# 2023 Trade Enforcement Priorities Report


Office of the United States Trade Representative

## FOREWORD

In accordance with section 601 of the Trade Facilitation and Enforcement Act of 2015 (section 310 of the Trade Act of 1974), the U.S. Trade Representative reports to the Committee on Finance of the U.S. Senate and the Committee on Ways and Means of the U.S. House of Representatives on acts, policies, or practices of foreign governments identified as trade enforcement priorities based on the consultations with those committees and the criteria set forth in paragraph (2) of section 310(a). The Office of the United States Trade Representative (USTR) is responsible for the preparation of this report and gratefully acknowledges the contributions of USTR staff to the writing and production of this report.

July 2023

## TABLE OF CONTENTS

# USTR ENFORCEMENT PRIORITIES

## *Executive Summary*

USTR is committed to strong trade enforcement of U.S. law and international agreements to further level the playing field and promote the interests of U.S. workers and businesses, manufacturers, farmers, ranchers, fishers, and underserved communities. Preserving U.S. rights to take actions necessary for our essential security is a top enforcement priority. Trade enforcement encompasses a broad range of activities including facility-specific rapid response labor mechanism actions under the United States-Mexico-Canada Agreement (USMCA), state-to-state dispute settlement, and section 301 investigations and actions. Trade enforcement also includes the monitoring of trade agreements, engagement in bilateral, plurilateral, multilateral, and regional fora (such as committees of the World Trade Organization), and direct engagement with trading partners on key trade barriers.

USTR's enforcement actions are critical to advancing the President's worker-centered trade policy and ensuring that foreign policy and trade combat unfair economic practices, defend American jobs and business, and create broad-based economic prosperity. This report highlights USTR's continuing commitment to enforcement and presents USTR's 2023 trade enforcement priorities:

- ***Preserving U.S. National Security Rights.*** For over 70 years, the United States has held the clear and unequivocal position that issues of national security cannot be reviewed in WTO dispute settlement and the WTO has no authority to second-guess the ability of a WTO Member to respond to a wide-range of threats to its security. China and other WTO Members have recently chosen to pursue legal challenges to U.S. national security measures in the WTO. USTR has been clear – and will continue to be clear – that the United States will not cede decision-making over its essential security to WTO panels. The Biden Administration remains committed to preserving U.S. national security, including by protecting human rights and democracy across the globe. The United States government has a responsibility to protect the security of its citizens and, as a nation, we are responsible for our security commitments to allies and partners. Neither of these responsibilities can be abridged by the WTO inserting itself into issues of national security. The United States intends to continue raising this fundamental issue until necessary steps are taken to ensure our national security rights remain intact.

- ***Enforcement of the United States-Mexico-Canada Agreement* (*USMCA*).** Enforcement of the USMCA is essential to ensuring that Canada and Mexico fully implement the agreement and live up to their commitments. Our enforcement actions also ensure that the agreement benefits American workers, manufacturers, farmers, fishers, businesses, families, and communities. Six times in 2023, and eleven times overall, the United States has sought Mexico's review of apparent denials of fundamental labor rights under the USMCA's Rapid Response Labor Mechanism (RRM) to benefit workers, raising labor

standards across North America and driving a race to the top. The United States has also advanced USMCA Environment chapter monitoring and enforcement, on matters including the prevention of illegal fishing, protection of the vaquita, and trafficking of totoaba fish. The United States also is continuing to employ the United States-Mexico Environment Cooperation and Customs Verification Agreement ("ECCVA"), leading to USTR's second request under the ECCVA with respect to wild-caught shrimp entering the United States. The United States has also requested consultations regarding other significant obligations under the USMCA, including Mexican measures related to energy and Mexican measures concerning genetically engineered corn and other genetically engineered products. The United States is also challenging Canada's revised dairy tariff-rate quota allocation measures, demonstrating the Administration's commitment to ensuring that U.S. dairy producers receive the full benefits of the USMCA to market and sell U.S. products to Canadian consumers.

- ***Pursuit of Fundamental Reform at the WTO and Enforcement of U.S. Rights in Ongoing Dispute Settlement Actions.*** The United States intends to lead in all areas at the WTO where we can contribute, including on dispute settlement reform. The United States will continue to engage constructively in a Member-driven reform process that seeks fundamental reform of the WTO's dispute settlement system. Fundamental reform is needed to ensure a well-functioning WTO dispute settlement system that supports WTO Members in the resolution of their disputes in an efficient and transparent manner, and in doing so limits the needless complexity and interpretive overreach that has characterized dispute settlement in recent years. In seeking reform through an interest-based, inclusive process, we will work towards producing a system that reinforces principles of fairness, equity, and sovereignty that underlie support for the multilateral trading system. The dispute settlement system should preserve the policy space in WTO rules for Members to address their critical societal interests and support rather than undermine the WTO's role as a forum for discussion and negotiation to help Members address new challenges. Most critically, fundamental reform must ensure that the WTO respects the essential security interests of WTO Members, including the United States. WTO dispute settlement cannot be a forum for debating and deciding on the essential security interests of Members. The United States is working towards a reformed system that respects the right of Members to determine what action is necessary to protect their essential security interests. The United States will also work to defend U.S. interests in ongoing dispute settlement actions.

- ***Defense of U.S. Trade Remedies.*** USTR will continue to strongly defend U.S. trade remedies, including to China's numerous challenges to U.S. antidumping, anti-subsidy, and safeguard actions that serve to defend U.S. workers and businesses from China's non-market economic policies and practices.

- ***Enforcement Supporting the Strategic Interests of the United States.*** Enforcement plays a critical role in promoting predictability and leveling the playing field in

agricultural trade. USTR has also intensified work to find mutually agreed solutions on outstanding WTO disputes, while maintaining the integrity of U.S. measures. This has already resulted in the resolution of six WTO disputes in 2023 and the removal of certain retaliatory tariffs, which will restore and expand market opportunities for U.S. agricultural producers and manufacturers. USTR will prioritize enforcement efforts with respect to key strategic priorities of the United States, including supporting the goals of Executive Order 14017 by leading the interagency Supply Chain Trade Task Force and identifying opportunities to use trade tools and agreements to make our supply chains more resilient. USTR will also continue to pursue a range of enforcement efforts to address intellectual property (IP) protection and enforcement in other countries related to the trade in counterfeit goods; forced technology transfer (including government-sponsored cybertheft of IP) and preferences for indigenous IP; inadequate protection of trade secrets, undisclosed information, patents, and geographical indications; and online and broadcast piracy. USTR will also continue engagement with WTO committees, which are important instruments supporting United States monitoring and enforcement of certain trade commitments undertaken by Members. To defend the rights of American workers, manufacturers, and businesses, and ensure that they can fairly compete on a level playing field, USTR will continue to address unjustified barriers stemming from technical regulations, standards, and conformity assessment procedures that discriminate against U.S. exports or do not otherwise comply with international commitments.

The priorities identified in this report reflect key areas of enforcement focus by USTR. The report does not attempt to catalog all trade enforcement priorities on which USTR is actively working. An inventory of trade barriers on which USTR and other agencies are currently working is contained in the 2023 National Trade Estimate Report on Foreign Trade Barriers, and other enforcement-related priorities and objectives are discussed in the 2023 Trade Policy Agenda and 2022 Annual Report of the President of the United States on the Trade Agreements Program. These reports are available on the USTR website at: www.ustr.gov.

## *Enforcement of U.S. Rights Under the United States-Mexico-Canada Agreement*

On July 1, 2020, the United States-Mexico-Canada Agreement (USMCA) came into effect, containing significant improvements to worker protections, expanded market access, and improved dispute settlement procedures. USTR will not hesitate to bring enforcement actions against trading partners that fail to respect and protect the rights of workers, discriminate against American businesses, or deny our producers market access.

### Labor Monitoring and Enforcement Under the USMCA

USTR is committed to putting workers at the center of trade policy by using the USMCA to help protect workers' rights. In this effort, USTR has pursued 11 actions under the USMCA's Facility-Specific Rapid Response Labor Mechanism (RRM), 6 of which have been in 2023. Additionally, USTR, working with the Department of Labor (DOL), closely monitors implementation of Mexico's labor law reform and follows up on tips from the web-based hotline and information received from the five labor attachés posted in Mexico. The Interagency Labor Committee for Monitoring and Enforcement, co-chaired by DOL and USTR, published "Final Procedural Guidelines for Petitions Pursuant to the USMCA" in the *Federal Register* on June 22, 2023. The Committee also published a set of frequently asked questions and answers in Spanish and English regarding the submission of Labor Chapter and RRM petitions and hotline information.

### Facility-Specific Rapid Response Labor Mechanism Matters & Petitions

The USMCA contains a first-of-its-kind RRM that enables expedited enforcement of the rights of freedom of association and collective bargaining in Mexico at particular facilities. The United States continues to fully utilize this mechanism to support these critical workers' rights and use trade to promote a "race to the top" in labor conditions.

*Review of Alleged Freedom of Association and Collective Bargaining Violations at Automotive Parts Factory in Matamoros, Tamaulipas*

In response to a petition from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and other groups, on June 9, 2021, USTR submitted a request that Mexico review whether workers at the Tridonex automotive parts facility were being denied the right of free association and collective bargaining. On August 10, 2021, USTR announced an agreement to address the allegations. As part of the agreement, Tridonex agreed to, among other things: provide severance and six months of backpay to at least 154 workers who were dismissed from the plant; support the right of its workers to determine their union representation without coercion; provide training to all Tridonex workers on their rights to collective bargaining and freedom of association; and remain neutral in any election for union representation at the facility. Tridonex has taken a number of steps to satisfy its commitments in the action plan, including executing payments to former workers, updating its human resources policies, distributing copies of the collective bargaining agreement to its workforce, and undertaking COVID-19 safety measures. On February 28, 2022, a union representation vote was held at the facility. The

United States continues to monitor implementation of the action plan and the union representation process.

*Review of Alleged Freedom of Association and Collective Bargaining Violations at Teksid Hierro Automotive Parts Factory in Frontera, Coahuila*

On May 5, 2022, the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and the Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúgicos y Similares de la República Mexicana (SNTMMSSRM or Los Mineros) filed a petition regarding the Teksid Hierro de México (Teksid Hierro) auto parts facility in Frontera, Coahuila, alleging that workers at the facility are being denied the right of free association and collective bargaining. On June 6, USTR submitted a request that Mexico review whether workers at the Teksid Hierro facility are being denied the right of free association and collective bargaining. On June 15, 2022, Mexico accepted the request for review. The facility took several actions, including providing access to the facility for the purpose of carrying out worker representation, paying union dues withheld from workers and owed to the independent union, and reinstating and offering back pay to thirty-six workers. SNTMMSSRM has since prevailed in a union representational challenge and continues to represent workers at the facility for purposes of bargaining. On August 16, 2022, the United States and Mexico announced that the matter had been successfully resolved.

*Review of Alleged Freedom of Association and Collective Bargaining Violations at Auto Parts Facility in Piedras Negras, Coahuila (VU I)*

On June 21, 2022, two Mexican labor organizations, La Liga Sindical Obrera Mexicana (LSOM) and Comité Fronterizo de Obreras, filed a petition alleging that workers at the Manufacturas VU automotive components facility in Piedras Negras, Coahuila, are being denied the right of free association and collective bargaining. On July 21, 2022, USTR submitted a request that Mexico review whether workers at the Manufacturas VU facility are being denied the right of free association and collective bargaining. On July 29, 2022, Mexico accepted the request for review. As a result of the review, the Government of Mexico and the company took several actions that remediated identified issues, including facilitating a written commitment from the employer to remain neutral in a future union representation election, and holding a supervised union representation election on August 31, 2022, in which VU workers voted in favor of LSOM.

*Review of Alleged Freedom of Association and Collective Bargaining Violations at Auto Parts Facility in Piedras Negras, Coahuila (VU II)*

On January 30, 2023, new denials of rights at the Manufacturas VU automotive components facility prompted the United States to ask Mexico to conduct a second review at the facility. On March 31, the United States and Mexico announced a course of remediation to address the new denials of rights. Under the course of remediation, Mexico will, among other actions:

- Initiate sanctions proceedings against individuals, labor organizations, or companies found to have violated Mexican law in connection with this matter;
- Conduct workers' rights training at the Manufacturas VU facility and monitor the facility with regular inspections;
- Ensure Manufacturas VU makes – and abides by – a public, written statement committing to respect the rights of freedom of association and collective bargaining;

- Ensure U.S.-based company executives visit the facility to further assure workers of these commitments; and,
- Ensure the company takes appropriate action – including termination – against human resource staff found to have violated workers' rights.

The agreed-upon deadline for remediation is September 30, 2023.

*Review of Alleged Denial of Workers' Rights at Unique Fabricating*

On February 2, 2023, the Mexican union Sindicato Nacional de Trabajadores de la Transformación, Construcción, Automotriz, Agropecuaria, Plásticos y de la Industria en General, del Comercio y Servicios Similares, Anexos y Conexos del Estado de Querétaro, "Ángel Castillo Reséndiz" ("the Transformation Union") filed a petition concerning a denial of rights at the Unique Fabricating automotive components facilities in Santiago de Querétaro. On March 6, 2023, USTR submitted a request that Mexico review whether workers at the facility were being denied the right of free association and collective bargaining. Mexico accepted the request, and the United States announced the successful resolution of the petition on April 24, 2023, after Mexico took actions during the review period to ensure workers' rights were protected at the facility. These actions included working with the company to issue a neutrality statement recognizing workers' ability to select a union of their own choice and stating its zero-tolerance policy toward union favoritism and discrimination. The company also signed an agreement with the new union committing to provide the new and existing unions with equal access to the facility, take steps to prevent potential freedom of association violations, and provide the new union with dues from its affiliates.

*Review of Alleged Denial of Workers' Rights at Goodyear*

On April 20, 2023, LSOM filed a petition asserting ongoing denials of rights at the Goodyear SLP, S. de R.L. de C.V. tire manufacturing facility in the city and state of San Luis Potosí. On May 22, 2023, USTR submitted a request that Mexico review whether workers at the facility were being denied the right of free association and collective bargaining with respect to several issues, including a failure to apply the sectoral collective bargaining agreement in the rubber manufacturing industry to workers at the facility and misinforming workers about the existence or application of the agreement to their employment. The Government of Mexico accepted the request and concluded that workers at the facility are being denied their right to freedom of association and collective bargaining. On July 19, 2023, the United States and Mexico announced a course of remediation to address the denial of rights at Goodyear.

*Review of Alleged Denial of Workers' Rights at Draxton Facility*

On May 31, 2021, USTR submitted a request to Mexico to review whether workers at a Draxton facility in Irapuato, Guanajuato were being denied the right of free association and collective bargaining. USTR self-initiated this action after becoming aware of information indicating violations of workers' rights. The information indicated several denials of labor rights, including the termination of a union official and interference with union activities; harassment, surveillance, and intimidation of workers attempting to organize a new union; and threats and violence faced by the terminated union official. Additionally, workers did not receive a copy of their collective bargaining agreement before voting on it in 2022. Mexico accepted the request

and concluded that workers at the facility are being denied their right to freedom of association and collective bargaining. The United States and Mexico are reviewing of this matter.

*Review of Alleged Denial of Workers' Rights at Mexican Garment Facility*

On May 12, 2023, *Frente Auténtico del Trabajo* (FAT), a Mexican labor organization, and the *Sindicato de Industrias del Interior*, a Mexican union, filed a petition concerning Industrias del Interior (INISA), a garment manufacturing facility in the state of Aguascalientes. The petition alleged that INISA is committing acts of employer interference by coercing workers to accept the company's proposed collective bargaining agreement revisions and intervening in the union's internal affairs. On June 12, 2023, USTR submitted a request that Mexico review whether workers at the facility are being denied the right of free association and collective bargaining. Mexico accepted the request. The United States and Mexico are reviewing this matter.

*Review of Alleged Denial of Workers Rights at a Grupo Mexico Mine*

On May 15, 2023, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the United Steel Workers (USW), and Los Mineros, a Mexican union, filed a petition concerning the San Martin mine, a lead, zinc, and copper mine owned and operated by the Grupo México conglomerate. Specifically, the petition alleged that Grupo Mexico has resumed operations at the San Martin mine despite an ongoing strike called by Los Mineros, and engaged in collective bargaining with a coalition of workers despite the fact that Los Mineros holds the right to represent workers for purposes of collective bargaining. On June 16, 2023, USTR submitted a request that Mexico review whether workers at the facility are being denied the right of free association and collective bargaining. Mexico accepted the request. The United States and Mexico are reviewing this matter.

**Monitoring of Mexican Labor Reforms**

USTR continues to monitor closely Mexico's implementation and enforcement of its new labor legislation to ensure that Mexico meets its obligations under the USMCA. Among other matters, USTR is monitoring:

- The process under which previously negotiated collective bargaining agreements are voted on by workers in Mexico. As USTR's actions demonstrate, USTR will take appropriate action to ensure that workers can exercise the right of free association and collective bargaining throughout this process.
- Allegations of violence against workers and labor organizations. USTR understands that workers and labor organizations must be able to exercise their labor rights in a climate that is free from violence, threats, and intimidation, and that governments must not fail to address violence or threats of violence against workers who exercise or attempt to exercise their labor rights.
- Mexico's creation and implementation of labor courts, union registration institutions, and conciliation centers to ensure Mexico's compliance with USMCA obligations and timelines.
- The process by which unions amend their bylaws to incorporate requirements of secret-ballot voting and gender equity for union officer elections.

## Environment Monitoring and Enforcement Under USMCA

The USMCA includes state-of-the-art provisions, including the most comprehensive set of environmental obligations of any U.S. trade agreement. The environmental commitments of the USMCA are fully enforceable through the Agreement's dispute settlement procedures, affirming the Parties' recognition that a healthy environment is an integral element of sustainable development and of a robust liberalized trading relationship. USTR is fully committed to effective monitoring and enforcement of the environmental obligations of the USMCA.

Since entry into force, the United States has taken broad and strategic measures that advance USMCA environment chapter monitoring and enforcement. These measures include; *inter alia*, actions related to the protection of the vaquita and trafficking of totoaba fish; preventing and reducing marine litter; improving and promoting the conservation of priority marine species; and promoting sustainable forest management and the legal trade in timber, including through improved wood identification.

## United States-Mexico Chapter 24 Environment Consultations

On February 10, 2022, USTR formally requested Environment Consultations with Mexico under USMCA Article 24.29.2 concerning Mexico's USMCA Environment Chapter obligations relating to the protection of the vaquita, the prevention of illegal fishing, and trafficking of totoaba fish. Since then, USTR held a number of technical-level consultations meetings with Mexico to enhance Mexico's enforcement of its fisheries-related environmental laws in the Upper Gulf of California and implementation of its USMCA environment commitments. In March 2023, USTR formally notified the Government of Mexico that, pursuant to USMCA Article 24.30.1, it was requesting consultations at the Senior Representative (Assistant U.S. Trade Representative) level, under the environment chapter. The Senior Representatives met in May 2023 to further progress and action in this matter.

While Mexico has adopted environmental laws designed to prevent illegal fishing in the Upper Gulf of California, to prevent trafficking of protected species such as the totoaba fish and to protect and conserve the vaquita, available evidence raises concerns that Mexico may not be meeting a number of its USMCA environment commitments. The vaquita is a critically endangered species of porpoise endemic to the Upper Gulf of California in Mexico. The most recent survey of the species identified between 10 to 13 individuals. Even with such a small population, scientists maintain that the species continues to be biologically viable, if given the space to recover. Incidental bycatch from prohibited gillnets, primarily set to catch shrimp and totoaba fish, is the primary cause of vaquita mortality. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) prohibits international commercial trade in both the vaquita and totoaba fish. While the vaquita is not traded, there is a high demand for the swim bladder of the totoaba fish, which is traded illicitly.

The consultations are ongoing, and USTR will continue to work closely with Mexico to strengthen Mexico's fisheries enforcement in the Upper Gulf of California.

## Work of the Interagency Environment Committee for Monitoring and Enforcement

USTR chairs the USMCA Interagency Environment Committee for Monitoring and Enforcement ("IECME"), which was established by Executive Order 13907. Since its creation, the IECME has served a central role in ensuring a whole-of-government approach to monitoring and enforcement of USMCA environmental obligations. The USMCA Implementation Act also provides that the IECME may request the Trade Representative to request consultations[1] with respect to a USMCA Party or request heads of Federal agencies to initiate monitoring or enforcement actions under specified domestic statutes[2] with regard to USMCA environmental obligations.

USTR has convened the IECME, and its informal subsidiary body and working groups, to ensure effective coordination and execution of monitoring and enforcement activities. Pursuant to its mandate, the IECME has regularly reviewed information concerning Mexico or Canada and has analyzed that information in light of their USMCA environmental obligations. This information has come from various sources, including through public submissions directly to the IECME and from the Commission for Environmental Cooperation ("CEC") Submissions on Enforcement Matters ("SEM") process, which was originally established under the former North American Agreement on Environmental Cooperation and is currently operating pursuant to the Environmental Cooperation Agreement and the USMCA environment chapter.

*Public Participation and Submissions*

The USMCA's environment chapter provides for enhanced public participation and allows persons of any USMCA Party to file a submission with the trilateral CEC Secretariat asserting that a Party is failing to effectively enforce its environmental laws. Separate from, and parallel to the CEC submissions process, persons of a Party may submit information regarding a Party's implementation of the environment chapter directly to USTR, as the IECME Chair. Through its website, USTR has provided for direct public engagement and inquiries regarding USMCA Chapter 24 implementation, establishing a dedicated email address to receive such submissions.

Between July 1, 2022, and June 1, 2023, eight SEMs were filed. Of the eight, six remain open.[3] Two submissions were terminated by the CEC Secretariat for not meeting the criteria in Articles 24.27.2 and 24.27.3 of the USMCA.[4]

The IECME continues to collect and analyze information related to the issues raised in the submissions, including whether there is sufficient evidence to support a claim that Mexico or

[1] *See* USMCA, Articles 24.29, 31.4, and 31.6.
[2] *See* the USMCA Implementation Act, section 814(2).
[3] Three SEMs (Loggerhead Turtle, Vaquita Porpoise, and North Atlantic Right Whale) remain open from the previous reporting periods.
[4] Terminated submissions include "Residential Development in San Cristóbal de las Casas", filed January 11, 2023, and "Madín Dam Basin", filed October 26, 2022. For more details see the Submissions on Enforcement Matter compliance tracker at http://www.cec.org/submissions-on-enforcement/sem-compliance-tracker/.

Canada is in breach of its environmental obligations under Chapter 24 of the USMCA. In addition to providing the public an opportunity to submit information directly to the IECME, USTR provides updates on USMCA implementation to its cleared advisors through the Trade and Environment Policy Advisory Committee.

*USMCA Environment Annual Report*

Pursuant to section 816 of the USMCA Implementation Act, USTR prepared its annual report in consultation with the heads of IECME member agencies. This report discusses the implementation of subtitles A and B of title VIII of the Act, summarizes efforts of Canada and Mexico to implement Chapter 24 of USMCA since the publication of the 2022 annual report on July 1, 2022, and describes additional efforts to be taken with respect to implementation of Canada's and Mexico's environmental obligations.

The annual report identified seven priority areas that USTR, along with other U.S. agencies, will continue to actively monitor, and collaborate with Mexico and Canada on, including: (1) protection and conservation of the vaquita and totoaba fish in the Gulf of California in Mexico; (2) illegal fishing in the Gulf of Mexico; (3) illegal wildlife trade; (4) the Maya Train project in Mexico, (5) coal mining effluent in Canada, and (6) water pollution from oil sands extraction in Canada, and (7) greenhouse gas emissions from logging and the oil and gas industries. USTR's monitoring and enforcement activities will also extend to issues outside of these priority areas.

The IECME, pursuant to the USMCA Implementation Act, has strengthened the United States' whole-of-government coordination of monitoring and enforcement of Mexico's and Canada's implementation of USMCA environmental obligations. USTR, as chair of the IECME, is committed to leveraging all relevant environmental and trade legal tools and policy resources together to enhance bilateral and trilateral collaboration around the USMCA environmental commitments.

## Environment Attachés

Per section 822 of the USMCA Implementation Act, three persons, one employee each from U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration, may be detailed to USTR to serve as environment attachés to assist the IECME to monitor Mexico's compliance with its USMCA environmental obligations. Three environment attachés had been posted at the U.S. Embassy in Mexico City since November, 2020, but one has since returned to a position at his home agency. The remaining two attachés continue to engage with relevant U.S. Government agencies, Government of Mexico officials, and NGO stakeholders in the United States and Mexico. The attachés provide quarterly updates to the IECME on their information gathering and monitoring efforts. The priority issue areas monitored by the attachés include efforts related to vaquita conservation and protection, combating illegal fishing and illegal totoaba fish trade, marine litter prevention and mitigation, fisheries management, forestry management and timber legality, air quality improvement and climate change.

### U.S.-Mexico Environment Cooperation and Customs Verification Agreement

The U.S.-Mexico ECCVA, negotiated alongside the USMCA and implemented under section 813 of the USMCA Implementation Act, is a separate and additional bilateral tool to facilitate cooperation between the United States and Mexico regarding specific shipments of fisheries, timber, and wildlife (including live) products. It allows parties to request information to verify whether an importer has provided accurate and adequate documentation demonstrating a shipment's legality.

In December 2022, USTR made its second request under the ECCVA with respect to the legality of wild-caught shrimp entering the United States, potentially in violation of import restrictions pursuant to the Marine Mammal Protection Act, as well as multiple U.S. customs requirements. The United States has requested documents from Mexico, including waybills, landing reports, and other available export documentation, to ensure shipments entered the United States according to U.S. law. USTR will continue to monitor this issue and consider other potential uses of the ECCVA.

### Dispute Settlement Related to Other USMCA Commitments

*Canada – Dairy TRQ Allocation Measures 2* (CDA-USA-2023-31-01)

On May 25, 2022, the United States requested consultations under Chapter 31 of the USMCA for the second time regarding Canada's dairy TRQ allocation measures, specifically relating to the ineligibility of certain types of importers to apply for USMCA dairy TRQ allocations, the imposition of a 12-month activity requirement for TRQ allocation applicants and recipients, and the partial allocation of the calendar year 2022 dairy TRQs. This consultation request follows a successful U.S. challenge in which a USMCA panel agreed with the United States that Canada's use of "processor pools" is inconsistent with Article 3.A.2.11(b) of the USMCA. Canada determined that, in response to the adverse findings of that panel, it would only eliminate the "processor pools" for its dairy TRQ allocations, but Canada otherwise did not make changes to the allocation of its dairy TRQs that the United States sought. Consultations were held on June 9, 2022, but the Parties failed to resolve the matter.

On December 20, 2022, the United States requested a new round of consultations with Canada. After initiating consultations with Canada in May 2022, the United States identified additional aspects of Canada's measures that are inconsistent with Canada's obligations under the USMCA. With the new request, the United States expanded its challenge of Canada's dairy TRQ allocation measures to include Canada's use of a market-share approach for determining TRQ allocations and Canada's return and reallocation mechanism for its dairy TRQs. Canada applies different criteria for calculating the market share of different segments of applicants, and Canada is failing to allow importers the opportunity to fully utilize TRQ quantities. The United States also continues to challenge Canada's dairy TRQ allocation measures that impose new conditions on the allocation and use of the TRQs, and that prohibit eligible applicants, including retailers, food service operators, and other types of importers, from accessing TRQ allocations. Through

these measures, Canada undermines the market access that it agreed to provide in the USMCA. Consultations were held on January 17, 2023, but again failed to resolve the matter.

On January 31, 2023, the United States requested the establishment of a panel to examine U.S. concerns. The panel hearings were held on July 19-20, 2023 in Ottawa, Canada. The panel's report is expected in 2023.

*Mexico – Measures Related to Energy*

On July 20, 2022, the United States formally requested consultations with Mexico under Chapter 31 of the USMCA. The consultations relate to certain measures by Mexico that undermine American companies and U.S.-produced energy in favor of Mexico's state-owned electrical utility, the Comisión Federal de Electricidad (CFE), and state-owned oil and gas company, Petróleos Mexicanos (PEMEX). Specifically, the United States is challenging a 2021 amendment to Mexico's Electric Power Industry Law that prioritizes CFE-produced electricity over electricity generated by all private competitors; Mexico's inaction, delays, denials, and revocations of private companies' abilities to operate in Mexico's energy sector; a December 2019 regulation granting only PEMEX an extension to comply with the maximum sulfur content requirements under Mexico's applicable automotive diesel fuel standard; and a June 2022 action that advantages PEMEX, CFE, and their products in the use of Mexico's natural gas transportation network. These measures appear to be inconsistent with several of Mexico's USMCA obligations, including under the Market Access, Investment, and State-Owned Enterprises chapters.

The United States is engaging with Mexico in these consultations on specific and concrete steps Mexico must take to address the concerns set out in our consultations request. It remains the goal of the United States to seek a solution with Mexico that addresses the United States' serious concerns.

*United States – Automotive Rules of Origin* (USA-MEX-2022-31-01)

On August 20, 2021, Mexico formally requested USMCA Chapter 31 consultations with the United States over the interpretation and application of certain rules of origin provisions for autos under the USMCA. On August 26, 2021, Canada notified its intent to join the consultations. Pursuant to Article 31.6 of the USMCA, Mexico requested and established a dispute settlement panel on January 6, 2022. Canada joined the dispute as a co-complainant on January 13, 2022.

The U.S. position is that the USMCA core parts rules of origin requirement for autos, comprised of major, high-value auto parts like engines, advanced batteries, and transmissions, and its calculation methodology are distinct from the overall vehicle regional value content (RVC) calculation, constituting two separate requirements. Mexico and Canada, with support from certain auto producers, interpret the USMCA to allow the total value of the core parts, including the total value of non-originating material used in those parts that are individually non-originating, to carry over into the calculation of the RVC for the vehicle itself as if 100 percent of those materials were originating.

On January 11, 2023, the USMCA parties made public the report of the panel in the dispute. In the final report, the panel found against the United States. The Parties are consulting to endeavor to agree on a positive resolution of the dispute.

*Mexico – Measures Concerning Genetically Engineered ("GE") Corn and Other GE Products*

On March 6, 2023, USTR requested technical consultations with Mexico under the USMCA Sanitary and Phytosanitary Measures Chapter, pursuant to USMCA Article 9.19.2. The request for technical consultations concerned three sets of measures:

1. Mexico's rejections of certain authorization applications covering certain corn, cotton, canola, and soybean GE events, and the resultant bans on products containing those events;

2. Mexico's ban on the importation and sale of GE corn for use in dough and tortillas, as set out in Mexico's 2023 Corn Decree and its legal regime governing GE products; and

3. Mexico's instruction to gradually substitute—i.e., ban—GE corn used for animal feed and for human consumption other than in dough and tortillas, as set out in Mexico's 2023 Corn Decree and its legal regime governing GE products.

Staff-level technical consultations with Mexico did not resolve U.S. concerns. On June 2, 2023, USTR requested dispute settlement consultations with Mexico under USMCA Chapter 31. Throughout USTR's engagement with Mexico on this matter, USTR has emphasized that if U.S. concerns are not resolved, the United States will consider all options, including taking further steps to enforce U.S. rights under the USMCA.

## *Section 301 Investigations*

Section 301 of the Trade Act of 1974, as amended, may be used to enforce U.S. rights under bilateral and multilateral trade agreements or to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce.

### China's Forced Technology Transfer

On August 18, 2017, USTR initiated an investigation into certain acts, policies, and practices of China related to technology transfer, intellectual property, and innovation. On March 22, 2018, USTR issued a detailed report and determined that the acts, policies, and practices of China under investigation are unreasonable or discriminatory and burden or restrict U.S. commerce, and are thus actionable under section 301(b).

In particular, USTR determined that China had adopted actionable policies and practices: (1) requiring or pressuring U.S. companies to transfer technology to Chinese entities through joint venture requirements and other foreign ownership restrictions, administrative reviews, and licensing procedures; (2) using its technology regulations to force U.S. companies to license their technologies on non-market terms that favor Chinese recipients; (3) generating technology

transfer from U.S. companies by directing or facilitating systematic investment in, and acquisition of, these U.S. companies and assets; and (4) stealing sensitive commercial information and trade secrets of U.S. companies through unauthorized intrusions into their computer networks.

On November 20, 2018, USTR issued another detailed report, explaining that China had not fundamentally altered the policies and practices that were the subject of the March 2018 report.

With respect to the second category of acts, policies, and practices (involving technology licensing regulations), the U.S. Trade Representative decided that relevant U.S. concerns could be appropriately addressed through recourse to WTO dispute settlement.

*Lists 1 and 2*

With respect to the three other categories of acts, policies, and practices listed above, the U.S. Trade Representative, at the direction of the President, determined to impose an additional duty on certain products of China. The additional duties were imposed in two tranches, following public comment and hearings. In July 2018, an additional 25 percent duty was imposed on the first tranche, known as List 1, which covered 818 tariff subheadings with an approximate annual trade value of $34 billion. Subsequently in August 2018, an additional 25 percent duty was imposed on the second tranche, known as List 2, which covered 279 tariff subheadings with an approximate annual trade value of $16 billion.

*List 3*

In September 2018, the U.S. Trade Representative, at the direction of the President, determined to modify the prior action in the investigation by imposing additional duties on products of China classified under 5,733 tariff subheadings with an approximate annual trade value of $200 billion. The rate of the additional duty on these List 3 products was initially 10 percent ad valorem and was later increased to 25 percent ad valorem in May 2019, following public comment and hearing.

*List 4*

In August 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the prior action in the investigation by imposing additional 10 percent ad valorem duties on products of China classified under approximately 3,805 tariff subheadings with an approximate annual trade value of $300 billion. The tariff subheadings subject to the 10 percent additional duties were separated into two lists with different effective dates: September 1, 2019, for the list in Annex A, known as List 4A, and December 15, 2019, for the list in Annex C, known as List 4B. Subsequently, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the additional duties for products covered by List 4A from 10 percent to 15 percent, effective September 1, 2019. The rate of the additional duties was

subsequently reduced to 7.5 percent. Effective December 15, 2019, List 4B was suspended indefinitely.

*Product Exclusions*

For each of the four lists (List 1-List 4A), USTR established processes by which stakeholders could request that particular products classified within a covered tariff subheading be excluded from the additional duties. Under these processes, USTR granted 2,217 exclusions and 549 exclusions were subsequently extended. Most of these exclusions expired by December 31, 2020, with the remainder expiring in early 2021. In March 2022, following a public comment process, USTR reinstated 352 of the 549 previously extended exclusions through the end of 2022. On December 21, 2022, USTR extended the reinstated exclusions for an additional nine months, through September 30, 2023.

In 2020, USTR granted 99 exclusions for certain medical care products to address COVID. These exclusions were subsequently extended and scheduled to expire November 30, 2021. Following public comment processes, 81 of the COVID exclusions were ultimately extended to May 31, 2023, and 77 of the COVID exclusions were further extended through September 30, 2023.

*Four-Year Review*

In May 2022, following requests from domestic industries which benefit from the tariff actions, the Trade Representative commenced the statutory four-year review of the actions taken. The statute directs that the Four-Year Review include a consideration of: (1) the effectiveness of the action in achieving the objectives of the investigation; (2) other actions that could be taken; and (3) the effects of the action on the U.S. economy, including consumers. To aid in this review, USTR opened an electronic portal to receive public comments on a number of issues including those directed by the statute, as well as views on the impact of the actions on U.S. workers, U.S. small businesses, U.S. manufacturing, critical supply chains, U.S. technological leadership, and possible tariff inversions. USTR expects to complete the four-year review in the fall of 2023.

*U.S.-China Economic and Trade Agreement*

The United States and China signed the U.S.-China Economic and Trade Agreement on January 15, 2020 (the "Phase One Agreement"), which created binding commitments to address China's technology transfer regime. The Phase One Agreement entered into force on February 14, 2020. The Technology Transfer chapter addresses some of the unfair non-market practices covered in the Section 301 investigation. In the Agreement, China commits not to coerce technology transfer. The commitment applies to both written measures and informal acts and practices of

agencies and officials that may not be written into official policy. USTR is monitoring China's progress in implementing the commitments under the Phase One Agreement.

### Vietnam's Acts, Policies, and Practices Related to Currency Valuation

Policies of U.S. trading partners that result in the undervaluation of their currencies are an important area of concern. Interventions in the foreign exchange (FX) market to maintain an undervalued currency make it harder for U.S.-based producers to export, and make imports artificially cheaper. Addressing this type of problem is an important element of the Administration's worker-centered trade policy.

On October 2, 2020, the U.S. Trade Representative initiated an investigation regarding whether Vietnam's acts, policies, and practices related to the valuation of its currency are unreasonable or discriminatory and burden or restrict United States commerce. On January 15, 2021, the U.S. Trade Representative determined that Vietnam's acts, policies, and practices related to currency valuation, including excessive foreign exchange market interventions and other related actions, taken in their totality, are unreasonable and burden or restrict U.S. commerce, and thus are actionable under section 301. The U.S. Trade Representative made this determination in consultation with the U.S. Department of the Treasury (Treasury), based on the information obtained during the investigation, and taking account of public comments and the advice of the Section 301 Committee and advisory committees. The determination was accompanied by a detailed public report.

The report evaluated the specific facts and circumstances examined in the investigation in light of widely-accepted norms, as evidenced in international agreements and U.S. law, that exchange rate policy should not be undertaken to gain an unfair competitive advantage in international trade, should not artificially enhance a country's exports and restrict its imports in ways that do not reflect the underlying competitiveness, should not prevent exchange rates from reflecting underlying economic and financial conditions, and should not prevent balance of payments adjustment.

On July 19, 2021, Treasury and the State Bank of Vietnam (SBV) issued a joint statement that they had reached an agreement to address Treasury's concerns about Vietnam's currency practices as described in Treasury's Report to Congress on the Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States. On July 23, 2021, the U.S. Trade Representative found that the Treasury-SBV agreement and the measures of Vietnam called for in the agreement provide a satisfactory resolution of the matter subject to investigation and that no action under Section 301 was appropriate at that time. Treasury and USTR will monitor Vietnam's implementation of its commitments on exchange rate policy. If USTR, in consultation with Treasury, subsequently considers that implementation is not satisfactory, the U.S. Trade Representative will consider further action under Section 301.

### Vietnam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber

The import and use of illegally harvested or traded timber is detrimental to the environment, undermines an equitable trading system, and disadvantages workers and firms who rely on legal timber. Addressing illegal timber concerns is an important element of ensuring a level playing field for U.S. workers and firms.

Vietnam is a leading and rapidly growing producer and exporter of wood products, such as plywood and wooden furniture. The United States is Vietnam's largest export market, with 2019 imports of $3.7 billion in wooden furniture from Vietnam alone. Vietnam relies heavily on timber imports. On October 2, 2020, the USTR initiated a section 301 investigation concerning Vietnam's acts, policies, and practices related to the alleged import and use of timber that is illegally harvested or traded. The notice of initiation explained that Vietnam relies on imports of timber harvested in other countries to supply the timber inputs needed for its wood products manufacturing sector, and evidence suggests that a significant portion of that imported timber was illegally harvested or traded. This was the first section 301 investigation to address environmental concerns.

On October 1, 2021, the United States and Vietnam signed an agreement that addresses U.S concerns in the timber investigation. The agreement secures commitments that will help keep illegally harvested or traded timber out of the supply chain and protect the environment and natural resources. USTR will monitor Vietnam's implementation of the agreement. If the U.S. Trade Representative determines that Vietnam is not satisfactorily implementing the agreement or associated measures, then the U.S. Trade Representative will consider further action under section 301.

### Digital Services Taxes

On July 10, 2019, USTR initiated an investigation of France's Digital Services Tax (DST). France's DST imposes a three percent tax on annual revenues generated by companies providing certain digital services to, or aimed at, French users. In December 2019, USTR released a detailed report and determined that France's DST was actionable under section 301. In January 2020, France agreed to postpone the collection of its DST. In July 2020, USTR determined to take action in the form of tariffs in this investigation and deferred imposition of the tariffs for up to six months. In January 2021, USTR determined to further suspend the action in the French investigation to allow USTR to coordinate actions in all DST investigations.

On June 2, 2020, USTR initiated investigations into DSTs adopted or under consideration in ten jurisdictions: Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom.

In January 2021, following comprehensive investigations, USTR determined that the DSTs adopted by Austria, India, Italy, Spain, Turkey, and the United Kingdom discriminated against U.S. digital companies, were inconsistent with principles of international taxation, and burdened or restricted U.S. commerce.

In March 2021, USTR announced proposed trade actions in these six investigations, and undertook a public notice and comment process, during which it collected hundreds of public comments and held seven public hearings. At that time, USTR also terminated the remaining four investigations (of Brazil, the Czech Republic, the European Union, and Indonesia) because those jurisdictions had not implemented the DSTs under consideration.

On June 2, 2021, USTR announced tariffs on certain goods from Austria, India, Italy, Spain, Turkey, and the United Kingdom, and immediately suspended the imposition of those tariffs while multilateral negotiations on international taxation at the OECD and in the G20 continue.

On October 8, 2021, the United States and 135 other jurisdictions participating in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting reached a political agreement on a two-pillar solution to address tax challenges arising from the digitalization of the world economy.

On October 21, 2021, Treasury issued a joint statement with Austria, France, Italy, Spain, and the United Kingdom on a transitional approach to those countries' DSTs prior to entry into force of Pillar 1. The joint statement reflects a political agreement that DST liabilities accrued during the transitional period will be creditable in defined circumstances against future taxes due under Pillar 1. Based on these countries' commitment to remove their DSTs pursuant to Pillar 1 and on their political agreement to the transitional approach prior to Pillar 1's entry into force, the U.S. Trade Representative determined to terminate the section 301 action taken in the investigation of the DSTs in Austria, France, Italy, Spain, and the United Kingdom. In coordination with Treasury, USTR is continuing to monitor implementation of the transitional approach as provided in the joint statement.

On November 22, 2021, Treasury issued a joint statement with Turkey regarding a transitional approach to Turkey's Digital Service Tax prior to entry into force of Pillar 1. The joint statement reflects a political agreement that DST liabilities accrued during the transitional period will be creditable in defined circumstances against future taxes due under Pillar 1. Based on the commitment of Turkey to remove its Digital Service Tax pursuant to Pillar 1 and on Turkey's political agreement to the transitional approach prior to Pillar 1's entry into force, the U.S. Trade Representative determined to terminate the section 301 action taken in the investigation of Turkey's DST. In coordination with Treasury, USTR is continuing to monitor implementation of the transitional approach as provided in the joint statement.

On November 24, 2021, India and the United States issued statements describing a transitional approach to India's DST prior to entry into force of Pillar 1. These statements reflect a political agreement that, in defined circumstances, the DST liability that U.S. companies accrue in India during the interim period will be creditable against future taxes accrued under Pillar 1 of the OECD Agreement. Based on the commitment of India to remove its DST pursuant to Pillar 1 and on India's political agreement to this transitional approach prior to Pillar 1's entry into force, the U.S. Trade Representative determined to terminate the section 301 action taken in the

investigation of India's DST. In coordination with Treasury, USTR is continuing to monitor implementation of the transitional approach agreed to by India.

## *Pursuit of Fundamental Reform at the WTO and Enforcement of U.S. Rights in Ongoing Dispute Settlement Actions*

The United States will continue to seek fundamental reform of the WTO's dispute settlement system and maintain U.S. leadership through constructive engagement in a Member-driven reform process. The United States will also work to defend U.S. interests in ongoing dispute settlement actions.

### Fundamental Reform of WTO Dispute Settlement

The United States is determined to achieve fundamental reform of dispute settlement at the WTO. Fundamental reform is needed to ensure a well-functioning WTO dispute settlement system that supports WTO Members in the resolution of their disputes in an efficient and transparent manner, and in doing so limits the needless complexity and interpretive overreach that has characterized dispute settlement in recent years. To work towards the necessary reform, the United States has developed and pursued an interest-based, inclusive process through which all WTO Members can contribute to durable and lasting reform. The U.S.-led informal discussions, which were guided by an interest-based approach, reflected a significant departure from the stale conversations of past years.

Although longstanding U.S. concerns with WTO dispute settlement remain unaddressed, these dialogues enabled Members' delegations to gain a better understanding of each other's perspectives on the value of dispute settlement and how that value might be maximized across the WTO Membership.

The United States has continued to build on that work by engaging in the current facilitator-led informal process. The United States has shared a number of ideas on dispute settlement reform in the informal discussions, with an open mind to different ways of achieving the interests that we and other Members have identified.

Among the objectives for a reformed system, the United States has been clear that the dispute settlement system should preserve the policy space in WTO rules for Members to address their critical societal interests and support rather than undermine the WTO's role as a forum for discussion and negotiation to help Members address new challenges. In seeking fundamental reform, we will work towards producing a system that reinforces principles of fairness, equity, and sovereignty that underlie support for the multilateral trading system.

In the past, we have seen WTO dispute settlement adjudicators interpret commitments and rules in ways that undermine core values, such as the ability of Members to protect their workers and businesses from non-market economic distortions, to promote democracy and human rights, or to protect human health or the environment. The United States seeks a reformed system that

enables rather than undermines Members' ability to promote and defend their values so that the trading system is a force for good.

WTO commitments and rules are agreed by Members and intended to be mutually beneficial. Those commitments and rules derive legitimacy from Members' agreement, and their understanding of what they have agreed. At the same time, WTO dispute settlement cannot be a means to change the commitments and rules of the WTO agreements without the consent of all Members. Thus, any reformed system must respect the rules, including the policy space left to Members, as agreed by Members.

Most critically, fundamental reform must ensure that the WTO respects the essential security interests of WTO Members, including the United States. WTO dispute settlement cannot be a forum for debating and deciding on the essential security interests of Members. The United States is working towards a reformed system that respects the right of Members to determine what action is necessary to protect their essential security interests.

For over 70 years, the United States has held the clear and unequivocal position that issues of national security cannot be reviewed in WTO dispute settlement and the WTO has no authority to second-guess the ability of a WTO Member to respond to a wide-range of threats to its security. China and other WTO Members have recently chosen to pursue legal challenges to U.S. national security measures in the WTO. USTR has been clear – and will continue to be clear – that the United States will not cede decision-making over its essential security to WTO panels. The Biden Administration remains committed to preserving U.S. national security, including by protecting human rights and democracy across the globe. The United States government has a responsibility to protect the security of its citizens and, as a nation, we are responsible for our security commitments to allies and partners. Neither of these responsibilities can be abridged by the WTO inserting itself into issues of national security. The United States intends to continue raising this fundamental issue until necessary steps are taken to ensure our national security rights remain intact.

### Continued Enforcement Against Trade Barriers

USTR has been actively engaged in numerous dispute settlement actions, including important offensive actions related to agricultural market access. USTR will continue to pursue actions to ensure U.S. workers and innovators, manufacturers, farmers, ranchers, fishers, and underserved communities obtain the market access they deserve, and which trading partners like China agreed to provide.

*European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint) (Recourse to Article 21.5 of the DSU) (DS316*)

The United States has entered into cooperative frameworks with the EU and the UK to address concerns and enhance cooperation following successful challenges to the massive subsidies to Airbus. In 2016 and 2018, compliance panel and appellate reports confirmed that the EU and

four Member States failed to comply with the earlier WTO recommendation finding launch aid for twin-aisle and very large aircraft programs inconsistent with their WTO obligations.

In October 2019, the WTO arbitrator found that annual countermeasures of $7.5 billion were commensurate with the adverse effects to the United States from the EU launch aid. The arbitrator calculated this amount based on the WTO's non-compliance findings of significant lost sales of Boeing large civil aircraft and exports of large aircraft being impeded to the EU, Australia, China, Korea, Singapore, and United Arab Emirates markets.

On April 12, 2019, the United States initiated an investigation under section 301 of the Trade Act of 1974 to enforce U.S. rights under the WTO Agreement denied by the EU and certain Member States. In response to the EU's failure to withdraw the WTO-inconsistent subsidies or remove their adverse effects, the United States imposed additional duties of 10 percent on large civil aircraft and 25 percent on certain other products of the EU, effective October 18, 2019. USTR subsequently reviewed and modified this tariff action in accordance with the applicable provisions under Section 306 of the Trade Act.

On June 15, 2021, the United States reached an understanding with the EU on a cooperative framework that would suspend tariffs for five years, ensure that future government financing is on market terms, and provide for joint, concrete action to confront the emerging threat from China's and other non-market practices in this sector. On June 17, 2021, the United States reached a similar understanding with the United Kingdom. USTR proceeded to suspend for five years the tariff action in the Section 301 investigation involving the enforcement of U.S. rights in the LCA dispute.

*China – Domestic Support for Agricultural Producers (DS511)*

USTR continues to monitor two challenges to China's agricultural policies relating to grains. In this dispute, the United States challenged China's provision of domestic support to wheat, rice, and corn producers in excess of its Aggregate Measure of Support commitments under the WTO Agreement on Agriculture. In 2019, a WTO panel agreed with the United States that China provided domestic support to its agricultural producers in 2012-2015, well in excess of its WTO commitments. Specifically, the panel found that China had provided support in excess of permitted levels for Indica (long-grain) rice, Japonica (short- and medium-grain) rice, and wheat, in every year. Each finding individually established that China breached its overall agricultural domestic support commitment for agricultural producers. Neither party appealed the report, and the WTO Dispute Settlement Body (DSB) adopted the report on April 26, 2019. China and the United States agreed that the reasonable period of time for China to implement the WTO's recommendations would expire on June 30, 2020. China claimed that it had implemented the WTO's recommendation, but the United States was not in a position to agree with China's claim. On July 16, 2020, the United States requested authorization from the DSB to take

countermeasures under Article 22.2 of the DSU. China objected to the level of countermeasures identified in the U.S. request, referring the matter to arbitration under Article 22.6 of the DSU.

*China – Tariff Rate Quotas for Certain Agricultural Products (DS517)*

In this dispute, the United States also challenged China's administration of its tariff-rate quotas (TRQ) for grains. The United States asserted that China's administration of its TRQs was not transparent, predictable, or fair; was not administered using clearly specified requirements or administrative procedures; inhibited the filling of the TRQs; and thus appeared inconsistent with commitments in China's WTO Accession Protocol and the *General Agreement on Tariffs and Trade* (GATT) 1994. In 2019, a WTO panel circulated its report, and the United States prevailed on its claims that China's TRQ administration is inconsistent with WTO rules. Neither party appealed the report, and the DSB adopted the report on May 28, 2019. China and the United States agreed that the reasonable period of time for China to implement the WTO's recommendations would expire on December 31, 2019. On February 17, 2020, China notified the DSB that as of December 31, 2019, China had fully implemented the WTO's recommendations in this matter. To allow the United States time to evaluate China's compliance measures, China and the United States mutually agreed to modify the reasonable period of time to expire on June 29, 2021. On July 15, 2021, the United States requested authorization from the DSB to suspend concessions or other obligations pursuant to Article 22.2 of the DSU. China filed a request for the establishment of a compliance panel under Article 21.5 of the DSU.

*Indonesia – Importation of Horticultural Products, Animals and Animal Products (DS478)*

The United States, together with New Zealand, successfully challenged Indonesia's import licensing regimes and restrictions on horticultural products, animal products (such as beef and poultry), and animals. The panel report was circulated in December 2016, and the United States prevailed on all claims. Indonesia appealed the panel report. In November 2017, the WTO upheld the original panel findings in the dispute that all 18 Indonesian measures challenged by the United States are inconsistent with Indonesia's WTO obligations and are not justified as legitimate public policy measures. Indonesia agreed that the reasonable period of time for implementation of the WTO's recommendations expired in July 2018. In August 2018, the United States requested authorization from the DSB to suspend concessions or other obligations pursuant to Article 22.2 of the DSU. Indonesia objected to the United States' proposed level of suspension of concessions, and the matter was referred to arbitration pursuant to Article 22.6 of the DSU. The parties continue to discuss a resolution to the U.S. concerns.

In addition to the above-mentioned disputes, USTR will continue to prioritize the elimination of traditional trade barriers imposed by foreign governments to the detriment of U.S. workers, businesses, farmers, fishers, and other exporters. Such barriers include import licensing restrictions, non-science-based sanitary and phytosanitary measures, and other import restrictions affecting U.S. products, including food and agricultural products. Foreign governments also continue to provide both domestic and export subsidies to unfairly benefit their products and disadvantage U.S. exports and to use lack of transparency and procedural fairness as a means to

protect home markets, such as in antidumping and countervailing duty investigations. USTR also will continue to monitor and enforce foreign export restrictions and discriminatory content requirements that reduce U.S. export opportunities.

In addition to addressing these concerns through bilateral and multilateral engagement, USTR has brought numerous challenges at the WTO to combat such measures. Examples of challenges to traditional trade barriers include:

*India – Measures Concerning the Importation of Certain Agricultural Products (DS430)*

The United States successfully challenged India's ban on poultry and other products. In June 2015, the DSB adopted panel and Appellate Body reports finding that India's ban on poultry and other products, allegedly to protect against introduction of avian influenza, is inconsistent with WTO rules. Because India had not brought its measure into compliance by the end of the reasonable period of time for implementation, in July 2016, the United States requested authorization from the DSB to impose countermeasures worth more than $450 million; India objected to the request, referring the matter to arbitration. In April 2017, India requested a compliance panel to review whether new measures that India promulgated after the U.S. request for authorization to suspend concessions brought India into compliance. Both the countermeasures arbitration and the compliance proceeding remain pending while the United States seeks to ensure that India provides effective and timely market access for U.S. products.

*India – Export Related Measures (DS541)*

On March 14, 2018, the United States requested consultations with India regarding various Indian export subsidy programs. The consultation request alleges that these programs provide prohibited export subsidies inconsistent with the SCM Agreement. Consultations took place in April 2018. The parties failed to reach a mutually satisfactory resolution to the dispute. At the U.S. request, in May 2018, the WTO established a panel. The panel held a hearing with the parties in February 2019 and concluded in a final report circulated on October 31, 2019, that the Indian export subsidies programs breached the SCM Agreement as prohibited export subsidies. India appealed the panel report in November 2019. No division of the Appellate Body could be established to hear this appeal. On July 13, 2023, the United States and India notified the DSB that they had reached a mutually agreed solution to the matter raised in this dispute.

**Defense Against Other WTO Challenges**

In addition to addressing traditional trade barriers, the United States is defending numerous WTO challenges of duties imposed to protect U.S. national security interests, and the United States has brought several challenges to retaliatory duties imposed by countries in response to those national security actions. Examples of these kinds of challenges include:

*United States – Origin Marking Requirement (DS597)*

On October 30, 2020, Hong Kong, China, requested consultations concerning certain measures affecting marks of origin with respect to imported goods produced in Hong Kong, China. The consultation request alleges that the measures appear to breach various provisions of the GATT 1994, the Agreement on Rules of Origin and the Agreement on Technical Barriers to Trade. Consultations took place on November 24, 2020. At the request of Hong Kong, China, the WTO established a panel on February 22, 2021. The United States has invoked Article XXI of the GATT 1994, the essential security exception, explaining to the panel that the dispute concerns issues of essential security not susceptible to review or capable of resolution by WTO dispute settlement. The panel held hearings with the parties in August 2021 and February 2022.

The panel circulated its report on December 21, 2022. The panel concluded that the measures at issue are inconsistent with Article IX:1 of the GATT 1994. The panel found that the measures at issue fail to provide no less favorable treatment to products from Hong Kong, China than products originating from a third country. The panel rejected the United States interpretation that Article XXI(b) is self-judging and found that the United States had not demonstrated that the situation at issue with respect to Hong Kong, China, constitutes an "emergency in international relations" such that the marking requirement could be justified under the exception.

On January 26, 2023, the United States notified the DSB of its decision to appeal certain issues of law and legal interpretations covered in the panel report. In a statement to the DSB, the United States rejected the panel's erroneous interpretation of Article XXI(b), noting that for over 70 years, the United States has held the clear and unequivocal position that issues of national security cannot be reviewed in WTO dispute settlement and the WTO has no authority to second-guess the ability of a WTO Member to respond to a wide-range of threats to its security.[5]

The U.S. emphasized how the challenged actions with respect to Hong Kong, China were based on well-grounded determinations implicating U.S. essential security interests relating to democracy and human rights.[6] The United States explained that it *does* consider democratic principles and human rights to be critical to its essential security interests – as is reflected in the U.S. National Security Strategy.[7] In the DSB statement, the United States explained that we fundamentally disagree with the panel's approach, which suggests a state ought to defer consideration of its essential security interests until after a breakdown in relations. A WTO Member cannot be expected to wait until it is too late to act, or be required to sever relations as a prerequisite for other action it considers necessary. The United States stressed that the WTO does not have the competence or the authority to assess the foreign affairs relationships of a Member. Nor does it have the competence or authority to pass judgment on the value that the United States – and some other WTO Members – place on freedom and human rights, and the

[5] *See* Dispute Settlement Body, Minutes of the Meeting Held on January 27, 2023, WT/DSB/M/475.
[6] *See id.*
[7] *See id.*

actions they take in seeking to secure those values. Accordingly, the United States could not support adoption of this fundamentally flawed and deeply concerning report.[8]

While China and other WTO Members have recently chosen to pursue legal challenges to U.S. national security measures in the WTO, USTR has been clear – and will continue to be clear – that the United States will not cede decision-making over its essential security to WTO panels. The Biden Administration remains committed to preserving U.S. national security, including by protecting human rights and democracy across the globe. The United States government has a responsibility to protect the security of its citizens and, as a nation, we are responsible for our security commitments to allies and partners. Neither of these responsibilities can be abridged by the WTO inserting itself into issues of national security. The United States intends to continue raising this fundamental issue until necessary steps are taken to ensure our national security rights remain intact.

*United States – Tariff Measures on Certain Goods from China (DS543)*

On April 4, 2018, China requested consultations with the United States concerning certain tariff measures on Chinese goods which would allegedly be implemented through section 301 of the Trade Act of 1974. The United States responded that it was willing to enter into consultations with China, without prejudice to its view that China's request did not satisfy the requirements of Article 4 of the DSU. China filed an addendum to its consultations request on July 9, 2018. Consultations took place in August and October 2018, but the parties were unable to reach a mutually satisfactory resolution to the dispute. At China's request, the WTO established a panel in June 2019. The panel held hearings with the parties in October 2019 and February 2020.

The panel circulated its report on September 15, 2020. The panel concluded that the tariff measures at issue are inconsistent with Article I:1 of the GATT 1994 (MFN), because they fail to provide treatment for Chinese products that is no less favorable than that granted to like products originating from other WTO Members, and with Articles II:1(a) and (b) of the GATT 1994, because the additional duties are in excess of the bound rates found in the U.S. Schedule. On October 27, 2020, the United States notified the DSB of its decision to appeal certain issues of law covered in the panel report.

*United States – Certain Measures on Steel and Aluminum Products (DS544)*

On April 5, 2018, China requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from China. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in July 2018. The parties failed to reach a mutually satisfactory resolution to the dispute. At China's request, in November 2018, the WTO established a panel.

[8] *See id.*

On December 9, 2022, the Panel circulated its final report finding the U.S. measures were inconsistent with various obligations under the GATT 1994, and that these inconsistencies were not justified under Article XXI(b)(iii) of the GATT 1994.

On January 26, 2023, the United States notified the DSB of its decision to appeal certain issues of law and legal interpretation covered in the Panel report. In a statement to the DSB, the United States rejected the panel's erroneous interpretation of Article XXI(b), noting that for over 70 years, the United States has held the clear and unequivocal position that issues of national security cannot be reviewed in WTO dispute settlement and the WTO has no authority to second-guess the ability of a WTO Member to respond to a wide-range of threats to its security.[9]

While China and other WTO Members have recently chosen to pursue legal challenges to U.S. national security measures in the WTO, USTR has been clear – and will continue to be clear – that the United States will not cede decision-making over its essential security to WTO panels. The Biden Administration remains committed to preserving U.S. national security, including by protecting human rights and democracy across the globe. The United States government has a responsibility to protect the security of its citizens and, as a nation, we are responsible for our security commitments to allies and partners. Neither of these responsibilities can be abridged by the WTO inserting itself into issues of national security. The United States intends to continue raising this fundamental issue until necessary steps are taken to ensure our national security rights remain intact.

The panel report in this dispute disregards the reality of sovereign nations, who must anticipate – not react to – issues of national security. The WTO as an institution has no business asserting its own standard that action may only be taken when it is too late. From the beginning, the United States made clear that the WTO is not the appropriate venue to adjudicate matters of national security. Despite these clear statements, China persisted in pushing the WTO to undertake this review, while simultaneously imposing illegal unilateral retaliatory measures on U.S. exports. We have seen in the past how China has sought to use WTO dispute settlement to undermine tools that were meant to address unfair trade, such as disciplines on dumping and subsidies. But a WTO that serves to shield China's non-market policies and practices is not in anyone's interest. Likewise, China should not be able to use the WTO to interfere with Members' responses to national security issues related to those policies and practices. Yet, in this dispute and others, we see China pursuing a strategy that would convert the WTO into a permanent venue for national security disagreements. Allowing such erroneous reports to be adopted would only help erode the foundations of the multilateral trading system. The United States therefore notified the DSB of its decision to appeal this damaging and erroneous report.

*United States – Certain Measures on Steel and Aluminum Products (DS547)*

On May 18, 2018, India requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from India. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the

[9] *See* Dispute Settlement Body, Minutes of the Meeting Held on January 27, 2023, WT/DSB/M/475.

Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in July 2018. At India's request, in December 2018, the WTO established a panel. On July 13, 2023, the United States and India notified the DSB that they had reached a mutually agreed solution to the matter raised in this dispute.

*United States – Certain Measures on Steel and Aluminum Products (DS548)*

On June 1, 2018, the EU requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from the EU. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in July 2018. The parties failed to reach a mutually satisfactory resolution to the dispute. At the EU's request, in November 2018, the WTO established a panel. Following the U.S.-EU arrangement announced on October 31, 2021, the panel proceedings were terminated, and the matter was referred to arbitration proceedings that are suspended indefinitely.

*United States – Certain Measures on Steel and Aluminum Products (DS552)*

On June 12, 2018, Norway requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from Norway. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in July 2018. The parties failed to reach a mutually satisfactory resolution to the dispute. At Norway's request, in November 2018, the WTO established a panel. On December 9, 2022, the Panel circulated its final report finding the U.S. measures were inconsistent with various obligations under the GATT 1994, and that these inconsistencies were not justified under Article XXI(b)(iii) of the GATT 1994.

On January 26, 2023, the United States notified the DSB of its decision to appeal issues of law covered in the Panel report, and stated that we would confer with Norway on the way forward in this dispute. In a statement to the DSB, the United States rejected the panel's erroneous interpretation of Article XXI(b), noting that for over 70 years, the United States has held the clear and unequivocal position that issues of national security cannot be reviewed in WTO

dispute settlement and the WTO has no authority to second-guess the ability of a WTO Member to respond to a wide-range of threats to its security.[10]

While China and other WTO Members have recently chosen to pursue legal challenges to U.S. national security measures in the WTO, USTR has been clear – and will continue to be clear – that the United States will not cede decision-making over its essential security to WTO panels. The Biden Administration remains committed to preserving U.S. national security, including by protecting human rights and democracy across the globe. The United States government has a responsibility to protect the security of its citizens and, as a nation, we are responsible for our security commitments to allies and partners. Neither of these responsibilities can be abridged by the WTO inserting itself into issues of national security. The United States intends to continue raising this fundamental issue until necessary steps are taken to ensure our national security rights remain intact.

The panel report in this dispute disregards the reality of sovereign nations, who must anticipate – not react to – issues of national security. The WTO as an institution has no business asserting its own standard that action may only be taken when it is too late. From the beginning, the United States made clear that the WTO is not the appropriate venue to adjudicate matters of national security. Allowing such erroneous reports to be adopted would only help erode the foundations of the multilateral trading system. The United States therefore notified the DSB of its decision to appeal this damaging and erroneous report.

*United States – Certain Measures on Steel and Aluminum Products (DS554)*

On June 29, 2018, the Russian Federation requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from the Russian Federation. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in August 2018. The parties failed to reach a mutually satisfactory resolution to the dispute. At the Russian Federation's request, in November 2018, the WTO established a panel. In April 2022, following Russia's unprovoked invasion of Ukraine in violation of international law, the United States suspended permanent normal trade relations with Russia and will continue to partner with other WTO Members to isolate and ostracize Russia in the WTO and other multilateral institutions. On June 23, 2023, the Panel accepted a request by Russia for the Panel to suspend its work in this dispute.

[10] *See* Dispute Settlement Body, Minutes of the Meeting Held on January 27, 2023, WT/DSB/M/475.

*United States – Certain Measures on Steel and Aluminum Products (DS556)*

On July 9, 2018, Switzerland requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from Switzerland. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in August 2018. The parties failed to reach a mutually satisfactory resolution to the dispute. At Switzerland's request, in December 2018, the WTO established a panel. On December 9, 2022, the Panel circulated its final report finding the U.S. measures were inconsistent with various obligations under the GATT 1994, and that these inconsistencies were not justified under Article XXI(b)(iii) of the GATT 1994.

On January 26, 2023, the United States notified the DSB of its decision to appeal issues of law covered in the Panel report, and stated that we would confer with Switzerland on the way forward in this dispute. In a statement to the DSB, the United States rejected the panel's erroneous interpretation of Article XXI(b), noting that for over 70 years, the United States has held the clear and unequivocal position that issues of national security cannot be reviewed in WTO dispute settlement and the WTO has no authority to second-guess the ability of a WTO Member to respond to a wide-range of threats to its security.[11]

While China and other WTO Members have recently chosen to pursue legal challenges to U.S. national security measures in the WTO, USTR has been clear – and will continue to be clear – that the United States will not cede decision-making over its essential security to WTO panels. The Biden Administration remains committed to preserving U.S. national security, including by protecting human rights and democracy across the globe. The United States government has a responsibility to protect the security of its citizens and, as a nation, we are responsible for our security commitments to allies and partners. Neither of these responsibilities can be abridged by the WTO inserting itself into issues of national security. The United States intends to continue raising this fundamental issue until necessary steps are taken to ensure our national security rights remain intact.

The panel report in this dispute disregards the reality of sovereign nations, who must anticipate – not react to – issues of national security. The WTO as an institution has no business asserting its own standard that action may only be taken when it is too late. From the beginning, the United States made clear that the WTO is not the appropriate venue to adjudicate matters of national security. Allowing such erroneous reports to be adopted would only help erode the foundations of the multilateral trading system. The United States therefore notified the DSB of its decision to appeal this damaging and erroneous report.

[11] *See* Dispute Settlement Body, Minutes of the Meeting Held on January 27, 2023, WT/DSB/M/475.

*China – Additional Duties on Certain Products from the United States (DS558)*

On July 16, 2018, the United States requested consultations concerning China's imposition of additional duties in retaliation to the action of the United States under section 232 on national security grounds. The consultations request identified an additional duties measure that appears inconsistent with Articles I and II of the GATT 1994 because China does not impose a similar duty increase on the products of other WTO Members and the applied duties are above China's bound rates. Consultations took place on August 29, 2018. At the U.S. request, the panel was established in November 2018. Panel proceedings are ongoing.

*European Union – Additional Duties on Certain Products from the United States (DS559)*

On July 16, 2018, the United States requested consultations concerning the EU's imposition of additional duties in retaliation to the action of the United States under section 232 on national security grounds. The consultations request identified an additional duties measure that appeared inconsistent with Articles I and II of the GATT 1994 because the EU did not impose a similar duty increase on the products of other WTO Members and the applied duties were above the EU's bound rates. Consultations took place on August 28, 2018. At the U.S. request, the panel was established in November 2018. Following the U.S.-EU arrangement announced on October 31, 2021, the panel proceedings were terminated and the matter was referred to arbitration proceedings that are suspended indefinitely.

*Turkey – Additional Duties on Certain Products from the United States (DS561)*

On July 16, 2018, the United States requested consultations concerning Turkey's imposition of additional duties in retaliation to the action of the United States under section 232 on national security grounds. The consultations request identified an additional duties measure that appears inconsistent with Articles I and II of the GATT 1994 because Turkey does not impose a similar duty increase on the products of other WTO Members and the applied duties are above Turkey's bound rates. Consultations took place on August 29, 2018. On October 18, 2018, the United States requested supplemental consultations that took place on November 14, 2018, regarding amendments to Turkey's additional measure. At the U.S. request, the panel was established in January 2019. Panel proceedings are ongoing.

*United States – Certain Measures on Steel and Aluminum Products (DS564)*

On August 15, 2018, Turkey requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from Turkey. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in October 2018. The parties failed to reach a mutually satisfactory

resolution to the dispute. At Turkey's request, in November 2018, the WTO established a panel. On December 9, 2022, the Panel circulated its final report finding the U.S. measures were inconsistent with various obligations under the GATT 1994, and that these inconsistencies were not justified under Article XXI(b)(iii) of the GATT 1994.

On January 26, 2023, the United States notified the DSB of its decision to appeal issues of law covered in the Panel report. In a statement to the DSB, the United States rejected the panel's erroneous interpretation of Article XXI(b), noting that for over 70 years, the United States has held the clear and unequivocal position that issues of national security cannot be reviewed in WTO dispute settlement and the WTO has no authority to second-guess the ability of a WTO Member to respond to a wide-range of threats to its security.[12]

While China and other WTO Members have recently chosen to pursue legal challenges to U.S. national security measures in the WTO, USTR has been clear – and will continue to be clear – that the United States will not cede decision-making over its essential security to WTO panels. The Biden Administration remains committed to preserving U.S. national security, including by protecting human rights and democracy across the globe. The United States government has a responsibility to protect the security of its citizens and, as a nation, we are responsible for our security commitments to allies and partners. Neither of these responsibilities can be abridged by the WTO inserting itself into issues of national security. The United States intends to continue raising this fundamental issue until necessary steps are taken to ensure our national security rights remain intact.

The panel report in this dispute disregards the reality of sovereign nations, who must anticipate – not react to – issues of national security. The WTO as an institution has no business asserting its own standard that action may only be taken when it is too late. From the beginning, the United States made clear that the WTO is not the appropriate venue to adjudicate matters of national security. Allowing such erroneous reports to be adopted would only help erode the foundations of the multilateral trading system. The United States therefore notified the DSB of its decision to appeal this damaging and erroneous report.

*Russia – Additional Duties on Certain Products from the United States (DS566)*

On August 27, 2018, the United States requested consultations concerning Russia's imposition of additional duties in retaliation to the action of the United States under section 232 on national security grounds. The consultations request identified an additional duties measure that appears inconsistent with Articles I and II of the GATT 1994 because Russia does not impose a similar duty increase on the products of other WTO Members and the applied duties are above Russia's bound rates. Consultations took place on November 9, 2018. At the U.S. request, the panel was established in December 2018. In April 2022, following Russia's unprovoked invasion of Ukraine in violation of international law, the United States suspended permanent normal trade

[12] *See* Dispute Settlement Body, Minutes of the Meeting Held on January 27, 2023, WT/DSB/M/475.

relations with Russia and will continue to partner with other WTO Members to isolate and ostracize Russia in the WTO and other multilateral institutions.

*India – Additional Duties on Certain Products from the United States (DS585)*

On July 3, 2019, the United States requested consultations concerning India's imposition of additional duties in retaliation to the action of the United States under section 232 on national security grounds. The consultations request identified an additional duties measures that appears inconsistent with Articles I and II of the GATT 1994 because India does not impose a similar duty increase on the products of other WTO Members and the applied duties appear to be above India's bound rates. Consultations took place on August 1, 2019. At the U.S. request, the panel was established in October 2019. On July 13, 2023, the United States and India notified the DSB that they had reached a mutually agreed solution to the matter raised in this dispute.

### *Defense of U.S. Trade Remedies Laws*

For decades, Congress has maintained laws designed to prevent unfair practices such as injuriously dumped or subsidized imports, or harmful surges of imports, from distorting the U.S. market. These laws represent a critical bargain between the U.S. Government and American workers, farmers, ranchers, and businesses (small and large) that underpins USTR's worker-centric trade policy. These laws reflect the core principles and legal rights of the international trading system since its founding in 1947 with the GATT. Article VI of the GATT, in the strongest language possible, states that injurious dumping "is to be condemned." Trade remedies are fundamental to the implementation of the WTO agreements and the prevention of market distortions from unfair trade practices.

Consistent with the strong textual foundation in the GATT and WTO agreements, Title VII of the Tariff Act of 1930 authorizes the U.S. Department of Commerce (USDOC) to impose antidumping and countervailing duties on imports that are either "dumped" (sold at less than their fair value) or subsidized – if the U.S. International Trade Commission (USITC) finds that such imports cause or threaten material injury to a domestic industry. The antidumping duty (AD) and countervailing duty (CVD) laws are fully consistent with WTO obligations – and, indeed, the WTO agreements specifically provide for such laws. For decades, domestic producers could seek relief under U.S. AD or CVD laws, or both. The USDOC also has the authority to self-initiate such cases if circumstances warrant.

USTR will continue to vigorously enforce U.S. rights to impose antidumping and countervailing duties to counteract injurious dumping or subsidies and defend against actions brought by foreign governments at the WTO. Over the last ten years, a significant share of WTO challenges to U.S. actions were to U.S. trade remedies actions. Foreign governments have challenged U.S. laws and practices in addition to specific trade remedies orders related to specific products and countries.

In this context, USTR's primary objective is to defend USDOC's ability to apply appropriate antidumping and countervailing duties to combat distortions caused by China's unfair non-market economy system and government subsidies that are injuring U.S. workers and industries, as well as the unfair trade practices of other countries. The international solar, steel, and aluminum markets, for example, have experienced significant oversupply due in large part to production from excess and uneconomic capacity in China and increasingly in other countries as well. This oversupply has caused severe market distortions, including adverse effects on U.S. and global prices, and the displacement of U.S. exports in foreign markets. Trade remedies may assist U.S. workers and industry by counteracting some of the injury caused by unfairly traded imports into the United States from China and other countries. Trade remedies are, therefore, essential tools in combatting market distortions such as overcapacity.

Therefore, USTR will continue to aggressively defend all WTO and free trade agreement challenges to U.S. antidumping, anti-subsidy, and safeguard actions, including in the context of numerous ongoing disputes, such as:

*United States – Measures Related to Price Comparison Methodologies (DS515)*
*European Union – Measures Related to Price Comparison Methodologies (DS516)*

China requested consultations in December 2016, and again in November 2017, on the U.S. application of a non-market economy methodology in U.S. antidumping proceedings involving products from China. China alleges that this methodology is inconsistent with the AD Agreement and GATT 1994 and not authorized by provisions of China's WTO Accession Protocol. China also challenges section 773(e) of the Tariff Act of 1930 – the constructed value provision that applies to market economies – to the extent that it permits the use of "surrogate values." Consultations were held in February 2017 and January 2018.

China pursued its panel proceeding against the European Union. The United States actively participated in China's dispute against the European Union. The United States and the European Union submitted a shared legal interpretation to the panel. Reading the text of Article VI:1 of GATT 1994, section 15 of China's Accession Protocol, the Second Note Ad Article VI:1, GATT accession documents, and other texts indicates that GATT Contracting Parties and WTO Members have always recognized that non-market prices or costs are not suitable for antidumping comparisons because they are not appropriate to use "in determining price comparability." On May 7, 2019, following issuance of a confidential interim report, the panel received a request from China to suspend its work in this proceeding. On June 14, 2019, the panel informed the DSB of its decision to grant China's request and suspend its work.

On June 15, 2020, the WTO Secretariat published a note indicating that the authority for the establishment of the panel in DS516 had lapsed because the panel had not been requested to resume its work. Despite being aware of the confidential outcome in DS516, China has not moved forward with a panel in its dispute against the United States.

*United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (Recourse to Article 21.5 of the DSU by India) (DS436)*

In 2012, India challenged several aspects of the U.S. CVD order on carbon steel flat products from India, as well as certain U.S. laws and practices. The reports were adopted in December 2014, and the U.S. announced compliance in April 2016. In 2018, India requested a compliance panel to challenge findings by the USDOC and the USITC in the section 129 determination.

The compliance panel rejected the majority of India's claims that the United States failed to bring its CVD determination and injury determination into compliance. The United States prevailed on eight sets of claims, including on public body, benchmarks, calculation of benefit, new subsidies, disclosure of essential facts, the "appropriateness" of exceeding a terminated domestic settlement rate, waiver of several injury claims, and all but one aspect of the injury determination. The compliance panel found in favor of India on a certain aspect of specificity, one aspect of the USITC's non-attribution analysis, and one subsection of the cross-cumulation statute (19 U.S.C. § 1677(7)(G)(i)(III)).

On December 18, 2019, the United States notified the DSB of its decision to appeal issues of law covered in the report of the compliance panel and legal interpretations developed by the compliance panel. No division of the Appellate Body could be established to hear this appeal. On July 13, 2023, the United States and India notified the DSB that they had reached a mutually agreed solution to the matter raised in this dispute.

*United States – Countervailing Measures on Certain Pipe and Tube Products (DS523)*

On March 8, 2017, Turkey requested consultations challenging U.S. CVD orders on four categories of pipe and tube products from Turkey: oil country tubular goods, welded line pipe, heavy walled rectangular welded carbon steel pipes and tubes, and circular welded carbon steel pipes and tubes. Turkey challenged the USDOC's findings regarding public body, benchmarks, specificity, and facts available, as well as the USITC's "practice" of "cross-cumulation" and its application in the underlying proceedings. On December 18, 2018, the panel found against the United States on public body, specificity, the application of facts available, and cross-cumulation in original investigations, but rejected Turkey's claims regarding benchmarks and cross-cumulation in five-year reviews. The United States appealed the issues of public body, specificity, the application of facts available, and cross-cumulation, and Turkey cross-appealed on the issue of public body. In December 2019, the appellate division communicated its decision to suspend its work on this appeal.

*United States – Countervailing Measures on Supercalendered Paper from Canada (DS505)*

In 2016, Canada challenged aspects of the U.S. CVD order on supercalendered paper involving the USDOC's initiation of the investigation, subsidy findings, specificity, and application of facts available. Canada also challenged the USDOC's "ongoing conduct" of resorting to facts available when undisclosed subsidies are discovered during verification. The panel found that certain aspects of the USDOC's determination were inconsistent with U.S. WTO obligations.

The panel also found that the USDOC has engaged in "ongoing conduct" with respect to subsidies discovered during verification and that such conduct is inconsistent with U.S. WTO obligations.

In August 2018, the United States appealed the panel's findings related to the treatment of undisclosed subsidies discovered during the course of a CVD investigation. An appellate report was issued on February 6, 2020. However, no DSB recommendations were adopted because there was no valid Appellate Body report, and there was no consensus for the DSB to adopt the report. In particular, the United States noted that one member serving on the appeal was affiliated with the government of China and therefore was not a valid member of the Appellate Body under Article 17.3 of the DSU.

On June 18, 2020, Canada requested that the DSB authorize Canada to suspend concessions for any future countervailing duties on Canadian imports attributed to the "ongoing conduct". The United States objected to Canada's request, referring the matter to arbitration under Article 22.6 of the DSU. On July 13, 2022, the arbitrator awarded Canada a formula to determine a future level of suspension of concessions or other obligations. The arbitrator's award did not contain a monetary amount because Canada does not suffer from any present nullification or impairment.

*United States – Countervailing Duty Measures on Certain Products from China (Recourse to Article 21.5 by China) (DS437)*

In 2012, China challenged numerous U.S. CVD investigations.[13] China alleged that the investigations made WTO-inconsistent findings with respect to, among other things, benefit, specificity, adverse facts available, and "public bodies." At the panel stage, the United States largely prevailed with respect to the USDOC's calculation of benchmarks, initiation of investigations, and use of facts available; however, the Appellate Body reversed these findings. In 2016, the USDOC issued redeterminations, and China challenged the revised findings with respect to "public bodies," benchmarks, and input specificity. The compliance panel found that the USDOC's revised "public bodies" findings are not inconsistent with U.S. WTO obligations, but found that certain aspects of the revised benchmarks and input specificity findings are inconsistent with U.S. WTO obligations. The United States and China appealed, and an appellate report was circulated on July 16, 2019. The appellate report upheld the compliance panel report, finding that the USDOC's revised "public bodies" findings are not inconsistent with U.S. WTO obligations and that certain aspects of the revised benchmarks and input specificity findings are inconsistent with U.S. WTO obligations.

The report included a separate opinion, which dissented from the majority on the interpretation of the term "public body" and the majority's conclusions and analysis concerning the other issues. The dissent criticized the interpretation of the term "public body" adopted by the

[13] China challenged preliminary and final determinations in 17 CVD investigations from 2007-2012 for products including solar panels; wind towers; thermal paper; coated paper; tow behind lawn groomers; kitchen shelving; steel sinks; citric acid; magnesia carbon bricks; pressure pipe; line pipe; seamless pipe; steel cylinders; drill pipe; oil country tubular goods; wire strand; and aluminum extrusions.

majority and in prior appellate reports, and articulated an interpretation under which a public body is an entity that a government can control and through which it can transfer financial value. The dissent also strongly criticized the majority for exceeding its authority by acting as a fact finder, a role that the DSU assigns exclusively to panels and not the Appellate Body, and for articulating incoherent interpretations of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) that do not accord with customary rules of interpretation of public international law.

In October 2019, China requested authorization to suspend concessions or other obligations to the United States. The United States objected, referring the matter to arbitration under Article 22.6 of the DSU. In January 2022, the arbitrator decided that the level of suspension of concessions or other obligations should be no more than $645.121 million annually.

*United States – Antidumping Measures on Oil Country Tubular Goods from Korea (DS488)*

On April 18, 2014, Korea requested consultations related to antidumping duties imposed on oil country tubular goods from Korea, as well as certain U.S. laws applied in those proceedings. Korea's claims include the USDOC's rejection of third-country sales, calculation of constructed value profit, selection of mandatory respondents, as well as several procedural issues. The United States successfully defended claims regarding the rejection of third-country sales to determine normal value, the selection of mandatory respondents, the calculation of constructed export price, and numerous procedural issues; Korea prevailed on certain aspects of its challenge to the calculation of constructed value profit. The WTO adopted the panel report on January 12, 2018.

On July 29, 2019, Korea informed the DSB that it considers that the United States has failed to implement the recommendations and rulings of the DSB in this dispute and requested pursuant to Article 22.2 of the DSU authorization to suspend concessions or other obligations with respect to the United States. On August 8, 2019, the United States informed the DSB that it objected to the level of suspension of concessions and related obligations under the GATT 1994 proposed by Korea in its July 29 communication. On February 6, 2020, the United States and Korea informed the DSB that they had reached agreement on subsequent procedures, including to accept adoption and not to appeal any compliance panel report. On May 7, 2020, the United States and Korea notified the WTO Secretariat that they had agreed to suspend the Article 22.6 proceeding.

*United States – Certain Methodologies and their Application to Antidumping Proceedings Involving China (DS471)*

In December 2013, China challenged antidumping measures imposed by the USDOC regarding a number of Chinese products. China challenged the USDOC's application of, among other things, targeted dumping, zeroing, the "Single Rate Presumption norm," and use of adverse facts available. Before the panel, China prevailed on the majority of its claims (for example, on zeroing in certain investigations and on the rebuttable single entity presumption). In November 2016, China appealed certain of the panel's findings regarding the USDOC's "targeted dumping

methodology" and the issue of adverse facts available. The Appellate Body's report was circulated on May 11, 2017. The United States prevailed on nearly every claim appealed by China. The reports were adopted on May 22, 2017. Following expiry of the reasonable period of time for implementation of the DSB's recommendations, in September 2018, China requested authorization to suspend concessions or other obligations. The United States objected to China's request, referring the matter to arbitration under Article 22.6 of the DSU. In November 2019, the arbitrator decided that level of suspension of concessions or other obligations should be no more than $3.579 billion annually.

*United States – Countervailing Measures on Softwood Lumber from Canada (DS533)*

On November 28, 2017, Canada requested consultations regarding the USDOC's CVD determination on softwood lumber products from Canada. Canada challenges the USDOC's benchmark and specificity determinations, the USDOC's calculation of the benefit of subsidies, and the USDOC's countervailing of log export restraints. The United States and Canada held consultations in January 2018. At Canada's request, the WTO established a panel in April 2018. The panel circulated its report on August 24, 2020. The panel found that the USDOC's determinations regarding benchmarks for stumpage, log export permitting processes, and non-stumpage programs were inconsistent with the SCM Agreement. The panel effectively applied the WTO Appellate Body's flawed test for using out-of-country benchmarks in its analysis of benchmarks from within Canada that the USDOC used to measure the benefit of subsidies. The panel also applied a heightened level of scrutiny in its review of the USDOC's determination, in essence putting itself in the place of the investigating authority, contrary to the terms of the SCM Agreement.

On September 28, 2020, the United States notified the DSB of its decision to appeal certain issues of law covered in the panel report.

*United States – Antidumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada (DS534)*

In 2018, Canada challenged aspects of the USDOC's AD determination on softwood lumber products relating to the USDOC's use of a differential pricing analysis and zeroing in connection with the application of the alternative, weighted average-to-transaction comparison methodology provided in the second sentence of Article 2.4.2 of the AD Agreement. In April 2019, the panel circulated its report, finding that the use of "zeroing" when applying a targeted dumping methodology is not inconsistent with Article 2.4.2 of the AD Agreement and that one aspect of the differential pricing methodology (the inclusion of higher-priced sales in the identified pattern) is not inconsistent with that provision. The panel also found that another aspect of the differential pricing methodology (the aggregation of sales across different categories (purchaser, region, and time period) to find one pattern) is inconsistent with Article 2.4.2.

This is the sixth time a WTO panel has rejected claims that "zeroing" is inconsistent with the WTO Agreement. In June 2019, Canada nonetheless appealed the panel's report. In December 2019, the appellate division communicated its decision to suspend its work on this appeal.

*United States – Certain Systemic Trade Remedies Measures (DS535)*

On December 20, 2017, Canada requested consultations concerning certain laws, regulations, and practices that Canada claims are maintained by the U.S. in its AD and CVD proceedings. The consultation request alleges claims regarding: liquidation of duties and failure to refund cash deposits in excess of WTO-inconsistent rates; retroactive collection of provisional AD and CVD duties following preliminary affirmative critical circumstances determinations; treatment of export controls as a financial contribution in CVD proceedings; calculation of benefit in CVD proceedings involving the provision of goods for less than adequate remuneration; the USDOC's effective closure of the evidentiary record before the preliminary determination; and the USITC's tie vote provision. No panel request has been made.

*United States – Antidumping Measures on Fish Fillets from Vietnam (DS536)*

On January 8, 2018, Vietnam requested consultations concerning antidumping duty measures pertaining to frozen fish fillets from Vietnam. The consultation request alleged claims regarding zeroing, revocation, application of adverse facts available and a government-wide entity rate, and the USDOC's determination pursuant to section 129 of the Uruguay Round Agreements Act. Consultations took place on March 1, 2018. At Vietnam's request, the WTO established a panel in July 2018. The panel report has not been circulated.

*United States – Antidumping and Countervailing Duties on Certain Products and the Use of Facts Available (DS539)*

On February 14, 2018, Korea requested WTO dispute settlement consultations regarding the USDOC's use of facts available in certain antidumping and countervailing duty measures against Korea, and certain laws, regulations, and other measures maintained by the United States with respect to the use of facts available in AD and CVD proceedings. The United States and Korea held consultations in March 2018. At Korea's request, the WTO established a panel in May 2018.

The panel circulated its report on January 21, 2021. The panel found that Commerce acted inconsistently with the AD Agreement or SCM Agreement in either resorting to facts available or selecting the replacement facts in the eight instances challenged by Korea. With respect to the "as such" claim against an alleged unwritten measure, the panel found that Korea failed to establish that such an unwritten rule even existed. This obviated the panel's need to evaluate whether such a rule (if it did exist) would breach the AD Agreement or SCM Agreement.

On March 19, 2021, the United States notified the DSB of its decision to appeal certain issues of law covered in the panel report.

*United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products (DS545)*

On May 14, 2018, Korea requested consultations concerning the United States' application of a safeguard measure on crystalline silicon photovoltaic products. The consultation request alleged

claims under the GATT 1994 and the WTO Agreement on Safeguards relating to several procedural and substantive obligations. At Korea's request, a panel was established in September 2018, but no panel has been composed.

*United States – Safeguard Measure on Imports of Large Residential Washers (DS546)*

In 2018, Korea challenged the U.S. safeguard measure on large residential washers as inconsistent with the GATT 1994 and the WTO Agreement on Safeguards relating to several procedural and substantive obligations.

The panel circulated its report on February 8, 2022. The panel rejected certain of Korea's claims, including against aspects of the USITC's serious injury investigation, the President's chosen form of the safeguard measure, and whether the United States timely notified key decisional points in the safeguard investigation. However, the panel found certain aspects of the ITC's serious injury determination were inconsistent with United States WTO obligations. The panel also found that the United States acted inconsistently with the WTO Agreement on Safeguards by not providing Korea with sufficient time to allow for the possibility, through consultations, for meaningful consultations between announcement of the final safeguard measure and the date it took effect.

Following negotiations between the United States and Korea seeking to resolve the dispute, the DSB adopted the panel report on April 28, 2023, and the parties simultaneously announced a mutually agreed solution to terminate the dispute.

*United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products (DS562)*

In 2019, China requested a panel concerning the United States' application of a safeguard measure on crystalline silicon photovoltaic products, alleging claims under the GATT 1994 and the WTO Agreement on Safeguards relating to several procedural and substantive obligations.

The panel circulated its report on September 2, 2021, which rejected all of China's challenges in the dispute. The panel found that the United States established that solar imports had increased as a result of unforeseen developments, established a causal link between increased imports and serious injury to the domestic industry, and appropriately considered other factors besides increased imports that were allegedly causing injury to the domestic industry.

On September 16, 2021, China notified the DSB of its decision to appeal certain issues of law covered in the panel report.

*United States – Antidumping and Countervailing Duties on Ripe Olives from Spain (DS577)*

In 2019, the European Union challenged AD and CVD measures on ripe olives from Spain, alleging claims regarding specificity, subsidy pass-through analysis, the manner in which final subsidy rates were calculated, and injury.

On November 19, 2021, the panel circulated its final report. The panel found that the United States acted inconsistently with the SCM Agreement and GATT 1994 in calculating the final

subsidy rate of one respondent, and in relying upon a provision of the Tariff Act of 1930 to attribute benefits to downstream agricultural processors. The panel also found that certain factual findings related to USDOC's specificity determination were inconsistent with the SCM Agreement. The panel rejected the EU's other claims concerning specificity and rejected all of the EU's claims concerning the USITC's injury determination. On December 20, 2021, the DSB adopted the panel report.

On July 5, 2022, the United States requested that the USDOC initiate a proceeding under section 129 of the Uruguay Round Agreements act to address the panel's recommendations relating to the CVD investigation. The USDOC issued preliminary and final determinations in the section 129 proceeding on September 23, 2022, and December 20, 2022, respectively. On January 12, 2023, USTR directed USDOC to implement those determinations, and on January 17, 2023, the United States provided a status report to the DSB confirming it had complied with the panel's recommendations.

On May 2, 2023, the EU requested consultations with the United States with respect to the section 129 redetermination concerning the attribution of benefits to downstream agricultural processors. Consultations were held on May 24, 2023.

On July 14, 2023, the EU requested the establishment of a compliance panel, indicating that it did not believe consultations had resolved the matter or that the measures taken by the United States complied with the Panel's recommendations concerning the attribution of benefits to downstream agricultural processors.

*United States – Anti-dumping Measure on Oil Country Tubular Goods from Argentina (DS617)*

On May 19, 2023, Argentina requested consultations concerning an antidumping measure pertaining to oil country tubular goods from Argentina, as well as the cross-cumulation statute (19 U.S.C. § 1677(7)(G). The consultation request alleges claims regarding initiation and industry support, cumulation of imports, and aspects of the USITC's injury determination.

### *Enforcement Supporting the Strategic Interests of the United States*

Enforcement plays a critical role in promoting predictability and leveling the playing field in agricultural trade. USTR will prioritize enforcement efforts with respect to key U.S. values, such as promoting labor rights and environmental protection, as well as strategic priorities of the United States, including those identified under Executive Order 14017, America's Supply Chains. USTR will also continue engagement with WTO committees, which are important instruments supporting United States monitoring and enforcement of certain trade commitments undertaken by Members.

#### Enforcement Supporting U.S. Agriculture

USTR will continue enforcing our existing agreements so U.S. producers can compete on a level playing field in global markets. For example, USTR has intensified work to find mutually

agreed solutions on outstanding WTO disputes, while maintaining the integrity of U.S. measures. This has already resulted in the resolution of six WTO disputes in 2023 and the removal of certain retaliatory tariffs, which will restore and expand market opportunities for U.S. agricultural producers and manufacturers.

- In June 2023, the United States and the Republic of India agreed to terminate six outstanding disputes at the World Trade Organization.[14] India also agreed to remove retaliatory tariffs, which it had imposed in response to the U.S. Section 232 national security measures on steel and aluminum, on certain U.S. products, including chickpeas, lentils, almonds, walnuts, apples, boric acid, and diagnostic reagents.
- In February 2023, India announced a 70% cut to tariffs on U.S. pecan exports, removing a longstanding barrier to U.S. agricultural trade. In 2023, USTR will continue to work with India to open market access for U.S. agricultural goods in India.

Farmers, ranchers, fishers, and food manufacturers are key to our worker-centered trade policy, and USTR is fighting to achieve quick, economically meaningful wins for them. In 2023, the Administration will continue to improve economic opportunities for U.S. farmers, ranchers, and food manufacturers by expanding market access opportunities in foreign markets through the negotiation of agreements that include provisions intended to eliminate or reduce nontariff barriers that can hamper market access for U.S. agricultural products. The Administration will seek to include in these agreements enforceable provisions that build on WTO obligations, including provisions to ensure that sanitary and phytosanitary (SPS) measures are science-based, developed through transparent, predictable processes, and implemented in a nondiscriminatory manner. For example:

- In January 2023, USTR brought into force an amendment to Japan's beef safeguard mechanism under the U.S. – Japan Trade agreement. The updated agreement will allow U.S. beef exporters to more reliably meet Japan's growing demand for high-quality beef, providing more predictability and reducing the probability that safeguard duties will be imposed on exports of U.S. beef in the future.
- In January 2023, the United States and the EU signed the U.S. – EU Tariff Rate Quota Agreement that provides certainty to U.S. exporters regarding access to the EU market

[14] *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436); *India – Certain Measures Relating to Solar Cells and Solar Modules* (DS456); *United States – Certain Measures Relating to the Renewable Energy Sector* (DS510); *India – Export Related Measures* (DS541); *United States – Certain Measures on Steel and Aluminium Products* (DS547); and, *India – Additional Duties on Certain Products from the United States* (DS585).

following the UK's exit from the EU, and secures favorable market access outcomes for U.S. agricultural products such as rice, wheat, and corn.

### Section 301 Petition and Further Monitoring

On September 8, 2022, USTR received a petition requesting an investigation of certain alleged acts, policies, and practices of the government of Mexico concerning seasonal and perishable agricultural products. On October 23, 2022, USTR announced that due to the complexities of the factual and legal issues raised in the petition, it could not conclude during the 45-day statutory review period that an investigation would be effective and was not opening an investigation at that time. USTR also announced that in light of challenges faced by southeastern U.S. producers as described in the petition, it would, in coordination with USDA, establish a private-sector industry advisory panel to promote the competitiveness of producers of seasonal and perishable produce in the southeastern United States. USTR and USDA are working towards establishment of the industry advisory panel.

### Supply Chains

As part of the Administration's whole-of-government approach to strengthen the resilience of critical supply chains, USTR leads the interagency Supply Chain Trade Task Force. The Supply Chain Trade Task Force will support the goals of Executive Order 14017 by identifying unilateral and multilateral trade actions we can bring to combat unfair foreign trade practices that undermine U.S. supply chains, as well as opportunities to use trade tools and agreements to make our supply chains more resilient to market disruptions. The Supply Chain Trade Task Force has focused on critical areas such as (1) addressing food insecurity in the wake of Russia's unprovoked invasion of Ukraine, (2) tackling forced labor in global supply chains, (3) continued collaboration with partners on supply chain issues, (4) facilitating trade in safe and effective medicines and minimizing drug shortages, (5) securing smoother goods movement of essential products, and (6) protecting uninterrupted North American trade during emergencies. USTR will continue to work to develop durable solutions that strengthen the resiliency of critical supply chains, and to adapt this work to new developments.

### Intellectual Property and Forced Technology Transfer

Consistent with USTR's 2023 Special 301 Report, USTR will continue to prioritize enforcement efforts with respect to key countries where IP protection and enforcement has deteriorated or remained at unacceptable levels and where market access for Americans who rely on IP protection has been unfairly compromised.

The United States has been closely monitoring China's progress in implementing its commitments under the Phase One Agreement, and China continues to be a major enforcement priority (*see also supra* Section 301 Investigations and Actions). In addition, USTR continues to place China on the Priority Watch List, and Section 306 monitoring remains in effect. China should provide a level playing field for IP protection and enforcement, refrain from requiring or pressuring technology transfer to Chinese companies at all levels of government, open China's

market to foreign investment, and embrace open and market-oriented policies. While rights holders have welcomed some positive developments, they raise concerns about the adequacy and effective implementation of IP measures, as well as about long-standing issues like technology transfer, trade secrets, bad faith trademarks, counterfeiting, online piracy, and geographical indications. China needs to complete the full range of fundamental changes that are required to improve the IP landscape in China.

USTR will also continue to pursue a range of enforcement efforts to address IP protection and enforcement in other countries. Outstanding challenges and trends relate to the trade in counterfeit goods; troubling "indigenous innovation" and forced or pressured technology transfer policies that may unfairly disadvantage U.S. right holders in markets abroad; inadequate protection of trade secrets, undisclosed information, and patents; geographical indications; and online and broadcast piracy. USTR is committed to addressing these and other priority concerns to foster American innovation and creativity and increase economic security for American workers and families.

### Environmental Enforcement under the United States–Peru FTA

The United States actively enforces rules and norms relating to environmental protection, including under USMCA and our FTAs and through use of Section 301 and other mechanisms.

On July 26, 2022, the Office of the United States Trade Representative announced that the Interagency Committee on Trade in Timber Products ("Timber Committee") had directed United States Customs and Border Protection (CBP) to continue to block any timber imports from WCA until the Government of Peru demonstrates that Inversiones WCA E.I.R.L. (WCA) has complied with all applicable laws, regulations, and other measures governing the harvest of and trade in timber. This order represents a continuation of a July 2019 order against WCA products.

In February 2018, pursuant to the United States-Peru Trade Promotion Agreement Annex on Forest Sector Governance, the Timber Committee requested the Government of Peru to verify the legality of three timber shipments to the United States. The Government of Peru carried out the verification and reported to the Timber Committee that timber products contained in a shipment exported by WCA were not harvested and traded in compliance with Peruvian laws, regulations, and other measures. On July 26, 2019, the Timber Committee directed CBP to deny entry to timber products originating from Peru that were produced or exported by WCA for the shorter of three years or until the Timber Committee notifies CBP that Peru has completed an examination that demonstrates that WCA has complied with all applicable laws, regulations, and other measures governing the harvest of and trade in timber products.

The original three-year denial of entry was set to expire on July 26, 2022. Over the three-year period of the order, the Government of Peru did not take administrative or judicial action against WCA in relation to the 2018 verification findings. Further, Peru provided no information in response to a June 8, 2022 request from USTR to provide information concerning WCA's compliance with relevant laws, regulations, and other measures governing the harvest and trade in timber products. For these reasons, a new denial of entry order was issued.

### Ensuring that Standards-Related Measures Do Not Create Unnecessary Obstacles to Trade

Standards-related measures are valuable tools that governments use to regulate in the public interest, for example, to protect health or safety, to provide consumer information, to protect the environment, or to prevent fraud or deception, among other aims. However, standards-related measures can be used as unfair trade barriers, such as when a regulation discriminates on the basis of national origin (e.g., when there is no rational relationship between the government's regulatory aim and the regulatory distinction drawn that affects domestic and imported goods differently). To ensure U.S. workers, manufacturers, and businesses can compete on a level playing field, USTR will continue to address unjustified barriers stemming from technical regulations, standards, and conformity assessment procedures that discriminate against U.S. exports or do not otherwise comply with international commitments.

USTR has intensified engagement with U.S. trading partners and increased monitoring of their practices to address measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports. During fiscal year 2022, in the three regularly scheduled World Trade Organization's Committee on Technical Barriers to Trade (WTO TBT Committee) and associated bilateral meetings, USTR raised over 50 offensive specific trade concerns and responded to 7 specific trade concerns regarding U.S. technical regulations. Additionally, USTR raised numerous concerns over standards-related measures in direct bilateral engagements with trading partners. During the reporting period, the United States expressed particular concerns about the following:

- During the WTO TBT Committee meetings, USTR raised concerns about China's proposed cybersecurity and encryption laws, its implementing measures for cosmetics supervision, regulations and administrative measures relating to overseas producers of imported food, and proposed rules for wireless charging equipment.

- During the WTO TBT Committee meetings and with the USMCA framework, USTR raised concerns about Mexico's proposed standards and burdensome conformity assessment procedures for dairy products, including cheese, milk powder, yogurt and butter; automotive standards; and telecom standards and regulations, as well as Canada's proposed prohibition of certain toxic substances; proposed regulations on plastics, clean fuels, and requirements for supplemental foods.

- During the WTO TBT Committee meetings and bilateral engagements with the EU, USTR raised concerns about a proposed cybersecurity regulation; a measure to regulate products contributing to deforestation; a proposed artificial intelligence act; a draft regulation on microplastics; the regulation of medical devices and in-vitro medical devices; the EU's upcoming chemical strategy; sustained objections to the EU's maximum residue limits policies for pesticides; a draft regulation regarding wine denominations of origin, and proposed labeling changes for alcohol required by Ireland. In addition to concerns and questions regarding implementation of specific regulations, USTR also raised serious systemic concerns with the EU related to the newly adopted European Standardization Strategy and the undue influence of EU Commission

consultants in the development of proposed international standards under agreements between the EU and certain international standards developers.

- During the WTO TBT Committee meetings and bilateral engagements with India, USTR raised concerns about proposed food safety regulations, genetically modified free certificates for food products, proposed in-country conformity assessment procedures for chemicals, telegraph equipment, and toys.

- During the WTO TBT Committee meetings and bilateral engagements, USTR raised concerns that the halal labeling and certification systems continue to be a source of concern in Egypt and Indonesia in terms of transparency, the breadth of products covered where no standards exist and limitations on available conformity assessment bodies to perform the certification requirements.

The United States has also worked independently and within various fora to implement capacity-building projects that will strengthen the skills of developing countries. The United States actively engaged with the WTO on the Transparency Champions Program, which was launched in 2022 to build-up the institutional functioning of Enquiry Points and notification authorities. The United States has also advanced projects in APEC on new technologies for battery energy storage systems and measuring greenhouse gas emissions, cybersecurity for critical infrastructure, increasing understanding of WTO TBT Agreement obligations, and good regulatory practices.

Under Working Group 10 of the U.S.-EU Trade and Technology Council, USTR is leading U.S. efforts with the EU to identify and avoid new technical barriers to trade, including in standards, with a particular focus on new and emerging technologies.