

NOMINATION OF RONALD KIRK

HEARING

BEFORE THE

COMMITTEE ON FINANCE UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF

RONALD KIRK, TO BE U.S. TRADE REPRESENTATIVE,
WITH THE RANK OF AMBASSADOR EXTRAORDINARY
AND PLENIPOTENTIARY, EXECUTIVE OFFICE OF THE PRESIDENT

MARCH 9, 2009



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**NOMINATION OF RONALD KIRK, TO BE
U.S. TRADE REPRESENTATIVE, WITH THE
RANK OF AMBASSADOR EXTRAORDINARY
AND PLENIPOTENTIARY, EXECUTIVE
OFFICE OF THE PRESIDENT**

MONDAY, MARCH 9, 2009

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 5:03 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Wyden, Stabenow, Cantwell, Nelson, Carper, Grassley, Hatch, Snowe, Roberts, Enzi, and Cornyn.

Also present: Democratic Staff: Bill Dauster, Deputy Staff Director and General Counsel; Amber Cottle, International Trade Counsel; Ayesha Khanna, International Trade Counsel; and Mary Baker, Detailee. Republican Staff: Kolan Davis, Staff Director and Chief Counsel; Stephen Schaefer, Chief International Trade Counsel; David Ross, International Trade Counsel; and Nick Wyatt, Tax Staff Assistant.

**OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR
FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The committee will come to order.

In June of 1944, as international commerce began to envision the world that would emerge from World War II, President Franklin Roosevelt said, "Commerce is the lifeblood of a free society. We must see to it that the arteries which carry that bloodstream are not clogged again, as they have been in the past, by artificial barriers created through senseless economic rivalries."

Slowly, a plan for global economic reemergence took shape. Far from the battlefield, economists and strategists in Washington drafted a document called "Proposals for the Expansion of Trade and Employment." Published in 1945, the report was a blueprint for dismantling the protectionism that had crippled the international economy for decades. The report laid the foundation for the international trading system that would sustain the global economy for the next 60 years.

Mayor Kirk, as President Obama's nominee for U.S. Trade Representative, you will soon have the pen to draft a new international economic blueprint. This new blueprint will be no less historic and no less important. In many ways, your task is even more chal-

lenging. America emerged from World War II as the clear military victor, to be the world's strongest economic engine by far.

In the current global economic crisis, America is not the victor, but its first victim. Some in foreign lands see America as the main culprit. Our economy is in recession, our consensus to advance international trade is frayed, and our faith in the international trading system is badly shaken.

New economic powers are emerging. Historical trading powers are on the decline; at least, by comparison they are not as strong as they once were. Economies that followed the letter and the spirit of international trade rules are battered, and foes of open trade are emboldened to take action that could undermine the global trading system for years to come.

Your job will be to fight a rear-guard action to combat new barriers to trade, and your job will also be to chart a course forward to free and open trade. I believe that you are the best man for the job.

Now, this committee's vetting process revealed mistakes in your tax returns. These are regrettable, but I believe honest, mistakes. You have acted to remedy them, and now you must focus on succeeding in the position for which the President has nominated you.

This year, American trade policy is off to a good start. In the Economic Recovery Act, Congress worked with the administration to pass a landmark expansion of Trade Adjustment Assistance. Passing TAA was a model of bipartisan cooperation. Senator Grassley, Chairman Rangel, Congressman Camp, and I worked to craft the agreement. Senators Snowe, Cantwell, Stabenow, Bingaman, and Rockefeller made valuable contributions.

I am committed to continuing that model of cooperation and engagement. I plan to introduce bipartisan, comprehensive Customs reauthorization legislation. I plan to introduce bipartisan legislation to give the administration the tools and resources it needs to enforce our trade agreements and level the playing field for American workers, firms, farmers, and ranchers. And I plan to introduce legislation to reform and reauthorize our preference programs in a way that will ensure that the world's poorest countries can trade, grow, and prosper.

I also want to find a way to begin consideration of the three pending trade agreements. I am committed to approaching that process with the same cooperation and commitment that we demonstrated on Trade Adjustment Assistance.

We should start with Panama. That is the agreement that is most ready for action, and it is the agreement that will win the greatest level of support. With careful thought, consideration, and compromise, I also want to address the trade agreements with Colombia and Korea. We must find a way to address the real and significant concerns with labor violence in Colombia, and Korea must find a way to accept all American beef from cattle of all ages.

Done properly, I believe that the United States-Korea Trade Agreement could serve as a cornerstone of a broader economic agenda that embraces the dynamism of Asia. Our exports to Japan and China, the world's second- and third-largest economies, are far from reaching their full potential. Surrounding these Asian heavyweights are promising markets in Vietnam, Malaysia, and Taiwan.

The bilateral engagement with these and other Asian countries is important, but a regional approach is also critical. The United States will chair the Asia-Pacific Economic Cooperation Group in 2011. We must start planning now to make our APEC meaningful.

One way to do so would be to lead the ongoing Trans-Pacific Partnership negotiations to successful conclusion. The sooner that the Obama administration commits to the Trans-Pacific Partnership negotiations, the sooner that those negotiations can grow into a broader regional deal that encompasses Japan and other countries with greater commercial impact.

Opening new markets through new negotiations is essential to American workers, firms, farmers, and ranchers who are struggling in today's economy, but equally important is unraveling the web of sanitary and phytosanitary barriers that keeps the world's consumers from enjoying American agricultural products.

These barriers hurt every State represented on this committee. In markets throughout the world, unscientific beef import bans have cost ranchers in Montana and other States \$10 billion in exports. The European Union has effectively locked out American corn, soy, poultry, and beef from their markets.

So, Mayor Kirk, you will also need all of your vigilance and tenacity to enforce our international trade agreements. Our softwood lumber agreement with Canada is a prime example. American companies can go toe-to-toe with any global competitor, but they can succeed only if the competition plays by the rules of the game.

Mayor Kirk, the 1945 report on "Trade Expansion and Jobs" that I mentioned earlier began with a simple observation. Its authors observed that America had "a limited and temporary power to establish the kind of world we want to live in." I urge you to approach your position as USTR in a similar way.

So, I urge you to protect the lifeblood of free society. I encourage you to see to it that the arteries that carry the stream are not clogged again, as they have been in the past. I urge you to use your position as U.S. Trade Representative to help to establish the kind of world that Americans want to live in.

Senator Grassley?

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM IOWA**

Senator GRASSLEY. Thank you, Mr. Chairman.

This is a very important hearing, particularly because President Obama just recently released his trade policy agenda, so the President and our country need a U.S. Trade Representative to advise on that agenda and, more importantly, to work hard to get it enacted.

The Finance Committee is in similar need of a U.S. Trade Representative to explain the details of the President's agenda, to justify it, and to be held accountable for it. There are elements of the President's trade agenda that I welcome. It was long overdue for this administration to embrace the idea that trade can, and should, play a very important role in our economic recovery, probably the most important role.

We need to take concrete steps that will produce meaningful new market access and the opportunities that come with that access for

our U.S. exporters, and the jobs that are related to those exports. With 95 percent of the world's consumers living outside of the United States, we need better access to consumers and foreign markets if we want to maintain robust economic growth over the long term.

The U.S. Trade Representative must work very hard to achieve that primary objective and not settle for less. On the other hand, the President's trade policy agenda raises some concerns. I do not know what the President intends when he says that our trade policies should build on labor provisions in our existing trade agreements, or when he asks how trade policy can respond to global environmental challenges.

Until I see details, I am reserving judgment, because the bipartisan compromise on these issues that was reached on May 10, 2007 was hard for some of us to accept. But we did accept it, and we wanted to move forward from that point, and still have not moved very far from that point. We have yet to see our three pending trade agreements, with Colombia, Panama, and Peru, be implemented, even though they were renegotiated to incorporate the elements of that May 10, 2007 compromise.

If the President intends to reopen the May 10 compromise, he runs the risk of losing the support that resulted in that compromise in the first place. The President's trade policy agenda also states that our trade policy needs a keener appreciation of the consequences of trade for workers, families, and communities.

I believe our trade policy has reflected these consequences for some time. We recently addressed these consequences for our workers in the globalized economy of the 21st century when we achieved a true bipartisan reform and expansion of Trade Adjustment Assistance.

So, unless the President has something else in mind, I believe that we have already addressed these issues in good faith, and it is time now to focus on implementing our pending trade agreements and to negotiate additional market liberalization trade agreements.

Finally, I am concerned that President Obama is sending mixed signals with respect to the North American Free Trade Agreement. On the campaign trail, he called for renegotiation or potential opt-out for this trade agreement. Now the President's trade policy agenda states that the administration will work with Mexico and Canada to identify ways to improve the agreement without having an adverse impact on trade.

Now, I do not know what the President intends, but I think the marketplace can ill afford such uncertainty as we work to recover from our national economic downturn. In addition, I do not see how the North American Free Trade Agreement could be changed without having adverse effects on at least some of our trade.

For example, if the agreement is reopened, Mexico may seek to reinstate high tariffs on our agricultural exports. That would be bad for producers in agriculture generally, but particularly in my home State of Iowa, so I would not support such an outcome. Last week, I wrote to President Obama, asking him to clarify his intentions in this regard, and would welcome from you, if you can, your views on this as well.

In closing, I stand ready to work with the President and with Mayor Kirk to advance a pro-growth trade agenda for the benefit of American exporters and consumers. However, I will not support policies that either impede that agenda or would reverse the important progress that has already been made. I do not see how any element of a trade agenda will advance if it does not have bipartisan support in the U.S. Congress.

In addition, the nominee, as has been reported, has been asked to address some very important personal issues that he will touch on. So I look forward to this hearing.

The CHAIRMAN. Thank you, Senator.

Our witness today hails from the Lone Star State. The Senator from Texas, Senator Cornyn, has asked to introduce our witness. Why don't you proceed, Senator?

Senator CORNYN. Thank you, Mr. Chairman.

The CHAIRMAN. I might remind everybody that a vote is supposed to start not too far from now. It is going to be awfully hard to come back, because there are four votes in a row, with 10-minute votes. So, I urge all of us to be very, very brief.

**OPENING STATEMENT OF HON. JOHN CORNYN,
A U.S SENATOR FROM TEXAS**

Senator CORNYN. Mr. Chairman, Senator Hutchison could not be here today to offer her introductory remarks, so I would ask unanimous consent that those remarks be made part of the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Hutchison appears in the appendix.]

Senator CORNYN. Thank you, Mr. Chairman.

It is my honor to introduce my constituent and President Obama's nominee for U.S. Trade Representative, Mayor Ron Kirk. I would note that Mayor Kirk and I have not always been on the same side on every issue. For example, who should have been elected to the U.S. Senate in 2002. [Laughter.] But I am happy to be here today and support his nomination.

In the Trade Expansion Act of 1962, Congress recognized that our Nation needed to speak with one voice to our trading partners around the globe. President Kennedy appointed America's first chief trade negotiator, and President Ford elevated that position to Cabinet rank. Congress has worked with many administrations to strengthen the ability of the U.S. Trade Representative to enforce existing trade agreements and open new markets for American workers, farmers, and investors.

Mayor Kirk would lead USTR during one of the most challenging times, with the global financial crisis. The World Bank predicts the global economy will shrink this year for the first time in more than 6 decades. People in many nations are suffering, and calls for new trade barriers grow louder. The USTR must speak clearly and calmly against protectionism. He must show how open markets can renew global prosperity and lift millions in the developing world out of poverty.

I believe President Obama has chosen the right man for the job. As mayor of Dallas, Ron Kirk saw how open markets create new opportunities for our people. He led trade missions to other na-

tions, he recruited foreign investors, and he supported the North American Free Trade Agreement.

Mayor Kirk's leadership in the late 1990s helped reenergize the local economy. By 2007, the Dallas-Ft. Worth area was exporting more than \$22 billion of goods and services to foreign markets.

Like other members of the committee, I became aware of concerns about Mayor Kirk's payment of income taxes, and I want to thank the committee staff for their diligence. I take these matters seriously. After meeting with Mayor Kirk, I know he does as well. I appreciate what he had to say to me in private, and what I expect he will say before the committee today.

Despite these concerns, I support Mayor Kirk's nomination. Mayor Kirk may not be the first choice of those who fail to acknowledge the benefits of free trade, but he is the first choice of the President, and that is what counts, and he is a good choice for American exporters and consumers. The continuing global financial crisis demands a strong leader at the helm of USTR, and Mayor Kirk will fill one of the many top positions of the administration that are still waiting to be filled.

So I am glad this day has come. I congratulate Mayor Kirk on his nomination, and I am proud to support my fellow Texan and introduce him to you and to the committee, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Mayor, thank you, much, for coming today. Our usual practice is to automatically include your statement in the record and then ask you to proceed. But it is also our usual practice for you to have the opportunity to introduce any of your family who are here with you. So we would be very honored to meet family whom you have here with you.

STATEMENT OF RONALD KIRK, NOMINATED TO BE U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY, EXECUTIVE OFFICE OF THE PRESIDENT, WASHINGTON, DC

Mayor KIRK. Chairman Baucus, Senator Grassley, and members of the committee, I am thrilled to be here. It has been a long and strange journey getting to this point, but I very much appreciate the opportunity to be with you today. I especially want to thank Senator Cornyn for his graciousness in introducing me, and for his expression of support.

I am privileged to be joined by my wife, Matrice Ellis-Kirk, and today is her birthday.

The CHAIRMAN. That is my understanding. Let us all wish her a happy birthday. [Applause.]

Mayor KIRK. Not exactly the celebration that I promised her.

The CHAIRMAN. We are tempted to sing it, but we will forego that. [Laughter.]

Mayor KIRK. Thank you so much.

I am, indeed, grateful to President Obama for having nominated me to serve as U.S. Trade Representative, subject to your confirmation. As you have noted, my full testimony has been submitted for the record, and I will try to summarize it here.

The President and I believe that trade plays a key role in our Nation's economy, as well as that of the world's, and we are com-

mitted to ensuring that the United States continues to be a leader in establishing the rules by which global trade is conducted.

To build support for that effort, we will work to expand the benefit of trade for America's families, while ensuring that those who are negatively impacted receive the assistance they desperately need.

We are mindful that the benefits of trade are often diffuse, while its pain is often concentrated. Cheaper foreign products undoubtedly help hard-pressed American families stretch their dollars, and at the same time the sale of our goods and services abroad create and support millions of good-paying jobs here in the United States.

But I think we all recognize that the over-arching benefits of trade are difficult to appreciate when a plant closes in a small community because of increased foreign competition. So, it is within that context that we seek to restore and build new bipartisan support for a progressive trade agenda for America.

Roughly a quarter-century ago, I had the opportunity to serve Senator Lloyd Bentsen. Like Senator Bentsen, I came from the State of Texas and grew up in a working-class family in Austin. When I was privileged to be elected mayor of Dallas, I carried with me the Senator's philosophy and practice of conducting himself as a raging pragmatist. That same philosophy and common sense will govern my work as U.S. Trade Representative, if I am so privileged to be confirmed by the Senate.

I am truly humbled and genuinely excited about the opportunity to be of service to our Nation, particularly during this difficult economic period. But, as I have said to many of you in private, I do not come to this job with deal fever. We are not going to do deals just for the sake of doing so.

This administration's starting point on trade will be to ensure the strongest possible enforcement of existing rules and increase the transparency of current and future trade agreements. We will also work with our partners within the WTO to advance the Doha negotiations in the right way. We will work with you and the appropriate countries on the pending free trade agreements and pursue new initiatives that seek to channel trade as an important driver of our economic recovery.

At an appropriate time, with proper congressional input and consultation, President Obama will also require the authority to negotiate new agreements and bring them to Congress for your approval. I am thankful for this opportunity to work with you to address your very real concerns about our trade policy in a productive and bipartisan spirit. To that end, I think it is important that we acknowledge that trade's winners and losers are all in this together.

One of my favorite African proverbs says, simply, that one should take no comfort from the hole in the other end of the boat. We all have to commit ourselves to ensuring a fair hearing and fair treatment for all American industries and workers negatively impacted by global trade. The President and I are confident that, given a level playing field, America's businesses and workers can compete with those anywhere in the world.

I recognize that restoring the bipartisan consensus on trade will take time, and I believe two important steps are necessary to restore our domestic confidence in global trade.

The CHAIRMAN. If you could get to the heart of the matter, Mayor. This is an unfortunate situation we are in. We do not have much time here. There are a lot of Senators here with questions.

Mayor KIRK. Certainly. Then I will respect the wishes of the committee.

Let me simply say that I am honored to have been asked by the President. I believe everything in my background as a lawyer and a mayor have prepared me and made me suited for this job, and I look forward to working with the committee on those matters that we have outlined in the President's agenda, and those that I have discussed with you privately.

The CHAIRMAN. That is very good.

[The prepared statement of Mayor Kirk appears in the appendix.]

The CHAIRMAN. I have three obligatory questions I must ask: is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mayor KIRK. No, sir.

The CHAIRMAN. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mayor KIRK. No, sir.

The CHAIRMAN. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed?

Mayor KIRK. I do, and I will.

The CHAIRMAN. Thank you.

In my short time here, I am going to ask about four questions. If you do not mind, I would like about 45-second answers, each. All right.

First, what are you going to do to help promote bipartisanship in this Congress in pursuing trade?

Mayor KIRK. Mr. Chairman, the first thing I am going to do is continue what I have done with so many of you, which is that we are going to talk to you often. We are going to consult with you. We are going to listen, try to build on all of those common values that I have heard many of you express, and on which we agree, that it is necessary to keep trade a vibrant part of our economic underpinnings as we try to get this economy going, and then we will work with that to try to find common ground and move forward.

The CHAIRMAN. Thank you.

Next is China, how to engage China. We have many tools: the Joint Commission on Commerce and Trade, the Strategic Economic Dialogue, and the WTO. So the question is, how do you expect to engage China, and do you plan to continue the JCCT? How do you expect to work with Secretary Clinton? In the past, Secretary Paulson had that primary responsibility. What metrics will you use to measure the success of our relationship with China?

Mayor KIRK. Mr. Chairman, as my father would say, I do not know that this is as much a question as it is an answer, but we will continue to work through all of the avenues that we have available. I know from your conversations with Secretary Geithner during his confirmation, your conversations with the President, that this is going to require a comprehensive strategy. We will work with the President and other members of the National Economic Council to make sure that we have a wise strategy for dealing with China on a broad range of issues, including—

The CHAIRMAN. Do you have any sole, new kind of idea about China and how we engage more effectively with China?

Mayor KIRK. We will use all of our resources within the WTO. We will use our diplomatic resources as well. The more that we can convince China that moving from not only just an exporting manufacturing community to a consumer society as well, the better it is going to be for both, I think, U.S. exporters and for China's economy as well.

The CHAIRMAN. We in the United States have the softwood lumber agreement with Canada that needs to be enforced. What steps will you take to make sure that Canada is complying with its obligations?

Mayor KIRK. Well, as you know, Mr. Chairman, I have talked about this with Senator Snowe and others. We have filed a number of cases against Canada with respect to the softwood lumber agreement. We recently got a favorable ruling on that. But the President, in his meeting with the Prime Minister of Canada, has made it clear we want to move forward in a much more collaborative way, and our office looks forward to working with you, as well as our trading partners, to make sure that we do that and they understand that, in order to keep this great relationship going, we all have to play by the rules.

The CHAIRMAN. As you well know, there are a lot of barriers to trade that other countries have imposed on the United States, non-tariff trade barriers, commonly called sanitary/phytosanitary barriers, and BSE is one. Can you assure me that addressing SPS barriers—that is sanitary/phytosanitary—will be a high priority for the United States?

Mayor KIRK. That is one of our highest priorities. One of the first things we will try to do is convince our partners, particularly those in the EU, that any regulations that relate to importing food and agriculture should be based on sound science.

The CHAIRMAN. And that is an issue, because they are not basing them on sound science.

Mayor KIRK. Well, certainly, as you know, our office has been successful in pursuing these cases in the WTO. We will continue to work with the EU, and any other countries that are blocking the import of American beef and meat products, to make sure that they are based on sound science and not fear.

The CHAIRMAN. I appreciate that.

What are your top three enforcement priorities?

Mayor KIRK. I think the first is going to be to convince our trading partners that we are absolutely serious about this. But in order to continue to build this bipartisan support that you and Senator Grassley say is necessary, and I agree, we have to play by the

rules. Second, we want to make sure that we have the resources within USTR to meet that challenge.

The CHAIRMAN. Do you not think we are ready, that Panama FTA is ready to move?

Mayor KIRK. Pardon me, sir?

The CHAIRMAN. Do you not think that the Panama FTA is ready to move?

Mayor KIRK. I believe, of those agreements, it is closest. But one of the things that I would like to do, Mr. Chairman, is—we are going to take a very expedited review of all the pending agreements to make sure that they meet the standards that the President has laid out. But, as we reference in the President's trade policy agenda, we believe Panama probably is closest to that. After very quick consultation with you, we will come back to you with—

The CHAIRMAN. My time has expired. But I meant what I said in my opening statement: you have a tremendous opportunity here, and tremendous obligation, given world economic conditions.

Mayor KIRK. I agree with you on both.

The CHAIRMAN. It is going to take a lot of creative work.

Mayor KIRK. We will look forward to working with you on that.

The CHAIRMAN. Thank you.

Senator Grassley?

Senator GRASSLEY. Yes. The environment that he is talking about is, in the last few months, for the first time since 1982, we had a downturn in trade. Getting that reversed is very, very important, not only for the benefit of the United States, but the world economy as a whole. This is a worldwide recession. It is not just a United States recession.

My first question. Implementation of the Colombia trade agreement is my number-one trade priority. If confirmed, will you commit to work with me to implement the trade agreement this year—that is, over the next 10 months, not into 2010?

Mayor KIRK. Senator, we actually welcome the opportunity to work with you on that. I cannot commit to a certain timetable. As I have said, we are going to take a comprehensive review of all of our trade policies, because we want to move forward in a strategic, rather than a tactical, manner. But we do agree with you that Colombia provides a great opportunity, and we will work with you to see if we cannot get that advanced sooner rather than later.

Senator GRASSLEY. Just so you know, there was good-faith negotiation between Republicans and Democrats 2 years ago to move our pending trade agreements forward, and it seems to me that when you have good-faith negotiations between two political parties, things ought to move forward without question about whether or not they ought to be renegotiated.

My next question. The President's trade policy agenda states that we need to "build on" the labor provisions in our existing trade agreements. What specific building does the President have in mind? Before you answer that, let me be clear where I am coming from. It was difficult for me to accept the bipartisan compromise that was reached on May 10, 2007, including with respect to the labor provisions.

I want to reserve judgment until I see more specifically what the President intends, but I am frustrated that the compromise that

was reached has not yet resulted in the implementation of all four trade agreements that were pending at that time. I doubt that I will embrace very much deviation from that compromise. So what specific building would the President have in mind?

Mayor KIRK. Again, Senator Grassley, what we would like to do is look at all of our trade agreements, all of the elements of May 10, look at the pending agreements, and make sure that they are all working in concert with one another. The President has been fairly unequivocal about his desire to make sure that most Americans believe that our trade policy works for us and our families. I believe those five elements that were agreed to in the May 10th agreement and reflected in Peru can go a long way to helping us achieve that.

I also believe the good work that you and Chairman Baucus did during the Economic Recovery bill on Trade Adjustment Assistance is going to help this. So I want to make sure you understand, I am not prejudging any of these, but I think we would like to have some period of time just to take a comprehensive look at all these before going forward, and we look forward to working with you on that.

Senator GRASSLEY. Do you agree that it would be improper to use trade negotiations and trade agreements as a means of obligating changes in Federal or State labor laws in the United States?

Mayor KIRK. Senator, I do agree with you. I think it is absolutely appropriate for the United States to use the opportunity to enter bilateral or multilateral trade agreements to see if we cannot bring the world to better standards for workers, but the laws of the United States, as they relate to our domestic laws on labor, should be set by this Congress. We agree with you.

Senator GRASSLEY. Yes. With background that I had in my opening statement about the NAFTA agreement, let me ask this question, and it will be my final one. If the President does seek to reopen the agreement, will you commit that you will not agree to any increases in, or reinstatement of, tariffs on U.S. agricultural products under this trade agreement, if you are confirmed?

Mayor KIRK. Senator, like you, I come from a State in which agriculture is very important, but I also come from a State that has a very strong relationship with Mexico. We will proceed, as the President has directed, in a collaborative way with Mexico and Canada to see whether we cannot strengthen NAFTA. I do not see the levying of additional tariffs as being in the category of strengthening that agreement.

Senator GRASSLEY. Thank you.

The CHAIRMAN. Thank you, Senator.

Mayor KIRK. Thank you, sir.

The CHAIRMAN. Next, is Senator Stabenow.

Senator STABENOW. Thank you very much, Mr. Chairman.

Mayor Kirk, it is wonderful to see you.

The CHAIRMAN. I might remind everybody, we have limited ourselves to 4 minutes.

Senator STABENOW. So I will talk quickly, Mr. Chairman.

The CHAIRMAN. We are not going to make it anyway, but we will give it our best shot.

Senator STABENOW. We had a chance to talk specifically about a number of issues, and I would have a number of questions for you.

But let me just ask, broadly, and preface my question by stating that, as you know, having that level playing field that you talked about is incredibly important to me. I am deeply concerned about the South Korea Free Trade Agreement because there is not a level playing field. The non-tariff trade barriers for autos and other manufacturers of appliances and other products were not changed in that agreement. The Doha Round manufacturers really were not at the table. So, I have great concerns about that.

Under the Bush administration, trade enforcement was really put on the back burner in favor of negotiating new trade agreements. One example. When China issued illegal regulations that discouraged the importation of auto parts into China, it took 2 years for the USTR to file a case. It took 2 more years before the WTO ruled—in our favor, by the way. I mean, we were right.

Mayor KIRK. Right.

Senator STABENOW. But by that time, 4 out of 5 of the major suppliers headquartered in my State went out of business. So, time matters on how we go ahead.

Now, as you probably know, newspapers like the *Financial Times* and the *Wall Street Journal* are reporting that China is creating new export subsidies and new import taxes. So I am wondering, under your leadership, what role will USTR take with regard to investigating the effects of these kinds of policies on our U.S. industry?

Mayor KIRK. Senator, thank you for your words. Thank you also for welcoming me when I had an opportunity to come to Michigan.

When I gave you that African proverb about taking no comfort from the hole in the other end of the boat, I think you know, I am obviously very proud of the work we have done with NAFTA. But as you know, my wife is from Ohio. Just about all of our in-laws live in Michigan, and all of them are either employed or retired from the auto industry. So as we have talked, I am well aware of both sides of this coin as it relates to trade.

So, one, you have our commitment that we are going to make enforcement a top priority. Second, we want to work to make sure that we create opportunities for those new small businesses and entrepreneurs. When I talked about not having deal fever, I do not mean to prejudge anything that is left on the table. But I did not accept this challenge, this opportunity from the President, to simply come in and just pick up and implement everything that was left there.

So when we talk about a comprehensive review, we are going to do that with the priorities that the President has established, of making sure that we enforce the rules vigorously, that our policies are transparent, that they work for our families, and that we try to do as much as we can to create that level playing field. I look forward to working with you to advance the interests and try to help rebuild those small- and medium-sized businesses, as well as helping to protect our auto industry.

As to Korea, I applaud the efforts of the previous administration to step away from that. The President has said, and I agree, the agreement as it is just simply is not fair. If we do not get that right, we will be prepared to step away from that. But I believe Korea also presents one of the biggest economic opportunities we

have of all of the bilateral agreements out there, but we want to make sure that we get that right.

Senator STABENOW. Absolutely. We want to get it right. We obviously benefit tremendously from trade economically, but the rules have to be fair.

Mayor KIRK. Right.

The CHAIRMAN. Senator Enzi?

Senator ENZI. Thank you, Mr. Chairman. I would ask that my statement be a part of the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Enzi appears in the appendix.]

Senator ENZI. I have a question. Since I came to the Senate 12 years ago, I have been working on implementing country-of-origin labeling for American meat products. Congress took special care in the 2008 Farm Bill to assure that that program would be consistent with our trade obligations. As you are probably aware, Canada and Mexico have threatened the United States if we challenge in the labeling program, and this despite the fact that 42 developed nations have similar, if not more stringent, labeling programs. What efforts would you be willing to make as the U.S. Trade Representative to uphold our country-of-origin labeling laws?

Mayor KIRK. Senator, as you and I have talked, I think we have an absolute obligation, working together, first of all, to give American consumers the insurance that the food that is in our freezers, that we feed our families, is safe. So I think having a reasonable, thoughtful program to give consumers that assurance is only fair. We will work with Agriculture Secretary Vilsack. I think he has taken a very thoughtful approach to this. We will work along with his office and the other agencies to make sure that we advance that interest.

Senator ENZI. Thank you. Yes. Secretary Vilsack did begin enforcing the law, and we really appreciate that.

Now, we have trade preference programs that help entrepreneurs in developing countries compete in the world trading system. In your view, what is President Obama's plan to increase global trading opportunities for American small business?

Mayor KIRK. Senator, as we talked—and forgive me, once a mayor, always a mayor—one of the programs I was most proud of during our trading program in Dallas was, we had a very aggressive effort, working with the Department of Commerce, the U.S. Trade Representative, and our local chamber to educate and help to get our small- and medium-sized businesses involved in trade. As important as the work of big companies like the auto manufacturers is, the reality is, 70 percent of the jobs in this country are still created by small- to medium-sized businesses.

I am looking forward to working with the Department of Commerce and the SBA to see if we cannot come up with a more thoughtful program to reach out and help our small- and medium-sized businesses become more globally competitive.

Senator ENZI. Thank you very much. I do appreciate the opportunity I had to meet with you.

I have quite a few other questions. Some are a bit more technical in nature, and I would ask if I would be able to submit those.

The CHAIRMAN. Absolutely.

Senator ENZI. I give up the balance of my time.

The CHAIRMAN. I thank the Senator.

[The questions appear in the appendix.]

The CHAIRMAN. Mayor, we have, as I mentioned, a little problem here. There is virtually no time left.

I am going to ask each of the remaining Senators to ask one question and limit him- or herself to a minute, and even less, if possible.

Senator NELSON. Would you just include my questions in the record for me?

The CHAIRMAN. Absolutely.

Senator NELSON. I support the nominee.

Mayor KIRK. Thank you, Senator.

The CHAIRMAN. Thank you, Senator.

[The questions appear in the appendix.]

The CHAIRMAN. Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman. I will stick to a minute. I am also looking forward to working with you, as chair of the Trade Subcommittee as well.

Mr. Kirk, the middle class today believes that these trade agreements are bad for them. That has been the overwhelming message that members of the U.S. Senate are getting now when they go home. As one who supported these agreements and looks forward to expansionist views of trade policy in the future, what do you plan to do to increase the support of Americans, particularly hard-hit middle-class Americans, so that they see benefits from expansionist trade policy?

The CHAIRMAN. Twenty-three seconds.

Mayor KIRK. I think there are several things we can do. First, we really want to work with the leadership in Congress to build true bipartisan support. Second, we are going to be a lot more proactive in using our technology. The USTR website was described to me by one of our young potential staffers as "so 1987." Well, one of the things we want to do is utilize technology to tell the good story. Third, as I mentioned to Senator Enzi, I think we can be much more aggressive in working with small- to medium-sized businesses, but we have to restore the American public's confidence.

The CHAIRMAN. Thank you. Thank you very much.

Senator SNOWE?

Senator SNOWE. Thank you, Mr. Chairman. Thank you for your leadership as well.

Mayor Kirk, welcome. I just want to ask a question on trade enforcement. I appreciate your statement on having the strongest possible enforcement.

My concern is, as I mentioned to you in our meeting, about the abysmal record of USTR with respect to enforcement. They have not taken any actions on a public petition since 1996. The fact is, they have rejected public petitions, even the very same day that they were filed. They would not investigate those reports.

What actions would you take to undergird strong enforcement actions by the USTR? Because we really need to reinforce the confidence, certainly in my constituents, and across this country re-

garding these trade agreements and being willing to require other countries to abide by them.

The CHAIRMAN. Fifteen seconds.

Mayor KIRK. Senator, if I am privileged to be confirmed, I am going to honor the President's commitment to you to make enforcement one of our very top priorities.

Senator SNOWE. I appreciate that.

And may I include my statement in the record, Mr. Chairman?

The CHAIRMAN. Absolutely.

Senator SNOWE. Thank you.

Mayor KIRK. Thank you, Senator.

[The prepared statement of Senator Snowe appears in the appendix.]

The CHAIRMAN. Senator Carper?

Senator CARPER. Mayor Kirk, welcome. Mrs. Kirk, welcome.

We passed, as you know, an improved and expanded Trade Adjustment Assistance reauthorization as part of the recently enacted recovery package. As was already stated, this is a first step toward demonstrating to those who are concerned about their jobs that we are trying to look out for them.

However, job instability, whether caused by trade pressures or by the current economic environment, makes a lot of Americans squeamish about foreign competition. Yet, currently those who lose their jobs due to international competition are eligible for more extensive economic support and retraining than those who lose their job for other reasons.

My question is, do our separate and different safety nets for those who lose their jobs due to trade pressures versus those who lose their jobs due to the bad economy make lowering trade barriers harder? If so, what is your role in addressing that?

Mayor KIRK. I think they undoubtedly make it harder, Senator. Our role is going to be to not only work with the Department of Labor and the President to make sure that Americans who are struggling through these difficult times have the resources to recover, but at the same time keeping a careful balance to make sure that trade remains a vibrant part of that economic recovery.

The CHAIRMAN. Senator Cantwell?

Senator CANTWELL. Mayor Kirk, thank you. I hope that you can work with us on the Reconstruction Opportunity Zones in Afghanistan and Pakistan, and make that a priority of USTR. I certainly want to work with you on China and getting a clean energy bilateral with that country to get U.S. products and services in there.

But my question is back to the Korea Free Trade Agreement. You mentioned its economic impact. I agree with you, it has enormous economic opportunity for the United States at a time when our economy is in a stall. What do you mean by "the benchmarks" and what can we do to get that legislation moving?

Mayor KIRK. The President said, Senator Cantwell, and I believe, that part of restoring America's confidence is that we have to give them a clear understanding of what our objectives are. So we have not determined those benchmarks, but I think it would be helpful, at least to whatever degree that we can come up with more definitive measures of what we see to be the benefits, to clearly communicate those to the American public. That is what we would like to

try to achieve. But in the case of Korea, the status quo simply is not acceptable.

The CHAIRMAN. Thank you, Senator.

Thank you, Mayor. I deeply regret that this series of four roll call votes has required the absence of Senators. It is just going to take way too long before we could get back.

I ask Senators to submit questions right away to you to answer, written questions. I asked those Senators to have their questions in before 3 p.m. tomorrow. I ask you, Mayor, to respond to those questions very quickly. We scheduled the hearing today—it is a bit unusual—in the evening, early evening, to accommodate you, accommodate the administration. We need to get our people in place, and I wish you well.

Mayor KIRK. Thank you, Mr. Chairman. I will look forward to working with all of you.

The CHAIRMAN. You bet.

The hearing is adjourned.

[Whereupon, at 5:47 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

SUBMITTED BY SENATOR BAUCUS

MEMORANDUM FOR FINANCE COMMITTEE TAX LAs

From: Senate Finance Committee staff
Date: March 2, 2009
Re: Mayor Ronald Kirk Nomination

This memo describes the results of the Senate Finance Committee staff review of the tax returns of Mayor Ronald Kirk for 2005, 2006 and 2007 in connection with his nomination to be the United States Trade Representative. Mayor Kirk was nominated for the position on January 20, 2009 and his paperwork was submitted to the Committee on January 23, 2009.

Background

Mayor Kirk's nomination team informed Finance Committee staff that in October, 2008 the mayor paid additional tax in the amount of \$2,188 and additional interest in the amount of \$139 for tax year 2006 after he was notified by the IRS that he had failed to report a speaking honorarium of \$5,000 and dividend income of \$819. The return was prepared by a paid tax preparer and filed jointly with his wife. The IRS identified the unreported income during a routine matching of Form 1099 income with the Kirks' tax return.

After reviewing Mayor Kirk's tax returns for 2005, 2006 and 2007, Finance Committee staff submitted several questions to Mr. Kirk on February 6, 2009. The questions included a request for clarification of his practice of assigning honoraria to Austin College and whether the honoraria should have been reported as taxable income, substantiation of various charitable donations and other miscellaneous tax questions. Mayor Kirk provided written responses to the questions on February 17, 2009. He met with Finance Committee staff on February 19, 2009 for a due diligence meeting and to answer tax questions that had not been resolved by his written responses. Mayor Kirk submitted additional information to Committee staff on February 24, 2009 and February 28, 2009.

The results of the staff review of Mayor Kirk's information are described below. Mayor Kirk has agreed to promptly file amended returns reflecting the adjustments discussed in this memo. Staff estimates the total tax adjustments on Mayor Kirk's amended returns for 2005, 2006 and 2007 will be approximately \$9,975.

Honoraria

Background

Mr. Kirk's nomination questionnaire explained that he routinely asked that his speaking honoraria be assigned to Austin College, his alma mater, to help fulfill a pledge he had made to the college for a scholarship fund. Since he asked for the honoraria to be assigned to Austin College, he did not think the honoraria were taxable income to him. His paid preparer also thought this was proper. The questionnaire indicated that Mr. Kirk had assigned speaking fees to Austin College on approximately 16 different occasions. In all, \$37,750 of honoraria were not reported as income for tax years 2004, 2005, 2006 and 2007.

Mayor Kirk followed a consistent pattern of assigning the honoraria to Austin College without reporting the honoraria as income or deducting them as charitable donations. In 2005, he differed from his general pattern by deducting 4 honoraria totaling \$7,500 as charitable donations that he had not included in income. Mayor Kirk did not work through an agent, and the arrangements to have the honoraria paid to Austin College appear to have been informal.

Findings

Mayor Kirk has determined that the honoraria received from his various speaking engagements that were assigned to the Austin College scholarship fund should have been reported as income and then deducted as charitable donations. The estimated income tax effect of these adjustments, including taking into account the honoraria already deducted as charitable donations, is approximately \$5800.

Charitable Donations

Background

Finance Committee staff asked Mayor Kirk to provide substantiation for certain charitable contributions. In response, he submitted donee acknowledgements, cancelled checks, and explanations for how the fair market values of non-cash donations were determined.

Findings

The mayor's information generally met the recordkeeping requirements for the amounts in question. Amended returns will adjust charitable donations in the amount of \$900 because a donee acknowledgement was not provided, and to reduce the fair market value of a TV from \$3,000 to \$1,500; charitable donations for 2006 may be increased to include a

deduction of \$1500 that was overlooked when the original 2006 tax return was filed. The net tax effect of these adjustments is estimated to be approximately \$300.

Other Various Business-Related Tax Issues

Background

Mayor Kirk reduced his net partnership income by certain unreimbursed business expenses including tax and accounting fees and season tickets to the NBA Mavericks. Staff had questioned whether the accounting fees were personal in nature, and for substantiation that certain entertainment expenditures were ordinary and necessary business expenses used to entertain clients.

Findings

Mayor Kirk paid \$7,079, \$7,969 and \$10,170 in tax and accounting fees in 2005, 2006 and 2007, respectively. He deducted 90% of the fees on Schedule E (the form on which his law firm partnership income was reported), and the remaining 10% were deducted on Schedule A (itemized deductions). Taxpayers are permitted to allocate tax and accounting fees among various tax forms commensurate with the effort required to prepare each form. The 90% allocation to Schedule E on the Kirk returns appeared to be too high. Mayor Kirk has reviewed these fees and he will adjust the allocation on the amended returns he intends to file. To the extent the fees are shifted from Schedule E to Schedule A, he will receive no tax benefit because the amounts will fall below the 2% adjusted gross income threshold for miscellaneous itemized deductions. The income tax effect of this adjustment is estimated to be approximately \$1,000.

Mayor Kirk deducted as entertainment expenses the cost of NBA Mavericks tickets in the amount of \$6,208, \$7,035 and \$4,139 in 2005, 2006 and 2007, respectively. He has substantiated \$9,900 of the total \$17,382 as qualifying entertainment expenses and will amend his returns accordingly. The tax effect of the adjustments to entertainment expenses is estimated to be approximately \$2,600.

Self-Employment Tax

The adjustments to the honoraria, tax and accounting fees and Mavericks tickets will increase Mayor Kirk's net self-employment income and increase the Medicare portion of his self-employment tax. The estimated additional Medicare tax he will owe on his amended returns is approximately \$275.

**Statement of Senator Maria Cantwell
Nomination of Ron Kirk as United States Trade Representative
Monday, March 9, 2009**

Thank you, Mr. Chairman, and welcome Mr. Kirk.

I share your belief that trade is vital to the strength of the U.S. and global economies.

I appreciate the fact you're from Texas - the country's top exporting state for the seventh year in a row. Texas is a state that understands just how important trade is to this country.

I too am from a state that understands that well: Washington. It ranks as the 4th largest exporter in the United States.

Washington exports set a new record in 2008 by growing to \$66.8 billion, a \$400 million increase over 2007. In my home state, exports have contributed to nearly one-half of the new jobs created over the past 30 years.

In these times of economic uncertainty, it's clear that the United States must continue to move ahead on trade and resist isolationist temptations. Any other course of action will only deepen and lengthen the global economic crisis.

In order for the United States to stay competitive, we must continue to press to open new markets. Exports are a huge component of economic growth and an undeniable force in the American economy.

The Bureau of Economic Analysis says that in 2007 exports accounted for 40 percent of total economic growth.

If we fail to move forward, we'll repeat failures, such as when protectionist policies cut us off from the world and turned the recession of 1929 into the Great Depression of the 1930s.

Let me mention several of my own trade priorities.

U.S. – Korea Free Trade Agreement

That is why we must move ahead on the U.S. – Korea Free Trade agreement. It is very important to my state and our country.

In 2008, U.S. bilateral trade with Korea edged up from \$82 to \$83 billion. And the prospect of removing tariff and non-tariff barriers to U.S. products in the Korean economy, East Asia's third largest, could really help generate growth and jobs in the U.S., particularly in the Pacific states. Korea and the European Union are approaching

the end of their own free trade agreement negotiations, which they expect to conclude next month.

It would be a great loss to U.S. state exporters if European competitors were able to get their free trade agreement with Korea ratified first and lock up the important long-term contracts and shelf space.

ROZ Bill

I share the President's belief that the United States must be committed to being "a strong partner to developing countries, especially the poorest developing countries." Therefore, I look forward to working together on a bill I just re-introduced last week to designate Reconstruction Opportunity Zones throughout Afghanistan and in the border regions of Pakistan. By giving people the tools they need to grow their own economies, and to create jobs, we empower communities against extremism. To that end, I introduced two bills to make the fight against global poverty an urgent priority.

This legislation is crucial to bringing peace and stability to troubled parts of both Pakistan and Afghanistan, which are among the most volatile regions of the world today. The ROZ bill will promote sustainable economic development and legitimate employment as an alternative to extremism.

Trade and Energy and the Environment

I also agree that trade should be "an important policy tool for achieving progress on national energy and environmental goals."

The United States has tried to eliminate tariffs on clean energy and environmental goods and services at the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation organization (APEC). However, talks have stalled.

I urge you to ahead by pressing for agreement with China on eliminating these tariffs. Any progress with China could lead to a broader agreement at APEC or the WTO. Ultimately, eliminating tariffs and trade barriers to environmental goods and services is good for our economy and important to wider deployment of green technology and to fighting climate change.

Mr. Kirk, I'm confident that we work together to meet these challenges and take advantage of these enormous opportunities for the United States and the world.

Thank you.

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中美清洁能源论坛
US-CHINA Clean Energy Forum

March 6, 2009

President Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 200500

Dear President Obama:

At the recent US-China Clean Energy Forum in Seattle, leaders from the United States and China discussed the notion of eliminating tariffs and export controls on clean energy technology to accelerate the adoption of clean energy and to reduce emissions of greenhouse gases.

Providing a policy framework that will encourage the freest possible flow of technology is an important issue for both countries, and for the world.

Currently, the U.S. and China are the world's largest producers, consumers, and importers of energy, accounting for nearly half the world's energy use and global carbon dioxide emissions. By working together to tackle these shared economic, environmental, and security challenges, the U.S. and China can more quickly transform to cleaner, 21st century energy systems. While the U.S. and China have differences over other issues, both nations have common interests in supporting each other's efforts to spur the adoption of renewable energy technologies, manage carbon emissions, and build the energy efficient infrastructures of the future.

The technologies exist to improve efficiency, reduce greenhouse gases and diversify supplies. Both nations will benefit greatly and create enormous economic opportunities by investing in smart energy technologies and clean energy sources. However, the fact is two largest energy users in the world are stymied by trade and tariff barriers, export regulations and financing hurdles.

One of the most effective ways to make progress on this issue and spur more rapid adoption of clean energy technologies would be to enter into a bilateral agreement with China in which we lower or eliminate tariffs and non-tariff barriers for clean energy and environmental goods and services, while eliminating, to the greatest extent possible, any export controls on those goods and services.

Such a U.S.-China bilateral agreement would reduce the cost of these technologies and would be a catalyst for our own economic recovery. It would represent a key expression of U.S. foreign policy, further strengthen the relationship between our two countries and help drive the accelerated development of a global clean energy economy.

www.cleanenergyforum.org
World Trade Center
2200 Alaskan Way, Suite 400
Seattle, WA 98121-1684 (USA)
Tel: (206) 444-4819





中美清洁能源论坛
US-CHINA Clean Energy Forum

It also would be an important step in paving the way for a broader Sino-American agreement on clean energy and climate change in the future. And it would demonstrate to the world U.S. and Chinese resolve to tackle critical environmental issues prior to the U.N. Framework Convention on Climate Change that will be held in Copenhagen at the end of this year.

Finally, we want to emphasize that this is not a partisan issue, but rather is a proposal that can win broad support in Congress and in the public, because it serves the interests of the United States, China and the world community.

Sincerely,

Michael Kantor
Co-chair

Carla Hills
Co-chair

William E. Brock
Co-chair

cc: Senator Maria Cantwell

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**Statement of Senator Michael B. Enzi
Senate Finance Committee
Hearing on the Nomination of Ron Kirk
March 9, 2009**

I am pleased that the President's Trade Policy Agenda recognizes trade as an important element of our economic recovery. There is a great deal of unfinished trade business from last year and I look forward to working with the Administration in achieving its goals to stimulate the economy. As a former Mayor myself, I am also pleased to see Mayor Kirk nominated as Trade Representative. As we discussed in our meeting, there are a number of lessons that Mayors learn in office that will prove helpful to you as Trade Representative.

I may be new to the Finance Committee, but I am not new to many of the trade issues that will be discussed this year. Having served on the President's Export Council, I have had the opportunity to see the benefit of trade on American industry, small businesses and agriculture. I have a number of concerns about the President's trade agenda and will work to ensure that the American economy and its businesses remain the focus of our trade agenda. The pending agreements with Columbia, South Korea and Panama have significant potential in being able to advance American business interests overseas and I would like to see this panel have the opportunity to consider each on their own merits.

I am especially interested in opportunities to increase American competitiveness and know that Mr. Kirk as Mayor worked with small businesses in Dallas to increase their involvement in global markets. The United States remains a source of ingenuity in the world and without the appropriate agreements in place it will prove difficult to get our products and services to markets overseas. This is one reason why I host an Inventors Conference annually in Wyoming. I help people with ideas for inventions learn how to build, patent, and market their products not only in the United States but also overseas. Our trade agreements must recognize our nation's advantage in innovation and protect ideas so that they can be commercialized.

I know that I share the concerns of the Chairman and Ranking Member when I say I am particularly interested in ensuring that our agricultural goods have a foreign marketplace. Livestock producers in the United States produce some of the best meat in the world and the way to maximize business for a rancher in Montana, Iowa or Wyoming is to gain access to foreign markets where our product is in high demand. Both the South Korean and Columbian free trade agreements are good mechanisms for achieving these goals and I look forward to working with the Trade Representative in advancing this cause.

I am concerned about language in the President's Trade Agenda that says we need to build labor provisions into our existing trade agreements. A number of these deals took years of work to complete and opening them up may cause unintended consequences on the American economy. Until the details are shared with Congress, I will reserve judgment but want say that our focus should be on the future of American trade not its past.

Mayor Kirk, I look forward to hearing your answers to the Committees questions. I appreciate your statement recognizing that in order to achieve results in promoting trade there needs to be an open and inclusive dialog with Congress. I know that the Members of this committee want to see American trade succeed and I trust that we can do just that.

**Remarks for Senator Kay Bailey Hutchison
U.S. Senate Committee on Finance
Nomination Hearing for Ron Kirk
March 9, 2009**

Mr. Chairman, Senator Grassley, and committee members. I'm pleased to support my friend Ron Kirk as President Obama's nominee to serve as U.S. Trade Representative.

I have known Ron for many years. As Mayor of my hometown of Dallas from 1995 to 2001, Ron touted the benefits of free trade for both Dallas and the state of Texas. Free trade including NAFTA has been a success for my state of Texas.

Before becoming Mayor of Dallas, Ron was Texas' Secretary of State under Governor Ann Richards.

Mayor Ron Kirk attended Austin College, graduating with a degree in both political science and sociology in 1976. He then went to the University of Texas School of Law. Upon receiving his Juris Doctorate in 1979, he practiced law until 1981 when he went to work in the office of then-Texas Senator Lloyd Bentsen.

I know the Mayor's leadership and experience will make him a strong Ambassador for U.S. trade policy.

The next U.S. Trade Representative will face stalled World Trade Organization talks, the Doha Round, and will be challenged with confronting issues like export subsidies, tariffs, copyright issues, and fighting to keep markets open to U.S. goods.

Equally important, the next U.S. Trade Representative will face the worst economic downturn in decades. As we face economic hardships around the world, trade presents a tremendous opportunity to sustain and create jobs, expand economies, and stimulate economic growth.

In 2007 exports accounted for 40 percent of our economic growth. I believe trade policy can play a role in getting our economy and the global economy back on track.

Currently, the United States has free trade agreements in effect with 14 countries: Canada, Mexico, Israel, Jordan, Chile, Singapore, Australia, Morocco, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and Bahrain.

However, there are three Free Trade Agreements pending before Congress, which we need to approve. Combined, these three FTAs with Columbia, Panama and South Korea represent both an economic opportunity for the U.S. as well as a diplomatic opportunity.

It is important for the next USTR Ambassador to work with Congress to implement trade agreements that ensure American exports enter the global market on a level playing field.

This is a responsibility that demands strong leadership and character. For those reasons, I strongly support my friend Ron Kirk as USTR Ambassador and I hope my colleagues in the Senate will do the same.

**Statement of Senator John Kerry
Finance Committee Hearing
Nomination of Ron Kirk for USTR
March 9, 2009**

First, I want to welcome Mayor Kirk, who has a long and distinguished career in public service dating back to his days as a legislative assistant to the former Chairman of this Committee, Lloyd Bentsen. Chairman Bentsen was himself a voice of reason for a free but fair trade policy in an era that was strikingly similar, if less economically trying, to where we stand today.

More than two decades ago, Chairman Bentsen led the effort in the Finance committee on the 1988 Trade Act, which fundamentally shifted the United States approach to global trade. Like today, we faced ominous trade deficits that threatened our standing in the global marketplace. I believe we have reached the point where we once again have to step back and take an expansive view of our trade policies to determine whether we have the tools in place to effectively enforce the rights and interests of U.S. companies and workers, both at home and abroad.

Since the consensus driven years of the 1990's, trade has become a five-letter word in Washington, as well as in hundreds of communities that have been decimated by what Mayor Kirk refers to in his testimony as the concentrated costs of trade.

Let me be clear: I have long been a supporter of trade liberalization, including NAFTA, the Uruguay Round, China PNTR, the Trade Act of 2002 and numerous bilateral free trade agreements pushed for by the previous Administration and passed over the last decade. But I have come to believe that our trade policy has been derailed by a tunnel-vision approach to passing agreements while looking the other way as key sectors of our economy suffer. We can no longer approach trade with the simple view that a rising tide lifts all boats. We've got to do more for the boats that are taking on water.

To this end, Chairman Baucus is to be commended for his work to expand the Trade Adjustment Assistance Program through the American Recovery and Reinvestment Act. This represents a first step toward providing real help to displaced workers and families across the country. And it's the kind of step that will help rebuild the consensus that is missing right now.

Another priority for me and for this Committee is our ability to enforce our trade rules around the world, and I am encouraged by Mayor Kirk's attention to this important issue. I and others on this committee pressed the previous Administration to focus on the issues of enforcement, yet rampant trade violations have persisted.

Mayor Kirk, I would urge you to actively pursue the Administration's tools for enforcing trade rules, and to work constructively with this Committee to bolster those tools where necessary.

Reaching a new era of consensus will not be easy—in fact I believe it will prove to be your greatest challenge. You'll have to win back the trust of millions of Americans who believe that their government pulled the rug out from under them.

To achieve a new era of consensus, we'll need to invest in education and technology to make our workforce the most competitive in the world. We need a sound economic and fiscal policy, and we need our trade agreements to level up and not level down worker and environmental protections.

Like your old boss helped to do twenty years ago, we need to turn the page on America's recent trade policy. We need to focus on what needs to be done to rebuild the consensus that will allow us to prosper at home and abroad.

**Statement of Ron Kirk
United States Trade Representative-Designate
Committee on Finance
United States Senate
March 9, 2009**

Chairman Baucus, Senator Grassley, and Members of the Committee:

I appreciate the opportunity to testify here today and for the time many of you have taken to speak with me. And I am very grateful to the President for having nominated me to serve as the United States Trade Representative, subject to Senate confirmation.

The President and I believe trade plays a key role in contributing to the strength of our nation's and the world's economy. We believe fundamentally that fair, open and transparent rules-based trade can act as catalyst to benefit working families and business, large and small, throughout this country. To that end, this Administration will work to ensure that the United States continues to be a leader in advancing the rules-based international trading system. For all of the challenges in recent years and its imperfections, the world's trading system and institutions provide a strong foundation for commerce that has expanded the economic pie and bound together nations. We reaffirmed our bipartisan commitment to multilateral cooperation in commerce in the recent stimulus bill. Moving forward, we can build on this record and deepen our commercial relations with the world in a manner consistent with our values.

To achieve that end, we will work to expand the benefits of trade and ensure that our workers who are negatively impacted by trade receive the assistance they need to move forward and the skills required to compete in the 21st century economy. In doing so, we are mindful that the benefits of trade are diffuse while the costs are concentrated.

It is true that cheaper foreign products help squeezed American families stretch their dollars, and the sale of our goods and services abroad support American jobs. But it is also true that the overarching benefits of trade are difficult to appreciate when a plant closes in a small community because of increased foreign competition. Everyone there is aware of it and they all feel it. When that competition is fair, Americans adjust and rise to

the challenge. When it is not, our government must act to insist that everyone plays by the agreed upon rules. This we will do.

It is within that context that we must conduct a new, open, and inclusive dialogue with Congress on trade. And I fully appreciate the central role of Congress in that conversation. If confirmed, I will come to you early and often to consult and to listen.

Roughly a quarter century ago, I had the opportunity to work as a staff member for Senator Lloyd Bentsen, with whom some of you served during his tenure as Chairman of this Committee.

Like Senator Bentsen, I come from the state of Texas, where I grew up in a working class neighborhood in Austin. As Mayor of Dallas for six years, I was what I have described as “a raging pragmatist.” I approached people as individuals and problems from a nonpartisan perspective. When I did not know an answer to a question, I did not make one up but sought others out to gain their perspectives and insights. And when one of us in my administration made an error, I reached out and worked to make it right.

I expanded Dallas’ reach to the world through a range of trade programs, including trade missions. I sponsored a competition every year for small businesses to highlight those competing strongly in foreign markets and invited the winner on those trips. As USTR, I would continue to work to increase opportunities for American entrepreneurs in the global marketplace.

As I have said, I was honored to accept the President's nomination for USTR and now come before you with an intense sense of both purpose and humility. The world economy is in a fragile state. And the President and I believe that U.S. leadership will be vital to restoring confidence and certainty to the world's financial and trading system.

But I do not come to this job with what I have called in some of our meetings “deal fever”. I know that you want the referees at the WTO to call a foul when the rules are broken. And I agree. The first order of business for the Administration on trade is to ensure strong enforcement of the rules. We will value your thoughts on how best to achieve that, and look forward to discussing additional resources that will be necessary for these efforts. Other priorities include working with our trading partners to advance the

Doha Round negotiations, working with you and the countries in question on pending agreements, and pursuing new initiatives that will seek to channel trade as a driver of economic progress – if they are done right.

And at an appropriate time and with proper Congressional input and concerns addressed, this President will require the authority to negotiate new agreements and bring them to Congress for an up or down vote.

None of this will be easy. But I look forward to working together with you to address real concerns with trade policy in a substantive way. And if you accept that trade's winners and losers are all in this together – then as the African proverb says, “the winners should take no comfort in the hole at the other end of our boat.” We must ensure and provide for a fair hearing and fair treatment for all American industries and workers. On a level playing field, our workers and entrepreneurs are the best in the world.

If confirmed, I will work toward reaching consensus on agreements that promote a more open and fairer trading system and advance the interests of America's working families. I will fight to open markets to our goods and services. And I will work to ensure that the way we negotiate and trade reflects the best of who we are.

I recognize that is a big challenge and it will be difficult to restore people's faith in the process. Unfortunately, many Americans believe that we are losing good jobs because of a trading system that is tilted against them.

Some have dismissed these concerns as protectionist and misinformed for failing to account for the good jobs that expanded trade creates. But it is wrong to do so. I believe in trade and will work to expand it, but I also know that not all Americans are winning from it and that our trading partners are not always playing by the rules.

I respectfully submit that two strong steps toward restoring domestic confidence in open markets are a real and renewed commitment to enforcement of our trade rules, including those addressing labor and the environment, as well as a new commitment to a reformed Trade Adjustment Assistance program that truly helps all workers displaced by trade. I commend Congress for its recent action on TAA and believe it was a victory

for workers and a pro-trade agenda. And I look forward to working with you on the enforcement challenge.

The President and I believe that our mission is not simply to increase American exports, as important as that is, but to ensure that the way we promote trade reflects our country's values about economic progress and justice, including through the advancement of internationally recognized labor and environmental standards. And we believe that by building on the "May 10 consensus" that was reflected in the Free Trade Agreement with Peru, we can promote those values and continue opening new markets. It is only through bipartisan cooperation that a pro-America, pro-trade agenda can move forward.

I appreciate your time, your ideas, and your consideration and I look forward to working with you if I am fortunate enough to be confirmed. Thank you.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. Biographical Information

1. Name: (Include any former names used.)

Ronald Kirk

2. Position to which nominated:

United States Trade Representative

3. Date of nomination:

January 20, 2009

4. Address: (List current residence, office, and mailing addresses.)

Residence:

Office:

5. Date and place of birth:

June 27, 1954
Austin, Texas

6. Marital status: (Include maiden name of wife or husband's name.)

7. Names and ages of children:

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

The University of Texas Law School

Attended Sept. 1976 to May 1979
J.D. received May 1979

Austin College
Attended Sept. 1972 to May 1976
B.A. received May 1976

John H. Reagan High School
Attended Sept. 1968 to May 1972
Diploma received May 1972

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Vinson & Elkins, LLP
Partner
Dallas, TX
Feb. 2005 to present

Gardere Wynne Sewell
Partner
Dallas, TX
Jan. 1995 to Jan. 2005 (I was a partner at Gardere during my tenure as mayor but to avoid conflicts of interest did not participate in profit sharing)

City of Dallas, Texas
Mayor
June 1995 to Nov. 2001

State of Texas
Secretary of State
Austin, TX
May 1994 to Jan. 1995

Johnson & Gibbs (dissolved in Dec. 1994)
Partner
Dallas, TX
Jan. 1990 to Dec. 1994 (took a leave of absence to serve as Secretary of State)

City of Dallas, Texas
Assistant City Attorney
Oct. 1983 to Dec. 1989

U.S. Senator Lloyd Bentsen
Legislative Assistant
Washington, DC
Oct. 1981 to Oct. 1983

Law Office of Windle Turley, PC
 Attorney
 Dallas, TX
 March 1980 to Oct. 1981

Law Office of Bennett & Cain
 Attorney
 Dallas, TX
 July 1979 to March 1980

Spivey & Grigg
 Law Clerk
 Austin, TX
 June 1977 to May 1979

Texas Legislature, House Study Group
 Legislative Analyst
 Austin, TX
 Jan. to June 1977, Jan. to June 1979

US Census Bureau
 Enumerator
 Austin, TX
 June 1976 to Aug. 1976

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

Texas General Services Commission, Chair, 1991-93
 United States Conference of Mayors Standing Committee on Urban Economic Policy, Chair, 1997-2000
 United States Conference of Mayors Standing Committee on Technology and Telecommunications, 2001
 United States Conference of Mayors Advisory Board, 1995-2000
 U.S. Department of Commerce's 2000 Census Advisory Committee, Chair, 1999-2000
 Federal Advisory Commission on Electronic Commerce (ACEC), 1999-2000
 University of Texas Law School Foundation Board of Trustees, 2003-2009
 University of Texas Development Board, 2002-present
 The Annette Strauss Institute for Civic Participation, University of Texas, Advisory Board, 2004-present
 The Texas Exes (Alumni of the University of Texas), President-Elect, 2008-present

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

Vinson & Elkins, partner, Feb. 2005 to present

Gardere Wynne Sewell, partner, Jan. 1995 to Jan. 2005

Johnson & Gibbs, partner, Jan. 1990 to Dec. 1994

COMPETE Coalition, co-chairman, Sept. 2007 to present

Brinker International, director, 1997 to present

Dean Foods, director, Sept. 2003 to present

PetSmart, director, June 2003 to present

Empress Hair Care, director, 2004 to present

One Earth Bank, organizer/investor, July 2007 to present

Dallas Education Foundation, chair/director, July 2006 to present

Trinity Trust Foundation, trustee, 2005 to present

Southwest Transplant Alliance, director, 2008 to present

Catalyst, Inc., advisory board, Sept. 2006 to present

March of Dimes, national trustee, 2003 to 2008; advisory board, 2008 to present

Dallas Citizens Council, Member/Executive Board, 2004 to present

Trinity Commons Foundation, Director, 2003 to present

State Fair of Texas, Director, 2008 to present

University of Texas Law School Foundation, Trustee, 2003 to 2009

University of Texas Development Board, 2002 to present

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

American Bar Association, member, 2003 to present

National Bar Association, member, 1980 to present
 State Bar of Texas, 1979 to present
 Dallas Bar Association, member
 National Association of Corporate Directors, 2005 to present
 Chi Delta Eta Fraternity, 1973 to 1976
 Sigma Pi Phi Fraternity, 1998 to present
 The Dallas Assembly, 1994 to present
 J.L. Turner Legal Society, member, 1980 to present
 Dallas Citizens Council, Member/Executive Board, 2004 to present
 Dallas Education Foundation, Chair/Director, July 2006 to present
 Trinity Commons Foundation, Director, 2003 to present
 Trinity Trust Foundation, Director/Trustee, 2005 to present
 Southwest Transplant Alliance, Director, 2008 to present
 State Fair of Texas, Director, 2008 to present
 The Real Estate Council, Advisory Board, 2004 to present
 Woodall Rogers Park Project, Advisory Board, 2005 to present
 Junior League of Dallas, Advisory Board, 2005 to 2007
 D/FW Airport Board, member, 1995 to 2001
 Hart Global Leaders Forum of SMU, Past Chair/Advisory Board, 1997 to 2000
 Catalyst, Inc., Board of Advisors, 2006 to present
 March of Dimes, Advisory Board, 2007 to present; National Trustee, 2003 to 2007
 Austin College, Senior Trustee/Trustee, 1994 to 2004
 University of Texas Law School Foundation, Trustee, 2003 to 2009
 University of Texas Development Board, 2002 to present
 The Texas Exes (Alumni of the University of Texas), President-Elect, 2008 to present
 The Annette Strauss Institute for Civic Participation, University of Texas, Advisory Board, 2004 to present
 NAACP, Life Member, since 1997
 The Crescent Club, Member, 2003 to present
 The Tower Club, Member, 2001 to 2004
 Lakewood Country Club, 1996 to present
 The University of Texas Golf Club, 2004 to present
 Dallas Convention and Visitors Bureau board, 2008 to present

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

Mayor of Dallas, 1995 and 1999

United States Senate, 2002

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Member, Democratic National Committee, 2004 to 2005

Member, Vinson & Elkins Political Action Committee
Registered agent for the State of Texas, Obama for America, March to December 2008

Chair of periodic public bond campaigns (e.g. for the Dallas Independent School District) financed by Dallas Citizens Council.

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

Obama Victory Fund, \$2300, 2008
Democratic Senatorial Campaign Committee, \$1250, 2008
Dallas County Democratic Party, \$500 (general), 2008
Friends of Bennie Thompson, \$500 (general), 2008
Rick Noriega for Texas, \$1000 (primary), 2008
Friends of Mark Warner, \$500 (primary), 2008
Texas Democratic Party, \$250 (primary), 2008

Dallas County Democratic Party, \$250 (primary), 2007
Obama for America, \$2100 (primary), 2007
Obama for America, \$200 (primary), 2007

Lukin Gilliland for US Congress Committee, \$250, 2006
Dallas County Democratic Party, \$500 (general), 2006
Harold Ford, Jr. for Tennessee, \$500 (general), 2006
Will Pryor for Congress, \$500 (primary), 2006

Richard Raymond for Congress, \$500 (primary), 2005
Eddie Bernice Johnson for Congress, \$1000 (primary), 2005
Friends of Hillary, \$1000 (primary), 2005
Democratic Senatorial Campaign Committee, \$1000, 2005
Kweisi Mfume for U.S. Senate, \$500 (primary), 2005
Bill Nelson for U.S. Senate, \$500 (primary), 2005

Obama for Illinois, \$1500 (general), 2004
Martin Frost Campaign Committee, \$1000 (general), 2004
Chet Edwards for Congress, \$1000 (general), 2004
Salazar for Senate, \$400 (general), 2004
Friends of Chris Dodd, \$500 (general), 2004
MoveOn.org, \$500 (primary), 2004
Democratic Congressional Campaign Committee, \$1000 (primary), 2004

Dallas County Democratic Party, \$1000 (primary), 2003
Dallas County Democratic Party, \$1000 (primary), 2003
American Health Care Association PAC, \$2000 (primary), 2003
John Kerry for President, Inc., \$1000 (primary), 2003

Joe Lieberman for President, Inc., \$1000 (primary), 2003
 Friends of Hillary, \$1000 (primary), 2003
 Wesley Clark for President, Inc., \$500 (primary), 2003

Texas Democratic Party, \$500 (primary), 2002

Friends of Jim Marshall, \$500 (primary), 2000

My wife Matrice Ellis-Kirk's contributions are as follows:

Obama Victory Fund (joint fundraising contribution received by Obama for America), \$1000, 2008

Alaskans for Begich, \$500 (general), 2008

Obama for America, \$300, Sept. 2007

Obama for America, \$2000, May 2007

Emily's List, \$250, 2006

Ron Kirk for U.S. Senate, \$395, 2002

Eddie Bernice Johnson for Congress, \$500 (primary), 2001

Emily's List, \$250, 2001

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

One of "The 50 Most Influential Minority Lawyers in America," *The National Law Journal*, 2008

Justinian Award, The Dallas Lawyers Auxiliary, 2008

One of "The Best Lawyers in America" in government relations law, 2007 - 2009

Honorary Doctor of Humane Letters, Austin College, 2006

Jurisprudence Award, Anti-Defamation League, 2004

Mickey Leland Leadership Award, Texas Southern University, 2004

University of Texas: Distinguished Alumni Award, 2001; Honorary Order of the Coif, 1996;

Young Texas Exes Award, 1995

Outstanding Public Service Award, Woodrow Wilson Center for Public Policy, 2000

Honorary Doctor of Laws, Paul Quinn College, 1997

Martin Luther King, Jr. Justice Award, Dallas Bar Association, 1996

Distinguished Alumni Award, Austin College, 1994

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

As mayor I published numerous op-ed pieces in the *Dallas Morning News*, including:

"Dallas youths need federal funds for jobs," *Dallas Morning News* (Mar. 10, 1996)

"City funds holistic approach to curb gangs," *Dallas Morning News* (June 23, 1996)

"You can be soldier in army of volunteers," *Dallas Morning News* (Apr. 26, 1997)

"Trinity River Bond Proposal: Return on this investment can't be overstated," *Dallas Morning News* (May 1, 1998).

"Annette brought us together," *Dallas Morning News* (Dec. 20, 1998)
"Internet can undercut tax base," *Dallas Morning News* (June 21, 1999)
"Trade with China is important for Dallas," with Albert Black, *Dallas Morning News* (May 12, 2000)
"Dallas is vital to helping Mexico," with Stephen Chipman, *Dallas Morning News* (Feb. 20, 2001)
"Budgets: Dallas vs. FW" (letter to the editor), *Dallas Morning News* (Aug. 19, 2001)
"We Agree on the Trinity," with Laura Miller, *Dallas Morning News* (Mar. 20, 2007).
"Bill would simply re-regulate the energy market," *Dallas Morning News* (Apr. 26, 2007).
"Keep Texas competitive," *Dallas Morning News* (Jan. 28, 2008).

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with **two** copies of each formal speech.)

Numerous extemporaneous speeches given while Mayor of Dallas, for which no record can be found.

The following public addresses, delivered while Mayor of Dallas, are maintained in the City's archives, with copies attached:

1999 State of the City Address
1998 State of the City Address
1997 State of the City Address
1996 State of the City Address

Copies of the following formal speeches are also attached:

University of Texas Law School Commencement Address (May 19, 2007)
Austin College Commencement Address (May 14, 2006)

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

As the mayor of a large U.S. city located in a border state, I encouraged substantial trade development, particularly in the early years of NAFTA. Dallas' economy grew as a result of trade, and Dallas was identified as a leading North American city in fostering a favorable climate for business during my service as mayor. I traveled to other countries on several occasions and promoted international trade during those trips. Specifically, I made annual or semiannual official trips to Mexico and Canada, where I participated in private meetings regarding trade development. I hosted foreign diplomats and business leaders in Dallas for trade discussions, through the Dallas Ambassadors Forum. I also worked to develop a more integrated government approach to assisting small businesses in Texas to engage in trade. Generally, I have been an advocate for the elimination of trade barriers and other mechanisms for strengthening the export positions of U.S. businesses, while holding other nations to the terms of negotiated agreements and to acceptable labor, environmental, and human rights standards. Both my career in public service and my leadership positions in private corporations and law firms have prepared me to serve as U.S. Trade Representative.

B. Future Employment Relationships

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Yes.

C. Potential Conflicts of Interest

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the United States Trade Representative ethics official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with USTR's designated agency ethics official.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

While I do have limited foreign professional and business relationships, none of those relationships pose a conflict of interest. Vinson & Elkins provides legal services to clients outside the United States and has offices abroad. Brinker, for which I serve as a director, has restaurants outside the United States, but those restaurants are primarily operated by third

parties as franchises. I am also a director of PetSmart, which operates in Canada in addition to the United States. My wife, Matrice Ellis-Kirk, is a partner at the international executive search firm Heidrick & Struggles, but her work is domestic. The full extent of potential conflicts of interest is described in the attached ethics agreement.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

During the 2007 Session of the Texas Legislature, I consulted with TXU Corp. on their proposal to build 11 coal-powered plants, and I later consulted with Texas Pacific Group and Kohlberg Kravis Roberts on their \$45 billion purchase of TXU.

I was a registered lobbyist during the 2007 session of the Texas legislature for Merrill Lynch.

I serve as a co-chairman of the COMPETE Coalition. The organization advocates for competition in the electric market, but I do not lobby personally on its behalf.

In 2000, I testified before the House Judiciary Subcommittee on Commercial and Administrative Law urging opposition to the Internet Tax Reform and Reduction Act.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with **two** copies of any trust or other agreements.)

As noted above and in the attached ethics agreement, I will resign all board memberships and will divest all securities issued by Dean Foods Company. There are no other obvious conflicts at this time, and the Office of Government Ethics has advised me that divestiture of other securities is not necessary. Once confirmed, I will follow all ethics guidelines regarding recusal should an unforeseen conflict arise.

5. **Two** copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.
6. The following information is to be provided only by nominees to the positions of United States Trade Representative or Deputy United States Trade Representative: Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

No.

D. Legal and Other Matters

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No. However, during my tenure as Mayor of Dallas, a complaint was filed with and subsequently dismissed by the City of Dallas' Ethics Advisory Commission. That complaint involved ongoing matters relating to American Airlines that were then pending before the Dallas City Council. At the time, American Airlines was also a client of Gardere Wynne, a law firm of which I was also a partner. The Commission concluded that the complaint posed only a hypothetical question and cited no actual conflict. Also, early in my tenure as Mayor, an individual wrote a letter to the Texas State Bar Grievance Commission that included false allegations that I had agreed to serve as the individual's lawyer. The complainant admitted in the letter that he had never retained me or spoken with me, and the Grievance Commission took no action and dismissed the complaint by a unanimous vote that the person had no claim. I know of no record of this letter.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

The City of Dallas was sued on several occasions during my tenure as mayor. The suits involved claims against the City and I was involved in such litigation solely in my capacity as an elected official.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

N/A

E. Testifying Before Congress

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

FINANCE COMMITTEE QUESTIONS FOR THE RECORD

United States Senate
Committee on Finance

Hearing on
Confirmation of Mr. Ronald Kirk to be
United States Trade Representative
March 9, 2009

Questions from Chairman Baucus

Question 1:

The Congressional-Executive bipartisan consensus on trade has eroded, and it is essential that this consensus be rebuilt. Passage of the Trade Adjustment Assistance bill was the first step in doing so. And I intend to introduce customs reauthorization and trade enforcement bills in the next few months, which I believe will be important additional steps in rebuilding this consensus. What steps do you think we should take to rebuild the trade consensus? What steps will you take to do so?

Answer: The first step is to listen and engage members on both sides of the aisle in both bodies of Congress. We must hear and address legitimate concerns as well as prove to members that the benefits of trade will reach their constituents.

Question 2:

Many Members of Congress believe we should step up enforcement of our trade agreements and our trade remedy laws. A bill I introduced with Senators Hatch and Stabenow during the last Congress addressed this concern in part by requiring USTR to provide an annual report to Congress identifying its enforcement priorities for the upcoming year.

I plan to introduce a new trade enforcement bill in the coming months. But in light of the hundreds of trade barriers around the world, I'd like your input on where the administration should focus its enforcement resources. What are your top three enforcement priorities?

Answer: Enforcement is itself a top priority and I will work with staff to identify the best way to deploy resources to maximize the benefits of our trade agreements and trade laws for American farmers, workers, and businesses.

Question 3:

The trade enforcement bill I introduced during the last Congress calls for, among other things, the creation of a new, high-level Chief Trade Enforcement Officer at the Office of the U.S. Trade Representative to ensure that the administration focuses sufficient attention

on enforcement. It also authorizes \$5 million in appropriations to build enforcement capacity at the staff level. Can you please let me know your thoughts on this provision? What do you see as the pros and cons of creating a new position along these lines?

Answer: We will focus on enforcement as a top priority. We would welcome additional resources and are open to creating a new position for enforcement. We will work with you and your staff to discuss potential pros and cons of such a position.

Question 4:

The global downturn in the housing market has led to a steep decrease in softwood lumber prices. U.S. lumber producers, including those in Montana, have seen production fall off, mills shut down, and workers laid off. In these troubled times, Canada has announced its intent to further subsidize its domestic industry, thus worsening competitive conditions for U.S. lumber producers and making it even more important to vigilantly enforce the U.S.–Canada Softwood Lumber Agreement (SLA). Do I have your commitment that you will enforce the SLA? What steps will you take to make sure Canada is complying with its obligations?

Answer: Yes, USTR is committed to carefully monitoring and enforcing the SLA. We will continue monitoring compliance, work with the Canadians where possible, and pursue dispute resolution when necessary.

Question 5:

I also encourage you to make the WTO trade case against Airbus a priority. Will you work to ensure that Airbus receives no further unfair and illegal subsidies?

Answer: Yes.

Question 6:

I am also concerned about enforcement of U.S. intellectual property rights abroad. I introduced a bill with Senator Hatch last year to strengthen the Special 301 provisions of U.S. law to address this concern.

Do you think the Special 301 provisions of U.S. law provide a sufficient enforcement tool? Do those provisions work as well today as they did 20 years ago? What do you see as the pros and cons of my proposal to strengthen the Special 301 provisions? What other tools does the administration need to better fight the intellectual property violations that have plagued U.S. industry?

Answer: These are all important questions. I will direct staff to review the Special 301 provisions of U.S. law and work with you and your staff to assess their ongoing value and ways in which we can improve on the process.

Question 7:

As indicated in my previous question, I have long supported enhanced protection and enforcement of U.S. intellectual property rights abroad. In addition to tough enforcement tools, I also think that negotiations can play an important role. And I think that the Anti-Counterfeiting Trade Agreement (ACTA) negotiations hold real promise. What are your plans with respect to this Agreement? Can you assure me that you will consult with all interested stakeholders as you move forward?

Answer: In the President's Trade Policy Agenda, we noted that this Administration "will protect American innovations and creativity by negotiating and enforcing strong and effective intellectual property protections." Consistent with that priority, I support the goal of working with our trading partners to raise international standards for the enforcement of intellectual property rights. I will make it an early priority to consider the way forward on ACTA with that goal in mind. I can assure you that I am committed to working very closely with Congress and all interested stakeholders on all of our trade agreements and negotiations, including ACTA.

Question 8:

As USTR, you will co-chair the U.S.-China Joint Commission on Commerce and Trade (JCCT) with the Commerce Secretary, which has proven effective at diffusing past trade problems. USTR has successfully used the WTO dispute settlement process in recent years to address trade issues with China. And USTR has also engaged China in the past as part of the Strategic Economic Dialogue. How do you expect to engage China? Do you plan on continuing the JCCT? Do you plan on being part of the dialogue Secretary Clinton has proposed? What metrics would you use to measure the success of our relationship with China?

Answer: USTR will continue to press China on important trade issues through dialogue, and at the same time will not hesitate to resort to WTO dispute settlement when dispute settlement is the most effective way to address specific concerns. If confirmed, I expect to work closely with the Secretary of Commerce to further enhance the effectiveness of the JCCT as a channel for addressing trade issues, and will also work with Secretary Clinton, Secretary Geithner and other cabinet colleagues to achieve important outcomes in our other strategic and economic dialogues with China. I will judge our success based on the contribution our efforts make to implementing the President's national economic agenda, which calls for revival of the global economy and renewal of growth that benefits all people, with a proper regard for social and environmental goals and appropriate political accountability.

Question 9:

The sheer magnitude of the copyright piracy problem in China is well established. And China's continued failure to come to grips with it has raised serious concerns in Congress. Can you assure me that you will press China hard to resolve this issue? How will you change your approach to intellectual property violations based on the successes and shortcomings of previous USTRs?

Answer: Yes, I can assure you that, if confirmed, I will press China hard to make significantly greater progress on the issue of copyright piracy. In addition, I will work closely with Congress and industry stakeholders and will continue to devote considerable staff resources to address the many challenges that IP-intensive industries, such as the copyright industry, face in China. I will carefully consider the strategies of previous USTRs in responding to these intellectual property enforcement challenges, as the Administration develops its engagement strategies with China.

Question 10:

China is not a member of the WTO Agreement on Government Procurement (GPA) and foreign companies regularly find that China's government procurement is non-transparent and favors domestic Chinese producers over foreign ones. China pledged in 2001 when it joined the WTO to sign the GPA "at the earliest possible time." China further committed at the 2006 JCCT meeting that it would submit a formal offer to accede to the GPA by the end of 2007. The initial proposal was submitted to the WTO as promised in December 2007, but its limited scope was extremely disappointing. Negotiations are ongoing and a new offer is reportedly expected soon. What will you do as USTR to ensure that China expands the sectors and scope covered in its GPA accession?

Answer: I will make it very clear to China's economic leadership that to fulfill its WTO commitment to accede to the GPA, it will have to meet the high standards of coverage set by the United States and other GPA Parties. We will not accept China's accession on any terms that are less than fully reciprocal.

Question 11:

In addition to discriminatory tariff and non-tariff barriers, U.S. companies also face challenges presented by discriminatory industrial policies, including in China. To date we have not seen a consistent U.S. strategy in dealing with these centrally-sanctioned, non-market-based policies. What will be your strategy for dealing with industrial policies in China and other countries?

Answer: We will address the elements of China's and other countries industrial policies – for example, subsidies, discriminatory tax and other policies – and use all the tools available to us at the WTO and through bilateral efforts to ensure our producers are receiving fair treatment.

Question 12:

The Agreement on Technical Barriers to Trade (TBT) outlines rules and procedures concerning the development, adoption, and application of voluntary product standards. Since acceding to the WTO, China has implemented nearly 20,000 national standards that are reportedly based on international standards. Nevertheless, China has issued several standards that do not comply with international standards and is promoting "indigenous innovation" to create domestic standards in competition with those agreed to in international bodies.

While all countries have the right to set their own standards, particularly in areas related to security, standards and certification regimes should not be used as a market access barrier or applied selectively. In your role as USTR, you will play a leading role in these issues. How will you address these concerns?

Answer: Concern has grown that the Government of China seems to be actively pursuing the development of unique requirements, despite the existence of well-established international standards, as a means for protecting domestic companies from foreign competition. If confirmed, I will vigorously pursue an end to policies of this nature that are designed to protect and advance specific Chinese industries, using all appropriate tools. I will engage interagency expertise and cooperate with our trading partners in multilateral fora, in addition to concerted bilateral engagement.

Question 13:

I am a strong proponent of economic engagement with Asia, and believe that we should engage in as many ways as we can. I think that the Trans-Pacific Partnership Agreement negotiations have real potential, and could grow into a significant regional agreement. Do you share this view? Do you support continuing the Trans-Pacific talks?

Answer: I agree with your view on the importance of economic engagement with Asia and will establish and execute a strong strategy to best to do so. If confirmed, I will work with my staff and the Congress to assess continued U.S. participation in the TPP initiative.

Question 14:

The United States faces significant challenges – from energy and the environment to economic growth and national security. Engagement with countries of the Asia-Pacific region is an integral aspect of any strategy to address these challenges. The member countries of the Asia-Pacific region are already promoting regional cooperation, and active U.S. involvement in APEC ensures the U.S. does not miss the opportunity to engage as an equal partner in this critical economic integration. Will USTR make U.S. involvement in APEC a priority as it looks to engage this important region?

Answer: I recognize the importance of APEC in moving our trade agenda forward. I look forward to working closely with my APEC counterparts to ensure APEC remains the premier forum to promote Asian-Pacific regional economic integration and to lay the groundwork for a successful U.S. host year in 2011.

Question 15:

In September 2007, Japan began a 10-year effort to privatize its postal and insurance monopolies. The United States has repeatedly been assured that privatization will lead to these two entities operating just as those in the private sector. U.S. insurance companies and their employees are concerned that they will face direct competition from Japan Post Insurance on certain insurance products before the privatization process is complete. Such an action would allow direct competition before the playing field is level and place U.S.

companies at a serious and unfair disadvantage. What is your view of this issue? What will you do to ensure that U.S. insurers in Japan can compete on equal terms during Japan's insurance privatization process?

Answer: USTR has been closely following developments in Japan and has raised the United States' serious concerns on this issue with Japanese officials. We are prepared to continue to press Japan in all appropriate fora to provide fair treatment to U.S. insurance companies.

Question 16:

I have long supported increased trade and investment ties with Asia. And I have grown increasingly concerned that our trading partners are locking down agreements with the region while we sit on the sidelines. Bilateral Investment Treaty (BIT) negotiations with China, India, and Vietnam are a step in the right direction. Strong BITs based on the model BIT will help ensure that U.S. companies can compete in these vital growth markets. What do you plan to do with respect to these negotiations?

Answer: We agree that Asia is an important region in which to intensify and deepen our trade and investment relationships. With respect to investment, it is critical that we ensure that U.S. firms and investors can compete on a level playing field in foreign markets and that they are treated according to the rule of law. Strong BITs promote economic reform, improve investment climates, enhance transparency, and strengthen the rule of law. In that regard, while we will be reviewing the U.S. BIT program to ensure that the agreements we negotiate are consistent with the public interest and our overall economic agenda, we also intend to move forward with the BIT discussions we have begun with these three important countries.

I also urge you to tread carefully as you consider whether and how to revise the model BIT. Improvements can always be made, particularly in the area of increased transparency. But the current model BIT represents a carefully calibrated compromise between many competing viewpoints. Can you assure me that you will consult with all interested stakeholders as you consider any changes to the model BIT? And can you assure me that you will consult closely with me and my staff as you consider any such changes?

Answer: We understand fully that the 2004 U.S. model BIT text represents a carefully calibrated compromise among all key domestic stakeholders. In exploring how best to address concerns relating to our BIT negotiations – whether through revisions to that text or through other investment initiatives – we and the State Department, with which we share responsibility on BITs, will make certain to consult extensively with all interested stakeholders. We will also make certain to consult closely with you and your staff, as well as the Senate Foreign Relations committee and other key Congressional committees, to ensure that the ultimate result of the review is a model BIT text that maximizes the benefits to our companies and workers, while ensuring that important public policy interests are not compromised.

Question 17:

Sanitary and Phytosanitary (SPS) barriers prohibit access for many of our most valuable agricultural exports. BSE-related barriers to our beef exports have cost more than \$10 billion in lost exports since 2003. And Europe uses SPS barriers to block our most valuable agricultural exports, from biotech corn and soy to hormone-treated beef. I am increasingly concerned by the proliferation of new SPS barriers as countries seek mechanisms to protect their agricultural markets during this economic downturn.

Can you assure me that addressing SPS barriers will be a high priority for USTR? What are the Administration's priorities and what is your strategy for restoring agricultural trade with Europe? Will you work with Congress, your colleagues at USDA, and other agencies to develop a strategy for reducing these barriers in the short and long term?

Answer: The Obama Administration is committed to addressing all SPS measures that are imposed without the scientific justification required by the WTO SPS Agreement. If confirmed, I will be committed to ensuring trading partners meet international trade obligations, including requirements of the SPS agreement. And, where they should fail to do so, I will aggressively utilize, in cooperation with my administration and Congressional colleagues, all available tools in the WTO and other mechanisms.

Question 18:

Korea's current beef import protocol recognizes that all U.S. beef is safe and allows for the eventual importation of all U.S. beef regardless of age. And Korea currently allows beef from cattle less than 30 months old to enter Korea. While I am pleased to see that Korea has partially opened its market to U.S. beef, Korea has yet to fully implement the protocol it negotiated with the United States last April. Can I count on you to continue pressing for full opening of Korea's beef market so that we can move the free trade agreement (FTA) forward?

Answer: U.S. beef from cattle under 30 months of age is selling well in Korea since the market was opened in June 2008 and Korea was the fourth largest 2008 export market for U.S. beef. I will work closely with Secretary Vilsack to engage with Korea as well as other trading partners to normalize our trade in beef in these important markets.

According to OIE guidelines, U.S. beef from cattle of all ages is safe. Unfortunately, many of our trading partners continue to block U.S. beef exports, despite the lack of a scientific basis for doing so. As USTR, will you continue to place to full opening of beef markets, particularly in Korea, Japan, and China, at the top of your agenda?

Answer: It is a top priority.

Question 19:

I have long said that we should move the pending FTAs in the order in which they are ready to move. I was therefore pleased to see in USTR's recently released Trade Policy Agenda that the administration intends to move the Panama FTA "relatively quickly." I

expect the Panama FTA will garner widespread support, and I see no reason to delay its consideration. What is your view? When and in what order should we consider the pending FTAs?

Answer: We will review all three pending agreements expeditiously and will proceed with them as soon as outstanding issues with respect to each have been addressed. The Panama FTA seems to pose the fewest obstacles but I cannot commit to a timetable.

Question 20:

Many Members of Congress remain concerned by the level of violence against Colombian labor leaders and the rate of impunity for the perpetrators of such crimes. I support the Colombia FTA, but have been clear that more must be done to address labor violence before the FTA can move forward. The President's Trade Agenda called for the development of benchmarks to address these labor issues, which I support. Can I count on you to develop these benchmarks in close cooperation with Colombia, key stakeholders, and the Finance Committee?

Answer: Yes, we will work closely with all the relevant parties in developing those benchmarks.

Can I also count on you to work with us as you establish benchmarks for the Korea FTA?

Answer: Yes, I look forward to working with the Committee as we establish benchmarks for this agreement.

Question 21:

While strong labor and environmental provisions are an important part of our FTAs, some of our FTA partners lack capacity to fully meet these obligations and to continue improving their domestic labor and environmental standards. How will you help ensure that adequate funding, resources, and trade capacity building programs are available to assist developing country trading partners meet their environment and labor obligations?

Answer: I will work with the Department of Labor, USAID, and other agencies to seek the resources necessary to help developing country trading partners comply with these important goals and obligations.

Question 22:

Although U.S. agricultural producers, manufacturers, and service suppliers believe that the WTO Doha Round holds great potential to open foreign markets, they are concerned that the current Doha Round negotiations are unbalanced. These groups feel that too little new market access is being offered by emerging economies, while too much is being asked of U.S. agricultural producers and manufacturers, both in terms of tariff reductions and domestic support. As USTR, what would you do to re-balance these negotiations and lead them to a successful conclusion?

Answer: We have begun by making clear to our trading partners through the President's Trade Agenda that the Doha Round requires additional work to provide our producers with comparable certainty to new market access to that which we are providing for others.

Question 23:

Global fisheries are being rapidly depleted, and environmentally harmful subsidies in many countries contribute to their decline. The United States has been a leader in the WTO negotiations aimed at ending harmful fishing subsidies. Will you continue to take a leadership role in these negotiations?

Answer: Yes

Question 24:

Liberalization of trade in environmental goods and services has the potential to ease the cost of mitigating climate change and addressing other environmental priorities around the globe. Unfortunately, negotiations to ease these trade barriers have been mired in definitional issues raised by a few countries and further slowed by lack of progress in other areas of the Doha Round. As USTR, are you prepared to advance a proposal to pursue environmental goods and services liberalization as a separate, plurilateral agreement?

Answer: This is an important priority and I look forward to discussing the concept and potential of a separate plurilateral agreement on environmental goods and services.

Question 25:

Our preference programs were established to help developing countries attain sustainable economic growth through trade. This is a worthy goal, but many Members are concerned that our preference programs provide too much assistance to countries that do not need the benefits, and not enough assistance to those that do. We must make sure these programs are assisting those countries that need the most help. What recommendations do you have to make our preference programs work better?

Answers: We are aware that leadership in the House and Senate are considering trade preference program reform and I look forward to working with you to ensure that these programs are working as effectively as possible to achieve the goals Congress has set.

Question 26:

As you know, I have long fought to open export markets for Montana's products. And I have been troubled by a 2005 Treasury ruling that has made it more difficult for Montana's farmers and ranchers to export their products to Cuba. The question is whether the Cuban buyer's payment must arrive in a U.S. bank before the goods leave the United States, or whether the payment must be received in advance of the transfer of title and physical control of the goods. The latter scenario was the practice for years without incident. I am concerned when I hear this transaction described as giving credit to the

Cuban buyers, which is not the case at all. Congress intended to facilitate cash basis food sales to Cuba, and I think that the 2005 regulation runs counter to the intent of Congress. While the Treasury Secretary is responsible for administering Cuba sanctions, you must be the administration's advocate for responsible trade policies. What are your views on this issue? Will you weigh in with the President and the Secretary of the Treasury on this important matter?

Answer: I look forward to working with you and other members of the Administration as we develop our trade policy with Cuba.

Question 27:

The U.S. sugar program was significantly altered in the 2008 Farm Bill, including by the addition of provisions that require USDA to purchase excess sugar and convert it into ethanol. Current U.S. trade commitments, through NAFTA, the WTO, and other FTAs, require the United States to import significant amounts of sugar. Will you work to ensure that the United States implements its current trade commitments and any new trade agreements in a manner that does not jeopardize the U.S. sugar program, and does not create unnecessary costs for U.S. taxpayers and USDA?

Answer: I fully understand the level of sensitivity associated with sugar, and if confirmed, I will work closely with USDA, U.S. stakeholders, and with you in implementing international trade commitments related to this commodity.

Question 28:

The 2008 Farm Bill includes a dairy import assessment that would require dairy importers to pay a fee to support the marketing and promotion of dairy products. The Farm Bill conferees, including me, stipulated that USDA consult with USTR to ensure that any dairy import assessment be implemented in a manner consistent with U.S. international trade obligations. Can you assure me that you will consult closely with Secretary Vilsack to ensure that the dairy import assessment is implemented properly? Will you consult with me and other Members of Congress as you develop dairy import regulations?

Answer: If confirmed, I can assure you that I will work closely with you, other Members of Congress, and Secretary Vilsack to ensure that the dairy import assessment is implemented according to the provisions of the Farm Bill.

Question 29:

The 2008 Farm Bill moves the inspection and regulation of catfish from the Food and Drug Administration (FDA) to USDA's Food Safety and Inspection Service (FSIS). The impact of this provision will depend greatly on how USDA defines catfish and implements this rule. I am concerned that a broad definition could conflict with our international trade obligations and perhaps spark retaliation from our trading partners. Can you assure me that your staff will work with USDA to implement these measures in a manner that reflects our international trade obligations and bases our regulatory decisions on sound science? I am also concerned that FSIS lacks the capacity to regulate an entirely new product, as it is

already criticized for lack of resources to properly regulate meat, poultry, and egg products. In its consultations with USDA, will USTR also consider whether new regulatory responsibilities will be detrimental to FSIS's current activities to ensure the safety of U.S. exports?

Answer: USTR staff is working with FSIS to ensure that the draft proposed rule when published is consistent with US obligations for science based regulation and transparency.

Question 30:

Services account for 80 percent of the U.S. economy and employ 80 percent of the U.S. workforce. What are your plans for opening foreign markets to U.S. service suppliers, particularly if the Doha Round remains stalled? What can Congress do to help?

Answer: The United States remains committed to achieving a successful conclusion to the Doha Round that provides new market access for our service suppliers. In addition to the Doha Round negotiations, bilateral or regional free-trade agreements, which have been effective at providing comprehensive coverage of services, enhancing regulatory transparency and addressing specific impediments to trade.

There also are ways to expand global trade in services outside of formal trade agreements, such as through regulatory dialogues and nonbinding cooperative initiatives. I am committed to exploring all of these options as well as any that you might suggest.

Question 31:

I am concerned about the misclassification of goods coming into the United States. The need for importers to correctly classify their goods according to the Harmonized Commodity Description and Coding System is essential for revenue, regulatory, and security compliance, yet the quality of commodity data submitted to Customs and Border Patrol (CBP) remains poor. According to the CBP, commodity code classification errors result in \$1 billion a year in lost revenue due to duty underpayments.

If goods are misclassified, it can undermine the tariff concessions that USTR negotiates in our trade agreements. Can we count on USTR to work with CBP to remedy this situation?

Answer: We will work with CBP and your committee to ensure that this problem is examined and promptly and properly addressed.

SENATOR CHARLES E. GRASSLEY

**Questions for the Record
Nomination Hearing for Mr. Ronald Kirk to be
United States Trade Representative**

March 9, 2009

QUESTION #1 (NAFTA):

Last Thursday, I wrote to President Obama asking him to clarify his intentions with respect to the North American Free Trade Agreement.

On the campaign trail he called for renegotiation of this trade agreement. Yet the President's recently released Trade Policy Agenda states that the Administration will seek to "improve" the North American Free Trade Agreement "without having an adverse effect on trade."

I don't see how this trade agreement can be reopened without having an adverse effect on trade, and I'm concerned that Mexico in particular will seek to rebalance tariff concessions to the detriment of U.S. agricultural exporters in Iowa and across the United States.

If the President does seek to reopen the agreement, will you commit that you will not agree to any increases in, or reinstatements of, tariffs on U.S. agricultural products under this trade agreement if you are confirmed?

Answer: We have received your letter and will provide you with a written response. But I can say three things now:

- (1) We fully understand how important the Mexican and Canadian markets are to our producers, and in particular to our agricultural interests.
- (2) The President already has spoken to President Calderon and Prime Minister Harper about the opportunity to "improve" the NAFTA, and make it more relevant to the situation that the three countries face over sixteen years after the original agreement was signed. That's in the interest of all three partners.
- (3) We will work closely with the Committee as we move forward in this collaborative effort to make our trade work for the benefit of the millions of people within the NAFTA region.

As I said to you during my hearing, I don't see the levying of additional tariffs as being in the category of strengthening that agreement.

QUESTION #2 (economic recovery):

What role can trade play in contributing to our domestic economic recovery, and what actions would you recommend to the Administration to incorporate a pro-growth trade agenda into a national economic recovery strategy?

Answer: Trade can create jobs at home by opening markets to our exports, encourage innovation through competition, and help consumers stretch the dollars they have.

In terms of actions, two have already been taken. First, with your leadership we are making real the social compact that Trade Adjustment Assistance incorporates into our trade policy. Those Americans trade displaces deserve our assistance in reentering the job market. Second, we need to begin restoring a bipartisan consensus on trade. In the stimulus, we all agreed that we will stay true to our international agreements and comply with our WTO obligations. We need to build on that consensus.

And going forward, we need to open new markets abroad and enforce the rules of trade so that our producers can get the access to new consumers and have the certainty of fair treatment that our trading partners have promised. We will do everything we can to play by the rules and we will ask the same of others. On a level playing field, there is no better worker or entrepreneur than the American worker and entrepreneur.

QUESTION #3 (bilateral trade agreements):

(i) The President's Trade Policy Agenda states that the Administration hopes to move on the Panama trade agreement "relatively quickly." Can you elaborate? Should we expect to receive an implementing bill before the Easter recess?

Answer: If confirmed, I will ask the staff to present to me their assessment of what Panama needs to do before we can comfortably send the agreement to Congress for ratification. We will do that as quickly as possible, but I am not in a position to attach a specific time frame to that task.

(ii) The President's Trade Policy Agenda states that the Administration will establish "benchmarks for progress" on the Colombia and South Korea trade agreements. Do you know what "benchmarks" are intended?

Answer: Benchmarks represent the steps necessary to address the concerns that have been raised with respect to each agreement. We will work with Congress to establish benchmarks for both countries and we will discuss them with both countries.

(iii) In the case of the Colombia trade agreement, are the contemplated benchmarks external to the agreement, or do you anticipate that the agreement will be reopened?

Answer: We will work with you and other Members of Congress as we work to identify the nature of the benchmarks.

(iv) Implementation of the Colombia trade agreement is my number one trade priority. If confirmed, will you commit to work with me to implement that trade agreement this year?

Answer: I will commit to work with you toward that end. The concerns the President expressed with the situation in Colombia were not political rhetoric. They are real. They are also something we can work with Colombia to address. But we will need to address them before the agreement is sent forward for approval and before implementation.

(v) Have you considered the economic benefits that we stand to gain upon implementation of the pending trade agreement with South Korea? Have you considered the impact of not implementing that trade agreement?

Answer: The Korea agreement would be the biggest we have implemented in 20 years. Implementing a strong Korea FTA would create important new market access opportunities for American workers, farmers and businesses. To date, the failure to create a basis to move the agreement forward constitutes a major missed opportunity of the last several years.

(vi) South Korea is currently negotiating with the European Union. Are you worried that the United States may get left behind in the South Korean market?

Answer: Even once concluded, the EU-Korea deal would take time to implement so I do not expect that European producers would have better access to the Korean market than we would for any significant period of time.

(vii) If we can find a way to address concerns about our bilateral trade in automobiles, would you be open to implementing our pending trade agreement with South Korea this year if confirmed?

Answer: I also need to determine if there is any additional concerns, particularly in relation to U.S. beef. Assuming we have resolved these issues, I would welcome the opportunity to work with you toward that end but I cannot commit to a timetable.

QUESTION #4 (trade and labor):

(i) The President's Trade Policy Agenda states that we need to "build on" the labor provisions in our existing trade agreements. What specific "building" does the President have in mind?

Answer: We have seen the text of trade agreements evolve over the last twenty years. In the case of labor language, text has gone from silence on labor rights to side agreements to inclusion in the core of the text. We expect to continue reviewing and making progress on the concepts in trade agreements to ensure that they reflect proper protection for the rights of workers and the environment. History tells us that we can always improve on our previous work.

(ii) Do you agree that it would be improper to use trade negotiations and trade agreements as a means of obligating changes in federal or state labor laws in the United States?

Answer: Yes. Domestic labor law, much like intellectual property law, must be written and set in our Congress.

QUESTION #5 (biotechnology and GMOs):

In 2006, the World Trade Organization (WTO) determined that the European Union's regulations regarding agricultural biotechnology are inconsistent with the European Union's obligations as a WTO member.

Regardless, the European Union continues to maintain policies that significantly restrict imports of U.S. agricultural biotechnology products, and in particular, corn.

The European Union's biotechnology restrictions negatively impact farmers in my home state of Iowa.

If confirmed, what will you do to see that the European Union brings its agricultural biotechnology policies into conformity with its WTO obligations?

Answer: We will use every tool available to us, from diplomacy to the dispute resolution process, to achieve our goal of normalizing trade in biotech products with the EU.

QUESTION #6 (biodiesel):

The European Commission is proposing to apply antidumping and countervailing duties on imports of U.S. biodiesel.

I'm concerned about the impact such duties could have on biodiesel producers and soybean farmers in Iowa.

Will you assure me that you will closely follow this issue if you are confirmed, and that you will not hesitate to act if Europe takes any actions that are inconsistent with its obligations under international trade agreements?

Answer: If confirmed, I will closely monitor this issue going forward and will take appropriate steps to protect our rights if the investigation raises concerns under WTO rules.

QUESTION #7 (trade negotiations outside of WTO):

(i) The Administration recently asked for a delay in the next round of discussions for a Trans-Pacific Partnership trade agreement.

The President's Trade Policy Agenda does not even mention these negotiations. This causes me some concern.

I consider these negotiations to be an important complement to the Doha negotiations—one that we need to pursue vigorously.

If confirmed, will you ensure that the United States takes an active role in the negotiations for a Trans-Pacific Partnership trade agreement?

Answer: We see active engagement with Asia as a priority and will establish and execute a strong strategy to best do so. If confirmed, I will work with my staff and this Congress to evaluate whether participating in the best approach to achieving this goal.

(ii) The President's Trade Policy Agenda did not address the ongoing negotiations on an Anti-Counterfeiting Trade Agreement. What is your view on the merits of these negotiations—should they be continued?

Answer: In the President's Trade Policy Agenda, we noted that this Administration "will protect American innovations and creativity by negotiating and enforcing strong and

effective intellectual property protections.” Consistent with that priority, I support the goal of working with our trading partners to raise international standards for the enforcement of intellectual property rights. I will make it an early priority to consider the way forward on ACTA with that goal in mind.

QUESTION #8 (China):

(i) I’ve been watching with some concern as the Treasury and State Departments in this new Administration divide up responsibility for our relations with China. We have serious trade concerns with China, and the United States Trade Representative needs to play the leading role on those particular issues.

If you are confirmed, will you ensure that your office takes the lead on trade issues involving China?

Answer: Yes. We understand the mandate and responsibility given to USTR by Congress, and if confirmed, I will ensure that USTR provides the leadership on trade issues that our nation requires – including with respect to China.

(ii) During the last session of Congress, this Committee reported out a bill that addressed fundamental misalignments in currency exchange rates, including with respect to China. We are currently considering whether to reintroduce that bill. What is your view on this issue?

Answer: The Treasury Department is responsible for issues pertaining to other countries’ currency practices. Speaking more broadly, if confirmed, I will work closely with the other senior officials in the Administration and consult with Congress so that we can ensure that the Administration has all the tools needed to address our trade policy priorities.

(iii) In June 2006, the Chinese government entered an appearance in a New York lawsuit alleging price-fixing by Chinese producers of vitamin C.

The Chinese government argued, in essence, that the Chinese defendants should be immune from suit because the government compelled them to coordinate their export prices.

The judge rejected the Chinese argument a few months ago, and the case is ongoing.

Are you aware of this case? What should the Administration do to discourage Chinese efforts to fix prices for products exported to the U.S. market?

Answer: I understand USTR staff is aware of this case. I will be pleased to raise this matter with the Department of Justice and consider whether there are any steps USTR appropriately can take to address this issue.

QUESTION #9 (trade promotion authority):

(i) The President’s Trade Policy Agenda states that the Administration won’t seek trade promotion authority until it consults with Congress to establish the “proper constraints” on that authority.

I don’t think the problem is a lack of constraints on the President’s negotiating authority.

The real problem has been a lack of willingness on the part of Congress to respect the bargain that Trade Promotion Authority strikes.

What additional “constraints” do you think the Administration has in mind, and how would they have changed outcomes on trade agreements in the last Congress?

Answer: Since 1974, Congress has authorized the Executive to draft and submit trade agreement implementing bills to Congress for an “up or down” vote without amendments – in exchange for keeping Congress informed and involved before, during, and after negotiations on the trade agreements. In addition, Congress has established negotiating objectives to guide the Executive in shaping trade agreements. The parameters that Congress sets for the Executive amount to constraints on its ability to invoke the authority Congress provides.

In my view, if the existing framework for this authority had been sufficient, it is likely that Congress would have already renewed it. Therefore, additional work with Congress on an appropriate framework may be needed. When the time comes to consider initiating new negotiations that can develop significant new commercial opportunities for U.S. exporters, I will work with the Congress to seek renewed authority.

(ii) The President’s Trade Policy Agenda suggests that the Administration will not seek reinstatement of trade promotion authority any time soon.

But the same document also notes that trade is “slowing markedly” and that, for the first time since 1982, global trade flows are projected to decline.

Doesn’t that fact make the need for Trade Promotion Authority greater than ever? Shouldn’t we be doing everything we can to level the playing field and create new market access opportunities for U.S. exporters?

Answer: U.S. leadership will be vital to restoring confidence and certainty to the world’s financial and trading system. The first order of business for the Administration on trade is to ensure strong enforcement of the rules under our existing agreements. At the same time, we will be looking at how we can move the Doha negotiations forward and develop support for the three pending free trade agreements. When the time comes to consider initiating new negotiations that can develop significant new commercial opportunities for U.S. exporters, we will work with the Congress to seek renewed negotiating authority.

QUESTION #10 (trade in services):

As you may know, the United States has undertaken services commitments that are far more extensive than those of most of our trading partners.

Do you agree that we need to do more to open foreign markets to our service suppliers?

Answer: Yes.

How can we expand global trade in services?

Answer: There are a number of ways to expand global trade in services. Enforcement of existing rules; pursuing improvements in foreign regulatory policies, particularly with respect to transparency; and a successful completion of the Doha round could all help us achieve that end.

QUESTION #11 (trade enforcement):

Congressional Democrats and their supporters repeatedly criticized the previous Administration for its alleged failure to enforce our trade agreements.

One former Clinton Administration official testified before this Committee that the previous Administration should have been filing at least 17 new cases each year at the World Trade Organization.

Do you think the number of new cases filed is a valid measure of an Administration's enforcement efforts?

Answer: No. Cases filed are not determinative of success. I think winning access to markets for our producers is a measure of our efforts and I think filing cases can help us do that, but so can other tools.

If this Administration does not file a substantial number of new cases this year, should we conclude that it is failing to enforce our trade agreements?

Answer: No, the number of new cases filed is not a valid measure of an Administration's efforts to enforce U.S. rights under trade agreements. While WTO dispute settlement is a very important tool for resolving trade problems, it is not the only one. The other important tools in the USTR arsenal include bilateral consultations (including technical discussions); monitoring mechanisms (including those within trade agreements); and U.S. trade legislation (such as Special 301).

QUESTION #12 ("zeroing" methodology):

(i) The World Trade Organization has issued a number of decisions against the Commerce Department's practice of "zeroing" in antidumping investigations.

Congress is going to have to figure out what, if anything, to do about those decisions.

In the meantime, if confirmed, will you consider whether the United States should file challenges to other countries' zeroing practices, such as those of Canada or India?

Answer: We will continue to work with Congress and members of the public in defending at the WTO our laws against unfair trade. As I explained in my testimony, enforcement will be a top priority of this Administration

(ii) Some suggest that we should respond to the World Trade Organization's decisions on zeroing by switching to a prospective duty assessment system.

What is your reaction to that idea?

Answer: The current statutory framework provides for a retrospective system. Along with my colleagues at the Department of Commerce and Customs and Border Protection, I would be happy to work with the Congress to consider the appropriate approach to these issues.

QUESTION #13 (Japan insurance services):

I understand that the Japanese government-owned company “Japan Post Insurance” is seeking approval to introduce a new product into the Japanese insurance market.

I also understand that Japan had promised to hold off on the issuance of new insurance products until the process of privatizing Japan Post had produced a level playing field for U.S. insurance suppliers in the Japanese market.

If you are confirmed, will you look into this issue and take whatever steps you feel are necessary to ensure that Japan adheres to its commitments in this sector?

Answer: USTR has been closely following developments in Japan and has raised the United States’ serious concerns on this issue with Japanese officials. We are prepared to continue to press Japan in all appropriate fora to provide fair treatment to U.S. insurance companies.

QUESTION #14 (trade and the environment):

(i) The President’s Trade Policy Agenda states that we need to ask how trade policy can help address climate change.

What are your thoughts on this issue?

Answer: Meeting and leading on the challenge of climate change are a core commitment of this Administration. The actions we take to establish that leadership will affect our market and trading patterns. Our role in that process will be to ensure that public policy is transparent, complies with our international obligations, and encourages others to follow. We can also consider how trade agreements might open markets in climate change technologies in a way that lowers prices, speeds up innovation, and also benefits American exports.

(ii) The President’s Trade Policy Agenda also states that we need to ask how trade policy can address the depletion of fisheries.

The World Trade Organization is already addressing the issue of fisheries subsidies in the Doha Development Round trade negotiations, and the United States has been an active participant in those negotiations for many years.

Do you have additional ideas for how the Administration could address the fisheries issue?

Answer: My understanding is that WTO negotiations have made some progress on this issue. I will be reviewing the fisheries aspects of those negotiations and will look forward to working with you to consider other approaches as well.

QUESTION #15 (differential export taxes):

I have long been concerned about the use of differential export taxes by some of our trading partners.

Differential export taxes put U.S. producers and processors of soybeans at a disadvantage in the world market.

For example, Argentina imposes lower export taxes on processed soybean products such as soy oil, soy meal, and soy biodiesel, than on raw soybeans.

This tax differential provides an artificial incentive for the production and export of processed soy products from Argentina, thereby putting downward pressure on world prices for these processed products.

If confirmed, would you press for the elimination of differential export taxes in the Doha Development Round trade negotiations?

Answer: I am aware of your concern and would like to work with you on this issue.

QUESTION #16 (China & Taiwan pork barriers):

China and Taiwan restrict imports of U.S. pork due to spurious and non-scientific concerns regarding ractopamine, a feed additive commonly used in U.S. pork production that improves meat metabolism and protein synthesis.

Ractopamine has been approved for use in the United States since 1999 and is registered for use in 26 countries. Although it has not even conducted a risk assessment for this product, China maintains a zero tolerance policy for ractopamine.

Taiwan recognized the safety of pork containing trace amounts of ractopamine in 2007 when Taiwan's government notified the World Trade Organization that it was prepared to adopt the draft international maximum residue limits for ractopamine.

However, Taiwan later reversed its decision in response to protests by Taiwanese farmers opposing imports of U.S. pork.

If confirmed, can I count on you to urge China and Taiwan to drop their scientifically unjustified restrictions on imports of pork containing traces of ractopamine?

Answer: Sanitary and phytosanitary measures that are not science-based are a key problem for U.S. farm exporters. I intend to take action, including WTO cases where appropriate, in order to address this growing problem for U.S. agricultural producers.

QUESTION #17 (Russia and pork imports):

Russia recently delisted 33 U.S. pork plants from eligibility to export to Russia. The Russian government contends that it has done so due to sanitary concerns, but the pork from these plants is safe and is consumed in the U.S. market.

What steps will you take to see that Russia reverses this scientifically unjustified action that restricts U.S. pork exports if you are confirmed?

Answer: USTR staff is working with the industry, USDA and other agencies to address this issue and to ensure that our pork exporters can continue to export their product to Russia.

QUESTION #18 (India agricultural trade):

Despite being the world's leading agricultural exporter, the United States provides only about 5 percent of India's current food imports.

U.S. agricultural exports face major barriers to entry in the Indian market. India's average bound agricultural tariff is 114 percent, over ten times higher than that of the United States.

In addition, Indian regulatory measures unnecessarily impede exports of U.S. agricultural commodities.

If confirmed, will you commit to work to further open the Indian market to exports of U.S. agricultural products?

Answer: If confirmed, I will work to further open the Indian market to exports of U.S. agricultural products. I also look forward to studying the International Trade Commission's report on India's agricultural market access realities and working to overcome barriers to U.S. exports.

QUESTION #19 (cumulation):

If confirmed, would you support providing for cumulation among our trade agreement partners in the Middle East and/or other regions of the world?

Answer: As we consider next steps in trade expanding agreements, and ways to improve the functioning of our existing FTAs, I look forward to working with you on a range of issues, including cumulation.

QUESTION #20 (preference program reform):

(i) With respect to our trade preference programs, the President's Trade Policy Agenda states that the Administration "will give careful consideration to proposals to concentrate benefits more effectively on the poorest countries."

Do you have any ideas for concentrating benefits in this manner?

Answer: I know that our staff has ideas that they would like to present to me if I am confirmed. I also understand that you may have some ideas on this subject as well. I do not want to prejudge any of those and will work with this Congress to identify the best way to make preference programs work.

(ii) With respect to least-developed countries, should we consider eliminating distinctions between African and non-African least-developed countries in terms of preferential access to the U.S. market?

Answer: This is an important issue that has arisen as we consider whether and how to extend benefits to the least developed countries (primarily in Asia) that do not currently have access to our more advanced regional trade preference programs like AGOA. These are an important set of issues on which I would like to work with you.

(iii) Should our trade preference programs be limited to least-developed countries? Or, should we expect more in terms of reciprocity from more eligible advanced developing countries?

If so, do you have any ideas for how we would achieve that?

Answer: There may be areas or sectors where an advanced developing country is fully competitive and reciprocity in treatment may be required. I look forward to working with you on the evaluation of that question.

QUESTION #21 (south-south trade):

If confirmed, what will you do to help developing countries better appreciate the economic benefits associated with liberalizing South-South trade?

Answer: We will work with developing countries as partners. We will present our views and the evidence for those views for their consideration as equals. That approach will hopefully lead to learning on both sides.

Do you think that providing unilateral trade preferences to developing countries creates a disincentive to seek further trade liberalization through the negotiation of bilateral or multilateral trade agreements?

Answer: I don't know whether it does and would be interested to learn your views and look into this question.

Should we consider requiring eligible beneficiaries under our trade preference programs to implement domestic reforms as a condition of enjoying preferential access to our market? If so, what model would you recommend?

Answer: As you know, our trade preference programs contain eligibility criteria that USTR reviews on an ongoing basis for compliance by our preference partners. I would welcome a further dialogue as we move forward.

QUESTION #22 (Generalized System of Preferences):

(i) Should the United States continue to extend duty-free access to super-competitive products from advanced developing economies such as India and Brazil?

Answer: We should evaluate seriously whether or not to do so. I would ask for public input and further discourse before making a decision.

(ii) Are there deficiencies with the current review process under the Generalized System of Preferences? If confirmed, how would you consider modifying the process to make it more effective?

Answer: I am aware that both this Committee and the Ways and Means Committee have introduced or are likely to introduce proposals to reform GSP and other trade preference programs. I look forward to working with all interested parties to ensure that our preference programs are achieving their goals in the most effective manner possible.

QUESTION #23 (Andean Trade Preference Act):

The President is required to make specific eligibility determinations with respect to Bolivia and Ecuador by July 1, 2009, under the Andean Trade Preference and Drug Eradication Act.

If confirmed, will you commit to a thorough review of the degree to which each of these countries conforms with each of the eligibility criteria under this trade preference program, and to report the results of your review to this Committee?

Answer: Yes

QUESTION #24 (Caribbean Basin Initiative):

There are some who question the usefulness of the Caribbean Basin Initiative given that Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and Panama have negotiated trade agreements with the United States and thus no longer utilize the program.

Does the Caribbean Basin Initiative remain an effective development tool in the Caribbean region?

Answer: The Caribbean Basin remains a vital and important region for the United States. Last year, the US International Trade Commission completed a study of possible issues and future directions in the CBI program. I look forward to working with you, Caribbean leaders, and others to assess this important question.

Would you recommend any changes to the program?

Answer: I will ask my staff for their assessment if I am confirmed. We will always welcome recommendations and be open to working with you.

QUESTION #25 (African Growth & Opportunity Act):

Do you believe that the African Growth and Opportunity Act has served as an effective tool for stimulating economic growth and prosperity among eligible beneficiary countries?

Answer: Yes. AGOA has been an important source of jobs, investment, and economic growth for many African countries since its inception in 2000. It has helped to significantly increase and diversify our trade with Africa. At home and in Congress, AGOA has been a classic story of bipartisan and bicameral success, and Congress should be commended for passing several enhancements to AGOA. That said, there may be other things that can be

done to improve the functioning of the program. We look forward to working with Congress and other AGOA stakeholders going forward.

Are there ways in which the program can be improved to better meet these objectives?

Answer: There are always potential improvements to our programs. I would welcome ideas for improvement. We will work with State and USAID to ensure AGOA beneficiaries receive the necessary trade-related development assistance so they can take full advantage of the opportunities under AGOA.

QUESTION #26 (import safety):

The President's Trade Policy Agenda states that the Administration "will pursue advances in... consumer product safety through plurilateral negotiations."

Do you know whether the Administration has any specific negotiations in mind?

If such negotiations produce an agreement, do you anticipate that the Administration will request Trade Promotion Authority from Congress in order to implement the agreement?

What should we expect from our trading partners regarding the safety of their exports to the United States?

Answer: There is no specific trade proposal. The Agenda stated that plurilateral negotiations are an option for tackling important economic challenges, and noted that consumer product safety is one such challenge. If we ever develop a proposal on trade and consumer product safety we would require it to reinforce the safety of consumers in the United States and around the world while addressing market access issues. This exercise would require extensive consultation with all stakeholders and Congress.

QUESTION #27 (customs):

The President's Trade Policy Agenda states that the Administration will "implement policies that address the heightened security threats associated with trade in the least trade-impeding manner possible".

If confirmed, how will you work with Secretary Napolitano and the Commissioner of Customs to achieve this goal?

Answer: The USTR has an interagency process in place for identifying and working through these kinds of questions. I will establish a relationship and work with my colleagues in the Cabinet to ensure this process is effective. I am aware of concerns that many members of this committee have had with the office of Customs Border Protection (CBP) in the recent past. I hope that I can work with you and Secretary Napolitano to address those concerns and ensure that CBP lives up to its mandate to ensure the security of commerce and also ensure that it is able to flow and be processed efficiently.

Are you aware of any role that the Office of the United States Trade Representative plays at the World Customs Organization and the World Trade Organization's Committee on Customs Valuation?

What type of relationship do you believe the agency should have with U.S. Customs and Border Protection and the Treasury Department?

Should there be more coordination among these three bureaucracies with respect to domestic and international customs laws and regulations?

If confirmed, will you commit to strive to improve coordination among the three agencies?

Answer: Yes. And I fully intend to work with you on the ideas that you and your staff have developed.

QUESTION #28 (agency resources):

In your view, does the Office of the United States Trade Representative have the resources it needs to effectively perform its mission?

Answer: Like any other enterprise, we could always use more resources. But we will work to meet our mission with or without additional resources.

Or, are there areas where the agency would benefit from additional targeted funding? If the latter, what are those areas?

Answer: We could certainly use more resources for travel, personnel, translation services, and infrastructure. But as I said, we will present our needs to Congress and meet our mission with the resources we receive.

QUESTION #29 (EU bananas regime):

In 1996, the United States initiated dispute settlement proceedings at the World Trade Organization over the European Union's regime for the importation of bananas. The United States prevailed in the dispute, and the European Union has been obligated to bring its banana regime into compliance with its WTO obligations since 1997. Regardless, some twelve years later the European Union remains out of compliance and EU policies continue to discriminate against U.S. banana distributors.

If confirmed, what steps would you recommend to the President to encourage the European Union to comply with its WTO obligations in this regard?

Answer: We remain committed to pressing the EU to liberalize, consistent with its WTO obligations, its banana import regime.

QUESTION #30 (Doha negotiations):

The President's Trade Policy Agenda states that with respect to the Doha Development Round trade negotiations, "it will be necessary to correct the imbalance in the current negotiations in which the value of what the United States would be expected to give is well-known and easily calculable,

whereas the broad flexibilities available to others leaves unclear the value of new opportunities for our workers, farmers, ranchers, and businesses.”

If confirmed, what steps would you recommend to the President to achieve a more balanced outcome in the Doha negotiations? What is your view on the idea that there should be an “early harvest” of outcomes in these negotiations?

Answer: The Administration has made clear to our trading partners that there needs to be an adjustment to the course of the negotiations. We intend to work with Congress, private stakeholders, and other agencies in the Administration to develop a strategy to address the problem in the current negotiations.

QUESTION #31 (tax returns):

Mayor Kirk, last week the Finance Committee released a memo reflecting several issues with your tax returns. What is the status in resolving each specific issue in the memo, and of filing amended tax returns where necessary?

Answer: On March 4, 2009, my wife and I signed Amended U.S. Individual Income Tax Returns on Form 1040X for the tax years 2005, 2006 and 2007. On March 5, the signed Amended U.S. Individual Income Tax Returns were filed, along with our personal checks payable to the U.S. Treasury, in the amount of \$5,215.00 (2005), \$1,087.00 (2006) and \$1,483.00 (2007). Electronic copies of the Amended U.S. Individual Income Tax Returns were provided to the Committee on Friday, March 6, 2009.

Each of the issues identified in the Senate Finance Committee memorandum and press release has been resolved. The specific steps taken to resolve each issue were reported to the Committee staff in a memorandum submitted on February 28, 2009. Further details were reported in the additional memoranda and exhibits submitted to the Committee Staff in response to the Committee’s questions dated February 6 and February 19, 2009.

Ron Kirk
Responses to Senate Finance Committee Supplemental Questions
February 6, 2009

Please provide the legal analysis demonstrating that the honoraria assigned to the fund were not income to Mr. Kirk.

The proper treatment of honoraria assigned to a charity has been examined by tax counsel. The tax treatment of such honoraria has been a controversial matter for decades. As the late Professor Bittker recited, Assistant Attorney General (later Justice) Jackson sparred with a Congressional Committee over an IRS ruling that the proceeds of Eleanor Roosevelt's radio broadcasts, which were paid by the sponsor to designated charities, were not taxable to her. His premise was that the doctrine of constructive receipt cannot create income where there is none. She had declined to work for money and was only willing to serve for charity's sake. Bittker & Lokken, *Federal Taxation of Income, Estates and Gifts* ¶ 75.2.4.

This situation is similar to that of Mr. Kirk. In these times of economic trouble, colleges and universities are suffering from a drop in contributions and assistance. Mr. Kirk's generosity has enabled Austin College to continue its educational mission.

The IRS has since changed its position on the taxation of payments that a speaker or entertainer requests to be paid to a charity. Treas. Reg. § 1.61-2(c) provides:

The value of services is not includible in gross income when such services are rendered directly and gratuitously to an organization described in section 170(c). Where, however, pursuant to an agreement or understanding, services are rendered to a person for the benefit of an organization described in section 170(c) and an amount for such services is paid to such organization by the person to whom the services are rendered, the amount so paid constitutes income to the person performing the services.

Consistent with this regulation, the IRS ruled in Revenue Ruling 79-121, 1979-1 CB 61, that an honorarium payable to an elected official but paid at his request to an exempt educational institution was includible in the official's income and deductible as a charitable contribution.

However, Congress legislatively overturned the regulation and ruling in the context of certain elected and appointed federal officials. Section 7701(k) of the Internal Revenue Code of 1986, as amended, provides:

In the case of any payment which, except for section 501(b) of the Ethics in Government Act of 1978, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c)--

(1) such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

(2) no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Senator, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government.

Although the Supreme Court ruled that the government-wide ban on the receipt of honoraria by any government employee violated the First Amendment in *United States v. National Treasury Employees Union*, 513 U.S. 454 (1995), the Code provision has not been updated or changed.

The confusion around the presence of this provision is understandable. Although Mr. Kirk was not a federal elected official, it was a commonly reported practice among members of Congress and others with whom he associated and he and his accountant reasonably presumed that the non-taxability of these payments was settled for all taxpayers. Accordingly, like Mrs. Roosevelt and like his colleagues who served in elective Federal positions, he did not report the income paid to Austin College and was not entitled to a deduction for those amounts. This logical conclusion, it turns out, is contrary to the IRS' current position.

Generally, Mr. Kirk's 2004-2007 returns consistently treated the honoraria paid to Austin College by excluding them from income and not deducting them. He assumed that because the honoraria went directly to the College, there was no tax consequence to him. Nonetheless, in reviewing Mr. Kirk's return, tax counsel noted that his 2005 return reported the payments in a manner inconsistent with all other periods. Four of the 2005 payments were excluded from income, but a charitable contribution deduction was taken on the Kirks' return. This treatment was inadvertent, appears to be a return preparation error, and is inconsistent with how the Kirks have conducted themselves. Accordingly, the Kirks would owe an additional \$2,657 for income and Medicare taxes (net of deducting half of the Medicare contribution) for 2005. Apart from 2005, no charitable contributions were claimed for fees paid directly to Austin College.

If the other contributions paid to Austin College were to be included in Mr. Kirk's income and then deducted as charitable contributions, the additional taxes would be \$4,249 for over four years.

Ron Kirk
Memorandum to Senate Finance Committee re Amended Tax Return Items
February 28, 2009

Mr. Kirk wishes to address the following unresolved matters with the Senate Finance Committee before filing amended tax returns.

Deduction of Tax and Accounting Fees. Expenses incurred by a taxpayer in preparing that portion of the taxpayer's individual federal income tax return that relates to the taxpayer's business as a sole proprietor or partner, and expenses incurred in resolving asserted tax deficiencies relating to the business, are deductible as trade or business expenses in determining the taxpayer's adjusted gross income under section 62(a)(1). *See, e.g., Rev. Rul. 92-29, 1992-1 C.B. 20; P.L.R. 9234009.*

Prior to Mr. Kirk becoming a law firm partner and Mr. and Mrs. Kirk first being elected to corporate boards, the Kirks did not require an accountant to prepare their returns and did not incur tax preparation and accounting expenses. Only when Mr. and Mrs. Kirk required more detailed tax advice, relating to the intricacies of reporting these categories of business income and associated deductions, did the family engage an accountant. The family's accountant, Mr. X, had years of experience in preparing returns for law firm partners and other self-employed persons. In preparing the Kirks' income tax returns for 2005, 2006 and 2007, Mr. X determined that approximately 90% of his professional time was devoted to tax issues associated with Schedule C (including, for this purpose, line 21 of Form 1040 and the 1040 SE) and Schedule E. Accordingly, this is the manner in which he prepared the Kirks' returns, reflecting accounting and tax preparation fees. He did not further allocate between Schedule E and Schedule C because it had the same impact on reporting AGI and self-employment income.

Mr. X's practice includes numerous clients who are required to make complex quarterly K-1 and self-employment income reporting filings (for example, other law firm partners). By way of comparison, Mr. X has prepared tax returns for the children or parents of clients. He estimated that these much simpler returns took between 2 and 3 hours of his time, whereas he spent approximately 45 professional hours working on the Kirks' tax returns each year. Mr. X charges an hourly rate for his services. The additional time spent on the Kirks' returns (and that of other law firm partners) is largely due to the fact that (a) Mr. Kirk was required to file quarterly statements of partnership earnings, (b) Mr. and Mrs. Kirk earned self-employment income from several different sources, and (c) the Kirks were entitled to deduct numerous corresponding business expenses. Mr. X's work for the Kirks was ongoing throughout each year and was primarily devoted to complications caused by trade or business income and expense.

The data collection and analysis associated with Schedule E requires an overwhelming majority of tax preparer time. Neither the number of forms nor the income associated with Schedule E, versus Schedule A, provides an accurate means of calculating where tax and accounting fees should be allocated. Under these circumstances, reasonable differences of opinion may exist over whether the actual amount that should be

deductible “below the line” is appropriately 10%, or perhaps slightly more. Mr. and Mrs. Kirk believe that the 10% allocation of accounting and tax preparer costs in their 2005, 2006 and 2007 federal income tax returns is valid. They are prepared to adjust the allocation of “below the line” non-business portion of tax and accounting expenses to \$1,500 for 2005, \$1,750 for 2006, and \$2,000 for 2007 – effectively doubling the allocation - in recognition of the fact that reasonable differences of opinion may be present in this instance.

Deductibility of Mavericks tickets. Mr. Kirk was able to have his electronic calendar restored for the periods in issue in order to document the persons attending Maverick games with him, their business relationship, and the extent to which they revolved around other business meetings or the business relationship and items that would have been discussed at the time. He provided the following documentation of his business guests at the Mavericks games and confirmed that his practice was to hold business meetings or discussions the day of the game, or in some cases on the next day or two. Accordingly, Mr. Kirk’s expenses for tickets at least meet the Associated Entertainment standard (and in some cases, the directly related test), and he should be allowed the deduction for the 33 games listed below. His expenses were approximately \$600/game (4 seats at \$147 each plus \$10 for parking), which equals a cost of \$19,800 over 3 years and deductions of \$9,900 total. Mr. Kirk would then agree to pay \$2,594 in additional taxes, as opposed to \$6,100.

Plasma TV. As mentioned previously, the \$3,000 value of the TV when it was donated to the YMCA in 2006 was a good faith estimate. Mr. Kirk contacted the electronics dealer from whom he purchased the television, and additional internet searches were conducted, but contemporaneous values for that model television used in 2006 could not be established. Mr. Kirk did learn that the purchase price of the television was closer to \$6,000, and that the price of plasma televisions declined substantially thereafter, to about \$3,000 in 2005. Accordingly, the Kirks would agree to reduce the value of the deduction to \$1,500.

**Questions from Senator Bingaman for USTR nominee Ron Kirk
March 10, 2009**

Enforcement of Labor Standards. The Peru FTA requires our trade partner to adopt internationally recognized labor standards. From a humanitarian perspective, these labor standards are clearly important. They also level the playing field for U.S. businesses. American businesses should not have to compete with companies that employ child labor or use forced labor. Unfortunately, our trading partners often do not have the capacity to effectively enforce these labor standards. Should the United States provide funds and technical assistance to help our trading partners enforce internationally recognized labor standards?

Answer: We will coordinate closely with the Department of Labor and the State Department and consult with you on how best to ensure that we have adequate funding, resources, and cooperation programs to assist these countries in meeting their obligations.

Would you support monitoring programs run by the International Labor Organization to ensure those standards are being met?

Answer: Recognizing that the ILO can play a constructive role, we will consult with you and coordinate with the Department of Labor and the State Department to determine the appropriate role for the ILO in any particular country.

Will you support including labor standards in all of our future trade agreements?

Answer: It is critical to ensure that our free trade agreements have provisions that ensure adoption of and adherence to basic internationally recognized labor rights and we will work with you to consider the most effective ways to accomplish this goal in future agreements.

Environmental standards. Do you support including environmental standards in all of our future trade agreements?

Answer: It is critical to ensure that our trade agreements have provisions that promote environmental protection and conservation of natural resources and we will work with you to consider how best to do this in future agreements.

USTR budget/manpower. Does USTR as it is currently set up have the budget and staffing levels needed to effectively fulfill its mission? If not, how would you like to see the USTR office expanded?

Answer: We will meet our mission with the resources Congress gives us. It would certainly help us do our job better if we had more funding for monitoring and enforcement and associated travel, infrastructure and personnel. I appreciate your advice and assistance on seeking the appropriate level of resources in the future.

Trade and development. Trade can be an effective tool to create economic opportunities in developing countries. Critics say, however, that our trade policy is often at odds with our development policies. For example, expanding market access for our agricultural goods is clearly important, but when those markets are in developing countries doing so can destroy the

livelihoods of local farmers who have few, if any, other way to feed their families. What should the U.S. do to better align its trade and development agendas? And should development be a priority for our trade policy?

Answer: Promoting growth at home and global economic development overseas are key goals of U.S. trade policy. The completion of the Doha Round can and should be a component of that policy. I also remain committed to working with you and the Committee to strengthen US trade preference programs and to take other steps to promote economic growth and poverty reduction in developing countries. I also look forward to working with you and my counterparts at State, MCC and USAID to ensure that the necessary trade-related development assistance is provided to our developing country partners to help them to participate in global markets and implement trade obligations effectively.

Trade has the ability to generate economic growth and development, and in turn, alleviate poverty. We will be working on how trade policy, both in our negotiations and trade preference programs, can better foster development, and look forward to hearing your input. We will also work closely with our counterparts at State, MCC and USAID to ensure that the necessary trade-related development assistance is provided to developing country partners to help them to participate in global markets and implement trade obligations effectively.

Balancing security and trade. National security and trade facilitation can be conflicting priorities, especially when it comes to port security. However, an attack on our ports could have severe consequences for trade. As the lead voice for United States trade policy, what role should USTR play in convincing our trade partners to cooperate with our efforts to improve our national security?

Answer: USTR and the rest of the Cabinet have no higher priority than keeping Americans safe. We must make that clear in everything we do. In doing so, CBP has put into place programs that both provide for the security of ports and cargo and ensure the movement of goods in commerce. These goals can be achieved in tandem.

**Questions From Senator Bunning for Mayor Ronald Kirk
March 9, 2009**

ENERGY

1. At the same time that OPEC has wielded more power on the international community, year after year, because of the growing demand for oil, I have introduced legislation to develop coal-to-liquid technology to decrease our dependence on foreign oil and provide our military with domestic fuel. Being that oil, the world's most important traded commodity, does not have any formula rules to prevent collusion by oil-producing states, do you believe pro-market mechanisms, such as increasing the supply of oil as my legislation does, are more productive at tackling America's energy policy than endless trade litigation that might spark international retaliation?

Answer: We will work with Congress and colleagues at the Department of Energy to ensure that our energy policy proposals are compatible with our international trade commitments.

2. In wake of the President's cap and trade proposal in his budget, I am very concerned about the price that all Americans will pay for utilities and everyday consumption by this arbitrary tax. The coal industry, which powers 50 percent of our nation's electricity, is set to pass these tax rates on to every American family. With large coal producers, such as India and China, showing no sign of developing their own cap and trade system, would you support efforts to place sanctions or raise tariffs on nations that do not limit their carbon emissions?

Answer: We will work with the State Department and other agencies to press countries such as India and China to take strong action through a new global climate change agreement. It will be critical that any U.S. climate change legislation address concerns with carbon leakage and competitiveness, yet do so in a way that does not generate serious trade tensions and that is consistent with our international obligations. We look forward to discussing these issues with you as legislation is drafted.

3. According to certain energy and agriculture experts, the inflationary realities that are seen in food and energy arenas have partly to do with a well intentioned biofuel mandate and import tariff that have inadvertently put our agricultural community in an unfavorable position: determining whether an acre of land is more profitable as food or fuel. Should you become the USTR, what will you do to address this "food or fuel dilemma" when formulating trade policy? And do you support the development of energy sources that do not compete with food production as long as inflationary concerns exist in our futures markets?

Answer: If confirmed, as USTR I will press for fair and open access to overseas markets for U.S. agricultural products – food, biofuels, and others. In addition, I will work with the Congress and others in the Administration to implement U.S. laws regarding energy and to realize the President’s goals on developing next generation biofuels.

LABOR

1. One of the most feared pieces of legislation before Congress is the ironically named “Employee Free Choice Act” which denies a secret ballot election for workers and allows a government arbiter to set a two year contract if an agreement is not met between a union and an operator. Businesses in my state, such as Toyota, have said that this legislation will force them to leave the U.S. in search of a pro-business environment. Should you become the USTR, will your first priority be formulating trade policies that advance free trade and attract foreign investors rather than promoting the agenda of a few special interests?

Answer: The Administration will pursue a pro-growth, pro-trade, pro-worker agenda that is in the public interest.

PENDING TRADE AGREEMENTS

1. Pending trade agreements the United States has signed with Colombia, Panama, and South Korea have become a central point for political counterattack against free trade policies. Unwarranted assaults by some of my colleagues on the other side of the aisle that such agreements would result in unfair trade have left these pending agreements unknown. Should you become the United States Trade Representative, would you work to drop or renegotiate these free trade agreements, or work to gain congressional support for their ratification?

Answer: We intend to move forward with the pending agreements as soon as the issues the President has articulated are addressed.

NAFTA

1. Do you agree with statements that were made by President Obama on the campaign trail that the rules of trade in NAFTA and other trade agreements should be revisited?

Answer: The President already has spoken to President Calderon and Prime Minister Harper about the opportunity to “improve” the NAFTA, and make it more relevant to the situation that the three countries face over sixteen years after the original agreement was signed. That’s in the interest of all three partners.

CHINA – TRADE DEFICIT & CURRENCY

1. I have introduced and supported measures to address the U.S. trade deficit with China – such as the Fair Currency Act and the China Currency Manipulation Act. Do you believe this trade deficit to be a problem? If so, what do you believe to be major causes and what will you do to address them should you become the USTR?

Answer: The President has expressed concern with our trade deficit with China. The overall trade balance of the United States reflects important macroeconomic factors, such as relative rates of economic growth, fiscal and monetary policies, patterns of saving and investment, domestic price levels and exchange rates. If confirmed, I will work closely with other agencies to ensure that our trade policies contribute powerfully to the President' national economic agenda for the renewal of growth that benefits the national and global well being.

2. Earlier this year, Secretary Geithner stated that he believes China manipulates its currency and hurts the U.S. economy. Do you agree with Secretary Geithner?

Answer: I appreciate the concerns that you have raised about China's currency practices. The Treasury Department is responsible for issues pertaining to other countries' currency practices and will make its determination concerning China's currency in its semi-annual report to Congress on international economic and exchange rate policies. If confirmed, I will work closely with the other senior officials in the Administration to develop a comprehensive and integrated policy to address the full range of China's trade policies that impact the United States. As part of this comprehensive effort, of course, we will need to review China's actions for consistency with its WTO obligations. I will aggressively pursue WTO action whenever that approach will be the most effective and appropriate means to address U.S. concerns.

CHIQUITA BANANA

1. USTR's enforcement efforts in the WTO have not always produced trade relief. In the *Bananas* case, USTR has won one victory after another, but the EC has paid no attention to those rulings and is still out of compliance. As basic enforcement principles are at stake in the *Bananas* case, will you help give this case the effort needed to turn the legal wins into lasting market relief for U.S. interests?

Answer: We remain committed to pressing the EU to liberalize, consistent with its WTO obligations, its banana import regime.

**Questions for the Record for USTR Designate Ron Kirk
Senator Maria Cantwell
March 9, 2009**

1. What will you do to resolve differences over access for U.S. autos and beef, so that we can move ahead with the U.S. – Korea Free Trade Agreement? I understand you will be setting benchmarks for progress on the U.S. – South Korea Free Trade Agreement. Could you tell me more about your plans?

Answer: Successful completion of the U.S.-Korea FTA holds the promise of expanding opportunities for American workers, farmers and businesses. Korea is an important friend and ally of the United States and its market is the seventh largest U.S. export market in the world. We are committed to working with U.S. stakeholders and our Korean counterparts to address the issues relating to the U.S.-Korea FTA and to ensure that the agreement fulfills its promise. We recognize that not implementing a good Korea agreement comes with opportunity costs. We will work with you and others to make the benchmarks we set for Korea transparent and objective.

2. What priorities will you have for trade policies involving Japan - one of the largest export markets for my state?

Answer: Achieving greater access to the Japanese market - our fourth largest goods export market - will be a priority. I plan to work with Japan closely to create new opportunities for U.S. goods and services, including through our regulatory reform work. I also plan to address bilateral irritants in such areas as beef and insurance.

3. Given the urgency of the problems in Afghanistan and Pakistan, I am very disappointed the former USTR did not make my Reconstruction Opportunity Zone (ROZ) bill a higher priority. Will you make it a priority?

Answer: We recognize the importance of economic development in defeating extremist elements in both Pakistan and Afghanistan. In coordination with other agencies, we are reviewing on a priority basis our options for fostering economic development in these countries. My goal is to identify a common approach as soon as possible and work with you on this important matter. I appreciate your efforts and leadership.

4. Do you believe that promotion of global economic development should be at the core of U.S. trade policy? Is the completion of the Doha Round a component of that policy? As USTR, what would you do at the multilateral, bilateral and unilateral levels to ensure U.S. trade policy promotes economic growth and poverty reduction in developing countries?

Answer: Promoting growth at home and global economic development overseas are key goals of U.S. trade policy. The completion of the Doha Round can and should be a component of that policy. I also remain committed to working with you and the Committee to strengthen US trade preference programs and to take other steps to promote economic growth and poverty reduction in developing countries. I also look forward to working with you and my counterparts at State, MCC and USAID to ensure that the necessary trade-related development assistance is provided to our developing country partners to help them to participate in global markets and implement trade obligations effectively.

5. Would you support extending duty-free, quota-free access to the U.S. market to all products from Least Developed Countries?

Answer: As you may know, Least Developed Countries (LDCs) are already eligible for duty-free access on 83 percent of tariff lines in the U.S. tariff schedule. LDCs covered by AGOA and CBI are eligible for duty-free access on up to 91 percent of the tariff lines in the U.S. tariff schedule. At the last WTO ministerial meeting in Hong Kong in 2005, the United States made a political commitment to provide expanded duty-free, quota-free market access (DFQF) for products from LDCs to 97 percent of tariff lines. Ministers agreed that WTO Members would implement the initiative coincident with the implementation of the results of the negotiations under the DDA. We will evaluate how we might best implement this commitment.

6. What priorities do you have for trade policies that will promote renewable energy and a cleaner global environment? Progress in any talks with China could lead to a broader agreement to eliminate tariffs within the Asia Pacific Economic Cooperation (APEC) organization by the 2011 APEC summit. Would you consider engaging China on working to eliminate tariffs on clean energy and environmental goods and services?

Answer: We will work with the State Department and other agencies to press countries such as India and China to take strong action through a new global climate change agreement. It will be critical that any U.S. climate change legislation address concerns with carbon leakage and competitiveness, yet do so in a way that does not generate serious trade tensions and that is consistent with our international obligations. We look forward to discussing these issues with you as legislation is drafted. As to a specific effort to eliminate tariffs on clean energy and environmental goods and services, I would like to explore the idea with you further and coordinate with my colleagues in the Administration.

7. If you are confirmed as the nation's next USTR, will you keep the Boeing Airbus WTO cases at the top of your priority list and seek to have decisions reached this year?

Answer: Yes

8. Will your office closely monitor European Union (EU) anti-dumping investigations launched against U.S. biodiesel exports? Will you take action at the World Trade Organization (WTO) if the EU acts inconsistently with its WTO obligations?

Answer: If confirmed, I will closely monitor this issue going forward and will take appropriate steps to protect our rights if the investigation raises concerns under WTO rules.

9. As you may know, consumer electronics is one of the fastest growing industries in the United States. In fact, high technology products are one of America's largest export sectors totaling some \$220 billion. Do you believe that a sectoral agreement on electronics can and should be pursued outside of the context of the Doha Round, should the Doha Round continue to stall?

Answer: We should not exclude any options in improving cross-border market access for the vital high technology and electronics sectors.

10. Over the years, USTR has made significant achievements despite its limited resources. I hope you agree that those resources must be wisely allocated to areas where they can do the most for our economy. If so, would you consider reviewing the role of the Special Textile Negotiator and revising the mission of that office so that some of its resources are reallocated to enhance USTR's efforts in areas such as services, where international negotiations have languished, and enforcing our existing rights under international agreements?

Answer: USTR's offices of industries, services and IPR focus critical attention on service and other key sectors of our economy. If I am confirmed, I will set clear goals, establish discipline, and further focus the agency to ensure that these vital issues receive priority attention. USTR's office of textiles and apparel will continue to play an important role in that sector as well. There are exceptional professionals in place and I will work with the structure to ensure that it serves our mission. I welcome any specific suggestions you might have.

**Questions From Senator Carper for Ronald Kirk
March 9, 2009**

CARPER #1

Last year, the U.S. Government collected nearly \$2 billion in duties on footwear imports. These tariffs were enacted in the 1930s and have not been adjusted even though today's domestic industry only produces specialty and certain types of high-end footwear.

Footwear tariffs are particularly regressive because they are highest on the cheapest shoes – usually between 48% and 67%. But expensive leather or luxury footwear is taxed at a far lower rate – in the 10% range.

Should we eliminate or reduce these footwear duties to help lower- and middle-income American families buy a basic necessity?

Answer: The most appropriate venue for considering reduction or elimination of footwear tariffs remains the Doha Development Agenda round of multilateral negotiations.

CARPER #2

We recently expanded Trade Adjustment Assistance to include displaced service workers because the service industry has become such an important and growing part of our economy.

As you appoint experts to address various aspect of the U.S. economy in trade agreements, how do you plan to address the increased role of services? Would you consider creating a Special Negotiator for services?

Answer: We have a strong and active Assistant USTR for Services but would consider any and all ideas you may have for improving our ability to help grow this vital sector of our economy.

Would you consider reviewing the role of the Special Textile Negotiator and revising the mission of that office so that some of its resources are reallocated to enhance USTR's efforts in areas such as services?

Answer: We would welcome your ideas on ways to ensure adequate and appropriate levels of support within USTR for the trade interests of our services industries.

CARPER #3

The U.S. government has consistently relied on the WTO dispute resolution process to insure that trading partners are not able to exclude U.S. goods and services from export growth markets. While the U.S. uses successes at the WTO to press our trading partners to open their markets, during the Bush Administration it has consistently refused to accept the WTO decision on zeroing in annual reviews. The U.S. has now lost four WTO Appellate Body decisions – all found the U.S. practice of zeroing in Antidumping Reviews as inconsistent with the Antidumping Agreement. Several other Dispute Settlement cases on the issue are at various stages of review.

Does the Obama Administration intend to maintain the practice of zeroing in light of the four WTO Appellate finding that the practice is inconsistent with the Antidumping Agreement?

Answer: We will work to fully capture the cost of dumping practices and are in the process of reviewing the zeroing decisions and their implications for our producers.

If so, what are the personnel requirements and the budget cost to the U.S. government of continuing to litigate these claims? And how might this impact our ability to get our trading partners to respect the finality of a dispute when the determination is not in their favor?

Answer: The USTR is committed to defending any challenges to American law.

CARPER #4

I would like your views on a matter of importance to one of my constituents, and with larger implications for renewable energy programs in the United States.

In a countervailing duties case brought against exports of certain sodium metal produced by Dupont, the European Union is currently investigating whether hydroelectric power provided by a state power authority to entities in the Niagara Falls region of New York is an improper government subsidy.

Should the EU impose punitive duties against U.S. exports based on the cost of hydroelectric power, a general precedent could be established against any Federal or sub-Federal program that provides clean, renewable electricity at affordable prices to energy-intensive industries. Companies like Dupont that employ thousands of Americans would be faced with highly punitive duties on their U.S.-made exports.

How will you direct the staff of the Office of the U.S. Trade Representative to mount an active and vigorous defense against the EU's challenge in this case?

Answer: I am committed to monitoring this case through to its conclusion and will take action if the EU does not live up to its WTO obligations.

CARPER #5

The retrospective system of administering U.S. trade remedy laws (antidumping and countervailing duty laws) is inherently unpredictable because parties cannot know in advance whether products they import may later be subject to antidumping/countervailing duties or at what level. The United States is the only country that employs a retrospective system for collecting antidumping/countervailing duties whereby final duty bills are not calculated until after a review is completed, which can be a year or more after the product was imported.

A prospective normal value system, such as those used by all our major trading partners, would eliminate the uncertainty while strengthening the application of U.S. trade remedy laws by allowing stronger duty collection rates and proactively resolving WTO challenges to U.S. trade policy such as zeroing and Customs and Border Protection's (CBP's) requirement for bonds on shrimp imports.

Would you consider a switch to a prospective system of U.S. trade remedy duty collections?

Answer: The current statutory framework provides for a retrospective system. Along with my colleagues at the Department of Commerce and Customs and Border Protection, I would be happy to work with the Congress to consider the appropriate approach to these issues.

CARPER #6

Japan is one of our largest trading partners and an ally of the U.S. in many ways. What it does in its trading relationship with us is carefully watched by the rest of the region, most notably by China and South Korea.

Recently, there have been reports that the government-owned postal insurance entity, which is in the early stages of becoming a private company, is trying to get approval to sell many products that U.S. companies sell--without first complying with all the regulatory rules and restrictions that apply to private companies. It is my understanding that this situation is moving forward rather quickly.

What is your plan of action with regard to dealing with it?

Answer: USTR has been closely following developments in Japan and has raised the United States' serious concerns on this issue with Japanese officials. We are prepared to continue to press Japan in all appropriate fora to provide fair treatment to U.S. insurance companies.

Senator Cornyn's Questions for USTR Nominee Ron Kirk**Question #1:**

I am concerned by growing protectionist sentiment in Washington. Regardless of any justification offered, protectionism ultimately penalizes the U.S. consumer and workforce. Consumers must unknowingly absorb the costs of tariff increases and regulatory burdens that are raised to penalize foreign competition.

For example, the "Buy American" provision in recently enacted economic recovery legislation was meant as an innocuous show of support to hardworking Americans, but it quickly provoked the ire of our trading partners just three months after President Bush convened the G-20 leaders in Washington to galvanize around a strategy of minimizing protectionism. President Obama was forced to step in and personally calm the protectionist rhetoric. Despite his efforts, I am concerned that ultimately our workforce will pay the price if our trading partners choose to retaliate with protectionist measures of their own.

Another example of misguided protectionism is the recently passed Country of Origin Labeling regime for meat and other food products. Origin labels are an increasingly popular non-tariff trade barrier in many corners of the world. However, these labels serve no definitive health or safety function. The cost for the increased government regulation necessary to implement this clever marketing scheme will be charged to U.S. consumers at meat counters and grocery stores nationwide. The governments of Mexico and Canada have protested mandatory labeling, and I understand that USTR staff recently held consultations with Mexican officials about this issue.

The latest example of protectionism is directed at the U.S.-Mexico border—a region near and dear to my heart and our state of Texas. The omnibus spending bill shuttling through Congress this week will very likely halt the Cross-Border Demonstration Project being conducted by the Department of Transportation. This project is vital. The status quo trucking regime is suffocating cross-border commerce simply because of the volume of empty truck and trailer crossings each day.

Despite successful results at the northern border and Department of Transportation data clearly indicating that Mexico-domiciled trucks enrolled in the demonstration program are as safe as our own, this program will be delayed again. The 15-year delay of this program is unacceptable. This is protectionism, and Congress is endangering the U.S. economy by provoking retaliation from the government of Mexico.

Mayor Kirk, I would like a commitment from you that you will continue to be a calming voice against protectionism in Washington. Once confirmed, I would also like an update on the recent consultations regarding the Country of Origin Labeling program. And I ask for a commitment from you to work with Congress and the Obama Administration to finally implement the Cross-border Demonstration Project we agreed to establish 15 years ago.

Answer: I look forward to working with you to address each of these challenges. On Country of Origin Labeling issues, USTR is working closely with the Department of Agriculture and is available to you or your staff for a briefing upon request. On the cross-border trucking project, the administration is aware of the concerns that were raised in Congress about the program, and we are reviewing the policy. We will work with you and other leaders in Congress to find a solution that satisfies those concerns – while upholding our trade commitments.

Question #2

I was pleased to see that President Obama’s recently released Trade Policy Agenda includes a commitment to increasing transparency and promoting broader participation in the debate. In your testimony, you re-iterated the commitment to using technology and the USTR website as an outreach tool. I firmly believe that democracy depends upon a fully informed citizenry, and open government is the cornerstone of any free society.

For these reasons, I was troubled to learn that certain facts and data regarding the Colombia agreement were recently removed from the USTR website. Specifically, one item removed was the helpful “Colombia Tariff Ticker” which tracks the time and estimated duties paid on U.S. exports since the agreement was signed. Also newly missing are state-by-state export impact statements pertaining to the Colombia agreement. This data is important to trade advocates and the U.S. workforce.

Once confirmed, I would like an update to ensure that important information, including state-by-state impacts, regarding the Colombia agreement and other agreements are made available to the American public on your agency’s website.

Answer: Improving the transparency and availability of information to stakeholders is an important priority, including state-by-state information on exports and information on existing and pending trade agreements. We are actively reviewing the content of the website to ensure that information and data on the Administration’s trade initiatives is available to promote informed public debate.

Question #3

I am concerned about a regulatory burden recently proposed by the government of China pertaining to cotton imports. China is the largest cotton consumer in the world, and the United States is their largest supplier of cotton, much of it grown in Texas. Cotton growers and merchants are concerned that China’s recently proposed cotton import inspection regime may be inconsistent with the WTO Agreement on Technical Barriers to Trade. When China joined the WTO it agreed to treat imported products no less favorably than domestic products.

Once confirmed, I would like an update on actions your office is taking to ensure that China is meeting its WTO obligations in this instance.

Answer: We will monitor this situation closely, work with the Department of Agriculture, and make that update available to you and your staff.

Question #4

I am concerned about foreign regulatory burdens that are unfairly impeding rice imports into Europe. The U.S. rice industry exports over half of its crop to foreign markets, and until recently Europe was a lucrative market for rice grown in Texas and the southern states. In the last 3 years, E.U. regulations have curtailed U.S. brown rice sales by approximately 85%. I am aware that USTR staff are working towards removing barriers to this market.

Once confirmed, I would like an update on any progress made to date, and your commitment to see that quick resolution is made to reopen this important market.

Answer: If confirmed, I will be monitoring these issues carefully and will ensure that you and the Committee are provided timely updates on this issue. I also will ask USTR staff to continue to work closely with U.S. industry and with this Committee toward a successful resolution of these problems.

**Questions for the Record
From Senator Mike Crapo
For Ron Kirk
U.S. Trade Representative Nomination Hearing
Senate Finance Committee
March 9, 2009**

1. I appreciate the Administration highlighting in the 2009 Trade Agenda the importance of trade to the U.S. economy and the important contribution of exports to the U.S. Gross Domestic Product (GDP). Aside from the need to follow through on the commitments made to the countries that invested considerably to negotiate with the U.S. on the pending FTAs, the FTAs provide the mechanism to advance market growth for U.S. producers through broader export opportunities and contribute to our economy. The Administration's 2009 Trade Agenda suggests that the Administration will establish "benchmarks for progress on the Colombia and South Korean FTAs." Could you please explain what those benchmarks are, or may be?

Answer: Benchmarks represent the steps necessary to address the concerns that have been raised with respect to each agreement. We will work with Congress to establish benchmarks for both countries and we will discuss them with both countries.

2. As a result of the trade commitments already made in the WTO and in FTA's, especially NAFTA's complete opening of the U.S. market to Mexican sugar in 2008, the U.S. sugar market is already over-supplied. Additional import commitments would put further pressure on this market and, given the new Farm Bill, require the U.S. government to convert the excess sugar into ethanol. Given this situation, are you prepared to tell our negotiating partners that no further concessions on market access for sugar can be made?

Answer: I fully understand the level of sensitivity associated with sugar, and if confirmed, I will work closely with USDA, U.S. stakeholders, and with you in implementing international trade commitments related to this commodity.

3. The recently released Trade Agenda recognizes that what is now on the table in the WTO Doha negotiations is unbalanced and must be corrected. Some Members of Congress and the private sector share this view, especially in the area of agriculture, where stringent constraints on U.S. domestic farm supports are being demanded without equitable market access. Are you prepared to make clear to our trading partners that major changes are needed in the texts now being considered? How will you change the dynamic of these negotiations?

Answer: The Administration has made clear in the President's Trade Agenda that an adjustment needs to be made to the current course of negotiations in order for them to reach a successful conclusion. We have also made clear that we are willing to work in good faith toward a resolution. We will work with Congress to assess our alternatives for changing the dynamics of the negotiations.

4. I appreciate the work the Administration put into achieving the recent successful softwood lumber arbitration decision. It is essential that the U.S. – Canada Softwood Lumber Agreement (SLA) is adhered to and properly enforced. This outcome is an important step in that direction. It is now

essential that Canada implement the ordered remedy. Are you committed to standing firm on Canada fully complying with the arbitration by implementing the ordered remedy?

Answer: If confirmed, I will work to ensure that Canada cures its breach of the Softwood Lumber Agreement.

5. I appreciate your commitment to strong enforcement of the rules. A trade agreement is only strong if both countries stick to it, and I am concerned by the many compliance issues affecting the success of the U.S. – Canada Softwood Lumber Agreement. Will you take actions to ensure compliance with the SLA? Will you develop a plan to improve compliance with the softwood lumber agreement and share it with members of this Committee?

Answer: Yes.

6. The Administration's 2009 Trade Agenda states that the Administration will only seek trade promotion authority with "proper constraints on that authority." Could you please explain what, in your view, those constraints are or should be? Also, do you think such restraints might best be self-imposed by the President?

Answer: As indicated in the President's Trade Agenda, the Administration expects it will need this authority at some point and will work with Congress to develop the appropriate legislation.

7. The United States Court of Appeals for the Federal Circuit recently issued its decision in *SKF USA, Inc. v. United States*, CAFC Nos. 2008-1005, -1006, -1007, and -1008, which upheld the constitutionality of the Continued Dumping And Subsidy Offset Act of 2000 (CDSOA). This decision, which was issued on February 19, 2009, frees up for distribution approximately \$350 million in antidumping and countervailing duties which were being withheld by Customs due to a lower court decision that has now been reversed. Distributing these funds now would make a big difference to U. S. manufacturers who have been hurt by unfair trade, including some in my state. Will the Administration go forward and distribute these funds now, helping these manufacturers during this difficult economic time?

Answer: Administration of the CDSOA is the purview principally of CBP and the Department of Commerce. I will work with them to ensure swift implementation of the SKF decision.

8. The United States has previously proposed in the Doha Round that the WTO be modified to authorize a provision like the Continuing Dumping and Subsidy Act of 2000 (CDSOA), which provides that duties collected in unfair trade cases will be paid over to the companies hurt by unfair trade. As you know, a WTO Dispute Settlement Panel and the WTO Appellate Body previously found that this provision was violative of the WTO. Will the United States continue and intensify its effort to modify the WTO in the Doha negotiations to authorize a provision like the CDSOA?

Answer: The appropriate venue for considering the operation of the rules negotiations remains the Doha Development Agenda. Those negotiations are under review and I will include this issue in the overall review.

9. The Government of China has started a WTO Dispute Settlement case against the United States claiming that applying the United States countervailing duty law and antidumping law against China is a violation of the WTO. The case claims that U. S. law on its face ("as such") violates the WTO, and that

the U. S. law “as applied” has also violated the WTO. What steps will you take to make sure we put forward the best defense possible to these claims by the Government of China, and ultimately win this case at the WTO?

Answer: USTR will vigorously defend the United States in this dispute, and will continue to work with other agencies and private sector stakeholders on this effort. Countervailing duties are an important, WTO-consistent tool, and I will ensure that USTR provides a vigorous defense of the U.S. ability to use its countervailing duty law to address Chinese government subsidization.

10. One of the restrictions regarding U.S. exports to Cuba that concerns me is the prohibition on Cuban buyers making payment direct to the seller’s bank in the United States. Currently, these transactions must be routed through a third country bank, needlessly adding cost and delay to the transaction. Particularly in the case of cash payments, it does not make sense for a portion of this business to be sent to French or Canadian banks. It does not seem like the best way to facilitate these exports. Please share your views on whether direct payment for the purpose of transacting cash basis sales – which are already legal – to Cuba would be good trade policy.

Answer: I look forward to working with you and other members of the Administration as we develop our trade policy with Cuba.

**Senator John Ensign
Questions for Ron Kirk**

Question 1

I recognize that public support for open trade has eroded, and I would like to work with you to find a path forward to rebuild that support. What precise steps with active opponents of trade do you plan to take to rebuild public support for trade?

Answer: We will engage the recent proponents and opponents of trade policy and work to find a middle ground. I will conduct extensive outreach and use technology to reach new audiences. And I will work with you and others on ensuring the benefits of trade reach deeper into our entrepreneurial, worker, and consumer base.

Question 2

What is your view about passing the Colombia, Panama, and South Korea free trade agreements? The President's Trade Policy Agenda states that the Administration plans to establish benchmarks before consideration of the FTAs with Colombia and South Korea. What are these benchmarks? Will they be set in consultation with both parties in Congress and with the relevant officials in Colombia and South Korea?

Answer: The benchmarks we will establish will represent the steps necessary to address the concerns that have been raised with respect to the Colombia and Korea agreements. We will work with Congress to establish those benchmarks and will discuss them with the respective governments.

Question 3

For over two years it has been said that there is a need by the Colombian government to take some vague and indefinite further action with regard to labor law enforcement, but Colombia needs precise and definite expectations laid out. What exactly will this Administration require of Colombia?

Answer: As indicated in response to question 2 above, we will work with the Congress to establish the appropriate benchmarks.

Question 4

Do you think that the labor and environment provisions of the U.S.-Korea FTA are appropriate?

Answer: The U.S.-Korea FTA incorporates the May 10th Agreement, which established a strong foundation for bipartisan progress on trade.

Question 5

How will you seek to open foreign markets to U.S. exports of goods and services? Will this be hampered if the U.S. does not live up to its own obligations? Have you heard from any of our

trading partners about specific measures that they claim violate our trade obligations? If so, what is your response and what action do you propose to take?

Answer: We will work to come to resolution on pending agreements as well as pursue new opportunities to increase exports. We will also enforce our rights in order to maximize our export opportunities. We often hear from trading partners about concerns that they have with actions we take and we work with them to attempt to address their concerns. This Administration believes in rules based trade and we will comply with our agreements.

Question 6

Stopping protectionist measures at home is one of the key roles of USTR. There are many in this country and in Congress, however, who would not care about opening a trade war with the rest of the world. How will you deal with protectionist measures that come out of Congress?

Answer: We will work to understand and respect the diversity of views on trade. We do not believe anyone wants a trade war and will work with the Congress to act in the best interest of the American people.

Question 7

Will you commit to rely upon, and abide by, the dispute settlement mechanisms in our trade agreements before taking retaliatory actions against our trading partners for alleged trade agreement violations? Do you agree that the U.S. expects other countries similarly to use formal dispute settlement mechanisms before they take retaliatory actions against us?

Answer: Yes.

Question 8

In the President's budget is a proposal to raise revenue by creating a "cap and trade" mechanism. We have no details on the specific mechanism, but some proposals in the past involve a border adjustment mechanism that would tax imports. Will you commit to oppose any such "cap and trade" measure that violates our trade agreement obligations? If such a measure is adopted and we are found to be in violation of our trade agreement obligations in a subsequent dispute, will you support reversing the measure to bring the U.S. back into compliance?

Answer: It is clear that certain sectors, particularly energy-intensive ones, are likely to raise concerns with respect to competitiveness or carbon leakage issues associated with a U.S. cap-and-trade system. A variety of approaches may be available to address such concerns, and, if confirmed, I will work closely with the Congress to ensure that any such approach is both effective for U.S. manufacturers and exporters and compatible with our international trade obligations.

Question 9

Recently, a "Buy America" provision was added to the Stimulus bill. The original provision violated our WTO obligations, and then Congressional leaders added the following, "This

section shall be applied in a manner consistent with U.S. obligations under international agreements.” I expect we will see this type of language in the future to cover protectionist legislation. How will you interpret that sentence when it directly contradicts the rest of the provision? Do you commit to advise relevant agencies to follow our trade obligations? Do you think we can meet our trade obligations by simply adding this contradictory sentence to legislation even when the legislation rampantly hikes tariffs, creates import bans, and imposes new protectionist measures?

Answer: It does not contradict the rest of the provision. The language reinforces our commitment to our international obligations and it encourages others to participate in those agreements.

Question 10

I very much appreciate your comment in your hearing that the U.S. has to play by the rules as well. Unfortunately, the U.S. is currently not in compliance with a number of WTO obligations. Specifically, we lost cases in the WTO related to Section 211 (Cuba trademarks), Irish music, hot-rolled steel, customs bonding, and zeroing, to name a few. What steps will you take to bring the U.S. into compliance with these cases?

Answer: I appreciate your interest to address these matters.

Question 11

As stated in the President’s Trade Policy Agenda, the Administration will seek to “correct the imbalance” in the current Doha Round of World Trade Organization negotiations. How do you plan to go about achieving a rebalancing of the negotiations?

Answer: The Administration has made clear to our trading partners that there needs to be an adjustment to the course of the negotiations. We intend to work with Congress, private stakeholders, and other agencies in the Administration to develop a strategy to address the problem in the current negotiations.

Question 12

Last year, negotiations were launched for a Bilateral Investment Treaty (BIT) with China. A BIT would create new investment opportunities for U.S. companies to export to China. Do you plan to continue the important BIT negotiations to create new opportunities for U.S. exports of goods and services, such as retail services?

Answer: We are reviewing the pending BIT with China and technical negotiations are ongoing.

Question 13

Under current trade rules and U.S. law, importers of products often do not have standing to address allegations raised in trade remedy cases. In the interest of having a balanced and fully transparent process related to trade remedy cases, do you agree that importing interests should be able to participate in trade remedy cases?

Answer: The trade remedy laws are designed to address unfair trade practices that harm domestic producers. Any fundamental change to the parties that may participate in an antidumping proceeding would need to be carefully considered and require legislation.

Question 14

I agree with the statement in the President's Trade Agenda that trade policy "needs a keener appreciation of the consequences" on all stakeholders. I believe this sentiment should also apply to trade remedy laws because downstream industries can be severely impacted by trade remedy actions (e.g., the auto industry relies on steel imports, and retailers rely on consumer product imports). In trade remedy decisions involving USTR, do you commit to consider the impact of remedies on all U.S. industries, including those that rely on imports to stay competitive?

Answer: The trade remedy laws are designed to address unfair trade practices that harm domestic producers. Any fundamental change to the parties that may participate in an antidumping proceeding would need to be carefully considered and require legislation.

Question 15

Footwear tariffs are particularly regressive because many inexpensive shoes have higher tariffs than expensive shoes. At a time when consumers are facing economic uncertainty and increasing cost pressures, would you as United State Trade Representative support eliminating or significantly lowering these footwear duties to help lower- and middle-income American families buy a basic necessity? This would help both poor countries that produce footwear as well as lower income families in the U.S. who pay this tariff.

Answer: The most appropriate venue for considering reduction or elimination of footwear tariffs remains the Doha Development Agenda round of multilateral negotiations.

Question 16

One policy proposal related to trade preference programs is to modify our programs to provide clear incentives and timetables for trading partners to open their markets to U.S. goods, thereby creating opportunities for U.S. exporters and providing foreign consumers and businesses with high quality U.S. goods and services at competitive prices. Will you work with Congress to create options to modify preferences to create sustainable two-way trade that benefits United States importers and exporters, as well as our trading partners?

Answer: I am aware that both this Committee and the Ways and Means Committee have introduced or are likely to introduce proposals to reform GSP and other trade preference programs. I look forward to working with all interested parties to ensure that our preference programs are achieving their goals in the most effective manner possible.

Question 17

The United States lost a case at the WTO related to the Continued Dumping and Subsidies Offset Act (CDSOA, also known as the "Byrd Amendment"). The law was appropriately repealed. There are some industries that seek to reenact CDSOA, despite overwhelming evidence against the program. The law was clearly inconsistent with our WTO obligations, and for that reason I have continued to oppose reinstating the law. Will the Administration oppose efforts to reinstate the law?

Answer: If confirmed, I will work with the Department of Commerce and other agencies to develop an Administration position on legislation including this proposal.

Question 18

In the bipartisan committee report, there is a statement as follows, "In 2005, [Mayor Kirk] differed from his general pattern by deducting 4 honoraria totaling \$7,500 as charitable donations that he had not included in income." Can you please elaborate on the circumstances surrounding those 4 instances given that you differed from the otherwise consistent pattern of not reporting the income not taking a deduction?

Answer: In my review of my contributions to Austin College, I realized that I had incorrectly deducted the four contributions in question as a result of having received letters from the College acknowledging the donations. We brought this to the attention of SFC staff and agreed to take the appropriate corrective action.

Questions From Senator Enzi for Ronald Kirk

Q. 1. The President's trade agenda makes mention to building labor provisions into existing trade agreements. As the Ranking Member of the Health, Education, Labor, and Pensions Committee any effort to make substantive changes to our domestic labor policies through trade agreements concerns me. Could you please clarify the President's intentions of inserting labor standards into existing trade agreements?

We will not alter domestic labor law through trade agreements; U.S. labor laws must be written and set in our Congress.

Q. 2. Did you originally count the \$5,000 as a charitable deduction?

Yes. This \$5,000 honorarium was contributed to Dillard University – a traditionally African-American college in New Orleans that suffered severe damage in Hurricane Katrina – in 2006. As described in my previous submissions to the Committee, however, I did not receive a Form 1099 reflecting that honorarium and so did not include that amount as taxable income in 2006. This was an error made in the preparation of my tax returns. I want to assure the Committee that I believe proper payment of all taxes is an important matter. Because I take this matter so seriously, my returns were prepared by a professional accountant. However, I take full responsibility for the honest and unintentional mistakes that were made in the preparation of my tax returns.

Q. 3. You paid \$2,188 but now will have to pay an additional \$9,975. Was that from 1099 forms that had been ignored?

No. Following the review by the Senate Finance Committee staff, my wife and I filed amendments to our joint federal income tax returns for the years 2005, 2006 and 2007, which resulted in a total additional tax payment of \$7,785 for the three years. (A detailed explanation of the source of the additional \$7,785 in federal income tax payments is given in response to Question No. 3).

Q. 4. Was that all [the additional \$7,785] from money contributed for charitable purposes?

No. A portion of that amount (approximately \$3,000) is attributable to the adjustment in treatment of honoraria payments that were contributed to Austin College, as described in detail in my submission to the Committee on February 6, 2009. The balance of the additional tax is attributable to adjustments made in deductions taken for business-related entertainment expenses for the tax years 2005 through 2007 and in charitable deductions taken in tax year 2006, as well as a voluntary adjustment in the percentage of accounting and tax preparation fees that were deducted as unreimbursed partnership expenses in those same years. The details of these additional adjustments are provided in my submission to the Committee of February 28, 2009.

Q. 5. When the college assigned honoraria to you, did the money flow through, or were the checks first written to you?

The honoraria were paid by professional organizations, publications and private corporations and were directed to a scholarship program that I agreed to fund at Austin College. While some of these payments may have been sent to me before 2004, beginning in that year I endeavored to have all honoraria paid directly to Austin College and I believe that directive was followed and checks were issued directly to the college or the scholarship fund.

**Questions for the Record From Senator Orrin G. Hatch
for USTR Nominee Kirk**

1. IP protection is critical to the preservation of many U.S. industries, especially those cutting-edge industries where the U.S. maintains a competitive advantage. However, in many international forums, such as the WTO and WHO, strong IP protections are increasingly represented as a hindrance to – rather than an essential element of – economic growth and prosperity. Too often, nations are touting measures such as compulsory licensing as the norm, rather than the exception. How will the USTR, under your leadership, ensure that international IP protections remain strong for American companies operating abroad?

Answer: I agree that ensuring strong IP protection must be one of our top priorities. Thanks to American innovation and creativity, IP-intensive industries are ones in which the United States enjoys a strong comparative advantage. In a time of economic challenges, we need those industries to continue to create jobs and excellent opportunities for economic growth, and improve the lives of Americans through the products they generate. IP-intensive industries in turn need commitments from our trading partners to strong and effective protections for U.S. intellectual property rights, and we will work with our trading partners to secure those commitments. As part of our renewed commitment to enforcement of our trade rules, I will ensure that USTR enforces trade rules concerning intellectual property rights. If confirmed, I also look forward to working with you and with other agencies of the U.S. Government to ensure constructive U.S. participation when issues that impact IP and innovation trade policy arise in international fora.

2. Intellectual property protections are paramount. In the face of economic hardships, steep job-losses and a downturn in U.S. manufacturing, it has become critical to the US economy that we protect our innovative ideas and the industries and workers that rely on them. Strong intellectual property protections at home and overseas, and making sure that our trading partners do not inappropriately make off with U.S. innovation, are essential to this task.

USTR has an excellent track record of ensuring robust intellectual property protections for U.S. companies abroad, opening markets for innovative U.S. industries, and making sure that our trading partners satisfy the highest international standards.

As USTR, can you assure us you will make it a priority to see to it that this good and essential work is built upon at the WTO and other international fora, as well as in bilateral and regional FTA negotiations?

Answer: Yes, I can assure you that, if confirmed, I will use all appropriate tools and work in all appropriate fora to seek commitments from our trading partners to strong and effective protections for U.S. intellectual property rights. I can also

assure you that our commitment to enforcement of our trade rules will extend to enforcement of trade rules concerning intellectual property rights.

3. Compulsory licenses must not be abused. Recently, countries such as Brazil and Thailand have issued a series of compulsory licenses (CLs) on a range of patented medicines developed by U.S. companies, largely to support local industry or address short-term budget objectives. CLs have also been threatened in areas other than medicines, including medical devices and patented environmental technologies. By issuing these licenses and making these threats, our trading partners are inappropriately turning what was intended to be a very limited exception to intellectual property rights protections under the TRIPS Agreement into a standard business decision. While WTO rules on CLs must be supported, just as with expropriations of tangible property, countries should not take this step lightly, and the U.S. Government must send a strong message against the inappropriate expropriation of U.S. property through compulsory licenses or other means.

USTR has a longstanding position, which has received strong bipartisan support on Capitol Hill, that compulsory licensing should be a rare exception to our trading partners' commitments to respect U.S. intellectual property rights.

Can we count on you to continue your predecessors' strong advocacy on this important issue?

Answer: I agree that the issuance of compulsory licenses can raise legitimate concerns in some circumstances. I also recognize the importance of protecting public health and ensuring access to life-saving medicines in developing countries. If I am confirmed, USTR will carefully monitor the use of compulsory licensing by our trading partners, and will work with Congress to address legitimate concerns while also working with Congress to support and respect the Doha Declaration on the TRIPS Agreement and Public Health, which recognizes the right of WTO members to grant compulsory licenses in accordance with WTO rules.

4. Access barriers must be eradicated. The U.S.-based biopharmaceutical industry faces numerous non-tariff barriers to entry in almost every market in which it operates. These can range from unreasonable regulatory delays to a failure to reward innovation to a lack of transparency in government decision-making... all having the same effect: delaying or preventing the ability of imported, innovative medicines to reach local patients and putting an increased burden on the US to foot the world's pharmaceutical bill.

While USTR has continuously improved the provisions in agreements relating to these types of issues, such adverse government practices remain widespread and compliance with any provision in place has been poor. Aggressive action needs to be taken to ensure that U.S.-based biopharmaceutical products have as fair and equitable

access to foreign markets as foreign products have to ours. Failure to improve access to foreign markets means fewer jobs in the U.S. and fewer new life-saving medicines.

Can we count on you to enforce agreements relating to these types of issues?

Answer: Yes, if I am confirmed I can assure you that our commitment to enforcement of our trade rules will extend to enforcement of trade rules that impact market access for all sorts of products and services, including the products of America's innovative pharmaceutical and biotechnology industries. Discrimination against innovative medicines from the United States in violation of trade rules does not serve the interests of public health, and should not be tolerated.

5. I am very concerned that if the Administration and Congress do not act quickly, we will lose a very important opportunity for our business, our farmers and our workers. Specifically, I am thinking of the U.S.-Colombia Trade Promotion Agreement. As you probably have heard, Canada and Colombia have signed a similar agreement last year. It appears that that agreement will go into force this year. If the U.S.-Colombia does not get approved and enter into force before the Canadian agreement, we will effectively cede that market to Canadian manufacturers, farmers and service providers at the expense of all of us here in the United States.

- a. What will you do, if confirmed as USTR, to make sure that American workers do not lose ground in this very important market?

Answer: We will review the agreement and work with all interested parties to ensure that the issues the President raised during the campaign are addressed in Colombia in a manner that allows us to move forward with the agreement. We will work with you on this effort and recognize that reaching conclusion will achieve improved access for our producers to that market.

- b. Equally vital is the need to support our strongest ally in the region, who is fighting not only an internal civil war, but also illegal narcotics trafficking and regimes very unfriendly to the United States. The United States' failure to approve the Colombia FTA – which was originally signed over two years ago in November 2006 – is sending a very negative signal to an ally that is facing its own elections in about a year. What will you do, if confirmed, to ensure that our relations with Colombia continue to be strong?

Answer: The President has made clear that Colombia is a friend and ally and we will work with them in that spirit.

6. Intellectual property and innovation are major contributors to U.S. economic growth, employment and success in the global economy. The protection of intellectual-

property rights is, therefore, a vital component of U.S. trade and investment policy that is necessary to support continued U.S. competitiveness worldwide.

- a. How will you, if confirmed, improve the protection of intellectual property?

Answer: Ensuring strong IP protection will be one of our top priorities. Thanks to American innovation and creativity, IP-intensive industries are ones in which the United States enjoys a strong comparative advantage. In a time of economic challenges, we need those industries to continue to create excellent jobs and excellent opportunities for economic growth, and improve the lives of Americans through the products they generate. IP-intensive industries in turn need commitments from our trading partners to strong and effective protections for U.S. intellectual property rights, and we will work with our trading partners to secure those commitments. As part of our commitment to the enforcement of our trade rules, we will enforce trade rules concerning intellectual property rights. I also look forward to working with you and with other agencies of the U.S. Government to ensure constructive U.S. participation when issues that impact IP and innovation trade policy arise in international fora.

- b. In 2007, an agreement was reached by some in Congress and the former Administration that weakened previously agreed to strong IP standards for one of our most innovative industries. Can you assure me that you will support the strongest possible IP protections for all U.S. industries?

Answer: Ensuring strong IP protection for all U.S. industries will be one of our top priorities. In pursuing that priority, we must also recognize the importance of protecting public health and ensuring access to life-saving medicines in developing countries. The IP language in the May 10, 2007 agreement reflected a bipartisan effort to strike a new balance on these issues. As we consider the way forward, I am open to consulting with Congress and listening to any ideas that you may have.

7. Fundamental to the U.S. legal system is the right of individuals to protect themselves against arbitrary, discriminatory and expropriatory government actions. From the Due Process, Equal Protection and Takings Clauses of the U.S. Constitution to the Administrative Procedure Act to a host of other federal and state laws, the U.S. legal system guarantees Americans and foreigners the right to protect themselves against fundamentally unfair government action. The same protections form a critical piece of bilateral investment treaties and a number of trade agreements – promoting broader U.S. national interests in the rule of law and the protection of individuals. Can you assure me that you will seek such strong protections in overseas markets?

Answer: Yes. Protection against denials of due process, discriminatory treatment of foreign investors, and expropriatory government actions is essential to allow U.S. investors to compete on a level playing field in foreign markets and

to ensure that they are treated according to the rule of law. U.S. investors have invested billions of dollars overseas. This is good for U.S. firms, for U.S. workers, and for the U.S. economy, but the system only works well if investors have these protections. That is why we will work hard to achieve strong protections for our investors overseas.

8. U.S. exports accounted for approximately 2/3 of U.S. growth in 2008 and should represent an important part of America's strategy to promote economic recovery at home and abroad. Countries around the world already maintain significant barriers to the entry of U.S. goods and services and some are looking at imposing new barriers, particularly given the current economic crisis.

- a. Do you agree in general that if the United States raises barriers in our own market, other countries are more likely to raise barriers against our products?

Answer: Yes.

- b. And how will you proceed to eliminate barriers in foreign markets against U.S. goods and services, barriers that are for the most part not already covered by existing trade and investment agreements?

Answer: We will work through the WTO and with trading partners abroad to identify and eliminate non-tariff barriers to trade that often present unnecessary and unfair obstacles to markets for our goods and services. We also welcome any ideas that you may have.

9. As you are aware, last year the previous administration engaged several of my Democratic colleagues to negotiate a compromise which was dubbed the "May 10th Agreement." It is no secret that I was opposed to that compromise because of the changes that it called for in the Labor, Environmental, and Intellectual Property chapters of already negotiated trade agreements. When I raised my objections to officials in the previous administration, I was given assurances that these concessions would lead to the passage of the – then four – outstanding trade agreements. Well, as we all now know – these concessions only lead to the passage of one of the four agreements – that of Peru.

- a. I now am hearing troubling talk that the Obama Administration is looking to reopen the May 10th deal in an attempt to win additional labor and environmental concessions. I have even heard some Democrats refer to the May 10th deal as a "floor" from which to begin negotiations and not a "ceiling" as it was portrayed to me. Mayor Kirk, can you please give me your personal assurance this afternoon that you will not seek to reopen the May 10th Agreement?

Answer: The May 10th Agreement established a strong foundation for bipartisan progress on trade. We will not seek to build on that foundation

without bipartisan support. But trade policy has evolved over the last twenty years and we expect it to continue evolving and will work with Congress to ensure a diversity of views is heard on the subject.

10. World Trade Organization (WTO) rules on trade remedies (e.g., antidumping, countervailing duty, and safeguard rules) allow injured U.S. companies to seek relief from dumped or subsidized imports. At the same time, U.S. importing companies are negatively impacted by these actions--sometimes irreparably--yet these companies do not have a meaningful voice in trade remedy proceedings. Meanwhile, U.S. exporters are facing the increasing and abusive use of trade remedies in overseas markets. History has shown us that as tariff barriers are reduced through international agreements, new barriers under the guise of trade remedies are erected, thereby harming U.S. exporters. How will you ensure that international trade remedy rules, and their application in the United States and abroad, is balanced and does not undermine legitimate commerce?

Answer: This Administration supports the enforcement of rules that protect producers from unfair competition. We do not support arbitrary rules aimed at undermining legitimate commerce. We will work with you to identify and eliminate such rules when and where they arise.

11. U.S. importers need predictability in the marketplace to be able to make informed business decisions. The retrospective system of administering U.S. trade remedy laws (antidumping (AD) and countervailing duty (CVD) laws) is inherently unpredictable because parties cannot know advance whether products they import may later be subject to AD/CVD duties or at what level. The United States is the only country that employs a retrospective system for collecting AD/CVD duties whereby final duty bills are not calculated until after a review is completed, which can be a year or more after the product was imported. For importers, this uncertainty in the supply chain is one of the most detrimental aspects of U.S. trade remedy law. A prospective normal value system, such as those used by all our major trading partners, would eliminate the uncertainty while strengthening the application of U.S. trade remedy laws by allowing stronger duty collection rates and proactively resolving WTO challenges to U.S. trade policy such as zeroing and Customs and Border Protection's (CBP's) requirement for bonds on shrimp imports. Would the USTR advocate and support a switch to a prospective system of U.S. trade remedy duty collections?

Answer: The current statutory framework provides for a retrospective system. Along with my colleagues at the Department of Commerce and Customs and Border Protection, I would be happy to work with the Congress to consider the appropriate approach to these issues.

Questions From Senator Kerry

Countries in Conflict

As dire as our current economic situation is at home, the situation in Eastern Europe is catastrophic. Young democracies face the very real threat of political unrest as the economic growth they have experienced in recent years is quickly undone. I also believe we have an obligation to assist fledgling democracies such as the Republic of Georgia that are standing up against despite threatening political circumstances.

- **Do you believe that the U.S. should extend its hand in the form of a trade partnership with countries in conflict to help provide political and economic stability? What other assistance can or should the United States be providing to help these countries during this time?**

Answer: Increased trade and expanded partnership with countries in conflict may play a constructive role in giving people productive alternatives to conflict. In that sense we should strongly consider how to best use trade as a tool. We look forward to working with you and experts in the field on the matter. The second part of your question is the jurisdiction of the Department of State and USAID. We will work with those agencies in to ensure the necessary trade-related development assistance is provided to these countries.

China Bilateral Investment Treaty

A high quality bilateral investment treaty with China would help reduce barriers to US companies doing business in China. In addition, it would encourage Chinese companies to invest here in the US, creating jobs for American workers.

- **What is your sense of the timing with respect to these negotiations? How high a priority will this be for your office, and have you been involved with discussions with the State Department and the Treasury Department?**

Answer: USTR co-leads the U.S.-China BIT negotiations with the State Department, with active participation from Treasury, Commerce, and other agencies. To date, the two sides have held three rounds of technical level negotiations. These negotiations are continuing. Whether and when we conclude an agreement will be influenced by guidance provided by the Administration, as well as actual progress in the talks. We will make certain to consult closely with you and your staff, as well as with other members of the Committee on Foreign Relations and other key Congressional committees.

One of the principal objectives of a BIT is to ensure a level playing field for U.S. investors. I understand that the initial U.S. negotiating proposal was based on the U.S. model BIT. China presents a unique set of circumstances on a range of issues, however, not faced in other countries with which the US has negotiated BITs or trade agreements. One issue in which China is unique is the prevalence of state-owned enterprises (SOEs) in the economy. These SOEs often

appear to benefit from formal and informal preferences by the Chinese government or at government direction, and their prominent role in China's economy can put U.S. companies at a significant competitive disadvantage. Under the model BIT, action by an SOE is only covered by China's obligations if the SOE is acting with delegated government authority. But, given the lack of transparency in the Chinese system, it is certain to be exceedingly difficult to prove that SOEs are acting with delegated authority. Additionally, there may be many ways in which the SOE distorts the market to the detriment of U.S. companies, even without delegated authority.

- **Do you agree that this is a serious problem that the U.S. government should seek to address?**

Answer: It is important for the Administration to identify effective ways to address the challenges for U.S. investors presented by China's state-owned enterprises ("SOEs") and the role they play in China's economy. In this regard, we will carefully consider the contributions our BIT negotiations as well as our ongoing economic dialogue with China can make to advance the objective of leveling the playing field for U.S. firms in the Chinese market.

- **Do you believe that the model BIT comprehensively addresses the SOE problem I have described and, if not, how do you plan to modify the U.S. negotiating position to address the SOE problem I have described?**

Answer: The model BIT may not adequately address the SOE challenge. If it does not, we will work with State in an interagency process for model BIT modification.

- **If you do not plan to modify the U.S. negotiating position, what is your plan for addressing the SOE problem I have described?**

Answer: As noted above, it would not be appropriate to prejudge the outcome of the Administration's assessment. We will work within the government to identify the full range of bilateral and multilateral opportunities to engage China on these issues. We will also be discussing these issues in consultation with the business community and other stakeholders.

Another issue in which China is unique is the issue of forced and coaxed technology transfer. It is well known that China uses a variety of tools to implement its industrial policy to promote technology transfer to China. While the model BIT prohibits certain types of forced technology transfers, it is not clear whether that obligation would cover many of the ways that China tries to force U.S. companies to transfer technology to China (e.g., requiring technology transfer as part of its standard-setting process). Also, the model BIT allows the use of subsidies and other "advantages" to promote technology transfer. To be clear – I am referring not to subsidies for R&D (which has a separate exemption), but subsidies and other "advantages" for the transfer of specific technologies. Yet, we know that China uses many direct and indirect methods to get U.S. companies to transfer technology that they would not transfer in the absence of these policies.

- **Do you agree that forced and coaxed technology transfer by China is a serious problem that the U.S. government should seek to address?**

Answer: I agree that it is an issue that warrants serious examination.

- **Do you believe that the model BIT is adequate to address the issue of forced technology transfer and the issue of the use of subsidies and other “advantages” to coax a technology transfer? If not, how do you plan to modify the U.S. negotiating position to address this technology transfer problem I have described? If you do not plan to modify the U.S. negotiating position, what is your plan for addressing the technology transfer problem I have described?**

Answer: Again, we will review our pending BIT agreements as well as the model BIT to ensure that the unique challenges you are raising are properly addressed.

China Currency

- **Although currency issues have generally been considered the domain of the Treasury Department, they clearly have an enormous impact on trade flows. Do you believe that the misalignment/manipulation of currency is a critical economic problem? If so, what steps would you advise to address it? Do you see any role for USTR in addressing currency manipulation?**

Answer: I appreciate the concerns that you have raised about China’s currency practices. The Treasury Department is responsible for issues pertaining to other countries’ currency practices and will make its determination concerning China’s currency in its semi-annual report to Congress on international economic and exchange rate policies. If confirmed, I will work closely with the other senior officials in the Administration to develop a comprehensive and integrated policy to address the full range of China’s trade policies that impact the United States. As part of this comprehensive effort, of course, we will need to review China’s actions for consistency with its WTO obligations. I will aggressively pursue WTO action whenever that approach will be the most effective and appropriate means to address U.S. concerns.

Global Poverty

Trade provides opportunities for economic growth and poverty alleviation that promotes prosperity and political stability in developing countries, which in turn promotes prosperity and security at home. President Obama has said, “Since extremely poor societies and weak states provide optimal breeding grounds for disease, terrorism, and conflict, the United States has a direct national security interest in dramatically reducing global poverty and joining with our allies in sharing more of our riches to help those most in need.”

- **How will U.S. trade policies, under your leadership, continue to promote prosperity and political stability in developing countries while responding to domestic concerns about job security and the U.S. economy?**

Answer: USTR has an office of trade and development and offices responsible for different regions of the world where developing countries are disproportionately located. We will work closely with our counterparts at State, MCC and USAID to ensure that the necessary trade-related development assistance is provided to our developing countries partners to help them participate in global markets and implement trade obligations effectively. We will also work to ensure that our trade preference programs continue to meet the mission of creating export opportunities for developing countries, particularly LDCs. We believe in the power of markets, improved infrastructure, rule of law, and reduced barriers to trade as a component of poverty alleviation.

Inverted Tariffs

Under the current tariff schedule, finished golf clubs made overseas have a lower duty than the component parts that are imported into the United States and assembled by American workers. The duty on these imported finished golf clubs is 4.4 percent while the duty on the imported component parts is 4.9 percent. This obviously creates an “inverted tariff” where the duties on the material inputs are higher than the duties on the finished product. Unfortunately, this tariff policy penalizes US companies and US workers and rewards those that outsource these jobs to other countries. The current tariff system is broken, discouraging domestic manufacturing and putting US golf companies that wish to continue their US operations at a competitive disadvantage in the global marketplace. As the financial impact for adjusting the tariff is minimal, and the message this inverted tariff is sending to US business is unjustifiable, as a matter of sound public policy and sound trade policy, we need to fix this inverted tariff.

- **Can I count on you and your office to work with us to be sure that we fix this broken system?**

Answer: I will look into this tariff inversion problem and work with your staff.

Trade Enforcement

It is critical the United States aggressively enforce our trade agreements around the world to ensure that American companies and workers compete on a level playing field, and this sometimes requires the U.S. to take its trading partners to dispute settlement in the WTO. Last year, the United States, Japan and Taiwan filed a case against the European Union (EU) for violating its obligations under the Information Technology Agreement (ITA).

- **During your time at USTR, will you actively pursue WTO dispute-settlement and other enforcement mechanisms to protect our trading interests in the global marketplace? Do you plan to aggressively pursue resolution of the ITA case mentioned above?**

Answer: The answer to both questions is yes. Just last week, USTR filed its initial brief in the ITA case and we are committed to litigating that case vigorously and successfully.

Senator Lincoln's Questions for Ronald Kirk

Good afternoon and welcome to Mr. Kirk. We're happy to have you here.

Mr. Kirk, I was pleased by the comments you made in your statement that this Administration would work to ensure the strong enforcement of our trade laws and work closely with Congress on trade issues. I believe there is a lot we can do to help even the playing field for American companies competing in a global economy.

I should note that Arkansas is a state that has benefited from trade, and I hope we continue to seek out new markets for our businesses. However, many of our businesses and producers have been hamstrung in the global economy by countries that flout world trade laws.

With that, I would like to bring up a few trade issues that are particularly important to Arkansas.

China Export Restrictions Question

China is a country that I and many members of Congress have concerns about in particular. There are a number of outstanding trade issues with China that touch on many parts of our economy.

As many world leaders have stated, a proliferation of protectionist policies could only further weaken a shaky global economy. While China has made progress in liberalizing its economy and opening its borders there are a number of issues that raise concerns and affect my state directly.

One issue in particular concerns China's export restrictions that come in the form of export quotas, export licensing and bidding requirements, minimum export prices, and export duties, among others.

They are targeted at raw materials many of which are key ingredients for many U.S. downstream producers, affecting a number of U.S. industries, including steel, chemicals, ceramics, semiconductor chips, refrigerants, and aircraft among others. This is China's industrial policy at its worse. China's export restrictions appear to directly violate several WTO rule.

Mr. Kirk, we understand that for some time now, USTR has been looking seriously into concerns regarding China's export restrictions on raw materials. I want you to know that this is a very important issue to me and to a lot of American companies. I strongly support USTR's continuous efforts to bring these and other problematic Chinese industrial policies in line with China's obligations in the WTO. Can you provide me assurance that you will make this a priority for USTR?

Answer: China's export restrictions on raw materials continue to generate serious concerns for us, as do other Chinese industrial policies. I can assure you that one of my top priorities will be to ensure that we aggressively defend our WTO rights and benefits vis-à-vis China and our other trading partners. We will use bilateral engagement, as well as the full range of WTO tools in our efforts.

EU-Tawain Rice Question

Our agriculture producers fight to compete in global markets that are significantly distorted by government intervention. The global playing field is often tilted against them by trade laws that

block our ag exports to the rest of the world. At a time of falling prices and high input costs, our farmers need an advocate at USTR.

As you may know, Arkansas is the biggest producer of rice in the country. Rice, in particular, is one of the most protected commodities in the world. In spite of this fact, U.S. rice farmers are constantly told that their long time economic health lies in exports.

U.S. rice producers suffer from a U.S. trade policy that focuses to a fault on negotiating new trade agreements while paying lip service to making sure countries live up to their import commitments.

In key international markets, negotiated access for U.S. rice is being denied while U.S. rice imports continue to grow, and the farm safety net renewed just last year in the Farm Bill is under attack.

Two markets on opposite sides of the globe and vital to the U.S. rice industry illustrate USTR's challenge.

The EU has long been an important market for rice growers. However, the large volume of sales there virtually disappeared in 2006 with the accidental introduction of a genetically engineered trait into U.S. long grain rice, better known as Liberty Link 601 rice.

Southern rice farmers have nearly cleaned up this problem. However, despite the rice industry's successful efforts to remove the LL 601 trait, the EU continues to keep in place "Emergency Measures" requiring origin testing of all long grain rice shipped to the EU.

The EU also refuses to compensate completely the United States for withdrawing a WTO trade concession in 2004 called the Margin of Preference or the MOP. If the MOP were in place today, EU import duties on U.S. brown rice would be zero.

Instead, our exporters face exorbitant duties of between 30 euros and 65 euros per ton. It is critical to our producers and exporters that USTR defends the U.S.'s WTO rights and negotiates a new fixed and low EU import duty.

I would also like to briefly raise a market access issue with Taiwan. Taiwan has flat out refused to import U.S. rice, in clear violation of its WTO commitments. Industry representatives and U.S. officials have repeatedly met with Taiwan officials to seek resolution but to no end.

At a time when many are preaching exports, exports, exports to U.S. agriculture producers, it is simply unacceptable that U.S. trade authorities continue to allow Taiwan to ignore its international obligations.

Mr. Kirk, can I have your commitment that if confirmed, you will work immediately with USTR staff to address both of these issues at the highest political level necessary to bring about resolution? Rice farmers need your commitment that as USTR you will place compliance in current agreements before concessions to reach new deals.

Answer: I understand the importance of the rice issues with Taiwan and the European Union. If confirmed, I will be monitoring these issues carefully and will ask USTR staff to continue to work closely with US industry and with this committee toward a successful resolution of these problems.

Japan Insurance Question

Mr. Kirk, I have heard concerns that Japan Post Insurance is going to try to get approval to sell products that directly compete with U.S. insurers—despite the fact that they (Japan Post Insurance) have significant government-provided advantages that our insurers don't get.

Would that violate the WTO 'national treatment' commitments Japan has made? What are the implications for US-Japan trade relations if JPI were approved to compete with US insurers?

Will you and your agency press hard on this with Japan? If so, what form will that take?

Answer: USTR has been closely following developments in Japan and has raised the United States' serious concerns on this issue with Japanese officials. We are prepared to continue to press Japan in all appropriate fora to provide fair treatment to U.S. insurance companies.

USTR Staff Resources Question

Mr. Kirk, USTR has a fairly small office of General Counsel. We are pleased to learn that Tim Reif, formerly Chief Counsel to the Ways and Means Trade Subcommittee and a former Associate General Counsel at USTR, has become the new General Counsel at USTR.

However, the General Counsel's office at USTR has a broad range of oversight. It is both responsible for defending the United States in cases brought by other countries against us at the WTO, and for preparing cases for the United States to take to the WTO, which require significant resources.

This is a large task and I question if this office has adequate resources?

Answer: We will meet our mission with the resources Congress gives us. It would certainly help us do our job better if we had more funding for enforcement, travel, infrastructure, and personnel. I appreciate your advice and assistance on seeking the appropriate level of resources in the future.

**Ronald Kirk, Nominee for U.S. Trade Representative
Questions for the Record from Senator Robert Menendez**

Using Trade to Promote Economic Growth in Developing Countries

- In your view, what role should the promotion of global economic development play in formulating U.S. trade policy?

Answer: Promoting growth at home and global economic development overseas are key goals of U.S. trade policy.

Trade Preference Programs

- What do you consider to be the shortcomings of our trade preference programs?

Answer: U.S. trade preference programs have helped to promote new opportunities for poor and developing countries for more than 35 years, and have also provided important opportunities for American exporters and the United States. I look forward to working with you and Congress in the next year or so to consider the best ways to strengthen our family of preference programs.

- How can our trade preference programs be improved and expanded to make them more effective in promoting development?

Answer: As I mentioned, Congress and the Administration are just at the beginning of what promises to be a rich and enlightening public dialogue about improving and expanding our trade preference programs so that they meet more effectively their goals,

Expanding duty-free, quota-free access

- What are your views on the effect of extending duty-free, quota-free access to the U.S. market to all products produced in the Least Developed Countries (i.e., those with low per person incomes and total national incomes of less than \$100 billion.)

Answer: We will evaluate what effect extending duty-free, quota-free (DFQF) treatment to all products produced in LDCs could have on the U.S. market, and look forward to hearing your thoughts on this issue as well. I understand that, in 2007, USTR requested that the United States International Trade Commission (USITC) perform an investigation of the probable economic effects on U.S. producers and consumers associated with implementation of the Hong Kong decision to provide duty-free, quota-free (DFQF) access to products from LDCs. Also in 2007, I'm told USTR requested public comments on issues related to implementation of DFQF in a Federal Register notice and nearly 80 responses were received.

Coordinating trade policy and foreign assistance

- Defense, diplomacy, and development are considered the three pillars of our foreign policy. How do you think we might use U.S. trade policy to reinforce our development programs?

Answer: As noted above, promoting growth at home and global economic development overseas are key goals of U.S. trade policy. The completion of the Doha Round can and should be a component of that policy. I also remain committed to working with you and the Committee to strengthen US trade preference programs and to take other steps to promote economic growth and poverty reduction in developing countries.

- If confirmed, what steps would you take to improve coordination between USTR, USAID, the State Department, and other agencies on policies that affect economic development?

Answer: I would want to sit down with my counterparts, Secretary Clinton, the USAID Administrator, MCC CEO and others to assess the best ways to collaborate more effectively and to ensure that the necessary trade-related development assistance is provided to our developing country partners to help them to participate in global markets and implement trade obligations effectively.

- In your view, should U.S. trade policy be part of a coordinated strategy to promote global development?

Answer: Yes. Promoting growth at home and global economic development overseas are key goals of U.S. trade policy. The completion of the Doha Round can and should be a component of that policy. I also remain committed to working with you and the Committee to strengthen US trade preference programs and to take other steps to promote economic growth and poverty reduction in developing countries. I also look forward to working with you and my counterparts at State, MCC and USAID to ensure that the necessary trade-related development assistance is provided to our developing country partners to help them to participate in global markets and implement trade obligations effectively.

The Doha Development Agenda

- If confirmed, what priority would you place on getting the Doha negotiations back on track?
- What would you consider to be a successful conclusion to the Doha Development Agenda?

Answer: The Doha negotiations are, obviously, the largest ongoing trade negotiation. Assessing the appropriate next steps is a top priority. A successful outcome is one that opened significant new market opportunities for American workers, farmers and businesses, without the United States having to make the lion's share of the concessions to get a package.

Bilateral and Regional Free Trade Agreements

- What is your view on pursuing new bilateral and regional trade agreements with developing countries?

Answer: If I am confirmed, I will be leading an intensive review of policy options for new trade agreements, including agreements with bilateral and regional groups of developing countries.

- In pursuing such agreements, what criteria we use in choosing trading partners?

Answer: That will be decided in the review. Some points—such as pursuing the largest possible new opportunities for American exporters, establishing high standards for market openness and transparency—will be fundamental.

- In your view, should such agreements reflect the differing levels of development and other disparities between the U.S. and its trading partners?

Answer: The answer depends on the level of development of the country in question, and the specific provisions in play. As I have previously explained, LDC status is critical to issues such as striking the right balance between protecting pharmaceutical patents and ensuring access to essential medicines.

- Does the May 2007 agreement between Congress and the Bush administration regarding trade agreements provide a useful starting point or template for future bilateral trade negotiations?

Answer: Yes.

Colombia FTA

- What changes, if any, do you feel are needed in the trade agreement with Colombia that was negotiated by the Bush administration?

Answer: The President has indicated that he expects to see more to address ongoing violence against labor leaders and others in Colombia.

- Is there a risk that a FTA with Colombia will exacerbate rural poverty in that country? How can that risk be alleviated?

Answer: The Colombia FTA contains long phase out periods for sensitive agricultural products and other mechanisms that should enable local populations to adjust more gradually over time, rather than immediately and all at once. The Colombia FTA should also be an additional tool the Government of Colombia will be able to use to fight poverty and strengthen equality throughout Colombia. The increased economic activity that will result from the FTA will create additional jobs and opportunities in the formal sector, and will positively influence Colombia's efforts to reduce poverty. Moreover, the Colombia FTA includes a Trade Capacity Building Committee that will coordinate assistance programs in Colombia to promote economic growth, reduce poverty, and adjust to liberalized trade.

Peru FTA

- To date, do you feel that Peru has complied with commitments it made under its trade agreement with the U.S., particularly with regard to labor rights and environmental protection?

Answer: This is an issue that I will need to examine more carefully if I am confirmed. For now, I know that there have been some issues with Peru's implementation, but also some important successes. Were I to be confirmed, I would be committed to using all the resources of my office to implement this remarkable set of agreements.

- What steps can be taken to ensure that Peru makes any needed reforms, and modifies its practices to comply with the letter and the spirit of the labor and environmental provisions in the FTA?

Transparency of trade advisory committees

- If confirmed, do you anticipate making changes to the trade advisory committee structure in USTR?
- What criteria do you believe should be considered in forming trade advisory committees?

Answer. As I indicated, I have have no preconceptions on this or other decisive issues. However, I will say that I want to do everything possible to de-mystify USTR and breath life into initiatives to provide greater access to the public and to those who may not have had as fulsome contact in recent years.

Chinese Export Tax

- As U.S. Trade Representative, will you enforce vigorously the terms of the WTO Accession Agreement, specifically with respect to export taxes on raw materials imposed by China?
- If China does not eliminate imposing these taxes in a manner inconsistent with the accession agreement, what actions would you consider taking?

Answer: China imposes export quotas, export duties and other export restrictions on a number of raw materials, which continue to generate serious concerns for us. I can assure you that one of my top priorities will be to ensure that we aggressively defend our WTO rights and benefits vis-à-vis China and our other trading partners. We will use bilateral engagement, as well as the full range of WTO tools in our efforts.

Protection of U.S. intellectual property rights from commercial piracy in China

For more than three years, the Chinese People's Liberation Army (PLA) medical library has been improperly making copyrighted U.S. medical and scientific journal articles available for online re-sale by a private Chinese company. Last December I wrote a letter to the Chinese ambassador calling his attention to the actions of this firm, Kangjian Shixun Science and Technology, Ltd., and asking that this infringement be stopped. However, nothing has

happened, and pirated copies of U.S. scientific and medical journal articles made available by the PLA are still available on the company's website.

As a result of this piracy, U.S. publishers are losing tens of millions of dollars, and jobs at these companies have been placed at risk.

- If confirmed, what actions will you take to bring an end to the rampant theft of U.S. copyrighted materials by the Chinese military and its private-sector allies?

Answer: I understand that USTR officials have been working to address this specific issue and they have been raising the issue with Chinese officials. USTR is currently consulting with the U.S. industry about appropriate next steps. If I am confirmed, I will ensure that we use all appropriate avenues in our efforts to resolve this issue.

Beef hormone ban retaliation list

- The new beef hormone ban retaliation list, imposed by the Bush administration, must remain in place for at least six months. As USTR, will you review the economic effects of the current list, or do you expect to keep the list in its present form?

Answer: We will always keep the domestic economic effects of this or any import retaliation list under review. The purpose of the new beef hormone retaliation list is to encourage a resolution of the beef hormones dispute that will provide a fair result for the U.S. beef industry. USTR officials are currently engaged in discussions with the EU that could result in at least an interim solution to the dispute. I support these efforts, and will take whatever steps are necessary to achieve a prompt resolution of this dispute.

Senator Bill Nelson
Senate Finance Committee
Questions for the Record for Mayor Ron Kirk,
Nominee for U.S. Trade Representative
March 9, 2009

- **China/Consumer Product Safety:** In Florida we have a fairly serious problem with contaminated drywall, imported mostly from China, that causes corrosion in wiring, creating potential fire hazards, and health problems in some individuals. It is my understanding that some companies have already contacted USTR to seek some form of redress on this issue.
 - **How will your offices seek to respond not only to the issue of contaminated drywall, but also to the larger problem of trade enforcement and consumer product safety with regard to China?**
 - **More broadly, how will USTR work with other U.S. agencies – e.g., the Department of Commerce, Customs and Border Protection, Consumer Product Safety Commission, and the Environmental Protection Agency – to balance trade facilitation with environmental concerns and consumer product safety in dealing with imports from China and elsewhere?**

Answer: I understand that USTR is one of several federal agencies that have been briefed on this issue related to Chinese drywall imports. Since USTR is not a regulatory agency, we are not engaged in assessing the technical situation or the proper regulatory response to this specific situation. However, there is no doubt that our government has the right and responsibility to protect the public from unsafe products. If confirmed, you can be sure I will work closely with the Department of Commerce, the CPSC, the EPA, and CPB, so that we can effectively protect the public from unsafe imports from all of our trading partners, including China, consistent with international trade rules.

- **Haiti:** The 2006 Hemispheric Opportunity through Partnership Encouragement Act (HOPE) and the 2008 HOPE II are aimed at revitalizing Haiti's textile industry and spurring economic growth.
 - **What more can we do on the trade front to assist the Haitian people take advantage of duty free access through HOPE II and other preference programs? What customs and port training or other technical assistance could the U.S. Government provide?**

Answer: We will work with CBP and other agencies to ensure that the Government of Haiti and the Haitian private sector are prepared to take advantage of all the benefits under HOPE II.

- **Israel/Jordan/Middle East:** We need to think creatively about ways to promote economic trade in the Middle East to achieve our national goals. The U.S.-Israel Free Trade Agreement will mark its 25th Anniversary in 2010. Other initiatives have shown promise, including the Qualifying Industrial Zones (QIZ), established in 1996 to support the peace process. These QIZs, industrial parks located in Jordan, manufacture jointly-produced Israeli-Jordanian goods for duty free export to the U.S. duty.
 - **What are your views on Israel’s request for Qualifying Industrial Zone (QIZ) designation for additional areas for new satellite factories in Jordan and allowing “cumulation of rules of origin”? In your view, how has Jordan improved its overall labor administration and compliance?**

Answer: It is critical to promote commerce in this region and we will evaluate Jordan and Israel’s request with that in mind. In response to labor issues that arose several years ago, the Government of Jordan responded swiftly to attempt to address these problems. We will work with the Department of Labor to continue to monitor carefully the situation and evaluate Jordan’s progress.

I would urge you to review the U.S.-Israel Free Trade Agreement and the QIZ Initiative to determine new ways to cooperate more fully with Israel and Jordan and grow our economic relationship with both countries, as well as with the broader Middle East.

**Senator Pat Roberts
Questions for the Record**

**Senate Finance Committee: Ron Kirk Nomination, United States Trade Representative
March 9, 2009**

- 1.) In accordance with the “controlled risk” designation determined by the OIE guidelines, all products from all ages of cattle are safe to consume, assuming that the specified risk materials (SRM’s) are removed. The beef industry represents \$6.3 billion to the Kansas economy. Full access to foreign markets is critical. China remains closed. Japan has limited imports to boneless products from animals 20 months and under. And other previous markets are either limited or still closed.

- What are you going to do to help reopen foreign markets to U.S. beef consistent with OIE guidelines.

Answer: This Administration is committed to ensuring strong enforcement of existing trade rules. I understand the importance of exports to the U.S. beef sector, and if confirmed, I can assure you that I will work closely with Secretary Vilsack and representatives of other regulatory agencies to engage with Japan and China as well as other trading partners to normalize our trade in beef in these important markets.

- 2.) Equally as critical as new market access is the protection of our existing international markets. A continued and growing problem for the US beef industry is non-tariff trade barriers that are often implemented under the guise of animal disease or food safety concerns.

- What is your position on the challenges of these non-tariff trade barriers and what actions will you take as USTR to hold our international partners to trade based on sound science and guidelines such as those developed by the World Organization for Animal Health (OIE)?

Answer: If confirmed, I will be committed to ensuring trading partners meet international trade obligations, including those of the WTO SPS Agreement. And, where they should fail to do so, I will aggressively utilize, in cooperation with Administration and Congressional colleagues, all available tools in the WTO and other mechanisms.

- 3.) Three U.S. trade agreements have been negotiated and await Congressional action: Colombia, Panama, and South Korea. Combined, they will give U.S. exporters enhanced access to markets of more than \$1 trillion and 100 million

consumers. (Department of Commerce press release 9-29-08). It is well past time to act on these agreements for not only economic reasons, which is reason enough, but for geo-political reasons, particularly with Colombia. The Colombia FTA is a win-win. Right now, nearly all of Colombia's exports enter our market duty-free, under current preference programs. What the trade agreement will do is to balance the playing field for U.S. producers and exporters. However, the Colombia FTA is important from a national security perspective, too, with the growing anti-American sentiment and political instability that we're seeing in South America.

- In this economic downturn, how can we afford to ignore opportunities to open market access to our exporters and producers through the pending FTA's?
- Where is the Obama Administration on the Colombia, Panama, and South Korean FTA's? Will he send them up for Congressional action and if so, when?

Answer: We will work responsibly and expeditiously to address the concerns with the pending agreements that the President has expressed. And I look forward to working with you in a bipartisan spirit to reach consensus on what is fair and necessary to ask of our trading partners in order to ensure that real market access is achieved with adherence to the labor and environmental commitments made in the text of the agreements.

- 4.) In May 2007, an agreement was forged in regard to the demands for additional labor and environmental provisions in trade agreements. Unfortunately, the agreement failed to move the Colombia FTA and others forward as was the deal.
- Do you anticipate any changes or additions beyond the May 10th Compromise, and if so, what specifically?

Answer: We have seen the text of trade agreements evolve over the last twenty years and expect it will continue to evolve. In the case of labor language, text has gone from silence on labor rights to side agreements to inclusion of the five basic internationally agreed rights in the core of the text. The May 10th Agreement established a strong foundation for bipartisan progress on trade and we will not seek to build on that foundation without bipartisan support. We will work with Congress to ensure a diversity of views is heard on the subject.

- 5.) For years I have been alarmed about the subsidies provided by Europe to Airbus and I was pleased with the decision to challenge it in the World Trade Organization. This issue came to a head again last year when the Department of Defense awarded the Air Force tanker contract to a consortium of Northrop Grumman and EADS, Airbus' parent. Now, the GAO found that the competition

was not fairly and evenhandedly judged by the procurement office. But I was equally outraged that the platform proposed by the EADS team was the A-330, which is one of the most heavily subsidized planes in history—more than \$6 billion. I just wanted to give you a sense of the real-world implications of this case and hope that you will commit to make its resolution a key priority of yours during your tenure at USTR. Do you have any comments?

Answer: I recognize that this is an important case to you and other members of this committee and I will make it a priority.

- 6.) I understand and support the goals of the Doha Development Agenda. However, I'm concerned that the current Ag modality packaged tabled before our negotiators gives more in terms of domestic support for our farmers and ranchers than what we are securing in market access. What assurances can you provide to Ag producers that they will not be forced to shoulder an unfair burden in the context of any Doha agreement?

Answer: If confirmed, I will work to ensure that any Doha Agreement is a strong, market-opening agreement for agriculture as well as industrial goods and services. However, it will be necessary to correct the imbalance in the current negotiations in which the value of what the United States would be expected to give is well-known and easily calculable, whereas the broad flexibilities available to others leaves unclear the value of new opportunities for our farmers, ranchers, and businesses.

- 7.) We've hear a lot about how trade agreements are bad for the U.S. economy and workers, particularly in regard to NAFTA. However, both Canada and Mexico represent our largest export markets, in that order. For Kansas, our exports in 2007 to Canada were \$2.4 billion and just under \$1 billion to Mexico. These are pretty important markets for Kansas exporters.

1. What changes do you expect in regard to NAFTA and do you intend to work with all members of this committee on any proposed changes?

2. What does "renegotiation" mean exactly?

Answer: I can say three things now: First, We fully understand how important the Mexican and Canadian markets are to our producers, and in particular to our agricultural interests.

Second, the President already has spoken to President Calderon and Prime Minister Harper about the opportunity to "improve" the NAFTA, and make it more relevant to the situation that the three countries face over sixteen years after the original agreement was signed. That's in the interest of all three partners. And third, we will work closely with the Committee as we move forward in this

collaborative effort to make our trade work for the benefit of the millions of people within the NAFTA region.

- 8.) The United States, Argentina, and Canada filed a case in the World Trade Organization (WTO) against the European Union in 2003 over its five-year moratorium on approving agricultural biotech products. In 2006, the WTO panel ruled in favor of the U.S. and found the moratorium as well as the EU member-state bans of previously approved products to be illegal. By not allowing its approval system to operate, the EU was found to have imposed “undue delays on biotech approvals, resulting in extensive delays and preventing the marketing of many crops grown in the United States.” After the reasonable period of time to comply with the ruling lapsed, and with industry consensus, USTR continued to meet with their European counterparts regarding the case and conducted dialogue regarding the US’ position on EU progress regarding approvals. In January 2009, the prior Administration declined to move forward with the case. It is my understanding that any progress at this time in the EU seems to be based on process, not outcome. In fact, the number of unapproved traits in the pipeline has increased since the U.S. won this case.

1. How does this Administration intend to address non-tariff trade barriers like this moratorium that prevent the export of our agricultural products such as corn and corn gluten feed?

Answer: We are developing additional expertise and directing resources at addressing non-tariff barriers to trade like this one. I will work with you to ensure that non-tariff barriers are identified and remedied.

Questions from Senator Rockefeller for Ronald Kirk

1.) I recognize that the US Trade Representative is tasked with negotiating the opening of foreign markets to US goods. Your goal is not to create more barriers, but many of our states worry that we've broken down more of our own barriers than our trade partners. If you met with American businesses you'd see that they're facing stiff challenges and international competition every day. I sponsored a bill last year that would have closed a number of loopholes and attacked a number of the major problems our domestic industry is facing, such as allowing US businesses to participate in WTO disputes, bolsters Congress's role in consulting with USTR on WTO disputes, makes currency manipulation subject to countervailing duties, and making countervailing duties subject to non-market economies, among other things. I plan on introducing this bill again this year and although it isn't in the direct purview of the US Trade Representative, I'd like to know what your view is on areas of our domestic trade laws that need reforming. I'd also like to know how you will attack wrongly decided WTO decisions, like zeroing and the Continued Dumping and Subsidies Offset Act (CDSOA or Byrd Amendment)? These were so clearly wrong that we must have a strategy for addressing them.

Answer: You are correct to say that USTR has objected clearly and strongly to a number of WTO dispute decisions as not being grounded in the text of certain WTO agreements. I am committed to finding a way to address this problem effectively and look forward to working with you on it. As to other issues in the operation of the U.S. antidumping law, I hear and share your concern for domestic producers struggling in a very competitive global market. Where that competition is unfair, I will work with you and the Department of Commerce to provide effective remedies for it. I also agree that we need a strategy for effective enforcement and I will work with you and my colleagues in the Cabinet in its construction and execution.

2.) I would like to ask a question about our strategy in the WTO Doha Round talks as it relates to the so-called "Rules" negotiations – i.e., those dealing with disciplines against subsidies and "dumping" of products. As you know, China, Japan, India and others that have routinely violated international rules in this area are seeking to use the Doha talks to force weakening of U.S. laws against unfair trade. They are hoping we will make concessions in this area in return for an overall agreement in the Doha Round. Let me assure you that such an approach would lead to a catastrophic result when any agreement reached Congress. There is no tolerance in this body to weaken our trade laws and allow unfair imports to cause even more damage here.

It is clear that we need a very different approach to the Rules negotiations as compared to what we saw with the previous Administration. As far as I could tell, our prior strategy was to just let the trade law weakening proposals pile up on the other side, without putting forward any significant proposals of our own to *strengthen* international disciplines on unfair trade. I believe it is critical for the Administration to change this dynamic and put forward major, substantive proposals to enhance disciplines against unfair trade. These should include proposals to rectify the current disparate treatment of

the U.S. income tax system vis-a-vis foreign VAT tax systems, proposals to force the WTO Appellate Body to follow a deferential standard in reviewing national unfair trade determinations, a proposal to revive the Continuing Dumping and Subsidy Offset Act (CDSOA) and proposals to rectify the raft of erroneous decisions the AB has issued over the years.

Please describe your strategy in this area and if you intend to put forward the type of proposals outlined above.

Answer: As I stated at my confirmation hearing, we are reassessing what is on the table on the Doha round and will not agree to the current language. We will work with you and Congress to ensure that we make progress at the WTO on these talks in a way that ensures strong antidumping and countervailing duty rules, and that increases prosperity and market opportunities for our producers.

3.) As you know, the United States specifically negotiated in the Uruguay Round to ensure that WTO dispute settlement panels and the Appellate Body would adopt a deferential standard of review in assessing national anti-subsidy and anti-dumping determinations. Where the relevant WTO agreements would permit of more than one reasonable interpretation, the intent was to allow national authorities to adopt whichever of these interpretations they felt would be most effective and beneficial. Over the years, the WTO Appellate Body has issued numerous decisions that have made a mockery of this standard of review, essentially finding that there is only one reasonable interpretation of key provisions – even where the provisions are unclear on their face and do not specifically speak to the issues in contention. Recently, the Appellate Body issued an analysis of the standard of review itself, an analysis that all but reads that standard out of existence.

For example, the WTO has engaged in an effort to eliminate the U.S. zeroing methodology in antidumping proceedings that has been applied for decades against those engaging in unfair and predatory trade practices. The WTO has sought to impose obligations on the U.S. that were never agreed to at the negotiating table, such as their ruling the Continued Dumping and Subsidy Offset Act (CDSOA also known as the Byrd Amendment) illegal. Many in the Congress, Democrats and Republicans, together with the Bush Administration aggressively pushed back against these efforts at the Doha Rules negotiations.

I think it is fair to say that the level of frustration with the WTO dispute settlement system in this body and in the country is reaching a critical level. This latest effort to rewrite the applicable standard of review – and to gut a provision that was critical to U.S. support for the Uruguay Round – shows just how out of control the situation is.

How do you plan to address this problem and to ensure that the WTO dispute settlement system will, going forward, operate in the manner intended? What can we do – and what will you do – to see that the past erroneous decisions issued by the Appellate Body are corrected? I would welcome the opportunity to work with you and USTR on how we can get a grip on this issue, and what steps Congress can take to achieve real change.

Answer: As noted, I intend to work on this issue to attempt to find a more effective way of addressing these problems in the WTO dispute settlement system. We appreciate and would welcome the opportunity to work with you as well. We take your concerns seriously and are working on a strategy in relation to WTO decision with which we disagree.

4.) I have long followed the Japanese privatization of their postal industry and throughout that process they have promised transparency and fairness. At present, Japan Post continues to have the world's largest bank and insurance company. As this privatization struggles through its early stages, do you commit to vigorously enforcing US rights under existing trade agreements and that you will use the authority of US trade laws to ensure fair competition for US companies operating in the Japanese marketplace?

Answer: USTR has been closely following developments in Japan and has raised the United States' serious concerns on this issue with Japanese officials. We are prepared to continue to press Japan in all appropriate fora to provide fair treatment to U.S. insurance companies.

5.) Currently, PET resin from India and Indonesia receives duty-free treatment under the Generalized System of Preferences (GSP) even though we have seen a massive growth in exports of PET resin from both of these countries and that Indonesia exceeded the competitive need limitation (CNL) by the third quarter of 2008. Indeed Indonesia is seeking a CNL waiver for PET resin. As a result of the large volume of low-priced imports, prices remain suppressed in the U.S. market and the domestic industry has been forced to close facilities, lay off employees, and has lost money in each of the last 3 years.

In light of the injury to U.S. manufacturers, I ask that you review the eligibility of the PET resin from India and Indonesia for duty-free treatment under the GSP and further ask that the USTR cast a critical eye on Indonesia's CNL waiver petition.

Answer: I understand your concern with respect to these petitions to remove the GSP eligibility of polyethylene terephthalate (PET) resin for U.S. imports from India and Indonesia as well as the petition for a waiver of the competitive need limitations (CNL) for imports of PET resin from Indonesia.) We have received public comments and held public hearings on both petitions and have asked the U.S. International Trade Commission (USITC) for its advice on the impact on U.S. industry and consumers on each petition, if granted.

Before making a recommendation to the President, the interagency team will review the pertinent statutory and regulatory considerations, as well as information obtained from hearing testimony, public comments, and the advice from the USITC. We also will consult with the pertinent committees of the House and the Senate before finalizing a recommendation. The President must announce his decisions no later than June 30, 2008.

Senator Charles E. Schumer
Questions for the Record
Nomination of Ron Kirk to be USTR
March 9, 2009

China Trade and China Currency

I know that China currency manipulation is within the purview of the Treasury Department, but I have two questions related to this issue that I would like to ask.

First, does the slowing economy in China and the recession in the United States make this a better time to address these trade issues with China, or a time where we should tread more carefully? In other words, does the economic slowdown make it *easier* to make progress, because you can lay the groundwork for reforms that will have a greater impact once the economy rebounds, or does it make it *harder* because the economic downturn magnifies any concessions a country might make on trade?

Answer: I will work with my colleagues in the Cabinet to ensure that we make progress on this critical issue while remaining sensitive to the current financial situation.

Second, on issues that are in your area of jurisdiction, what are the three or four *specific* cases or issues related to China that USTR is pursuing, or is expected to pursue?

Answer: The complexity of our trade relationship and the importance of access to the China market for so many U.S. industries make it important to be active on many fronts. USTR has been pursuing high priority issues in a number of areas, including, among others, the areas of intellectual property rights, industrial policies (including government subsidies and an array of other distortive policies), agriculture market access and services market access. In addition to continuing this engagement, I will continue to pursue enforcement of our rights under the WTO, not only through vigorous prosecution of our pending WTO cases against China but also in any other situations where WTO action would be appropriate. I will also ask my staff at USTR to scrutinize China's recently announced stimulus policies in order to ensure that they are consistent with China's international trade obligations.

China and CVD Remedies

You may be aware that the Government of China has challenged in the World Trade Organization the use by the United States of its countervailing duty law to address the issue of Chinese government subsidies to companies that export to the United States. I believe that this challenge is misplaced particularly in light of the fact that China specifically agreed in its WTO accession protocol that its trading partners would be able to apply countervailing duties when warranted, and in accordance with WTO rules.

I would appreciate it if you could detail for me what you will do as U.S. Trade Representative to defend the United States in these WTO challenges and how you will ensure that the U.S. maintains its ability to apply the countervailing duty law to countries like China, which provided billions of dollars in subsidies to help favored industries.

Answer: I am committed to defending vigorously this challenge by China, including by working effectively with the Department of Commerce here at home and with other governments that share our interests to present the very strongest case to the panel and make clear the importance not just to the United States but to the WTO system of maintaining the ability to address China's subsidies.

China and Intellectual Property

I would like your views on an intellectual property rights (IPR) matter of great importance to the publishing industry in my home state of New York.

The Chinese People's Liberation Army (PLA) medical library allegedly has been making copyrighted U.S. medical and scientific journal articles available for online re-sale by a private Chinese firm, Beijing Kangjian Shixun Technology Company. On December 1, 2008, I wrote to the Chinese Ambassador – with my colleagues from New Jersey, Senators Lautenberg and Menendez – asking that the matter be investigated to ensure that China holds its companies to the same rigorous IPR standards as U.S.-based firms. Regretfully, I have not received a reply from the Ambassador.

The publishers impacted by these alleged IPR violations directly and indirectly employ over 50,000 workers in the United States. Thirteen publishers maintain extensive operations in New York, providing over 2,500 jobs. I am concerned that Kangjian Shixun's activity in China may be putting these jobs at risk. Can you assure the Committee that, if confirmed, you will thoroughly investigate the alleged theft of U.S. copyrighted materials by the Chinese military and its private-sector allies in China, and if copyright violations are confirmed, bring them quickly to an end?

Answer: I understand that USTR officials have been working to address this specific issue and they have been raising the issue with Chinese officials. USTR is presently consulting with the U.S. industry about appropriate next steps. If I am confirmed, I will ensure that we use all appropriate avenues in our efforts to resolve this issue.

Dairy and Canada

Coming from a state that borders one of our most significant trading partners, I keep a close eye on our trading relationship with Canada. The Canadian dairy market is a very important export market to the dairy industry in my state. Because of this, some of the recent moves by Canada to make the continued sales and growth of U.S. dairy products to Canada more difficult have greatly concerned me. What is your view of Canada's

recent efforts to revise its dairy product standards and impose WTO safeguard levels that include imports under Canada's Import for Re-Export Program? Will you commit to working with me to address these issues and the full range of the trading relationship between the U.S. and Canada?

Answer: I am always concerned when a trading partner takes action or maintains policies which reduce U.S. access to its market. If confirmed, I look forward to working with you to address these and other U.S.-Canadian bilateral issues.

Trade in Art and Antiquities

Several foreign countries – Cambodia being a recent example – have requested that the United States refuse entry of art objects and antiquities from those foreign countries that do not have an export permit. Do you agree that the United States should agree to these restrictions for foreign countries that as a matter of policy never issue any such permits?

Answer: Several agencies work to address issues arising out of the importation and exportation of art objects, antiquities, and other cultural property. In some cases there are import restrictions arising out of international agreements and treaties. Under some of the agreements an export permit is required. I will work with other government agencies on appropriate approaches to this issue.

Trade and Small Business

Small businesses export \$263 billion in goods and services each year, accounting for 29 percent of all U.S. exporting. That percentage is slightly less than it was 10 years ago, indicating that exporting among small firms is increasing more slowly than among big businesses. I have a few questions regarding the Administration's trade agenda as it pertains to small business.

- There are nearly 240,000 small businesses involved in exporting. I would like to know *specifically* what you plan to do to help support small business that is different from what the previous Administration was doing.

Answer: I cannot speak to the work the previous Administration did in relation to trade and small businesses. It was a priority for me as Mayor of Dallas and it will be a priority for me as USTR if I am confirmed. I will task a senior official to ensure that we are working on it and we will work in close coordination with Commerce and SBA on the issue.

- Looking at forthcoming trade agreements, would you be willing to give special consideration to small businesses by lowering their trade barriers, or reducing their transaction costs, in order to help facilitate more small business exporting?

Answer: I will make sure those questions are asked and will fight to expand the benefits of trade to include more small and medium sized businesses, including

through trade facilitation efforts to address opaque customs procedures that particularly affect small and medium sized exporters.

- In light of the fact that 97 percent of all exporters are small businesses, would you commit to having an Assistant U.S. Trade Representative that is focused exclusively on small business issues? If not, why not?

Answer: I will strongly consider it. If that is the best way to ensure that we can expand small business exports and we have adequate resources, then I will do it. We will also explore other ways to reach that goal.

Senator Snowe Questions for the Record for Ronald Kirk***1. Question on Manufacturing Industries Hurt by Trade Liberalization***

Representing the people of a state that has lost many of its historic manufacturing industries, I believe that shifting the focus of U.S. trade policy to job preservation is absolutely essential to the survival of the U.S. manufacturing sector. Between 1994—the year NAFTA came into effect—and the beginning of the current economic downturn, America lost over 4.5 million jobs. Over 26,000 of these manufacturing jobs were lost in Maine—a state with a relatively small population where such losses have a devastating impact, particularly on small towns. The economic crisis which began last year has further decimated U.S. manufacturers, which shed over 600,000 jobs in 2008, and 219,000 more just last month. Tragically, these lost jobs have been some of the best paying work in the country. The average manufacturing worker earns a weekly wage of \$725, 20% higher than the national average.

It is no coincidence that this withering of our country's once-unparalleled manufacturing base took place during a period of record trade liberalization and increases in imports from large, often poorly regulated low-cost producers like China and India. Import competition from—and in some cases, off-shoring of entire production lines to—countries with low wages, poor labor standards and lax environmental laws has undoubtedly played a large role in the decline of American manufacturing, and has deservedly generated considerable resistance among many former and current manufacturing workers to further trade liberalization.

Given that the President's Trade Policy Agenda released last week did not mention the manufacturing sector even once, should America's manufacturing workers be expecting more of the same from this Administration in terms of their jobs being sacrificed on the negotiating table?

Answer: The Administration has made clear that its trade policy will advance and defend the import interests of American manufacturers and their workers—both by redeveloping our manufacturing base and making manufacturing opportunities for export real. These are two of the core goals for our economic and trade policy. The Trade Policy Agenda makes clear that American trade remedy laws have to be vigorously enforced to ensure fair trade for U.S. manufacturers and their workers at home, while also pressing vigorously for new export markets by challenging discriminatory practices, industrial policies, and nontariff barriers overseas. This Administration is committed to taking these actions and all others that are feasible and effective to provide real results for American manufacturing, not just rhetoric.

2. China Currency Manipulation Questions

While China's currency has appreciated nearly 19% since Beijing removed it from its peg to the dollar in July 2005, manufacturers and workers in trade-sensitive industries—such as paper production in Maine—feel that the Yuan may still be undervalued by as much as 20%, making Chinese imports artificially cheaper vis-à-vis competing U.S. goods.

Yet under the previous administration, the Treasury Department's inability to classify China's intervention in the valuation of its currency as "manipulation" frustrated me and many of my colleagues who would like to see greater pressure put on China to allow its currency to appreciate more rapidly, according to market forces.

Needless to say, I was therefore pleased when, in response to question I and others on this committee posed to him on the record in connection with his confirmation hearing, Treasury Secretary Tim Geithner stated that, "President Obama—backed by the conclusions of a broad range of economists—believes that China is manipulating its currency" and that "President Obama has pledged as President to use aggressively all the diplomatic avenues open to him to seek change in China's currency practices."

Do you believe, like the President, that China is manipulating its currency, and would you as USTR be comfortable—should the President deem that circumstances warrant it—bringing a formal dispute resolution case against China or any other currency manipulator in the World Trade Organization?

Answer: I appreciate the concerns that you have raised about China's currency practices. The Treasury Department is responsible for issues pertaining to other countries' currency practices and will make its determination concerning China's currency in its semi-annual report to Congress on international economic and exchange rate policies. If confirmed, I will work closely with the other senior officials in the Administration to develop a comprehensive and integrated policy to address the full range of China's trade policies that impact the United States. As part of this comprehensive effort, of course, we will need to review China's actions for consistency with its WTO obligations. I will aggressively pursue WTO action whenever that approach will be the most effective and appropriate means to address U.S. concerns.

In July 2007 the Finance Committee—with my support—favorably reported the "Currency Exchange Rate Oversight Reform Act of 2007", which would direct the Secretary of the Treasury to identify countries with "fundamentally misaligned" currencies (i.e., currencies that do not correspond to market conditions, whether or not due to deliberate foreign government manipulation), and impose gradually increasing restrictions on financial cooperation with such countries over the course of a year, possibly culminating in the U.S. bringing a formal dispute resolution case against an offending country in the World Trade Organization.

Are these legislative changes that you would recommend that the President sign into law? Would you like to see different or additional authorities granted to the Office of the U.S. Trade Representative to deal with currency manipulation?

Answer: If confirmed, I will work closely with the other senior officials in the Administration and consult with Congress so that we can ensure that the Administration has all the tools needed to address our trade policy priorities, including with China.

3. Question on Value Added Tax as a Trade Barrier

About 150 of our trading partners impose value-added tax (VAT)—i.e. taxes assessed at every level of production process—on goods sold domestically. These countries often rebate the value of any VAT on exported products, resulting in the good being cheaper to an overseas—and often American—buyer. This is, in effect, an export subsidy. Yet, World Trade Organization rules purport to exclude VAT rebates from the definition of a subsidy, meaning the U.S. cannot effectively challenge VAT rebates as an unfair trade subsidy.

To add insult to injury, these foreign countries impose their VAT on the U.S. products shipped to their market for sale, essentially constituting a tax on imports. Again, WTO rules ostensibly allow for this practice, on the basis that a country has the right to ensure that equal taxes are ultimately applied on all goods sold within its borders. U.S. labor groups estimate the cumulative cost to the U.S. economy at \$290 billion for manufactured goods and \$85 billion in service trades—about half of our yearly global trade deficit.

As the Doha Round struggles to regain its footing after multiple failed attempts at making progress, how would you address the need to reform these WTO rules to allow non-VAT countries such as the United States to prevent VAT schemes from being used as a trade barrier?

Answer: This issue has been a priority negotiating goal directed by Congress since 2002. The Administration intends actively to pursue that goal.

4. Question on Small Business Representation at USTR

Over 97% of U.S. exporting manufacturers are small businesses, yet USTR has no official dedicated to looking out for the needs of this sector. This is especially troubling given that small businesses do not have the resources of larger corporations to detect and take legal or lobbying steps against trade violations by foreign parties which harm their sales, such as counterfeiting in China. I was therefore pleased to see as part of the President's Trade Policy Agenda released by USTR last week the statement that "trade and commercial policies should help small and medium-sized firms become more integrated as effective competitors in the global marketplace."

In previous Congresses, I have sought to address this need by proposing the creation of an Assistant USTR for Small Business. This political-appointed official would be equivalent in rank to an Assistant Secretary, and have primary responsibility for representing the interests of small businesses at the WTO and in bilateral trade negotiations. The official would also be the point-of-contact for small businesses which are seeking enforcement of U.S. trade rights that are being violated by foreign countries.

Would you support the creation of an Assistant USTR for Small Business? If what other ways would you suggest prioritizing the trade concerns of small and medium-sized businesses?

Answer: Working with and getting results for small businesses was a priority for me as Mayor of Dallas and it will be a priority for me as USTR if I am confirmed. I will task a senior official

to ensure that we are working on it and we will work in close coordination with Commerce and SBA on the issue. With respect to the creation of an Assistant USTR for Small Business, if that is the best way to ensure that we can expand small business exports and we have adequate resources, then I will do it. We will also explore other ways to reach that goal

5. *Question on Dairy Products in the Proposed Trans-Pacific Free Trade Agreement*

As you know, the previous administration announced in September the intention of the United States to enter into trade negotiations with Singapore, Chile, New Zealand, and Brunei Darussalam under the framework of the “Trans-Pacific Partnership FTA.”

I am very concerned about the impact that a trade deal with New Zealand that included dairy products would have on the dairy industry in my state. One company—formerly the state-run dairy trading monopoly—still controls over 90% of the milk produced in New Zealand. As a result, it is able to dominate not only that country’s dairy market, but also approximately one-third of the global dairy trade.

This near-monopoly situation, coupled with the relatively small market New Zealand constitutes for U.S. dairy producers, means that the dairy trade relationship between our two countries is already strikingly one-sided. In 2008 New Zealand exported \$704 million worth of dairy products to the U.S. while we shipped them only \$8.6 million to them. An FTA that dropped tariffs on what is already a flood of low-priced dairy products would only further exacerbate this unbalanced relationship, leading to the displacement of domestically produced dairy products and—ultimately—jobs losses in rural areas that can not bear further setbacks in the current economic environment.

As USTR, how will you work to address the concerns of the U.S. dairy industry with respect to the treatment of New Zealand’s dairy products in a Trans-Pacific FTA?

Answer: I understand the concerns of the U.S. dairy industry regarding New Zealand, and thank you for bringing them to my attention. If confirmed, I will work with my staff, the Congress, and stakeholders including the dairy industry as we develop and execute a strong strategy to engage with Asia.

6. *Question on Softwood Lumber*

Last month, I led nine of my Senate colleagues, including several members of this committee, in sending a letter to the President urging him to raise the issue of Canada’s numerous violations of the Softwood Lumber Agreement with Prime Minister Harper during his trip to Ottawa, because ensuring Canadian compliance with the pact is essential to Maine’s mills, four of which have shut down indefinitely in the last year, resulting in the loss of nearly 200 jobs in my home state. And approximately 20 more mills in Maine have no choice but to significantly cut back hours, deepening the recession in communities that can ill afford such setbacks. These mills—which are already struggling with the lowest demand for softwood lumber in decades—must simultaneously deal with a deliberate effort by Canadian provinces to circumvent the agreement with new subsidies and reduced stumpage fees.

Thankfully, a certain degree of credibility was restored to the Agreement two weeks ago, when London Court of International Arbitration (LCIA) ordered Canada to impose an additional \$68 million in export taxes on lumber from certain provinces which breached quota obligations under the pact in 2007. I firmly believe that the agreement's ability to survive the current market downturn will rest wholly on Canada's willingness to swiftly implement the additional export taxes ordered by the panel and cease its further violations of the SLA.

As USTR will you ensure that Canada fully complies with the arbitration decision by implementing the ordered remedial export taxes?

Answer: If confirmed, I will work to ensure that Canada cures its breach of the Softwood Lumber Agreement.

7. Question on Canadian Customs Duty Exemption Disparity

As USTR notes in its 2008 National Trade Estimate Report on Foreign Trade Barriers, Canada's strict personal customs duty exemption limits discourage shopping visits to the United States by Canadian border residents. Under these rules, Canada allows its residents no personal exemption from customs duties on goods purchased during trips abroad lasting less than 24 hours. For trips between 24 and 48 hours, Canadians are exempt from their government's duties and taxes on only the first C\$50 of purchases. In contrast, the United States allows its residents to bring \$200 of merchandise into the country duty free upon returning from a trip abroad lasting less than 48 hours.

Moreover, these rules are inconsistent with Canada's obligations to the United States under NAFTA, because they are designed to give Canadian retail and distribution service providers an advantage over their U.S. counterparts just across the border. Despite this inconsistency with NAFTA and frequent requests by U.S. lawmakers and trade officials, Canada has for years refused to change these rules.

That is why my friend and colleague Senator Cantwell and I introduced a bill in the last Congress that would direct USTR to initiate an official investigation of Canada's personal duty exemption scheme as an unfair trade practice. This legislation would not be necessary if USTR were willing to initiate Canada's scheme of its own accord.

As USTR, would you be willing to investigate Canada's customs duty exemption scheme as a possible unfair trade practice?

Answer: I would like to work with you and others who are interested to address this bilateral matter.

8. Question on Rubber Footwear

The manufacture of non-rubber footwear, which was once a great American industry that provided employment in many factories throughout New England, has virtually disappeared due to the attraction of low wages in Asia. Many rubber footwear plants have been able to resist this

migration largely because of the level of tariffs on categories of rubber footwear still made in the United States. Today, the industry employs nearly 1,000 people in Maine.

The threat to domestic rubber footwear production by import competition has been such that previous administrations ensured that none of the Kennedy, Tokyo and Uruguay Rounds of multilateral trade negotiations resulted in any cuts in the duties of the industry's core products. The concentration of footwear manufacturing in China since that country's accession to the World Trade Organization (WTO) leaves no uncertainty about what abandoning this long-standing policy in the Doha or future rounds would mean for U.S. footwear manufacturers: domestic production and jobs would be seriously threatened by import competition from Chinese producers, who would be the only beneficiaries of the dramatic reduction in duties. These losses would be all the more likely and devastating in the current economic climate, potentially prolonging and deepening the downturn.

As USTR, will you make accommodations for trade-sensitive U.S. industries that are critically important to state and local economies by seeking to exclude them from duty reductions in future WTO and Free Trade Agreement negotiations?

Answer: We intend to listen to all interested parties as we reassess the United States approach to the Doha negotiations.

9. *Question on State Input in U.S. Trade Policy*

The often negative impact of trade liberalization on particular states and communities has highlighted concerns in those states with the lack of opportunities for local governments and groups to provide input in the trade policy formulation process. I firmly believe that a major part of the review process you spoke of in your testimony should focus on increasing consultation with state- and local-level trade policy organizations, such as the diligent state legislators, business and community leaders of the Citizen Trade Policy Commission in Maine.

As USTR, how would you improve your office's interaction with state and local governments and trade policy groups to better address their concerns with U.S. trade policy?

Answer: USTR needs to do a much more proactive job of reaching out to governors, State Attorneys General, local officials and others to solicit their input early and often.

10. *Question on Japan's Retaliation against Goss International*

USTR's 2009 Trade Policy Agenda released last week notes that the United States is working with Japan to strengthen our bilateral investment relationship and improve the climate for direct foreign investment. However, I am concerned that one ongoing dispute with Japan may be overlooked that calls the current status of this relationship into question.

The Japanese Government sponsored and enacted a retaliatory law that nullifies a valid U.S. federal court judgment obtained by Goss International, a U.S. company that produces printing presses and employs many Maine citizens. Goss won the lawsuit against a Japanese competitor

that was found to have violated U.S. law by dumping printing presses in the U.S. market with the express intent of destroying the U.S. industry. In a separate investigation, the Japanese defendant was also found by the Commerce Department to have evaded dumping duties by using a secret rebate, false invoices, and withholding of documents requested by Commerce.

The retaliatory Japanese law allows the Japanese company that violated U.S. laws to recover the full amount of the judgment from Goss or its Japanese facility. Japan enacted this law unilaterally in violation of WTO rules, and possibly in violation of the Friendship Commerce and Navigation ("FCN") treaty that guarantees non-discriminatory treatment for U.S. investors in Japan.

As USTR, would you work with the State Department to resolve this matter and protect a U.S. company which lawfully sought relief from illegal dumping?

Answer: USTR is monitoring these problems closely, and is working with the State Department and other interested agencies to urge the Government of Japan to provide fair treatment to Goss and its Japanese investment.

**Senator Debbie Stabenow
Kirk Hearing Questions for the Record**

Outreach to Small Business Manufacturers

The small business manufacturers in our state are on the front lines of globalization and trade. When a country provides export subsidies or unfairly taxes imports small businesses are often forced to shut their doors before they can reach out to USTR. In many instances, they are unsure of even how to navigate USTR.

What do you think USTR can do to become more transparent and helpful to small businesses?

Answer: As a former Mayor, I know well the importance of small businesses and their success to our communities and workers. I will work with Commerce and the SBA to ensure that we are breaking down barriers to entry into the global market for small businesses and equipping them with the assistance necessary to be competitive.

Counterfeit Auto Parts

China has resisted efforts combat piracy and counterfeit manufacturing in their country. When my staff and I meet with Chinese officials, they say they are working on the problem, but we have failed to see any real world results.

What role could USTR have to raise the profile of this issue and get substantive results from China?

Answer: I am aware that several members of Congress have proposed legislation to give the CBP greater authority and ability to intercept counterfeit goods. We will continue to work with China for them to do more inside their borders as well.

Currency

There is consensus from small businesses, large businesses, and economists that China's currency is undervalued. This undervaluation has caused many small business parts suppliers in my state to go out of business and left workers without a job.

Do you believe China artificially keeps its currency undervalued in order to keep their exports competitive?

Answer: I appreciate the concerns that you have raised about China's currency practices. The Treasury Department is responsible for issues pertaining to other countries' currency practices and will make its determination concerning China's currency in its semi-annual report to Congress on international economic and exchange rate policies. If confirmed, I will work closely with the other senior officials in the Administration to develop a comprehensive and integrated policy

to address the full range of China's trade policies that impact the United States. As part of this comprehensive effort, of course, we will need to review China's actions for consistency with its WTO obligations. I will aggressively pursue WTO action whenever that approach will be the most effective and appropriate means to address U.S. concerns.

China

1. In 2004 and 2006, a Section 301 petition was filed with the support of numerous members of congress alleging that the Chinese government had engaged in widespread and systematic repression of fundamental worker rights. Not only is this an unconscionable violation of Chinese workers' human rights, it also constitutes an unfair trade practice. By artificially suppressing the wages of Chinese workers, the government distorts the price of Chinese-made exports, costing American businesses profits and lost markets and costing American workers jobs. The Bush Administration twice rejected the AFL-CIO petition, without disputing its factual basis and without stating any substantive reasons.

As USTR, would you look favorably on an updated petition, if it were submitted to you?

Answer: China's labor practices are a matter of serious concern and we will work with the Department of Labor and the Department of State to examine the issue.

2. China's exchange-rate policy has contributed significantly to our bilateral trade deficit, which increased from \$84 billion in 2001 to \$266 billion in 2008. Economists across the political spectrum agree that China is manipulating its currency, providing an effective export subsidy of at least 30%. This currency imbalance has imposed a tremendous cost on American workers and producers. Furthermore, currency manipulation is not only an issue between the US and China, but is global.

Although currency issues have generally been considered the domain of the Treasury Department, they clearly have an enormous impact on trade flows. Do you agree that the misalignment/manipulation of currency is a critical economic problem?

If so, what steps would you advise to address it? Do you see any role for USTR in addressing currency manipulation?

For example, should USTR use Section 301 to urge a revaluation of the Yuan, as several petitioners – including several members of Congress – have repeatedly urged?

Answer: Again, I appreciate the concerns that you have raised about China's currency practices. The Treasury Department is responsible for issues pertaining to other countries' currency practices and will make its determination concerning China's currency in its semi-annual report to Congress on international economic and exchange rate policies. If confirmed, I will work closely with the other senior

officials in the Administration to develop a comprehensive and integrated policy to address the full range of China's trade policies that impact the United States. As part of this comprehensive effort, of course, we will need to review China's actions for consistency with its WTO obligations. I will aggressively pursue WTO action whenever that approach will be the most effective and appropriate means to address U.S. concerns.

3. We have a bilateral trade deficit with China of \$266 billion – more than 60 percent of our non-oil goods deficit.

How do you propose that we begin to narrow that deficit?

Answer: The President has expressed concern with the trade deficit with China. The overall trade balance of the United States reflects important macroeconomic factors, such as relative rates of economic growth, fiscal and monetary policies, patterns of saving and investment, domestic price levels and exchange rates. If confirmed, I will work closely with other agencies to ensure that our trade policies contribute powerfully to the President's national economic agenda for the renewal of growth that benefits the national and global well being.

Role of Congress

As you are aware, The U.S. Constitution gives the Congress authority to regulate international commerce, but Congress has periodically granted some of that authority back to the executive branch through trade negotiating or fast track authority. However, under the previous administration, many of Congress's concerns on a range of issues were ignored during trade negotiations. As an example, there is an Agriculture Negotiator, but no similar representation exists for manufacturing. Recommendations made during the so-called mock mark-up hearings were similarly dismissed – even when they were unanimous and bipartisan, as was the case with the Oman FTA.

What would you do as USTR to improve and deepen consultation with Congress throughout the negotiation process?

Answer: I view Congressional outreach and coordination as critical to the success of our trade policy and to its sustainability. We will respect the process and go beyond the letter of the law to ensure consultation is frequent and inclusive.

Panama FTA

In the President's Trade Policy Agenda, released March 2, 2009, it states that the Administration plans to move on the Panama FTA "relatively quickly."

Can you tell us more specifically what the Administration's proposed timeline is for introducing this agreement? Does the Administration intend to consult with Congress on any outstanding issues before sending up the implementing legislation?

Answer: I am going to enter my office and ask the staff to present to me what they and our counterparts at the Department of Labor think is necessary for Panama to do before we can comfortably send the agreement to Congress for ratification. Initial conversations with experts indicate that while that list exists, it is not long. I cannot say whether or not you should expect a bill before Easter. We need to present a list to the Panamanians and assess their willingness to address the issues promptly. I can say that nothing we ask should require a change to the text of the agreement. We will consult with Congress throughout.

On May 10, 2007, the House leadership and the White House announced negotiated amendments to the trade agreement template. These changes included improvements on labor, environment, procurement and intellectual property. However, many organizations still believe that these chapters could be improved further, and that other chapters, such as investment, services and trade remedies, for example, need further, more substantial amendments.

Will USTR seek to address any of these outstanding concerns in this agreement, or does USTR intend to submit the Panama FTA “as is” for a vote?

Answer: The Administration supports the May 10 agreement and will work to ensure that Panamanian law accords with the requirements under that agreement. Going forward we will work with the organizations you cite on their remaining concerns.

Has the Panamanian government addressed any of the concerns expressed by the International Labor Organization (ILO) and/or Panamanian unions regarding its labor laws?

Answer: That is part of what we must answer before sending the agreement to Congress for approval and I have tasked staff to brief me on that question upon my arrival.

Korea FTA

1. Today, the U.S. auto industry is on life support. Critics of the US-Korea FTA, including President Obama, argue that the agreement is unbalanced, as it on the one hand eliminates all barriers to Korean auto exports and reduces tariffs on light trucks, while leaving in place discriminatory non-tariff barriers to U.S. auto exports. Critics have also pointed to other problematic provisions, including new, ambiguous language in the investment chapter, a weakening of available trade remedies and an annex which contemplates the potential of goods made in an industrial complex in North Korea falling under the agreement. In November 2008, we also saw the unlawful arrest of several prominent trade union leaders.

What is your strategy with respect to the Korea FTA? Do you plan to renegotiate the auto provisions? If so, how?

Answer: We are well aware of the concerns with the auto provisions and will work with you to address them. Successful completion of the U.S.-Korea FTA holds the promise of expanding opportunities for American workers, farmers and businesses. Korea is an important friend and ally of the United States and its market is the seventh largest U.S. export market in the world. We are committed to working with U.S. stakeholders and our Korean counterparts to address the issues relating to the U.S.-Korea FTA and to ensure that the agreement fulfills its promise.

Do you think that any other provisions of the agreement should be put back on the negotiating table? If so, please specify.

Answer: I am not closed to the idea that there are other issues that may need to be addressed but I am generally supportive of the Korea FTA.

2. Over the last 8 years USTR did not allow manufacturing to have a seat at the table during the negotiation of the Korea FTA.

What steps could USTR have taken to ensure that the voice of a major industry, such as the auto industry, was heard during the negotiation of this agreement and what steps could they take to ensure manufacturing interests are heard in future trade agreements?

Answer: I plan to expand public participation in advising U.S. negotiators. For example, improved websites and more public consultations outside the established advisory groups are important methods for doing so.

3. Since the middle of 2000, the United States has lost over 4.3 million manufacturing jobs, an amount equal to 25 percent of all manufacturing jobs in this country. This situation has obviously been exacerbated by the current economic crisis, but was a major trend and problem even when the economy was growing and our markets were strong. I believe that this decline in manufacturing in America is a threat to our economy, our security and the future of our children. Manufacturing is not only critical to our capacity to produce the things needed for a diversified and healthy economy, but has always been the conveyor belt to a decent standard of living for the middle class in this country.

Do you agree that the decline in manufacturing is a major threat to our country? What are your thoughts on how we can address this growing problem? Given that violation of trading norms by countries like China, Japan, and others has been a substantial cause of this decline, how do you plan to ensure that U.S. manufacturers can compete on a level playing field in an increasingly global market?

Answer: I am committed to policies that work for American manufacturers and workers. It will take a coordinated effort by the Administration, including but not limited to trade policy, to reinvigorate our manufacturing sector.

3. Last year was the fourth consecutive year in which the U.S. trade deficit in goods exceeded \$700 billion. That is an enormous sum. Indeed, many observers believe that the large imbalance between the United States and its trading partners played a role in bringing about the current economic crisis. The trade deficit has been in large part caused and exacerbated by the unfair tactics of our trading partners – tactics that include government subsidies, closed home markets, currency manipulation, and cartels designed to limit competition.

Do you believe that trade deficits matter? What are your plans to address the persistent imbalance we see reflected in the U.S. trade deficit? Are you committed to stronger and more effective enforcement of our laws against unfair trade to address the root causes of this imbalance?

Answer: Trade deficits do matter. But more important than the deficit itself are the causes. We need to press for greater access to markets overseas and enforcement of our rights under our international agreements.

4. I share the concern of many of my colleagues in the Senate about the effort of a number of our trading partners – including the most persistent violators of rules-based trade – to weaken U.S. trade laws (including anti-dumping and anti-subsidy laws) as part of the Doha Round negotiations. I believe we need a very different approach in dealing with these negotiations in general – and that we must be crystal clear that any weakening of unfair trade disciplines is off the table.

Can you assure me that you will agree to nothing in the Doha Round that would weaken our trade laws? What is your strategy for dealing with the effort of foreign countries to weaken our laws?

Answer: I am committed to the vigorous and effective enforcement of our trade remedy laws. As I stated at my confirmation hearing, we are currently reviewing what is on the table on the Doha round. We will work with you and Congress to ensure that we make progress in the WTO Rules negotiations in a way that protects U.S. producers from unfair trade practices and ensures increased market opportunities for our exporters.

Colombia FTA

As you are aware, the escalating murder of trade unionists, and the slow progress on the prosecution of those ultimately responsible, is one, but by no means the only, problem with the US-Colombia FTA. As a result of the violence, as well as poor labor laws and the failure of the government to enforce its laws, workers in Colombia are unable to exercise their basic labor rights.

What will you do to urge the Colombian government to address the problem of violence against trade unionists and to enact meaningful labor law reform?

Answer: We will work with the Department of Labor, Department of State, and Congress to assess the exact labor law reform or other changes necessary to bring Colombia into compliance with the commitment to allow for the effective exercise of the right to organize free from fear.

What benchmarks do you see as useful in judging whether the Colombian government has made adequate progress toward ending the climate of terror and violence for workers seeking to exercise their rights?

Answer: We will work with Congress and other agencies to identify those benchmarks.

Peru FTA

The Bush Administration implemented the Peru FTA despite objections from the Committee on Ways and Means and several labor and environmental organizations, which argued that Peru had not yet passed the labor and environmental laws and regulations necessary to comply with the terms of the FTA.

Will you raise these outstanding concerns with the Peruvian government?

Answer: We will work with Congress and raise any outstanding concerns with the Peruvian government and work toward resolution.

What process(es) will you put into place to ensure that such concerns, from congress or civil society, are duly considered and acted upon long before the USTR determines whether an FTA should enter into force?

Answer: We will exercise much more intensive communication and coordination with Congress in the evaluation of compliance with FTA commitments prior to allowing them to go into force.

New FTAs

In the past few years, the US has negotiated several bilateral and regional US FTAs, most with economically insignificant countries – such as the countries of Central America, as well as the Middle East/African countries such as Oman, Bahrain and Morocco.

Do you think that the US should pursue more bilateral FTAs, or focus on multilateral negotiations? Or can/should we do both at the same time? Or do you support sectoral agreements?

What would be your criteria for picking countries with which to negotiate an FTA?

What would be the overall strategy informing bilateral trade negotiations under your watch?

Answer: Before choosing a specific strategy for new agreements, I want to take the time to assess our options and discuss them with Congressional leaders. We will pursue agreements that make sense for America.

Labor Rights and Trade

Although our trade agreements, going back to NAFTA, include labor rights protections, they have never been adequately enforced. Well over 30 NAFTA labor cases were filed but have resulted in nothing more than hearings and seminars. A complaint under the US-Jordan agreement, noting the denial of labor rights to migrant workers was ignored. Further, petitions under the trade preference programs are routinely rejected despite substantial evidence that a country is not meeting the labor conditions set out in the various trade preference programs.

What actions will you take to ensure that the labor protections in our trade agreements and trade preference programs are fully enforced?

Answer: I will task the agency to work much more closely with the Department of Labor and the Department of State to monitor and enforce compliance.

What changes, if any, would you make to strengthen the labor provisions of current unilateral preference programs and trade agreements?

Answer: I am open to discussion and deliberation on what changes and improvements are necessary and look forward to working with you and interested stakeholders in the NGO and labor communities on this matter.

WTO

1. At the Doha Ministerial Conference in November 2001, trade Ministers pledged to place development issues at the heart of the WTO's work. However, developing countries have been disillusioned by the lack of progress on key issues over the past several years.

Do you believe that the negotiations to date have been on track to promote global development? How would you ensure that future negotiations both promote needed global development and at the same time create new opportunities for U.S. workers and farmers?

Answer: Much of the current deadlock in the Doha negotiations can be traced to the continuing question of whether key emerging markets such as China, Brazil, and India will make new market-opening commitments. Securing a Doha result that brings meaningful market access contributions by key advanced developing countries is imperative for our farmers, manufacturers, and service suppliers – and is critical to providing new economic opportunities that will also ensure a strong development outcome. Other developing countries have made that clear. I will work closely with Congress and all stakeholders to take the steps needed that will

move the Doha negotiations on to a path leading to a balanced and ambitious outcome.

2. Although there are non-binding commitments, there is currently no enforceable labor rights clause in the WTO agreements, and there continues to be resistance by some countries to the introduction of a labor clause.

Do you think enforceable labor rights should be included at the WTO and, if so, how would you go about putting labor rights on the agenda – given the strong objections of some WTO members?

Answer: We intend to undertake a comprehensive review of our trade policy, including how to address concerns about labor rights protections, and will work with Congress to develop a bipartisan strategy.

3. The Doha Declaration pledged that no reciprocal market access commitments would be sought from developing countries – including emerging markets like China, Russia, India, and Brazil. At the same time, the U.S. Congress instructed the USTR not to agree to any increased market access to the U.S. if reciprocal access were NOT included.

Can you reconcile these conflicting positions?

Answer: I do not see them as conflicting positions. The Doha Declaration sets out a full array of parameters for conducting tariff negotiations on non-agricultural products, including a reference to a longstanding GATT Article (Article XXVII *bis* of GATT 1994) as part of underscoring how members take into account the special needs and interests of developing and least developed countries -- including through less than full reciprocity in tariff reduction commitments. That provision is distinct from something that would involve assessing and comparing levels of market access that may be the outcome of a particular negotiation.

Financial Services

Given the current global financial crisis, do you think it is important to reexamine the financial services provisions in FTAs and plurilateral agreements to determine whether they constrain our ability to respond to the crisis through, for example, more prudent financial regulation?

Answer: The GATS and FTAs include the ability for a Member to take prudential measures and adjust its monetary policy to ensure the soundness and integrity of its financial system. Therefore, we have no reason to believe that U.S. government actions taken to date in response to the financial crisis are inconsistent with any of our trade commitments. But we are always open to discussion on ways to improve our existing trade policies and strategy and welcome your specific suggestions.

Softwood Lumber

Given President Obama's successful visit to Canada, and his recognition of Canada as one of our closest friends and allies and largest trading partners, how can we ensure that the Softwood Lumber Agreement is managed in such a way as to protect U.S. interests while avoiding unnecessary friction with our neighbors? I understand that there have been some complaints from the U.S. industry, but I also understand that, under the SLA, the Canadian share of the U.S. market has dropped from 34 percent to 29 percent, its lowest level in decades. The recent decision by the London Court of International Arbitration on the recent Softwood Lumber Agreement showed that trade agreements can include successful enforcement mechanisms. It is, however, critical that the decision by the arbitral panel is fully implemented in a timely manner by Canada.

What would you take as USTR to ensure Canada is fully complying with the arbitration decision? Further, the list of SLA compliance issues is growing almost weekly, threatening the longevity of this agreement. Will you work proactively to improve SLA compliance?

Answer: Yes.

Public Health & the TRIPS Agreement

In 2001, the United States signed the Doha Declaration on the TRIPS Agreement and Public Health along with all the members of the World Trade Organization (WTO). The Doha Declaration emphasizes the importance of public health considerations in implementing the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), "affirm[ing] that the [TRIPS] agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all."

Do you think the U.S. is following the TRIPS agreement, which includes allowing countries to issue compulsory licenses on grounds determined by member states?

Answer: This is an important question that I know you and many members of the public health community care about deeply. I will investigate the question and follow up with you and your staff.

New Drugs and Developing Countries

As the most cutting edge and effective medicine is developed, the new drugs are often too expensive for patients in developing countries. In 2008, the United States and other member countries of the World Health Organization unanimously adopted a Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property (WHA 61.21) in order to address the interconnected innovation and access challenges that face developing countries. The strategy commits WHO and member countries, including the United States, to explore some commonsense measures aimed at spurring the development of medicines and other products that will meet priority health needs of

people in developing countries, and making those products available on an affordable basis.

Do you support exploring and implementing new global norms for promoting medical research and development that seek to provide a sustainable basis for a needs-driven essential health agenda, such as those ideas outlined in the WHO global strategy and plan of action?

Answer: I want to work with you and the public health community as well as industry to reach a consensus on how to promote global health and global commerce. I take the need for life saving medicines in the developing world very seriously and look forward to working with you on the challenge.

Buy America

As you know, the economic stimulus package included Buy America provisions. Some of our trading partners have complained loudly about these provisions. But the WTO Director-General, Pascal Lamy, has stated that he believes the Buy America provisions are consistent with our obligations to our trading partners.

There has been concern about the Buy America provision from some of our biggest trading partners including China, Russia, Brazil, and India, yet they have not signed the WTO Government Procurement Agreement.

Do they have an obligation to allow U.S. companies to bid on their government projects, and do we have an obligation to give these countries access to our government projects?

Answer: China, Russia, Brazil and India maintain “buy national” policies that significantly restrict participation by U.S. firms in their procurement. The United States does not have obligations to allow any country to participate in our government procurement unless that country has agreed to allow U.S. suppliers fair and reciprocal access to their procurement.

“Protectionism”

It seems that, for many years now, any time anyone calls for the vigorous enforcement of our trade laws, they are accused of being “protectionist.”

Would you agree that we need to jettison that term once and for all, so that everyone understands that enforcement of our trade laws, and of our rights under international agreements, is not “protectionist”?

Answer: I agree that enforcement of our trade laws and our rights under international agreements is not protectionism. The availability and appropriate use of trade remedies to address unfair trade practices play a critical role in maintaining support for free trade.

**Questions From Senator Ron Wyden for Mayor Kirk for
Confirmation for United States Trade Representative
March 9, 2009**

1. The recent debates over free trade agreements show that more and more Americans don't see any benefit in trade agreements at best or at worst see trade agreements as a threat to their well-being. It appears that those who have the most to gain from free trade agreements have done the least to convince the public of their usefulness. My suggestion is for companies to give their workers a trade bonus, in order to show workers that trade agreements produce real benefits for them, not just for front office executives. If a trade agreement means a company is going to benefit from a 10% cut in tariffs on its exports, why not take some of this savings and pass it along to employees in their check? What do you think can be done to give workers more of a share in the benefits of trade agreements and, in particular, do you support the idea of companies voluntarily providing a trade bonus for workers and is that something you would encourage?

Answer: I agree that we need both to expand the benefits workers receive from trade and ensure that those benefits are better explained. I understand that some companies are experimenting with the use of a "trade bonus." I think that USTR and Commerce should work together to highlight innovative experiments to promote exports, just as we encourage best practices in many other areas of commerce. I don't know enough to assess this practice in particular, but I look forward to working with you on the best way to achieve this learning about promising best practices.

2. Countries all over the world are scrambling over themselves to establish new trade barriers. What's your strategy for knocking those barriers down without resorting to protectionist measures?

Answer: We are working with the G-20, the WTO, and our bilateral trading partners to ensure that we are all fighting pressures to raise any new barriers to trade. We will continue to work in cooperative, multilateral and inclusive manner to guard against protectionist efforts.

3. I applaud USTR's December 2008 announcement it had requested WTO dispute settlement consultations with the People's Republic of China about China's "Famous Brands" programs, in which it subsidizes exports, clearly counter to China's WTO commitments. I've heard from constituents in our high technology industry about a host of unfair trade practices and am very glad USTR is pursuing this case. I would note that USTR reached a settlement on a previous case involving China's improper subsidies for a number of industries, including its hardwood/plywood export industry. What will you do to see that the continuing problem of China illegally subsidizing its exports is corrected?

Answer: Enforcing our rights under the WTO is one of my top priorities. We will continue to pursue the current case on China's "Famous Brands" programs vigorously,

and in the future we will not hesitate to use all appropriate tools available to address China's improper use of subsidies.

4. The U.S and Mexico signed an agreement in 2003 that would allow U.S. potatoes into Mexico's market. U.S. products would be limited to a 26 km border region for the first year, and then would be given greater, and then full access to the market. Instead, Mexico has kept U.S. potatoes to just the border region, in clear violation of our agreement. The U.S. has opened its markets wide to Mexican avocados, yet Mexico has not lived up to its commitments. What will you do to hold Mexico to its 2003 commitments to open its whole market to U.S. potatoes?

Answer: I am always concerned when a trading partner does not follow through on its agreements with the United States and believe that enforcement of such commitments is very important. If confirmed, I look forward to working with you, as well as with Secretary Vilsack to engage early with Mexico and address this important issue for our potato industry.

5. Oregon is a big exporter of agricultural products and I want to voice my support for USTR to hammer out a high-quality conclusion to the Doha round that gives the United States increased market access overseas for our agricultural exports. How do you see your role in achieving a high quality multilateral agreement that gives the United States fair access to foreign markets for our agricultural and other exports?

Answer: If confirmed, I will take the lead in those negotiations and insuring that Doha is a high-quality agreement that creates wealth at home and abroad. Agriculture is a key industry and creating export opportunities for our growers is a high priority.

6. Illegal logging, besides being a threat to the environment and the rule of law, is another way that foreign exporters can cut their costs. I expect legislation I introduced and that passed as part of the Farm Bill to amend the Lacey Act to combat illegal logging, which federal agencies are implementing, will help greatly in this regard. But we need to keep the pressure up on all fronts, and trade agreements can be another tool. I was pleased to see illegal logging provisions included in the Peru Free Trade Agreement and I think this is a good model going forward. With the Peru Free Trade Agreement's important provisions on illegal logging in place - how will you ensure that those provisions are enforced? How do you envision those provisions working in reality?

Answer: I understand that USTR's Office of Environment and Natural Resources and Office of the General Counsel are working closely with outside stakeholders and Congress as USTR continues to engage the Peruvian government in enforcing the historic logging provisions in the Peru FTA. Peru has already taken unprecedented steps to reform its forest sector governance, including significant revisions to its laws and regulations. In practice, effective implementation and enforcement will require specific resources, including for USG monitoring and technical assistance in Peru.

7. Do you see these provisions as something we can add to future agreements going forward?

Answer: We would welcome a discussion with you on that question, particularly as we move forward with other countries that have similar circumstances.

8. Some environmental, civil society and indigenous groups contend that Peru is enacting legislative changes to implement the agreement that could actually weaken environmental protections. They charge there has been a lack of transparency in how Peru's government is making these statutory changes. What role can the Administration and Congress play to ensure that our trade agreements are implemented by our partners with transparency?

Answer: We are working with those groups, the Peruvian government, and Congress. We also welcome your leadership and efforts and share your goals.

9. What steps will you take to ensure that the labor and environmental standards included in the agreement are enforced and that such provisions are incorporated into new agreements going forward?

Answer: We will coordinate closely with the Department of Labor and the State Department as well as outside experts and stakeholders to measure and encourage compliance through all the tools at our disposal.

10. What does the Office of the USTR intend to do to assure that Buy America provisions in the stimulus bill and other federal and state programs adhere to international obligations?

Answer: The legislation is clear that it must and we will work to ensure that our regulatory guidance reflects that intent.

Senator Pat Roberts
Statement for the Record
Senate Finance Committee: Ron Kirk Nomination, United States Trade Representative
March 9, 2009

Chairman Baucus and Senator Grassley, I thank you for holding this hearing today. We need our lead trade negotiator in place as soon as possible.

Mr. Kirk – Thank you for your participation in today’s hearing. I also appreciate our chance to visit personally during your courtesy call when we discussed the importance of trade liberalization and market access for Kansas manufacturers and Ag producers.

As former Mayor of Dallas, you know better than most of the important role of international trade. Your support for passage of past trade agreements provides a good glimpse of your position on trade. As you work to implement the current administration’s trade agenda, I am hopeful that we can find more areas of common ground.

As the Chairman said, I am strongly concerned about the anti-trade sentiment that seems to be hovering over Congress and the public policy area. It has become far too easy to blame our current woes on international trade, when in fact, U.S. exports have long supported economic growth. If we move in that direction we run the risk of isolating ourselves from the global marketplace. I stand ready to work with you to renew public support for the benefits of trade and to enhance our ability to compete and thrive in a global economy, whether it is market expansion or market preservation.

Just as concerning, however, are actions at the domestic level that may appear to be protectionist could, in turn, cause other countries to act in kind. Unfortunately, we’ve already seen cases like the EU biotech moratorium case where countries have blocked our corn exports with non-tariff trade barriers under the guise of science. I am hopeful that as you engage with your colleagues representing our trading partners, that you encourage resistance to policies that impede trade flows.

As a Senator from a state that exports half of the wheat acres harvested and one-third of all planted acres, preserving and increasing access to foreign markets is critical for Kansas farmers and ranchers. In addition to being the largest wheat producing state, Kansas is also the largest beef processing state in the country. Cattle outnumber Kansans more than 2-1. Given that population, I’m attuned to the problems that we’ve had reopening our foreign beef markets in the post-BSE era. Despite being designated as a “controlled risk” country by the World Organization for Animal Health (OIE) and the proof that our interlocking food safety system works, countries are still balking at fully reopening their markets to our products.

Statement of U.S. Senator Olympia J. Snowe
Finance Committee Hearing on the Nomination of Ron Kirk to Serve as
U.S. Trade Representative
March 9, 2009

Thank you, Chairman Baucus and Ranking Member Grassley, for holding this hearing on the President's nominee to serve as the U.S. Trade Representative. And thank you, Mayor Kirk, for appearing here today and for our productive meeting a few weeks ago.

As I said when we first met, it is essential for the new administration to work with Congress to redirect U.S. international trade strategy toward preserving American jobs through stringent enforcement of U.S. trade rights, rather than endlessly negotiating more free trade agreements. Shifting the focus of U.S. trade policy to job preservation is particularly essential in the manufacturing sector, which since 1994—the year NAFTA came into effect—has lost over 4.5 million jobs. The economic downturn over the past year has further decimated U.S. manufacturers, which shed over 600,000 jobs in 2008, and an astonishing 219,000 additional jobs just last month!

It is no coincidence that this withering of our country's once-unparalleled manufacturing base took place during a decade-and-a-half of record trade liberalization and increases in imports from large, often poorly regulated low-cost producers like China and India. In Maine, my constituents have seen this down-side of trade, with over 26,000 manufacturing jobs lost since 2000, mainly in paper and wood-working industries that have suffered from competition from Asian imports. Just last week, another pulp mill announced that it will suspend operations in the proud but struggling town of Baileyville, Maine, extinguishing the employment of approximately 300 workers, and devastating the families and businesses in the area which relied on the income from these jobs.

Last month, I was pleased to support the Chairman and Ranking Members' bipartisan, bicameral addition to the Stimulus bill strengthening and expanding the Trade Adjustment Assistance (TAA) program to cover service sector workers and firms, workers whose firms shift production to non-FTA partner countries, and strategic planning assistance for communities—all of which Chairman Baucus and I had proposed in our TAA bill in the last Congress. Yet we must not mistake this necessary relief for those who have already lost their livelihoods to trade as a substitute for a trade policy which keeps these hard-working Americans employed in the first place.

To stem the outflow of American manufacturing jobs due to trade competition with countries that manipulate their currencies, exploit their workers or wantonly degrade their environment, I believe we must decisively enforce the trade agreements we already have in place. Yet, the

Office of the U.S. Trade Representative (USTR) has been outrageously resistant to public calls for trade enforcement in recent years. It is a shocking fact that all five of the public petitions for trade enforcement action—each concerning currency manipulation or labor exploitation by China—filed during the previous Administration was denied by the office of the U.S. Trade Representative—in some cases on the same day they were filed!

In order to fulfill his campaign promise to “pressure the World Trade Organization to enforce trade agreements and stop countries from continuing unfair government subsidies to foreign exporters”, President Obama must first fix the broken U.S. trade enforcement system. Yet in the 5-page “President’s Trade Policy Agenda” released by USTR last week, the word “enforce” is used just once in a pledge to “protect American innovations and creativity by negotiating and enforcing strong and effective intellectual property protections”... a commitment I fully support, but one which falls short of recognizing that enforcement action under existing trade agreements is direly needed in other areas such as currency manipulation and labor exploitation. Mayor Kirk, I am hoping that your pledge in your testimony to work with Congress to “ensure strong enforcement of the rules” means that the Administration will not lose sight of the critical necessity of trade enforcement.

To that end, I have introduced legislation—the Trade CLAIM Act—with my friends and fellow committee members Senators Rockefeller and Conrad, which would strengthen American manufacturers’ and workers’ ability to compel the office of the U.S. Trade Representative to take trade enforcement action against a foreign country by giving them the right to appeal an adverse decision by USTR to the U.S. Court of International Trade, which under my bill would have the authority to order USTR to bring a country before the WTO for dispute resolution. Additionally, as this committee proceeds toward the mark-up of a trade enforcement bill later this year, I will be introducing legislation to transfer primary authority for enforcing trade agreements from USTR—which by its own estimation spends 75% of its time on negotiating new trade agreements-- to the Department of Commerce’s International Trade Administration, which already handles anti-dumping and anti-subsidy cases.

I firmly believe that protecting U.S. manufacturers and workers from unfair foreign trade practices must precede any consideration of new trade agreements. And any such agreements should only be pursued by the new administration with countries that are willing to adhere to labor and environmental standards comparable to those in the United States, so that even more American workers do not see their jobs lost to foreign companies that underpay or mistreat foreign workers and pollute without restriction. Because, amidst an economic environment in which we lost nearly 700,000 U.S. jobs just last month, we owe it to Americans to make job preservation and creation—rather than unfettered trade liberalization—the centerpiece of our trade policy.

Thank you, Mr. Chairman.

COMMUNICATION



THE US-CHINA BUSINESS COUNCIL

美 中 贸 易 全 国 委 员 会

February 27, 2009

The Honorable Max Baucus
Chairman
Committee on Finance
219 Dirksen Senate Office Building
U.S. Senate
Washington, DC 20505

Dear Mr. Chairman:

It is with pleasure that I write in support of the nomination of Ron Kirk to be US Trade Representative.

Mr. Kirk has been a vocal advocate of both expanding opportunities and seeking a level playing field for US companies internationally, a view which is shared by the member companies of the US-China Business Council.

China is now the United States' third largest export market, behind only Canada and Mexico. US companies have established roots in China that are bringing not only goods and services to Chinese consumers, but also high-quality global standards and business practices to Chinese workers. Problems that exist in the commercial relationship must be addressed, but we should also acknowledge freely—and work to expand—the many benefits that our ties with China have brought to American workers, companies and the economy as a whole.

Mr. Kirk will be on the frontlines of achieving those goals as US Trade Representative. USCBC and its members are certain that he will do so ably and to the advancement of broader US economic goals. We urge his speedy confirmation by the Senate.

Sincerely,

John Frisbie
President

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