensuring that U.S. inventors continue to enjoy adequate and effective protection of patent rights in Canada in line with relevant international norms.

### **Questions from Senator Hatch**

## **Question 1**

For the past several years this Committee has pressed the Administration to focus on a results-oriented strategy to address the problems that U.S. industry is facing by China's lack of enforcement of IP, including in the area of software. We have encouraged the setting of objective, measurable benchmarks to show success in reducing IPR infringement. Please give us a status report on your pursuit of metrics.

It appears that there was some progress with the Special Campaign, albeit incremental, in terms of China's cleaning up the use of pirated product by the Central Government. What is the situation with respect to State-owned, and financial and large enterprises, including those that are publicly-traded?

Many of these actors engage in substantial commercial activity in China and are formidable in global markets. The standard practice for businesses and financial institutions is to annually implement independent software verification. A third-party software verification would certainly be a good way to move forward and remove some of the tensions that we have seen. How can we help you persuade China to establish a commonly-recognized mechanism of independent software verification?

### **Answer:**

The Administration has worked hard to protect American IPR in China, and to reduce the export of infringing products made in China, through a variety of mechanisms – including results-oriented dialogue on IPR protection and enforcement, the annual Special 301 Report, and enforcing international rules to protect American intellectual property and market access through the WTO. In response to our efforts over the past four years, China has taken unprecedented steps to set up mechanisms that can curb the problem of software piracy, and we are pressing to see concrete change on the ground.

With respect to metrics specifically, China committed, in the 2012 Strategic and Economic Dialogue to “creat[ing] an environment ... where[...] the level of sales of legitimate IP-intensive products and services increases, reflecting economic growth and in line with the two countries' status as globally significant producers and consumers.” We have been working with rights holders to obtain the information necessary to ascertain whether this metric is being met.

With respect to software piracy, China has made several commitments to tackle this problem, including:

- China agreed at the 2010 JCCT to establish software asset management systems at government agencies, to allocate budgets for software purchases, and to promote the use of licensed software at enterprises.
- At the 2011 State Visit of President Hu, China further bolstered its commitment to software legalization by agreeing to conduct financial audits focused on the use of legal software in government agencies and to publish the audit results.

- At the 2011 S&ED, China agreed to improve its high-level, long-term IPR protection and enforcement mechanism and strengthen its government inspection mechanism to make sure that software being used by government agencies at all levels is legitimate.
- In the 2011 JCCT, China committed to increase resources devoted to conducting audits and inspections, and to further improve management of their software assets, including by the use of technical means. China also agreed to further promote the use of licensed software in enterprises and conduct additional enterprise software management pilot projects beyond the 30 SOE pilot projects it has underway.
- At the 2012 S&ED, in addition to the language on legitimate sales, China noted that it had incorporated the software assets into the government assets management system, and reflects the expenditures on information network and software procurement and updates in the budget accounts, and, building on the initial priority enterprises pilot project, is to extend its legalization efforts in the enterprise sector.
- In the 2012 JCCT, China confirmed that it requires state-owned enterprises under the authority of the China Banking Regulatory Commission and central state-owned enterprises directly supervised by the State-Owned Assets Supervision and Administration Commission of the State Council to purchase and use legitimate software, including but not limited to operating system and office suite software.

Securing these commitments required significant coordination across relevant agencies. While we must see how these steps work out in practice, and much more work remains to be done, China's recent commitments mark a significant opportunity for genuine progress on this difficult issue. We will be following up aggressively through both the S&ED and JCCT processes that are underway for 2013.

## **Question 2**

The European Medicines Agency (EMA) has instituted a new policy to release upon request biopharmaceutical companies' non-public clinical and pre-clinical data and reports that are submitted as part of marketing applications in Europe. The current and proposed policies of the EMA to disclose the entire non-clinical and clinical portions of marketing authorization dossiers – thousands of pages that include proprietary research plans and strategies, methods, raw data, regulatory communications, and analysis, which have been submitted in confidence to regulators – will provide little or no incremental value to patients or healthcare professionals. In fact, the primary beneficiaries of such non-public information would be competitors who wish to free-ride off the investments of innovators. Moreover, disclosure of such confidential clinical and pre-clinical data is inconsistent with the WTO TRIPS Agreement, which sets forth WTO member obligations regarding intellectual property. Under TRIPS, the EMA is obliged to keep such data confidential, unless the disclosure is necessary to protect the public or the EMA takes steps to prevent unfair commercial use of the data. The European Commission has consistently interpreted this obligation – including in recent treaties – to mean that the information in marketing applications should not be disclosed beyond the regulatory reviewers. What is USTR

doing to enforce the TRIPS agreement and protect biopharmaceutical companies' non-public testing data from public disclosure by the EMA? How will USTR ensure that the proposed Transatlantic Trade and Investment Partnership protects incentives for U.S. and European biopharmaceutical companies to invest in innovative medical research to benefit patients?

**Answer:**

The United States continues to support and to advance the protection of proprietary test and other data provided as a condition of marketing approval for agricultural, chemical, and pharmaceutical products, including biopharmaceuticals, consistent with international obligations. We have worked closely with the EU in the past to address specific instances of concern, and will continue to collaborate with the EU through all appropriate channels. We look forward to ongoing consultations with you and other members of Congress regarding the Transatlantic Trade and Investment Partnership, including with respect to the protection and enforcement of intellectual property rights.

**Question 3**

At the 2012 US-China Joint Commission on Commerce and Trade (JCCT) Plenary Meeting, China agreed to the following commitment:

"To promote scientific advancement and to establish effective regulatory data protection, China agreed to define new chemical entity in a manner consistent with international research and development practices in order to ensure regulatory data of pharmaceutical products are protected against unfair commercial use and unauthorized disclosure."

What is the US Government's plan for ensuring 2013 implementation of this commitment?

**Answer:**

We will pursue implementation systematically. We will engage China intensively through expert working groups on both pharmaceuticals and on intellectual property, including discussing the details of international R&D practices this month with Chinese officials and U.S. stakeholders. We are also simultaneously reviewing the legal actions we believe China will have to take to incorporate a new definition into relevant measures. Further, we will flag the need for robust and swift implementation in high level interactions with China, including the vice minister level mid-year review of 2012 JCCT commitments which normally occurs during the summer. We will remain in close consultation with stakeholders throughout this process.

**Question 4**

There is a lot of talk about the benefits of exports, but we often neglect the benefit of imports. I was interested to see a recent economist's report that found that more than 70% of the retail value of imported apparel sold in the United States is created by American workers, even though the final assembly was completed abroad and most of the materials were also sourced overseas. Your predecessor, Ambassador Ron Kirk, is even quoted in the study, saying "when a shipment of your products arrive in America, an army of workers goes into motion . . ." The U.S. apparel



and retail industries employ millions of U.S. workers that rely on apparel imports. How does US trade policy promote US jobs that are sustained by imports, particularly in sectors with very high import penetration such as apparel or footwear?

**Answer:**

Our trade policy has long recognized the overall economic benefits of trade liberalization, including in sensitive sectors such as apparel and footwear. We have continually liberalized tariffs and eliminated non-tariff barriers over the long term through agreements under the World Trade Organization (WTO). For example, the WTO Agreement on Textiles and Clothing eliminated the textile and apparel quota regime. We continue to pursue bilateral and plurilateral free trade agreements which eliminate tariffs altogether on apparel and footwear products. In addition, we are committed to reaching agreements, whether under the WTO or bilaterally, on customs facilitation measures in order to further promote two-way trade.

I note that your question does not specifically cite to the economist's report findings on the value added in the U.S. of imported apparel that is created by American workers, so I am unable to comment specifically on your point. However, caution should generally be used in interpreting these data, as some reports include profit and mark-up in the U.S. value calculations, in addition to the value created by productive activities.

**Question 5**

In light of the growth of the Internet as a channel for trade in services and digital products, are cross-border data issues a priority for the United States in TPP, the ISA and the TTIP with the EU? How does USTR plan to address these issues in new trade agreements?

Important issues of privacy and security have made the negotiation of cross-border data commitments in trade agreements more complicated. The data issue affects all industries, from the providers of the services as well as those industries that depend on the services in order to do business, manage inventory or be compensated. The EU is now working on its own data privacy regulations, with an aggressive timetable that doesn't seem to be connected in any way to the trade negotiations launched by the High Level Working Group. How does the Administration plan to bring clarity to the US-EU negotiations on the issue of data flows and protection? How will you ensure that the commercial interests of our companies are treated fairly and that we don't create disguised barriers to trade, while addressing security and privacy needs appropriately?

**Answer:**

The free flow of data across borders is a key priority for the United States in the negotiations for a Trans-Pacific Partnership (TPP) agreement, the Trade In Services Agreement (TISA), and the Transatlantic Trade and Investment Partnership (TTIP) agreement. Free movement of data across borders facilitates trade in many sectors, including sectors enabled in whole or in part by the Internet. USTR has proposed in the TPP several commitments that would work to secure a predictable set of rules for the movement of data across borders. These include proposed commitments not to unreasonably restrict access to and the transfer of information across borders

or to impose unreasonable requirements concerning the location of computing facilities. USTR has also proposed rules providing for non-discriminatory treatment of digital products.

In the TPP, USTR's proposals for the cross border movement of data would create an obligation for TPP partners to allow our companies to transfer information across borders, recognizing the legitimacy of appropriate privacy and security protections. With respect to the EU, we are deeply engaged with them with respect to the implementation of the U.S.-EU Safe Harbour framework and the proposed Data Privacy Directive.

## **Questions from Senator Brown**

### **Question 1**

As you know, the United States has a substantial trade deficit. When the Administration discusses the benefits of trade agreements, it disproportionally focuses on the benefits of exports, without a meaningful discussion of the impact that imports have on domestic job creation. The Administration claims that each \$1 billion in exports of manufactured goods supports around 5,200 jobs. How was this figure calculated? Of the claimed 5,200 jobs supported, how many are new jobs?

#### **Answer:**

The Department of Commerce has estimated that 5,359 jobs were supported for every \$1 billion of goods exports. The methodology that Commerce used can be found in the site below:

[http://www.trade.gov/mas/ian/build/groups/public/@tg\\_ian/documents/webcontent/tg\\_ian\\_004021.pdf](http://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_004021.pdf)

Overall, 9.8 million jobs were supported by goods and services exports in 2012, this was an increase from 9.7 million jobs in 2011 and 8.5 million jobs in 2009.

Ambassador Marantis stated that 50 % of all U.S. imports are intermediate products used by U.S. companies to make finished goods that are then sold in the domestic market or exported. Are these imports of intermediate products displacing sales of domestically produced goods? Have you estimated the overall manufacturing job losses resulting from increasing imports? How do you calculate the overall U.S. economic benefit or cost in terms of jobs and revenue for imports of intermediate goods versus final goods?

#### **Answer:**

To my knowledge, there is no Government estimate on the effect of all imports on jobs. Unlike exports that can be directly measured, the relationship between imports and jobs is more complex. Exports and imports do not have the same effect on production or jobs. As noted, imports are often either inputs in U.S. production, commodities, or products we do not typically make in the United States. So while some imports displace jobs, some have no effect on jobs and some are used by our domestic economy to create or support existing U.S. jobs. Moreover,

imports are driven by other factors such as the economy, the pace of consumption, and not necessarily by a single trade agreement.

On the other hand, measuring the effect of exports is straight forward because it is looking at American workers who produce those goods and services. American businesses, large and small, rely on imports for inputs to build our sophisticated manufactured goods, make processed foods, and create other job-supporting American goods.

## **Question 2**

I have heard from representatives of the steel industry that they are concerned with the surge in steel imports from a number of countries due in large part to an overcapacity of world-wide steel production. This overcapacity is a result of both government interference in domestic markets and a weakened global economy. China, for example, continues to provide massive subsidies to its steel industry, allowing it to build steelmaking capacity far in excess of its home market demand. Last fall, Brazil doubled its steel tariffs to 25% to keep out imports, no doubt diverting even more excess supply to the U.S. market. For those of us who were around during the last steel crisis in the late 1990s and early 2000s, this is very troubling. What is the Administration planning to do to address this issue?

### **Answer:**

We see the steel industry as a critical partner in the development of our trade policy and enforcement efforts and have been working closely with it to ensure the rules-based trading system works as it should to help producers and workers in the United States. In November 2012, Ambassador Kirk and Acting Commerce Secretary Blank met with leaders of 11 steel manufacturers to discuss their concerns about global steel capacity and increasing imports.

As you know, we have been the most active U.S. administration on WTO enforcement activities. Through WTO dispute settlement, we are successfully challenging several Chinese government practices that have provided unfair advantages to the Chinese steel industry, including the imposition of antidumping and countervailing duties against U.S. exports of certain Grain Oriented Electrical Steel (GOES) and export restraints on raw material inputs for steel-making.

In addition, the Administration is committed to strong enforcement of U.S. trade remedy laws. Commerce already has AD and/or CVD orders in effect on imports of 112 steel-related products from various countries, including Argentina, Brazil, China, India, Indonesia, Japan, Korea, Mexico, Russia, Taiwan, Thailand, Turkey and Ukraine.

However, litigation and trade law enforcement alone may not always be the most appropriate or effective means of addressing foreign government intervention in the steel sector, so we are also working closely with industry to step up our trade diplomacy on steel excess capacity issues.

We are concerned that China, which currently produces 47 percent of global steel production, is continuing to increase its steel capacity, despite slowing demand in China and globally. China has acknowledged its excess capacity problem, which is only getting worse, and contributes to

significant increases in exports of low-priced Chinese steel to global markets, including the United States. Excess capacity in global markets hurts not only weak and inefficient steel producers, it also undercuts the ability of efficient producers in the U.S. market to compete. Ambassador Kirk raised these concerns directly with Chinese Vice Premier Wang Qishan at the December 2012 Joint Commission on Commerce and Trade meeting.

In addition to our high-level contact with China, in the past few months, we have raised concerns about government policies that contribute to global steel excess capacity in bilateral meetings with Japan, Korea, Turkey and Ukraine. For example, in response to Brazil's announced plan in September 2012 to increase steel import tariffs from 12 to 25 percent, Ambassador Kirk sent a letter to Foreign Minister Patriota strenuously objecting to that action. We also included these tariff increases in the October 31, 2012 report to the WTO on trade restrictive measures taken by G20 members and raised our concerns about Brazil's tariff increases at the OECD Steel Committee on December 2, 2012. Brazil's higher tariffs may displace more steel from Asia and other countries to the North American market, while also making it more difficult for U.S. exporters to compete in the Brazilian market.

We are also actively working with like-minded trading partners such as the European Union, Canada and Mexico in upcoming multilateral meetings of the WTO, OECD Steel Committee and North American Steel Trade Committee to press other governments to avoid policies that support excess steel capacity and distort steel trade.

We remain committed to working with the steel industry and other industries to enforce U.S. trade rights by identifying and addressing foreign trade barriers and unfair trade practices to achieve the best trade outcomes for U.S. stakeholders.

### **Question 3**

I understand that in the context of targeted dumping, the Administration has recently announced measures that may arguably weaken our laws even beyond what the WTO has ordered in the zeroing decisions. Could you explain the Administration's actions in this regard?

#### **Answer:**

This Administration has an unparalleled record of both enforcing U.S. trade remedy laws domestically, and of defending U.S. trade remedy actions in the WTO. We would highlight, for example, the safeguard on tires from China, and our successful defense of the safeguard in the WTO.

This Administration also surveyed the Department of Commerce's trade remedy practices in order to determine how to improve the effectiveness of its existing enforcement tools through administrative and regulatory changes. Based on this review, Commerce developed a number of proposals to help strengthen the administration of the nation's antidumping and countervailing duty laws, most of which have been fully implemented.

The Administration fully agrees that it is important to have strong methodologies to address situations of targeted or masked dumping. The Administration has expended great efforts in this area, and has been consulting closely with Congress and stakeholders. Recently, the Administration has issued some decisions outlining an approach that we believe is both smart and effective. We will continue to consult with Congress and stakeholders as our approach evolves.

#### **Question 4**

The President and Administration officials are looking for ways to boost domestic manufacturing and to help businesses that want to continue to manufacture in the U.S. find ways to stay here. As you know, there is a small but vibrant group of companies, including New Balance, that continue to manufacture shoes and boots in the United States and are committed to doing so. These companies employ more than 4,000 Americans. They have asked USTR to maintain the 24 import-sensitive duties that help level the playing field for U.S. manufacturers and allow these companies to manufacture here competitively. These tariffs have been on the books for decades and have not impeded market entry from Vietnam and China, which collectively account for more than 90 percent of all the footwear bought in the United States. In fact, only 1 percent of footwear is still made in the U.S., so we know there isn't a market access issue for imports. What guarantees can USTR provide me that it will maintain these duties to protect the remaining footwear production in the U.S. and its workers?

#### **Answer:**

We understand the concerns of footwear companies that manufacture in the United States and keep these concerns in mind as we negotiate trade agreements.

We have worked to provide import-sensitive footwear with special treatment during trade negotiations. For example, in past FTAs, the duties on these products have been subject to the longest staging periods that we use for any industrial goods. In our current and upcoming trade agreement negotiations, the treatment of footwear will depend on our partners' ambitions with regard to market access for U.S. exports. A variety of approaches to tariffs for import-sensitive footwear products is possible, and these will emerge in the course of the negotiations.

#### **Question 5**

What are the priorities for the Interagency Trade Enforcement Center (ITEC) for the coming year? How is the ITEC assisting Small and Medium-sized Enterprises?

#### **Answer:**

ITEC will be addressing trade enforcement issues originating in a variety of regions across the globe. It would not be appropriate for us to identify publicly the priority trade practices that ITEC will seek to examine in the near term. Just as we do not discuss publicly our specific enforcement activities prior to seeking WTO consultations, we would not do so regarding the

specific near-term ITEC priorities. We would be pleased to provide a separate, non-public briefing on this issue if that would be helpful.

Small and medium-sized enterprises (SMEs) are encouraged to continue to report their specific market access problems to the Trade Compliance Center (TCC) at the Department of Commerce. If the TCC is unable to resolve an issue, especially when it has noted a trend, the TCC will report the problem to ITEC. By leveraging the expertise of the TCC, ITEC will have a head start on dealing with trade issues that are affecting SMEs. Small and medium-sized enterprises may also work through their associations to bring industry-wide problems to the attention of ITEC.

### **Question 6**

American auto and auto parts workers have proven the ability to overcome challenges and compete on a global scale, but such export subsidies, prohibited by the WTO, harm U.S. competitiveness. What more can you share regarding the status of negotiations with the Chinese government related to the U.S.'s WTO challenge to export subsidies provided to Chinese auto and auto parts industries?

#### **Answer:**

The United States filed a WTO dispute in September 2012 challenging China's provision of what appear to be prohibited export subsidies to auto and auto-parts enterprises located in designated regions known as "export bases." Export subsidies are considered so trade distorting that they are prohibited outright under WTO rules. The challenged subsidies provide an unfair advantage to auto and auto parts manufacturers located in China.

We conducted formal consultations with China in November of last year and continued our engagement with China after consultations on some technical issues related to the challenged measures. Since then, we have been evaluating the results of the consultations with China, examining China's measures, and conducting further research on those measures.

We anticipate further engagement with China during this consultations phase to seek a comprehensive solution to this dispute and will take all actions necessary to ensure that China meets its obligations under the WTO.

### **Question 7**

The President's Trade Policy Agenda for 2013 includes little discussion, beyond mention of a few meetings in the WTO, on the issue of currency misalignment and the need to address exchange rate policies that make our exports more expensive and imports even cheaper. But as we consider the TPP, will USTR propose provisions to address currency manipulation? How can our exporters and workers take advantage of new markets in a country like Japan, when the advantage can be offset through governments intervening in currencies? **(Weisel)**

#### **Answer:**

We have received significant input from Members of Congress and stakeholders on the currency issue. We agree this is an important issue and we are continuing to consult internally on it.

## **Questions from Senator Isakson**

### **Question 1**

The U.S. and EU recently announced their intention to begin negotiations on the Transatlantic Trade and Investment Partnership (TTIP) which is intended to be a comprehensive agreement that will address both market access issues and regulatory barriers. A recent study by the Center for European Policy Studies (CEPS) suggests that the agreement will be a key tool in reducing regulatory barriers and estimates that 80 percent of the gains from the TTIP will come from addressing regulatory burdens with respect to the services and procurement sectors. In light of the enormous potential economic benefits to the US that will result from a comprehensive TTIP which reduces regulatory burdens, we are interested in your views on whether the Administration is considering excluding any sectors from the TTIP.

#### **Answer:**

Our goal is to identify new ways to improve market access, reduce unnecessary costs and to prevent non-tariff barriers from limiting the capacity of U.S. firms to innovate and compete in world markets. Therefore, we will not automatically exclude any sectors from the TTIP discussion with the EU. All sectors could potentially benefit from improved market access and horizontal regulatory disciplines. In addition, we have been consulting with both stakeholders and regulators to identify sectors for additional regulatory disciplines.

### **Question 2**

I understand you are consulting on insurance issues as part of your bilateral TPP consultations with the Japanese Government. How are you planning to address the level playing field concerns expressed by US industry in this regard?

#### **Answer:**

Addressing concerns so as to achieve a level playing field with regard to Japan Post Insurance (JPI) is an integral part of our trade agenda with Japan. We have emphasized the importance of implementing a standstill on the Japanese Government's approval of new JPI products, as well as addressing concerns regarding the existence of a level playing field for the insurance industry in Japan, bilaterally and in the context of Japan's possible participation in the TPP negotiations. We continue to consult closely with the U.S. insurance industry regarding Japan's interest in TPP.

## **Questions from Senator Cornyn**

### **Question 1**

Japanese leaders recently signaled a desire to join the Trans-Pacific Partnership (TPP) trade negotiations. This development is encouraging and notable, as Japan is one of the greatest and most developed economies on Earth. A key concern is that Japanese leaders may try to insulate

certain domestic sectors, such as agriculture, from US exports in the TPP negotiations at all costs. Such an outcome is unacceptable to farmers in Texas, and I urge you to refuse any such pre-conditions as you enter discussions with Japan.

For example, it is critical for rice growers in the State of Texas that the Administration insists Japan offer additional market access for US rice exports in TPP negotiations. The domestic rice industry, with US government support, has worked for nearly two decades to open, establish, and grow the market in Japan for US rice. The TPP negotiations offer the opportunity to bring this commitment and investment to the next level by securing meaningful improvements in market access. What assurance can the Administration give to US rice growers that it will not categorically exclude rice from TPP negotiations?

**Answer:**

As Japan currently ranks as the fourth largest export destination for U.S. agricultural products, Japan's possible participation in the TPP negotiations would present significant new opportunities for U.S. exports. Japan's Government has confirmed that should Japan join the negotiations, it would subject all goods to negotiation. Japan has further confirmed that it would join others in achieving a comprehensive, high-standard agreement. We are fully aware of our rice industry's views on ensuring that rice is included in the TPP negotiations, and are committed to seeking expanded access for U.S. rice should Japan join the negotiations.

**Question 2**

How does the Administration intend to engage the domestic rice industry in developing a negotiating strategy that advances market access for US rice?

**Answer:**

The Administration works closely with the domestic rice industry on an ongoing basis. The U.S. rice industry is well-represented within the formal, jointly administered USTR/USDA advisory committee process, through which we seek input and advice relating to the formulation and execution of the Administration's trade agenda. In addition, rice industry representatives routinely, and frequently, engage with USTR on an ad hoc basis on a diverse range of issues, including ongoing trade agreement negotiations, the implementation and administration of existing agreements, and numerous country and /issue-specific matters that arise. We believe there is an excellent track record of coordination and cooperation on these initiatives and issues, through both formal and informal mechanisms, and we look forward to maintaining and building upon those efforts going forward.

**Question 3**

Another encouraging trade development is the President's announcement of the Transatlantic Trade and Investment Partnership (TTIP) with the European Union (EU.) Texas exports more goods and services to the EU than any other state, and additional gains are possible by further reducing tariffs and eliminating non-tariff barriers to trade. The EU's agricultural import policy



is notorious for relying on non-tariff barriers to protect European crop and livestock growers. The TTIP is the forum to secure reductions in such barriers.

A key tariff reduction priority is eliminating all duties and quotas on milled rice exports from the US to Europe. The EU tariff structure severely restricts the commercial viability of US milled rice in much of the Europe. How does the administration intend to obtain duty-free trade in milled rice in a TTIP agreement?

**Answer:**

Eliminating tariffs and quantitative restrictions, including for agricultural products such as rice, is a key recommendation of the High Level Working Group on Jobs and Growth report of February 11, 2013. Our goal in the negotiation is to seek to eliminate all tariffs and other duties and charges bilateral trade in agricultural, industrial, and consumer products, with a substantial elimination of tariffs upon entry into force of an agreement, and a phasing out of all but the most sensitive tariffs.

**Question 4**

Despite facing these tariff challenges, parts of Europe were once a premier market for long grain rice from the Southern growing region, including Texas. However, rice exports to the EU were decimated following an accidental release of a non-approved rice variety in 2006. Although the domestic industry has taken measures to correct the problem, the EU's extreme regulatory policy has prevented restoration of the commercial markets in Europe for US long grain rice. Please identify how the Administration intends to correct protectionist European regulatory policies, such as those preventing US rice from regaining its market competitiveness.

**Answer:**

We recognize that our negotiations with the EU will need to address sanitary and phytosanitary (SPS) measures, including those related to biotechnology products. We intend to develop an ambitious "SPS-plus" chapter that builds on key principles of the World Trade Organization (WTO) SPS Agreement, including commitments that each side's SPS measures be based on science and on international standards or scientific risk assessments, applied only to the extent necessary to protect human, animal, or plant life or health, and developed in a transparent manner, without undue delay, and establishes an on-going mechanism for improved dialogue and cooperation on addressing bilateral SPS issues chapter.

**Question 5**

Texas beef also faces blanket non-tariff barriers in Europe. Too often are US beef exports blocked based on arbitrary, and often politically charged, regulatory policies such as those outlawing certain livestock feed additives—even those recognized as safe by international sanctioning bodies. Any agreement with the EU must include mutual and binding science-based food safety regulations such as those made by respected sanctioning bodies including the World Organization for Animal Health (OIE) and the Codex Alimentarius (Codex.) Can Texas cattle

ranchers and feeders count on the Administration to insist that EU import regulations incorporate internationally recognized safety standards, including those on feed additives?

**Answer:**

In the High-Level Working Group on Jobs and Growth, which recommended in February 2013 that the United States and the European Union (EU) pursue comprehensive trade negotiations, the EU assured us they are prepared to work toward an ambitious outcome in the food and agricultural sectors, including food safety and animal health measures. We have made it clear that in a comprehensive agreement we will press not only for the elimination of tariff and quota barriers facing our agricultural exports, but also for substantial progress in reducing SPS and TBT barriers to those exports.

While negotiations will be difficult in some areas, there has been some recent progress on specific EU SPS measures. On February 25, 2013, the EU began allowing the use of lactic acid as a pathogen reduction treatment for beef. This will provide opportunities for U.S. exporters to increase non-hormone treated beef exports to the EU. We are hopeful that this progress can translate into productive engagement with the EU on existing SPS barriers and on trade agreement provisions that will prevent future barriers.

**Question 6**

As an aside, the US government must also agree to abide by science-based regulatory standards for food imports. It is time for the Department of Agriculture to finalize health and safety regulations pertaining to imported beef. Can you please explain what interaction the USTR office has had with the USDA to ensure that our beef import regulations mirror the regulations we are seeking abroad?

**Answer:**

USTR consults with USDA on regulatory actions that will affect trade, both directly on key issues and through the inter-agency process that the Office of Management and Budget conducts to ensure that our domestic regulations are consistent with our international obligations. USTR recognizes the contribution of science-based international standards to facilitating international trade. Much of our success in re-opening markets for U.S. beef in the past ten years has relied on the relevant international guidelines for bovine spongiform encephalopathy (BSE), and USTR supports aligning U.S. import requirements with those guidelines as proposed in USDA's pending BSE comprehensive rule.

**Questions from Senator Bennet**

**Question 1&2**

Agriculture Secretary Vilsack announced last February that USDA resolved dozens of export disputes in 2012 that freed up an estimated \$4 billion in agricultural exports and protected 30,000 jobs here at home. Some of these disputes might seem small, but for places like Colorado—where for years, our potato producers have been fighting to increase market access in Mexico kilometer by kilometer—they represent tremendous opportunities for growth. Can you provide

some more detail about the Administration's plans for breaking down trade barriers for U.S. agricultural products in 2013?

Agriculture is one of Colorado's most significant growth engines, contributing \$40 billion annually to the state economy. Finding ways to harness overseas demand has been at the forefront of agriculture's success story. Could you please speak more on the opportunities and challenges for farmers, ranchers, and all of agriculture as we look toward expanding our trade relationships with Europe and Asia over the next several years?

**Answer:**

(For both Question 1 & 2) USTR works closely with USDA in proactively addressing and resolving market access barriers to support the expansion of export opportunities for America's farmers and ranchers around the world. In 2013, USTR is continuing its focused efforts relating to the implementation, monitoring, and enforcement of existing trade agreements, including the three most recent agreements that entered into effect last year with Korea, Colombia, and Panama. In addition, we are pursuing ambitious trade agreement negotiations with the Trans-Pacific Partnership (TPP) countries, and will soon be initiating negotiations with the European Union. Through the elimination of import tariffs and other market access barriers, a TPP agreement will provide the United States with significant opportunities to expand agricultural exports to the Asia-Pacific region. The TPP also provides an opportunity to promote transparent and science-based rules on food safety, and animal or plant life or health. The EU holds significant potential for further growth should existing tariffs, quotas, and non-tariff measures, including SPS constraints, be addressed. Finally, we are continuing to work on a daily basis to address trade problems that arise for specific sectors, and in some cases specific shippers, in markets around the world, including expanded market access for U.S. potatoes to Mexico.

**Questions from Senator Cantwell**

**Question 1**

During President Obama's first term the Administration made clear that Intellectual Property Rights (IPR) was at the top of the United States' economic agenda and a priority for US-China bilateral engagement. Does the Administration intend to pursue the IPR issue with similar attention in the second term? How does the Office of the U.S. Trade Representative plan to engage the Chinese authorities on the question of IPR, and what is your office's strategy for avoiding a slow-down in efforts due to a change in China's Leadership? Is there more that the Senate can do to help convey the message to China that it needs focus on enhancing IPR protection programs? Does USTR or other offices in the Administration need more tools to accomplish this?

**Answer:**

Creativity and innovation are the engines of the American economy. According to industry estimates, IP-intensive industries employ about 18 million Americans. Countries that fail to respect U.S. intellectual property, either by failing to implement or enforce laws that adequately protect American intellectual property, or creating policies that disadvantage U.S. right holders, put American workers and businesses at a disadvantage. The Administration continue to be

committed to working with all of America's trading partners, including most notably China, to secure adequate and effective intellectual property safeguards wherever American goods and services are sold.

The Administration will continue working to protect American IPR in China, and to reduce the export of infringing products made in China, through a variety of mechanisms – including results-oriented dialogue on IPR protection and enforcement, the annual Special 301 Report, and enforcing international rules to protect American intellectual property and market access through the WTO. The Administration will continue to pursue this strategy in close coordination with other relevant U.S. agencies, stakeholders, trading partners, and Congress. In addition, USTR works closely with the U.S. Intellectual Property Enforcement Coordinator's Office, and the U.S. Department of Homeland Security –including U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement --, among many others agencies, to consider additional steps the United States can take to protect ourselves from these illegal and, in some cases, dangerous imports.

## **Question 2**

Last year China prohibited all fresh apples from Washington, Oregon and Idaho, claiming sanitary and phyto-sanitary issues. Since that time the Chinese market has remained closed, despite efforts to find a protocol that is acceptable to the Chinese, including inviting a Chinese scientist to Washington to tour apple orchards and processing facilities. What actions is USTR taking to open China's market to U.S. apple varieties and fresh potatoes?

### **Answer:**

China maintains a suspension on shipments of apples from Washington State due to sanitary and phytosanitary (SPS) concerns, although China continues to allow imports of apples from Oregon and Idaho. To address this suspension, USDA hosted a Chinese technical delegation to discuss an acceptable protocol which would address the fungal pathogen issue. USTR continues to work with USDA and China to resolve this issue. USTR also continues to raise the importance of market access for fresh U.S. potatoes with China in our bilateral trade meetings.

## **Questions from Senator Burr**

### **Question 1**

The EU committed under the 2009 US/EU Banana Agreement not to return to discriminatory and restrictive banana tariff rate quotas and licenses, but has recently approved new legislation requiring licenses and quantitative limits on banana imports from certain Latin American countries. In view of the United States' right under the 2009 Agreement not to settle the case if the EU is not in compliance with its 2009 commitments, please explain how these new arrangements will be administered in the EU and covered countries, what administrative requirements are still unknown, and what steps USTR is taking to maintain all U.S. legal rights until full compliance can be assured.

**Answer:**

We have been in frequent contact with representatives of the two U.S. companies, Chiquita and Dole, who have expressed the greatest interest in developments connected to the EU's bananas trade.

At the companies' request, we have approached the European Commission and the governments of Costa Rica and Panama in an attempt to clarify how the bananas-related requirements of the EU-Central American free trade agreement (FTA) will be implemented in practice. We have repeatedly made the point to all concerned that the implementing measures should not place new burdens on U.S. firms.

We have been informed by the European Commission and by officials of two of the Central American exporting countries that FTA bananas-related requirements are not designed to be burdensome on U.S. company operations.

Since these requirements are not yet being implemented in practice (the FTA has not yet entered into force), we will need to monitor their implementation in the months ahead and will remain in contact with both European and Central American officials to clarify our understanding of the process.

The U.S.-EU Bananas Agreement entered into force on January 24, 2013. Under the terms of the Agreement, the U.S.-EU WTO dispute settlement proceeding "shall be settled as between the United States and the EU... (i)mmediately after" the various bananas-related disputes and claims are settled between Latin American banana exporting countries and the EU. On November 8, 2012, the EU and Latin American countries announced they had settled those disputes and claims.

The Agreement further provides that the requirement to settle the U.S.-EU dispute settlement proceeding will not apply if the EU fails to fulfill the undertakings to which it committed under paragraph three of the Agreement (i.e., application of an MFN tariff-only banana import regime and no application of any measure that discriminates between suppliers of banana distribution services).

Before taking any action to settle the U.S.-EU dispute settlement proceeding, we will consider whether the EU has failed to fulfill these undertakings.

**Question 2**

The Administration has said that USTR is proceeding with the Trans-Pacific Partnership Agreement as if it has Trade Promotion Authority (TPA), and the most recent version of TPA spelled out that in the case of intellectual property rights, the objective was to obtain a standard of protection similar to that found in U.S. law. Current U.S. law regarding data-protection for biologics is set at 12 years, and Congress voted specifically on that issue. If you are operating as if you have TPA, why have you not sought the 12 years as set by current U.S. law during these negotiations?

**Answer:**

We share a clear appreciation that biologic drugs are a vital area of pharmaceutical innovation, now and in the future. We have been discussing this issue with our trading partners, Members of Congress, and with stakeholders. We have not made a specific proposal for a longer term for biologics pending further discussions with our partners on how this issue should be included in the agreement. We appreciate your continuing input on this important issue as those discussions continue.

**Question 3**

Last year, USTR proposed a “safe harbor” for tobacco in the Trans-Pacific Partnership Agreement. This proposal would have wide implications for the American economy as it sets a precedent for how other sectors may be treated in future free trade agreements both by the United States and other countries. Has USTR made a decision on this proposal? Will Congress be consulted before any language on this is tabled?

**Answer:**

We received significant input from Congress and stakeholders on how to treat tobacco and tobacco products in the TPP negotiations. Last year, we developed an initial draft proposal, which we discussed with Congress and stakeholders. We are considering their feedback on this proposal and have not yet made a decision on how best to proceed. As with all other proposals we have developed for TPP, we will consult closely with Congress before tabling any text for the TPP negotiations.

**Question 4**

Last year after the UN’s Codex Alimentarius adopted science-based maximum residue levels (MRLs) for ractopamine, the government of Taiwan approved a maximum residue level for ractopamine in beef. However, the government of Taiwan did not revise its position on U.S. pork. What actions is USTR taking to address this?

**Answer:**

Taiwan continues to prohibit imports of pork with residues of ractopamine. We continue to press Taiwan to adopt international standards for ractopamine in pork, at every opportunity. Ambassador Marantis stressed the importance of resolving this important issue with Taiwan trade and agricultural officials during the March 10 meeting of the Trade and Investment Framework (TIFA) Council and reiterated this message in bilateral meetings, including with Taiwan President Ma Ying-Jeou.

**Questions from Senator Enzi****Question 1**

At the December 2012 Joint Commission on Commerce and Trade (JCCT), the United States and China agreed to hold further discussions in 2013 to “work toward a mutual understanding of China’s VAT system.” The experience of the U.S. soda ash industry has been that China’s manipulation of its VAT rebate distorts trade. What are the U.S. objectives for the VAT rebate discussion? When will the talks will take place, and does the U.S. anticipate it to be an ongoing dialogue?”

**Answer:**

At the December 2012 JCCT meeting, China agreed to hold discussions with the United States regarding China’s VAT system. The Administration intends to use these discussions to work toward a mutual understanding of the concepts on which a trade-neutral VAT system is based and the impact of China’s VAT system on energy conservation, emissions reduction and trade.

In a normally functioning VAT system, the VAT operates in a trade-neutral manner. That means that the VAT is automatically rebated in full for all exports. However, China uses different VAT rebate rates on exports for different sectors and for different products within a sector. The differences in tax burdens between products can significantly distort normal production and trade patterns, as we have seen, for example, in the steel, aluminum and glass sectors.

Through our discussions with China, we intend to address the advantages of a trade-neutral VAT system and to explain the impact of China’s VAT rebate policy on trade. We also intend to explore with China whether its VAT rebate policy has been successful in achieving the goals that China has invoked in pursuing that policy, i.e., energy conservation and emissions reduction.

It has been envisioned that the discussions will begin in China in the first half of 2013. However, no discussions have yet been scheduled

**Question 2**

As you know, Canada has repeatedly been on USTR’s Priority Watch List due to its weakness in a range of areas related to IP protection. For example- just related to the biopharmaceutical industry alone, Canada remains one of the only industrialized countries not to compensate innovators for lost effective patent life due to the regulatory approval process. Likewise, the courts in Canada have created a heightened standard for patentable utility for pharmaceuticals that raises uncertainty as to how much information needs to be disclosed in patent applications. This standard is inconsistent with common practice in the U.S. and international obligations against discrimination on the basis of field of technology. Additionally, innovative companies do not have the same rights of appeal as afforded to generic producers in the patent challenge procedure. Countries like Canada that choose not to bring their IP standards in line with other countries pose a great risk to American jobs and economic growth—how do you intend to deal with these issues in the context of Canada’s entry into TPP negotiations?

**Answer:**

As you know, we have had longstanding concerns on IP issues with Canada, as well as some recent notable improvements. With respect to the emerging utility test that Canadian courts have

been applying to pharmaceutical patents in some cases, we are troubled by the negative consequences this test is having on U.S. patent holders. USTR is working with representatives of the affected companies and industries to ensure that we fully understand the issue and its possible solutions, and to engage with the Government of Canada with a view to ensuring that U.S. inventors continue to enjoy adequate and effective protection of patent rights in Canada in line with relevant international norms.

### **Question 3**

We've heard a great deal about the challenges faced by US business due to Indian government policies. Many have compared India's policies to China's – and feel that these policies are removing opportunities for market access in this growing economy of 1.2 billion people. These market access challenges are not limited to one industry – but are impacting agriculture, the biopharmaceutical industry, technology companies, and others. India has the potential for enormous US commercial interaction, but many improvements are needed to level the playing field between our two countries. Ambassador Marantis – I know that India has been a focus of your work as Deputy USTR -- what are USTR's plans over the next year to combat the increasing challenges we face in India?

#### **Answer:**

We recognize the significant potential as well as challenges presented by the Indian market, and share your concern about recent policies that have increased those challenges for U.S. firms across sectors.

We are taking a comprehensive approach to addressing these challenges. This includes engaging the Indian government bilaterally in regular trade and investment discussions as well as in other bilateral fora such as the US-India Energy Dialogue and the Information and Communications Technology (ICT) Working Group. Working with like-minded trading partners, we are also actively pressing India on these issues in the WTO, where we have received active support from a range of WTO Members. We are also encouraging India to be more constructive in working to craft a small package for the 9th WTO Ministerial meeting in Bali in December 2013. Agreement on such a package, which would include an agreement on Trade Facilitation, would benefit U.S. firms in a wide range of sectors. Given India's recent trend towards adopting localization barriers to trade, we are also working through our TPSC Task Force on localization barriers to improve coordination and whole-of-government advocacy on this issue. Finally, we are exercising our rights under the WTO dispute settlement mechanism to help ensure that India's policies are in line with its WTO commitments.

### **Questions from Senator Nelson**

#### **Question 1**

Japan announced its intentions to join the Trans-Pacific Partnership negotiations last week. The United States ships more fresh grapefruit to Japan than it ships to any other country in the world.



The Japanese demand high quality and they pay the highest prices. Nonetheless, Japan maintains high tariffs on both grapefruit (10 percent) and grapefruit juice (27 percent or more). The inclusion of Japan in TPP negotiations is a great opportunity for our citrus producers. I understand some Members are already voicing opposition to Japan's participation in TPP talks. Such talk may be premature. The more inclusive we make this agreement, the more we can increase exports and create jobs here at home. Is the United States committed to including Japan in the TPP negotiations? Are there any specific, substantive preconditions to Japan joining the TPP talks, other than an agreement to accept what has been negotiated thus far?

**Answer:**

Bilateral consultations with Japan remain ongoing to assess Japan's readiness to meet the comprehensive, high-standard objectives of the TPP agreement, as well as to address bilateral issues of concern. As a result, no decision has yet been made with respect to whether the Administration is able to support Japan's candidacy for TPP membership. The Administration remains fully mindful of the potential benefits, as well as of the serious concerns raised by Members and U.S. stakeholders about Japan's possible participation in the TPP negotiations.

**Question 2**

I have long supported the Administration's pursuit of a transatlantic free trade agreement with the European Union. What do you believe such an agreement could do for service sector jobs, such as those in the travel and tourism industry? What are the United States' primary objectives with respect to opening up the European Union's services sector?

**Answer:**

Our primary objectives for the TTIP agreement as it relates to services are improving market access for cross-border services, financial services, telecommunications and e-commerce, and establishing commitments for transparency, impartiality and due process with regard to authorizations to supply services. Given the historic openness of both the European and U.S. services markets in most service sectors, as illustrated by the close integration of industries such as travel and tourism, the principle benefits will flow from increased legal certainty, improved regulatory cooperation, and establishment of a model of open trade in services for third countries.

**Question 3**

Some economists argue state-owned enterprises pose a significant challenge for U.S. companies looking to do business abroad, many of whom are not used to competing in non-market economies. First, how influential are state-owned enterprises in some of the Trans-Pacific Partnership member countries, such as Vietnam, Malaysia, and Singapore? Second, what should we do to ensure our exporters can compete in these countries?

**Answer:**

Many TPP countries, including Vietnam, Malaysia, and Singapore, have a significant number of state-owned enterprises, and the role they play varies by country. We agree that state-owned

enterprises can pose challenges to U.S. companies and for that reason have proposed new disciplines in the TPP negotiations to ensure that U.S. businesses are not disadvantaged. Our proposal seeks to address the unfair advantages that governments provide to state-owned enterprises that are primarily commercial in nature, compete directly with the private sector, and have an impact on trade or investment.

#### **Question 4**

On average, Americans pay much more for their prescription drugs than do our counterparts in other TPP countries. Do you have any insight into how our trading partners are able to significantly lower the cost of drugs, in comparison to our prices? Is there cost shifting across jurisdictions? If so, is there anything we can do through trade negotiations to ensure a more level playing field for U.S. consumers?

#### **Answer:**

A variety of factors affect drug prices, making it difficult to identify any single policy or factor. Broadly speaking, however, it is important that our trading partners maintain transparent and balanced systems that both respect and support innovation and provide clear pathways for generic market entry, often at lower cost, upon the expiration of relevant intellectual property protections that provide the incentives for initial development and commercialization. An effective, transparent, and predictable intellectual property system is necessary for both manufacturers of innovative medicines and manufacturers of generic medicines. For example, in the United States we maintain a robust intellectual property system, while at the same time approximately 75 percent of all prescriptions in the United States are filled by generic products and the United States boasts some of the lowest prices for generics anywhere in the world. In these respects, there are many features of the U.S. system that the U.S. Government would like to share with its trading partners to help them achieve an appropriate balance as well.

#### **Questions from Senator Portman**

#### **Question 1**

We understand that USTR is operating under the objectives outlined by the previous version of Trade Promotion Authority that lapsed in 2007. There was a TPA objective to obtain a standard of intellectual property protection similar to that found in U.S. law. I understand that current U.S. law regarding data-protection for biologics is clearly set at 12 years. Given this background, why has USTR refused to seek the 12 years as set by current US law during the Trans-Pacific Partnership negotiations?

#### **Answer:**

We share a clear appreciation that biologic drugs are a vital area of pharmaceutical innovation, now and in the future. We've been discussing this issue with our trading partners, Members of Congress, and with stakeholders. We have not made a specific proposal for a longer term for biologics pending further discussions with our partners on how this issue should be included in

the agreement. We appreciate your continuing input on this important issue as those discussions continue.

## **Question 2**

I have heard from many U.S. companies about the growing problem of the theft of trade secrets, and I understand that the Administration recently announced a broad initiative on this. Will U.S. negotiators consider using the Transatlantic trade negotiations to align US and EU interests on dealing with trade secrets, especially in relation to China?

### **Answer:**

On February 20 of this year, the Administration announced its Strategy on Mitigating the Theft of U.S. Trade Secrets to continue and to enhance U.S. Government efforts to stop the theft of U.S. trade secrets by foreign competitors or foreign governments. Reflecting the Strategy's commitment to sustained and enhanced international engagement with trading partners, the United States has coordinated closely with the European Union (EU) on this critical issue, including as a priority agenda item in the Transatlantic Intellectual Property Rights Working Group. Through such transatlantic engagement, we have found a significant convergence of interest, and have worked together to address specific concerns in third countries. We look forward to continuing to collaborate with the EU through all appropriate channels.

## **Question 3**

U.S. companies in a diverse range of sectors including manufacturing, Information Technology, telecommunications, and energy, are reporting that governments around the world are instituting new and discriminatory policies – known as local content requirements – designed to force American companies to manufacture locally, purchase from local suppliers, or to put them at a disadvantage compared to their domestic competitors. I understand that the Administration has created an interagency working group on localization barriers to trade to study the problem of local content requirements and develop solutions. What specific enforcement steps will you take to roll back these policies, protect the international rules-based trading regime, and ensure that U.S. companies can compete fairly in critical markets around the world?

### **Answer:**

The Administration is determined to ensure that rules-based international trade promotes innovation and competition to the benefit of all businesses and consumers worldwide. That is why the Administration is tackling emerging problems that increasingly affect trade in the 21st century, including the serious threat to U.S. manufacturers and service suppliers from localization barriers to trade.

We are actively combating “localization barriers to trade” – i.e., measures designed to protect, favor, or stimulate domestic industries, service providers, and/or intellectual property (IP) at the expense of goods, services, or IP from other countries. The use of these measures has increased in the last few years, especially in some of the world's largest and fastest growing markets.

Building on progress made in 2012, the TPSC taskforce on localization will coordinate an Administration-wide, all-hands-on-deck approach to tackle this growing challenge in bilateral, regional, and multilateral forums, and through trade agreements, enforcement, and policy advocacy. This approach includes working with stakeholders in the United States and like-minded trading partners to (1) multilateralize work to address localization barriers to trade; (2) promote global-level policy approaches that offer better ways to stimulate job creation and economic growth than localization barriers, and (3) make the analytical case against localization barriers.

## **Questions from Senator Wyden**

### **Question 1**

Foreign suppliers are taking advantage of lax enforcement of anti-dumping and countervailing duty laws at our border. These suppliers, often Chinese, are routinely evading duties -- they are cheating -- and Customs and Border Protection isn't using the tools that Congress already provided it to stop the cheats and collect the AD/CV duties. As a result, this committee, in strong bipartisan fashion reported out the ENFORCE Act, which would establish consistent disciplines for how CBP addresses duty evasion. It provides clear timelines and a clear mandate to use its tools to collect the duties that protect American jobs. Is it your view that legislation such as this would be helpful to enforce the trade laws and give confidence to American producers that the trade agenda is working for them, too?

#### **Answer:**

Strong enforcement of our trade remedy laws is an important priority for this Administration to ensure a level playing field in the United States for workers, farmers, ranchers and businesses. A key element of that is strong and effective border enforcement. It is my understanding the Finance Committee is currently working with you to advance elements of your bill. We stand ready to work with you and this Committee, along with the Department of Commerce and CBP, to address the shared goal of ensuring that our trade remedy laws are being enforced in the most effective way possible.

### **Question 2**

As the Chair of the Energy and Natural Resources Committee, I can tell you that new environmental and related economic challenges are surfacing every day. It's true at home, if you look at the debate over fracking and oil and natural gas. It's true when you look abroad, too, and see logging and fishing practices that are not only bad for the environment but also create an unlevel economic playing field upon which American producers must compete. What is the USTR seeking in the TPP negotiations that would respond to these types of new challenges?

#### **Answer:**

The Administration is seeking a high-standard, comprehensive agreement in the TPP negotiations. In doing so, we have worked with Congress, stakeholders, and agencies to develop innovative environment proposals appropriate to a 21st-century agreement. In response to new trade and environment challenges, we have proposed environmental commitments to address trade in illegally taken wildlife and illegally harvested timber, and harmful fisheries subsidies

and illegal fishing practices. Our proposals for the TPP environment chapter are mutually supportive of both our environmental and economic objectives and demonstrate our commitment to addressing 21st-century challenges.

### **Question 3**

I and others remained concerned about the degree of transparency in trade negotiations, particularly around areas where there is a real public interest, like issues that could impact Internet freedom. In many areas, the Obama Administration has made great strides in recognizing and relying on the value that the public provides in policy making. Will the USTR work with me and with other stakeholders to identify new ways in which the public can be more informed and involved in the trade negotiations, particularly those that may affect the Internet and the digital economy?

#### **Answer:**

Transparency in our trade negotiations is a priority for this Administration. The USTR and other senior USTR officials have met with numerous stakeholders representing a broad range of views over the past four years, and will continue to do so. In the last year alone – in Washington and during domestic travel – we have engaged on a number of occasions with individuals from labor, agriculture, small and large businesses, women-owned businesses, local elected officials and non-governmental organizations through briefings and meetings to hear their views and to share more information about our trade policy. We will continue our outreach efforts while seeking ways to improve and increase stakeholder participation – particularly with regard to the emerging issues that we are seeking to address in a balanced fashion in new, 21st-century trade agreements.

### **Question 4**

Do you believe that free trade agreements should require our trading partners to establish Intellectual Property Rights that exceed U.S. law and require an enforcement regime that is more punitive than U.S. law? Do you believe that free trade agreements should limit the flexibility of Congress to address the challenges posed by new technologies, such as adopting a permanent exception to the Digital Millennium Copyright Act to allow cell phone unlocking?

#### **Answer:**

Congress has set out U.S. IP laws in these areas, and the Administration does not feel it is appropriate to exceed those existing U.S. laws. With regard to the Digital Millennium Copyright Act (DMCA), U.S. free trade agreements follow the strong and balanced approach that Congress established in that legislation, and provide flexibility for new exceptions to technological protection measures in the same way that Congress provided that flexibility in the DMCA.

### **Question 5**

President Obama notified Congress on January 15 of the Administration's intent to enter into the International Services Agreement negotiations with 20 other countries. Most people are aware of the TPP and the EU-US FTA but I'm concerned that the administration has yet to put as much emphasis on the International Services Agreement upcoming negotiations. The ISA negotiations are the most promising opportunity in two decades to advance services trade internationally. This is among the nation's first opportunities to establish disciplines specific to

digital services, one of the most promising sectors of the American and global economy. What assurances can I get from you that the Administration will put as much effort on the ISA negotiations as it does on the TPP and the TTIP and can you give some ideas as to how the Administration is planning to engage with Congress during the ISA negotiations?

**Answer:**

The Administration views the negotiations for a Trade in Services Agreement (TISA) as one of the pillars of our efforts to open markets for U.S. exporters. Led by Deputy USTR Punke, we have been working to develop the concept and build support among other parties for over two years. This effort is bearing fruit as 21 other economies are now prepared to move to the next phase of formal negotiations.

In launching negotiations, we recognize that the hard work is just beginning. We are confident that we have the skilled personnel to negotiate this agreement in parallel with the TPP and TTIP. At USTR, we are accustomed to working in multiple venues simultaneously and within tight budgets.

With regard to consultations with Congress during the negotiations, we plan to continue the practice applied during the TPP negotiations, which includes regular briefings of committees with jurisdiction on services matters.

**Question 6**

I am pleased that the President continues his focus and emphasis on doubling U.S. exports by 2015. Congress has been actively exploring ways to help increase U.S. exports. More than 50 years ago, Congress recognized that when US components are used to manufacture goods abroad and returned, tariffs should not be levied on the US content of the returned good. Such recognition is provided for in Chapter 98 of the Harmonized Tariff Schedule. However, I have learned that U.S.-formed yarns and US formed fabrics are not benefitting from this provision. My state enjoys significant yarn and textile production that is being discriminated against under this provision. I want to ensure that all our manufacturers are able to benefit from the long standing tariff provision that does not levy US import tariffs on US inputs. Would USTR agree that expanding currently existing programs to include additional product coverage to benefit US manufacturers would aid promoting exports for US goods?

**Answer:**

We are very pleased, and stand ready, to examine proposals from Members of Congress and U.S. manufacturers on ways to increase production and exports, in a manner consistent with our trade policy, free trade agreements, and preferential trade arrangements.