OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (USTR)

PROMOTING SUPPLY CHAIN RESILIENCE

Tuesday, May 28, 2024, 10:00 AM ET

Ted Weiss Federal Office Building
30th Floor Conference Center, Conference Room 2
290 Broadway
New York, NY 10007

MR. BAN: All right. Good morning, everyone, and welcome to this public hearing on promoting supply chain resilience convened by the Office of the United States Trade Representative. I'm Victor Ban, Special Counsel at USTR.

MR. GUNDERMANN: I'm Chris Gundermann, Director of Intergovernmental Affairs and Public Engagement.

MS. OETKEN: I'm Jennifer Oetken, Director for Labor Affairs at USTR.

MR. BAN: On behalf of our colleagues at USTR and our partners across the interagency, I want, first and foremost, to express our sincere gratitude to our witnesses. Thank you for taking the time out of your day to participate in this public comment process, and for sharing your views at this important inflection point in the development of U.S. trade policy. I'll note for the record that we're joined today remotely just via audio by a few colleagues from USTR and from the interagency, not from the public, but they're just listening in remotely from Washington.

Before we get started, I'll offer some brief opening remarks. First of all, USTR's Federal Register Notice of March 7th, provides an overview of how the

agency understands supply chain resilience, and its significance within a broader shift in U.S. trade and investment policy away from a focus on short-term cost efficiency and tariff liberalization. As the notice explains, the question of how to enable supply chains to bounce back quickly after crises or disruptions is important, but it's only one dimension of resilience. For USTR, supply chain resilience is multifaceted, encompassing transparency, diversity, security, and sustainability. So what does this broad vision of resilience mean in practical terms when it comes to formulating trade and investment policy?

That's why we're here today. We want to understand from all of you where the challenges and pain points are and where potential solutions may lie, whether through existing trade tools or new ones. Importantly, we don't want to limit this hearing or the public comment process more generally to USTR's existing trade policy strategies and approaches. We certainly welcome any discussion of existing tools. But USTR's invitation was more open-ended, and we welcome blue sky thinking about possibilities for the future. Thank you all for accepting that invitation and for joining us here today.

That brings me to my last point. Amid all

the heightened policy interest in supply chain resilience, it's important that we, as the federal government, recognize that the actual building of supply chains isn't the sole work of the government. Rather, supply chains are born through the collective efforts of workers, businesses large and small, communities, and civil society, enabled by sound government policy. We need your partnership and expertise to develop thoughtful and durable policies and to help all Americans prosper and thrive.

In this spirit, in addition to this hearing, we convened in Washington, D.C., four weeks ago for a public hearing, and we then held a hearing in St. Paul, Minnesota. And additionally, last week, we convened virtually for a third public hearing.

Thank you again for being here and for working with us in this endeavor.

MR. GUNDERMANN: Just a few process points before we get underway. The agenda for today will -- is posted on the USTR website. You can just go to ustr.gov, and under trade topics, you'll see a tab for supply chain resiliency. And the agenda is linked on that page.

Second, the run of show is that we'll first receive all testimony from the witnesses in

alphabetical order as shown on the agenda. This will ensure that each witness can speak for the allotted eight minutes before we move on to questions. In responding to questions, do please try to be concise so that we can proceed and hear from all witnesses for both panels. A word about transcripts. We have a court reporter joining us -- joining us today who will prepare a transcript of today's hearing. USTR intends to post this transcript on our website as soon as possible after the conclusion of this hearing, and given that we are preparing a transcript, please try to speak clearly. And so before -- and so before we begin your testimony, please state your name and introduce yourself. Note that last week we posted the transcript for the D.C. and St. Paul hearings.

After the hearing, our docket will remain open until June 4th to receive post-hearing comments. Note that, as provided in our April 3rd Federal Register Notice, "USTR will permit any person to submit post-hearing comments so long as the comments respond to testimony provided at any of the four public hearings in this proceeding." So any person includes not only the testifying witnesses, but also anyone here who isn't testifying. You're all welcome to submit comments if you want to respond to anything stated

during this hearing or any other public hearing. If any witnesses are asked questions that require further research or factual information, it's also acceptable to state that you'll respond and follow up with a post-hearing comment.

And lastly, I want to acknowledge, though he's not here, the tremendous contributions of George Crews of the General Services Administration for his diligence and support in making this hearing come together. We are deeply appreciative of the GSA's time and location, so thank you very much.

MR. BAN: Great. With that, I'll turn it over to the chair of our first panel.

MS. OETKEN: Okay. Again, I'm Jennifer Oetken. I'm Director for Labor Affairs at the U.S. Trade Representatives. I'm going to be chairing this first panel. We will have five minutes of testimony from each of our witnesses, and then we'll move on to about 20 minutes of question and answer.

So we'd like to begin with Mr. Griffith.

If you want to start your testimony.

MR. GRIFFITH: Sure. Thank you. And -- and good morning, everyone. I want to thank you all for inviting me to speak on this very important topic. My name is Brendan Griffith, and I'm the chief of staff at

the New York City Central Labor Council, AFL-CIO.

As you know, New York City and the surrounding areas are a major economic hub for an incredibly diverse number of businesses, workers, and producers who are part of the global supply chains and beneficiaries of international trade and investment. So we understand in New York City, the importance of international trade to our local, our state, and our national economies.

For too long, our nation's trade and investment policies largely reflected the influence of powerful corporate interests. They protected what's important to Corporate America but did little to nothing to safeguard the rights of workers and the environment here and around the world. In the name of greater economic efficiency, they fueled a race to the bottom in wages and standards, where workers everywhere lost. Let me share some sobering statistics.

According to the Bureau of Labor Statistics, from the passage of NAFTA in 1994 through 2018, New York State lost 391,658 manufacturing jobs. This figure is for total manufacturing employment, so it takes into account both jobs created by exports and jobs displaced by imports. During the same period, 123,855 workers in New York State were certified as

having lost their jobs due to imports or offshoring under the Trade Adjustment Assistance Program.

That is why the New York City Central Labor Council, AFL-CIO has opposed and worked to defeat corporate-dominated trade deals, like the Trans-Pacific Partnership, or TPP. It is also why we strongly support the Biden administration's worker-centered trade policy that supports good jobs at home and sustainable development abroad. And we especially appreciate Ambassador Tai's emphasis on enforcing our trade laws already on the books to address unfair trade practices that create an unlevel playing field for workers and domestic producers.

As this current investigation notes, high-standard trade agreements and full enforcement of our trade laws are vital to creating more sustainable and resilient supply chains. In New York City, we all too well remember the shortages of personal protective equipment faced by our healthcare workers, including unionized nurses and others, and all of workers on the front lines. So I'd like to commend the administration for connecting the dots between trade policy and rebuilding our nation's manufacturing base, especially in sectors that are critical to our economic and national security. We simply cannot afford to lose the

ability to produce PPE, lifesaving drugs, and other products in the name of corporate efficiency.

Let me wrap up with some thoughts on the importance of sustainable and resilient supply chains to the green energy transition. I'm proud to say that New York City and New York State are leaders in promoting a just transition to clean energy that creates good union jobs. One example I'd like to highlight is the project labor agreement signed between the New York City Building & Construction Trades Council and offshore wind company called Ecuador -- Equinor. As a result of this agreement, some of New York's first offshore wind hubs will be built with union labor. This is the kind of high-standard trade and investment that we need more of to ensure our green energy supply chains and projects are resilient and sustainable.

Let me stop here, and I look forward to any questions you might have. Thank you.

MS. OETKEN: Thank you.

Now we'll go to the testimony for Mr. Weinhold.

MR. WEINHOLD: Good morning. Thank you for providing me the opportunity to testify. My name is William Weinhold. I'm the plant chairman of UAW Local

74. I traveled just over 1,000 miles to join you today. I'm from the heartland of this country in Ottumwa, Iowa, and I work at the -- at the John Deere Ottumwa Works. We've built agriculture equipment in Ottumwa for 113 years strong. We are proud of that fact. I've worked at John Deere for 20 years. I started at Ottumwa Works when I was 33 years young. I come from the skilled trades and started at John Deere as a machine repairman. Two of my sisters, my brother-in-law, and my sister-in-law also work at John Deere Ottumwa Works. The union jobs we fought for at Ottumwa have sustained my family and will continue to long into the future.

We've had a union in Ottumwa since 1942. That's 82 years running. For generations, our union has fought to secure high wages, good benefits, and job security for the now 600 workers at the Ottumwa plant, and nearly 12,000 union workers at the John Deere plants across Iowa, Illinois, Kansas, and John Deere distribution centers in Colorado and Georgia and Illinois.

In Ottumwa, my union brothers and sisters and I build hay balers, forage harvesters, and windrowers. They're the massive pieces of farm equipment that you see in the fields when you drive by different fields in

-- in the Central America. Our worker ensures that this country has food on the table and gas at the pump. American farmers and the crops they produce rely on the union labor for reliable, state-of-the-art equipment and make possible the nearly 400 million acres of farmland they cultivate every year using the machines that we make, touching everything from the ethanol in our gas, the feed for our livestock, and the starches, oils, and sweeteners in our food. UAW-made farm equipment is the central link in the supply chain.

But as I hope to demonstrate today, the strong link of union workers that drive the supply chain is and has always been under constant threat of breaking. The present, yet rarely mentioned, culprit is corporate greed and a billionaire class that wield it. Our link is whittled away with every outsourced job and with every threat of offshoring more. The corporate conduct is a clear and present danger to supply chain, and the days of getting off scot-free must come to an end.

The UAW -- UAW firmly believes that a resilient supply chain should be built from the bottom up. Because of the central role the union workers occupy in the domestic food chain -- supply chain, our nation's trade negotiations, enforcement, and overall

trade policy must promote supply chain resilience by putting these workers, workers like me, first, before all other competing consideration. The primary goal of our trade policy must be to protect and expand the domestic workforce against the corporate actors that seek to cut wages, bust unions, and offshore jobs.

With our historic standup strike, the members of the UAW not only provide -- or proved that -- their importance to the supply chain, but we also provided a model for what the effective trade policy could be. When UAW members walked off the job, we shut down the auto industry, disrupted the economy of billionaire class, while also raising the standards of workers across the industry at non-union automakers. We even forced the company to reopen a plant instead of shipping jobs to Mexico. It was working people standing together that prevented the company from offshoring 1,200 union jobs from Illinois to Mexico.

Our nation's trade laws provide no -- resource -- recourse. That needs to change. Our strike showed the corporate actors will never do what is best for the country and the American workers on their own. Corporate America only responds to economic consequences for their destructive behavior. Our trade policy must deliver real economic consequences to a

company if it decides or threatens to close a plant for offshore jobs.

We can see this most acutely at John Deere. In 2021, 10,000 UAW members waged in a month-long strike for a new six-year contract. We beat back the company's offers to make our jobs less secure, and consequently to make our supply chain less reliable. We won 20 percent wage increases to return -- and we returned to cost-of-living adjustments, and we kept our pensions.

But with every victory the workers collectively achieve, our country trade policy offers a trump card. It allows corporate actors to seek lower costs elsewhere, while still benefiting from the U.S. market, despite being used to toil crops on the American soil. The machines we build are increasingly being moved from our plants to be built in -- at factories in Mexico. Just a few months after we ratified our contract following the '21 strike, John Deere announced it was shipping tractor cab and mower conditioners to Mexico.

At that time, we were told that the USMCA would help prevent this from happening in the future. We were told the trade agreement would help blue-collar workers like us. Unfortunately, we are still waiting.

Unfortunately, two years later, we are back here to report more offshoring and the loss of more jobs at John Deere.

Just since March of this year, John Deere has announced layoffs of over 650 workers at our plants across the country, and instead of working with our union or even giving us advanced notice, the company has staggered these layoffs to avoid the threshold for compliance with the state and federal WARN Act requirements. This threat of offshoring is ever-present in the working people. Every time we try to fight back and organize or bargain for a better deal, the billionaire class threatens to offshore our jobs and destroy the communities. It is economic terrorism, plain and simple.

We cannot have a resilient supply chain when corporate actors are free to undermine the gains that workers achieve together. We demand a comprehensive approach to both trade and industrial policy that puts workers first. The USMCA's six-year review is two years away. We have 24 months to decide whether the working people of this country are best served by a trade regime that offers a race to the bottom, pitting workers here against workers in Mexico, or whether we need a different approach.

As the Biden administration considers its next course of action, we hope you look to our fight at John Deere, to the scores of other examples across this country where the working-class communities are left picking up the pieces of a shuttered plant, and resolve to never let it happen again. I welcome any of your questions.

MS. OETKEN: Thank you so much for your testimony.

I am going to start with a question for both of you. Just to reiterate, we really appreciate you taking the time to -- to testify today. So the -- the first question I have is whether or not you have suggestions for how the U.S. government can better incorporate worker and community voices into its policies on resilient supply chains?

MR. GRIFFITH: So yet -- I -- I -- first I will say, you know, I am -- I am, you know, a local advocate, part of a large infrastructure through the AFL-CIO and a more robust one, so I think my answer will be somewhat limited, but I can certainly expand on it in -- in comments after the hearing.

You know, I will say that hearings like this are -- are -- are very important to have workers' voices represented, and -- and, you know, working for

the AFL-CIO, I can certainly appreciate my role, but most important, I think, is having workers on the front lines of this, like -- like the UAW who are here, Mr. Weinhold, who is here, to speak to the very personal experiences that happen when we deal with trade that is not favorable to domestic production, to domestic workers.

MR. WEINHOLD: Could you repeat that question, please?

MS. OETKEN: Yeah. Just whether or not you have any additional suggestions for how the U.S. government could better incorporate worker and community voices into our -- our trade policymaking?

MR. WEINHOLD: I think just allowing testimonies like myself at hearings like this is a big advocate for our voices to be heard.

MS. OETKEN: Great. Another question that -- for -- for either of -- of the witnesses, if you have any additional recommendations how -- for how our trade tools and policies could be utilized to respond to supply chain challenges, or when we have supply chain crises?

MR. GRIFFITH: Sure. You know, I would just put a very strong emphasis on enforcement. You know, the rules that exist are only as good as their ability

to be enforced and to have very specific repercussions when those rules are not followed. If there is not only an unfair -- if there is an unlevel playing field, excuse me.

If there is an unlevel playing field, then domestic production, domestic workers are going to be coming from behind in the first place. And I would also just suggest that beyond creating a level playing field, ensuring that there is a robust investment in domestic manufacturing to help stimulate markets.

MS. OETKEN: And then one -- one final question from me is -- and this is really coming out of the -- the Federal Register Notice question, but if you have any additional recommendations that you would like to make today or in additional written testimony about how U.S. trade and investment policy can promote a race to the top in terms of stronger labor and environmental protections?

MR. GRIFFITH: You know, I would just refer to my previous answer, and say that I can certainly expand upon that in comments after the hearing.

MS. OETKEN: Thank you so much.

Victor, did you have any additional questions?

MR. BAN: Yeah. I do. So thank you both,

first for your testimony, echoing Ms. Oetken.

Mr. Weinhold, so I -- I -- I know you have been at John Deere for a few decades now, and I am interested in understanding a bit about how you make what you make at -- at your job.

Did the -- do the supply chains that support your work, are they running primarily through the U.S., or are there imports that enable you to manufacture at your facility, if you could speak to that?

MR. WEINHOLD: Yeah. So we have both. And so in the last few years, the imported parts that we are bringing into our facility have set us back on being able to do production and get the product out the door that we need, just because the supply chain had slowed down and there was no way to get parts to us, which, in turn, we made less money at that time because we wasn't able to work. We were laid off at different times because parts availability was it -- it wasn't there.

MR. BAN: And the disruptions were related to COVID or other factors.

MR. WEINHOLD: It started with COVID back in '19, and then things just slowly have started to get better. But it was a two or three-year delay since that happened that we were having supply chain issues,

and it directly affects our profitability when we can't put products out the door.

MR. BAN: And is there any move to -- to reduce the amount of dependency on imports or to shorten those supply chains, that you are aware of?

MR. WEINHOLD: Not that I am aware of. We have brought it up to senior leadership at the company that, you know, we probably need to in source some of this work that we have outsourced so that we have it available here, but they can get it done cheaper somewhere else, so.

MR. BAN: Aside from availability, are there other concerns that you have seen from your vantage point in terms of potentially risk or quality of supply?

MR. WEINHOLD: So we have seen quality issues when we moved product to Mexico before on our LSB, and we were getting some of those products back, and the quality was terrible. We ended up insourcing some of that work back into our factory.

It -- it just makes it tough to bargain for good wages when you got somebody on the other side that can undercut everything and we can get it all done cheaper and the corporations can maintain their profitability and the workers get nothing except for

loss of jobs.

MR. BAN: And you mentioned LSB. Can you spell that out?

MR. WEINHOLD: That is the large square baler that we build.

MR. BAN: And you testified earlier that -- that certain supply chains or products have moved offshore already, even in recent years. What is your sense of the reason for the portion that hasn't moved, that -- that has remained in the U.S.? Do you understand those products to be special or differentiated in some way that has enabled them to stay here?

MR. WEINHOLD: No. Not necessarily, and the fear is always there that those will move right along with everything else.

MR. BAN: So you testified about recent movements to Mexico, in particular. Are you aware that the products are -- that are manufactured there have already begun serving the U.S. market or are those -- is that production still in -- in the process of ramping up?

MR. WEINHOLD: It is -- right now, they are just getting ramped up down there. I am not even sure that they have been able to put a quality machine off.

Their production is quite a bit less than what our production rates are, so I don't know that they have been able to produce quite as much as we are.

MR. BAN: And do you have a sense of whether what is made at your particular facility is destined primarily for export or for the U.S. market's use?

MR. WEINHOLD: I think the most part, it is for the U.S. market.

MR. BAN: Okay.

MR. GUNDERMANN: I just have two quick questions that I am curious for both of your thoughts on.

The first one is Rapid Response Mechanism in the USMCA. I think it was a novel inclusion and curious how you think that is working, how you would like to see that modified, or expanded, or used in the future, more teeth. Any thoughts? Maybe both of you can go -- go to the first.

MR. GRIFFITH: Now I will be honest. I am -- I am quite -- not quite so familiar with that and -- and would need to do more research and -- and reply after the hearing.

MR. GUNDERMANN: Okay.

MR. WEINHOLD: Same.

MR. GUNDERMANN: And then just my second

question is just one Ambassador Tai loves to ask whenever she is meeting with folks. I am curious how COVID has led to lasting changes, or any lessons you have learned at your plant, or in your labor council, more broadly, going forward as we move into a new paradigm of thinking about outsourcing, reshoring. How has that changed?

MR. WEINHOLD: You can go ahead first, if you would like.

MR. GRIFFITH: Sure. You know, I -- I think that being on the ground in New York City during COVID, and in -- in my remarks, I wrote -- referred to a -- a lack of PPE really showed -- showed what I think people who are not in the labor movement, that -- that essential workers are really essential workers. If you are in the labor movement, I think that we always understood that healthcare workers, grocery store workers, workers who are -- are, you know, public facing on the front line of the economy have always been essential.

But COVID made that clear in a way I think many did not really -- did not realize. That being the case, I -- I think we are also coming to a place where we can acknowledge that society has short memories, and that workers are being continuously displaced, and --

and that designation of essential has since been forgotten by many.

We also know that -- I think, that working people realize that just having a job, you know, and it is not a good job, is not enough. Workers deserve good jobs with fair pay, good benefits with, you know, upward mobility, and COVID really showed that, you know, the -- there is certainly a recalibration of values that we -- working people deserve more. Working people are finding their voices. We are seeing organizing throughout this country.

Mr. Weinhold referred to the fight at the UAW. That was a fight that was not just for workers at the UAW at those three plants and not just for UAW workers at other plants, but for workers across this country. And we are seeing that in many other places. While not solely a result of COVID, I think COVID certainly allowed workers to find their power, find their voice, gave a glimpse to society of the value of working people, and now it is up to the labor movement to make sure that that value is not forgotten.

MR. GUNDERMANN: Can I add -- ask one quick follow-up?

MR. GRIFFITH: Sure.

MR. GUNDERMANN: What changes are you seeing

in how the labor movement is moving forward or new strategies or techniques based on the increased emphasis they got during COVID?

MR. GRIFFITH: Again, I think we are we -- we are seeing a lot of worker-led efforts in ways that we haven't before, and I think that's just a wonderful thing. You know, the voices of workers who are day in and day out experiencing the struggles that come from, you know, various policies' inclusion, and why we are here, and trade policy, that are seeing the negative effects of saying that we are not going to -- we are not going to stand for this anywhere. We are going to fight back. Our voice is as important as any voice at a corporate board meeting.

MR. WEINHOLD: I would just piggyback off of what he said, honestly. COVID -- the attrition rates in the factory during COVID, we ended up with a lot of people that didn't necessarily want to work, I guess. You start bringing people in. They didn't work very long, and they were gone, and the attrition rates were just crazy. We couldn't get people trained. We couldn't get people into the factory. Everybody was trying to get somebody to work for them, so the number of people that we could get at one time was terrible. I mean, we couldn't even find workers, and then the

workers that we did get at that time weren't the best workers in the world, I guess. It set us back quite a bit.

We still struggle now. We hired extra people back in those times to cover the attrition and to cover the people who were going to be gone and things like that, and we carried that burden of those extra workers for a while. And now, when we started moving all this stuff to Mexico, then we had to start laying people off and getting rid of jobs in the -- in the factory.

MR. GUNDERMANN: That's all I have.

MR. BAN: Mr. Griffith, a few questions, if I may. So you testified about the case of Equinor, I believe, this offshore wind project and the PLA that -- that came with that.

Can you unpack that a bit for us and explain how that success came to be and some of the key factors that have played into it?

MR. GRIFFITH: Sure. Yeah. I -- yeah. As -- as an agreement that was made locally between the New York City Building Construction Trades Council and Equinor, I think, one of the more significant factors is that, you know, the prevalence of union construction in -- in New York City and the high degree of training that goes into it.

While this is a new industry coming to the United States, New York City unions have the infrastructure to ensure that their workers have the training and the skills necessary to put out a -- a quality product. And I think that's one -- one significant aspect of it.

You know, I -- I think that, you know, another part of this is a realization from multinational companies that there is just -- there is no -- there is no workforce that can compete with unionized labor when it comes to, you know, construction of -- be it wind farms or anything else. Union labor gets it done successfully, gets it done with quality, gets it done the first time.

MR. BAN: Thank you. You also testified about rather striking job loss data that I believe you attributed to the period post-implementation of NAFTA, and I believe those were New York statewide data.

MR. GRIFFITH: Yes.

MR. BAN: Do you have any sense of the sectoral breakdown within those numbers, if some sectors were -- were impacted more than others within the state?

MR. GRIFFITH: I -- I don't, and I don't want to misspeak, but I can certainly respond in the

comments after the hearing.

MR. BAN: Relatedly, do you have any sense of going -- building on Mr. Weinhold's testimony, do you have any sense of whether the trends have changed in recent years, in particular after the conclusion of the USMCA?

MR. GRIFFITH: You -- I -- I -- I can't refer to specific numbers. I don't have that knowledge. What I would say, which -- and probably somewhat more than anecdotally, is that the attitudes have changed, and I think there's still a lot of work to be done for the trends to be moving in the direction that we want. As Mr. Weinhold explained, there's still a number of struggles for domestic manufacturing that we have to get through, but I know, you know, partnership between the labor movement, between pro-labor government, and between U.S. domestic manufacturers that, you know, want to help contribute to a domestic economy and a thriving -- thriving workforce, we -- we can work on those challenges.

MR. BAN: Thank you. And one final question, if I may. This relates to your testimony about the Equinor project, but of course, the -- the Biden administration has -- has provided much support to our domestic clean energy sector through the IRA and other

measures. Have you noticed any impact of that here from where you sit in New York? Are -- are there more, for example, construction projects relating to the energy sector?

MR. GRIFFITH: I -- I would say offshore wind certainly stands out as an example in the -- in the local New York area. Beyond that, I would -- I would want to do more research, and then -- then respond in the comments afterwards.

MR. GUNDERMANN: One additional question off of that is, going forward, we have seen that investment. Not referring to any specific figures, but what would you like to see going forward as we continue to -- IRA money continues to be unfurled and spent and factories are built. What have you seen that's been good so far, and what has been lacking?

MR. GRIFFITH: Sure. I -- I think the most important -- one of the most important parts of this is that it's tied to -- to very strong worker protections. You know, all of the investments have to be tied hand in hand with the creation of good jobs. Whether, you know, it's in New York City or beyond.

If that's not the case, then all we're doing is continuing, and I -- I believe the idea of the virtuous cycle might have been referred to before, but

we're -- we're looking at a vicious cycle where we're promoting low road jobs where, you know, companies are simply looking at profit as the primary motivator with no consideration for those folks that are working for them.

MS. OETKEN: I have -- I have one question for -- for either of the -- the witnesses.

Would you consider labor to be an essential component of supply chain resiliency? Or -- yeah.

MR. GRIFFITH: Yes. Enthusiastically, yes. And labor -- labor needs a seat at every table. You know, a strong labor movement, strong worker protections, the ability for workers to form unions are integral to supply chain resiliency.

MS. OETKEN: Any -- any final questions?

MR. GUNDERMANN: Nothing from me.

MS. OETKEN: Okay.

MR. GUNDERMANN: Unless there are any other thoughts on the infrastructure investments that you've been seeing over the past couple of years, I'd love to hear them. Anything that hasn't been touched on, on clean energy.

MR. GRIFFITH: No. I -- I -- again, I -- I will include more information and comments after this, but I do want to say that I appreciate the opportunity

to testify. Thank you.

MS. OETKEN: Well, thank you so much. That concludes our -- our questions. Thank you for your responses and for taking the time to meet with us today.

MR. BAN: We'll take a brief break and go off the record for a few minutes and transition to our second panel. Thanks.

(OFF THE RECORD)

MR. BAN: Back on the record at 10:53 a.m. All right. So we are a few minutes ahead of schedule, but seeing as all of our witnesses are here, I think we'll go ahead and kick off Panel 2.

Once again, Victor Ban, Special Counsel at USTR, and this is our second of two panels in New York City. We will go ahead and get started. As before, we'll proceed in the order shown on the agenda, and we'll be hearing from a wide range of witnesses and sectors.

So without further ado, we'll go ahead and get started with Mr. Boring. You have the floor.

MR. BORING: Thank you. I appreciate the opportunity to provide testimony here today. My name is Trey Boring. I am president of IMS Worldwide, Inc., which is a privately held consulting firm that works in

international supply chains, focusing a lot on U.S. bonded programs, specifically the Foreign Trade Zone program run out of the Department of Commerce.

What I wanted to offer up today is really just some of the experiences that we -- we've had with clients related to supply chain disruptions and the nature of what causes those. What I like to explain to clients, and to anyone, is that a supply chain is just like any other system that you build. Systems are fragile, and they are susceptible to disruption points based on many factors. But when you disrupt that -- those supply chains, what you disrupt is, generally, economic impacts to companies, to society, and to employees, as we heard from the first panel.

These disruptions are what we would love to avoid at any cost, but there are factors sometimes that you can't. One of the things that we look at is that supply chains are really built on a -- a few factors. I'll paraphrase with some here that -- the availability of resources is one of those factors. Costs, obviously, is another. Existing trade agreements and trade policies are also elements that drive companies to build supply chain models. And any impact to any one of those, obviously, will cause a potential disruption in what the company experiences.

We very often say that supply chains are impacted most recently by tariff regimes, 301s, 232s that were implemented in the previous administration. Pandemics. Obviously, the pandemic in 2020 caused a significant disruption to many supply chains. Regional conflicts. We saw that a little bit with the Ukraine and -- and Russian conflict. So regional conflicts certainly play a part. And, in essence, trade policies. One example more recently would be the forced labor, a policy that needed to be enacted, a -- a process that needed to be put in place, but the unintended consequence of some of those was the disruption of the supply chain for importers until they had an opportunity to catch up with the enforcement and be able to work through the issues that they were experiencing.

So the evidence that we have in all of this really is that supply chains don't change on a dime. In many cases, supply chains take, optimistically, weeks, more often, months to years to change. We saw that with 301, and the fact that the Chinese tariff regime pushed a lot of companies to go back and look at their contracts, their P.O.s, the things that establish these relationships for manufacturing in other countries.

And in the last, you know, four to five years, you have seen changes where companies have moved out of China, but it has taken that amount of time. People were not able to move quickly to -- to -- to address those issues. But basically what we look at in -- in a lot of these is that we know that the government and the administration, Congress, they all look at very -- very specifically the why questions. Why do we need adjustments to trade policy? Why do we need trade agreements? Those are very valid questions that need to be answered.

I think my only recommendation in my testimony is the how questions also need to be considered in many cases when we implement certain elements of trade policy. How it will impact employees, as our previous panel mentioned. How will it impact domestic manufacturing. How will it impact U.S. companies that employ individuals, and more specifically and dear to what I do for a living, is how will it impact companies that utilize special trade programs, such as the Foreign Trade Zone Program.

Many of the implementation rules that we have seen have driven negative impacts to companies that are not only committed to U.S. locations and U.S. employment, but use the program such as the Foreign

Trade Zone -- or programs, such as the Foreign Trade Zone Program, to incentivize the operation remaining in the U.S.

And when we have a policy that comes, that negatively impacts foreign trade zones more so than it does a regular importer, you know, you're impacting organizations that have half a million people employed in them, that do just over a trillion dollars in imports into the U.S. every year, according to the 2022 Foreign Trade Zones Board report. They do just under 1.62 million, I believe, was the number in 2022 of exports. So these are major players, major importers, many of which are your most compliant in the government. They are CTPAT participants. They are participants in other trade-related programs that are run by the Customs and Boarder Protection.

So these -- these are things that we think would help as trade policy is being debated, is asking, at points, the how questions. How will this impact our current industry, et cetera. I think those are going to be the main things from a trade policy perspective that will absolutely assist us in being a more resilient supply chain as a nation.

MR. BAN: Thank you, Mr. Boring.

We'll move next to Mr. Gutterman.

MR. GUTTERMAN: Thanks so much for the time to testify. My name is Lucas Gutterman. I'm the Designed to Last campaign director with U.S. PIRG or the Public Interest Research Group. I want to provide some comments on critical minerals and electronic waste.

So critical minerals are needed for lifesaving medical devices, our country's green transition, and many other essential products. Their importance makes it all the more absurd that Americans are throwing away these valuable and finite resources in the form of electronic waste at the rate of eight million tons each year.

Electronic waste is the fastest growing waste stream in the world, and the U.S. generates more than nearly every other country in the world as well. So PIRG advocates to reduce harmful or needless manufacturing, reuse what we've already produced, and recycle the rest until we achieve zero waste. In the electronic space, we campaign for the right to repair, which removes barriers to repair and reuse, including allowing farmers to repair their John Deere tractors, as we actually heard about in the last panel.

We also work to ensure that all the products that we use are designed to last and not part of an

endless treadmill of disposable devices. We've been campaigning more and more around electronics because of the unique ways that electronic manufacturing, e-waste, and the extraction of critical minerals powering these devices threaten our health, climate, and environment. To address concerns around finite, valuable, and necessary critical minerals, our first step should be to stop wasting materials by manufacturing them into unfixable and disposable devices.

The United Nations 2024 Global E-waste Monitor found that rare earth elements are critical for future green technologies, but less than 1 percent of our supplies actually come from recycling. Rare earth elements are critical minerals used in magnets, memory storage, electronic cars and buses, e-scooters, and other necessities for a future without the air pollution that causes climate change, yet 99 percent of these elements being used to meet demand actually come from extraction, while less than one percent are from recycled materials. Our current recycling system is just not capable of creating a circular economy for these elements.

Instead of opening new, destructive mining operations, we should stop wasting the critical minerals we use in products that are destined for the

dump. Too many consumer electronics have glued-in batteries that act as timers counting down their lifespan. No device with consumable batteries that can't be replaced -- or no device should have these consumable batteries that can't be replaced when they die.

These products, including Apple AirPods, aren't designed to last. They're taking rare Earth elements such as neodymium and dysprosium with them to the landfill. And after disposal, neodymium can cause adverse health effects, and dysprosium can actually present an explosion hazard.

I want to mention another product as well, which is vapes. The Global E-waste Monitor announced that vape waste is a major e-waste contributor. It's getting worse. Disposable cigarettes, better known as vapes, have become a really pervasive part of our society. The vape market is expected to grow by 31 percent annually until 2030, and vape waste could grow at an equally dangerous rate.

Nothing we use for a day or two should pollute our environment for hundreds of years. And according to CDC Foundation sales estimates, lining up the disposable vapes sold a year would stretch more than 7,000 miles, which is enough to span the

continental U.S. twice.

Because of their nicotine residue and the glued-in batteries, there's just no standard legal way for consumers to recycle these products, meaning many of them just are tossed into landfills, and the critical minerals that they contain are lost as well.

So U.S. PIRG Education Fund's vape waste report found that Americans throw out 4.5 disposable vapes per second. The United Nations found that the vape batteries produced in 2022 contained 286,000 pounds of lithium. Mining for and disposing of this element could have really negative environmental repercussions.

The report points out that although lithium recycling is technically feasible, it's not economically viable under current conditions. In 2022, only 13,000 pounds of lithium was recovered from all e-waste. That's less than five percent of the lithium needed just to power disposable vapes sold that year.

Dozens of countries around the world have banned disposable vapes. In the U.S. lawmakers across the country have introduced some 48 bills that ban, partially ban, or implement recycling programs for vapes. We need to ban these disposable vapes that are wasting our finite resources and retailers, and

franchisees like 7-Eleven, Mobil, CITGO, and others that have received warnings directly from the U.S. Food and Drug Administration should also stop selling these products.

So the upshot is that we need to start with reduce, reuse, repair, and recycle. The U.N. E-Waste Monitor found that electronics manufacturing is growing five times faster than recycling. Even though global recycling is growing at a rate of 30 billion pounds per year, it just can't keep up with our insatiable manufacturing of electronics.

The only way recycling can work is if we manufacture much less, starting with the stuff that shouldn't exist at all. Right now, only 22 percent of global electronic waste is recycled, and so our social norms of buying, using, and tossing phones, laptops, and other electronics just can't continue at this rate.

The first step to resilient supply chains is to stop throwing out the valuable and necessary critical minerals used to manufacture short-lived products with glued-in batteries and limited life spans. Consumers and the environment deserve better than a world where nothing is designed to last. So our supply chain resilience policy should focus on reducing, reusing, and recycling the electronics that

require critical minerals before engaging in more damaging extraction.

By slowing the flow of e-waste and extending the life span of a wide variety of products, we can reduce pressure for new forms of mineral extraction and lay the foundation for a sustainable circular economy and critical minerals for decades to come. So thanks so much, and I welcome questions.

MR. BAN: Thank you, Mr. Gutterman.

We'll hear next from Ms. Jaeger.

MS. JAEGER: Yes. Good morning, and thank you for the opportunity to be here today and testify and share our views. My name is Kathleen Jaeger, and I am the president and CEO of the Center for American Medicine Resiliency. It's a nonprofit -- bipartisan nonprofit dedicated to restoring medicine resiliency, which to us is synonymous with health resiliency, and also which is fundamental to our national pursuits such as, you know, food insecurity, energy resiliency, and CHIPS.

So in -- in 2021, the White House actually issued the executive order 141 -- excuse me -- 14017, which identified at least four critical sectors. And from there, we saw energy, batteries, semiconductors, and pharmaceuticals. And then subsequently, the U.S.

passed the CHIPS and Science Act, allocating $280 billion to drive semiconductor resiliency to support clean energy and biotechnology.

And then we saw the National Biotechnology Act invest $2 billion to enhance domestic biotechnology and bio manufacturing. And then in 2022, we saw the nation further invest in the Inflation Reduction Act to bolster domestic energy production and manufacturing.

Yet despite these investments, the critical sector of affordable medicine remains unaddressed. So every day, you know, we are delaying, we're actually effectively providing one of our -- a very adversarial nation the opportunity to compromise our national security. This is a very clear and present danger, a danger to the United States, the United States health infrastructure, our economic prosperity, and military readiness and national defense.

Since 2019, the U.S. China Security and Economic Commission has warned Congress about the dangers and the excessive over-reliance on China for affordable medicine. We source these medicines directly from China, and we also source them indirectly from China through active pharmaceutical ingredients called APIs, and also key starting materials which are called KSMs and other critical chemical inputs.

In 2021, the Department of Defense Inspector General also echoed all these concerns, and these concerns have been echoing even just recently. And so what we've really got to do is look at these warnings and -- and realize that they actually underscore the depth of the U.S. exposure, and the need for accelerated strategic action.

Health resiliency is not limited to healthcare. It doesn't. It transcends to all industries, from energy production to national defense, impacting every American from semiconductor engineers to oilfield workers to truck drivers to the military generals, and really from Main Street to Wall Street.

The truth is that health resiliency underpins every critical sector, driving both economic prosperity and national security. And as we have witnessed during COVID robust health infrastructure, we know that this infrastructure is critical, requiring urgent government attention and decisive action. And in fact, the White House has stated that keeping America's drug supply chain robust and resilient is essential for national security and economic prosperity.

So here we are today. Very few Americans and very few policymakers are aware that the building blocks, the very basic building blocks of our everyday

medicines, are mirrored in this global web that actually has a very deep dependency, and it stretches all the way back to China, regardless of where that generic medicine is made. It can be made in the UK. It can be made in Japan. It can be made in the EU, Canada, Mexico. All basically critical inputs come from China.

So we're in a situation where all of us, United States and all our trusted allies, are deeply dependent on China, and we are at the mercy of this international geopolitics and political coercion by that country. And over the years, we all know that China has engaged in aggressive, unfair trade practices, undercutting global markets and establishing a near-monopoly on key starting materials required for affordable medicines like antibiotics and hypertensives.

So it's really time to adjust the past threats and also to mitigate any potential future threats here, and we need to do that by derisking, rebalancing, and rediversifying our supply chain. So we were actually very pleased to see that on January 2024, this year, U.S. and India, the joint statement agreement, acknowledged the need to work together to diversify the API and KSM inputs.

So we here -- are here today to say, let's accelerate resiliency here, and we're asking USTR and the federal government to proactively engage and execute sectorial bilateral trade agreements with key goals, and they -- really, again, the key goals are resiliency, diversification, security of a supply chain, along with industry sustainability through investments, innovation, collaboration, and manufacturing of our prioritized inputs.

Certainly, the guiding principles are everything that USTR stands for, which is transparency and accountability and a fair and level playing field for all. We also need to ensure that we have technology transfer in onshoring activities, and we need to do that through collaboration for R&D, technology transfers back to the United States, data sharing, and innovation and research development.

We also need to provide financial and investment opportunities to drive resiliency. We need to be looking at public-private partnerships that provide a -- a real good, solid suite of innovation in the funding and opportunities to invest in this sector. And we also need to look at the resilience. And so really looking at the mapping of the inputs, looking at stockpiling as we move forward, and then looking at

market creation and creating a market demand for those products that are clean and free of adversarial inputs.

So further, you know, we also had -- furthermore, we had global CEOs from India just recently come to the United States back in April, and they actually proffered a U.S. India affordable medicine partnership that if it -- if it was executed would actually set a very strong foundation, and it actually would create a construct for collaboration that would drive that innovation, and it would drive manufacturing both across -- actually, in India, as well as here domestically.

And also, once it was established, we could really take that construct and expand it to other countries and use that as a model for the EU, the -- you know, Japan, EK, the EU and -- and Canada and the like. And that way, we can really build a very secure, diverse supply chain for affordable medicine.

So we really are asking the Biden Administration to strongly move forward here to immediately engage on this proposal and -- and really work to build out this partnership proposal, at the same time also extend the Defense Production Act to extend not just to drug shortages of sterile products, but also to ensure that we can prevent outages -- drug

outages, and so we aren't at the mercy of political coercion.

We also want to -- we also realize that it really --necessitates this whole situation is just so urgent that we also are asking for USTR to take a broader advocacy role and really look at perhaps supporting federal legislation. Much like the CHIPS Act, it would be the Medicines Act, that would look at opportunities to streamline the domestic manufacturing and allied manufacturing opportunities, at the same time looking at opportunities to interface with the government and streamline the -- the FDA approval process, the environmental process, and the funding. And so that would be much like a comprehensive piece like semiconductors, so that we can accelerate and derisk as fast as -- as we can.

But lastly, the one piece we would also like to urge USTR is to be cautious, and as you're looking at legislation on the Hill and -- and you're looking at legislation that we -- respect to trade, anything that's something similar like the Medical Supply Chain Resiliency Act, which is supported by PhRMA, this legislation might set some very needless barriers and -- and hurdles to overcome, and it also is just driven for one industrial sector.

So we ask that USTR instead support and streamline measures that actually will accelerate sectoral bilateral agreements that will really effectuate meaningful change and really build a resilient supply chain to secure our nation. So with that, I thank you for the opportunity to be here today, and happy to share our views.

MR. BAN: Thank you, Ms. Jaeger.

We move next to Mr. Kennedy.

MR. KENNEDY: Good morning. John W. Kennedy. I am now with the -- the New Jersey Economic Development Authority. I'm the senior advisor to the governor, and to the CEO of the EDA and -- but most of my background has been in engineering and manufacturing. I owned engineering and manufacturing companies in New Jersey for many years. Supply chain, my doctorate is in supply chain. So it's always interesting to me to hear that we have this incredible need on supply chain now when it's been going on for 30, 40 years and we ignored it, and that's part of the issue.

What happens, though, is that we take supply chain in bite-sized pieces. All right. Most people look at supply chain. We need batteries. We need batteries. That's great, but as one of the gentlemen

said down here, you know, where's the minerals coming from? That's the supply chain. How do we feed this? How do we take away? It's not just the end product. You know, we can't build cars because we don't have chips. Well, it's a lot more to that.

You know -- you know, we're looking to fix it now, and -- and one of the jobs that I had for 12 years, I worked -- I ran the New Jersey Manufacturing Extension Program, which is part of a national program through Department of Commerce and NIST. The MEP National has 51 representatives, every state and Puerto Rico, and they're not an association. They're a working group to assist manufacturing and supply chain. You cannot have manufacturing without supply chain. And we worked very hard to try to work that through. And my role took not only the New Jersey market, which by the way has 11,000 manufacturers and 340,000 workers in -- in a small state such as New Jersey. So consider the impact overall when you are talking about 50 states, and -- and so when you look at it, what did we -- what have we learned?

Well, first of all, we always know that our -- as somebody mentioned -- the tariffs. You know, everybody sees it as a political football. The dumb engineer in me sees it that we don't make steel and

aluminum like we did in the past. Steel and aluminum aren't just one-size-fits-all. There are multiple levels of what types of steels and -- and what types of aluminums, and what you can do with it, and what you can't do with it. And so what it taught me was that we are in trouble right now. That is not part of the discussion.

During COVID, we mentioned COVID, what you saw was a lot of good stuff, as well as a lot of bad stuff. You all had enough to eat. You all had water that was clean and, everything, right? You had medicine, electric. You gassed up your car. That is all because of manufacturing.

But what we didn't have was a sustainable process to go past that. One of the issues is that we don't look at our supply chain. There is no national supply chain database. There is none. It does not exist. We rely on companies whose -- their intent is to make profit. Well, it should be. That is their job.

So what happened during COVID was that you had 51 MEP centers communicating with all sorts of databases, so what should have taken minutes in a combined database took days of back and forth, and that's -- that's a problem. So what I found was --

somebody that has been in New Jersey, and been in this industry, and we have a database in New Jersey of 9,400 companies, what I found was we couldn't get PPE and stuff, right?

MS. MONTGOMERY: Uh-huh.

MR. KENNEDY: Two hundred and forty-seven companies make PPE in New Jersey, some portion of PPE. I did not know that, and I should have, and that's part of the problem. If we don't know what is in our supply chain, we don't know what we need.

The easiest statement is, we don't make that here anymore, and that is a bunch of bull. We do make a lot of these things. We just don't pay attention to it because we don't know, and that is problematic. If you look at the CHIPS Act, there is a section on national supply chain database tool. It is in there, because I wrote it. MEP worked very hard to get that bill passed because it is critical to our security or -- and so many other aspects. It is supposed to get a $131-million investment over five years. It got 20 million and stopped. My opinion was you run it through the MEP system because they already got four to 5,000 people, boots on the ground, but also you tie in, you know, all of our aspects.

Mr. Ban, you spoke about this is a combined

effort, and somebody said public-private partnerships, right? That is the public-private, U.S. firms, the governments, you know, our trade partners. Hell, our union partners are very -- very important in this aspect, too. We talked about offshore wind, not just the -- the building of it, but how do we maintain these -- these aspects? Because everyone we are putting in is basically a prototype, because we are building them bigger and bigger and nobody has built them that big before, so there are going to be maintenance issues. You know, our ports of entry and our flexibility in our supply chain so that in critical times, whether it is a pandemic, whether it is weather, I'm scared, but defense that -- I don't think things are going to get better. If you look at certain things and you look at certain charts, even our military gets almost all of their chips materials from who we might consider foes, and that is a problem, right, and this is all the materials.

Spoke of recycling. What about glass recycling for substrates? What about films and chemicals, all of these things that we need to be able to do? And this is the critical aspect of where we are going with this, because I think everything you are talking about is really important. The thing that

scared me the most during the pandemic was I read an article in the Wall Street Journal that said we get 80 to 90 percent of our blood pressure medicine from China. I don't know if that is absolutely true, but that was in the Wall Street Journal. Then the New York Times came out two -- two days later with an article saying 50 percent of us are on blood pressure medicine. I am one of the lucky ones. My -- my wife says I am a carrier, so I give high blood pressure, I don't -- but -- but think about that. If you went to war, 50 percent of us would have an issue because we wouldn't have -- and the second thing I read was almost 100 percent of the ibuprofen comes from China.

MS. MONTGOMERY: Yes.

MR. KENNEDY: Anybody have a Tylenol over the last week or so? These are issues that we are not thinking about, and we should, and it doesn't end -- begin and end with government. It begins and ends with all of us, whether that is labor, whether that is engineering and manufacturing, whether that is, you know, all of these aspects, and we need to figure this out. But every time we have this conversation, the crisis passes and we go back to normal.

As a kid, my dad worked -- was in the Army Air Corps during World War II. He took me to air

shows. And I remember in the '60s, he took me to an air show and showed me a B-52, and this was like '65. And he said, gee, John, take a look at this because these planes won't be flying that much longer. They are probably going to be replaced. It is now 2024. Guess what our big bomber still is, the B-52. Who makes the components to put them up in the air? Not many.

Thank you for having me and listening to me. I forgive my passion. It just comes out.

MR. BAN: Thank you, Mr. Kennedy, for your testimony.

We will move to our last witness of the panel, Ms. Montgomery.

MS. MONTGOMERY: Good morning. My name is Megan Montgomery, and I am fortunate to be the Executive Vice President of the National Customs Brokers And Forwarders Association of America. We couldn't agree more with some of the comments that Mr. Boring made regarding the how of trade policy, and the requirement that we need to implement the core -- the core infrastructure in any sort of trade policy.

The NCBFAA represents more than 1,300 member companies consisting of the nation's leading customs brokers, freight forwarders, ocean transportation

intermediaries, non-vessel-operating common carriers, and air cargo agents. Our industry manages approximately 97 percent of goods coming into the country, and over 90 percent of outbound goods. We are the only industry to touch every air, land, and sea port, every participating government agency or PGA, every harmonized tariff code, HTS, and every congressional district. We have the kind of visibility into the logistical and regulatory movement of goods that no other industry has, and we are a vital component of Homeland Security in the cargo space.

I will be making three main points in my testimony today. First, any supply chain solution must be implementable, administrable, and operationally viable through all trade lanes. NCBFAA believes that a consistent, rational, and practicable set of trade rules that all traders and service providers can implement will support supply chain resilience. Clear, transparent, and uniform rules could and should lead to the seamless processing of goods, as well as optimally focus the government's enforcement capabilities. Further, federal officers and administration -- administrators who regulate trade need training throughout their career to stay current with the same rules and procedures to which the trade community must

adhere.

NCBFAA strongly supports USTR's efforts to understand and improve the resiliency of the U.S. and global supply chain. The pandemic and its impact on cargo flows showed us how truly vulnerable we all are to the stability of the global supply chain. Empty grocery store shelves, panic buying, toilet paper and PPE shortages are not something that any of us want to see repeated.

We urge that any changes, suggestions, and solutions be made in partnership with the ports of entry and the transportation and logistics intermediaries. USTR excels in enacting trade policy, but the implementation of trade policy on the ground is a delicate business. It is full of nuanced terms of art that are often redundant and defined differently in various contract -- contexts and built upon a wholly complete supply chain microsystem already in place.

We also want to work with USTR to make sure that there are as few missed opportunities as possible. We often see when updates, changes, or additions to governmental policies and programs are rolled out that there are areas where a few additional words, a different phrase, or just a slight tweak to the policy could have resulted in large additional gains at no

cost to what was already accomplished. This is also often a case in legislation, as we spend a significant amount of time working in partnership with legislators draft -- legislative drafters to provide technical assistance to ensure that the legislators mean what they want it to mean -- the legislation means what it -- they want it to mean and does what they want it to do. We hope that we will be able to provide that same partnership and support to the USTR.

Point number 2. Digital and physical infrastructure must be co-created through public-private partnership to maintain viable supply chains. NCBFAA has expressed concern to both Customs and Border Protection and the Department of Homeland Security regarding how much of our port and trade infrastructure is controlled by non-U.S. entities. We have heard reports that in some ports more than 40 percent of terminals are leased by foreign parties, mainly China. This is alarming because the lessee of that terminal ultimately has control over what ships and cargo can move through the terminal.

Picture the ports of LA and Long Beach a few years ago with 80-plus ships docked, backed up, anchored off the coast. Now, imagine that four to five of those 13 combined terminals were leased by China,

and China got to decide which ships' cargo was allowed to dock and unload. That would have made an already challenging situation exponentially worse.

We also, as this -- as the country currently allows foreign importers of record outside of the jurisdiction of the U.S. government, which creates enforcement challenges for the U.S. We should be sure when working towards a more resilient supply chain, we are comfortable with the amount of foreign influence and control leveraged in our infrastructure.

Another area that needs to be revisited is the commercial -- is the Automated Commercial Environment single window, commonly known as ACE. It is the system of trade management systems that was declared complete in 2016, and was intended to incorporate all federal agency requirements related to the importation and exportation of goods and eliminate paper forms. Now eight years later, we find that some agencies are reverting to their own system, nomenclature, standards, and/or requiring paper submissions. This creates redundant data, and coupled with the repeat reporting and storage requirements, makes for an atrophied logistics system that is much less flexible and scalable than it needs to be. Every port has its own unique ecosystem and layering CBP,

PGAs, and multiple layers of redundant data weakens supply chains, making them less able to flex and change when circumstances do.

This was a significant factor in some ports having very large backups during this -- the pandemic and some with almost no backups at all. The cargo just can't set sail for a less -- a less congested port. That cargo is, literally, regulatorily and logistically, locked into place. A resilient supply chain should stay as data-lean as possible for Homeland Security, while allowing changes in the physical movement of goods to best capitalize on any available option in times of system stress. Holding respectal (sic) federal agencies accountable through the Border Interagency Executive Council, or the BIEC, is imperative if we are to achieve a one USG electronic cargo release. Accordingly, ACE, this vital IT system, needs dedicated, ongoing funding for enhancements and improvements as necessary to keep trade flowing.

The IT infrastructure overall needs to be modernized as part of our supply chain resiliency review. We are all vulnerable to cyber-attacks, system failures, and overall outages. We need co-created public-private partnership plans, tabletop exercises, and shared drills to ensure that legitimate goods can

continue to move to deliver vital products to America's grocery stores and front doors.

And finally, number 3. Trade policy must be transparent and consistent so that companies can formulate business decisions that promote nearshoring and ally shoring. USTR should seek to level the playing field with a consistent and reliable trade policy resulting in fair and competitive trade. Companies make long-term, multi-decade investment in plants, sourcing partners, supply routes, and instruments of international trade. These cannot change on a whim.

The government's lapse of preferential trade legislation, like MTB, GSP, and AGOA severely hinder a company's ability to make long-term investment decisions abroad. While we understand that geopolitical issues arise, trade should not be weaponized, because in the end, people paying a price for that are American companies and ultimately American consumers. Companies need stable and predictable U.S. policy upon which to layer their own internal and business risk assessments.

U.S. supply chains also need sufficient time for implementation of all trade policy changes, trade remedies, or changes to trade rules or procedures.

Changing trade policies and procedures when goods are on the water is very disruptive to the supply chain and should be avoided at all costs. Thank you for allowing us to share our views today, and we look forward to answering your questions.

MR. BAN: Thank you, Ms. Montgomery, for your testimony.

I'll start off the question and answer portion with a few questions for Mr. Gutterman.

Thank you, Mr. Gutterman, for your sobering submission about the imperative to increase recycling of critical minerals, especially from e-waste. Your submission focuses on product design and consumer behavior as two key areas for developing solutions. Can you speak a bit to the technology or infrastructure needed to improve recovery and recycling of minerals from e-waste, and what can be done to build a stronger supply chain for these recyclables?

MR. GUTTERMAN: Yeah. Thanks for the question. I guess I would clarify that one of my whole points is that we actually really can't recycle our way out of this problem. And so the reason why I'm focusing on product design and extraction is because that's where I actually think the intervention is.

Recycling rates are -- are quite low. They

vary by metal -- metal. Really common metals like aluminum and copper actually can have quite high recycling rates, but the critical minerals and the rare earth elements that I talked about often have incredibly low metal recovery rates. And so ultimately, the solution is to just use them less and make sure that the products we are using them for are the products we want to use them for, and then make sure those products last as long as possible.

One really simple thing, though, that I would point to, just in terms of, you know, the sort of global situation, is that disposable vapes are actually not authorized in the U.S. They have not been approved by the Food and Drug Administration. There's -- there's 13 vapes that have been approved that are all tobacco flavored and are not disposable. And so one really easy solution is just actually to enforce that ban. I mean, we could walk outside right now and I'm sure find disposable vapes at every convenience store in the city. And so that's something that actually can be done, you know, at the border, just prevent these disposable vapes that are manufactured from other countries from -- from crossing over.

But ultimately, the solution really is to stop manufacturing things that don't last and stop

manufacturing things that shouldn't exist at all in the first place, like disposable electronics with batteries that are fundamentally consumable and fail, and like disposable vapes that are -- are really sort of designed for the dump. They're -- they're disposable electronics through and through, and that just shouldn't exist.

MR. BAN: Thank you, Mr. Gutterman. Just to clarify, so when you mention recovery rates, that is a rate that describes a maximal amount of material that can be recovered based on existing technology? It's not a --

MR. GUTTERMAN: Effective recovery rates.

MR. BAN: Effective recovery rates.

MR. GUTTERMAN: Yeah.

MR. BAN: So it's not a function of behavior or willingness to recycle or build infrastructure?

MR. GUTTERMAN: Yeah. There is sort of a -- a funnel, right? Where the first step is just actually designing products that -- that can be recycled easily. When you have a product like a headphone, like AirPods, or like a disposable vape, those batteries are glued in. It actually can be really difficult to just actually recycle the product and -- and manually take it apart and move the components. Then consumers need

to actually recycle the product, and then there needs to actually be the economic and chemistry available to recover the actual metals from the products.

So it's all well and good to encourage consumers to recycle. We like to say that, you know, the -- the worst recycling is better than the best landfilling, but ultimately, the solution is -- is -- is not recycling, because the functional recovery rates for especially these critical minerals is extremely low, either because we don't have the technology or because we don't have the economic incentive to do so.

And then you know, finally, I would just say that there's sort of this fantasy that, you know, I think people have, that when they put their product in the recycling bin, they're putting their old phone there and they're just going to get a new phone out of that. That's never happened, and I don't think it ever will, right? That fundamentally these products are too complicated. They have too many little components and parts. I doubt it will ever be economically or technologically feasible to make a new complete consumer product like a phone from an old one.

MR. BAN: Thank you for the clarification. Do you see the economic viability as differing based on type of product or the value of the product? For

example, a large battery for energy storage --

MR. GUTTERMAN: Uh-huh.

MR. BAN: -- grid applications or electric vehicles may be economically more viable to recycle versus a small consumer electronic product?

MR. GUTTERMAN: Yeah. That -- that can be true. I will say that that -- you know, because you mentioned sort of EV batteries or -- or home storage batteries. Lithium is a good example because we actually have the technological process to recover lithium, but it is just not economically viable. And so instead, we just extract more lithium from the environment because it's cheaper than, you know, actually recovering it from -- from -- from lithium ion batteries.

So sort of that -- that sort of -- I think there is some question to that. And then I would also highlight that the largest category of e-waste by weight is actually small electronics. So it is really important to, you know, recycle our refrigerators and our appliances, and increasingly, in the next couple years, electric vehicles and their batteries and e-scooters. That's definitely an important part of the process, but really, the most e-waste we're producing is from electric toothbrushes and phones and vapes and

sort of all of these low-cost products that are just really designed to end up being disposed.

MR. KENNEDY: And if I may, so many things have semiconductor chips. Your -- your plug-in, you know, air freshener has semiconductor chips, and how we're able to recycle those and those materials, whether that's glass silicates, or whether that's galenic ore or all of these other aspects, we've got to figure that portion out, and -- and we don't because it's not, as he said, economically viable.

And also, to be honest with you, it's access, a lot -- you know, I mean, my Boy Scout troop, we ran electronics recycling in our town and charged $5 a car load, and in four hours made $5000 because no one knew where to bring the items.

MR. GUTTERMAN: Yeah.

MR. KENNEDY: We worked with a company that could recycle because there's a lot of precious -- you know, your highest conductive materials are gold, platinum, silver, and so on. Not to mention, you know, the -- the other stuff. So you know, these are things that concern a lot of stuff. You talk about the car batteries. If you ride your car for 150,000 miles, you're going to go through at least three batteries. What do you do with it? And -- and how do we recycle?

How do we figure it out? You know, and that -- that's certainly things that we need to figure out, not just for the United States, but for the world usage as well.

MR. GUTTERMAN: And just one more note on that because we're talking about car batteries and sort of large home storage batteries as well. One thing that we're also concerned about is just making sure that -- again, because recycling can actually not be that effective, that we have re-manufacturing or reselling or reuse potential for these batteries as well, in a safe way.

That's why in New York we've had some really high-profile fires, and that has resulted in legislation that, you know, has certain licensing requirements for the batteries that are used in micromobility devices like e-scooters. That's important, right? We want to make sure our lithium ion batteries are safe.

We also want to make sure that the huge batteries that are being used to power electric trucks can actually find a -- a second life. There's no reason why those batteries couldn't be used for home storage or for micromobility or remanufactured for some other use. And so I just want to -- we sort of have to balance those tensions between making sure that we're

using these products safely and they're being transported safely, and also that we realize that, you know, an EV battery that has been used to 70 or 80 percent capacity still has a lot of life left in it and can be useful for -- for consumers or for other uses.

MR. BAN: Thank you very much.

Mr. Jaeger -- I mean, excuse me, Ms. Jaeger.

MS. JAEGER: Uh-huh.

MR. BAN: You propose in your written submission that developing federal government procurement measures may help diversify generic pharmaceutical supply chains.

Do you have a sense of how large the government procurement market is when it comes to generic medicines and whether focusing on this market would be sufficient to shift supply chains? That's the first question, and second and relatedly, apart from government procurement, how can the U.S. government encourage private sector manufacturers and/or procurers to diversify pharmaceutical supply chains?

MS. JAEGER: Two great questions. So first, again, generics represents 90 percent of all medicines actually dispensed in the U.S. So -- and account for about 85 percent in total pharmaceutical expenditures. So when we're looking at procurement, you know, you're

looking at DOD for TRICARE, and you're looking at the VA, and -- and you're looking at some of the other sort of Medicare and Medicaid programs. And they are for the most part -- they're -- they are not the big commercial market.

That said, they are sufficient to actually create a -- a triverset (phonetic), provided that we actually create the right market demand for those -- for those concepts, and it's also that we have to infuse within those procurement measures the need for quality, sustainability, and again, for those inputs across all -- all inputs within that drug product are clear and free and are from trusted allies.

So if we create and -- create this demand market through the government programs, and -- and actually extending it down even to Medicaid, there are also -- and other tools that we're actually seeing. Just recently, the HHS just -- and the White House just published a white paper basically incentivizing the hospitals to start looking at opportunities through value-based modeling, procurement modeling, so that they actually look out and start looking not for the -- the -- the product that is the least expensive, but the one that has the -- the one that has very strong quality, meets those strong quality pieces, and

actually is sustainable and can be deliverable and has that accountability in the system.

So there are some very creative ways when we start looking at our commercial sector and to bring them along afterwards, but I think that we -- we start right away with the military. We start with all the federal programs, and including Medicaid. I believe that there's going to be a sufficient incentive built in, as long as we build it right. At the same time, we all should be looking at stockpiles for APIs and KSMs. That too should also again have the right incentives built into -- that again were rotating those KSMs and APIs as we move forward. And that -- that should -- should help quite a bit.

In America, we're starting to look at who should -- how do you incentivize folks to manufacture APIs and KSMs here? That's a great question because, you know, you have to remember, we have the capability. We did -- we produced these. We gave it away for efficiency reasons. So again, what we really need to do is, again -- is to create this market back in the United States that says we are going to reward quality, we're going to reward products that are made only by the United States and our domestic allies, and those are going to be used for these programs.

And then two, we're going to provide you with a suite of financial tools that are going to allow you to have the right incentives through public-private partnerships that allow you to come in and start to build -- build new cluster and manufacturing and -- and maybe in countries like India and the EU. And then also domestically take the companies that we have here and we have excess capacity for finished dosage forms, and also -- and some other areas that are food and drug related, that we could take some of the manufacturing facilities we have here, refurbish them, and bring them around to actually manufacture the key starting materials and APIs.

India has already done this. They've actually put forth what they call the production incentive linked program. They actually -- EU and India are farther ahead than the United States by far. The EU and India were doing it in parallel tracks. EU basically came out and said that -- and acknowledged that with respect to brand products, that they do have some concern about their critical inputs for those brand products, but not as much to the same extent as they do for affordable medicine. And affordable medicine, they're completely dependent on China and India. As I said, India is a dependent on China.

So we have a situation where they've actually sat down and started to look and analyze and put together an assessment about how to build resiliency into the system. They haven't gotten too far in that -- into that world yet on trying to create that implementation strategy. Right now, they're kind of focusing on shortages, drug shortages, which really is just a symptom of the larger problem that we all have.

India, on the other hand, said, we -- we don't have time; we have to move. And so during COVID, they actually did identify -- they mapped out the most critical APIs and KSMs, worked backwards, and said, what doesn't our country have in terms of looking at WHO, the World Health Organization's 560 essential medicines? What don't we have here that we absolutely, unequivocally need?

So they started with a phase one of 43. They've built out right now, I think, 21 to 23 different manufacturing facilities through their cluster manufacturing program in India, and they're looking to build more. But we all know one country can't do it alone. Not one country, not India, not EU, not the United States. What we need to do is we need to ensure that the U.S. gets in with India, because India is the next leading pharmaceutical player in

affordable medicine, and it -- we -- and really, the U.S. should be first before we get knocked out by the EU or Japan or Australia. We need to be in there and have a bi-sectorial trade agreement where we are sitting down and we are looking at the products that we need here in the United States, making sure that we have a significant portion of what they're producing in India allocated back to the United States.

At the same time, we're asking them to help us bring back our R&D technology for affordable medicine, we ask them to transfer back their technology and manufacturing, and then we also help -- ask them to upscale our workers here in the United States through this sectorial bilateral agreement. And this way, it's a very firm agreement with very certain business terms, and that we also are building out what actually -- who will procure those -- those goods on the other end. So there, we can start to build that model, and then we can actually expand it to others, but right now it's India outside China. And then from there, we move into -- to Europe, and then we move to Japan and to some other countries.

But you have to remember, in America, 90 percent of all medicines are affordable medicines. And so while we may have the biggest robust

biopharmaceutical industry in the world, and we are dominant in that field, that only represents the vaccines and the biopharmaceuticals. That's 10 percent. We need the other basic medicines. So while we are very supportive and laudable in that piece, and we support the national biopharmaceutical strategy, that's a strategy that could take 15 to 30 years to build, depending upon who you ask, on a biomass concept to create APIs.

We still need that bridge to get there to the future, even it's 10 years, 15, or 20 years from now, and that means India is the central base, is the pharmacy of the world. And hopefully the United States will be first, not last, in being in that partnership. And again, that's -- I think you build the right incentives and you provide the right financial tools with the right public partner -- private partnerships, you can get there very easily.

MR. GUNDERMANN: Can I ask one quick follow-up question? I noticed in your testimony, and then just how you talked about transferring back knowledge. I'm curious what incentives you had in mind to incentivize that behavior, if you -- if there were any further thoughts you had on how that would work?

MS. JAEGER: Yes. And -- because that the

other side of the coin is what the government -- what the -- the government and the private manufacturers would like is the U.S. to actually invest in new facilities and in India and the EU. And so especially India would love the U.S. to come in and actually invest, and the sort of a quid pro quo is, well, we all agree this is all -- we all work together, all boats rise. So we need you to help us, provide us with that R&D technology. It's kind of a quid pro quo. We'll invest if you help us get back our domestic manufacturing, and then -- and the technology.

And again, knowing that if you actually create a demand back here in the United States, you actually, I think, will see it happen anyway naturally because, as I mentioned, over 55 percent of the top five out of 10 therapeutic areas comes from -- you know, from India for the U.S. Medicare program, and nearly -- you know, you're looking at -- nearly 47 percent of all prescriptions come from India for the United States, so they're already here. They already have manufacturing facilities in the United States. There's also some other -- domestic manufacturers that we still have here that we could build out and expand as well.

So I think we just have to give the right

incentives with the right program.

MR. GUNDERMANN: Thank you.

MR. BAN: Thanks, Ms. Jaeger. Can you comment on -- on the extent of transparency in pharmaceutical supply chains, including data for sourcing of APIs and KSMs? Your submission notes that your organization provides certain information and data. Can you explain what data you provide, and how you source those data?

MS. JAEGER: Uh-huh. It actually is very complicated, and it's not transparent to a vast degree. One, China just changed its policies, and now when an API comes out of China or a key starting material comes out of China, it does not tell you -- there's no lot numbers. It doesn't even tell you where it's manufactured anymore. It's very difficult. It just happened in the last couple of years. They've shifted their policy there.

But once -- once you're actually procuring that product and you're using that product, you know where the -- your manufacture is, if you're a manufacturer, and -- and from that, then you're actually submitting data sets to the Food and Drug Administration through what we call drug master files, and those drug master files are actually before FDA.

Now, FDA doesn't know which drug master file manufacturer you're using. Generally speaking, you actually put multiple drug master files together to support your application for resiliency purposes. But at the end of the day, typically you're using one major -- major source. And so from that standpoint, it's a very commercial, a very competitive endeavor, and everyone basically keeps all their cards close to the vest.

However, if you sit down and do mapping, and you do it quietly through government agencies, whether it be DOD or others where it's for national security reasons, the manufacturers will sit down, and they are very willing to sit down and actually showcase where and how they map the -- all the different ingredients they have, and where they also know they're at the greatest risk.

At the same time, India also has started to -- you know, as I mentioned, done a lot of that -- started that work on -- at least for phase one and phase two of their critical inputs. So it's two governments sitting back, working with the -- the commercial sector, and getting them, through confidential means, to provide that information to the government, because if you -- you know, I'm not sure

they'll want to share, but they will share with the government for national security reasons.

MR. BAN: Thank you, Ms. Jaeger.

MS. MONTGOMERY: If -- if I could just add to that really quickly.

You know, we have seen, at the very least, anecdotal evidence that China in general is getting more opaque with their supply chain. You know, I would assume because of the timing that it is probably -- at least can be presumed to be in part a reaction to the Uyghur Forced Labor Prevention Act, because the more opaque they make their supply chain, right, the harder it is for companies to trace back and to find that forced labor, which makes it ultimately harder, you know, to get -- get those goods cleared through customs.

And -- and we're certainly not pro forced labor, but we need to make sure that when we implement these sorts of rules, regulations, legislation, protocol, that we do it in a way that doesn't harm U.S. companies, because the reality of what we're doing now with the Uyghur Forced Labor Prevention Act is that, by the time we stop those goods, bad guys are already paid. We only are hurting American companies.

MR. BAN: Thank you, Ms. Montgomery. If I

may turn next to you with a few questions.

You noted in your submission, also in your testimony, the statistic that about 40 percent of port terminals are leased by foreign entities, and you noted in particular entities from the People's Republic of China. Can you unpack the statistic a bit? You -- you mentioned in your testimony the risk that entities controlling the -- the space, the physical space, could deny, for example, ships access to ports, but I'm trying to understand how that risk would be different from the risk, say, where the -- the space may be leased by an American entity, but the goods are coming from the PRC, and so the PRC supplier would deny the ability of the goods to move.

So can you -- can you explain what -- particularly what the risk is of -- of the space being leased by the PRC is?

MS. MONTGOMERY: Yeah. So first, you know, I just want to make clear we have heard from some ports, talking about other ports, that up to 40 percent of their terminals are leased. I have tried my very best, and there are no public statistics on this, right? We raise this issue because it is out there.

So what is concerning particularly about the PRC leasing our terminals under long-term leases is --

which is different than American companies. Is that in times of national crisis, we believe, and have seen evidence, that American companies are going to work in conjunction with the American government to support America, our consumers, our businesses, right?

We don't know that same to be true of other foreign entities, particularly the PRC. They can, in conjunction with those long-term leases, as long as -- you know, as we adhere to them, right, as long as that contract is valid, they can deny whole -- whole steam lines, right? They can come in and just say, thanks, Maersk, we're not doing business with you today. They can deny any, you know, let's say, U.S. flagged vessel, right? Nope. Nope. PRC only, China flagged vessels.

You know, they really do control a huge segment of the ability to flow goods into our country, and they are not -- what was the phrase you used? They are -- they could potentially be considered foe, right? Certainly --

MR. KENNEDY: Just --

MS. MONTGOMERY: -- maybe not friend. And then you couple that with all of the PRC goods that are moving into Mexico, getting a -- you know, a -- a Mexican country of origin getting trucked through the border up to the U.S. as NAFTA, right? They -- they

have to do some sort of transformation in -- in Mexico, but fundamentally, we are seeing Chinese setups, manufacturing setups, staffed with Chinese workers opening in Mexico, getting that -- you know, that legitimate NAFTA certification, and coming up through the land borders.

Laredo has relatively consistently been beating both LA and Long Beach as the single biggest port in the country. They are doing an average of 9,000 trucks a day, and they've got a huge rail business, and that's before their second rail bridge comes online at the end of this year, which will more than double their rail capacity. They're a huge port. The southern border is a huge component of our trade, and we don't really have any -- much visibility into how much China is down in Mexico, and we -- we certainly have not been able to find solid statistics on how much of our -- our seaport infrastructure China controls here in the United States. You know, we want to draw your all's attention to this because we think it's a pretty serious issue.

MR. BAN: Thank you. And I understand now that the concern is not just that these entities control the flow of goods from the PRC, but from potentially other sources --

MS. MONTGOMERY: Correct.

MR. BAN: -- as well? Understood.

MS. MONTGOMERY: Every -- every container, every ship.

MR. BAN: You -- your submission also notes duplicative PGA data requests as one challenge in implementing race to the top strategies in trade policy. Could you provide an example of this and what you think would be required to standardize more fully ACE data across CBP and the PGAs?

MS. MONTGOMERY: Absolutely. So you know, when ACE was developed, when it was conceptualized after 9-11, the idea was that it was one single window, right? One portal, one pipeline. You put your goods in this IT -- or you put your data in this IT system, you get one, you know, set of data in, one cargo release on the way out. Release means release.

But what we really have because of a lot of politics and funding and lack thereof and, you know, the reality of -- of inter-agency work, as you all know well, is we really have maybe one window, but it's got 47 panes. And so in each window pane -- like, think about, you know, if you want to open, right, a window, and every -- you have to open every pane, right? Do I have -- do I have EPA data? Oh, I have to open that

EPA pane. Oh, do I have FDA data? Oh, I have to go and hand-crank that FDA pane.

You know, we really don't have one true system of record, and, you know, there's a lot of reasons for that. Congressional jurisdiction is tricky. It's -- you know, it's -- it's not really designed to make everybody work together. Federal agencies really -- you know, CBP doesn't have -- and even DHS doesn't have the authority to tell other agencies what to do. There's eight agencies with release-and-hold authority. Those -- some of them are -- most of them are -- are pretty good at working with CBP, but there are smaller agencies that have data requirements that kind of just don't want to, you know, participate in the ACE program.

And what that means is, you know, you have to go in and enter your address or your MID, your manufacturer ID number, or -- you know, or your -- your HTS code. You have to enter it here in this system, and you have to enter it here in this system, and you have to enter it here in this system, and you get a different release or a different hold from all three of these systems, and it creates huge potential for errors, right? Just human error. It creates really a very choppy system of getting -- you know, think about

-- think about how quickly an air flight from Canada or Mexico can come across that border. And if you're waiting for three or four different systems to give you a release, you -- you have -- you have an incredibly tricky component to get, you know, all of those releases to coincide with the landing of the aircraft, if that makes sense.

MR. BAN: Thank you. Thanks for that example and analogy.

I'll turn it next to Mr. Gundermann.

MR. GUNDERMANN: I'm going to turn to Mr. Boring. You mentioned the FTZ program, and I believe you've spoken with Mr. Ban about it previously. I was curious if you could elaborate on your statement and your submission about the no consideration about how tariff actions are implemented within the FTZ program, and any examples you could provide would be great as well.

MR. BORING: Sure. So when we -- and I'll use the 232 and 301s as an example, that's our most recent history. What you had in the Foreign Trade Zone program is, an importer is allowed to bring in the merchandise, officially import it, but not pay duty or entry on that material. And that import date can be, in what we found, significantly in advance of the

implementation date of the tariff regimes that came into play.

However, because nobody kind of considered how this works in bonded warehouses, Foreign Trade Zones, different other bonded programs, what immediately happened is, is that importers who had material in the U.S. for a year released it and were popped with the punitive tariffs, even though they were legally imported into the U.S. well in advance of the implementation date of the -- the -- the regime.

We also had the fact that in ACE, there was no -- there was no element early on that would show a manufactured item, such as farm equipment or an automobile or what have you, that would allow that to come out of a Foreign Trade Zone without potentially being impacted by 301 tariffs, because how the system works is when you're doing a Foreign Trade Zone entry, the transformation of the merchandise generally meets our guidelines of either it's assembled in the U.S. or manufactured in the U.S.

So from a country of origin perspective, it can be labeled U.S. when it comes off of the assembly line. However, the way the ACE system works, because census wants certain data elements, that same tractor that comes off the line may actually show, and it is

required to show, the largest foreign value country of origin. And it's a census requirement only. But what that did at the very beginning of the implementation of the tariff regimes, is it popped every manufactured item that had China listed as a 301 tariff implication in ACE.

MR. KENNEDY: That's true.

MS. MONTGOMERY: Yeah.

MR. BORING: And each importer had to go back and argue their points and, I'll say this politely, but initially, it fell on deaf ears.

MS. MONTGOMERY: Yes.

MR. BORING: CBP went, nope. System says, and the system is right, and we've got to listen to the system.

Now, a lot of that ended up being cleared up, but it certainly was a big disruption for Foreign Trade Zone manufacturers.

The other element is in -- in like forced labor. You had the same thing. I have product that has been in Foreign Trade Zones for a year or two, well in advance of the implementation date of UFLPA -- UFLPA. Everybody calls it something different. But you know, the forced labor when it was -- when it was put in. So these are materials that have been in the

U.S. for a year, two years in advance.

But because the implementation was driven at the entry level, not at the import level, which, again, that's a technicality because it's -- a lot of instances entry and import occur at the same time. Megan's group could all be -- explain that a lot better than I can. However, it's, you know, it's that import date was well in advance of the implementation date, but there was no consideration given that Foreign Trade Zones may have this material with this MID code because we're required to trace that information for the government.

And so when weekly entries were filed the very first week of the implementation of forced labor, the seizure notices that went out for containers in Foreign Trade Zones was hilarious because customs sends it out for, hey, I need that container, when the reality is, there is no container. It's all goods coming out of a building.

But there was no enforcement discussion about how do we address these issues? And in -- and in most cases, when they were finally cleared up, a vast majority, including one major retailer in the United States, discontinued their Foreign Trade Zone and discontinued even the expansion they had for

distribution centers in the United States because they went to look at how is this going to negatively impact? They worked with customs, got through their initial part, but it was one that it cost them a significant amount of resources to fix the issue. So those are two examples of kind of how when we come with a tariff regime or a trade policy, just a consideration that you have this amount of material running through a Foreign Trade Zone is -- is certainly worth considering.

MR. GUNDERMANN: So two questions, and one follow-up to that, that we did not plan for, and then another one that I also want to ask you.

First, the most recent round of 301 announcements, I'm curious how you navigated that. If there was any of these issues with the most recent FRN releases and news from USTR.

And then the other question I have is you are talking about the cost of maintaining the FTZ program in Canada and Mexico. Curious, what key factors you see your customers deciding to use U.S. FTZs versus others and how you're seeing other countries navigate some of these similar issues?

MR. BORING: Sure. Well, I will tell you on the most recent, the -- to answer for the most recent 301 tariff decisions. The simplest way to answer it is

we all have experience now. We all understand how we have to approach it, which unlike the very, you know, first round, it was new and people were not prepared. Supply chains and manufacturing, in -- in my case, Foreign Trade Zone operations, were not prepared.

We are seeing a very small impact other than a few people groaning because, you know, they're -- they're looking at, you know, what -- what is the potential impact to them as an importer? But the beauty of it is, is I don't think we're importing that many electric vehicles. So you know, it's -- I think it'll be minimal, but the good thing is every Foreign Trade Zone that may be impacted already has practice.

MR. GUNDERMANN: Uh-huh.

MR. BORING: And for your second question, the -- the big thing that we dealt with and -- and this was confirmed in the USITC study last year that, I think it was last year, yes, last year, that came out, is that what we see when clients are debating locations, the old NAFTA and U.S. current USMCA really impacts decisions for most of my clients because of one element and one element only. And that is, as a Foreign Trade Zone, if they are manufacturing goods that are going to be destined for the USMCA market outside of the U.S., they do not get USMCA

consideration and or benefit. They must pay the U.S. duty on the material that they're sending to Mexico and Canada. Mexico and Canada do not have this restriction. This is a historical element that goes all the way back to NAFTA, but that is really the most significant.

So if I have a very labor-intensive element of my production and or an element of my production that uses resources from China, then you are seeing those individuals select Mexico for that interim production because they're not facing 301 tariffs. They are not facing the NAFTA restrictions. So they can manufacture those components in Mexico, and any of the components they send up to the U.S. for further production assembly. I think you see this largely in the automotive industry --

MR. GUNDERMANN: Yeah.

MR. BORING: -- they choose Mexico or Canada. They don't choose the U.S. If it is a pure straightforward, non-USMCA type play, where they are looking at building to service the U.S. market, what we have been seeing over the last 10 years is that importers are selecting the U.S. Foreign Trade Zone program and other beneficial programs in the U.S. to establish facilities here, because any cost reduction

allows them to near shore, friend shore, or reshore the best that they possibly can. And we are seeing that, even though it is mostly in kind of the final stages of assembly.

And, you know, a lot of the components we're still seeing are manufactured elsewhere, but we're seeing final assembly -- folks taking a -- a better look at the U.S. because of the trade programs we may have that will limit their cost.

MR. GUNDERMANN: Okay. Any follow up questions before we switch to Mr. Kennedy?

You touched on a lot in your testimony. You made me a little bit nervous about some things, but in your submission, you suggested prioritizing semiconductors, defense machinery and certain methods for reshoring. How did you decide to recommend prioritizing these areas versus others when looking at rebuilding U.S. industrial base and what other areas do you think are high priority?

MR. KENNEDY: Bio-med, for one. But to be honest with you, if you look at the charts of where our semiconductors are coming from and even when they come from friendlys like Taiwan, a lot of it's coming -- the materials in our supply chain are coming from China, Ukraine, Russia, Africa nations, and stuff that are

overseen by China and Russia. And that's part of the problem that we have here.

We are not -- you know, we used to own 40 percent of the semiconductor, you know, development and manufacturer recently, you know, 15, 20 years ago. Now we are down about 10 percent, so we don't produce something that goes into everything we have. You talked about, you know, recycling, you were talking about, you know, your toothbrush -- electric tooth -- semiconductor chips. I was speaking to the people at the joint base in New Jersey and Picatinny Arsenal in New Jersey, because they're working with us on our CHIPS Act work.

They're seeing that about 70 percent of the chips that they get are infected. Not necessarily by China, but they're infected or they're damaged or the quality is poor, and so on. Seventy percent. If you can imagine that your electric car has about 50 -- 1,500 chips, could you imagine what the F-22 has?

So to be honest with you, it's been something that's been on my radar when I owned engineering and manufacturing companies. We worked a lot, DOD, so it was there. But with the MEP system, it was shown to us very -- very quickly. Years ago, there was America COMPETES Act, which I think got passed, but never got

funded. Well, a lot of the chips verbiage came out of that and went into, you know, the new bill that did get passed. And these are issues that we have to come to grips with. And some of that ties into, you know, what we do with some of the materials, the substrates, glass, thin films, all right. That's all -- that's all chemical based.

All right. The third, which we're coming out with artificial intelligence, it's called dimensional or chiplets. Again, these are all components and they're all made under different circumstances. So obviously the plugin air freshener doesn't have the same chip that your, you know, your -- your smartphone has, but it's there. And the problem with them, if they're compromised on a defense aspect, or even so much as, you know, being used by industry to spy on us, isn't it funny how you just looked for something -- last night I did something on my phone and immediately I'm getting e-mails. I mean, it was that quick, you know, that I was looking for, you know, a type of window glass and immediately I'm getting all these e-mails. I'm like, how the hell? Man, that's quick.

So it's not a matter of to be scared about something. It's a matter to be concerned about it enough to make the decision and move forward now. All

of the industries and everything that you're talking about, it all ties in. This is the point. Supply chain is everything. Everything. Name one thing that -- name one thing that doesn't get shipped at least once; that's your supply chain. Name one thing that you see here that isn't manufactured by somebody. You can't do that. So we've got to get a better grip out of this. And this is what concerns me and the fact that we do not know what's in our supply chain means that we cannot find the holes quickly. God forbid China decides not to ship us any medicine. For whatever reason, they're ticked off at us. What do we do?

MS. JAEGER: There's nothing.

MR. KENNEDY: I don't know. We had one out of four companies that produce baby formula shut down because of an issue. Not a supply chain issue, but an issue for safety. What happened to baby formula? Think about that. And that's why -- and not just -- but we need -- we need to stop giving it verbiage.

U.S. trade is both ways, right? You guys do that every day. Thank you. But how do we figure it out so that it's equal and important so that we have partners in Europe and India and et cetera, that we can rely on. But we all -- they also rely on us and aren't

going around us and using our own laws to provide us and to take jobs away from our citizenry. Just my opinion.

MS. JAEGER: And can I just add -- actually just staying on that same sort of -- that sort of -- that same thread, you know, if you go back and think about the heparin scare that we had here in the United States, it was a very terrible situation where many, many folks passed away because it was -- heparin was actually contaminated.

But heparin actually is a naturally occurring substance. It shouldn't have ever been contaminated. And it took MIT, it took Stanford, it took Harvard, it took many folks working 24/7 for almost eight to nine weeks to figure out what was actually in the product. And -- and it wasn't a naturally occurring substance when they finally found it. It had to be -- there's many that will say that it was willful. And -- and so you've got that situation.

But you remember in the United States, or actually anywhere else in the world, science is science. You can only -- when you -- you have to know what you're looking for to test it. So if you're just testing the product on basic specifications and are looking at for some general impurities, you're probably

going to pass. The product is going to pass. The question is, what else is in there that is sophisticated that needs to be concerned and checked and looked at.

And I'm sure you're aware that right now, the Pentagon also is doing its third party testing of -- of a lot of medicine, and they're trying to figure out whether or not the medicine they are giving, you know, the -- the Pentagon officials and -- and the troops are actually okay to be giving. Well, that's not a really good place for us to be.

And we also know that we also know that China's already threatened the United States and EU and to try -- basically said, we aren't going to -- we're not going to provide you with certain inputs in medicine. And we had it again last year.

So it's not -- it's -- it -- to me, it's not about a situation of, oh, you know, will they do it? No. They will do it. It's a question what extent will they do it to us and to the rest of the world. And that means shortages beget shortages. We see that already in the United States. You -- you have one shortage, everyone runs around and every parent and every family member runs around and tries to find that next drug that can be that alternative. Well, that's

wonderful. But that drug then becomes a shortage. Well, at the end of the day, we have to realize that we have -- we cannot just be designing a system for the next pandemic. It's great that we're looking at, you know -- you know, I call it biopharmaceuticals and the vaccines for -- for bird flu and other things.

But we got to know that today that if you had a child and you needed a medicine and antibiotic for strep throat, you may not get it if China decides to play hard ball with the - with the United States or with the EU, because remember under eminent domain, every country's going to take what they have, and they're going to just keep it closed and close to their vest. And thus, actually, we saw that all the way through the pandemic, and that's why the trade bilateral agreements are so important to have a binding agreement between the two countries, that on the sectorial piece, we know that we have been invested in, you know, X amount of dollars into your country for these particular products. And you've invested so much money in -- in these particular products in the United States. And then we have given a proportion in -- in our -- in our trade agreements so that we know it's a 50/50 split, 60/40. What is it? But at least we know that we have ingredients to make -- starting materials

to make the active ingredients so that we can make sure that we have that essential medicine list for WHO.

So it's not the pandemic essential list that we all should be paying attention to. We need to be paying attention to the WHO's essential list, which covers chronic care, which covers hypertension, which covers COPD, which covers -- right. You know, all the various chronic disease -- diabetes -- we need to ensure we know that health is intrinsically linked to the -- our economic prosperity and our National Security. That is the biggest lesson we came out of on COVID. If we don't have our medicine, if we don't -- we can't get those inputs, our system -- we have the best doctors in the world, the best facilities here will be shut down. They will all just collapse. And not only will ours collapse, so will Europe's and so won't all our other trusted allies and what would have we done?

And so at the end of the day, I -- I implore -- implore you -- I know you're talking with Quad and I know you're talking on, you know, Pacific Indo pieces, but you've got to start with the one country that has the infrastructure built and also has already moved out on this and leverage what they know, so we can build a real strong foundation, the biggest and the best

construct for the two nations and then take that and expand it to the others. So we can have -- U.S. can have health and national security. India can health -- health and -- and national security as well as UK.

But also we lead at the United States. We also should be trying to ensure also global health so that everybody -- everything we do, we protect our own, but then we're also trying to protect others. If we don't do it, no one will.

MR. KENNEDY: And it -- the odd thing to me is that, when I owned my manufacturing company, the -- the first thing I learned was never single source. Never have a single source, always have a backup. You may have a favorite source for price or quality or whatever. But yet it seems like our industry and our government does a lot of single sourcing, and that's bad business, let alone bad for thing -- we -- we tend to push things to certain groups and certain companies and certain countries and it -- it leaves us at a great disadvantage and, you know, that's the thing -- comment I made about the steel and the aluminum. We used to own the industry, and then tariffs came along and you couldn't get stainless steel. You couldn't get, you know, aircraft aluminum. You couldn't get these things.

Guess what, every missile that's sent up by Ukraine or Israel or whoever might be, aircraft aluminum. Every single one has significant (sic) in there. And if we don't have it, what do we do? Just saying, I wish the -- I wish people didn't have -- I wish we -- we played baseball games and, you know, the winner take all instead of fighting. But unfortunately, defense is critical.

MR. GUNDERMANN: Well, thank you very much for that, and for all of you.

I just want to turn it over to Mr. Ban for closing remarks given where we are.

MR. BAN: Yes. I think we are a bit over time, so thank you for all of your testimony.

I will prepare to conclude the hearing. I want to just remind everyone that our regulations.gov docket will be open through June the 4th to receive any post-hearing comments as provided in our April 3rd Federal Register Notice. Thank you again for your time and for your engagement. And with that, we conclude the hearing. Thank you.

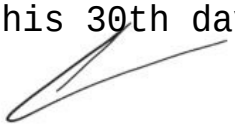
MR. KENNEDY: Thank you.

MS. JAEGER: Thank you.

REPORTER'S CERTIFICATE

I, JOHN SHEFFIELD, do hereby certify that I was authorized to and did electronically report the foregoing remote proceedings [video teleconference/telephone] and that the foregoing is a true and accurate electronic recording of the proceedings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 30th day of May, 2024.



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