

**NOMINATIONS OF MICHAEL PUNKE,
ISLAM SIDDIQUI, AND MICHAEL MUNDACA**

HEARING

BEFORE THE

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

MICHAEL PUNKE, TO BE DEPUTY U.S. TRADE REPRESENTATIVE, WITH
THE RANK OF AMBASSADOR; ISLAM SIDDIQUI, TO BE CHIEF AGRICULTURAL
NEGOTIATOR, OFFICE OF THE U.S. TRADE REPRESENTATIVE, WITH THE RANK OF
AMBASSADOR; AND MICHAEL MUNDACA, TO BE ASSISTANT SECRETARY OF THE
TREASURY FOR TAX POLICY

NOVEMBER 4, 2009



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WITH THE RANK OF AMBASSADOR; ISLAM
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AMBASSADOR; AND MICHAEL MUNDACA,
TO BE ASSISTANT SECRETARY OF THE
TREASURY FOR TAX POLICY**

WEDNESDAY, NOVEMBER 4, 2009

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

The hearing was convened, pursuant to notice, at 10:14 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Conrad, Lincoln, Wyden, Grassley, Hatch, Roberts, and Enzi.

Also present: Democratic Staff: Bill Dauster, Deputy Staff Director and General Counsel; Amber Cottle, Chief International Trade Counsel; Ayesha Khanna, International Trade Counsel; Cathy Koch, Chief Tax Counsel; Russ Sullivan, Staff Director; and Mary Baker, Detailee. Republican Staff: Mark Prater, Deputy Chief of Staff and Chief Tax Counsel; Stephen Schaefer, Chief International Trade Counsel; David Johanson, International Trade Counsel; and Nick Wyatt, Tax and Nomination Professional Staff Member.

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

The CHAIRMAN. The committee will come to order.

The French poet Jean de la Fontaine said: "No path of flowers leads to glory."

To our witnesses today, President Obama has nominated the three of you to travel important paths, guiding America's trade and tax policies. Each of you must travel a path littered, not with flowers, but with stones, but you must navigate these paths with sure feet and find success at the end of the road.

Mr. Punke, President Obama has nominated you to be Deputy U.S. Trade Representative in Geneva. Your path will twist and turn through the complex World Trade Organization Doha negotia-

tions. I am confident that you have the experience to navigate this path successfully.

You have more than 20 years of international trade law and policy experience, in both the public and the private sectors, you served as White House Director for International Economic Affairs during the Clinton administration, and you spent several years practicing international trade law at a top firm. You also very ably served this committee as my International Trade Counsel.

You unquestionably have the requisite tools for this position. But yours is not an easy road. The path that you must travel is marked with past failures to conclude the Doha negotiations, and, as you round each curve, you must keep the needs of American exporters first and foremost in your mind.

A successful conclusion to the Doha negotiations must provide real, meaningful market access for American producers. Our ranchers, our farmers, our manufacturers, and service providers can compete with the world's finest. We must make sure that our trade agreements give them the opportunity to do so.

Mr. Punke, I know from personal experience that you have the ability to successfully navigate your path, and you have my full confidence.

Dr. Siddiqui, President Obama has nominated you to be Chief Agricultural Negotiator at USTR. Your path must lead to new and additional market access for American agricultural exports, while ensuring that current markets remain open.

Your experience makes you uniquely qualified for this role. During the Clinton administration, you held several high-level positions at the Department of Agriculture. You were a Senior Trade Advisor to then-Secretary Dan Glickman, and you were Under Secretary for Marketing and Regulatory Programs. You currently work at CropLife America, where you have focused on international trade and regulatory matters.

You also have the requisite tools for this position, but yours is also not an easy road. The path you must travel is marked with previous attempts to reduce tariff and non-tariff barriers to American agricultural exports.

As you travel your path, you must continue this valiant effort. Beef, wheat, and other exporters in my State, Montana, and throughout our country, produce some of the world's finest agricultural products, absolutely the finest. I have no doubt that they can compete with the rest of the world. But in Doha and other negotiations, you will have to work hard to break down the walls to American exports. Dr. Siddiqui, your experience tells me that you have the ability to successfully navigate this path.

Mr. Mundaca, President Obama has nominated you to be the Assistant Secretary for Tax Policy at the Treasury Department. Your path will lead you through the halls of Treasury and the halls of Congress as you develop significant tax policies, and Congress begins to consider tax reform.

Your experience has readied you for this important task. You were previously the Deputy Assistant Secretary of Treasury for International Tax Affairs, and you were a partner at a top accounting firm. Before that, you were an attorney at the Office of the International Tax Counsel at Treasury.

You have the requisite tools for this important position, but yours is also not an easy path, to say the least. The path that you must travel is marked with past efforts to improve the administration of U.S. tax policy. As you travel this path, you must keep in mind the unique challenges of this economic environment.

Significant tax reform must be considered carefully and thoughtfully. It will probably be one of the main efforts we undertake next year in this Congress.

Our fiscal situation demands that we make every effort to close the tax gap. We must close that tax gap now. We do not have to do it immediately, but over a reasonable period of time, we must close it. It is unconscionable that the roughly \$300 billion annually that is owed and not collected remains uncollected. That could go a long way to reducing our annual deficits. And health care reform will create new challenges in tax administration.

Mr. Mundaca, I urge you to bring your years of experience to these tasks, and I am confident that you, too, will successfully navigate your path.

I encourage each of you to undertake your new responsibilities with utmost vigilance. American exporters and taxpayers are depending on you. I encourage each of you to navigate the twists and turns that you face, and to find the paths that lead to success on behalf of the American people.

Senator Grassley?

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

Senator GRASSLEY. Mr. Chairman, thank you. I welcome our nominees and congratulate you on your nominations.

I will start with Michael Punke, nominated to be our Trade Ambassador to Geneva, a very, very important position. I am concerned, not for you, Mr. Punke, but just generally concerned, about our trading partners not fully understanding the prevailing sentiment on trade in the United States. We are dealing with a stronger protectionist sentiment, I am sorry to say. And we know that protectionism only hurts our collective well-being; however, it is a political reality that we have to contend with.

On the other hand, there is a bipartisan consensus that we need to see meaningful market access opportunities from our major trading partners, and that would be accomplished if the Doha negotiations are concluded successfully, and, of course, we have not seen that yet. Our Trade Ambassador to Geneva needs to accurately and constructively convey these sentiments, and I think, Mr. Punke, that you are up to that job.

Dr. Siddiqui is nominated to be our Chief Agricultural Negotiator in the Office of the U.S. Trade Representative. You have enjoyed a lengthy career, assuming a variety of responsibilities involving agriculture and agricultural trade. You seem to understand the vital roles that technological advances can play in helping to feed a growing global population, and that is very, very necessary. We do, in fact, need a very strong voice for U.S. agricultural interests at the negotiating table, and I believe this nominee can fill that role.

Michael Mundaca, I thank you for coming to my office to visit with me about some issues. You spent a good amount of time there with me discussing your nomination to be Assistant Secretary for Tax Policy.

Right now is a critical time for tax policy. We still have the challenge of dealing with tax provisions that expire every year or two, called extenders. One of these is the monster that we have to deal with almost every year called the Alternative Minimum Tax. The current short-term fix restraining the AMT expires at the end of this year.

Additionally, many of the bipartisan tax cuts enacted in 2001 and 2003 expire at the end of 2010, so you are going to have a lot of work in your portfolio to deal with, and those are major problems for us to tackle.

These issues are significant, but they represent, of course, only a fraction of tax issues facing this nominee, as well as those of us in the Congress. The administration has many large-scale priorities, and many of them would be implemented and enforced through the tax code.

To give you an example, under legislation being advanced in both the House and the Senate, the Internal Revenue Service plays a major role in implementing and enforcing health care policies. There are many new complicated taxes to fund health reform, and many new and complex credits. The IRS would also be tasked with penalizing individuals who do not buy insurance and employers who do not provide affordable insurance.

Aside from these health care issues, a cap-and-trade scheme might also work its way through the tax code. The Congressional Budget Office made very clear that emission allowances hold value and, therefore, represent Federal revenues, which seems to obviously have implications for the tax code.

Independent of specific policy questions inherent in health care reform and energy reform, we must consider larger questions as to the fundamental purpose of our Internal Revenue Code and what limits, if any, ought to be enforced against it. Policies under consideration right now could significantly alter how we as a Nation use the tax code and how average Americans interact with it. These are questions this committee, and you in your position as Assistant Secretary for Tax Policy, will not be able to avoid.

In addition, you will serve as the primary political liaison to the U.S. Customs and Border Protection in the Department of Homeland Security when it comes to Customs regulations. This is a critically important aspect of your job. We have seen breakdowns in relationships between Customs, Treasury, and the Office of the U.S. Trade Representative with regard to Customs regulations.

As a result, the chairman and I included a provision addressing this issue in the Customs Reauthorization Bill that we recently introduced. So, I underscore to you as a nominee the importance that I place on active management of the interdepartmental relationships regarding Customs issues.

I am hopeful that the nominee will serve as a down-to-earth architect of tax policy, able to tell the difference between high-minded fantasy and practical reality. In your written testimony, you recognize the need for a simple tax system that promotes growth, while

collecting needed revenue. I am glad that you agree that our current system falls short, but I hope, soon, that you will be able to say that the situation has improved. I was glad to read in the nominee's written testimony how his parents taught him the value of hard work, because this position requires a lot of that.

Thank you.

The CHAIRMAN. Thank you, Senator Grassley.

I would like now to introduce our panel of witnesses. First, it is a real honor to introduce Michael Punke. Michael, we have worked together. You were sitting on this side of the dais on lots of trade matters, and now you're sitting on the other side in a different capacity.

It is just a real honor for me and a privilege, frankly, to be working with you in your new position as Deputy U.S. Trade Representative. And I think, not only do you hail from our State of Montana, but you also hail from another State, and I think Senator Enzi would like to introduce you.

**OPENING STATEMENT OF HON. MIKE ENZI,
A U.S. SENATOR FROM WYOMING**

Senator ENZI. Thank you, Mr. Chairman. I am really pleased that this famous author from out our way has been selected for this nomination, and I would not only like to recognize Michael Punke who currently resides in Montana, but as a native of Wyoming. I believe his parents, Butch and Marilyn, have already braved the snow this weekend to make their way here from Torrington, WY, and I want to thank them for attending.

I am pleased that the President made your nomination, and I know that your western know-how and extensive trade experience will help in Geneva. I hope that it does not completely eliminate your writing, though. There are some fascinating things over there that need to be explored a little bit, too. But I appreciate your books that deal with the west. The one that I am wading through now, and really enjoying, is, "Last Stand," about the saving of the North American bison, the buffalo. It is very well done, what I have gotten through so far. Very interesting.

So, thank you for your writing talent, and now, thank you for your willingness to go to Switzerland with your family and solve the problems there for us.

The CHAIRMAN. Thank you, Senator.

I might say that the books also, I think, are an insight into the grit of Mr. Punke. One of his first books, called "The Revenent," is about a fellow who seeks revenge for a fellow who tried to kill him.

I know that is a quality, I think, that we are going to need, to some degree. [Laughter.]

We are not going to let anybody kill us, but we sure are not going to let anybody take advantage of us. "The Revenent" is about a fellow who did not let anybody take advantage of him.

One more book is called "Fire and Brimstone." It is about the grit of people of the biggest underground mining catastrophe in our country in Butte, MT. It is just about people who face adversity and the community is bound together to fight adversity and reach a common goal, surviving and so forth. It is a wonderful subject,

so I think it gives insights into the quality of the man and how hard he is going to fight for us.

Senator Roberts?

Senator ROBERTS. Mr. Chairman, I just want to point out that his parents have lived in Kansas for a considerable amount of time.

And I am not as well read as you or the distinguished Senator from Wyoming, as to his works, but I am going to have to start. How do you justify revenge with a “path of flowers” that you described?

The CHAIRMAN. No, no. The quote is: “Glory is no path of flowers.” That is the quote.

Senator ROBERTS. No child left with a dime. Something like that. [Laughter.]

The CHAIRMAN. It takes hard work and grit, and his path is littered with stones.

Senator ROBERTS. It will be better than that, really. [Laughter.] And that is from the minority.

The CHAIRMAN. All right.

Next on our panel is Dr. Siddiqui. We are very honored to have you, Dr. Siddiqui.

The third panelist is Michael Mundaca. I regret I have not read your books, or I would have mentioned them this morning. [Laughter.]

Michael Mundaca is nominated to be Assistant Secretary of the Treasury for Tax Policy.

Thank you all for coming. As is our usual practice, your full statements will be included in the record. I encourage each of you to speak about 5 minutes.

Before we begin now, Mr. Punke, do you have any family here? I think you do, I see your family behind you. Why don't you introduce your family?

Mr. PUNKE. Thank you for the opportunity. Thanks, also, for the endorsements on the books. I would just say that, if everyone on the panel would read my books, I believe I could double my sales, so I appreciate that. [Laughter.]

I am very pleased, Senator Baucus, Senator Grassley, and distinguished members of the committee, to introduce my family today. I have with me my parents, Butch and Marilyn Punke, Kansas natives, but long-time Wyoming residents. I have my brother, Tim Punke, of Seattle, WA. My wife, Traci, is here, and my children, Sophie and Bo. I am very grateful for the opportunity to introduce them, and I am obviously very grateful for their support.

The CHAIRMAN. Could you have them all stand so we can recognize them?

Mr. PUNKE. Absolutely.

The CHAIRMAN. Everybody.

[Applause.]

The CHAIRMAN. I might say this is apropos of, I don't know what, but Traci and Michael met when they both were working in my office.

Mr. PUNKE. I do not have to talk about that today, though, now do I, Senator? [Laughter.]

**STATEMENT OF MICHAEL PUNKE, NOMINATED TO BE DEPUTY
U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBAS-
SADOR, EXECUTIVE OFFICE OF THE PRESIDENT, WASH-
INGTON, DC**

Mr. PUNKE. Senator, I am honored and humbled to be sitting here today, and I am grateful to President Obama and to Ambassador Kirk for the confidence that they have placed in me. I am grateful to you, Senator Baucus, and I want to say this as a personal matter, for giving me my first government job in trade, now almost 18 years ago.

If confirmed, I will work every day to vindicate the trust that has been placed in me.

Whoever serves as U.S. Ambassador to the World Trade Organization builds on 60 years of bipartisan American leadership to create a rules-based, multilateral system of international trade. That system, born in the long shadow of world war, has made an enormous contribution to worldwide economic growth and stability.

But the question we face today is this: Can the WTO evolve along with the dramatic changes of our dynamic global economy?

President Obama and Ambassador Kirk have called for an outcome in the ongoing Doha Round of WTO negotiations that is both balanced and ambitious, with meaningful new market access for all involved. As members of this committee are well aware, we have not yet achieved that goal.

From my meetings and conversations with members, with your staffs, and with various stakeholder groups, I understand very clearly, no deal is better than a bad deal. The potential of trade in the abstract is easy to describe. But the challenge lies in making that potential tangible for America's workers, farmers, ranchers, and businesses. If I am confirmed, I will approach this challenge with an orientation that is neither naïve nor despondent. I believe a good deal is doable, but we will not do a deal at any cost.

Having worked on the Hill, I understand intuitively that it is impossible to achieve success in trade without the joint efforts of the legislative and executive branches. And from studying history, I know that all of our most important trade agreements have been the product of bipartisan support.

I hope and believe that the experiences of my career have equipped me to succeed in this job. I have seen trade issues from the perspective of two branches of government, from three Federal agencies, as an attorney in the private sector, and as the owner of a small business.

But none of my professional experiences has been more important than the perspective I have gained during the past 6 years living in Montana, watching the impact of trade in the lives of everyday Americans. I have watched Montana goods by the trainload roll toward overseas markets. I am friends with the farmers, ranchers, miners, and entrepreneurs whose jobs depend on those exports. But I have also watched lumber mills close, and I have seen the impact of those job losses ripple through the heart of my community.

The job of the Office of the United States Trade Representative is to advocate every day, for every one of those people, for every American. As members of this committee know, there is no agency

in government that fields a more talented, more dedicated staff. If confirmed, I will work tirelessly and proudly as a member of that team.

I thank the members of the committee for your consideration.

The CHAIRMAN. All right. Thank you, Mr. Punke.

[The prepared statement of Mr. Punke appears in the appendix.]

The CHAIRMAN. Dr. Siddiqui? Do you have family here you would like to introduce?

**STATEMENT OF DR. ISLAM SIDDIQUI, NOMINATED TO BE
CHIEF AGRICULTURAL NEGOTIATOR, OFFICE OF THE U.S.
TRADE REPRESENTATIVE, WITH THE RANK OF AMBAS-
SADOR, EXECUTIVE OFFICE OF THE PRESIDENT, WASH-
INGTON, DC**

Dr. SIDDIQUI. Yes, of course, Mr. Chairman. I have my wife, Tabassum Siddiqui, here with me this morning, and my daughter, Arshi Siddiqui, who works here on the Hill with Speaker Pelosi, the senior—

The CHAIRMAN. I thought I recognized you. Why don't you stand up? Are there others of your family here?

Dr. SIDDIQUI. And my other two children: my middle daughter, Sophia Siddiqui, who is also an attorney, she had some commitments this morning in Wilmington, DE. She lives there. She could not be here. My youngest son, Sami Siddiqui, is in New York. So again, due to his work commitments, he could not be here this morning.

The CHAIRMAN. Could you have your wife and daughter stand please?

[Applause.]

The CHAIRMAN. Thank you. We are honored to have you here.

Dr. SIDDIQUI. Mr. Chairman, Senator Grassley, and members of the committee, I am honored and humbled to sit before you to consider my nomination to be the Chief Agricultural Negotiator in the Office of the U.S. Trade Representative.

I thank President Obama for nominating me for this position and for the confidence Ambassador Kirk has placed in my abilities. This opportunity is particularly challenging given the current economic climate, and the need to make real progress toward opening new markets and creating jobs.

During the past 40 years I have spent my career, both in government and the private sector, witnessing first-hand the critical role the agricultural sector plays in our national and rural economy.

More than one-third of our agricultural products are exported to countries around the world. According to a recent USDA report, in 2008 our agricultural exports stood at \$115 billion, whereas imports were about \$80 billion. Our farmers and ranchers are the most productive in the world, and, as a result, they are able to compete successfully in the global marketplace. In large part, America's competitive edge in agriculture has been the result of adoption of new technologies and state-of-the-art farm management tools.

Throughout my public service in the California Department of Agriculture and USDA, I have found that scientific evidence can be a powerful tool in addressing trade issues and resolving them. And

without going into detail, I would like to just mention that I have been involved in numerous sanitary and phytosanitary issues in my time, 13 years with the California Department of Agriculture and 4 years in USDA. These experiences also proved to be really instructing in terms of opening and breaking down the SPS-related barriers we faced and our farmers and ranchers faced.

My time in Washington, DC has taught me the importance of dialogue, consultation, and coordination with all the stakeholders in forging consensus on agricultural trade issues. As a Senior Trade Advisor to Secretary Dan Glickman, I was responsible for coordination of inter-agency efforts within USDA and also served as a liaison to USTR and other Cabinet-level agencies. I also represented the U.S. Government on a number of agricultural trade issues with our trading partners in Asia, Latin America, and the European Union.

My approach in dealing with our trading partners has always been based on consultation and diplomacy as a starting point and a more vigorous approach in exercising WTO rights when necessary. Monitoring and enforcement of trade agreements is a cornerstone of a strong trade agenda.

As such, I applaud USTR's recent decision to request a dispute settlement panel within the WTO regarding the EU's ban on the importation of U.S. poultry meat and meat products related to process pathogen reduction treatments, which are considered to be safe by both U.S. as well as European food safety agencies.

If confirmed, I plan to work closely with USDA Secretary Tom Vilsack and his team in efforts to remove many of the non-tariff barriers our farmers and ranchers face around the world.

Pursuing trade deals that benefit our farmers and ranchers, in particular in the Doha Round, will be another one of my key priorities. Based on the briefings I have received, it is my understanding that the Doha negotiations have made progress on a number of issues, but the larger stumbling blocks still remained unresolved.

If confirmed, I commit to devote my best efforts to achieve an ambitious and balanced outcome in agriculture, something that has eluded us for the last 8 years. It is evident that we are being asked to make significant concessions in the first two pillars of the agricultural negotiations, namely domestic support and export competition. Therefore, a final agreement on agriculture must provide commercially meaningful access to U.S. agricultural products into the marketplace of both developed and emerging economies.

If confirmed, I look forward to working under the leadership of Ambassador Kirk and working with all of the outstanding staff of USTR. I also look forward to working closely with members of this committee, as well as the Senate and House Committees on Agriculture, in addressing many of the challenges we face through open markets around the world, especially related to trade arrangements we face, as well as in the Doha Round.

Thank you.

The CHAIRMAN. Thank you, Dr. Siddiqui.

[The prepared statement of Dr. Siddiqui appears in the appendix.]

The CHAIRMAN. Mr. Mundaca? Do you have family here?

STATEMENT OF MICHAEL MUNDACA, NOMINATED TO BE ASSISTANT SECRETARY OF THE TREASURY FOR TAX POLICY, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. MUNDACA. I do. Thank you, Senator.

I would like to introduce my wife, Gina, and my daughter, Ana, who are here today. My son, Alexander, is only 4 years old, is a little bit too rambunctious to bring before this august body, but he is with us in spirit.

The CHAIRMAN. Why don't you both stand? We would like to honor your presence.

[Applause.]

The CHAIRMAN. All right.

Mr. MUNDACA. Thank you, Chairman Baucus, Senator Grassley, and members of the Senate Finance Committee, for the opportunity to appear before you today. I am honored to have been nominated by President Obama to serve as Treasury Assistant Secretary for Tax Policy, and I am grateful to Secretary Geithner for recommending me to the President. And I want to thank you and your staffs for meeting with me over the last weeks to discuss important tax policy issues and my qualifications for the position to which I have been nominated.

If confirmed, I would be honored to begin my third phase of Federal public service. I first worked at the Treasury Department from 1997 to 2002, starting as an Attorney Advisor in the Office of the International Tax Counsel on Tax Policy and leaving after 5 years' service as Deputy International Tax Counsel, returning to the private sector as a partner in the accounting firm, Ernst and Young. I was honored to be asked to return to the Department in 2007 as Deputy Assistant Secretary for International Tax Affairs and have served at the Department since that time.

My commitment to public service was instilled in me by my parents. My father, Fred Mundaca, was born in the country of Chile, came to this country as a teenager with his parents. He met my mother, Irene, in Staten Island, NY, where his family settled and where my mother lived.

When I was born, my parents and my sister Marie and I lived in the West Brighton housing projects on Staten Island. My father went to Staten Island Community College and worked nights at the U.S. Postal Service. After getting his degree, he was hired by IBM, where he worked for the next 25 years, until retiring. Through saving and borrowing, my mother and father raised enough money to move us out of the projects and into the house my parents still live in today on Staten Island.

They also helped put my sister and me through college and graduate school, with the additional help of student loans and scholarships. My parents' experience taught me to work hard, play by the rules, and help others whenever you can. I hope my children can learn these lessons from me. I also hope that my children will have all the opportunities that I had.

I do not need to tell this committee that both the United States and the world economy have faced unprecedented turmoil. However, I am convinced we can meet these serious challenges with the right mix of economic and tax policies that address near-term conditions in a manner that promotes long-term growth. Tax policy

will play an important role as we move ahead. We need a tax system that is simple, fair, and promotes growth, while providing necessary revenue. Our current system falls short.

If confirmed, I look forward to working with this committee and Congress to address the necessary changes to our tax system.

But in addition to changing our current system, we must also work together to improve compliance with our current rules. Non-compliance undermines confidence in the fairness of our tax system and fosters further non-compliance. It also results in a de facto tax increase on compliant taxpayers, who must pay more because others failed to pay what they owe. It is incumbent upon the Treasury Department to issue guidance necessary to provide taxpayers the information they need to meet their obligations. Taxpayer service is also an important element.

But we must do more. The Obama administration has already proposed and already taken a number of significant steps to increase compliance. We are currently moving to implement the recent important changes that Congress enacted to increase reporting with respect to credit card and securities transactions.

In addition, the administration's budget includes a number of proposals to improve both domestic and cross-border compliance. And we welcome the recent introduction by the chairman and others of a significant offshore tax evasion bill that incorporates the approach of the administration's offshore proposals. We appreciate the leadership this committee as a whole has shown on the important issue of improving tax compliance, and, if confirmed, I look forward to working with the committee and Congress to move forward on this important issue.

Treasury has sought to improve compliance additionally by increasing our access to information held by our trading partners that is necessary to enforce our laws. We have recently signed a number of important agreements to exchange tax information, including agreements with Switzerland, Luxembourg, Monaco, and Gibraltar.

In addition, through greater cooperation through the G-20 and the OECD, we have been able to increase the number of countries that have committed to full tax information exchange and to establish a process to assess implementation of those commitments.

In closing, I would like to thank the lawyers, economists, accountants, and others within the Office of Tax Policy at Treasury. I have never worked with such a talented group of individuals, and it has been an honor to lead the office during these challenging times.

I am humbled and honored to have the possibility of serving the Nation in this new capacity during these extraordinary times. If you and your colleagues in the Senate give me the opportunity to serve as Assistant Secretary for Tax Policy, I pledge to you diligent and dedicated service. I promise to apply myself fully, to the best of my ability, to justify your trust and confidence.

Again, thank you for allowing me to appear before you today. I would be pleased to answer any questions.

Thank you.

The CHAIRMAN. Thank you, Mr. Mundaca.

[The prepared statement of Mr. Mundaca appears in the appendix.]

The CHAIRMAN. Actually, I will begin with you. I mentioned in my statement—but actually before I do that, I have standard questions that I have to ask each of the nominees. I will just go down the list here, frankly.

Is there anything that you are aware of in your background that might present a conflict of interest for the duties of the office to which you have been nominated?

Mr. Punke?

Mr. PUNKE. No.

The CHAIRMAN. Dr. Siddiqui?

Dr. SIDDIQUI. No.

Mr. MUNDACA. No.

The CHAIRMAN. Thank you.

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?

Mr. PUNKE. No.

Dr. SIDDIQUI. No.

Mr. MUNDACA. No, Senator.

The CHAIRMAN. Thank you.

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?

Mr. PUNKE. Yes.

Dr. SIDDIQUI. Yes, sir.

Mr. MUNDACA. Yes, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Mundaca, I mentioned in my statement about the tax gap. How do we close it, and how quickly can we?

Mr. MUNDACA. Thank you, Mr. Chairman.

Obviously, this is an important issue. As we both know, there are significant amounts of money that are owed by taxpayers that are not collected. This committee and the administration are very focused on this issue. The offshore evasion bill that you introduced is an important first step in addressing the tax gap on cross-border transactions, those taxpayers who hide money overseas in order to evade their U.S. tax obligations.

The IRS has done some significant research on elements of the tax gap and, in general, ways to close it. Information reporting is one way to improve compliance. The findings of the IRS indicate, where they have good information about income flows, the compliance rate rises above 90 percent. We have taken some steps to implement the important changes that Congress enacted with respect to credit card reporting, as well as securities transactions reporting.

But, again, we must do more. I look forward to working with this committee on identifying the ways that U.S. citizens evade their tax obligations and seek ways to stop them, balancing the burdens on taxpayers with the money we do need to raise from non-compliance.

The CHAIRMAN. This is a serious problem. We have been talking about this for a long time, but not very much has been done about

it, frankly. I was very disappointed, in fact, by the last administration. In fact, I held up a nominee, the Assistant Secretary, to try to get some assurance that the Treasury was going to address the tax gap. They promised they would. To be honest, they did not, and they are going to try again.

If it is \$345 billion—some people think that is a low number; it is probably a higher number of tax dollars that is owed to Uncle Sam but not collected—we have to do something about that.

I am going to ask you for something more specific, like, by what date to you think we could lower the tax gap, by what percent?

Mr. MUNDACA. Thank you, Senator.

It is difficult to make specific predictions about lowering the rate by a certain amount, by a certain date. We will see—

The CHAIRMAN. I know it is difficult, but we have to try.

Mr. MUNDACA. Yes, sir. Yes, sir.

The CHAIRMAN. We have to do something about this.

Mr. MUNDACA. Yes, Mr. Chairman, we do. I know your committee has a number of ideas how to address it. We have a number of ideas. I pledge to work with you to address the issue. Again, I think as a first step, information reporting is something we need to consider. There is a good deal of leakage through cash transactions. We need to address a way to try to get better information about such transactions to improve compliance.

Again, these are difficult issues, in part because of the compliance burden that may be placed on other taxpayers who are meeting their obligations as we seek to close the tax gap. But, again, I do pledge to work with you and your staff, and the staff of this committee to try to move something.

The CHAIRMAN. I appreciate that. You cannot say anything at this point, probably more specific, because you are not confirmed. But in the near future, this committee is going to suggest to you and to the administration ways to finally get at this and to close it. So I would like for you, in the meantime, when you will be confirmed, to be thinking about it, because you are going to hear from us. You are going to hear from us pretty soon, because we have to address this.

Mr. MUNDACA. All right. Thank you, Mr. Chairman.

The CHAIRMAN. You bet.

Mr. Punke, I liked it when you said “no deal is better than a bad deal,” and I believe that. And I just urge you to remember that when you are negotiating with other countries.

I think, to some degree, other countries are, if not tougher trade negotiators than we, but certainly tend to drive a harder bargain sometimes than we. Because in a certain respect, although this is changing, trade is more important to a lot of these countries than it has been in the United States as a percentage of GDP. That is changing now. Trade is much more important in the United States as a percentage of GDP, but other countries are very aggressive, and I urge you to remember that “no deal is better than a bad deal,” because these other countries are tough.

Mr. PUNKE. I appreciate that, Senator Baucus. I would say that one of the things that has been remarkably consistent in all of the meetings that I have done with members and their staffs, is this mantra of “no deal is better than a bad deal.” I have certainly

taken that to heart and will pledge to be extremely tough on that front. From my standpoint, the worst possible outcome we could imagine in Doha would be to accept something in Geneva, bring it back to Congress, and have Congress reject it. And that is an outcome that I will be working very hard to avoid.

The CHAIRMAN. Right. Especially while we are going through a recession, or coming out of a recession, because the American people, I think, are rightfully concerned about their jobs, their incomes.

Mr. PUNKE. I have taken that message to heart.

The CHAIRMAN. Thank you. My time has expired.

Senator Grassley?

Senator GRASSLEY. Yes. I would like to ask each of you to give a short answer to my first question, and I ask this of almost all nominees who come before this committee.

It is in regard to our oversight work as a Congress, because that institutes the checks and balances of our system, and we want to make sure that the American people have a fair, honest, and transparent government.

In addition to what we as members of the committee do here, we often ask the Government Accountability Office to evaluate government programs and the activities in a variety of agencies, and then oftentimes, we ask the Inspector General to do that as well.

So, my question to each of you: Would you commit to working with Congress, the Government Accountability Office, and any Inspector General, where applicable, in a timely and constructive manner to address the oversight and other needs of Congress, and would you encourage others to do so?

Mr. PUNKE. Yes, Senator.

Dr. SIDDIQUI. Senator, I will commit to work with the Government Accountability Office.

Mr. MUNDACA. Yes, Senator.

Senator GRASSLEY. And then, pretty much along the same line, because sometimes delay is inaction, so I would ask you to do it in a timely and substantive manner.

Mr. PUNKE. I will commit to that Senator.

Dr. SIDDIQUI. Yes, sir.

Mr. MUNDACA. Yes, Senator.

Senator GRASSLEY. Thank you.

Mr. Punke, I strongly support U.S. participation in the Trans-Pacific Partnership negotiations. There are some opponents of those negotiations who say that they are a distraction from Doha. My opinion is to disagree with that position. I think U.S. negotiators can, in effect, walk and chew gum at the same time. So, what is your view about those being in conflict? Not necessarily in conflict, but that they cannot both be going on at the same time?

Mr. PUNKE. Senator, I am aware of your strong support of TPP. I think that TPP is one of the things that we have to consider as we look at ways of expanding our trade relationship with the vital region of Asia, and I certainly agree with you that it is important for the administration to be able to walk and chew gum at the same time. We have extremely broad trade interests around the globe, and we need to pursue those interests using all of the tools that are at our disposal.

Senator GRASSLEY. Dr. Siddiqui, the European Union's policy regarding agricultural biotechnology is harming American farmers. The European Union is not making meaningful progress in approving new biotech varieties. While EU officials can point to some recent approvals, the list of unapproved varieties is even higher than it was last year. And of particular concern to my State of Iowa is that the Union's policies, in effect, block U.S. corn and corn gluten feed from entering the EU market.

If confirmed, will you make it a priority to attempt to remove the European Union's barriers to the import of U.S. biotech commodities?

Dr. SIDDIQUI. Senator Grassley, I share your concern about the EU's refusal to accept the WTO decision which was ruled in U.S. favor to use science-based risk assessment to allow those biotech varieties of different crops into the EU. I understand the USTR continues to work with them. We have made some progress, but I will commit to you and the committee that, if I am confirmed, I will work with you and other members of the committee on two fronts: one is to engage the EU negotiators from the Directorate-General for Trade on this issue to open this and approve those varieties which are in the pipeline and should be approved on a science-based approval process, and also push them in terms of honoring their WTO commitments.

Senator GRASSLEY. All right.

A little more specific in this area, Dr. Siddiqui, Turkey issued a new regulation, just last week, concerning importation of biotech commodities. According to industry, this regulation would shut down the Turkish markets for imports of U.S. corn and soybeans. Turkey failed to consult with the United States or to notify the WTO before it announced this regulation, which went into effect immediately.

If confirmed, I encourage you to act quickly to work with Turkey's officials to see that they adopt biotech policies that are based on science and do not discriminate against imports of U.S. biotech commodities. I would like to ask you for your response.

Dr. SIDDIQUI. Senator, this development is of concern to USTR, according to my discussions with them, and to me, personally, because Turkey has failed to live by its commitments to the WTO in terms of WTO notification. And also, to my knowledge, I do not believe they have done a scientific risk assessment before they took these actions. If I am confirmed, Senator, I will work very closely with you and other members of the committee in looking into this issue and also take appropriate actions, whatever is needed.

Senator GRASSLEY. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman.

Mr. Mundaca, I recently had a meeting with several small business owners who have been assessed penalties by the IRS in the hundreds of thousands of dollars each. These penalties were for failing to disclose certain information in connection with listed transactions in which they unwittingly entered.

One of them was a contractor who was trying to get pensions for his people and found himself in a tremendous mess afterwards. All

of us here are concerned about abusive tax shelters and the need to crack down on those who peddle them. But I am very concerned about this particular issue. We are also very concerned about those who knowingly attempt to cheat our government.

But I suspect that every member of the committee believes that these peculiar penalties go way beyond reason and need to be modified to avoid them sending small businesses and their owners into bankruptcy when the tax due from the original transaction is relatively modest. I am grateful that our chairman and ranking member have already engaged IRS about this issue and have received temporary assurances that the Service will suspend the collection of these penalties until the end of the year in order to allow us to pass a change in the law. I hope we will have a legislative vehicle before then that allows us to make this happen.

Now, is it correct to assume that the Treasury Department shares our concern that these penalties under 6707(a) are far too harsh and need to be rationalized and will support legislation to do so?

Mr. MUNDACA. Thank you, Senator. You raise an important issue. You correctly identified the issue as the lack of discretion given to the IRS and the legislation to abate the penalties that may apply with respect to failure to report certain listed transactions.

I do support adding that discretion to the code in order to give IRS, again, the ability in extraordinary cases where the penalties far outweigh the tax due, or other circumstances point to a reason, to have those penalties abated. We have been working with IRS on this issue. Again, I commit to working with you and this committee, if I am confirmed.

Senator HATCH. That is great. We appreciate it.

But a lot of these were not extraordinary issues. These were people who just found themselves on the bad end of government, losing their businesses, going into bankruptcy, taking their savings and a whole raft of things that really are highly improper, as far as I am concerned. So, I hope you will really look into this and help us to get this resolved.

Mr. MUNDACA. Yes, Senator, I will.

Senator HATCH. All right. Now, I get many complaints from Utah business people and others all over the country that our corporate tax rate and other international tax rules place American firms at a disadvantage when it comes to competing globally. As you know, our corporate tax rate is among the highest in the world. We now stand nearly alone among developed nations in taxing home-based entities on their income, regardless of where such income was earned, while most other countries employ a system that taxes only that income earned within their borders.

Do you think that moving towards territorial taxation will make it easier for our companies to compete, and also simplify the corporate tax system?

Mr. MUNDACA. Thank you, Senator. You raise an important issue. The administration is very focused on competitiveness of U.S. multi-nationals, as well as competitiveness of U.S. workers. You are correct. Our statutory corporate tax rate is among the highest in the world, perhaps only second to Japan at this point.

This is an issue we do need to address. I think it needs to be addressed in the context of fundamental corporate tax reform, and more likely, tax reform including individual tax reform as well. The administration's budget put forward a number of proposals changing our international tax rules, trying to rationalize the rules that we have now in order not to incentivize the shifting of income and investment overseas. But we do recognize competitiveness needs to be considered in all of these proposals, what our trading partners are doing needs to be an element of all this as we move ahead. If I am lucky enough to be confirmed, I look forward to working with you on this issue.

Senator HATCH. I hope you will, because we think it is very important.

Now, let me ask just one last question. I will submit the rest of my questions to you, Mr. Mundaca, in writing.

[The questions appear in the appendix.]

Senator HATCH. Now, Mr. Punke, let me just ask you this. The WTO's Director Pascal Lamy recently stated that member nations "now need to engage in text-based negotiations," particularly in agriculture. What are your thoughts on that statement? It appears that some nations are attempting to blame the United States with the lack of progress in the WTO agricultural negotiations. Now, what are your plans for countering this incorrect information? And you could answer that as well. I would be happy to hear from both of you.

Mr. PUNKE. Senator, I appreciate the question.

I think the significant thing, in terms of making progress in the Doha Round of negotiations in which we are engaged, is number one, getting greater clarity from our trading partners as to what concessions they are willing to make; and number two, closing the gaps between the concessions that have been made by the United States and the concessions made by our trading partners.

I think that will be what will determine whether or not the round is successful. One of the difficult things about where we stand in the round currently is, the concessions that have been placed on the table by the United States are very clear. What is unclear is what we are going to receive in return. And one of the central efforts at the Office of the U.S. Trade Representative right now is to close those gaps and to gain greater clarity so that we can eventually come back to Congress and give you a much clearer sense of what we are getting in return for the concessions that have been contemplated.

Senator HATCH. Dr. Siddiqui, do you have any comment?

Dr. SIDDIQUI. Senator, if I may just add to what Mr. Punke said. I believe that multi-lateral negotiations, and also text-based negotiations, are fine, but in addition to that, we need to have bilateral engagement, especially key emerging countries so that we can narrow the gap, and also understand what we are going to get in return for the concessions we are either making already on record or we will be asked to. So I think there is a lack of clarity on that.

Senator HATCH. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Roberts, you are next.

Senator ROBERTS. Chairman Baucus, Ranking Member Grassley, thank you for holding these very important nominations that will

help further our trade agenda and fill a critical role in the Treasury.

Mr. Chairman, I have some questions in regards to tax policy, but then I have some additional questions regarding trade policy. Are you anticipating a second round that might work?

The CHAIRMAN. Yes.

Senator ROBERTS. All right. Thank you, sir.

As we learn more about Mr. Punke and Dr. Siddiqui's many qualifications, it is my hope their nominations will serve as a long overdue jump-start to what I would call a lagging trade agenda.

I am also pleased that we are considering Mr. Mundaca's nomination for Assistant Secretary for Tax Policy. This is a very important position to fill. I think it will become even more important, especially as Congress considers health care legislation with significant tax policy implications.

So, Mr. Mundaca, thank you for your willingness to serve. As Acting Secretary, you already know that one of your primary responsibilities is to advise the Secretary on tax policy and issues that reach into the lives and pocketbooks of every American.

Now, under the Health Care Bill that recently passed out of this committee and is now being considered, is trying to be evolved, or it is trying to be just like a jigsaw puzzle, we are trying to put it together. I say "we." They are trying to put it together. But that is the way things are.

I just want to make sure that everybody watching this hearing understands that there are not just \$500 billion or more in new taxes called for in this bill.

It also calls for an unprecedented expansion of the IRS's role in collecting and sharing information about Americans and their health care choices. That makes a lot of folks who pay taxes, and a lot of citizens, and a lot of people in the small business community, really sit up and take notice on the edge of their chair. They might get a little bit in the weeds, and their eyes glaze over if you get into tax policy and talk about insurance companies all the time, but, when you say that the IRS is going to be involved, you know you get their attention.

Seventeen provisions have been identified in the Finance Committee Health Care Bill that the IRS will be responsible for implementing, administering, and enforcing. They include the individual mandate penalty and the employer penalty. For the life of me, I am not quite sure how you are going to administer this, how you are going to get the kind of information that you need, but we want to be of help to you.

Senator Grassley has raised this issue with the IRS Commissioner and on the Senate floor, and I have several questions about these provisions—I understand there are 17 of them—especially the expanded reach of the IRS and how it will collect, verify, and share information from individuals and families in order to implement the health care taxes, fines, or fees called for in this bill.

I will submit those questions for the record so we do not have to get into that right now, but they are terribly important.

The CHAIRMAN. Without objection, they will be included.

[The questions appear in the appendix.]

Senator ROBERTS. I would like your thoughts on a related issue Senator Grassley has raised about the cost of this expanded IRS activity. The bill that was reported out of this committee does not acknowledge any additional costs for implementing and enforcing these new provisions.

The first question: will there be additional costs, and more importantly, was the IRS even consulted about whether the Service would need additional funding, not to mention personnel to implement this bill?

Mr. MUNDACA. Thank you, Senator. There have been, and will continue to be, discussions as the bill evolves, about the way that the IRS will be asked to administer the new law. And at the time that the bills settle and we are clear on what is going to be asked, the IRS will be able to better assess the additional resources that may be necessary. I believe Commissioner Shulman responded to a letter from Senator Grassley on that point.

Senator ROBERTS. I am very much aware of the letter back to Senator Grassley by Commissioner Shulman. It is like the letter that many Senators write back to constituents when they ask a question about a particular bill, and say this particular bill is now pending in X-Y-Z committee, and rest assured we will keep your thoughts in mind. I think we need to get into this a little bit more. But at any rate, have any cost estimates been requested or provided?

Mr. MUNDACA. Other than the letter from Senator Grassley, I do not know of any specific requests.

The CHAIRMAN. Well, I might say, we have been consulting, frankly, with IRS in drafting this bill and during markup. But you are correct at least—Mr. Mundaca is correct—there is nothing specific going back. But there have been discussions between the Finance Committee staff and the administration.

Senator ROBERTS. Mr. Chairman, you know that we have the individual mandate. Whether it is the employer or whether it is the individual, it will be up to the IRS to determine how to do this. I am not quite sure how we do it. I do not know how the employer gives the information, I do not know how the individual gets the information, and I do not know how the IRS really polices it. I know that is a pejorative, perhaps, if I say police, but somebody has to enforce this, as I say, the fines, fees, and the taxes.

I am very glad that our very capable staff, hopefully on both sides, is doing this. Is there somebody down there in the basement that internally knows pretty much what these three bills are doing? Well, we do not know what the conference report will be, but we do know what the House bill sort of is going to do. We have the Assistant to the Speaker here. Perhaps she could shine some light. I am just mentioning that. I am not going to call on you.

If you are discussing this, what is the status of these estimates, or do you have estimates?

Mr. MUNDACA. We have not been working on estimates, but we have been working on figuring out how it is, if the various bills do pass, they would be administered by the IRS, that there is a good exchange back and forth to make sure that the provisions that are being considered can be administered; obviously, a bill that does not work would be to no one's benefit.

Senator ROBERTS. Well, I am glad to hear that. Instead of a bed of flowers, there is a lot of cactus in the world. You do not have to sit on every one of them. You are going to open the door and find out you will be in that situation.

So, you are saying that would not be completed and the funding request would not be made to Congress, of course, until the final passage. But you are making some substantial efforts to figure out, if this does pass, these are our responsibilities.

Well, thank you for your willingness to serve. I am very concerned about the ability of Treasury and IRS to implement the new and far-reaching provisions in the bill, and I know we have your commitment to work with the committee.

I am already over time, but on the second round, I will get into the trade.

Thank you, Mr. Chairman. I appreciate that.

The CHAIRMAN. Thank you, Senator. I do not mean to get into an argument here, but the Joint Committee on Taxation, which advises this committee, and the Ways and Means Committee of the Congress, and to some degree, the world, it has concluded, Americans will get an average tax cut under the proposed Health Care Bill—I think this is the Finance Committee bill—of 1.3 percent over 10 years. Actually, the Joint Committee on Tax estimates that the bill's tax credits will reduce taxes for more than 42 million Americans by the year 2017. And I might say that the Congressional Budget Office has also concluded that, not only is the proposal deficit-neutral over 10 years, but actually, I have forgotten the exact amount, is \$40 to \$81 billion in the last year, and to the good. It puts the country in the black, with a surplus of \$81 billion.

I might also add that the Joint Committee on Taxation said that the role of government will actually decline in the second 10 years under the proposed legislation, that is, less government over the next 10 years. That is less government involvement in health care over the next 10 years than would be currently. Basically, the tax cuts are the form of tax credits. A lot of Americans will get tax credits, and that, of course, means a tax reduction.

Senator ROBERTS. The testimony we had before the HELP Committee yesterday indicated that, for our 60,000 small businesses, their tax credit is only going to apply up to about 11 percent. So we do have some problems here. I am very much aware of the chairman's position in regards to the Health Care Bill overall and the tax implications, and that we have had many, many hearings. And I hope you are right. I will just say that, basically, that really, with all due respect, sir, I do not think it has too much to do with what I was talking about with Mr. Mundaca in terms of the ability of the IRS to implement and police their responsibilities.

The CHAIRMAN. There is no doubt the Senator made good points. In this administration, it is something that we will address vigorously to make sure that it is done as fairly and responsibly and reasonably as it possibly can.

Senator ROBERTS. As always, the chairman is an eternal optimist. You would never put the seed in the ground if you did not think you would have a crop. [Laughter.]

The CHAIRMAN. We are going to find a solution, here.

Senator ROBERTS. I think there is a hailstorm coming, but you will think it is good weather.

The CHAIRMAN. But I also have good health insurance in this bill.

All right. Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Mundaca, to begin with you: The Volcker Commission is going to be coming in fairly shortly with their proposals for tax reform, and I have thought for a long time that the 1986 model, where, in effect, you clean out a lot of the clutter that has been accumulated over the years, simplify the code, and keep progressivity, that that model from 1986 continues conceptually to be a pretty good model for tax reform.

I would like to hear your thoughts. And again, this is not on any specific piece of legislation, just conceptually where the principles of 1986 are a pretty good model still.

Mr. MUNDACA. Thank you, Senator. I do agree with that. When we talk about the general principles that should apply to tax reform—fairness, simplicity, and administrability—one of the easiest ways to achieve that is to simplify the special rules that are in the tax code, the special exemptions, deductions, et cetera, get rid of those. In essence, broaden the base, have a pure income tax. You can lower the rates then and keep the same amount of revenue collected and then, also, get the gains from simplification. So, I do think it is a good model going forward.

Senator WYDEN. I will have some other questions for you in a minute.

Mr. Punke, we are very interested, particularly in exports, and exports of environmentally friendly goods. This is an area I have talked about with the chairman and a lot of our colleagues. This is a chance for us to really promote a sector where there is going to be good-paying jobs. And as you know, around the world, we are hit with some pretty significant tariffs and pretty significant obstacles to getting our environmentally friendly goods into these countries.

What do you think about the idea of moving quickly to conclude and implement some early agreements on environmentally friendly goods, and would it be possible to do that without, for example, undermining Doha?

Mr. PUNKE. Senator, I appreciate the question. As you know, Senator—and I agree with your analysis—environmental goods are one of the very important sectors where we have the potential to make progress in Doha. That particular sector has been one of our areas of focus in the negotiations over non-agricultural market access. I would add to that that the environmental services sector has been an area in which we intend to, and have focused intently in the context of the services negotiations.

I am not sure that any of the fruits in Doha are low-hanging, but I would certainly expect, and hope to consult with you, about the best timing in terms of bringing back any concessions that we are able to win in the context of the Doha negotiations.

Senator WYDEN. Let us prosecute this case as vigorously as we can. I know colleagues on this committee have a great interest in

this. This is an economic winner for our country to get these goods into these markets overseas, and I want to follow that up with you.

Mr. PUNKE. I appreciate that.

Senator WYDEN. Dr. Siddiqui, I want to ask you about pesticides. As you know, there has been a lot of debate about this issue. I am someone who believes that we ought to be doing everything we can to support sustainable American agriculture. I think it is clear that there is a role for pesticides. And certainly, almost as a backup, I would like to do as much as possible, in terms of public policy, to support sustainable American agriculture.

If you are confirmed, what would you do in your position specifically to promote that? We have a great interest, for example, in organic farming in my home State, elsewhere in this country. What would you do in this position to support sustainable American agriculture?

Dr. SIDDIQUI. Senator, I am glad you asked this question. Number one, I truly believe that the U.S. has the most abundant, affordable, and safe food supply in the world, whether the food is grown conventionally or using organic practices, number one.

Number two, if I am confirmed, I will commit to work with you and all the stakeholders. My public service of 32 years in California, as well as the U.S. Government, has been to work with all the stakeholders. If I am confirmed, I will work with all the stakeholders, farmers and ranchers who grow their food products, to promote the exports, whether they are grown conventionally or through organic sustainable means.

Senator WYDEN. So, with respect to the concerns that have been raised—and there are many groups that have sent letters to the committee—I want to give you a chance to respond to those concerns, people who have criticized your positions in the past. How would you respond to those who have been sending these letters here to the Finance Committee?

Dr. SIDDIQUI. The best way and the shortest way I can answer, Senator, is that all of these allegations I have read there in the text which I've seen are directed toward the trade association I worked for for 8 years. There is no evidence in my public service of 32 years where I have made any disparaging remarks against organic or sustainable practices. I truly believe—I grew up in India as a child, saw the agriculture, the way it was. I saw the Green Revolution when I was going to university which was opened with U.S. assistance, in the Bill 480 Program, and I came here as a student. I am a true believer in all the processor systems, whether they are using conventional means or organic. And I will do my best in terms of representing all these interests in promoting agricultural exports abroad, organic as well as conventionally grown products.

Senator WYDEN. My time is up, Mr. Chairman. I am just going to submit some additional questions in writing.

[The questions appear in the appendix.]

The CHAIRMAN. Thank you.

Next is Senator Lincoln.

Senator LINCOLN. Thank you, Mr. Chairman. Good morning and welcome to all of the nominees before the committee today. We are so pleased that you are here.

Obviously—I think it is obvious to most all of us—it is critical that we fill the vacancies that exist at both USTR and the Treasury.

Mr. Mundaca, the role that you must now fill at Treasury is an extremely important one, and I am pleased we have you here today and are moving your nomination forward, hopefully, in an expeditious way.

In your testimony, you alluded to the economic challenges our Nation is currently facing and the role that tax policy is going to play in getting us back on track. Without a doubt, the number-one concern on Arkansans' minds right now is, indeed, the economy and the impact it is having on all of our family pocketbooks, but particularly those families in Arkansas.

And I do believe that we have taken steps to implement policies that are helping our businesses and families, such as our Home Buyer Tax Credits and the NOL carryback expansion, two provisions that we are working to improve even further on the floor this week.

There is, however, more to be done, and in the weeks and months ahead I look forward to working with you to ensure our focus remains on crafting policies that are going to create jobs. I think that is the biggest issue on the minds of Americans right now. We need to encourage economic development, provide tax relief to families and small businesses. Across this country, our small businesses are our largest employers, in Arkansas, and I think in most States as well. So I appreciate your willingness to work with us on that, and I look forward to doing so.

I would also like to bring up the importance of the nominations of Mr. Punke and Dr. Siddiqui to agriculture. As the chairman of the Senate Agriculture, Nutrition, and Forestry Committee, I have a long record in support of farmers and ranchers in this country and the benefit trade can provide them.

Mr. Punke, having been a staffer for Chairman Baucus, I am sure you are very familiar with the challenges facing agriculture in the current negotiations. I am also sure that you will rely very heavily on Dr. Siddiqui in the Doha negotiations, where agriculture always plays a key role in that debate. We look forward to working with you, again, with that history, knowing that you are going to be a hard worker, and particularly responsive, at least to our concerns about agriculture, as they are negotiated.

Dr. Siddiqui, should you be confirmed, you will be involved with facets of any trade negotiations involving agriculture and, personally, I think the administration's choice for Chief Agricultural Negotiator at USTR is a very wise one.

You have had a long and distinguished record of service, beginning in California, serving in multiple positions at USDA during the Clinton administration, and finally under the Secretary for Marketing and Regulatory Programs, and in this capacity, you worked closely with President Clinton and Secretary of State Madeleine Albright on several trade delegation trips abroad. You have had the respect of former colleagues and many in the farm and food community.

And on that note, I would really like to submit for the record two letters in support of Dr. Siddiqui's nomination, Mr. Chairman, one,

from former Agriculture Secretary Dan Glickman and another from 46 groups representing producers, workers, exporters, and others involved in the farm and food sector.

The CHAIRMAN. Without objection, they will be included.

[The letters appear in the appendix on p. 40.]

Senator LINCOLN. Thank you, Mr. Chairman.

I respect Dr. Siddiqui because he has very effectively advocated a responsible position on food and agriculture policies that are embraced by the vast majority of people in America and around the world. His views are shared by other respected and dedicated Americans whose commitment to eradicating hunger is well-known.

And I will quote from one of them who recently addressed the technological advances in the agriculture sectors, as you and Senator Wyden were discussing. This is what Bill Gates recently had to say on the subject: "On one side is a technological approach that increases productivity, on the other side is an environmental approach that promotes sustainability. Productivity or sustainability, they say we have to choose. It is a false choice, and it is dangerous to fall for. The fact is, we need both productivity and sustainability, and there is no reason that we cannot have both." Bill Gates is absolutely correct: there is not a choice between sustainability and productivity. We can do both, and we need to in order to feed the world.

No one provided more proof of this than the late Dr. Norman Borlaug, the recipient of the 1970 Nobel Peace Prize, the 1977 Presidential Medal of Freedom, and the Congressional Gold Medal of 2007, among others.

I think it is important that Dr. Borlaug was credited with saving in excess of 1 billion lives over the course of his lifetime due to his groundbreaking work in developing and implementing technologies.

I have no doubt that Dr. Siddiqui understands this, which makes him uniquely qualified for this position. I intend to vote in favor of Dr. Siddiqui, and urge my colleagues on the committee to join me in that support of his nomination.

Dr. Siddiqui, I look forward to working closely with you once you are confirmed as our Chief Agricultural Negotiator.

Just a couple of questions I will throw out, and then, as Senator Wyden did, I will submit the remainder of my questions for the record.

[The questions appear in the appendix.]

Senator LINCOLN. The problem is especially clear for agriculture, where steep and unsustainable cuts in U.S. domestic farm supports have been demanded. Meanwhile, our trading partners balk at meaningful changes in the existing text and refuse U.S. requests for bilateral commitment.

Under these circumstances—and these are most appropriate, obviously, for Mr. Punke and Dr. Siddiqui—what, if anything, might be done to break the stalemate, and how do we plan to rebalance the negotiation? And, as such, from the last administration's offer to reduce farm supports conditioned on major gains in market access, does it make much sense to withdraw the U.S. offer so we can negotiate on a level playing field?

Mr. PUNKE. Senator, I appreciate the question. I think what is most important in terms of addressing that question is that we not

simply continue down a path that we have been on for 8 years that has not yet led us to a successful conclusion in the Doha negotiations.

One of the things that I think that USTR and the administration have done successfully over the course of the past 6 months is to advocate for and to create a system of bilateral consultations in parallel with the multilateral discussions that are going on in Doha.

The express purpose of those bilateral discussions is to seek gap filling between what the United States has offered in terms of concessions, and what we are receiving in exchange, and to achieve clarity over what has been offered by our trading partners.

Those discussions, bilaterally, give us an opportunity to really drill down and hopefully obtain that clarity and hopefully close those gaps. We will not know if we are successful in that effort for a while, but I am convinced that, absent that bilateral effort, that we will not achieve the success and the clarity that we need.

Senator LINCOLN. Dr. Siddiqui?

Dr. SIDDIQUI. Senator, in addition to what Mr. Punke said, and specifically to agricultural negotiations, I know it is going to be a challenge to bring these agricultural negotiations to conclusion. But we need to make sure, as I said in my opening remarks, that we have some meaningful market access in agricultural products, U.S. products, to especially those emerging economies.

I hope to work with you and members of Congress, as well as other parts of the administration, to bring a balance and also get this—I think we have failed overall in terms of, out of 153 member countries of WTO, about 130 countries are not being asked to make any significant concessions. So, we have to engage, for the lack of a better word, OECD member countries and some of the emerging economies which are not members of OECD, and make sure that we, in return for what we are giving, do gain meaningful market access for agriculture.

Senator LINCOLN. Well, I appreciate that. I do think, as we look at ourselves in a part of this global community, you are exactly right engaging other traders and certainly making sure that that market access is open. And I would just plead with you all that we do stick to the mantra of “no deal is better than a bad deal.”

The CHAIRMAN. Thank you very much, Senator.

I might say, I regrettably have to leave to another engagement, but Senator Conrad has kindly agreed to continue chairing the rest of the hearing. [Laughter.]

Senator CONRAD. And there is Senator Roberts’s waiver rule that will be in effect, which does not actually permit him to ask any additional questions. [Laughter.]

Senator ROBERTS. Precisely what kind of waiver are you talking about? I am a little concerned.

Senator CONRAD. And you should be. [Laughter.]

The CHAIRMAN. Before I leave, I would like to ask one question of Mr. Mundaca. When will the credit card reporting regulations be issued? That was part of the semi-tax gap legislation passed. The industry needs it for timely guidance so it can get ready. I hear conflicting reports of when it might be issued. I would like you to shake it up. We need to get those reporting regulations issued.

Mr. MUNDACA. Yes, Senator. We understand the priority of getting the guidance out so that credit card companies can adjust their systems, get us comments in. They should be out within the month.

The CHAIRMAN. Thank you.

Senator CONRAD. Thank you, Mr. Chairman. Thank you for holding this hearing, and thanks to all of you for your willingness to serve in this administration and be in public service.

Mr. Punke, we remember your previous service. My staff tells me you were especially responsive on issues critically important to my State in terms of enforcing previous trade agreements, and so I want to acknowledge that here, publicly, and say how much I appreciate the assistance that you provided my office and the people of my State in your previous position. I think you demonstrated sensitivity to production agriculture that is very much appreciated by this member, and I think other members on this committee.

I also see Gus Schumacher here in the audience. Gus, who has served in the previous administration in the Department of Agriculture, was also very responsive, traveled to my State on a number of occasions. It is good to see you, Gus. I am delighted that you remain active.

Mr. Punke, I would like to ask you and Dr. Siddiqui a question that relates to negotiating strategy. A previous Trade Ambassador told us in testimony before this committee that she thought it was smart negotiating strategy to make substantial concessions on the front end to set a good example for our negotiating partners. I do not want to play hide-the-ball here, so I would just tell you, I thought it was one of the most unusual negotiating strategies I had ever heard of.

I was taught to negotiate by my uncle. My uncle taught me how to negotiate in buying a car, and he told me you have to walk away at least twice if you are going to get any kind of a deal.

I am just interested in your basic philosophy of negotiating. Do you think it makes sense to make significant concessions on the front end that are not reciprocated on the notion that somehow that is going to set a good example for those with whom we negotiate?

Mr. Punke?

Mr. PUNKE. No, Senator. I do not.

I can tell you this—and my father who is sitting behind me can confirm this—his philosophy is you have to walk away 3 or 4 times before you buy a car and wear them down, and he has been very successful in this negotiating style over the years.

Senator, I think it is extremely important to emphasize that the negotiations we are in obviously have been going on for 8 years, and there is a context to them, but I think it is also important to emphasize that nothing has been agreed to yet, and that nothing will be agreed to until everything is agreed to.

And, certainly, my focus, if I am confirmed, will be to gain those concessions from our trading partners to gain that clarity so that we can bring a good deal back to Congress and so that you can see very clearly what concessions we have won on behalf of the American people.

Senator CONRAD. Well, I appreciate that. I would just say to you, if it is not a good deal, it is going to be dead on arrival here.

The previous agreements that were in train, that were tentatively put on the table, I think would have been an extremely serious blow to American agriculture, certainly the State that I represent, and I would have done everything in my power to stop them. So, I hope very much that you take to heart how critically important it is that we negotiate aggressively. The days are gone when the United States could just give things away because we were so strong, so prosperous, it did not much matter. Those days are gone.

Dr. Siddiqui, I hope I am pronouncing your name correctly.

Dr. SIDDIQUI. Siddiqui. Absolutely correct. Siddiqui.

Senator CONRAD. Thank you, sir.

Can you tell us a little about your negotiating philosophy?

Dr. SIDDIQUI. Senator, I would say for the record here that my experience in negotiating, especially what I mentioned in terms of dealing with both WTO member countries and some that are not WTO member countries, has always been to know the issue, have your facts, and understand what is on the table. But I would not want to telegraph my strategy to the other side and extract concessions.

I think we have to look for openings where we can exploit those openings in terms of what we can bring from the situation in the WTO Doha Round. But, if I am confirmed, I will assure this committee, and I will commit to work not only with Congress but also the stakeholders, because there are different stakeholders, U.S. exporters, and others, they have a stake in this and they are the ones who are going to pay the price for this. So we will not bring back an agreement to you which does not provide meaningful market access, and is a balanced and ambitious one.

So my strategy in terms of negotiation has always been to study up on the issues, understand the opposition, where their weakness is, and then also work with the stakeholders so that we have a balanced agreement.

Senator CONRAD. Well, I appreciate that. I had a former head of negotiations for the Europeans tell me that their idea was always, on agriculture negotiations, to insist on equal percentage reductions from both sides. Of course, they have much higher levels than we do, so equal percentage reductions always benefit them. They said we will always be able to claim it is fair, but we will always have the advantage. I hope we remember that they do have a strategy, and they do have a plan, and their plan is to win. And I hope we go into it with a plan to win.

My time has expired.

Senator Roberts?

Senator ROBERTS. Yes. Thank you, Mr. Acting Chairman. I have this classified note that I will return with your staff member with the yellow tie over there that just sat down, if you could hand that to the distinguished Senator.

All right. I think it is obvious by the comments that everybody made—and Senator Lincoln is no longer present, but I certainly want to endorse her statement—about sustainable agriculture and commercial agriculture. It is not an either/or thing. I think we can

do both, and I think she made that very clear, and it was a very good statement.

My State depends, just like the State that Senator Conrad represents, on access to foreign markets. I am concerned that we are letting some opportunities pass us by. We are trying to climb out of these very troubled economic times, and I do not think we can further ignore the possibility, what used to be the probability, of trade agreements with Colombia, Panama, and Korea. They have been languishing now more than 7 years.

In the case of Colombia, it makes little sense to deny our exporters the same access to their market that the Colombian exporters now currently have to ours. But, beyond the shelved trade agreements, there is little indication that international trade is a top priority, and I think, hopefully, all of you can help change that. We have had 11 months in. The United States remains on the sidelines while our competitors, like the EU and Korea, negotiate trade agreements. When we have to export one-third to one-half of our crops and our livestock, that is just not acceptable.

So, Dr. Siddiqui—and thank you by the way, for all of your service with Secretary Glickman, Secretary Veneman, with CropLife, all of the years of experience. I cannot think of anybody with better qualifications.

I want to talk about beef trade, especially in Asian countries, and the priority of same. We have had a problem, at least, as I have talked with industry—or a challenge really—of a lack of clear communication, not only with the stakeholders in the beef industry, but within the executive branch. I am concerned about a lack of effective communication—that is my definition, but that is what I am hearing from the participants—between the White House, the USTR, and the USDA, meaning several opportunities for having some real conversations with our Asian trading partners may have been lost.

What will you do at USTR to ensure that all channels—all channels—are communicating with each other and with industry to re-energize the beef trade?

Dr. SIDDQUI. Well, Senator, I share your concern about the beef trade and how much is sitting on the table which we are not able to export because of the scientifically unsound bans we have because of the BSE.

If I am confirmed, I commit to you that I will work with the USDA and other agencies within the government in terms of improving that communication you just alluded to just a while ago. Also, I will work very closely with the stakeholders in the beef industry. Having worked at the USDA between 1997 and 2001, I have this advantage of knowing folks in the Agriculture Marketing Service. That was one of the agencies I oversaw when I was a Deputy and a Secretary and Under Secretary of Marketing and Regulatory Programs. And second, I also understand our beef industry and some of the problems they face. So I commit to you to work with Congress, as well as the stakeholders who have a stake in this, in improving market access not only in Asia, but also we have some issues with Mexico as well.

Senator ROBERTS. I know that our livestock associations are very eager to work with you directly to make sure they have input to

all of the administration's actions to restore trade and open new markets to U.S. beef, so I am not even going to ask that question because I know you are going to be there.

As I said, you can visit Dodge City, and we will make you an honorary marshal.

Dr. SIDDIQUI. Thank you. I will do that, sir.

Senator ROBERTS. And make you an honorary member of the Dodge City Coffee Klatch, and you will be in fine shape.

The trade agreements with Panama, Colombia, South Korea, appear to me to be—and this is my definition, and I hope nobody takes it in a wrong way—but it seems to me we have the environmental and labor benchmarks that put these trade agreements in purgatory. In regard to Colombia, much has been made about benchmarks. Why have benchmarks, when Colombia has been the benchmark for cooperation and about the only real ally we have in Latin America?

So, what is the status of this assessment? Are there any actions that you can take to move this process forward more quickly? And I think this has national security implications as well in regards to the government of Colombia and all that they have gone through with the expectation that we would follow through with the trade agreement, or more especially with the situation in Honduras, which I am worried about as well. So, I think there are a lot of issues at stake.

Mr. PUNKE. I appreciate that question, Senator.

I think it is important, and I think what the administration has said about the three pending trade agreements is, that each one of them has the potential to be a very good agreement for the United States, but each one has areas of concern, including labor issues.

This is not an area of direct oversight for me, but my understanding is that this is an area where USTR is working very hard every day, both with our trading partners, but also with Congress, and I would certainly commit to you, Senator, to take your views back, and to be part of that process of working toward resolution of those issues on those pending bilaterals.

Senator ROBERTS. I appreciate that. We have done that on repeated occasions.

Senator Conrad, I share your view in regards to—and I think most of us in the agriculture community—with regards to the Doha Round and these ever-ongoing trade agreements. Were you in Seattle for the tear gas round? [Laughter.]

You cannot hold a trade conference meeting/trade negotiation without all of the various people who are opposed to trade showing up in various shapes, sizes, costumes, gosh knows what else.

And I remember Secretary Glickman at that particular time, and then Senator Harkin, saying what are we going to tell our farmers if we cannot reach an agreement on the basic things that we all agree to? And then, of course, came the tear gas. You could not even get a hamburger in Seattle because they were very worried about certain things. I cannot remember the chain where all of that started, where somebody ate beef that was not cooked. But, at any rate, I am worried that we cannot get there from here, and we certainly should not be in a position of saying, well, we are going to take whatever protection we have in the current farm bill and use

that as a leverage, if you will, to try to make some concessions prior to any agreement. So, I agree with you on that.

Did you really walk away 3 times when you bought your car? Was that a Cash for Clunkers, or what?

Senator CONRAD. Sometimes I have walked away more than 3 times. My Uncle Jim was a very wise man.

Senator ROBERTS. Would he have been for Cash for Clunkers, do you think? [Laughter.]

Senator CONRAD. I rather doubt it.

Senator ROBERTS. I am way over time. I apologize.

Senator CONRAD. Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Mundaca, our country has an enormous need for investment in roads, and bridges, and transportation systems. For 6 or 7 years now, I have worked closely with a number of colleagues on the other side of the aisle, starting originally with former Senator Talent, most recently with Senator Thune, and we have advocated a proposal to issue Build America Bonds, where in effect the bond holder not only gets the interest on the bond, but would get a Federal tax credit. And we worked very closely with Chairman Baucus and Senator Grassley, and we were able to get our proposal included in the stimulus legislation.

At the time, we thought that this was a very promising idea that runs through 2010. And our kind of seat-of-the-pants assessment—because this was a departure in Federal policy for the Federal Government to get into the business of issuing these bonds—we thought perhaps \$3 billion might get issued. We thought it was going to go well, and we would have a chance to come back and have it extended.

The last time I looked, almost \$40 billion of these Build America Bonds had been issued, more than 10 times what we had expected. So the evidence indicates that there is great interest in this in terms of State and local issuers.

My question to you is, Build America Bonds are authorized—essentially the period wraps up in 2010—do you believe this will be an area you will be asked about, if confirmed? I hope you are confirmed—I am certainly planning to support you. If confirmed, do you believe that a version of the Build America Bonds program should be extended beyond 2010?

Mr. MUNDACA. Thank you, Senator, for that question. Thank you for your leadership on this issue.

You mentioned the approximately \$40-billion figure. We got new numbers yesterday. It is over \$47 billion now. It has been an extraordinarily successful program. As you mentioned, it was an innovative program. We were not sure how it would work. It has worked beyond all of our expectations. It has opened up markets for States and localities to place their bonds beyond where other State and local bonds could be placed.

As you mentioned in the Recovery Act, it is a 2009 to 2010 program. But I do think we need to seriously consider whether, and how, to extend this. It is too successful to simply allow it to expire. There are issues, obviously, with cost, with the level of the subsidy provided, but it is certainly something we have to look at. It has been too successful to allow it simply to go away.

Senator WYDEN. I appreciate your answer. You always ought to quit while you are ahead.

My sense is that, for a program that has produced 15 times, I think—did you just say it was at \$47 billion? So your number is higher than what we had most recently, and it seems to be growing in popularity in terms of State and local issuers who are really in a crunch in terms of generating investment for infrastructure and transportation.

We ought to be looking at creative ways to pursue this. I am open to a variety, after we have a chance to review this, of additional considerations that we would factor into what to do next. But it is going to be a big transportation bill. This Congress is going to have a number of opportunities to look at investment in infrastructure, and I hope what we have done has at least shown that there is a new and politically acceptable way to generate funds for infrastructure.

Obviously, if you raise the gas tax into the stratosphere, you are going to have Americans marching on every Congressperson's office in a tough economy, if you go that route. In something like this, you have a way that is targeted, it has been effective. Now we have had a very good test, proving to be much more successful than anybody anticipated.

I look forward to voting for you when you come up for confirmation in the committee, on the floor, and particularly to have a chance to work with you on this additional area would be very helpful.

Thank you, Mr. Chairman.

Senator CONRAD. Thank you, Senator Wyden. You will not find any member of the Senate who digs in more on an issue than Senator Wyden, whether it is health care or tax reform. I do not think there is any other member who devotes himself to doing the homework necessary to be effective on an issue. So, you would be well advised to work with him, if you are confirmed.

Mr. Mundaca, have I pronounced your name correctly?

Mr. MUNDACA. Yes you have, Senator. Thank you.

Senator CONRAD. Mr. Mundaca, I am of the view that the tax system that we have is increasingly ineffective to meet the challenges we confront as a country. If we look ahead, we have had the debt of the United States double over the last 8 years, we are on a track to have it double again, and the gross debt of the United States to reach a level well over 100 percent of Gross Domestic Product.

Virtually every expert who has come before the Budget Committee, including the head of the Congressional Budget Office when it was Dr. Orszag, the head of GAO when it was David Walker, the head of the Federal Reserve when it was Mr. Bernanke—and still is Mr. Bernanke—has said to us we are on an utterly unsustainable course.

And, if you look at the contributing factors, it is the entitlement programs and it is the revenue system. And the revenue system, as I look at it, is woefully ineffective, and inefficient, and unfair, and is not enhancing the competitive position of American business. And, when this tax code was written, we did not have to

worry so much about the competitive position of the country; now we do.

If I look at the tax gap, well over \$300 billion a year, money we are hemorrhaging in these offshore tax havens, well over \$100 billion a year according to the Permanent Committee on Investigations, abusive tax shelters well over \$50 billion a year, you add that up, and I believe you are at well over \$500 billion of leakage out of the tax system.

After discussing with my colleagues, reading, and listening to experts come before this committee and others, I am convinced that just re-jiggering the current tax code is inadequate, insufficient, and unwise. What we need to do is go back and really rewrite the tax code, have fundamental tax reform.

So I would be interested in your assessment. Do you agree with the notion that we need thorough-going tax reform with the purpose of being more fair, helping this country be more competitive, and have a system of collection that is more efficient so we do not have this hemorrhaging and the spectacle of those of us, the vast majority of us, who file and pay what we owe, being, in effect, chumped by those who do not file and pay what they owe? I would be interested in your assessment.

Mr. MUNDACA. Thank you, Senator. Those are all important issues and important points.

Yes, our current tax system is falling short right now, both in the scope and complexity of our current rules, the fact they have not been significantly updated in a significant period of time, while the economy has altered and changed. Our current tax rules do affect the competitiveness of U.S. businesses and workers. All of this has to be taken into account with the overlays you mention of our current fiscal situation.

These are extraordinary issues we do need to start working on, I think very quickly, collaboratively, so that we can get something that we all can agree on, get passed, and get implemented. It is going to be a heavy lift.

If confirmed, I look forward to working with you, with this committee, with Congress as a whole, on something that we all are going to have to agree on how it gets done, because again, a thorough-going rewrite of the tax code hits so many different areas, we are going to need input, expertise, and buy-in from just about everybody.

Senator CONRAD. Let me ask you this.

Next week, in the Budget Committee we are holding a hearing on measures to deal with our long-term debt, and the notion is that there will be a necessity for some kind of special process, whether it is a commission or a summit, some means of everybody coming to the table with everything on the table, on both the spending and the revenue side of the equation.

Will you be prepared if that process is put in place for next year, however, it is done? Will you be prepared? Do you have the manpower? Do you have the resources to consider a fundamental reform of the tax revenue system of the country?

Mr. MUNDACA. Yes, Senator, we do. We have a large and able staff in Tax Policy. If the budget request we put in is approved, we will get additional resources next year, and I do think we can effec-

tively turn to fundamental tax reform. Obviously, there are a lot of different priorities this year, implementing the Stimulus Act and other crisis measures, dealing with health care, as well. There will not be much excess capacity, but we do have the capacity to turn to that issue.

Senator CONRAD. All right. I think that is going to be critically important.

With that, we have about reached the end of our time. I want to give each of you an opportunity to make a final statement if there is anything that you would want to make certain the committee is aware of, any question you were not able to answer, or any statement that you would want to make before we close the hearing.

Mr. Punke?

Mr. PUNKE. Senator, I appreciate the opportunity. I do not have any type of closing statement, except to say that, going back to what Senator Baucus opened this hearing with in terms of the large amount of hard work ahead, I think he is right about that, and I look forward, if confirmed, to digging in on that work and working with this committee in doing that.

Senator CONRAD. Well, Mr. Punke, you certainly have credibility with this member, and I believe before this committee, based on your previous service. We appreciate it and look forward to working with you in the future.

Mr. PUNKE. Thank you very much.

Senator CONRAD. Dr. Siddiqui, any final comments, thoughts that you would want to bring to the attention of the committee?

Dr. SIDDIQUI. Senator, just a short, closing comment. All my career, 32 years with the State of California and USDA, I have been in public service. I am open to suggestions and will work with all the stakeholders. I will continue to do so, if I am confirmed. I truly believe—and this issue came up earlier—in coexistence of sustainable, organic agriculture and conventional agriculture.

I will definitely, if I am confirmed, work with all of the stakeholders to hear their concerns, and if there are any trade issues having to do with organic, as well as conventional agriculture, I will do my best in terms of resolving those issues. In terms of bilateral trade negotiations, there are some WTO issues. Likewise, I will work diligently in terms of trying to bring back a balanced and ambitious outcome with significant new market opportunities for American agriculture.

Senator CONRAD. Well, we appreciate that. And you, too, enjoy a very good reputation before this committee. We appreciate your previous service and look forward to working with you as well.

Mr. Mundaca, any final thoughts you want to make certain the committee is aware of before we close the hearing?

Mr. MUNDACA. Thank you, Senator, very briefly.

I just want to follow up on your last points. We are going to face a number of very significant challenges in the very short term. I think the only way to effectively address them is collaboratively, and we need to move together on this. I look forward, if confirmed, to being a part of that process.

Senator CONRAD. Well, Mr. Mundaca, my tax counsel tells me that you are well-known in international and domestic tax circles,

that you are well-respected, well-regarded, and we look forward to your confirmation. I think you are going to have an extraordinary challenge, as are we all, as we seek to pivot and address our long-term debt circumstance.

We are on a course that is completely unsustainable, and we have to face up to it. We understand you do not take those steps in the middle of an economic downturn. That would be extremely unwise from an economic standpoint, but we have put a great deal of the liquidity into the system, to prevent and avert a collapse. I think we were successful in that.

Those policies were not perfect. The work of people is rarely perfect, but now we have to begin to think of when we pivot and take on this burgeoning debt, because that, too, threatens the fundamental economic security of the country.

Thank you all, and we will close the hearing.

[Whereupon, at 12 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Hearing Statement of Senator Max Baucus (D-Mont.) Regarding Top Trade and Treasury Nominees

The French poet Jean de la Fontaine said:

“No path of flowers leads to glory.”

To our witnesses today: President Obama has nominated the three of you to travel important paths, guiding America’s trade and tax policies. Each of you must travel a path littered, not with flowers, but with stones. But you must navigate these paths with sure feet, and find success at the end of the road.

Mr. Punke, President Obama has nominated you to be the Deputy U.S. Trade Representative in Geneva. Your path will twist and turn through the complex World Trade Organization Doha negotiations.

I am confident that you have the experience to navigate this path successfully. You have more than 20 years of international trade law and policy experience, in both the public and private sectors. You served as White House Director for International Economic Affairs during the Clinton Administration. And you spent several years practicing international trade law at a top firm. You also very ably served this Committee as my international trade counsel.

You unquestionably have the requisite tools for this position. But yours is not an easy road. The path that you must travel is marked with past failures to conclude the Doha negotiations. And as you round each curve, you must keep the needs of American exporters first and foremost in your mind.

A successful conclusion to the Doha negotiations must provide real, meaningful market access for American producers. Our ranchers, farmers, manufacturers, and service providers can compete with the world’s finest. We must make sure that our trade agreements give them the opportunity to do so.

Mr. Punke, I know from personal experience that you have the ability to successfully navigate your path. You have my full confidence.

Dr. Siddiqui, President Obama has nominated you to be the Chief Agricultural Negotiator at USTR. Your path must lead to new and additional market access for American agricultural exports, while ensuring that current markets remain open.

Your experience makes you uniquely qualified for this role. During the Clinton Administration, you held several high-level positions at the Department of Agriculture. You were a Senior Trade Advisor to then-Secretary Dan Glickman. And you were the Undersecretary for Marketing and Regulatory Programs. You currently work at CropLife America, where you have focused on international trade and regulatory matters.

You also have the requisite tools for this position. But yours is also not an easy road. The path that you must travel is marked with previous attempts to reduce tariff and non-tariff barriers to American agricultural exports.

As you travel your path, you must continue this valiant effort. Beef, wheat, and other exporters in Montana, and throughout America, produce some of the world's finest agricultural products. I have no doubt that they can compete with the rest of the world.

But in Doha and other negotiations, you will have to work hard to break down the walls to American exports. Dr. Siddiqui, your experience tells me that you have the ability to successfully navigate your path.

Mr. Mundaca, President Obama has nominated you to be the Assistant Secretary for Tax Policy at the Treasury Department. Your path will lead you through the halls of Treasury and the halls of Congress, as you develop significant tax policies, and Congress begins to consider tax reform.

Your experience has readied you for this important task. You were previously the Deputy Assistant Secretary of Treasury for International Tax Affairs. And you were a partner at a top accounting firm. Before that, you were an attorney in the Office of the International Tax Counsel at Treasury.

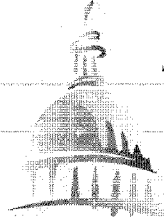
You have the requisite tools for this important position. But yours is also not an easy path. The path that you must travel is marked with past efforts to improve the administration of U.S. tax policy. As you travel this path, you must keep in mind the unique challenges of this economic environment.

Significant tax reform must be considered carefully and thoughtfully. Our fiscal situation demands that we make every effort to close the tax gap. And health care reform will create new challenges in tax administration.

Mr. Mundaca, I urge you to bring your years of experience to these tasks. I am confident that you, too, will successfully navigate your path.

I encourage each of you to undertake your new responsibilities vigilantly. American exporters and taxpayers are depending on you. I encourage each of you to navigate the twists and turns of the roads that you face, and to find the paths that lead to success.

United States Senate
Committee on Finance



Sen. Chuck Grassley · Iowa
Ranking Member

Opening Statement of Sen. Chuck Grassley
Nominations Hearing
Wednesday, November 4, 2009

Thank you, Mr. Chairman. I am also pleased to welcome the nominees to today's hearing. First, we have Michael Punke, nominated to be our trade Ambassador in Geneva. This is a critically important position. I'm concerned that our trading partners don't fully understand the prevailing sentiments on trade in the United States. For example, we're dealing with a stronger protectionist sentiment, I'm sorry to say. Protectionism only hurts our collective well-being, but it's a political reality that we must contend with. On the other hand, there's a bipartisan consensus that we need to see meaningful market access opportunities from our major trading partners if the Doha negotiations are going to be concluded successfully. And, we haven't seen that yet. We need a trade ambassador in Geneva to accurately and constructively convey these sentiments. I believe Mr. Punke is up to the job.

Next, we have Dr. Islam Siddiqui, nominated to be our Chief Agricultural Negotiator in the Office of the U.S. Trade Representative. He has enjoyed a lengthy career assuming a variety of responsibilities involving agriculture and agricultural trade. He seems to understand the vital role that technological advances can play in helping to feed a growing global population. We need a strong voice for U.S. agricultural interests at the negotiating table, and I believe the nominee can fill that role.

Finally, we have Michael Mundaca, nominated to be Assistant Secretary of the Treasury for Tax Policy. Right now is a critical time for tax policy. We still have the challenge of dealing with tax provisions that expire every year or two, called extenders. One of these is the ravenous monster that is the alternative minimum tax (AMT). The current short-term fix restraining the AMT expires at the end of this year. Additionally, many of the bi-partisan tax cuts enacted in 2001 and 2003 are set to expire at the end of 2010, including relief from the death tax. Under current law the estate tax will be repealed next year before springing back to pre-reform levels in 2011.

These issues are significant, but they represent only a fraction of the tax issues facing the nominee and Congress. The administration has many large-scale priorities and many of

them would be implemented and enforced through the tax code. For example, under legislation being advanced in both the House and the Senate, the Internal Revenue Service plays a major role in implementing and enforcing health care reform.

There are many new, complicated taxes to fund health reform and many new, complex credits. The IRS would also be tasked with penalizing individuals who don't buy insurance and employers who don't provide affordable insurance.

Aside from health care reform, a cap-and-trade scheme might also work through the tax code. The Congressional Budget Office has made clear that emission allowances hold value and therefore represent federal revenues, which would seem to have implications for the tax code. Independent of the specific policy questions inherent to health care reform and energy reform, we will be forced to consider larger questions as to the fundamental purpose of our internal revenue code and what limits, if any, ought to be enforced against it. Policies under consideration right now could significantly alter how we as a nation use the tax code and how the average American interacts with it. These are questions this Committee, with jurisdiction over federal revenues, and the Treasury Assistant Secretary for Tax Policy, will not be able to avoid.

In addition, the Assistant Secretary serves as the primary political liaison to U.S. Customs and Border Protection in the Department of Homeland Security when it comes to customs regulations. That is a critically important aspect of the portfolio. We've seen breakdowns in the relationships between Customs, Treasury, and the Office of the U.S. Trade Representative with respect to customs regulations. As a result, Senator Baucus and I included a provision addressing this issue in the customs reauthorization bill that we introduced. I just want to underscore for the nominee the importance I place on active management of interdepartmental relationships regarding customs issues. I am hopeful that the nominee will be able to serve as a down-to-earth architect of tax policy able to tell the difference between high-minded fantasy and practical reality. In his written testimony, the nominee recognizes the need for a simple tax system that promotes growth while collecting needed revenue. I'm glad the nominee agrees that our current system falls short, but I hope the next nominee to this position is able to say that the situation has improved. I was glad to read in the nominee's written testimony how his parents taught him the value of hard work, because this position is going to require a lot of very hard work. Now I look forward to hearing from our nominees.

SUBMITTED BY SENATOR LINCOLN

DAN GLICKMAN

October 30, 2009

The Honorable Max Baucus
Chairman, Committee on Finance
United States Senate
219 Senate Dirksen Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member, Committee on Finance
United States Senate
219 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Chairman Baucus
and Ranking Member Grassley:

I am writing to express my strong support for President Obama's nomination of Dr. Isi Siddiqui to become Chief Agricultural Negotiator in the Office of the US Trade Representative.

I have known Isi Siddiqui since September 1997 when he joined my team in USDA as Deputy Under Secretary for Marketing and Regulatory Programs. At that time, the organic food standards legislation still had not been implemented, having been passed in the 1990 farm bill, and his first major assignment was to publish the national organic standards rule. Prior to his arrival, the Department had made little progress because of competing priorities, internal conflicts, and difficulty achieving consensus on a number of controversial issues. It was largely due to Isi's singular focus, negotiating skills, and determination that a proposed rule was published in December 1997.

Moreover, his approach toward resolving the three most difficult issues -- biotechnology, bio-solids, and irradiation -- demonstrated his commitment to transparency and dialogue. The team he headed determined that public comment was essential toward developing sound public policy. As a result, the Department ultimately received over 270,000 comments from the public, many of whom opposed inclusion of these three practices. Therefore, the final rule excluded them, among other changes supported by organic food industry and consumers.

During my tenure, we faced a number of sanitary and phytosanitary issues with our trading partners. Isi's scientific background and extensive hands-on experience in SPS

issues he gained in California was invaluable during the time he served as my senior trade advisor. He traveled with me and other Cabinet Secretaries to a number of high profile meetings overseas such as the APEC meeting, Cairns Group Ministerial meeting, US-EU Leader's Summit, and many bilateral meetings with my counterparts. He always represented the US position on sensitive trade issues with professionalism, knowledge, and diplomacy. I have come to know him as a man of high integrity, dedication, and purpose.

Dr. Siddiqui will be a tremendous asset to the Obama Administration in dealing with myriad of agricultural trade issues facing US agriculture, including the Doha agricultural negotiations. I urge the Senate Finance Committee to act affirmatively on his nomination as the Chief Agricultural Negotiator.

With best personal regards, I am

Sincerely,

A handwritten signature in black ink that reads "Dan Glickman". The signature is written in a cursive, flowing style.

Dan Glickman
Chairman and CEO
Motion Picture Association of America

October 21, 2009

The Honorable Max Baucus
Chairman, Committee on Finance
U.S. Senate
Senate Dirksen 219
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member, Committee on Finance
U.S. Senate
Senate Dirksen 219
Washington, D.C. 20510

Dear Chairman Baucus and Ranking Member Grassley,

The undersigned food and agricultural organizations, representing producers, workers, exporters and other stakeholders in the farm and food sector wish to express strong support for President Obama's selection of Dr. Isi Siddiqui as chief agricultural trade negotiator in the Office of the U.S. Trade Representative (USTR).

The position of chief agricultural negotiator with the rank of ambassador was created by Congress in 1997 for the express purpose of ensuring that U.S. agriculture is fully represented in trade negotiations at the highest possible level with the support of the U.S. Congress. The position has been filled by highly qualified individuals since its inception to the enormous benefit of the agriculture sector.

We believe Dr. Siddiqui is an excellent nomination to fill the role of agricultural ambassador and we urge the Senate Finance Committee to move forward with his confirmation at the earliest opportunity.

Dr. Siddiqui brings to the position a wealth of valuable experience from his four decades of work in agriculture as a respected doctor of plant science and as an expert in international trade policy. Dr. Siddiqui served for 28 years with the California Department of Food and Agriculture, where he attained the position of chief plant scientist in the nation's largest agricultural state. From 1997 to 2001, Dr. Siddiqui served at the U.S. Department of Agriculture as Under Secretary for Marketing and Regulatory Programs, Senior Trade Advisor to Secretary Dan Glickman and Deputy Under Secretary for Marketing and Regulatory Programs. In the latter capacity, he worked closely with the USTR and represented USDA in bilateral, regional and multilateral agricultural trade negotiations.

Dr. Siddiqui's scientific background was invaluable to U.S. agriculture in dealing with the myriad of sanitary and phytosanitary measures that foreign countries erect to restrict

U.S. exports, and this expertise will be of even greater value today, as onerous barriers have become endemic.

Dr. Siddiqui's experience in trade negotiations as senior trade advisor to the Secretary of Agriculture will be critical to achieving U.S. trade objectives for agriculture in the World Trade Organization (WTO) Doha Round of negotiations and in other future trade agreements.

We urge you to act on Dr. Siddiqui's nomination as soon as possible. In order to achieve progress on the critical agricultural trade issues of concern to the undersigned companies and trade associations, we believe it is critical to fill this key position without delay, and we can think of no more capable individual than Isi Siddiqui.

Sincerely,

American Cotton Shippers Association
American Farm Bureau Federation
American Feed Industry Association
American Meat Institute
American Peanut Product Manufacturers, Inc.
American Soybean Association
Blue Diamond Growers
California Cherry Export Association
California Fresh Tomato Growers
California Grape and Tree Fruit League
California Pear Growers
California Table Grape Commission
Corn Refiners Association
Distilled Spirits Council of the United States
Grocery Manufacturers Association
Growth Energy
International Dairy Foods Association
National Association of Wheat Growers
National Barley Growers Association
National Cattlemen's Beef Association
National Corn Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Meat Association
National Milk Producers Federation
National Oilseed Processors Association
National Pork Producers Council
National Potato Council
National Renderers Association
National Sorghum Producers
National Sunflower Association

North American Export Grain Association
Northwest Horticultural Council
Pet Food Institute
Sweetener Users Association
U.S. Apple Association
U.S. Dairy Export Council
U.S. Wheat Associates, Inc.
United Egg Association
United Egg Producers
United States Dry Bean Council
US Canola Association
US Meat Export Federation
USA Dry Pea and Lentil Council
USA Rice Federation
Western Peanut Growers Association

cc: Members of the U.S. Senate Committee on Finance

Opening Statement of Michael F. Mundaca
Nominee for Assistant Secretary of the Treasury for Tax Policy
U. S. Senate Committee on Finance
November 4, 2009

Thank you, Chairman Baucus, Senator Grassley, and members of the Senate Finance Committee, for the opportunity to appear before you today. I am honored to have been nominated by President Obama to serve as Treasury Assistant Secretary for Tax Policy, and I am grateful to Secretary Geithner for recommending me to the President. And I want to thank you and your staffs for meeting with me over the last weeks to discuss tax policy issues and my qualifications for the position to which I have been nominated.

I know the time is brief. If you permit me, Mr. Chairman, I would like to introduce the members of my family who are here today and who have supported me through the years. My wife, Gina, who has been with me since our time together at university, and my daughter, Ana, who is a fourth-grader at the Oyster-Adams Bilingual Public School, here in Washington, D.C. My son, Alexander, who is 4 years old and also a student at Oyster, could not be with us here today. All three have been a steadfast source of support and I thank them for their consent to my continuing public service. If approved by this Committee and confirmed by the Senate, I will need their further support and guidance.

If confirmed, I would be honored to begin my third phase of federal public service. I first worked at the Treasury Department from 1997-2002, starting as an Attorney-Advisor in the Office of the International Tax Counsel in Tax Policy and leaving after over 5 years' service as Deputy International Tax Counsel, returning to the private sector, as a partner at the accounting firm, Ernst & Young. I was honored to be asked to return to the Treasury Department in 2007, as Deputy Assistant Secretary for International Tax Affairs, and have served at the Treasury Department since that time.

My commitment to public service was instilled in me by my parents. My father, Fred Mundaca, was born in Chile and came to this country as a teenager with his parents. He met my mother, Irene, in Staten Island, NY, where his family settled and where my mother lived. When I was born, my parents and my sister, Marie and I, lived in the West Brighton housing projects on Staten Island. My father went to Staten Island Community College during the day and worked at night for the U.S. Postal Service. After getting his degree, he was hired by IBM, where he worked for the next 25 years, until retiring. Through saving and borrowing, my mother and father raised enough money to move us out of the projects and into the house my parents still live in to this day. They also helped put my sister and me through college and graduate school, with the additional help of student loans and scholarships. My parents' experience taught me to work hard, play by the rules, and help others whenever you can.

I hope that my children can learn those lessons from me.

And I also hope that my children will have all the opportunities that I have had. I do not need to tell this Committee that both the United States and the world economy have faced unprecedented turmoil. However, I am convinced that we can meet the serious challenges we continue to face with the right mix of economic and tax policies that address near-term conditions in a manner that promotes long-term growth.

Tax policy will play an important role as we move ahead. We need a tax system that is simple, fair, and promotes growth, while providing necessary revenue. Our current system falls short.

If confirmed, I look forward to working with this Committee and Congress to address the necessary changes to our tax system.

In addition to changing our current system, however, we must also work together to improve compliance with our current rules. Non-compliance undermines confidence in the fairness of our tax system and fosters further non-compliance. It also results in a de facto tax increase on compliant taxpayers, who must pay more because others fail to pay what they owe.

It is incumbent upon the Treasury Department to issue guidance necessary to provide taxpayers the information they need to meet their obligations. Taxpayer service is also an important element.

But we must do more. The Obama Administration has also already proposed and already taken a number of additional significant steps to increase compliance.

We are currently moving to implement the recent important changes that Congress passed to increase reporting with respect to credit card and securities transactions.

In addition, the Administration's Budget includes a number of proposals to increase both domestic and cross-border compliance. We welcome the recent introduction by the Chairman and others of a significant offshore evasion bill that incorporates the approach of the Administration's proposals, and appreciate the leadership this Committee as a whole has shown on the important issue of improving compliance. If confirmed, I look forward to working with this Committee and Congress to enact those proposals.

Treasury has also sought to improve compliance by increasing our access to the information held by our trading partners which is necessary to enforce our laws. We have recently entered into a number of important agreements to exchange tax information, including agreements with Switzerland, Luxembourg, Monaco, and Gibraltar.

In addition, through greater cooperation within the G-20 and the OECD, we have been able to increase the number of countries that have committed to full tax information exchange and to establish a process to assess implementation of those commitments.

In closing I would like to thank the lawyers, economists, accountants and other professional within the Office of Tax Policy. I have never worked with such a talented group of individuals, and it has been an honor to head the office during this challenging period.

I am humbled and honored to have the possibility of serving the nation in this new capacity during these extraordinary times. If you and your colleagues in the Senate give me the

opportunity to serve as Assistant Secretary for Tax Policy, I pledge to you diligent and dedicated service, and I promise to apply myself fully to the best of my ability to justify your trust and confidence.

Again, thank you for allowing me to appear before you today. I would be pleased to answer any questions.

**SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

A. BIOGRAPHICAL INFORMATION

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

Michael Fred Mundaca

2. Position to which nominated:

Assistant Treasury Secretary for Tax Policy

3. Date of nomination:

October 6, 2009

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

5. Date and place of birth:

**July 16, 1963
Staten Island, NY**

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.)

University of Miami School of Law, Coral Gables, Florida, 1996-1997
 Master of Laws (LL.M.) in Taxation with Certificate of Specialization in
 International Tax, May 1997

Boalt Hall School of Law, University of California at Berkeley, 1989-1992
 Juris Doctor, May 1992

University of Chicago, Chicago, Illinois, 1986-1988
 Master of Arts in Philosophy, August 1988

Columbia University, New York, New York, 1981-1986 (one year (1984-1985) at
University of Edinburgh, Edinburgh, Scotland
 Bachelor of Arts in Philosophy, Physics (concentration), May 1986

Monsignor Farrell High School, Staten Island, NY, 1977-1981
 High school diploma, May 1981

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.)

U.S. Treasury Department, Office of Tax Policy, Washington, D.C.
July 2007 – Present
July 1997 – October 2002
Acting Assistant Secretary (Tax Policy), May 2009 – Present
Senior Advisor for Policy, August 2009 – Present
Deputy Assistant Secretary (International Tax Affairs), July 2007 – August 2009
Deputy International Tax Counsel, July 2001 – October 2002
Associate International Tax Counsel, August 1999 – July 2001
Senior Advisor on Electronic Commerce, August 2000 – July 2001
Acting Deputy International Tax Counsel, April 2001 – July 2001
Acting International Tax Counsel, February 2001 – April 2001
Acting Deputy International Tax Counsel, November 2000 – February 2001
Attorney-Advisor, July 1997 – July 1999

Ernst & Young, Washington, D.C.

October 2002 – July 2007

Partner/Principal, National Tax Department — International Tax Services Group

Sullivan & Cromwell, New York, New York

October 1993 - August 1996

Associate, Tax Group

Summer Associate, Corporate and Tax Groups, May 1991 - August 1991

Honorable Stewart G. Pollock, New Jersey Supreme Court, Morristown, NJ

September 1992 - September 1993

Judicial Clerk

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.)

None other than listed above

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.)

Ernst & Young, Washington, D.C.

October 2002 – July 2007

Partner/Principal, National Tax Department — International Tax Services Group

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

Admitted to the bars of New Jersey (1992) and New York (1993)

Member, American Bar Association

Member, International Fiscal Association

13. Political affiliations and activities:

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

None

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

Registered as a Member of the Democratic Party

- 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.

None

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.)

Florida Bar Scholarship, 1996

Order of the Coif, 1992

American Jurisprudence Award - International Tax (Professor John K. McNulty), 1992

American Jurisprudence Award - Federal Courts (Professor Paul J. Mishkin), 1992

University of Chicago Century Fellowship, 1986

CIC Minority Fellowship, 1986

Thomas J. Watson Memorial National Merit Scholarship, 1981

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

Co-authored the following:

Current Status of Legislation Relating to U.S. International Tax Rules, Tax Management International Journal (monthly column, January 2003 to July 2007)

U.K. Disregarded Entity Qualifies for U.S. Withholding Tax Exemption under U.S.-U.K. Income Tax Treaty, Derivatives Financial Products Report (WG&L November 2006)

TIPRA: A Mixed Bag for U.S. International Tax, 17 Journal of International Taxation 12 (WG&L August 2006)

New Protocol to US-Denmark Treaty Explained, International Tax Review (Euromoney Institutional Investor PLC Jul/Aug 2006)

Budget Reconciliation is Next for Congress' Tax Law Writers, International Tax Review (Euromoney Institutional Investor PLC Feb 2006)

Tax Technical Corrections Act of 2005 Introduced, Derivatives Financial Products Report (WG&L October 2005)

Time is Running Out for Cash Repatriation, International Tax Review (Euromoney Institutional Investor PLC Oct 2005)

The Latest Guidance on Temporary Dividends Received Deduction, 2005 Tax Notes Today 176-28 (Sept. 13, 2005)

Guidance Offers Clearer Picture on Repatriation, International Tax Review (Euromoney Institutional Investor PLC June 2005)

Notice 2005-38: Second Round of Guidance on Repatriation Provisions of Section 965, 2005 Tax Notes Today 96-72 (May 19, 2005)

Notice 2005-10: Welcome (Mostly) Guidance on the New Repatriation Provisions, 2005 Tax Notes Today 13-34 (January 21, 2005)

Section 965 Repatriation Incentive: Proposed Technical Corrections Would Provide Clarity But Additional Guidance is Necessary, Derivatives Financial Products Report (WG&L January 2005)

American Jobs Creation Act of 2004: Extraordinary Repatriation Incentive, Journal of International Taxation (WG&L January 2005)

Landmark International Tax Bill Signed into Law, International Tax Review (Euromoney Institutional Investor PLC Nov 2004)

US and Barbados Sign Protocol Limiting Treaty Benefits, International Tax Review, (Euromoney Institutional Investor PLC Sept 2004)

Different ETI Repeal Bills Mean Difficult Negotiations Ahead, International Tax Review (Euromoney Institutional Investor PLC Jul/Aug 2004)

Senate Tax Bill Puts House on the Spot, International Tax Review (Euromoney Institutional Investor PLC June 2004)

Next Budget Includes International Tax Proposals, International Tax Review (Euromoney Institutional Investor PLC March 2004)

Inside Washington, International Tax Review (Euromoney Institutional Investor PLC Oct 2003)

Washington Pushes Tax-Cut Package Through, International Tax Review (Euromoney Institutional Investor PLC Jul/Aug 2003)

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.)

None

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

I have been a practicing tax lawyer, tax consultant, and policymaker since 1993, in private practice and at the U.S. Treasury Department, most recently as Deputy Assistant Secretary for International Tax Affairs, as Senior Advisor for Policy, and as Acting Assistant Secretary for Tax Policy. In private practice, I advised primarily large corporate clients on the tax consequences of various transactions, including mergers, reorganizations, acquisitions, securities offerings, and cross-border partnerships and joint ventures. I also represented clients in negotiations and discussions with the Internal Revenue Service regarding advance pricing agreements, private letter rulings, and dispute settlements. While at the Treasury Department, I have reviewed and drafted numerous Treasury regulations, rulings, and studies, regarding all aspects of U.S. taxation, and I have led and participated in the negotiation of numerous United States tax treaties. In addition, I have helped develop Administration budgets and budget proposals.

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.

Currently employed by the U.S. Treasury Department

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 Treasury Department's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

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.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Treasury Department's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

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.

None

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.)

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Treasury Department's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

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 and Deputy United States Trade Representative:

N/A

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.

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

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.

No

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.

None

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

UNITED STATES SENATE
COMMITTEE ON FINANCE
NOMINATIONS HEARING
NOVEMBER 4, 2009

QUESTIONS FOR MR. MICHAEL MUNDACA

ANSWERS TO QUESTIONS FROM CHAIRMAN BAUCUS

Question 1

This Committee will be considering tax reform in the near future, and I expect we will work closely with you on this effort. To what extent do you believe our tax code is working well? To what extent do you believe tax reform is necessary? What changes would you make to the tax code so our country remains competitive in the global marketplace and the job market is strong? Should the emphasis be on domestic reform, international reform, or both?

The elements of a desirable tax system include: promoting economic growth; simplicity; fairness; and raising adequate revenue for the Federal government to meet its obligations. Our current tax system falls short of the ideal in several respects. It is too complex, too filled with special rules, and too susceptible of evasion and avoidance. We need to reform our tax system so that it effectively and fairly raises adequate revenue while enhancing the competitiveness of U.S. business and U.S. workers.

This reform should cover both international and domestic aspects of our tax system; given the increasingly global nature of our economy, we cannot ignore how we tax cross-border investment.

Question 2

Last week, I introduced the Foreign Account Tax Compliance Act, which will incent foreign financial institutions to tell the IRS who their US account holders are, and how much money is in their accounts. Do you think this is an effective way to clamp down on Americans who are hiding their money offshore to avoid or evade U.S. taxes? To what extent do you believe offshore noncompliance is a serious problem? What do you intend to do as Assistant Secretary to stop offshore scams and schemes? The IRS recently reached an agreement with UBS that requires UBS to turn over the records of many US account holders. The IRS also has been conducting a voluntary disclosure initiative encouraging US persons hiding money offshore to come forward. What will you do as Assistant Secretary to ensure this information doesn't go to waste – that it is reviewed in a timely, efficient and effective manner?

Noncompliance with our tax rules in general is a very serious issue, and offshore noncompliance is an especially serious issue. Non-compliance undermines confidence in the fairness of our tax system and fosters further non-compliance. It also results in a de facto tax increase on compliant taxpayers, who must pay more because others fail to pay what they owe. The Treasury Department has developed a multi-pronged approach to combat offshore tax evasion. Our comprehensive approach includes legislative proposals, a focus on bilateral tax information exchange agreements, multilateral initiatives to improve transparency and information exchange in tax matters, and Internal Revenue Service (IRS) enforcement actions.

The Foreign Account Tax Compliance Act incorporates the substance of many of the Administration's legislative proposals to curb the use of off-shore tax havens and close the international tax gap. The proposed legislation would enhance information reporting, increase tax withholding, strengthen penalties, and make it harder for foreign account-holders to evade U.S. taxes, while also providing the enforcement tools necessary to crack down on tax haven abuse. I believe that the Foreign Account Tax Compliance Act would be an important step in addressing offshore noncompliance, and if confirmed I look forward to working closely with you, other members of this Committee, and other members of Congress on this important issue.

In addition to legislative proposals, the Treasury Department is pursuing a number of other measures to improve offshore compliance. Since President Obama took office, the Treasury Department has made a high priority of negotiating international agreements to permit the IRS to obtain the information that it needs to enforce U.S. tax laws. Since January of this year, we've reached agreements on exchanging tax information with Switzerland, Luxembourg, Gibraltar, and Monaco.

The United States also is leading efforts in the G7, the G20, and the Global Forum on Transparency and Exchange of Information for Tax Purposes to make sure that countries meet international standards and are committed to preventing the facilitation of offshore tax evasion.

To augment all of these efforts, the Administration's Fiscal Year 2010 Budget would provide funds to add nearly 800 new IRS employees to combat offshore tax evasion and improve compliance with U.S. international tax laws by businesses and high-income individuals.

While I cannot comment on ongoing investigations involving UBS or the use of information received by the IRS under their voluntary compliance initiative, be assured we are aggressively pursuing those who evade U.S. taxes, and those who facilitate such evasion. We are working closely with Commissioner Shulman and Chief Counsel Wilkins of the Internal Revenue Service to be sure that they have the tools needed to pursue these important initiatives in a timely, efficient and effective manner.

Question 3

The IRS says the annual tax gap is \$345 billion. That figure is based on 2001 data and doesn't include all of the international tax gap. Taking into account that it is eight years later, and offshore tax evasion is a big problem, what do you think is the true size of the tax gap? In July, Treasury updated its Tax Gap Plan that originally was developed as a result of my insistence for a comprehensive plan with goals, measures and timelines to reduce the

gap. I believe it is important to improve compliance of the taxes already on the books – this doesn't raise taxes on anyone and it is fairer to Americans who pay what they owe. What was your role in updating the plan, and do I have your assurance that you are committed to improving voluntary compliance of the Tax Code?

As you know, the IRS estimated the gross tax gap for 2001 at \$345 billion. After enforcement action and receipt of late payments, the net tax gap was \$290 billion. The IRS arrived at these estimates of the tax gap in 2005 based on the best available data. The Treasury and IRS have initiated intensive efforts to update the estimate of the tax gap on an ongoing basis, to permit more regular and effective assessment.

As Acting Assistant Secretary (Tax Policy), I exercised oversight over the preparation of the updated tax gap plan. I share your concern with addressing the tax gap, and appreciate your leadership as we set forth goals, measures, and timelines. If I am confirmed, improving voluntary compliance will be a top priority of mine.

Currently, the Administration's Fiscal Year 2010 Budget contains seventeen domestic tax gap legislative proposals, relating to information reporting, business compliance, tax administration, and penalties. Enactment of these proposals will help to close the tax gap, but more needs to be done.

I am committed to addressing tax evasion in general and offshore tax evasion in particular, and if confirmed I look forward to working closely with your Committee to address this important issue.

Question 4

A GAO report came out last week that said the IRS collection notice process has a lot of problems – it lacks goals and measures, and some of the fundamental business rules, like debt thresholds, hadn't been revisited since the 1980s. Collecting taxes is a basic IRS function. To what extent can the IRS be doing more with the tools it already has to close the tax gap? How can you work with the IRS to ensure the agency is working smartly and efficiently? How will you ensure that Congress hears about all the good ideas to help close the tax gap, not just a few that seem to make the cut each year?

In 2008, the IRS collected over \$28 billion in tax debts through its collection activities, and the IRS continues to provide a very high return on each dollar spent on tax enforcement. Although the IRS's collection activities are substantial and effective, there remains room for improvement. In that regard, the recent GAO report raises a number of important issues and makes a number of very helpful recommendations regarding the IRS's collection process. The Administration's Fiscal Year 2010 Budget also contains a number of proposals focused on improving collections. It is also critical that the IRS receives the resources necessary to efficiently implement the collection tools provided to it. If confirmed, I will work with Commissioner Shulman and Chief Counsel Wilkins as well as the staff of the Committee to develop recommendations for narrowing the tax gap.

Question 5

Voluntary tax compliance is the most effective way to close the tax gap. Timely guidance from Treasury and the IRS helps taxpayers know how to report complex and controversial tax issues. The new credit card information reporting rules are a good example of this. When do you predict those regulations will be issued so that the industry and business owners know how to prepare for the new law?

Increased information reporting is unquestionably a vital tool for promoting voluntary compliance. Treasury and the IRS have invested significant resources over the last year in preparing proposed regulations to implement the new credit card information reporting rules, which go into effect in 2011. As part of this process, Treasury and IRS actively solicited input and feedback from taxpayers, banks, and credit card processors, and that input was taken into account in preparing the proposed regulations. The proposed regulations are nearly ready, and I expect they will be issued within the month.

Question 6

Congress is going to be passing health care reform this year. Treasury and the IRS are going to play an important role in the eligibility verification process and implementation of the tax credits that will make health care affordable for millions of Americans. Do I have your commitment that you will make implementation of health care reform a priority, with a particular emphasis on reducing the burden on individuals who are enrolling through the exchanges and receiving the credits?

The health reform proposals currently being considered would make use of the tax system as a means of verifying eligibility and delivering tax credits that will help make coverage affordable for millions of individuals and families. You have my personal commitment that if I am confirmed the Office of Tax Policy, working closely with the IRS, will make implementation of health care reform a high priority. In particular, we will give emphasis to the importance of implementing health care reform in a manner that minimizes any burdens on individuals and families (including those enrolling through exchanges and receiving credits) as well as on small businesses and other employers.

Question 7

For over 200 years, the Department of Treasury, through the former U.S. Customs Services, has carried out the important mission of collecting duties and enforcing U.S. trade laws. In 2002, the U.S. Customs Service, which became the Bureau of Customs and Border Protection (CBP) within the Department of Homeland Security, was given a new mandate of securing our nation's borders while carrying out its historical trade mission. The Department of Treasury, as part of this transition, retained authority over all customs revenue functions and commercial operations of CBP. In your role as Assistant Secretary of the Treasury for Tax Policy, you will play a leading role in ensuring CBP fulfills its historical trade mission. I have been concerned that trade facilitation and enforcement simply have not been a priority in recent years. And while the agency's security mission is

vitaly important, I believe CBP must do a better job of balancing their two missions. How will you address these concerns?

One of the most effective ways that Treasury helps CBP balance its security and trade processing mission is by ensuring that regulations involving customs revenue functions create no unnecessary burdens for business or for CBP and that regulations are as simple and clear as possible. This approach facilitates trade and also reduces the drain on CBP resources. I commit to you that if I am confirmed, both trade facilitation and enforcement will be my priorities with regard to customs revenue functions.

Question 8

CBP also plays an important role in administering and enforcing our trade laws. And CBP's policy decisions have a sweeping effect on the trade community. As such, Congress mandated that CBP fully consult with the trade community, other agencies, and Congress before making significant policy decisions. But CBP has persisted in making major decisions without proper consultation. And this results in policy changes that are not supported by the facts. Can you assure me that you will work closely with the Secretary of the Department of Homeland Security to conduct proper oversight of the customs revenue functions and commercial operations? Can you assure me to consult with all interested stakeholders, including the trade community and other agencies, before making such decisions? And can you assure me that you will consult closely with me and my staff as you consider any such changes?

I am a strong advocate of interagency cooperation and stakeholder consultation, and I commit to you that if confirmed I will promote cooperation with the Department of Homeland Security, as well as other interested agencies, stakeholders and the Committee and its staff with regard to the administration of customs revenue functions. I understand that there have been increased communications with Congress over the last few months. If confirmed, I promise to ensure that this communication continues and improves.

ANSWERS TO QUESTIONS FROM SENATOR GRASSLEYQuestion 1: The Proper Priority for US Tax Policymakers

In the last weeks of the Clinton Administration, in December 2000, the US Treasury Department put out a 200-page report entitled “The Deferral of Income Earned Through U.S. Controlled Foreign Corporations.” The report stated:

“tax policies ... that maximize global welfare are considered first, because maximizing global welfare is probably the best way to maximize U.S. economic welfare. ... it is probably not advisable to establish policies that promote national short-term interests at the expense of global economic welfare, because establishing such policies is likely to encourage other nations to seek to advance their own short-term national interests at the expense of global economic welfare.”

This suggests that US tax policymakers should focus more on maximizing global economic welfare, than on maximizing US economic welfare.

- What was your role, if any, in the drafting of this report?
- Do you think that US tax policy-makers should focus on maximizing global economic welfare, or should we focus on maximizing US economic welfare? Which should take priority?

I did not participate in the preparation of the report sections you cite, although I am generally familiar with its findings, and did participate in the drafting of chapter 6 of the report, regarding the challenges to subpart F from electronic commerce.

You raise one of the most debated questions of international tax policy. Specifically, what is the role of our tax system in promoting national welfare and to what extent should our tax policies take account of the interaction between the U.S. economy and the larger global economy?

In my view, U.S. tax policy should advance the economic welfare of U.S. citizens and residents. While there is an ongoing debate as to which policies advance U.S. welfare, I believe our analysis of policies should focus on the long-term effects such policies have on the economic welfare of U.S. citizens and residents.

Question 2: Permanency of the Research & Development Tax Credit

The section 41 Research & Development Tax Credit has expired over a dozen times since its original creation as part of the Economic Recovery Tax Act of 1981. It has always been extended again, but one time (in the mid 1990s), a one-year period did not have the credit. Furthermore, many times it has been allowed to expire, and was retroactively patched back to the last expiration date. Furthermore, the various ways to calculate the R&D credit have changed numerous times.

The R&D credit, of course, is for the purpose of incentivizing Research and Development. However, given all this uncertainty associated with the credit, it is questionable if it can really achieve the intended incentive effect. To the extent a taxpayer takes into account the credit in determining its future R&D budget, presumably the taxpayer must discount the expected benefit to reflect the likelihood that the credit will not exist.

- Would it be possible to achieve a greater incentive effect if we had a permanent and more stable credit? Or do you think the constant expiration and constant tinkering with it do not reduce its incentive effect very much?
- Thought of from a different angle, could the US government achieve the same incentive effect as under current law, but for less money, by merely making the credit permanent, but with less generous provisions?
- Does the frequent expiration and extension of the R&D credit increase the volatility of earnings reports as released on a quarterly and annual basis to the investing public of publicly-traded corporations, especially in the high-tech sector? If yes, to what extent is that undesirable?

The research tax credit encourages technological developments that are an important component of economic growth. However, the Administration believes that the credit's temporary nature undermines its effectiveness. Uncertainty about the future availability of the research tax credit diminishes the incentive effect of the credit, because it is difficult for taxpayers to factor the credit into decisions to invest in research projects that will not be initiated and completed prior to the credit's expiration. Therefore, the Administration's priority is to make the credit permanent, and a proposal to make it permanent was included in the Administration's Fiscal Year 2010 Budget. The Administration also agrees that the credit's structure could be simplified or updated in certain respects to maintain or improve its effectiveness. I look forward to working with Congress, if I am confirmed, on possible modifications to the credit.

The frequent expiration and extension of the research tax credit can affect the volatility of earnings reports. Companies are not permitted to anticipate the passage of legislation and thus have to prepare interim financial statements without regard to the effect of the credit during the period that the credit has not been extended. This is undesirable because interim financial statements and earnings reports are most effective when they closely reflect actual performance.

Question 3: Technological Progress and Elasticity of Response to Taxes

In one sense, there are only two types of taxes: "Benefits Received" taxes and "Ability to Pay" taxes. With a Benefits-Received tax, the amount of tax that the taxpayer receives is, at least roughly, equal to the benefit that same taxpayer receives from the government. With an Ability-to-Pay tax, there may be very little benefit received by the taxpayer. With this type of tax, the taxpayer simply has the resources, the ability, the deep-enough-pockets, to pay the tax.

In an earlier era, when capital and people were not very mobile, there would not be so many negative distortions caused by an Ability-to-Pay tax. Those subjected to high Ability-to-Pay taxes may not have liked it, but there was not so much they could do about it. In the modern era, however, capital and people are very mobile. A US telemarketer

being located in India was astonishing a decade ago, but not only are we used to that now, but we hear that US tax returns are even outsourced to return-preparers in India. As another example, 100 years ago, people rarely left his home state – today, they can and do easily leave the country. Governments that think they can impose an Ability-to-Pay tax are increasingly finding that taxpayers, and their investments, have an Ability-to-Move-Away.

Benefits-Received taxes do not have nearly as much the same type of problem: Taxpayers are not generally chased away by such taxes, as they usually will want to stick around to receive the worthwhile benefit the tax pays for.

It would seem that there are only two policy options to make in the face of this Ability-to-Move – especially as that Ability-to-Move only increases with the ongoing march of technological progress: i) transition away from Ability-to-Pay taxes and to Benefits-Received taxes; and/or ii) ever increase the grasp/scope of the US tax network, so that there is in fact no Ability-to-Move-Away.

What do you think are the long-term tax-policy implications? Do you see other alternatives to what I have suggested? How will your office lay the groundwork for addressing these implications?

The globalization of the American economy raises great opportunities for increasing the standard of living of Americans. It also raises challenges for the design and implementation of effective tax policy. Tying taxes more closely to benefits received is one way to attempt to deal with increased mobility, as you point out. However, the application of the benefits received approach can be limited. For example, it might not be feasible for many important government services, such as national defense, because the benefits are diffused over society in general.

I look forward to working with Congress, if I am confirmed, to develop effective and fair ways of raising the revenue required by the Federal government in an increasingly global economy.

Question 4: Notice 2008-83 and the Rule of Law

Section 382 of the Internal Revenue Code limits the ability of acquiring companies that acquire target companies to offset the taxable income of the acquiring company with the Net Operating Losses of the target. This provision was not enacted lightly by Congress, but rather after extensive scholarly reflection by the staffs of the Senate Finance Committee and the Joint Committee on Taxation, as well as after reflection by the House Ways & Means Committee. It has been an established part of the law ever since 1986.

This law was changed when Treasury issued Notice 2008-83. Many tax law scholars have opined that Treasury simply did not have authority to make this change. Although Congress subsequently prospectively overturned the Notice, I want to make sure that no such episode occurs again and that Congress remains the Federal lawmaker for these United States.

- **What was your involvement, if any, in the drafting, analysis, or promulgation of this Notice?**

I had no involvement in the drafting, analysis, or promulgation of Notice 2008-83. My position at that time was Deputy Assistant Secretary for International Tax Affairs, and the issues addressed in Notice 2008-83 were not within my area of responsibility.

- **Do you believe Treasury properly exercised its authority by issuing Notice 2008-83?**

In the American Recovery and Reinvestment Act, Congress provided that the Notice would be inapplicable to transactions occurring after the date of the Recovery Act's enactment. However, the Notice remains in effect for transactions occurring before that date. In light of my current position as the Acting Assistant Secretary (Tax Policy), I believe that it would be inappropriate for me to express a personal view on whether previously-issued guidance that remains in effect for at least some transactions was not a proper exercise of the Treasury Department's authority.

- **What steps has the Treasury made in 2009 to assure that all guidance the Treasury issues is within the authority granted to the Department by the Constitution and by Congress?**

Before any item of regulatory or other public guidance is issued, it is reviewed twice to determine whether authority for the guidance exists. First, the Chief Counsel of the Internal Revenue Service must review and approve the guidance. Second, the lawyers in the Office of Tax Policy at Treasury also undertake a review of whether authority exists for the issuance of the guidance. In conducting this review, Treasury takes into account the Chief Counsel's views concerning whether the guidance is within the authority granted to the Department. A regulation or other item of published guidance is issued only if the Treasury concludes, upon the completion of these reviews, that there is authority for the issuance of the guidance.

- **What assurances can you offer that Treasury will comply with the Congressional Review Act of 1996?**

Treasury is committed to complying with all applicable laws, including those that govern the process we must follow in issuing guidance. You have my assurance that Treasury will continue to meet its obligations under the Congressional Review Act of 1996.

Question 5: Corporate Tax Rate

In your testimony to the Committee, you mentioned that according to some measures, the US has the second highest statutory marginal corporate income tax rate of OECD countries.

Do you think having a low corporate tax rate is important in assuring that US multinational corporations are competitive?

Which of the following do you think is more important in keeping US multinational corporations competitive: The average tax rate, or the marginal tax rate? In answering this question, please clarify your understanding of those terms "average tax rate", "marginal tax rate," or any other similar terms you may use in discussing this question.

All of these measures provide important insights into the effects of the corporate tax system on multinational corporations.

Both the statutory and marginal effective tax rates influence international economic decisions. The statutory corporate income tax rate in combination with other features of the tax code determines the "marginal effective tax rate," which measures the effect of the corporate income tax (and other taxes) on investment decisions. Marginal effective tax rates show the total percentage of capital costs, excluding economic depreciation, needed to pay taxes over the lifetime of a marginal investment (i.e., an investment assumed to just break even). The statutory tax rate also is important because it influences the extent of the incentive to shift income into or out of the United States. In some cases, the decision on where to locate the production of a particular highly profitable good or service is based not only on the marginal effective tax rate, but also the taxation of infra-marginal returns (returns above those needed for the investment to just break even) which are taxed at the statutory tax rate.

Neither the statutory nor the marginal tax rate measures the overall portion of corporate income that is paid in taxes. For that purpose, the average corporate income tax rate, i.e., the ratio of corporate taxes to corporate capital income, is the appropriate measure. It can differ from the marginal tax rate for several reasons, including the existence of substantial economic profits. It could also differ from the statutory rate, depending upon the level of tax compliance and enforcement.

Compared to the statutory rate, the marginal effective tax rate may give a more accurate picture of the incentive for corporations to invest at the margin. Statutory rates, however, influence decisions regarding both income shifting, as well as the investment location with respect to highly profitable goods and services. As such, a high statutory rate can act as a disincentive to certain investment and an incentive to income shifting.

Question 6: Bonus Tax Legislation

Legislation that passed earlier this year in the House of Representatives (H.R. 1586) would tax bonuses paid on or after January 1, 2009, to employees of companies that received TARP funds. Similar legislation (S. 651) has been introduced in the Senate.

The legislation was triggered by the justifiable outrage last Spring over the revelation that the employees of AIG Financial Products were being paid bonuses totaling \$165 million. AIG Financial Products is the very AIG Division whose reckless risk taking would have brought down AIG but for the U.S. taxpayer rescue. Many believed, I among them, that the bonuses were absolutely indefensible.

Despite the public outcry, the bonuses were paid in March, 2009. At the time we were told that the Treasury Secretary learned of the bonuses only days before they were due to be paid and that nothing could be done to stop the payments.

Eight months have passed since those bonuses were paid. Incredibly, the Special Inspector General for TARP reported last month that the employees of AIG Financial Products are

due to receive another round of bonuses in March, 2010. This time the payout will be \$198 million. No one at Treasury can claim that they are unaware of the bonuses this time.

The Special Inspector General also reports that efforts by Treasury to recoup the 2009 bonuses have yielded negotiations, but no bonus repayments. Worse still, the 2010 bonuses of \$198 million are still on track to be paid next March.

Do you support the bonus tax legislation to the extent that it would tax the 2009 bonuses already paid to employees of TARP recipients? If not, why not?

Do you support the bonus tax legislation to the extent that it would tax future bonuses to be paid to employees of TARP recipients? If not, why not?

Secretary Geithner's statement of June 10, 2009, which was issued in connection with legislative proposals for strengthening compensation committee independence and providing shareholders with a "say on pay," sets forth quite clearly the Treasury's view that pay should reflect long-term value creation and financial soundness that benefits corporate stakeholders and the economy at large.

TARP recipients differ from other private-sector companies because of the government's ownership interest and because taxpayers are substantial stakeholders. Representing those stakeholders, it is important that the Treasury exercise an oversight role. Mr. Kenneth R. Feinberg was designated as the Special Master to review and approve executive compensation for top executives at the seven firms (including AIG) receiving exceptional assistance. His job is to help ensure that companies strike the right balance around their need to retain talent, reward performance, and protect the taxpayers' investment. We all have a shared interest in ensuring that those companies can return to profitability as soon as possible so that taxpayers can recoup their investment.

Question 7: Use of TARP Funds

The Special Inspector General for TARP has repeatedly asked Treasury to require quarterly reports from TARP recipients regarding their use of TARP funds. Treasury always refuses, saying that money is fungible and such reports would not provide useful information. However, the Special Inspector General conducted a survey of every TARP recipient last summer and found a wealth of useful information for the asking. The Special Inspector General found that, rather than lending to businesses, many TARP recipients were using TARP funds to pay down debt, build up reserves, and acquire other banks. This is useful information and the Special Inspector General continues to recommend that Treasury require all TARP recipients to report their use of funds. Treasury has begun requiring such reports from AIG, Bank of America and Citigroup. And on November 2, 2009, a GAO report on the auto industry bailout stated that Treasury requires Chrysler and GM to report quarterly on their use of TARP funds. Obviously these reports provide useful information.

Will Treasury promise to begin requiring that all TARP recipients file quarterly reports on their use of taxpayer TARP funds and that the reports be made transparent for Congress and the public? If not, why not? Given that Treasury requires use of funds reports by

AIG, Bank of America, Citigroup, Chrysler and GM, why not require those reports of all TARP recipients?

While TARP matters are outside my area and authority, I understand from my colleagues that Treasury is committed to issuing reports that adequately address the transparency issues raised by SIGTARP. As my colleagues have previously indicated to you, Treasury will be issuing an expanded quarterly report that will cover, on both an aggregate basis and for each bank participating in CPP, all of the significant categories of uses reported in SIGTARP's Use of Funds Survey Responses, including lending, investments, capital cushion, repayment of debt and acquisitions. Moreover, the report will be based upon detailed financial information collected by bank regulators, and will specify the actual levels and changes of assets and liabilities related to each use of funds rather than simply identifying categories. Further, the Treasury report will be updated each quarter and will show how uses of capital by each CPP bank and by all CPP banks in the aggregate are changing over time. Finally, Treasury will continue to consider, evaluate and discuss with SIGTARP additional ways to collect and report information about how banks are using TARP funds.

Question 8: Historical Trends of Federal Taxes

Mr. Mundaca, the Treasury Assistant Secretary for Tax Policy plays an important role in setting tax policy in any administration. As Finance Committee members, we'd like to get your views on the trends in revenues. CBO reports that, over the past 40 years, taxes as a percent of GDP averaged 18.3 percent. In the year 2000, Federal taxes took 20.9% of GDP, a record Post World War II level. Individual income taxes were at even more dramatic levels. CBO reported individual income taxes were at 10.3% of GDP.

CBO has also indicated that revenues hit a trough, at about 16.3% for 2004. But in 2005, revenues increased to 17.5 percent, in 2006, revenues were up to 18.5 percent, and in 2007, revenues jumped to 18.8 percent – that's higher than the historical average – all with the AMT patch and the 2001 and 2003 tax cuts in place. In 2008, according to the Treasury, revenues declined slightly to 17.5 percent. Because of the recession, Treasury has determined revenues further declined to 14.8% in 2009.

Now, we hear a lot of criticisms from those who opposed the bipartisan plan. One of the main criticisms is that we cut income taxes too much. That is, the allegation is that the bipartisan tax relief plan gutted the Federal revenue base. I was pleased to see Drs. Furman and Goolsbee indicated in their Wall Street Journal op-ed of August 14, 2008, that an Obama Administration would seek to keep the revenue base at or close to historic averages of GDP.

Do you agree with Drs. Furman and Goolsbee? Do you disagree with those who argue the only path to fiscal discipline is to maintain record levels of Federal taxation as a percentage of the economy? Do you recognize that there is a downside to future economic growth if we return to record levels of Federal taxation?

I recognize that tax rates that are too high can dampen economic growth, as can unsustainable deficits. Effective tax policy balances the goals of revenue sustainability, fairness, simplicity, efficiency, and growth. I look forward to working with the Congress, if I am confirmed, to develop tax proposals that meet the Federal government's revenue needs while simultaneously being as fair, as simple, as efficient, and as pro-growth as possible. Once the economy recovers, it will be important to restore fiscal discipline, in order to avoid an unchecked rise in federal debt, which would pose a threat to the U.S. economy in the long term.

Question 9: Capital Gains Tax Rate

The House of Representatives has proposed imposing a surtax of 5.4% on singles with income over \$500,000 and couples making over \$1 million. This surtax would be imposed on a taxpayer's modified adjusted gross income (MAGI). Under the House bill's definition of MAGI, the surtax would be imposed on income that is not currently subject to ordinary income tax rates, including capital gains income.

The current top capital gains tax rate of 15% is scheduled to expire at the end of 2010. In the President's budget he proposes allowing the 15% rate to increase to 20% for singles making over \$200,000 and couples making over \$250,000.

If the House 5.4% surtax is enacted into law and the 15% cap gains rate is allowed to expire for singles making over \$200,000 and couples over \$250,000 this effectively results in a top long-term capital gains rate of 25.4%. Do you agree?

Raising the rates from 15% to 25.4% represents a 70% swing in the top rate. Do you envision any adverse consequences to equity markets as a result of this swing in the top rate?

As you point out, the President has proposed keeping the current capital gains tax rates for 2009 and 2010, and permanently extending the zero and 15 percent rates for single taxpayers with incomes under \$200,000 and joint filers making less than \$250,000. This proposal would return the top capital gains rate to what it was prior to 2003, but it would apply to fewer taxpayers. Under the President's proposals, overall tax rates on capital gains income would remain lower than prior to 2003, and those same low rates would apply to dividends as well.

While capital gains tax rates can affect stock prices, the effects are generally thought to be outweighed by other factors, such as the strength of the overall economy. The President's Budget proposals reflect the view that in 2011, when our economy is back on track, it is critical to focus on restoring fiscal discipline and reducing the deficit, to promote long-term economic growth.

Question 10: Delinquent Debt Collection/Tax Gap

According to a GAO report from last year, the amount of delinquent tax debt is almost \$300 billion of which over \$100 billion was deemed collectible.

In letter dated March 6, 2009, I expressed my disappointment about killing the private debt collection program to Secretary Geithner and Commissioner Shulman and requested that Treasury and IRS develop a strategic plan to reduce the amount of delinquent tax debt and provide regular progress reports. I have not yet received any updates since my March letter. I ask for your commitment to work on that strategic plan and that you ask IRS to provide the updates requested immediately.

Congress and the Administration have many ideas for new and complex ways to tax individuals and small businesses to fund all sorts of new spending. It would seem wise to make sure people are paying what they owe before we tax them even more. What has been your involvement in both tax gap reports Treasury provided to the Committee? What recommendations do you have to improve tax collections and the tax gap overall?

If confirmed, I will work with Commissioner Shulman to ensure that the Internal Revenue Service has in place a plan, as well as the resources, necessary to collect tax debts, and that you are updated on progress. In regard to a strategy to improve collections, the Administration's Budget proposals for Fiscal Year 2010 contain a number of proposals focused on improving collections, including increasing the ability of the IRS to levy payments made to federal contractors and expanding the scope of payments that could be subject to a 100-percent levy by the IRS.

In my prior position as Deputy Assistant Secretary for International Tax Affairs, I did not prepare the 2007 tax gap report, which focused largely on domestic issues. However, as Acting Assistant Secretary (Tax Policy), I exercised oversight over the preparation of the more recent tax gap report. This report highlighted, among other points, the levy proposals in the Administration's Budget proposals which would help address the tax gap, as would a number of other proposals dealing with expanded information reporting, improved compliance by businesses, strengthened tax administration, and increased penalties. In addition, simplification of the tax laws and reducing compliance burdens (by, for example, making e-filing easier and more accessible) will help to narrow the tax gap.

Question 11: Use of Third Party Data

In your response to Chairman Baucus's question about the combating the tax gap, you mentioned information reporting. However, one GAO report after another highlights that IRS is not utilizing the information it already receives. Why do you think additional information will help? How will you help insure that any new information provided to IRS from 3rd parties will be used effectively and efficiently by the IRS?

Although compliance generally increases significantly for amounts that a third party reports to the IRS, excessive reporting of unnecessary information not only burdens taxpayers and third parties, but may also hinder the IRS's ability to process and use necessary information. It is therefore critical that the information requested by the IRS from taxpayers and third parties meets specific tax compliance and enforcement needs. There are many important information reporting programs already in place that provide critical information to the IRS. However, there remain additional sources of information that could potentially improve tax compliance if made

available to the IRS. The Administration's Budget proposals for Fiscal Year 2010 contain a number of proposals addressing those additional sources of information, including increased information reporting by foreign financial institutions, domestic corporations, and insurance companies. The Treasury Department is also actively working to implement recent legislation providing for increased information reporting related to credit card payments and the tax basis of securities. If confirmed, I will work to ensure that the information reporting required by the IRS does not overly burden taxpayers and focuses on meeting specific tax compliance and enforcement goals of the IRS.

Question 12: Offshore Tax Abuse

There are at least two different Senate proposals to curb off-shore tax shelters. In addition to the Chairman's proposal, Senator Levin has proposed creating a blacklist of countries. What do you think of this approach?

The Administration appreciates Sen. Levin's leadership in highlighting the importance of combating offshore tax abuse and seeking ways to address the issue. Senator Levin's proposal would base imposition of negative consequences with respect to entities, transactions, and financial accounts on their association with countries on a list of "offshore secrecy jurisdictions." The Chairman's proposal and the Administration's Budget proposals, however, take a different approach. Because foreign financial institutions are in the best position to provide the IRS with the information it needs to enforce U.S. tax laws, the Administration's Budget proposals, like the Chairman's proposal, focus on financial institutions instead of countries, and impose negative tax consequences on foreign financial institutions (including offshore investment vehicles), wherever located, that do not agree to collect and provide information to the IRS with respect to U.S. accountholders.

Question 13: Update on Studies Mandated by the Pension Protection Act

In August 2009, Treasury tax staff briefed Finance Committee on the studies required by the Pension Protection Act. I understood that both the study on supporting organizations and donor advised funds and the study on investments in life insurance by tax-exempts would be completed by the end of the year. Please provide an update on the status of these studies.

Completion of these reports is a high priority. We intend to deliver the report on charity-owned life insurance by the end of this year. We are also in the final stages of completing our report on donor-advised funds and supporting organizations, which we now intend to deliver by the end of February 2010.

Question 14: Return Preparer Regulation

Regulation of return preparers is of concern to both me and Chairman Baucus and Commissioner Shulman has made this a priority. Since it can be a key tool in combating the tax gap and you have extensive experience as a practitioner, please provide your thoughts on what standards should apply to do paid and unpaid preparers. Should those

subject to Circular 230 be subject to additional standards? Should those not currently regulated be subject to tests and other standards? What should the role of the IRS be compared to the role of private sectors, e.g., professional associations?

I fully support Commissioner Shulman's recent initiative to study the regulation of tax return preparers. Based on the public comments received in connection with that initiative, there appears to be broad based public support for ensuring that all tax return preparers meet certain standards of professional competency. I look forward to reviewing the Commissioner's recommendations in this area.

Question 15: Customs and Border Protection

Are you aware of the important role that the Treasury Department has in working with Customs and Border Protection on customs regulations? Do you have any recommendations for improving the operation of the delegation of customs authority by Treasury to the Department of Homeland Security?

I am aware of the important responsibility that Treasury has for customs revenue functions. I believe that a critical step in promoting effective operation of the delegation of customs authority to the Department of Homeland Security is through close cooperation with that Department, and other parties with an interest in the process, including, of course, the Committee.

Question 16: Interagency Consultation/Coordination

The Department of the Treasury, in coordination with the Department of Homeland Security, promulgated regulations in 2008 and 2009 that proposed to alter longstanding administrative customs practices before consulting with this Committee or other appropriate federal agencies. For example, Treasury promulgated a notice of proposed rulemaking on heading "9802" of our tariff schedule before consulting with the Office of the United States Trade Representative. The "9802" proposal was subsequently withdrawn because of concerns over its consistency with our international trade obligations.

Senator Baucus and I recently introduced a customs reauthorization bill. Section 102 of our bill establishes an interagency review board comprised of officials from Customs, the Departments of Homeland Security, Treasury and Commerce, and the Office of the United States Trade Representative, to review regulations before they are promulgated to determine whether they conform to our international trade obligations. Do you think such a review board will improve the coordination among these agencies with respect to the development and administration of our domestic customs laws and regulations? Do you have other ideas for improving coordination among these agencies?

I am a firm believer in interagency coordination. As a matter of practice, Treasury now consults with USTR on all customs regulations prior to publication. I am open to proposals that would ensure comprehensive review in appropriate circumstances.

Another example I would cite is the so-called “first sale” rule. Treasury promulgated a notice of proposed interpretation on “first sale” before consulting this Committee. The rule elicited a strong response from the business community and Congress, which passed a sense of Congress stating that Customs should delay implementation of the rule until further information is known about the impact on international trade flows.

Do you consider it part of your agency’s mission to keep the Finance Committee fully informed of such matters? If confirmed, will you recommit your agency to regularly engage this Committee in advance of proposing or finalizing any significant changes to the administration of U.S. customs laws?

I believe it is important to keep the Committee fully informed about significant matters in customs administration and will regularly inform the Committee of significant changes in customs administration that are subject to Treasury review.

Question 17: International Trade Data System

Congress vested the Treasury Department with the authority to develop the International Trade Data System. Are you aware of the importance of this system? If confirmed, will you devote the necessary resources to complete the development of the ITDS and to coordinate integration of ITDS capability into the Automated Commercial Environment with CBP?

ITDS can significantly reduce the burden of complying with import formalities by eliminating redundant import filing requirements. Treasury chairs the interagency ITDS Board of Directors and coordinates interagency participation in ITDS, and is a strong supporter of the ITDS program. Currently, building ITDS functionality is the responsibility of Customs and Border Protection and is funded by appropriations for DHS.

ANSWERS TO QUESTIONS FROM SENATOR ROCKEFELLER**Question**

A number of companies have suffered greatly due to last year's unprecedented economic crisis and sudden drop in stock value. This unforeseen event created unintended consequences in the application of some tax laws.

One area where this has occurred is in the measurement of whether there has been a 50% or greater "change in control" of a company for purposes of IRC section 382. If a "change of control" is deemed to occur, a company can lose significant tax assets (through the elimination and limitation on the use of losses it has incurred over time). This technical operation of a complicated rule has serious, practical consequences for companies. When tax assets are lost, a company has a harder time generating capital, thereby reducing its ability to expand capacity to create jobs.

The question of how to determine a "change of control" in an economic downturn creates a number of issues, including: (1) how to account for dramatic changes in stock prices that create "5% owners" whose holdings need to be monitored and accounted for; (2) how to deal with changes when a company has different classes of stock; and (3) how to apply the existing "segregation" rules in the current IRC section 382 regulations.

I understand that the Treasury Department is looking at developing additional guidance under IRC section 382 to address the questions raised by the recent economic downturn. Last year, Treasury used its authority under IRC section 382 to address the impact of the rules on a very small number of affected taxpayers. I believe that it is beneficial to provide guidance to a much larger segment of impacted taxpayers. As you develop your new guidance, we strongly urge you to consider an application of the "change of control" rules that takes into account last year's dramatic and sudden downturn in the stock market and to address all the issues raised by this unforeseen change of events.

Can you specifically look at issuing guidance under IRC section 382 that addresses the three issues mentioned above? Can you provide me with a timeline for when guidance will be issued?

I look forward to working with you on sensible rules that interpret our tax laws in a way that allows companies to grow and create jobs during these challenging economic times.

I recognize that Internal Revenue Code section 382 is a concern to a broad cross-section of this nation's business community, and that it can have a significant effect on a company. The Guidance Priority List for 2008-2009 included an item for guidance addressing fluctuations in value described in Code section 382(l)(3)(C), and we are actively developing that guidance, and hope to issue that guidance within the next few months. In addition, I fully support reviewing and developing additional broad-based public guidance under section 382, which may include re-examining the issues you describe.

ANSWERS TO QUESTIONS FROM SENATOR SCHUMER**Question**

In 2003, the Bush Administration delegated a significant amount of authority to the Deputy Assistant Secretary for Tax, Trade and Tariff Policy, a career position in the Office of Tax Policy that you will manage. This delegation appears to have resulted in issuance of proposed rules that seek to set policies that neither reflect the political position of the administration, nor reflect any sensitivity to the role of Congress in these matters. Recent examples include the proposed rules on "first sale" and on duty drawback.

As Assistant Secretary for Tax Policy, will you take an active role in reviewing trade policy issues and proposed rules?

What steps will you take to ensure that proposed rules reflect authority delegated to the agency by Congress?

If confirmed, I will ensure that proposed rules involving customs revenue functions are scrutinized with regard to their relationship to our trade policies and our international obligations. In addition, I will ensure that significant regulatory proposals involving customs revenue functions are brought to the attention of the Committee.

ANSWERS TO QUESTIONS FROM SENATOR NELSON**Question 1**

In a couple of years, we expect large job losses at the Kennedy Space Center in Florida. The Clinton Administration was effective at designing regional tax incentives for economically distressed areas, such as Empowerment Zones and Renewal Communities. It makes sense to focus resources on areas most in need. As Assistant Secretary, will you work with us to develop a similar proposal for areas, such as the Cape, that need help?

I share your concern for those who have lost their jobs, such as those at the Kennedy Space Center. If confirmed, I would be happy to work with you on this issue.

Question 2

The President's budget would impose an excise tax on drilling in the Gulf of Mexico in the case of companies with windfall profits from poorly drafted leases. I have a strong interest in preventing drilling off the Florida coast. What is the status of this proposal?

I understand the Government Accountability Office has reported that the return to the taxpayer from drilling in the Gulf of Mexico is among the lowest in the world, despite other factors that make the United States a comparatively good place to invest in oil and gas development. I also understand that an excise tax on Gulf of Mexico production would advance important policy objectives, such as providing a more level playing field among producers, raising the return to the taxpayer, and encouraging sustainable domestic oil and gas production. The Administration's Fiscal Year 2010 Budget committed the Administration to working with Congress to develop a proposal to impose an excise tax on certain oil and gas produced offshore in the future. If confirmed, I will work with Congress to develop such a proposal.

Question 3

Early next year, the Senate should consider financial regulatory reform. Financial derivatives used by AIG and others played a significant role in the financial crisis. Are the tax rules related to financial derivatives part of the problem? Do they need reform?

Most financial institutions mark to market their securities, including their derivatives positions, for both financial accounting and tax purposes, thereby ensuring that book and tax income are closely aligned. This book-tax conformity should minimize the role that tax rules alone play in influencing behavior. Moreover, although derivatives may have concentrated risk and thereby contributed to the financial crisis, it does not appear that that concentration was influenced by the tax treatment of derivatives. As Congress considers financial market reforms, and as the market for derivatives becomes more standardized and more contracts move to exchanges and clearinghouses, Treasury will monitor the situation to determine whether existing tax rules should be revised to reflect those changes.

Question 4

The public is understandably outraged with Wall Street bonuses. Are the tax rules related to executive compensation unfair? For example, an average worker is limited in how much he can put in a 401(k) account. But the tax law allows corporate executives to defer unlimited compensation as long as certain requirements are met. Is reform needed?

As you know, the Federal income tax treatment of section 401(k) plans – which are tax-qualified – is different from the tax treatment of executive deferred compensation, which, for the most part, is not tax-qualified. The limits on contributions by employees to 401(k) plans are part of this structure, which accords tax-favored treatment to those plans, largely by allowing employees to defer recognition of income on the contributions until amounts are paid from the plan, even though the benefits are held in trust for the employee, protected from the employer's creditors, and the employer can claim a current tax deduction for contributions. Contributions to tax-qualified plans such as 401(k)s are limited in view of this favorable treatment. By contrast, the tax law generally does not accord nonqualified deferred compensation this same combination of advantages (including the fact that employers receive no current deduction for amounts deferred and are taxed on any earnings on assets not paid out as current pay); accordingly, Congress to date has not imposed dollar limits on nonqualified deferred compensation.

The Code section 409A rules that Congress enacted in 2004 also help constrain executive deferrals by ensuring that the amounts deferred really do remain subject to the claims of a company's creditors in the event of bankruptcy and by placing stringent limitations on the ability of executives to control the timing of distributions from nonqualified deferred compensation plans.

Question 5

What is the status of the U.S. Treasury's negotiations with the Government of Panama on reform of their tax laws?

For a number of years, the Treasury actively pursued a Tax Information Exchange Agreement (TIEA) with Panama. Negotiations have been stalled for the past several years, however. In May 2009 the Government of Panama publicly committed to negotiating an agreement with the United States that would provide for full exchange of information related to tax matters. We hope to make progress on this matter in the near future.

Question 6

What would be the minimum commitment you would require from Panama on its tax reform before the administration will send this agreement to Congress?

The Treasury would require Panama to commit to a TIEA that complied with international standards, in particular the OECD and US Model TIEAs. This would include the obligation to

obtain and exchange information held by financial institutions in response to a request for information that was made pursuant to the TIEA.

Question 7

Are you aware of any provisions in the U.S.-Panama trade agreement that would remove key policy tools used to combat financial crimes and would conflict with U.S. government efforts to combat the global economic crisis by re-regulating finance?

No, I am not aware of any such provisions.

ANSWERS TO QUESTIONS FROM SENATOR HATCH**Question 1**

I am very concerned about some of the proposals in the Treasury's Green Book for this year that are designed to discourage "U.S. businesses to shift their investments and jobs overseas." You are an experienced international tax expert. Do you believe the current U.S. tax law creates any disadvantages for U.S.-based multinational corporations in competing against their non-U.S.-based counterpart companies? Do you think there is a danger that by making our international tax rules even less friendly to U.S. businesses that we discourage such firms from forming in the United States or even providing an incentive for them to leave this nation?

The academic literature is replete with evidence that U.S. foreign direct investment is a positive thing for the United States, both in terms of domestic employment and in terms of global competitiveness. How would making U.S. companies even less competitive through more onerous tax rules help achieve the President's goal of encouraging growth and recovery and creating jobs?

The Administration is concerned about the competitiveness of both U.S. businesses and U.S. workers. Numerous academic studies have considered the relationship of foreign investment to domestic employment. Some of those studies have found a positive relationship and others a negative relationship. Some forms of foreign investment are associated with a decrease in domestic employment, while others are associated with an increase in domestic employment. For example, there are two potential effects on domestic employment if a U.S. multinational corporation shifts some of its production activities overseas to take advantage of lower foreign production costs—a substitution effect and a scale effect. The lower foreign production costs may cause a substitution of foreign for domestic workers (the substitution effect). However, if the lower foreign production costs cause an increase in demand for the U.S. multinational corporation's products, the corporation may then increase output, which could raise investment and employment both in the United States and abroad (the scale effect). The net effect on domestic employment could be either negative or positive depending on the relative strengths of the two offsetting effects.

The process of considering whether and how to tax the active foreign income earned by the foreign subsidiaries of U.S. multinational corporations, in my view, should begin with a comparison of the domestic employment gains and increased domestic business activity known to result from domestic investments (for example, in education or infrastructure) with the net domestic employment gains or increased domestic business activity that result from reducing the U.S. taxation of U.S. multinational corporations' overseas income.

If confirmed, I commit to work with Congress to create rules that maximize the economic welfare of U.S. citizens and residents.

Question 2

Do you think that fundamental and wholesale reform of the tax code is politically possible in the next two years? Or, do you believe that it might make more sense from a practicality standpoint for the Administration and Congress to pursue a series of incremental reforms that simplify the code and improve incentives for both households and firms?

Given the need to reduce the budget deficit, we should consider comprehensive tax reform that promotes growth, simplifies our current rules, and fairly raises adequate revenue for the Federal government to meet its obligations. If I am confirmed, I will work with Congress to help enact tax reforms that achieve those goals.

Question 3

Mr. Mundaca, as you know, in the Finance Committee's health care bill there is a provision that requires individuals to obtain health insurance or else face a penalty of \$750. The bill also includes various "annual sector fees" on several parts of the health care industry. During the markup of this bill, there was quite a disagreement as to what is and is not a tax. What is your definition of a tax and would you consider the excise tax and the annual sector fees in the health care bill to be taxes?

The House and the Finance Committee health care bills provide different means to offset the cost of health care reform. The Finance Committee bill imposes a penalty on individuals who fail to obtain coverage and imposes fees on certain sectors of the health care industry. In general, a penalty is exacted when prescribed behavior is engaged in. A fee is generally imposed in return for a benefit, such as access to a larger market.

Question 4

As you probably know, Chairman Baucus and I have introduced a bill to extend permanently the research tax credit. I am aware that the Treasury's Green Book for this year once again includes the proposal to make the research credit permanent. My question, however, is whether the Treasury supports expanding the credit as well, by strengthening the alternative simplified credit, as we propose in the Baucus-Hatch bill?

The Administration appreciates your efforts and the efforts of Chairman Baucus to extend the research credit permanently. The research tax credit encourages technological developments that are an important component of economic growth. However, the Administration believes that the credit's temporary nature undermines its effectiveness. Uncertainty about the future availability of the research tax credit diminishes the incentive effect of the credit, because it is difficult for taxpayers to factor the credit into decisions to invest in research projects that will not be initiated and completed prior to the credit's expiration. Therefore, the Administration's priority is to make the credit permanent, and a proposal to make it permanent was included in the Administration's FY 2010 Budget. The Administration also agrees that the credit's structure could be simplified or updated in certain respects to improve its effectiveness. I look forward to working with Congress, if I am confirmed, on possible modifications to the credit.

Question 5

Mr. Mundaca, as you know, our tax law contains a provision that temporarily provides an exemption from subpart F for active financing income. This provision is very important for U.S.-based companies competing globally in insurance, banking, and other financial services sectors. Does the Treasury Department support a permanent extension of this provision?

The Administration supports extending the active finance exception for one year as described in its Fiscal Year 2010 Budget. If confirmed, I look forward to working with Congress to consider whether this section should be extended beyond 2010.

ANSWERS TO QUESTIONS FROM SENATOR SNOWE**Question 1**

Mr. Mundaca, as you are well aware, the House is considering offsetting the cost of health care reform with a surtax on high-income individuals. In particular, the House bill would apply a surtax of 5.4 percent on single filers with over \$500,000 in income and married couples with over \$1 million in income. Given the fact that the 2001 tax cuts are expiring at the end of 2010, the impact of this tax increase will be to take the top marginal income tax rate from 35 percent today to 45 percent, a staggering 29 percent increase. Given that small businesses often pay taxes through the individual income tax system, as Ranking Member of the Senate Committee on Small Business and Entrepreneurship, I am extremely concerned about the potential impact of these surtaxes on small enterprises and their ability to continue generating the 64 percent of net new jobs that will lead us out of this devastating recession.

Mr. Mundaca, could you comment where the Administration stands on the surtax? Would you agree with me that health care reform should be financed within health care? Why or why not? Would you also agree with me that the House surtax could have a devastating economic effect, especially when combined with the expiration of the 2001 tax cuts, by impeding small business' ability to create jobs and drive economic growth? Additionally, would you not also concur that the surtax contemplated by the House would harm a small business' ability to provide quality, affordable health insurance?

One of the Administration's principal goals of health care reform is to relieve the burden on small businesses. Each of the bills making their way through Congress includes several important measures, including health insurance exchanges and a small business tax credit, that will make it more affordable for small businesses to provide health insurance to their workers.

As your question indicates, the House and the Finance Committee health care bills provide different means to offset the cost of health care reform. If confirmed, I look forward to working with Congress on those proposals.

Question 2

Mr. Mundaca, employees are able to exclude from taxation health insurance benefits provided by their employer. This is true not just for income taxes, but for payroll taxes also. Self employed people are not permitted to exclude their health insurance premiums from payroll taxes for Social Security and Medicare. This is a double burden for the self-employed because they pay both the employer and employee share of the tax, known as the Self-Employed Contributions Act - or SECA tax. For a family insurance policy in the individual market that costs \$20,000, the SECA tax burden of 15.3 percent would be another \$3,060 of tax.

There is currently a surplus in the Finance Committee bill that is credited toward the Social Security trust fund. This surplus arises from the excise tax on high cost health insurance from people making a rational choice to take higher wages instead of non-taxable health benefits and those higher wages result in enhanced payroll tax collections. Mr. Mundaca, given that the excess funds in the bill are directed to the Social Security Trust Fund and that there is no policy reason to differentiate between employees and the self-employed regarding the exclusion for health benefits, will the Administration support addressing the inequity of the SECA tax problem?

Your question correctly states that health care expenses incurred by a self-employed individual are deductible for federal income tax, but not for self-employment tax (SECA) purposes, whereas health care costs are excluded from an employee's income for both federal income tax and FICA tax purposes. It is difficult to compare the equities of the deductibility of health care expenses for self-employed individuals versus employees because the taxation of self-employment earnings differs in a number of fundamental ways from the taxation of employee wages. For example, self-employed individuals may deduct the full amount of their business expenses against their self-employment income, while an employee's business expenses are itemized deductions that are generally subject to a 2% of income floor. Because of these differences, any consideration of a change in the deductibility of health care cost for SECA purposes should be considered in context of the overall taxation of self-employment earnings.

ANSWERS TO QUESTIONS FROM SENATOR KYL**Question:**

A number of commentators have suggested the adoption of a securities transaction tax, or so-called Tobin tax, as a means, in part, to reduce excessive speculation in the financial sector. The Tobin tax has been proposed in various forms since the early 1970s.

A securities transaction tax would have a significantly negative impact on the financial markets - at precisely the worst time possible. President Obama and Secretary Geithner have spent much time and effort in working to repair the U.S. financial markets given that the economic recovery we are beginning to witness depends in no small measure on a well-functioning capital market.

Can you provide to the Committee your thinking on the effects that a securities transaction tax would have on the U.S. capital markets? In particular, I would be very interested to learn of your views on how the U.S. financial market could retain its preeminent global position, along with the hundreds of thousands of jobs associated with that sector, by adopting a Tobin tax.

Many countries have experimented with different versions of a transaction tax or a Tobin tax. There is no disagreement that we need to create a more stable system where taxpayers are not exposed to the risk of loss from financial institutions and where those institutions do not operate with the expectation that the government will be there in the future to bail them out. Our approach is focused on how we build a system in which taxpayers do not have to absorb the costs in the future and financial institutions are responsible for the risks they take and the consequences of their mistakes.

ANSWERS TO QUESTIONS FROM SENATOR BUNNING**Question 1:**

Mr. Mundaca, I assume you are aware of President Obama's campaign promise that he will not raise any taxes on individuals who earn less than \$200,000 or families who earn less than \$250,000. Does the Obama Administration plan to keep this pledge in health reform legislation?

The President has outlined three key goals that the final health care bill must meet: to provide security and stability for those with insurance, to reduce cost growth for families, businesses and the government, and to provide insurance for those who cannot afford it. I share and support the President's vision for what successful health care reform should achieve. The President also has pledged not to raise taxes on families with incomes below \$250,000. If confirmed, I will support the President and Congress as they work to pass health care reform legislation in a consistent manner.

Question 2:

A few weeks ago, President Obama claimed in a television interview that an individual mandate in health reform, which is a penalty tax on the uninsured, is not really a tax. Can you explain why an amendment to the tax code that is enforced by the IRS and is specifically called an "excise tax" in legislative text is not really a tax?

The health care reform bills making their way through Congress impose an obligation on certain individuals and families to acquire health care coverage. To enforce this provision, the bills amend the tax code to impose an individual responsibility payment on individuals who fail to obtain coverage. Although the bills refer to this individual responsibility payment as a "tax," it is in fact a penalty designed to enforce the coverage requirement. The bills also exempt individuals from the penalty if the cost of health care exceeds a specified level or in the case of hardship, and provide for a tax credit to assist low and moderate income individuals and families to acquire coverage.

ANSWERS TO QUESTIONS FROM SENATOR ROBERTS**Question 1**

The America's Healthy Future Act imposes an individual mandate penalty on those who do not purchase health insurance. Under the bill, the Internal Revenue Service (IRS) is tasked with collecting this penalty. There are millions of individuals and families who are not required to file tax returns. What processes will the IRS have to develop and implement in order to verify that this group has obtained health insurance? What will be the cost to develop and implement these measures?

Under the Committee's bill the IRS is responsible for enforcing the penalty on individuals who fail to obtain coverage. The bill also limits collection to withholding from federal payments, and prohibits the IRS from imposing criminal or civil penalties on individuals for non-compliance. Although the IRS has begun analysis of the implementation needs, no cost estimates have been prepared.

As I understand the Committee's bill, individuals and families whose income level is below the threshold for filing a tax return will likely either be exempt from the penalty or will have coverage through Medicaid or Medicare. Certain of these individuals may purchase coverage with the tax credit provided in the bill, in which case they will be required to file a tax return in order to retain the credit.

Question 2

The America's Healthy Future Act imposes a penalty on employers that do not provide affordable health care coverage. In order to accurately calculate and pay this penalty, the employer will have to obtain information from each employee about their income, including income from other employers. Employers will also have to collect information about whether the employee has purchased health insurance through an exchange, and information about whether the employee is eligible for the premium credit.

This seems like a significant increase in the scope of information that employees will have to provide to their employers. What privacy provisions will apply to the collection and use of this information? How will this information be collected? Will penalties be assessed for noncompliance with these additional information requirements?

As I understand the Finance Committee bill, the details regarding how employers will collect necessary information are not specified. If confirmed, I look forward to working with Congress to ensure that the use of individuals' private financial and health care information is maintained

in strict confidence and protected as appropriate by the provisions of section 6103 of the Internal Revenue Code and the HIPAA privacy provisions.

Question 3

The America's Healthy Future Act imposes an excise tax to fund the Patient-Outcomes Research Trust Fund. Does the IRS currently have the ability to determine which entities will be required to pay these excise taxes? If not, how will the IRS make such a determination?

The Finance Committee's bill calls for a Patient-Centered Outcomes Research Trust Fund that would be funded in part by a fee for each individual covered under insured and self-insured health plans. For insured plans the bill calls for the fee to be collected from the issuer of the insurance policy. For self-insured plans, the fee would be collected from the plan sponsor. Since this would be a new fee, the IRS does not currently have in place forms and processes for collecting it, but I believe that the IRS will be able to determine which entity – insurance carrier or plan sponsor – will be responsible for paying the fee depending on the nature of the plan and should have no special difficulty in developing the necessary forms and procedures.

ANSWERS TO QUESTIONS FROM SENATOR ENSIGN**Question 1**

Sixty-seven Senators are cosponsors of legislation introduced by Senator Kerry and myself, S. 144, which would remove cell phones from the definition of listed property. I understand that both business and the IRS recognize the difficulty of keeping cell phone records. Related to this issue, Commissioner Shulman issued a statement asking Congress to act "...to make clear that there will be no tax consequences to employers or employees for personal use of work-related devices such as cell phone provided by employers." That is precisely what we hope to do, and this is the kind of tax simplification that the Congress and the Administration should be cooperating on. Since Congress is quickly moving to legislate on this matter, what can the Treasury do to minimize administrative burdens on taxpayers during the interim?

I agree with the Commissioner that the laws related to the tax treatment of the personal use of employer-provided cell phones are out of date, and should be updated. Until that happens, the treatment of employer-provided cell phones as 'listed property' under current law is established by statute. I understand your question to be directed to the IRS's administrative approach in examinations related to that issue. While enforcement is fundamentally a matter within IRS jurisdiction, we at Treasury are also aware of the problem and will continue to work with the IRS in crafting a reasonable solution to it. The Treasury and IRS have expressed their interest in suggestions on how to minimize administrative burdens within existing law and are reviewing public comments already received in an effort to develop ways to assist taxpayers. For example, approaches being considered to address the current substantiation rules include a method under which minimal personal use would be deemed allowable, a safe harbor substantiation method under which a stipulated percentage of cellular telephone use would be deemed to be business use, or a statistical sampling method to allocate personal and business use.

Question 2

The President has repeatedly promised not to raise taxes on lower and middle income families (i.e., those making less than \$250,000 per year). Yet, there are many new taxes being proposed in the healthcare and cap-and-trade legislation under discussion in the Congress. Specifically, there is an individual mandate excise tax, a "high cost insurance plan" tax, an insurance company tax, a medical device maker tax, a clinical laboratory tax, an employer mandate tax, a pharmaceutical maker tax, and a small business surtax.

- a. Do you agree that the healthcare legislation now under consideration by the House and Senate (H.R. 3962 and S. 1796) would impose new or higher taxes on middle income families who make less than \$250,000 per year? If not, why not?
- b. According to the Congressional Budget Office and the Joint Committee on Taxation, some of these new taxes or "fees" will be passed through to consumers.

Do you agree, and do you have any analysis that relates to the impact on consumers of any of these healthcare taxes?

- c. Do you agree that new taxes that increase taxpayer costs for healthcare, such as insurance, pharmaceuticals, lab tests, and medical devices, violate the President's promise not to raise taxes on families making less than \$250,000 per year? If not, why not?**
- d. Do you maintain that imposing taxes on businesses in the amount of hundreds of billions of dollars would not violate the President's promise not to raise taxes on middle income families even when it can be conclusively demonstrated that these taxes will ultimately be borne by middle income families as consumers?**
- e. Will you definitively and without qualification guarantee that not "one dime" in new taxes or new tax liability will be imposed on middle income families as a result of the healthcare bill the President ultimately signs?**
- f. As an acting official of the Treasury department, have you seen or prepared a Treasury analysis on the impact of any of these new healthcare taxes, as embodied in the current House and Senate bills, on middle income families and whether and how much this group will ultimately pay in higher costs, either directly or indirectly? If so, please provide that analysis.**

As your question indicates, various versions of health care reform legislation are currently under consideration in Congress. A variety of ways to offset costs, in addition to those the Administration suggested, have been proposed and are still being considered. As you know, the characteristics of those offsets, the amounts they would raise, and the overall economic effects of the various proposals have been the subject of extensive analysis and discussion by the Committees, their staffs, and the Congressional Budget Office. I have not seen or prepared a Treasury analysis on the impact of the proposed healthcare offsets embodied in the current House and Senate bills. Once Congress determines the appropriate direction forward, Treasury looks forward to working diligently to evaluate any tax implications that may result.

The President has outlined three key goals that the final health care bill must meet: to provide security and stability for those with insurance, to bend the cost curve for American families and businesses, and to provide insurance for those who cannot afford it. I share and support the President's vision for what successful health care reform should achieve.

The President also has pledged not to raise taxes on families with incomes below \$250,000. If confirmed, I will support the President and Congress as they work to pass health care reform legislation that is consistent with that pledge.

Question 3

According to many charitable organizations, placing restrictions on taxpayers' itemized deductions would negatively impact the incentives to contribute to charities. For that reason, many charitable organizations oppose these restrictions especially during this

economic downturn in which charitable giving is down but charitable services are sorely needed. What is your view of the impact of cuts in charitable giving? Do you agree that cuts in charitable giving are likely if the deduction is restricted? If you agree with the Administration budget proposal to restrict charitable deductions, why do you believe such charitable work is relatively less important compared to the new spending the Administration proposes to make with the new revenue generated from restricting charitable deductions?

The evidence suggests that many factors affect charitable contributions, including public desire to help the charity and overall economic conditions. For example, between 2002 and 2003, the highest income tax deduction for charitable contributions was reduced from 38.6 percent to 35 percent – and yet individual charitable contributions rose, presumably because other factors were a more important influence on giving than the change in the income tax rate.

Furthermore, the restriction on itemized deductions would affect less than 1.5 percent of taxpayers. About 75 percent of overall contributions would not be affected by the proposed restriction, because those contributions come from individuals who would not be affected or from corporations or foundations not subject to the individual income tax. Finally, even to the extent that charitable contributions are affected by tax considerations, the Administration's Budget contains other proposed changes (including retaining an estate tax) that will create stronger incentives for giving.

Question 4

There has been some concern on the part of Congress about a few recent high profile bankruptcies by qualified intermediaries in IRC section 1031 transactions leading to defalcations and failed IRC section 1031 transactions when funds held by qualified intermediaries were not available to purchase the replacement property. This result causes taxpayers hardship resulting from taxation on gains on income that has disappeared.

I understand that the IRS has plans to issue guidance on this matter. Specifically, in the 2008-2009 Priority Guidance Plan or 'Business Plan' the IRS included a reference to "[g]uidance under §1031 regarding the treatment of accounts held jointly by the taxpayer and a qualified intermediary."

As you know, the IRS can issue rules or regulations covering the requirements for qualified intermediaries under IRC section 1031. Most regulatory guidance by the IRS falls under the General Counsel's general responsibilities. Can you update the Committee on the guidance on this issue and whether the IRS will issue rules to help better ensure that taxpayers' funds held by qualified intermediaries are available when the replacement property is scheduled to close?

Treasury and the IRS are aware that the failures of several large qualified intermediaries (QIs) have resulted in taxpayers who initiated a section 1031 transaction being unable to complete an exchange, because the QI filed for bankruptcy or defaulted on its obligations. As you note, the

2008-2009 Priority Guidance Plan includes a project to address the status of accounts held by QIs. The published guidance should address the tax consequences to taxpayers who lost money or property, or who were unable to complete an exchange, due to a QI failure.

In general, a taxpayer considering a section 1031 exchange transaction is free to determine whether to utilize the services of a QI, and if so, to negotiate with the QI regarding how the taxpayer's funds – including proceeds from the sale of relinquished property – are held by the QI pending completion of the exchange. For example, a taxpayer and a QI may agree that sale proceeds of relinquished property must be placed in a trust or escrow account. Section 1031 and the regulations thereunder do not prescribe any particular arrangement or requirement regarding how funds are held.

Question 5

In the Homeland Security Act, Congress created the Homeland Security Department but clearly laid out that the U.S. Treasury Department retained authority over customs revenue functions. That authority is largely exercised out of your office. Can you confirm and elaborate on your intentions to implement this law by vigorously exercising these customs revenue functions and overseeing Customs and Border Protection to ensure that trade facilitation remains a priority? What steps will you take to ensure that CBP evaluates the impact on trade facilitation and consults with your office and the public prior to publishing new regulations?

Treasury considers trade facilitation to be an important part of its role in exercising Treasury's customs revenue function authority. All CBP regulations involving customs revenue functions are subject to Treasury review, and if confirmed I will ensure that promoting trade facilitation is a top priority.

Question 6

I am a strong supporter of “Free File” software which allows free electronic tax filing services to taxpayers through a partnership between the IRS and a group of private sector tax software companies. Most taxpayers are eligible to use this software service, and it does not cost taxpayers any money to provide the service. In contrast, I and many Members of Congress do not support the development by the government of a tax preparation system. What is your view of this?

In 2009, approximately two out of every three taxpayers e-filed their returns with the IRS. The e-filed returns included approximately three million taxpayers who used the IRS Free File program. If confirmed, I will continue to pursue ways to increase e-filing, including increased participation in the Free File program.

Increased participation in Free File is one of many ways to relieve the compliance burden on taxpayers. If confirmed, I would work closely with all interested parties to ensure that any new programs meet the common goals of increased tax compliance and reduced taxpayer burden.

ANSWERS TO QUESTIONS FROM SENATOR ENZIQuestion 1: Estate Tax

If Congress doesn't act soon, the death tax will disappear in 2010 only to resurrect itself in 2011 to pre-2001 levels, making it very difficult for Wyomingites to keep the family ranch or the family business "in the family." President Obama recognized the economic imperative of a permanent fix and included a proposal of his own in his FY 2010 budget submission.

Citing the current focus on health care reform, however, some senators have floated the idea of a one-year extension of current law as a temporary patch until the Senate can learn to walk and chew gum at the same time.

Your background includes extensive experience providing tax advice to corporate clients - a group for whom tax planning and the ability to look ahead is critical to global competitiveness.

* Do you agree the same is true for family-owned and operated businesses? Aren't small businesses as equally disadvantaged by the inability to plan ahead and make timely and efficient investment decisions as corporations are?

Tax planning under current law regarding the estate and generation-skipping transfer (GST) taxes is particularly difficult, because the changes in law currently scheduled to take effect in 2010, and then in 2011, are more fundamental than mere changes in the applicable estate and GST tax rates and exemptions. As you appropriately point out, tax planning, whether personal or business, and whether for large corporations or smaller family-owned businesses, is more effective and efficient when there is stability and consistency in the applicable law. This is particularly true in the case of estate planning where the date of death (the future time when the plan must be implemented) is unknown, and the taxpayer may lose the capacity to change the plan in response to intervening changes in the law. Permanence in our transfer tax laws would allow resources otherwise expended on repetitive planning costs, or set aside to pay indeterminate amounts of potential tax liabilities, to be redirected into the expansion of these businesses and increased job creation.

* Both the House and the Senate approved budget resolutions that allowed for a permanent fix to the death tax - not a temporary band-aid but a permanent fix. If for economic reasons we all agree it is prudent to act, if a bipartisan majority of lawmakers believe we should act, and if it can be done in a manner that is deficit-neutral, do you see any reason the Administration would object?

In its Budget proposals for Fiscal Year 2010, the Administration has already endorsed a permanent fix by assuming a baseline that incorporates the permanent extension of the estate and

GST provisions as in effect in 2009. The Administration supports such a permanent resolution in this area.

*** If a majority of both chambers agree we ought to pursue a permanent fix, and President Obama agrees we should pursue a permanent fix, then why should Administration officials even entertain the notion of a one-year band-aid?**

The Administration has proposed and supports a permanent fix.

Question 2: International Taxation

President Obama's economic team proposed significant changes to international tax law in their FY 2010 budget submission to Congress. Specifically, the Administration proposed to defer expense deductions related to foreign-source income, eliminate the "check the box" rules, and revise the determination and use of foreign tax credits.

In a puzzling and unnecessarily antagonistic move, the Administration looped these proposed changes under the umbrella term "loophole closers" suggesting that corporations who exercise these legal allowances are somehow cheating on their taxes. I think the distinction between shell corporations that headquarter in tax-free banana republics to avoid U.S. taxation and U.S. multinationals like Caterpillar, Exxon, Merck and Federal Express is very bright. Grouping the two together was simply inflammatory and besmirched the important contribution these legitimate businesses make to our economy.

*** Do you believe that the Administration's proposed changes to deferral, "check the box" and foreign tax credit rules are appropriately named "loophole closers?"**

The proposals by President Obama to existing international tax law that you identify are designed to reform existing tax rules and remove inappropriate incentives to shift business activity and income offshore. The changes proposed do not address illicit or illegal activities undertaken by U.S. multinational corporations to reduce their U.S. tax liabilities.

*** Do you believe, as many other tax experts believe, that the appropriate venue to examine and debate these provisions is within the broader context of corporate income tax reform?**

It would be appropriate to examine and debate these provisions in the broader context of corporate tax reform. However, if consideration of corporate income tax reform is not undertaken at this time, it is nevertheless appropriate to examine and debate the provisions that you identify to eliminate in a more targeted way inappropriate incentives under current rules.

*** Do you think it is wise to retrench our worldwide-based international tax structure at a time when most other industrialized nations are moving towards a territorial-based system?**

It is difficult to draw definitive insights from tax law comparisons between the United States and other industrialized nations. For example, our major trading partners rely less on the corporate tax and more on value-added taxes as a source of revenue than does the United States. As a result, our major trading partners may be less sensitive, from a revenue perspective, to provisions in their tax regimes that permit the erosion of the corporate tax base.

Many proponents of the adoption of a territorial-based system similar to what many European countries have adopted assert that such a system would promote the free flow of capital cross-border by eliminating the tax on repatriation of foreign earnings. Opponents of a territorial-based system, however, assert that a significant cost of adopting such a system is increasing the effective subsidy for foreign investment made by U.S. multinational corporations that exists today, which could provide a larger incentive for U.S. multinational corporations to invest overseas and not in the United States.

The Administration has received numerous comments on these important issues, and if confirmed, I look forward to working with Congress and this Committee on proposals that would advance the economic welfare of United States citizens and residents.

*** What obstacles do you see in moving towards a territorial-based international tax system?**

There are many factors to be considered in determining whether the United States should move towards a territorial-based system similar to one of the different models that have been adopted by our trading partners. Among the factors to consider are, first, that the revenue effects of a territorial-based system are uncertain and, second, that a territorial-based system would place significant additional pressure on transfer pricing rules. The revenue effects of a territorial-based system would depend in significant part on the presence (or absence) of meaningful expense disallowance provisions; the effectiveness of transfer pricing rules; and the definition of exempt foreign income.

These, and other, concerns and issues would need to be thoroughly considered before moving towards a territorial-based system.

*** What are the disadvantages of maintaining our current worldwide-based system?**

The current U.S. worldwide tax system with deferral of tax for most foreign business income is complex and provides incentives for U.S. multinational corporations to locate new investments overseas potentially at the expense of investments within the United States. It would be appropriate to reduce existing complexity and eliminate the features of the current system that encourage shifting of investments and profits overseas. These are, by most measures, disadvantages of the current system that should not be replicated in any successor regime.

Question 3: Cap and Trade Legislation

The Administration has proposed implementation of a carbon management regime to limit greenhouse gas emissions to combat climate change. Earlier this year, at the time of the President's proposal to reduce emissions by 14 percent below 2005 levels by 2020, unemployment was around 8 percent. Today, unemployment is 9.8 percent and rising. Additionally, the legislation that is being considered in the Senate requires even greater emissions reductions - 20 percent below 2005 levels by 2020 - than the President proposed.

In testimony before the Finance Committee, economists have made clear that the only way for such a program to reduce emissions is to change behavior and the only way to change behavior is to see energy prices increase. How does the Administration justify support for more stringent programs that will raise energy prices and burden middle and lower income families with unemployment nearing 10 percent?

It is my understanding that the Administration supports a cap-and-trade program because it is a proven, flexible policy that can harness market forces to help redirect the U.S. toward a clean energy economy. It is widely recognized that flexible market-based policies such as a cap-and-trade program for greenhouse gas (GHG) emissions can offer substantial cost savings relative to traditional emission regulations. Changing the relative price of GHG intensive goods and activities through market based incentives is critical to reducing our greenhouse gas emissions in a cost effective manner. The Congressional Budget Office (CBO) has estimated that the costs of the American Clean Energy and Security Act of 2009 (ACESA), which uses a cap-and-trade policy to reduce GHG emissions, would be relatively modest. Household purchasing power would decrease by an estimated \$160 in 2020 when analyzed using 2010 income levels.

The Administration's Fiscal Year 2010 Budget proposes to use the value of allowances created under a cap-and-trade program to help vulnerable households, businesses, and communities transition to a clean energy economy. ACESA also uses the value of allowances to aid vulnerable households and businesses, and CBO estimates that households in the lowest income quintile in 2020 would see an average *gain* in annual purchasing power of about \$125 under this proposal. The Administration's Budget for Fiscal Year 2010 also proposes to use a portion of the value of allowances to fund the clean energy research, development, and deployment that will be necessary to lower households' energy costs in the future. The Administration has already made a down payment on transitioning to the clean energy economy and lowering the energy costs of American families through the American Recovery and Reinvestment Act (ARRA). For instance, the weatherization program provided for in ARRA will lower energy bills by improving the energy efficiency of low-income residences.

I understand that the Administration projects that the economy will emerge from the current recession well before the enactment of any climate change policy. I also understand that the Administration believes that uncertainty about future climate legislation has had the effect of hindering a number of important investments in our energy infrastructure. Consequently, enacting a cap-and-trade system that provides clear long-run price signals could play an important role in supporting those needed investments.

ANSWER TO QUESTION FROM SENATOR CORNYN**Question**

For almost two years, Treasury has had under consideration revisions to Treasury Regulations relating to the amount of tax-exempt bonds permitted to be guaranteed by the Texas Permanent School Fund (PSF). The Texas Congressional delegation has written two letters indicating its strong support for these revisions.

The PSF has existed since 1854 and in 1983 Texas voters approved a constitutional amendment that created a bond guarantee program. The PSF guarantee program allows Texas school districts to receive an "AAA" rating on their bonds, thereby lowering their borrowing costs and eliminating the need to pay for bond insurance. While Texas law currently allows the PSF guarantee-capacity limit to be up to five times the cost value of the assets in the PSF, the applicable Treasury Regulation restricts the guarantee capacity to two and one half times the lower of the cost or market value.

The current economic downturn pushed the PSF beyond the limits permitted under the existing Treasury Regulation, and the Texas Education Agency has stopped accepting applications from school districts to guarantee their bonds. Texas school districts, many of which are packing school children into trailers, are left with the option of postponing the financing of needed facilities in hopes of revisions to the Regulation, or going ahead and paying significantly higher borrowing costs. Needless to say, neither option is attractive. Continued delay in announcing a decision on these revisions will continue to hinder the creation of jobs and the improvement of educational opportunities for Texas students.

How quickly do you think Treasury's Office of Tax Policy can act on this matter, so that the Administration can announce a decision which will allow the PSF guarantee program to resume?

The Treasury Department and the IRS are fully aware and appreciative of the recommendations for regulatory changes to Treasury Regulations on the arbitrage investment restrictions that affect tax-exempt bonds guaranteed by the Texas Permanent University Fund. These recommendations generally urge an expansion of an existing regulatory exception to the arbitrage investment restrictions to increase the amount of tax-exempt bonds permitted to be guaranteed by this fund. We understand that recent state law changes have increased the capacity of this fund to guarantee tax-exempt bonds issued by Texas local public school districts. The guaranteed bonds generally are used for capital infrastructure projects for local public elementary and secondary schools.

The Treasury Department and the IRS are giving very careful consideration to the recommended regulatory changes to the arbitrage investment restrictions that affect this fund. Representatives of Treasury's Office of Tax Policy are scheduled to meet with representatives of the IRS and Texas counsel to this fund on Friday November 13, 2009 to discuss the recommendations further. We plan to provide further public guidance to address this matter as expeditiously as reasonably possible consistent with legal requirements.

UNITED STATES SENATE
COMMITTEE ON FINANCE
NOMINATIONS HEARING
NOVEMBER 4, 2009

SECOND ROUND OF QUESTIONS FOR MR. MICHAEL MUNDACA

ANSWERS TO ADDITIONAL QUESTIONS FROM SENATOR GRASSLEY

Question 1: Capital Gains Tax Rate

I previously asked you a question regarding the top capital gains tax rate and a proposed 5.4% surtax included in the House's health reform bill. You stated that the President has proposed returning the top capital gains rate to what it was prior to the enactment of the Jobs and Growth Tax Relief Reconciliation Act of 2003 for singles earning over \$200,000 and couples earning over \$250,000.

While I understand the administration's position regarding the proposal to increase capital gains taxes on these taxpayers, I am more interested in having your thoughts on the impact the 5.4% surtax proposed in the House would have on capital gains tax rates.

As I mentioned in my previous question, the House of Representatives has proposed imposing a surtax of 5.4% on singles with income over \$500,000 and couples making over \$1 million. This surtax would be imposed on a taxpayer's modified adjusted gross income (MAGI). Under the House bill's definition of MAGI, the surtax would be imposed on income that is not currently subject to ordinary income tax rates, including capital gains income. If the House 5.4% surtax is enacted into law and the 15% cap gains rate is allowed to expire for singles making over \$200,000 and couples over \$250,000 this effectively results in a top long-term capital gains rate of 25.4%. This results in a top rate on capital gains that is higher than capital gains rates in place prior to 2003. Do you agree?

In your previous answers to me, you stated, "[u]nder the President's proposals, overall tax rates on capital gains income would remain lower than prior to 2003." What do mean by "overall tax rates" in this context? Under your definition of "overall tax rates," would your above statement remain true if the 5.4% surtax is enacted into law?

As I mentioned before, raising the rates from 15% to 25.4% represents a 70% swing in the top rate. As stated in a column in the Wall Street Journal by Kim Strassel, "the last time investors were hit with anything comparable was 1986, when the capital gains rate jumped to 28% from 20%, a 40% increase." This rate jump in 1986 led to many individuals realizing their capital gains prior to the increase going into effect. Once the rate went into effect, revenue plummeted. Do you envision any similar disruption in the capital markets should the House surtax become law?

Thank you for the opportunity to clarify my prior response. First, let me address the issue you raised about President Obama's tax proposals. By "overall rates" being lower, I meant that under the President's proposals all but the highest income taxpayers would face marginal and average tax rates on capital gains that would be lower than under pre-2003 law, and the highest income taxpayers would face tax rates essentially equal to pre-2003 law.

Your other questions deal with possible effects if the House health care proposal for a 5.4 percent surtax were enacted. You ask how the surtax would affect the "overall rate" on capital gains. The surtax would not apply to lower and middle income taxpayers, so that even if the surtax were added on top of the President's tax proposal, all but the highest income taxpayers would still face marginal and average tax rates on capital gains that would be lower than under pre-2003 law. Imposing the surtax on top of the President's tax proposal could raise the top marginal tax rate on capital gains of those at the very highest end of the income distribution, as you suggest.

You also ask about the effects of a higher capital gains tax rate on realizations and on the stock market. You are correct that in 1986 capital gains realizations increased ahead of the rate increase. It seems likely that many of those realizations were accelerated from subsequent years. That shifting likely accounted for some of the decrease in realizations following the 1986 tax changes. In its analysis and revenue estimates, Treasury accounts for this type of shifting behavior as well as for longer term effects on capital gains realizations. With respect to disruption in capital markets, the 1986 increase in the capital gains rates did not appear to have a large effect on stock prices.

Question 2: Bonus Tax Legislation

Your answer to my bonus tax legislation questions addressed Secretary Geithner's position regarding the "say on pay" legislation. While I appreciate the information provided, I would like an answer to my two questions regarding the bonus tax legislation pending in the Senate.

Do you support the bonus tax legislation to the extent that it would tax the 2009 bonuses already paid to employees of TARP recipients? If not, why not?

Do you support the bonus tax legislation to the extent that it would tax future bonuses to be paid to employees of TARP recipients? If not, why not?

Thank you for the opportunity to elaborate on my prior response. This Administration is committed to taking steps that ensure that companies strike the right balance around their need to retain talent, reward performance and protect the taxpayers' investment.

That is why the Secretary designated Mr. Kenneth R. Feinberg as Special Master to review and approve executive compensation for top executives at the seven firms receiving exceptional assistance. As Mr. Feinberg indicated in his initial set of rulings, he has engaged in detailed, individualized discussions with each of the seven exceptional-assistance recipients about how best to align their compensation plans with long-term value creation and financial stability. In

some cases, that process has led to the restructuring of certain payments that were contractually promised in the past; in others, pursuant to authority granted to Mr. Feinberg under Treasury's executive compensation regulations, those payments have been taken into account in approving future compensation amounts. As Secretary Geithner recognized in his October 22, 2009 statement, the decisions the Special Master has announced thus far reflect Mr. Feinberg's commendable efforts to achieve an appropriate compensation balance at those firms.

At this point, we would not support abandoning the process that we put in place to allow an independent Special Master to oversee executive compensation payments to recipients of exceptional TARP assistance in favor of a bonus tax. However, in addition to the Special Master's review process, I think it is important to emphasize the Administration's commitment to passing regulatory reform measures that ensure that taxpayers do not bear the brunt of any future failures of the financial system, and that put the onus on the financial sector for any future collapse. At the same time, we remain open to other ideas as to how we can ensure that taxpayers' interests are protected as we work to restore and maintain financial stability.

Question 3: Notice 2008-83

I appreciate your "assurance that Treasury will continue to meet its obligations under the Congressional Review Act of 1996."

Notice 2008-83 was released on September 30, 2008; it was presumably effective immediately, if not retroactively. It was faxed to various congressional offices on October 2, 2008 and delivered by the IRS office of Legislative Affairs to congressional leadership offices on October 3, 2008.

- **Did this comply with Treasury's obligations under the Congressional Review Act of 1996?**

The Congressional Review Act (Act), 5 U.S.C. 801 et. seq., requires that before a rule can take effect, the Federal agency promulgating the rule must submit to each House of Congress and to the Government Accountability Office (GAO) a copy of the rule. As you note, Notice 2008-83 (Notice) was released on September 30, 2008. It did not contain an explicit effective date. As you also note, packages containing the Notice and other submissions required under the Act were faxed to Congressional offices on October 2, 2008, and delivered on October 3, 2008. The Act does not specify when required submissions must be made, but does state that before a rule can take effect, such submissions have been made. Thus, it appears that under the Act, in order to have had the Notice take effect on September 30, 2008, the required notifications should have been made on that day.

I note that in your response to Senator Schumer's question about assuring that proposed rules reflect authority delegated to the agency by Congress, you said "I will ensure that significant regulatory proposals involving customs revenue functions are brought to the attention of the Committee."

- **Does the Congressional Review Act require notification to Congress before any rule takes effect, whether or not it is “significant”?**

The Congressional Review Act defines which rules are subject to the Act. Rules subject to the Act include both significant and non-significant and major and non-major rules, which may include statements of general policy, interpretive rules and those pertaining to grants, loans, benefits, and contracts. Rules of agency organization, management, or personnel and rules that do not affect the substantive rights of non-agency parties are not subject to the Act. My response to Senator Schumer’s question was not meant to limit our obligations under the Congressional Review Act, which I assure you we will comply with fully, but to supplement the notice required under the Act.

Question 4: Corporate Tax Rate

I appreciate your earlier statement that “marginal effective tax rates influence international economic decisions.”

In your earlier statement, you also stated “Marginal effective tax rates show the total percentage of capital costs, excluding economic depreciation, needed to pay taxes over the lifetime of a marginal investment (i.e., an investment assumed to just break even).”

- **Could you please explain this statement?**

The marginal effective tax rate is the tax rate that, if applied to properly measured economic income, would have the same incentive effect as that implied by the various features of the tax law, including tax rates, deductions, and tax credits. It shows, over the life of an investment, the fraction of the investment’s pre-tax rate of return that covers tax costs.

I believe that a good definition of “marginal tax rate” might be: “The tax rate that applies to the last dollar of the tax base.” The tax base, in the circumstance being discussed here, would presumably be taxable income.

- **Do you agree with this definition?**
- **Is this definition consistent with your statement regarding marginal effective tax rates quoted above? If so, how?**

I do agree with your definition, although what you term the “marginal tax rate” is sometimes called the “marginal statutory tax rate,” in order to differentiate it from the “marginal effective tax rate,” discussed above. As you know, because of deductions and tax credits, as well as differences between economic and taxable income, marginal statutory tax rates are not synonymous with marginal effective tax rates.

You also stated that “the average corporate income tax rate, i.e., the ratio of corporate taxes to corporate capital income ... can differ from the marginal tax rate for several reasons, including the existence of substantial economic profits.”

- **Please explain the term “corporate capital income.” Does this term have a different meaning than “corporate taxable income”?**

“Capital income” is not a precise term and can be measured in various ways, depending on the particular question being addressed. In some cases, “capital income” is intended to be an approximation to economic income, so that there are adjustments made, including for the difference between tax depreciation and economic depreciation. In other cases, “capital income” is intended to be a more expansive concept that includes both the return to equity and the return to debt financed investment. Thus, capital income is not usually synonymous with taxable income. With respect to determining the average corporate income tax rate, “corporate capital income” means the economic income earned by a corporation.

Question 5: Benefits-Received Taxes

In response to my question about tying the level of tax to the level of benefit received, you responded that “the application of the benefits received approach can be limited. For example, it might not be feasible for many important government services, such as national defense, because the benefits are diffused over society in general.”

As you suggest, correlating the amount of tax an individual pays to the benefits received by the individual may be difficult.

- **To the extent feasible, do you consider it desirable that the amount of tax paid by an individual correlates to the benefits received by the individual from the government?**

There are a number of different theories regarding an equitable sharing of the burden of taxation. One is the “benefits-received theory,” referenced in your question, according to which those who benefit from government programs should bear the associated tax cost, or the tax burden should be proportional in some way to the benefit received. Another theory is the “ability-to-pay theory,” according to which those with the greatest income or wealth should bear the greater tax cost of government programs, or the tax burden should be proportional in some way to the ability to pay. In many cases, these theories suggest quite different distributions of the burden of taxation across families, and so can be irreconcilable. Which theory should govern can depend on the particular tax and spending programs under consideration. That said, I agree that in general to the extent consistent with fairness and efficiency, the benefits received by an individual from government should be considered in determining the amount of tax paid by the individual, along with the ability to pay.

- **Do you agree that to the extent a tax deviates from the Benefits-Received model, that to such extent, the tax will increase incentive for people and assets to escape such tax?**

I agree that in general, taxpayers have an incentive to try to minimize their tax payments, and are free to do so within the bounds of the law. I am less certain, however, that a benefits-based tax would significantly reduce a taxpayer’s incentive to reduce his tax payment, because, all else being equally, a taxpayer is equally better off paying lower taxes than paying higher taxes under any tax system, assuming in this case that a reduction in tax paid does not result in a reduction in benefits received.

ANSWERS TO ADDITIONAL QUESTION FROM SENATOR ENSIGNQuestion

Please elaborate on your original response to the following question:

The President has repeatedly promised not to raise taxes on lower and middle income families (i.e., those making less than \$250,000 per year). Yet, there are many new taxes being proposed in the healthcare and cap-and-trade legislation under discussion in the Congress. Specifically, there is an individual mandate excise tax, a “high cost insurance plan” tax, an insurance company tax, a medical device maker tax, a clinical laboratory tax, an employer mandate tax, a pharmaceutical maker tax, and a small business surtax.

- a. Do you agree that the healthcare legislation now under consideration by the House and Senate (H.R. 3962 and S. 1796) would impose new or higher taxes on middle income families who make less than \$250,000 per year? If not, why not?
- b. According to the Congressional Budget Office and the Joint Committee on Taxation, some of these new taxes or “fees” will be passed through to consumers. Do you agree, and do you have any analysis that relates to the impact on consumers of any of these healthcare taxes?
- c. Do you agree that new taxes that increase taxpayer costs for healthcare, such as insurance, pharmaceuticals, lab tests, and medical devices, violate the President’s promise not to raise taxes on families making less than \$250,000 per year? If not, why not?
- d. Do you maintain that imposing taxes on businesses in the amount of hundreds of billions of dollars would not violate the President’s promise not to raise taxes on middle income families even when it can be conclusively demonstrated that these taxes will ultimately be borne by middle income families as consumers?
- e. Will you definitively and without qualification guarantee that not “one dime” in new taxes or new tax liability will be imposed on middle income families as a result of the healthcare bill the President ultimately signs?
- f. As an acting official of the Treasury department, have you seen or prepared a Treasury analysis on the impact of any of these new healthcare taxes, as embodied in the current House and Senate bills, on middle income families and whether and how much this group will ultimately pay in higher costs, either directly or indirectly? If so, please provide that analysis.

As your question indicates, various versions of health care reform legislation are currently under consideration in Congress. A variety of ways to offset costs, in addition to those the Administration suggested, have been proposed and are still being considered. As you know, the characteristics of those offsets, the amounts of revenue they would raise, and the overall economic effects of the various proposals have been the subject of extensive analysis and discussion by the Committees, their staffs, and the Congressional Budget Office. I have not seen or prepared a Treasury analysis on the impact of the proposed healthcare offsets embodied in the current House and Senate bills. Once Congress determines the appropriate direction forward, Treasury will work diligently to evaluate any tax implications that may result.

The President has outlined three key goals that the final health care bill must meet: to provide security and stability for those with insurance, to bend the cost curve for American families and businesses, and to provide insurance for those who cannot afford it. I share and support the President's vision for what successful health care reform should achieve.

The President also has pledged not to raise taxes on families with incomes below \$250,000. If confirmed, I will support the President and Congress as they work to pass health care reform legislation that is consistent with that promise.

Your question characterizes a number of different revenue provisions bills as taxes, whether or not they are framed as taxes under those bills. No matter what one calls them, only one would be a charge imposed on individuals. That one is the penalty imposed on people who do not have health insurance and do not purchase individual coverage through one of the exchanges called for in the bill or otherwise obtain coverage.

My understanding is that this is a penalty — analogous to a fine for failing to have car insurance — designed to encourage otherwise uninsured individuals who can afford health insurance to obtain coverage. People would be exempt from this penalty if the cost of coverage exceeds a specified level varying with income or in the case of hardship, and billions of dollars of tax credits would be provided to assist low and moderate income individuals and families acquire coverage. In short, my understanding is that the penalty would apply only to the small group of people who refuse to buy health insurance that they can afford.

The other revenue provisions referred to in the question are not collected from individuals but instead from insurers who write high-cost health plans, from employers, or from providers who will benefit from the provisions of the bill, and they are part of an overall package intended to reduce health care costs over the long run.

ANSWER TO ADDITIONAL QUESTION FROM SENATOR KYL**Question**

On Nov 4th, I submitted a question for the Finance Committee record asking what impact you thought a securities transaction tax would have on U.S. capital markets. Although you mentioned in your response that the Administration's approach is focused on building a system where individual financial institutions and not taxpayers bear the cost of poor financial decisions, you did not say if such an approach would rely on a transaction tax. Do you think a transaction tax is needed and if so what impact would it have on U.S. financial markets?

The International Monetary Fund has been asked by the G20 to evaluate a range of options countries are considering to help cover the cost of the financial crisis. We expect the Fund to report back in the spring, which will be a good opportunity to take stock and see what an appropriate response might be. As Secretary Geithner has previously said, however, the Administration's approach is focused on how we build a system in which taxpayers do not have to absorb the costs in the future and financial institutions are responsible for the risks they take and the consequences of their mistakes. As Secretary Geithner also has previously indicated, a transaction tax is not something we're actively considering.

ANSWERS TO QUESTIONS FROM SENATOR SNOWE – ROUND TWO**Question 1**

Mr. Mundaca, as you are well aware, the House is considering offsetting the cost of health care reform with a surtax on high-income individuals. In particular, the House bill would apply a surtax of 5.4 percent on single filers with over \$500,000 in income and married couples with over \$1 million in income. Given the fact that the 2001 tax cuts are expiring at the end of 2010, the impact of this tax increase will be to take the top marginal income tax rate from 35 percent today to 45 percent, a staggering 29 percent increase. Given that small businesses often pay taxes through the individual income tax system, as Ranking Member of the Senate Committee on Small Business and Entrepreneurship, I am extremely concerned about the potential impact of these surtaxes on small enterprises and their ability to continue generating the 64 percent of net new jobs that will lead us out of this devastating recession.

Mr. Mundaca, could you comment where the Administration stands on the surtax? Would you agree with me that health care reform should be financed within health care? Why or why not? Would you also agree with me that the House surtax could have a devastating economic effect, especially when combined with the expiration of the 2001 tax cuts, by impeding small business' ability to create jobs and drive economic growth? Additionally, would you not also concur that the surtax contemplated by the House would harm a small business' ability to provide quality, affordable health insurance?

The President is committed to health care reform and has outlined three key goals that the final health care bill must meet: to provide security and stability for those with insurance, to bend the cost curve for American families and businesses, and to provide insurance for those who cannot afford it. More specifically, one of the Administration's principal goals for reform is to relieve the burden on small business. Moreover, reform must be paid for and not increase the deficit. The President understands that financing reform will involve balancing competing interests.

The Administration is not taking a position on specific financing provisions, other than to the effect that they meet the President's goal of ensuring that reform not increase the deficit. If confirmed, I look forward to working with you, the Committee, and Congress on this important issue.

Question 2

Mr. Mundaca, employees are able to exclude from taxation health insurance benefits provided by their employer. This is true not just for income taxes, but for payroll taxes also. Self employed people are not permitted to exclude their health insurance premiums from payroll taxes for Social Security and Medicare. This is a double burden for the self-employed because they pay both the employer and employee share of the tax, known as the Self-Employed Contributions Act - or SECA tax. For a family insurance policy in the

individual market that costs \$20,000, the SECA tax burden of 15.3 percent would be another \$3,060 of tax.

There is currently a surplus in the Finance Committee bill that is credited toward the Social Security trust fund. This surplus arises from the excise tax on high cost health insurance from people making a rational choice to take higher wages instead of non-taxable health benefits and those higher wages result in enhanced payroll tax collections. Mr. Mundaca, given that the excess funds in the bill are directed to the Social Security Trust Fund and that there is no policy reason to differentiate between employees and the self-employed regarding the exclusion for health benefits, will the Administration support addressing the inequity of the SECA tax problem?

You raise a serious and legitimate issue that deserves consideration. The challenge of developing health care reform legislation is determining what issues are not only preferable but which best fit within the bill while also balancing multiple competing interests. The President supports three basic principles of health care reform legislation: to provide security and stability for those with insurance, to bend the cost curve for American families and businesses, and to provide insurance for those who cannot afford it. While the Administration is not taking a position on specific financing provisions, I look forward to working with you, if confirmed, on this important issue.

Additional Hatch Question – 11/19/09

Mr. Mundaca, as you may know, in 2007, the Treasury Department released Notice 2007-19, which deals with the statute of limitations for taxpayers in the U.S. Virgin Islands.

In March 2007, two other members of the Finance Committee and I wrote a letter to then-Secretary Paulson asking him to review this notice.

I continue to be concerned about the fairness of a policy that essentially provides no statute of limitation benefits for certain residents of the USVI simply because they report over a certain amount of income. I am aware of no other U.S. citizens who have no statute of limitation benefits, absent tax fraud.

If confirmed, would you be willing to work with me and other members of the Finance Committee and Senate to attempt to find an administrative solution to this problem?

This is a difficult issue that raises concerns both about fundamental fairness and about administration of our tax laws. As I understand the issue, resolution must balance the interests of not keeping tax years open indefinitely with closing tax years only if the Internal Revenue Service has sufficient notice justifying the closing of a year.

If confirmed, I would be willing to work with you and other members of the Committee and the Senate to attempt to find a solution to this difficult issue.

Statement of Michael Punke
Nominee for Deputy United States Trade Representative
and U.S. Ambassador to the World Trade Organization
Before the Senate Committee on Finance
November 4, 2009

Thank you Chairman Baucus, Senator Grassley, and distinguished Members of the Finance Committee.

I am honored and humbled to be sitting here today, and I am grateful to President Obama and to Ambassador Kirk for the confidence they have placed in me. Senator Baucus, I want to offer my personal thanks to you for giving me my first government job in trade, eighteen years ago. If confirmed, I will work every day to vindicate the trust placed in me.

I am particularly proud to have members of my family with me today: my parents, Butch and Marilyn Punke of Torrington, Wyoming; my brother, Tim, of Seattle, Washington; my wife, Traci; and my kids – Sophie and Bo. I am grateful beyond words for their support.

Whoever serves as U.S. Ambassador to the World Trade Organization builds on sixty years of bipartisan American leadership to create a rules-based, multilateral system of international trade. That system, born in the long shadow of world war, has made an enormous contribution to worldwide economic growth and stability.

The question we face today is, can the WTO evolve along with the dramatic changes of our dynamic, global economy?

President Obama and Ambassador Kirk have called for an outcome in the ongoing DOHA Round of WTO negotiations that is both balanced and ambitious, with meaningful new market access for all involved. As members of this committee are well aware, we have not yet achieved that goal.

From my meetings and conversations with Members, with your staffs, and with various stakeholder groups, I understand very clearly: No deal is better than a bad deal. The potential of trade in the abstract is easy to describe. But the challenge lies in making that potential tangible for America's workers, farmers, ranchers, and businesses.

If confirmed, I will approach this challenge with an orientation that is neither naïve nor despondent. I believe a good deal is doable. But we will not do a deal at any cost.

Having worked on the hill, I understand intuitively that it is impossible to achieve success in trade without the joint efforts of the legislative and the executive branches. And from studying history, I know that all of our most important trade agreements have been the product of bipartisan support.

I hope and believe that the experiences of my career have equipped me to succeed in this job. I've seen trade issues from the perspective of two branches of government, from three federal agencies, as an attorney in the private sector, and as the owner of a small business.

But none of my professional experiences has been more important than the perspective I've gained during the past six years, living in Montana, watching the impact of trade in the lives of every-day Americans. I've watched Montana goods – by the trainload – roll toward overseas markets. I'm friends with the farmers, ranchers, miners, and entrepreneurs whose jobs depend on those exports. But I've also watched lumber mills close, and seen the impact of those job losses ripple through the heart of a community.

The job of the Office of the United States Trade Representative is to advocate, every day, for every one of those people, for every American. As members of this committee know, there is no agency in government that fields a more talented, more dedicated staff. If confirmed, I will work tirelessly and proudly as a member of that team.

I thank the Members of the Committee for your consideration.

**SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.) **Michael Ward Punke**
2. Position to which nominated: **Deputy U.S. Trade Representative**
3. Date of nomination: **September 14, 2009**
4. Address: (List current residence, office, and mailing addresses.)

5. Date and place of birth: **December 7, 1964, Lovell, Wyoming**
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.)
Torrington High School (Torrington, WY), 1979 – 1982, high school diploma
University of Massachusetts (Amherst), 1982-1984 (including three semesters of study abroad in Angers and Paris, France)
George Washington University (Washington, D.C.) 1984-1986, B.A. 05/86
Cornell Law School (Ithaca, NY), 1986 – 1989, J.D. 05/89

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.)
- 09/89 – 03/91: Associate Attorney, Hogan & Hartson, Washington, D.C.**
- 03/91 – 01/93: International Trade Counsel, Office of Senator Max Baucus, Washington, D.C.**
- 01/93 – 02/93: Special Assistant to the National Security Advisor, The White House, Washington, D.C.**
- 02/93 – 03/95: Director for International Economic Affairs, National Security Council/National Economic Council, The White House, Washington, D.C.**
- 03/95 – 07/96: Senior Policy Advisor, Office of the United States Trade Representative, Washington, D.C.**
- 07/96 – 12/97: Founding Partner, Arrowhead International (publisher of international regulatory directories), Washington, D.C.**
- 01/98 – 06/03: Mayer, Brown, Rowe & Maw (of counsel, 01/98 – 12/99; partner, 01/00 – 06/03), Washington, D.C.**
- 07/03 – present: Writer (publications listed below under question 15), Missoula, Montana.**
- 07/03 – present: Michael Punke Consulting, Missoula, Montana.**
- 01/04 – present: Adjunct Professor, University of Montana, Missoula, Montana.**
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.)
- 09/84 – 12/85: Intern, Office of Senator Alan K. Simpson, Washington, D.C.**
- 06/85 – 08/85: Civilian Intern, Department of the Navy, Council of Personnel Board, Arlington, VA**
- 06/87 – 08/87: Civilian Intern, Judge Advocate General's Corps, US Army Europe and 7th Army, Contract Law Division, Heidelberg, West Germany**

06/06– 01/07: International Trade Consultant, State of Montana, Helena

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.)

01/09 – present: Member (sole), Sawmill Gulch Enterprises LLC, Missoula, Montana. Umbrella company organized for writing and consulting work.

Clients of Michael Punke Consulting:

Mayer, Brown, Rowe & Maw: 07/03 - 05/07

Pharmaceutical Manufacturers Association: 08/03 – 08/03

Biotechnology Industry Organizaion: 09/05 – 11/06

International Cinematographers Guild: 10/06 – 11/06

State of Montana: 06/06 – 01/07

Washington Corporations/Dennis and Phyllis Washington Foundation/Butte Heritage Center (related entities): 03/07 – 03/09

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

Maryland State Bar. Became member in 1989; current status = “inactive”

District of Colombia Bar. Became member in 1998; current status = “inactive”

2002 – present: Member, Western Writers of America

01/07 – present: Member of the Board, Humanities Montana; Missoula, Montana.

2006 – 2007: Member of the Board, Friends of the Mansfield Library; University of Montana, Missoula, Montana.

2007 – present: Member, Friends of Missoula Parks.

2008 – present: Member of the Board, Butte Heritage Center; Butte, Montana.

06/09 – present: Writers Guild of America, West

13. Political affiliations and activities:

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

N/A

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

N/A

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.

02/02/00: Friends of Max Baucus, \$250

06/23/00: Friends of Chris Dodd, \$250

03/22/07: Friends of Brian Schweitzer, \$100

09/11/07: Friends of Max Baucus, \$500

09/30/07: Friends of Max Baucus, \$500

12/10/07: Friends of Brian Schweitzer, \$100

04/24/08: Friends of Steve Bullock, \$100

05/18/08: Friends of Mike McGrath, \$100

09/30/08: Friends of Mike McGrath, \$50

10/01/08: Friends of Steve Bullock, \$50

06/02/09: John Engen for Mayor, \$160

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.)

Editor-in-Chief (elected), Cornell International Law Journal, 1988-1989

William Randolph Hearst Scholarship (Wyoming awardee)

**Alexander Wilbourn Widell Prize (writing on a political science topic,
George Washington University)**

Pi Delta Phi, Société d'Honneur Française (George Washington University)

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

Books:

The Revenant: A Novel of Revenge, Carroll & Graf, 2002.

Fire and Brimstone: The North Butte Mining Disaster of 1917,
Hyperion, 2006

*Last Stand: George Bird Grinnell, the Battle to Save the Buffalo, and
the Birth of the New West*, Smithsonian, 2007

Book Introduction:

The Buffalo Hunters by Mari Sandoz, University of Nebraska Press,
2008 Edition

Articles:

"In the Face of Tragedy," *Montana Quarterly*, Winter 2006

"The Battle to Save the Buffalo," *Montana Quarterly*, Summer 2007.

"The Extraordinary Session of 1918," *Montana Quarterly*, Fall 2007.

"The Devil's Brigade," *Montana Quarterly*, Winter 2007.

"Last Jump," *Montana Quarterly*, Spring 2008.

"Confluence of Change," *Montana Quarterly*, Summer 2008.

"Structural Impediments to United States-Japanese Trade: The
Collision of Culture and Law," *Cornell International Law Journal*,
Winter 1990.

Op-Eds:

**"The Sago Mine Disaster: Solace from Butte," *Montana Standard*,
January 11, 2006**

**"Written With the Blood of Miners," *History News Service*, June 12,
2006**

**"For Democrats, Another Circular Firing Squad," *Helena Independent
Record*, March 11, 2007**

"Why the Buffalo Roam," *History News Service*, April 17, 2007

**"Superbad: A Lesson on Superdelegates Past and Present,"
Montana Standard, April 3, 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.)

N/A

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

I believe I would bring a unique background to the position of Deputy US Trade Representative, well-matched to the challenges we face. My fourteen years in government service and law have given me deep experience with the substance of international trade law and policy, international negotiations, the congressional role in U.S. trade policy-making, and the interagency process. With that experience as a backdrop, the past six years have provided me an opportunity to view international trade from outside Washington, and to understand better the impact of trade on local economies and ordinary Americans.

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.

I anticipate continuing connections through existing book and film contracts to which I am party (listed below), in accordance with the terms

of the ethics agreement that I have entered into with the USTR's designated agency ethics official and that has been provide to this Committee:

Perseus Book Group, New York, NY: contract providing for possible royalties depending on sales of *The Revenant*

Hyperion Books, New York, NY: contract providing for possible royalties depending on sales of *Fire and Brimstone*

Harper Collins Publishers, New York, NY: contract providing for possible royalties depending on sales of *Last Stand*

Anonymous Content, Culver City, CA: contract for possible purchase of film rights to *The Revenant*

Presho Productions LLC, Oklahoma City, OK: contract providing for possible production bonus if my screenplay, *Charlie Russell*, is produced

Twentieth Century Fox, Los Angeles, CA: contract providing for possible production bonus if my screenplay, *Family History*, is produced

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 USTR's designated agency ethics official, who has consulted with the Office of Government Ethics, to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the USTR's designated agency ethics official and that has been provide to this Committee. I am not aware of any other potential conflicts of interest.

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.

In connection with the nomination process, I have consulted with USTR's designated agency ethics official, who has consulted with the Office of Government Ethics, to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the USTR's designated agency ethics official and that has been provide to this Committee. I am not aware of any other potential conflicts of interest.

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.

2007 – 2008: On behalf of the Butte Heritage Center and the Dennis and Phyllis Washington Foundation, sought appropriations to fund the construction of a "Butte Heritage Center" to celebrate the mining history and heritage of Butte, Montana.

2007: As a private citizen and as a volunteer member of Friends of Missoula Parks, sought appropriations to create a bike/pedestrian crossing at a dangerous intersection in Missoula, Montana.

2003: On behalf of AOL Time Warner, sought congressional support for bilateral trade agreements.

2001-2002: On behalf of the North Dakota Wheat Commission, sought support for a Section 301 investigation of unfair trade practices by the Canadian Wheat Board.

2000-2001: On behalf of the Wheat Export Trade Education Committee (WETEC), sought support for a Section 301 investigation of unfair trade

practices by the Canadian Wheat Board; fought European ag export subsidies.

1999-2000: On behalf of the Washington Wheat Commission, sought support in fight against European ag export subsidies and Chinese restrictions on wheat exports from the Pacific Northwest.

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.)

In connection with the nomination process, I have consulted with USTR's designated agency ethics official, who has consulted with the Office of Government Ethics, to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the USTR's designated agency ethics official and that has been provide to this Committee. I am not aware of any other potential conflicts of interest.

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.

To be provided

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and 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.

In late 2002 and early 2003, my former law firm, Mayer, Brown, Rowe & Maw, assisted the Embassy of Australia in its efforts to seek U.S. congressional support for launching proposed free-trade negotiations between the United States and Australia. In connection with this effort, in January 2003, I conducted 11.75 hours of background research on US-Australia trade relations for a partner in the firm. I did not have direct contact with the client and neither my firm nor I represented, aided, or advised Australia in the trade negotiations, which were initiated in March 2003.

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.

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.

No.

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.

UNITED STATES SENATE
COMMITTEE ON FINANCE
NOMINATIONS HEARING
NOVEMBER 4, 2009

QUESTIONS FOR MR. MICHAEL PUNKE

ANSWERS TO QUESTIONS FROM CHAIRMAN BAUCUS

Question 1

Many countries have urged the United States to accept the Doha deal that was on the table in July 2008. But I strongly believe that deal did not provide adequate market access for U.S. exporters. Can you assure me that you will insist on strong, significant market access for American manufacturers and service providers, as well as our farmers and ranchers? Do you have ideas on how the Administration can achieve that goal? How can Congress help?

I agree that the Doha deal that was put on the table in 2008 was unacceptable. It was neither balanced nor ambitious, and would not create meaningful new market access for the United States, particularly with regard to key emerging markets which are some of the fastest growing and increasingly important in today's global economy. My understanding is that other developing country exporters share our interest in securing a robust market-opening result from China, Brazil, India and other larger and more advanced developing countries. If confirmed, I will insist on a deal that achieves significant new opportunities for U.S. exporters, including manufacturers, service providers, farmers and ranchers.

To break the current logjam in WTO negotiations, my view is that it is critical for the United States to pursue sustained bilateral negotiations on Doha issues with our key trading partners. Such direct engagement, in parallel with the broader multilateral process, will give us the best opportunity to secure clarity and to close gaps regarding the critical issue of market-opening contributions from the most advanced developing countries. History has shown that simple reliance on broader-based multilateral engagement will not achieve that key objective and without clarity and gap-closing, we will not have an acceptable outcome for the Doha negotiations. If confirmed, I look forward to being part of this direct engagement.

I believe that we will not succeed at Doha unless Congress and the Administration collaborate actively on the negotiations. If confirmed, I will be an active part of that collaboration, consulting early and often to ensure that the Administration is pursuing a course that can lead ultimately to an agreement with broad congressional support.

Question 2

The United States has a competitive edge in services exports. In fact, services account for nearly 80 percent of our national income and over 80 percent of our employment. But services have received less attention in the Doha Round negotiations than other areas. Do you have ideas on how we can achieve strong market-access for U.S. services exports? Will you commit to seeking such an outcome in the Doha negotiations?

I agree that services represent a vital sector of our economy. I also agree that services negotiations have been held back by the lack of progress in other parts of the negotiations, where I understand certain key emerging markets such as Brazil have sought to hold such progress in services as a hostage to first achieving a breakthrough on agriculture and non-agricultural market access (NAMA). If confirmed, I will commit to seeking a strong market access outcome for services as part of any Doha Agreement.

My view is that we need to push forward on two fronts to advance the services negotiations. First we need to include making progress on services as one of the major objectives of our direct bilateral engagement with certain key Members that the Administration has initiated over the past few months. Second, in addition to progress on obtaining access into key markets, we need to make broader-based progress in key service sectors, particularly those infrastructure services that are most important to economic development. In pursuit of this goal, the United States has recently been exploring whether an enhanced plurilateral approach in key areas (including information, communications and technology services (ICT); energy and environmental services; distribution and express delivery) could complement (and spur) the existing negotiating process. If confirmed, I will work actively on both of these fronts.

Question 3

I have long supported the Trans-Pacific Partnership, or TPP. I believe this agreement has the potential to open commercially significant markets to U.S. exports, and will also give the United States an opportunity to negotiate a high-level trade agreement in a strategically crucial region. Additionally, I think pursuing a significant regional FTA such as the TPP sends a strong signal to our trading partners that we will continue to deepen our economic and trade ties with other countries, even if the Doha negotiations do not successfully conclude in the near term. Do you think the TPP will create an incentive for our trading partners to work with us to successfully conclude the Doha negotiations?

I know that both you and Senator Grassley have been strong proponents of TPP. I believe it is important that we consider TPP as one possible approach to expanding our ties in the Asian-Pacific region given its present and future economic significance. It is important that the United States position itself so that our farmers, ranchers, manufacturers and service providers have the most competitive opportunities. As a more general matter, I believe that the negotiation of multilateral agreements and bilateral or other agreements can create incentives to work together. As a historical matter, for example, it is my view that negotiation of the NAFTA helped the

United States to conclude the Uruguay Round Agreement. If confirmed, I will work with you to make sure the United States is using all its trade tools to achieve that goal.

Question 4

In a dispute filed against the United States by Brazil, the WTO Dispute Settlement Body found U.S. cotton subsidy programs to be inconsistent with WTO rules, and authorized Brazil to retaliate and potentially to cross-retaliate against the United States in other sectors, including intellectual property and services, if the subsidy level is found to exceed a certain threshold. If Brazil is entitled to cross-retaliate, what steps will the Administration take to ensure that any harm to U.S. intellectual property holders and service providers is minimized?

My understanding is that U.S. officials are interested in working with their Brazilian counterparts to find a way to resolve these issues without Brazil resorting to countermeasures. If confirmed, I will work as part of the effort to resolve these issues and avoid countermeasures against U.S. interests.

ANSWERS TO QUESTIONS FROM SENATOR GRASSLEY**Question 1**

The new Japanese government is reversing the privatization of Japan Post. I'm concerned about the impact this action will have on U.S. competitors in the Japanese banking, insurance, and express delivery markets. What should USTR do to protect U.S. market access?

Japan represents an important market for U.S. services providers, including the specific sectors you listed. USTR officials are monitoring developments regarding Japan Post very carefully while continuing to urge for a level playing field in all these sectors. In the area of insurance, fair access has been a long-standing concern. If confirmed, I would work actively to ensure fair treatment to all U.S. services industries abroad and would use all tools available, including enforcement of U.S. rights under our international trade agreements.

Question 2

The Doha negotiations seem to be going nowhere fast. Some say the WTO has simply gotten too big. They argue it's not realistic to have consensus-based negotiations with 153 countries.

What is your view? Do we need to start focusing more on plurilateral agreements with smaller groups of willing partners?

First, I strongly believe that it is in the interests of the United States that the WTO operates on the basis of consensus, and that the WTO remains a Member-driven organization. I agree that negotiations with 153 Members present a significant challenge. To address this challenge, I understand that the Administration, over the past several months, has urged our trading partners to pursue parallel Doha negotiations on a bilateral basis. As part of this new approach, the United States has begun working toward a sustained bilateral negotiating process with key Doha trading partners. It is too early to determine if this approach will be successful, but I believe it gives us our best opportunity to "drill down" – obtaining clarity and closing gaps concerning the concessions our trading partners are willing to make. The results from this direct engagement can provide a new form of momentum to the overall multilateral work toward a Doha success. In addition, various parts of the Doha negotiations have featured U.S.-backed initiatives based on a 'critical mass' approach to results, such as sectoral initiatives in the NAMA and services negotiations. This type of approach focuses on achieving meaningful new export opportunities without requiring full participation by all 153 Members. At the end of the day, my view is that we need to be pragmatic and creative as to the form of our negotiations – pursuing what works to

achieve an economically meaningful outcome that meets U.S. objectives. If confirmed, I look forward to achieving those objectives.

Question 3

The Doha services negotiations are bogged down. You'll need a strong services package if you want my support for an agreement. What are your ideas for reinvigorating the services negotiations?

Ambassador Kirk has been very clear that we cannot conclude a successful package on Doha that does not include meaningful new market access for U.S. service suppliers.

My view is that we need to push forward on two fronts to advance the services negotiations. First we need to include making progress on services as one of the major objectives of our direct bilateral engagement with certain key Members that the Administration has initiated over the past few months. Second, in addition to progress on obtaining access into key markets, we need to make broader-based progress in key service sectors, particularly those infrastructure services that are most important to economic development. In pursuit of this goal, the United States has recently been exploring whether an enhanced plurilateral approach in key areas (including information, communications and technology services (ICT); energy and environmental services; distribution and express delivery) could complement (and spur) the existing negotiating process. If confirmed, I will work actively on both of these fronts.

ANSWERS TO QUESTIONS FROM SENATOR LINCOLN**Question 1**

Although WTO members did agree at the Hong Kong ministerial in 2005 to seek to develop modalities in agricultural and NAMA negotiations before they would fully engage in negotiations on trade in services, it appears to me that the lack of clarity as to what gains might be available through liberalizing trade in services is part of what has led to the current stalemate in the Doha Round negotiations. Do you think it might be fruitful to consider changing the sequence of negotiations and re-activate negotiations in trade in services as one possible avenue to reviving the overall Round?

I agree that a lack of clarity regarding the potential market-opening contributions of our trading partners, particularly with regard to advanced developing countries, is one of the major impediments to concluding the Doha Round negotiations successfully. This is certainly true in the area of services, but also in agriculture, NAMA and other aspects of the Round.

My view is that we need to push forward on two fronts to advance the services negotiations. First we need to include making progress on services as one of the major objectives of our direct bilateral engagement with certain key Members that the Administration has initiated over the past few months. Second, in addition to progress on obtaining access into key markets, we need to make broader-based progress in key service sectors, particularly those infrastructure services that are most important to economic development. In pursuit of this goal, the United States has recently been exploring whether an enhanced plurilateral approach in key areas (including information, communications and technology services (ICT); energy and environmental services; distribution and express delivery) could complement (and spur) the existing negotiating process. If confirmed, I will work actively on both of these fronts.

Question 2

One of the main principles that underlies the World Trade Organization is that all members must agree to trade reforms before they can be adopted. With the WTO now counting 153 countries as members, that process has proven to be unwieldy in the Doha Round negotiations.

How can we reconcile the need to have all member countries agree to a change with the experience in recent years that no meaningful negotiations occur when everyone demands to be in the room and part of the process?

First, I strongly believe that it is in the interests of the United States that the WTO operates on the basis of consensus, and that the WTO remains a Member-driven organization. I agree that

negotiations with 153 Members present a significant challenge. To address this challenge, I understand that the Administration, over the past several months, has urged our trading partners to pursue parallel Doha negotiations on a bilateral basis. As part of this new approach, the United States has begun working toward a sustained bilateral negotiating process with key Doha trading partners. It is too early to determine if this approach will be successful, but I believe it gives us our best opportunity to “drill down” – obtaining clarity and closing gaps concerning the concessions our trading partners are willing to make. The results from this direct engagement can provide a new form of momentum to the overall multilateral work toward a Doha success. In addition, various parts of the Doha negotiations have featured U.S.-backed initiatives based on a ‘critical mass’ approach to results, such as sectoral initiatives in the NAMA and services negotiations. This type of approach focuses on achieving meaningful new export opportunities without requiring full participation by all 153 Members. At the end of the day, my view is that we need to be pragmatic and creative as to the form of our negotiations – pursuing what works to achieve an economically meaningful outcome that meets U.S. objectives. If confirmed, I look forward to achieving those objectives.

Question 3

In the ongoing WTO talks, certain nations have demanded that the United States give up its cotton program as an "early harvest", before the agriculture negotiations have concluded. Would USTR ever agree to reform or terminate the US cotton program, or any U.S. agricultural support program, as an "early harvest" before we've received commitments from other nations in a final agriculture deal?

My personal view is that a so-called “early harvest” on cotton is not in the U.S. interest. The agricultural negotiations, along with the rest of a potential Doha package, are highly complex, requiring a delicate balance of potential benefits and concessions across a broad range of issues. If confirmed, I look forward to consulting often to make sure your views and the views of the U.S. cotton industry are taken into consideration.

Question 4

In the ongoing WTO talks, certain nations have demanded that the United States give up its cotton program as an "early harvest", before the agriculture negotiations have concluded. Can you assure the committee that cotton negotiations will remain part of the overall agriculture negotiations and not be considered independently?

As I stated above, my personal view is that an early harvest on cotton is not in the U.S. interest.

Question 5

The Food and Agriculture Organization of the United Nations (FAO), recently estimated that there are just about 1 billion people in the world who are chronically hungry, a figure that has jumped up a couple of hundred million in the past two years due first to the spike in world food prices and then second to the global economic recession. The FAO also recently projected a need for a 70 percent increase in food production by 2050, an alarming number to say the least.

Given the serious concerns being raised about the adequacy of world food supplies, Shouldn't we be encouraging food production and will you work to protect the U.S. farm safety net that helps ensure safe, affordable, and abundant supplies?

If confirmed, I will work to ensure that we maintain a safe, affordable, and abundant supply of food – in the United States and worldwide.

ANSWERS TO QUESTIONS FROM SENATOR SCHUMER**Question 1**

Increased opportunities for New York's dairy industry to participate in fair trade are very important to helping my farmers recover from the financial crisis they have been experiencing this year. As such, I am concerned about trade barriers that prevent U.S. dairy products manufacturers from exporting to India. Since 2006, India's market has been completely closed to U.S. dairy products. India's continued stonewalling of U.S. efforts to resolve this issue is deeply concerning, and I was pleased to hear from Ambassador Kirk that the issue of dairy market access would be a top issue on the agenda at the October 26th meeting in India of the U.S.-India Trade Policy Forum.

What progress was made on this issue at the TPF?

Has the United States raised this issue in the WTO? What has been India's response?

What steps will you take to help ensure that the recent discussions with India will translate into useful steps towards resolution of this issue that has been plaguing my dairy products manufacturers for so many years?

What steps will you take to resolve this issue if continued discussions fail to resolve this issue within the next several months?

I certainly appreciate the importance of improving market access for U.S. manufacturers of high quality dairy products, including products from New York State. I fully recognize the importance of defending and creating jobs, and, if confirmed, will make market access for U.S. products – including dairy – a top priority in our dialogue with India. As you note, last month the United States held the annual Trade Policy Forum in India, which provided the United States with a direct opportunity to convey to the Indian Government our concerns regarding market access for U.S. dairy products. If confirmed, I will monitor the situation closely, follow up aggressively on past U.S. efforts, and will continue to consult with U.S. stakeholders, including Members of Congress and the dairy industry.

ANSWER TO QUESTION FROM SENATOR STABENOW**Question 1**

You mentioned that you have seen both the positive and negative aspects of trade in our country. Securing market access for industrial and manufactured goods at Doha negotiations is important to my state. Although we've aggressively reduced tariffs on imported industrial goods through negotiations and unilateral action, we haven't always sought reciprocal market access. This puts our companies at a disadvantage when they are trying to get a foothold in foreign markets.

What would be your strategy during Doha to ensure that our manufacturers can successfully compete abroad?

I agree that industrial and manufactured goods represent a vital sector of our economy. I also agree that U.S. exports are faced with relatively high tariffs in many markets, including in key advanced developing countries like China, Brazil and India. If confirmed, I will commit to seeking a strong reciprocal market access outcome for industrial and manufactured goods as part of any Doha Round Agreement.

To advance the negotiations on industrial and manufactured goods (also called the Non-Agricultural Market Access, or NAMA, negotiations), my view is that we need to continue to actively pursue the direct bilateral engagement with select Members that the Administration has initiated. It is too early to determine if this approach will be successful, but I believe it gives us our best opportunity to not only obtain clarity about the potential market access results for U.S. exporters but also to close the current gaps and ensure that our trading partners are willing to provide a commercially meaningful market opening outcome. The results from this direct engagement can provide a new momentum to the overall multilateral work toward a Doha Round success. In addition, the NAMA negotiations have featured U.S.-backed sectoral initiatives, which focus on the reciprocal additional lowering of tariffs in key manufacturing sectors by major producers and traders, as well as U.S. led proposals to reduce non-tariff barriers in key product areas. At the end of the day, my view is that we need to be pragmatic and creative as to the form of our negotiations – pursuing what works to achieve an economically meaningful outcome that meets U.S. objectives. If confirmed, I will work hard to achieve those objectives.

ANSWERS TO QUESTIONS FROM SENATOR NELSON**Question 1**

The upcoming World Trade Organization Ministerial Conference in Geneva will be an opportunity for stock-taking among our trading partners on the prospects for a reinvigorated Doha Round. What are USTR's goals for the conference and how might this meeting, as well as the upcoming APEC Summit in Singapore, provide an opportunity to showcase American leadership on the trade agenda and help move developing countries toward agreement on Doha?

I believe that a strong and robust rules-based trading system that operates to provide new and expanded economic opportunities worldwide is in the interests of the United States. I agree that the upcoming WTO Ministerial and the APEC Summit provide an opportunity to demonstrate continuing U.S. leadership, both in support of Doha and in support of the broad range of international issues under discussion. Both meetings offer the Administration an opportunity to communicate, at the highest level, the ongoing U.S. commitment to achieving an agreement in Doha that is balanced and ambitious. My understanding and expectation is that this leadership will be on full display, not only in meetings involving the full membership, but also in the important informal meetings on the 'margins' of the more formal group sessions, involving varied and smaller groups of Ministers. To complement these meetings at the highest level, it is essential that our trading partners embrace the hard work that remains to be done day-to-day. Our trading partners need to be willing to sit down across the table from us to engage. If confirmed, I will stand ready to support this hard work and I know the United States stands ready.

Question 2

How can we bridge the divide on Doha with rapidly developing economies such as India and Brazil who are reluctant to provide market access, especially for our agricultural goods, due to their own domestic sensitivities over further economic liberalization?

My view is that the success or failure of the Doha negotiations will depend, in significant part, on the willingness of advanced developing countries such as China, Brazil and India to make contributions toward a meaningful market-opening outcome, commensurate with their growing role in the global economy. The power and influence of these countries in the world economy has expanded dramatically, even since the beginning of Doha negotiations in 2001. It is vital for them to accept the responsibility that goes along with this power and influence. If confirmed, I will stand ready to engage in the hard work of the negotiations that can lead to a successful outcome in Doha.

Question 3

The 2001 Doha Ministerial Declaration states that “International trade can play a major role in the promotion of economic development and the alleviation of poverty.” How can the U.S. reconcile our trade and development agendas? What is your view on U.S. trade preference reform in this context?

The U.S. economy is among the world’s most open to begin with. In 2008, 45 percent of imports entered the United States MFN duty-free, and an additional 24 percent of imports entered duty-free under existing preference programs and FTAs. Where a tariff was charged on imports, the average duty paid was 4 percent. With regard to Doha, it is important to note that the world’s least developed countries already have largely open access to the U.S. market. For countries that receive benefits under the GSP program, we currently provide duty free access on 82 percent of our tariff lines. For countries benefitting from all U.S. preference programs, the percentage of duty-free tariff lines is above 90 percent. In the Doha negotiations, the United States has committed to make 97 percent of our tariff lines duty-free and quota-free for the least developed countries Members of the WTO.

By contrast, it is important to note that the tariff barriers in key advanced developing markets – including those that are beneficiaries of the GSP program – remain high. For example, according to the WTO’s latest figures (from 2007), Brazil maintains peak tariffs, defined as rates at or above 15 percent, on over one-third of products. Malaysia maintains peak tariffs on 21 percent of its products. And 15 percent of products imported by China are subject to tariffs at or above 15 percent. Two-thirds of the tariffs collected by developing countries are paid by other developing countries. This means that the most important new trade and development opportunities for developing countries will come from other developing countries. When we push advanced developing countries for new market access, we do so on behalf of U.S. exporters. But the effects are just as important for developing countries, including the least developed.

Preference programs benefit U.S. importers and consumers and the developing country producers that supply those products. The programs have the important objective of, inter alia, contributing to the reduction of poverty in beneficiary developing countries and helping to bring these countries, particularly the least active traders, into the global trading system. I understand the Committee is considering modifications to some or all of US preference programs. If confirmed, I look forward to working with you in this effort.

ANSWER TO QUESTION FROM SENATOR BUNNING

Question

Mr. Punke, since Canada is a WTO member, it is required to comply with the Technical Barriers to Trade Agreement. Among other things, this Agreement requires that governments use the least trade-restrictive means of accomplishing a legitimate government objective. Can you explain why other nations put the Canadian tobacco legislation on the agenda for this week's Technical Barriers to Trade Committee meeting in Geneva, but the U.S. did not actively protect American interests in this area?

I know that the issue of C-32 is extremely important to you and to burley tobacco farmers. I also believe that Canada and other WTO Members should live up to their obligations under the TBT Agreement and other WTO agreements. My understanding is that the USTR-led delegation to the most recent meeting of the WTO Committee on Technical Barriers to Trade posed questions to Canada about C-32 and the implementing regulations that Canada is developing to implement it, which could affect the scope and application of the law. If confirmed, I would look forward to working with you and with all U.S. stakeholders to achieve successful outcomes to the issues that relate to my responsibilities.

ANSWERS TO QUESTIONS FROM SENATOR ENZI**Question 1**

Ambassador Kirk and Secretary Vilsack have both reassured me that the United States will pursue Canada and Mexico's WTO challenge of our Country of Origin Labeling law aggressively. As you are engaged in Geneva with the dispute settlement process, what is your outlook for this important case?

I believe that the U.S. Country of Origin Labeling law ("COOL") provides information to consumers in a manner consistent with the United States' WTO commitments. If confirmed, I will work as part of the effort to defend aggressively U.S. interests on this issue, including in WTO dispute settlement proceedings.

Question 2

Regional trade agreements are important for stimulating trade; however, they are not adequate substitutes for a Doha Agreement. In recent years, countries who cannot afford to wait for Doha have pursued bilateral and regional trade deals. This is especially true for Asia's trading nations. There has been significant discussion about changing the dynamic at the Doha negotiations and this is one area where focus will need to be shifted. Do you have any thoughts about how the United States can shift this dynamic?

It is my view that, as a nation with significant trade interests around the world, we need to be able to use all of the trade tools at our disposal in order to achieve our goals on trade. These tools include bilateral, plurilateral, and multilateral agreements. If confirmed, the primary focus of my job would be the Doha negotiations; however, I would expect to work in concert with broader USTR and Administration efforts to pursue new market-opening opportunities using all of the tools at our disposal.

**Statement of Islam A. Siddiqui
Nominee for Chief Agricultural Negotiator,
United State Trade Representative
Before the Senate Finance Committee
November 4, 2009**

Mr. Chairman, Senator Grassley and members of the Committee, I am honored and humbled to sit before you as the Committee considers my nomination to be the Chief Agricultural Negotiator at the Office of the U.S. Trade Representative.

I thank President Obama for nominating me for this position and Ambassador Kirk for his confidence in my abilities. This opportunity is particularly challenging given the current economic climate and the need to make real progress toward opening markets and creating jobs.

During the past 40 years, I have spent my career, both in government and the private sector, witnessing first-hand the critical role the agricultural sector plays in our national and rural economy. More than one-third of our agricultural products are exported to countries around the world. According to a recent report by USDA, our agricultural exports in 2008 totaled \$115.3 billion, whereas imports were \$80.5 billion. Our farmers and ranchers are the most productive in the world and as a result, they are able to compete successfully in the global marketplace. In large part, America's competitive edge in agriculture has been the result of adopting new technologies and state-of-the-art farm management tools.

Throughout my public service with the California Department of Food and Agriculture and USDA, I have found that scientific evidence can be a powerful tool in breaking down trade barriers. As Director of California's plant protection and quarantine programs for 13 years, I was involved in a number of sanitary and phyto-sanitary issues with our trading partners. I learned that resolution of SPS issues required painstaking negotiations supported by scientific facts in order to remove non-tariff barriers. These experiences also proved instructive when I worked with USDA-APHIS officials in the 1990's to lift a ban on U.S. citrus fruit exports to China, which was imposed due to Medfly infestations in California. This 18-year old ban against all U.S. citrus exports was lifted in 2000 after extensive negotiations with Chinese officials and an exchange of detailed protocols for fruit fly detection, fruit surveillance and eradication treatments.

My time in Washington has also taught me the importance of dialogue, consultation, and coordination with all stakeholders in forging consensus on agricultural trade issues. As Senior Trade Advisor to USDA Secretary Dan Glickman, I was responsible for coordination of inter-agency efforts within USDA and also served as a Liaison with USTR and other cabinet level agencies. I also represented the U.S. government on a number of agricultural trade issues with our trading partners in Asia, Latin America and the European Union.

My approach with our trading partners has always been based on consultation and diplomacy as a starting point and a more vigorous exercise of our rights under the WTO when necessary. Monitoring and enforcement of trade agreements is a cornerstone of a strong trade agenda. As such, I applaud USTR's recent decision to request a dispute settlement panel within the WTO

regarding the European Union's ban on importation of U.S. poultry meat and meat products processed with pathogen reduction treatments, which are considered to be safe by U.S. and European food safety authorities. If confirmed, I plan to work closely with USDA Secretary Tom Vilsack and his team in our efforts to remove the non-tariff barriers faced by U.S. farmers and ranchers.

Pursuing trade deals that benefit our farmers and ranchers, in particular in the Doha Round, will be another of my key priorities. Based on the briefings I have received, it is my understanding that the Doha Negotiations have made progress on some issues, but the larger stumbling blocks remain unresolved. If confirmed, I commit to devote my best efforts to achieve an ambitious and balanced outcome on agriculture, something that has eluded us for the last eight years. It is evident that we are being asked to make significant concessions in the first two pillars of the agricultural negotiations— domestic support and export competition. Therefore, a final agreement on agriculture must provide commercially meaningful market access for U.S. agricultural products into the markets of developed and emerging economies.

If confirmed, I look forward to working under the leadership of Ambassador Ron Kirk and work with his outstanding team in USTR to achieve President Obama's trade agenda, especially as it relates to agricultural trade. I also look forward to working closely with members of this Committee and Senate and House Committees on Agriculture in addressing many challenges and opportunities that we face in agricultural trade.

**SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Islam Ahmed Siddiqui (Isi A. Siddiqui)
2. Position to which nominated:
Chief Agricultural Negotiator, Office of the U.S. Trade Representative
3. Date of nomination: September 24, 2009
4. Address: (List current residence, office, and mailing addresses.)

5. Date and place of birth:
08/21/1942 Haldwani (Nainital) Uttranchal, India
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.)

- M.B. High School, Haldwani (Nainital) Uttranchal, India
07/1953-05/1958 High School Diploma, 05/1958
- M.B. Intermediate College, Haldwani (Nainital) Uttranchal, India
07/1958-05/1960 Intermediate College Diploma, 05/1960
- U.P. Agricultural University, Pantnagar (Nainital) Uttranchal, India
07/1960-05/1964 B.Sc. (Honors) in Plant Protection, 11/1964
- University of Illinois, Champaign, Urbana, IL
09/1964-08/1966 M.S. in Plant Pathology, 06/1966
- University of Illinois, Champaign, Urbana, IL
09/1966-06/1969 PhD. In Plant Pathology, 06/1969

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.)

Title	Description	Employer	Location	Dates
Post-doctoral research fellow	As a research fellow, investigated host-parasite relationships in nematodes	Department of Nematology, University of California	Davis, CA	10/1968-10/1969
Assistant Plant Pathologist	Served as a field plant pathologist responsible for Southern California	State of California, Department of Food & Agriculture	Riverside, CA	10/1969-07/1970
Associate Plant Nematologist	Performed taxonomic identification of plant parasitic nematodes needed for quarantine and regulatory actions	State of California, Department of Food & Agriculture	Sacramento, CA	08/1970-07/1974
Senior Plant Pathologist	Liaison officer for technical communications for the Division of Plant Industry	State of California, Department of Food & Agriculture	Sacramento, CA	08/1974-07/1976
Program Supervisor, Control & Eradication	Managed agricultural pest control and eradication projects: Cotton	State of California, Department of Food & Agriculture	Sacramento, CA	08/1976-02/1981

	pink bollworm, gypsy moth & others			
Branch Chief, Pest Detection & Emergency Projects	Managed agricultural pest detection and eradication of exotic pests such as medfly	State of California, Department of Food & Agriculture	Sacramento, CA	02/1981-10/1984
Director, Division of Plant Industry	Administered & managed a division of over 1,000 employees involved in pest prevention, control and eradication programs	State of California, Department of Food & Agriculture	Sacramento, CA	10/1984-09/1997
Deputy Under Secretary, Marketing & Regulatory Programs	Assisted the Under Secretary for MRP in overseeing USDA's Animal & Plant Health Inspection Service (APHIS) Agricultural Marketing Service (AMS) and Grain Inspection, Packers and Stockyard Administration (GIPSA)	U.S. Department of Agriculture, Office of the Secretary	Washington, D.C.	09/1997-02/1999
Senior Trade Advisor to the Secretary	Served as Senior Trade Advisor to USDA Secretary of Agriculture on international trade policy, WTO, food aid and sanitary & phytosanitary issues, including agricultural	U.S. Department of Agriculture, Office of the Secretary	Washington, D.C.	03/1999-12/2000

	biotechnology			
Under Secretary, Marketing & Regulatory Programs	Administered and managed USDA's marketing and regulatory programs in APHIS, AMS & GIPSA (recess appointment by President Clinton)	U.S. Department of Agriculture, Office of the Secretary	Washington, D.C.	12/2000-01/2001
Special Assistant to California Secretary of Agriculture	Assisted and advised CDFA's Secretary of Agriculture on agricultural trade issues, the 2002 Farm Bill, sanitary & phytosanitary issues and agricultural biotechnology	California Department of Food & Agriculture, Office of the Secretary	Sacramento, CA	02/2001-06/2001
Director, Biotechnology & Trade	Managed U.S. plant science industry's regulatory and trade issues related to agricultural biotechnology and crop protection chemicals	CropLife America	Washington, D.C.	06/2001-10/2001
Vice President, Biotechnology & Trade	Managed U.S. plant science industry's regulatory and trade issues related to agricultural biotechnology and crop protection chemicals	CropLife America	Washington, D.C.	10/2001-12/2003
Vice President,	Managed U.S.	CropLife	Washington,	01/2004-

Science & Regulatory Affairs	and international science and regulatory issues related to crop protection chemicals, including tariffs, IPR and data protection issues	America	D.C.	Present
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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.)

1972-73: Appointed by Governor Reagan, Associate of the Management Development Institute to teach courses in group leadership

1984-97: Served as a member (1984-97), Secretary-Treasurer (1992), Vice Chairman (1993-94) and Chairman (1994-95) of the National Plant Board, a body of State plant regulatory officials from the 50 states and U.S. territories.

1988-97: Member of National Plant Board Advisory Council, which advised USDA's Animal and Plant Health Inspection Service (APHIS) on pest prevention, quarantine and control/eradication matters. The council also advised APHIS on budgetary and phytosanitary issues, including those that posed barriers in international trade.

2004-Present: Member, Industry Trade Advisory Committee (ITAC-3) on chemicals, pharmaceuticals Health/Science Products and Services. ITAC-3 advises the U.S. Secretary of Commerce and the U.S. Trade Representative on international trade issues, including the FTA and Doha Development Agenda negotiations.

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.)

CropLife America 1156 15 th , NW, Ste 400 Washington, D.C.	6/2001-Present	Director/Vice President – Biotechnology & Trade Vice President, Science & Regulatory Affairs
Cornell University Agricultural Biotechnology Support Project (ABSP II) 213 Rice Hall	11/2003-Present	Advisory Board Member

Ithaca, NY 14853		
Oxitec Corporation 71 Milton Park Oxford, U.K. OX144RX	06/2005-12/2005 (Est.)	Consultant

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

Member, Society of Nematologists (1965-84)
 Associate Editor, Society of Nematologists (1976-78 Est.)
 Member, Helminthological Society of Washington (1965-1980 Est.)
 Member, Afro-American Society of Nematologists (1994-2000 Est.)
 Member, European Society of Nematologists (1970-2000 Est.)
 Member, Society of Regulatory Plant Protection (1995-1997 Est.)
 United Muslims of America, Member (1982-Present), President (1982-86)
 American Muslim Council, Advisory Board Member (1985-87)
 California State Employees Association, Member (1970-78)
 Chairman – Agriculture & Conservation Council (1973-75)
 Chairman, Representation Committee (1974-75)
 Director of Representation (1976-77)
 Advisory Board Member, Muslim Council of America (1980-Present)
 Islamic Society of North America, Member (1980-Present)
 Muslim Mosque Association, Member (1969-97)
 Board member (1984-94)
 Vice President (1986-88)
 President (1988-90)
 Muslim Student Association – University of Illinois, Urbana, IL (1964-68)
 Indian Student Association – University of Illinois, Urbana, IL (1964-68)
 India Association, University of California, Davis, CA (1969-70)
 Aligarh University Alumni Association, Washington D.C. area (1997-Present)

13. Political affiliations and activities:

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

None

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

Political Office/ Committee	Position	Elected/Appointed/ Volunteer Position	Dates
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Organization			
Agriculture & Rural Advisory Committee, Obama for President	Member	Volunteer /Appointed	July-Nov 2008
Asian Americans for Obama for President	Co-Chair	Volunteer/ Appointed	June-Nov 2008
Asian Americans for Hillary Clinton for President (Primary Election Cycle)	Co-Chair	Volunteer /Appointed	Jan-June 2008
Maryland Governor Martin O'Mally Election Committee	Agriculture Transition Team Member	Volunteer /Appointed	Nov 2006-Jan 2007 (Est.)
John Kerry for President	Campaign Coordinator in Michigan	Volunteer	Oct-Nov 2004
Al Gore for President	Outreach Supervisor, Philadelphia HQ Office	Volunteer	Oct-Nov 2000

- 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.

Elijah Cummings for Congress	\$1000	07/2009
Chris Van Hollen for Congress	\$500	11/2008
Keith Ellison for Congress	\$1000	11/2007
Andre Carson for Congress	\$275	05/2008
Obama Victory Fund	\$1300	10/2008
Barack Obama for America	\$1000	07/2008
Hillary Clinton for President	\$1500	2007
Hillary Clinton for President	\$500	2008
Tom Perriello for Congress VA District 5	\$200	2007
Tom Davis for Congress	\$200	2006 (Est.)
Martin O'Mally for MD Governor	\$250	2006 (Est.)
Saqib Ali for MD Delegate	\$250	2006(Est.)
Kerry Victory Fund	\$1000	08/2004
Al Gore for President	\$250	03/2000
Progressive Patriot Fund	\$500	2007
Charles Robb for Senate	\$200	07/2000

New Leadership for America PAC	\$250	05/2004
Van Hollen for Congress	\$250	10/2004
Mike Honda for Congress	\$250	06/2005
Virginia Muslim PAC	\$500	2007
CropLife America PAC	\$250	2003
CropLife America PAC	\$250	2004
CropLife America PAC	\$250	2005
CropLife America PAC	\$120	2006
CropLife America PAC	\$160	2007
CropLife America PAC	\$250	2008

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.)

U.P. Agricultural University (India), Merit Certificate (1962-63)
 Wright Fellow in Plant Pathology, University of Illinois (1964-66)
 Xi and Gamma Sigma Delta Honor Societies (1967-68)
 Post-doctoral Research Fellow, University of California, Davis (1968-69)
 California Department of Food & Agriculture, Superior Achievement Award 1982
 USDA Secretary of Agriculture's Distinguished Service Award 1982
 National Association of State Departments of Agriculture (NASDA)
 Award for Distinguished Service 1991
 CDFA Secretary of Agriculture's Certificate of Appreciation for 1990
 Mexican Fruit Fly Eradication 1991
 CDFA Secretary of Agriculture's Certificate of Appreciation for 1989-90
 Mediterranean Fruit Fly Eradication 1991
 USDA Secretary of Agriculture's Award for Distinguished Service 1992
 Sacramento Area Muslim Community's Excellence in Service Award 1992
 Senior Associate, Center for Strategic & International Studies
 Biotechnology and Food Security Issue 2001-2003
 University of Illinois – College of Agricultural Consumer and Environmental
 Sciences Alumni Association Award of Merit – 2001
 California Senate Resolution, Commendation of Distinguished Service 1997
 California Assembly Resolution, Commendation of Distinguished Service
 June 2001

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

Book:
 Siddiqui, I.A., Sher, S.A. and French, A.M. Distribution of Plant Parasitic
 Nematodes in California
 Published by the California Department of Food & Agriculture in 1973, 324pp

Reports:

Commercialization Prospects for Guayule in California,
California Department of Food & Agriculture 2001, 13 pp

Feasibility of Commercial Development of Guayule in California
California Department of Food & Agriculture, 2004, 51pp

Scientific Articles:

Siddiqui, I.A. and Taylor, D.P. 1967. A redescription of Aphelenchoides bicaudatus (Imamura, 1931) Filipjev & Schuurmans Stekhoven, 1941 (Nematoda: Aphelenchoididae), with a description of the previously undescribed male. Nematologica 13, 581-585.

Siddiqui, I.A. and Taylor, D.P. 1969. Feeding mechanisms of Aphelenchoides bicaudatus on three fungi and an alga. Nematologica 15, 503-509.

Siddiqui, I.A. and Taylor, D.P. 1969. Embryonic and postembryonic development of Meloidogyne naasi and comparative development on wheat and oats. J. Nematol. 1, 304-305 (Abstr.)

Siddiqui, I.A. and Taylor, D.P. 1969. Histopathogenesis of galls induced by Meloidogyne naasi in wheat and oat roots. J. Nematol. 1, 305-306. (Abstr.)

Siddiqui, I.A. and Taylor, D.P. 1970. The Biology of Meloidogyne naasi. Nematologica 16, 133-143.

Siddiqui, I.A. and Taylor, D.P. 1970. Histopathogenesis of galls induced by Meloidogyne nassi in wheat roots. J. Nematol. 2, 239-247.

Siddiqui, I.A. 1971. Histopathogenesis of galls induced by Meloidogyne naasi in oat roots. Nematologica 17, 237-242.

Siddiqui, I.A. 1971. Comparative penetration and development of Meloidogyne naasi in wheat and oat roots. Nematologica 17, 566-574.

Siddiqui, I.A. and Viglierchio, D.R. 1970. Ultrastructure of photoreceptors in the marine nematode Deontostoma californicum. J. Ultrastruct. Res. 32, 558-571.

Siddiqui, I.A. and Viglierchio, D.R. 1970. Fine structure of photoreceptors in Deontostoma californicum. J. Nematol. 2, 274-276.

Siddiqui, I.A. and Viglierchio, D.R. 1970. The fine structure of the lamellated, cytoplasmic inclusions in nematode Schwann cells. Xth Int. Nem.

Symp. European. Soc. Nematol., Pescara, Italy, 7-9 (Abstr.)

Siddiqui, I.A. and Viglierchio, D.R. 1971. Ultrastructure of the lamellated cytoplasmic inclusions in Schwann cells of the marine nematode, Deontostoma californicum. J. Nematol. 3, 264-275.

Siddiqui, I.A. and Viglierchio, D.R. 1971. The effects of Gamma Irradiation on the motility, infectivity, reproduction and morphology of Ditylenchus dipsaci. Nematologica 17, 459-469.

Siddiqui, I.A. and Taylor, D.P. 1970. Symptoms and varietal reaction of oats to the Illinois isolate of the barley root-knot nematode, Meloidogyne naasi. Plant Dis. Repr. 54, 972-975.

Nene, Y.L., Siddiqui, I.A. and Kharbanda, P.D. 1966. Control of stemgall of coriander by fungicides. Mycopathol. Mycol. Appl. 29: 142-144.

Viglierchio, D.R., Siddiqui, I.A. and Croll, N.A. 1973. Culturing and population studies of Ditylenchus dipsaci under monoxenic conditions. Hilgardia 42, 177-214.

Siddiqui, I.A. and Viglierchio, D.R. 1974. Ultrastructure of esophageal region of the marine nematode Deontostoma californicum. J. Nematol. 6, 152. (Abstr.)

Viglierchio, D.R. and Siddiqui, I.A. 1974. Pigments of the ocelli of Antarctic and Pacific marine nematodes. Trans. Amer. Micros. Soc. 93, 338-342.

Raski, D.J. and Siddiqui, I.A. 1975. Tylenchocriconema alleni n.g. n.sp. from Guatemala (Tylenchocriconematidae n. fam.; Tylenchocriconematoidea n. superfam.; Nematoda). J. Nematol. 7, 247-251.

Siddiqui, I.A. and Viglierchio, D.R. 1977. Ultrastructure of the anterior body region of marine nematode, Deontostoma californicum. J. Nematol. 9, 56-82.

R.V. Dowell, I.A. Siddiqui, F. Meyer and E.L. Spaugy. 1999. Early results suggest sterile flies may protect S. California from medfly. Cal. Agric. 53: 28-32.

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.)

Bilateral Free Trade Agreements
 CropLife India
 New Delhi, India
 June 2009

Green Innovation: Can Patents Make the World a Better Place?
 Organized by: The U.S. State Department's Economic Bureau
 At National Press Club, April 22, 2009

Public and Private Strategies to Get New Technologies from the Lab into the Field
 Le Meridien Hotel, Windsor Place, New Delhi, India
 March 4, 2008

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

During the last 25 years, I have held leadership positions in California agriculture and at the national level and the private sector. As Director of Plant Industry, California Department of Food and Agriculture (1984-1997) and Deputy Under Secretary/Senior Trade Advisor and Under Secretary (1997-2001) at the U.S. Department of Agriculture in Washington, D.C., I have gained hands-on experience in international agricultural trade issues, both in bilateral and multilateral negotiations. My most relevant experience was between March 1999 and December 2000, during the time I served as Senior Trade Advisor to USDA Secretary of Agriculture Dan Glickman. I was the primary liaison between the Office of the USDA Secretary and Office of the U.S. Trade Representative. In this capacity, I had the following experiences:

- o Co-chaired the Interagency Working Group on Sanitary and Phytosanitary Issues
- o Helped negotiate the U.S. China Bilateral Agricultural Agreement
- o Advised the Secretary on China's Permanent Normal Trade Relations (PNTR)
- o Developed remedy in the EU Beef Hormone Complaint before the WTO
- o Coordinated the Lamb Assistance Package (\$100 Million assistance to U.S. lamb industry)
- o Helped negotiate the US/EU Veterinary Equivalency Agreement
- o Co-led the US/EU Senior Level Dialogue in Agricultural Biotechnology
- o Attended the WTO Ministerial Conference (November 1999) in Seattle, Washington as a part of the U.S. delegation and participated in the WTO agricultural negotiations.
- o Accompanied and assisted Secretary Glickman to Geneva to unveil the first U.S. proposal to the WTO Committee on Agriculture in March 2000, before the Doha Development Agenda negotiations started.
- o Accompanied and assisted Secretary Glickman in meetings with the EU

Commissioner Franz Fischler and other ministers of agriculture either in capitals around the world or in Washington, D.C.

- o Attended and staffed the US/EU Summits in Lisbon, Portugal (2000) and Washington, D.C. (1999 and 2000) on issues related to hormone beef and agricultural biotechnology.

As a member of Industry Trade Advisory Committee (ITAC-3) on chemicals, pharmaceuticals, health sciences/products & services since 2004, I have advised the U.S. Department of Commerce and USTR in the Doha-NAMA negotiations and bilateral FTAs. As a result, I also attended the WTO Ministerial Conferences in 2003 in Cancun and in 2005 in Hong Kong.

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 USTR's

designated agency ethics official, who has consulted with the Office of Government Ethics, to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the USTR's designated agency ethics official and that has been provide to this Committee. I am not aware of any other potential conflicts of interest.

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.

In connection with the nomination process, I have consulted with USTR's designated agency ethics official, who has consulted with the Office of Government Ethics, to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the USTR's designated agency ethics official and that has been provide to this Committee. I am not aware of any other potential conflicts of interest.

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.

Co-signed a letter and appeared with other former trade officials in support of Trade Promotion Authority Legislation (H.R. 3009). 2001-2002

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.)

In connection with the nomination process, I have consulted with USTR's designated agency ethics official, who has consulted with the Office of Government Ethics, to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the USTR's designated agency ethics official and that has been provide to this Committee. I am not aware of any other potential conflicts of interest.

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 and 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.

N/A

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

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.

Type of Proceeding	Your Involvement	Dates	Issue(s)	Location of Records
Civil litigation Pacific Merchants Shipping Association v. Voss et al. (including Islam Siddiqui)	Defendant in my official capacity	1995	Challenge to California legislation which levied inspection fees on shipments from foreign countries.	California Supreme Court

Civil litigation Alfonso Macias et al v. American Cyanamid Co, et al (including Islam Siddiqui)	Defendant in my official capacity	1989- 1990	One of many defendants in connection with the State of CA's Medfly Eradication Program in Los Angeles County.	Los Angeles County Superior Court
Civil litigation involving Sacramento Muslim Mosque Association (MMA)	Defendant in my capacity as a Board Member of MMA	1985	The opposing coalition that lost the Board election, filed the lawsuit protesting the results.	Sacramento County Superior Court

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.

None

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

UNITED STATES SENATE
COMMITTEE ON FINANCE
NOMINATIONS HEARING
NOVEMBER 4, 2009

QUESTIONS FOR DR. ISLAM SIDDIQUI

ANSWERS TO QUESTIONS FROM CHAIRMAN BAUCUS

Question 1

Dr. Siddiqui, you have spent several years working for CropLife America. Several environmental and small agricultural groups have raised concerns about CropLife's representation of pesticide producers. I think it is important that U.S. domestic and international agricultural policy reflect the viewpoints of the various stakeholders. Do you commit to taking these viewpoints into account, if confirmed?

Senator, if confirmed I can commit to you that I will include the viewpoints of both organic and conventional agriculture sectors in any negotiation I undertake on behalf of the United States. I believe that my role is to successfully represent the interest of all US agriculture stakeholders to ensure that everyone can benefit from our trade agenda.

Question 2

Agriculture is one of the lynchpins to a successful Doha round, but I have long said that no deal is better than a bad deal for U.S. farmers and ranchers. And the fate of the agricultural negotiations rests on ensuring significant new market access for U.S. agricultural exporters. How do you intend to ensure that the special treatment afforded to developing countries does not undermine the potential gains for U.S. exporters?

If confirmed, I will work closely with Congress as the Doha negotiations advance, and will ensure that a key U.S. objective remains to secure significant new market access opportunities through a balanced and ambitious Doha outcome. I can assure you that the administration will not conclude a Doha deal that does not work for US farmers, ranchers and agribusinesses.

Question 3

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, including biotech corn and soy. 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 is your strategy to ensure that WTO members will uphold their obligations to use science-

based import standards? 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?

Sanitary and phytosanitary measures that are not science-based are a key problem for U.S. farm exporters and eliminating such barriers is a high priority for USTR. This Administration is committed to ensuring strong enforcement of existing trade rules, including those governing the application of sanitary and phytosanitary measures. I understand the importance of exports to the U.S. agriculture, and if confirmed, I can assure you that I will work closely with Ambassador Kirk, the Administration, and Congress to address these foreign barriers and will utilize all tools available at the WTO or any other forum to ensure market access for our agricultural products.

Question 4

During your hearing, you noted the need to see meaningful market access improvements for farmers and ranchers in the Doha negotiations before any deal can be struck. I would like to further highlight that careful attention is needed to ensure the market access commitments made are not undermined by restrictive TRQ administration procedures and arbitrary import licensing requirements. The European Union and other countries, while committing to open markets in the Uruguay round, instituted onerous import licensing schemes and tariff-rate quota administration procedures that greatly diminished the true market access U.S. farmers and ranchers gained as a result of the round. We must not allow that to occur again. Will you commit to ensuring that transparent and non-trade distorting TRQ administration and import licensing rules are agreed as part of the agricultural negotiations?

I agree with you that import licensing and tariff-rate quota administration procedures certainly can impact market access. If confirmed, I will work closely with U.S. stakeholders, including Congress, to find a satisfactory way forward on these issues.

Question 5

During the Korea – U.S. Free Trade Agreement negotiations, Korea agreed to a beef import protocol to fully comply with OIE standards. However, Korea has stopped short of meeting that commitment and currently allows only beef from cattle under 30 months old to enter the market. 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?

The April 2008 U.S.-Korea beef import protocol was negotiated separately from the U.S.-Korea Free Trade Agreement negotiations. The protocol is based on science and fully consistent with World Organization for Animal Health (OIE) guidelines. However, U.S. beef exporters and Korean beef importers agreed, as a transitional measure, to limit exports to U.S. beef and beef products from cattle under 30 months of age until Korean consumer confidence improves. I appreciate the importance of gaining full market access for U.S. beef in Korea, and if confirmed, I will work closely with Korea to fully normalize trade in beef.

Question 6

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 Chief Agricultural Negotiator at USTR, will you continue to place to full opening of beef markets, particularly in Korea, Japan, and China, at the top of your agenda?

This Administration is committed to ensuring strong enforcement of existing trade rules, including those of the WTO SPS Agreement. 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 Ambassador Kirk, USDA and other agencies to engage with Japan, China, Taiwan, Hong Kong, and Korea as well as other trading partners to normalize our trade in beef in these important markets in a commercially viable manner based on science and international standards. And, where they should fail to do so, I will, together with USTR trade officials, aggressively utilize, in cooperation with other Administration and Congressional colleagues, all available tools in the WTO and other mechanisms

Question 7

The 2008 Farm Bill authorized 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. It was neither our intent nor expectation when the Farm Bill was enacted that the definition of catfish would be expanded. I am concerned that a broadened definition could conflict with our international trade obligations and perhaps spark retaliation from our trading partners. Further, I am concerned that a broader definition would likely conflict with the duties of FDA, which has primary responsibility for seafood safety and which has developed the expertise in seafood safety. Can you assure me that you and 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?

Throughout my thirty-two years of public service, I have made many regulatory decisions on sound science and I can pledge to you that I will continue to do so if confirmed. I will work with my colleagues at USDA to ensure that our regulatory decisions are based on sound science and meet our international obligations. I believe having spent time as an official at USDA will provide me with keen insight on how to coordinate efforts between USTR and USDA to make sure this process goes smoothly.

Question 8

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?

This Administration fully understands the level of sensitivity associated with sugar. If confirmed, I will work closely with USDA, U.S. stakeholders, and with you regarding international trade commitments related to this commodity. As the Administration develops its trade policy agenda going forward, I fully appreciate the importance of an open and inclusive dialogue with Congress on trade. If confirmed, I can assure you that I will come to you early and often to consult and to listen.

ANSWERS TO QUESTIONS FROM SENATOR GRASSLEY**Question 1**

I'm concerned with the current state of agricultural negotiations in the Doha Round. I appreciate that some of our trading partners are now engaging us in bilateral and plurilateral discussions at the WTO, and I hope that these discussions will bear fruit. If confirmed, what approach will you take in advancing agricultural negotiations at the WTO in a way that will provide for increased market access for U.S. farm products?

To break the current logjam in WTO negotiations, my view is that it is critical for the United States to pursue sustained bilateral engagement on Doha issues with our key trading partners. Such direct engagement, in parallel with the broader multilateral process, will give us the best opportunity to secure clarity and to close gaps regarding the critical issue of market-opening contributions from the most advanced developing countries. History has shown that simple reliance on broader-based multilateral engagement will not achieve that key objective and without clarity and gap-closing, we will not have an acceptable outcome for the Doha negotiations. If confirmed, I look forward to being part of this direct engagement.

Question 2

Russia has delisted more than 30 U.S. pork facilities over the past year and a half. Some of these facilities are located in Iowa. Given these delistings, over 50 percent of U.S. pork is ineligible for sale in the Russian market. Russia has implied that it has delisted U.S. facilities due to sanitary concerns, but it has yet to provide reasons for its actions. Before acceding to the World Trade Organization, Russia must demonstrate that it will indeed abide by the WTO's rules and base its agricultural import policies on science, including its policies regarding U.S. pork facilities. If confirmed, will you emphasize this point with Russian officials with whom you will interact?

I am aware of the general frustration of many U.S. agricultural exporters in trying to build and maintain export markets into Russia. My understanding is that there are several issues that affect US exports of pork and other products – for example, Russia's application of its SPS requirements, Russian vets' refusal to abide by an existing plant inspection agreement with the United States, and import licensing regulations that seem to be problematic. If I am confirmed, I will work to resolve SPS barriers to improve market access for US producers and exporters of agricultural products, including pork.

Question 3

Citing alleged concerns about BSE, Japan prohibits imports of U.S. produced bovine-origin gelatin for human consumption. Yet the World Organization for Animal Health recognizes that this product can be traded safely. Japan's ban on U.S. gelatin has led to job layoffs in Iowa. If confirmed, what will you do to see that Japan opens its market to imports of U.S. produced gelatin?

I understand your concern about securing access in Japan for US exporters of gelatin and related products. If confirmed, I will work with US regulatory agencies and US stakeholders, including Members of Congress, to engage with Japan to reopen the market to these products as soon as possible.

Question 4

Some countries continue to block imports of U.S. beef due to unfounded concerns about BSE. For example, Japan limits imports of U.S. beef to beef derived from animals aged 20 months or under. China maintains a complete ban on imports of U.S. beef. Yet the World Organization for Animal Health recognizes that U.S. beef can be traded safely due to safeguards undertaken by the United States. If confirmed, what strategy would you recommend that the Administration take to see that our trading partners lift their scientifically unsubstantiated barriers to imports of U.S. beef?

This Administration is committed to ensuring strong enforcement of existing trade rules, including those of the WTO SPS Agreement. 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 Ambassador Kirk, USDA and other agencies to engage with these trading partners to normalize our trade in beef in a commercially viable manner based on science and international standards. And, where they should fail to do so, I will, together with USTR trade officials, aggressively utilize, in cooperation with other Administration colleagues and Congress, all available tools in the WTO and other mechanisms.

Question 5

China and Taiwan prohibit imports of pork produced with ractopamine, a growth promotant. China maintains this policy although it has yet to conduct a risk assessment on this product. Taiwanese officials have acknowledged that pork containing trace amounts of this product does not pose health risks. Ractopamine is indeed safe and is approved for use in the United States and over 20 other countries around the world. If confirmed, what will you do to see that China and Taiwan drop this scientifically unfounded barrier to imports of U.S. pork?

In the case of barriers to U.S. pork, sanitary measures that are not science-based, including bans on the use of a veterinary drug that is commonly used in the United State such as ractoapmines, are a key problem for U.S. exporters. If confirmed, I will assist Ambassador Kirk in taking appropriate actions, to address barriers against U.S. pork and other agricultural producers.

ANSWERS TO QUESTIONS FROM SENATOR LINCOLN**Question 1**

The U.S – Colombia FTA would likely be beneficial for much of agriculture, including rice and poultry, commodities grown by producers across my state.

Any expectation on when the Administration plans to submit the Colombia FTA to Congress for approval and are there discussions underway between the two governments on how to address issues that are holding up its consideration?

I am not aware of a timeline for submitting the Colombia FTA to Congress for approval. It is my understanding that USTR and an interagency team visited Colombia over the summer to review the current conditions on the ground and is conducting stakeholder outreach to get a better sense of the progress the government has made on labor violence and impunity and the labor regime. USTR has also issued a Federal Register notice and received several hundred public comments which it is currently reviewing.

Question 2

The Food and Agriculture Organization of the United Nations (FAO), recently estimated that there are just about 1 billion people in the world who are chronically hungry, a figure that has jumped up a couple of hundred million in the past two years due first to the spike in world food prices and then second to the global economic recession. The FAO also recently projected a need for a 70 percent increase in food production by 2050, an alarming number to say the least.

Given the serious concerns being raised about the adequacy of world food supplies, Shouldn't we be encouraging food production and will you work to protect the U.S. farm safety net that helps ensure safe, affordable, and abundant supplies?

If confirmed, I will work to ensure that we maintain a safe, affordable, and abundant supply of food – in the United States and work within the administration and with Congress to assist in achieving global food security.

Question 3

The European Union has long been a corner stone of export business for long grain rice from Arkansas and other Southern states. Sales as recently as a few years ago of brown rice averaged 250,000 metric tons annually, but virtually disappeared in late 2006 with the discovery of the Liberty Link 601 genetically engineered trait which was accidentally introduced into the U.S. long grain crop. Southern rice farmers have nearly cleaned up this problem caused by others, and our exporters are now ready for the hard job of recovering the EU market.

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 for the LL601 trait.

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.

Dr. Siddiqui, 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?

I understand that USTR and USDA are currently working with the EU to lift the emergency measures. I also understand that USTR has sought negotiations with the EU to replace the current tariff mechanism for brown rice with a fixed tariff. If confirmed, you have my commitment to work with you and the U.S. rice industry to address these issues and help restore exports of U.S. rice to the EU market.

Question 4

In the ongoing WTO talks, certain nations have demanded that the United States give up its cotton program as an "early harvest", before the agriculture negotiations have concluded. Would USTR ever agree to reform or terminate the US cotton program, or any U.S. agricultural support program, as an "early harvest" before we've received commitments from other nations in a final agriculture deal?

My personal view is that a so-called "early harvest" on cotton is not in the U.S. interest. The agricultural negotiations, along with the rest of a potential Doha package, are highly complex, requiring a delicate balance of potential benefits and concessions across a broad range of issues. If confirmed, I look forward to consulting often to make sure your views and the views of the U.S. cotton industry are taken into consideration.

Question 5

In the ongoing WTO talks, certain nations have demanded that the United States give up its cotton program as an "early harvest", before the agriculture negotiations have concluded. Can you assure the committee that cotton negotiations will remain part of the overall agriculture negotiations and not be considered independently?

As I stated above, my personal view is that an early harvest on cotton is not in the U.S. interest.

Question 6

Please update the committee on the ongoing activities by US government agencies in West Africa, specifically related to the West Africa Cotton Improvement Program. In your opinion should the program be continued?

The USG is actively involved in agricultural development activities in west Africa, including through work by the MCC and USDA. Since 2006, USAID's West Africa Cotton Improvement Program (WACIP) has worked with Burkina Faso, Benin, Chad, Mali and Senegal on cotton-related programs. Implementation of the program focuses on the themes of (a) reform of cotton sector policies and institutions; (b) higher valued added in cotton processing and transformation; and (c) increased yields in cotton production. WACIP activities are implemented through a partnership with U.S. agricultural universities, numerous regional organizations, government agencies, farmer organizations, and private businesses.

I understand that WACIP has been a good program. If confirmed, I will work with USAID and USDA to discuss the future of our cotton-specific assistance activities in West Africa.

Question 7

China, as well as other emerging markets have recently enacted measures that increase trade barriers to US exports in cotton and other sectors. Are you familiar with these measures which include a longstanding refusal to administer cotton TRQs in accordance with the accession agreement, as well as, application of a variable levy on imports and implementation of a new registration and performance requirement for cotton exporters. What steps would you take to deal with these developments?

I understand the importance of market access for cotton and other agricultural exporters into China. If confirmed, I will work closely with U.S. stakeholders, including Members of Congress, on this issue.

Question 8

The Senate-confirmed position of Chief Agricultural Negotiator has been vacant since May 2007, when Dr. Richard Crowder resigned from that position. While Dr. Joe Glauber, now USDA's Chief Economist, did an admirable job in his capacity as Special Doha Agricultural Envoy, that position did not extend beyond Doha Round negotiations to other agricultural trade issues and disputes that would otherwise be the responsibilities of the Chief Agricultural Negotiator. The United States is a party to a number of ongoing bilateral agricultural trade disputes, some of which have been going on for many years.

If you are confirmed to this position, I would ask you to commit to briefing the Committees of jurisdiction in both the Senate and the House on where things stand on these various disputes, and what steps are being taken to resolve them.

Throughout my tenure in public service, I have always maintained a commitment to an open-door policy. I can commit to consulting with Congress early and often to ensure that our Committees of jurisdiction are fully aware and up to speed on all USTR's current disputes and options for moving forward.

Question 9

Food aid in the Doha Round

While a lot of attention has rightfully been paid to U.S. problems with the lack of balance between the domestic support language and the market access language in the Doha Round draft agricultural text, especially with respect to the commitments of advanced developing countries, there is another area of the draft text that I would also like to raise concerns about. The treatment of U.S. in-kind food aid programs in the current draft language would seriously constrain our ability to operate those programs as intended, especially with respect to providing development assistance through monetizing U.S. commodities and restrictions on the roles of private voluntary organizations which run our projects on the ground in recipient countries. This language was never agreed to by our negotiators. However, I understand that since that language is not bracketed in the text, the new chair of the agricultural negotiations regards the food aid text as closed and does not intend to hold additional discussions on these matters.

The United States has been the single largest contributor to humanitarian relief around the world for a very long time, and I would hate to see restrictions imposed on our programs through WTO rules that would constrain our ability to address these needs.

I would ask for your commitment that if you are confirmed as the Chief U.S. Agricultural Negotiator by the Senate, you will fight in the Doha Round negotiations to maintain our ability to run our food aid programs in a way that addresses both emergency needs and chronic needs through development assistance around the world in keeping with rules to minimize adverse impacts on local production and commercial trade flows, either for in-kind or cash assistance.

The United States has a long track record in providing humanitarian food assistance, and this activity is very important. While USDA is responsible for running those programs, you have my commitment that, if confirmed, I will work with USDA and interested stakeholders, including you and others in Congress, to ensure the United States maintains the ability to run a robust humanitarian food aid program.

Question 10

Dr. Siddiqui - As you know, our Congress, in cooperation with this Administration, recently lifted a ban on imports of Chinese poultry products. This issue had been a sore spot for the Chinese and was impeding progress in a number of trade areas. However, we still have several outstanding poultry issues with China: including China's WTO case related to our ban, which is clearly moot, and should be withdrawn; antidumping and countervailing duty cases against the U.S. poultry industry; and continued bans on poultry

products from a number of U.S. states, including Arkansas, that have tested positive for low pathogenic avian influenza, even though the World Animal Health Organization has determined that presence of low path AI does not warrant trade restrictions. Given the significant movement on our part with regard to Chinese poultry products, I hope that this Administration is now pressing China hard to resolve these outstanding issues. If confirmed as Chief Agricultural Negotiator, I would ask you to commit to making this a top priority.

If confirmed, I will join Ambassador Kirk and the Administration in on-going efforts to resolve these serious trade issues with the Chinese.

Question 11

Dr. Siddiqui - As you know, a very important trade issue involves access of the U.S. beef industry to key export markets like Japan and China. The U.S. beef industry has literally lost billions of dollars in export opportunities since the first case of BSE was discovered in the United States in 2003. This is very unfortunate since many of the restrictions put in place by our trading partners are not based on the accepted science for BSE, as established by the World Organization for Animal Health (OIE).

I can tell you that my cattlemen in Arkansas, and this industry in general, expects our trading partners to both recognize the guidelines on BSE as established by the OIE, and ultimately, to comply with these guidelines. However, our cattlemen also know this may have to occur in phases and that an "all or nothing" approach to these negotiations has not been very successful in the last few years. The most important thing is to re-establish a foothold for U.S. beef products in key foreign markets. To this goal, we should consider phased agreements that allow U.S. beef exports from cattle under 30 months, both bone-in and boneless, as a starting point. These agreements could include benchmarks, or commitments to negotiate further, that would ultimately lead to full market access consistent with OIE guidelines. I know am confident that you understand the importance of this issue, and if you are confirmed, I hope that you will commit to approaching beef negotiations in a flexible manner such as I have described in order to maximize future market opportunities for U.S. beef.

This Administration is committed to ensuring strong enforcement of existing trade rules, including those of the WTO SPS Agreement. 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 Ambassador Kirk, USDA and other agencies to engage with Mexico, as well as other trading partners – particularly those in Asia, to normalize our trade in beef in these important markets in a commercially viable manner based on science and international standards.

ANSWERS TO QUESTIONS FROM SENATOR WYDEN**Question 1**

You are quoted as suggesting that EU practice with respect to Genetically Modified Organisms has the effect of “denying food to starving people.” Is this quote accurate? If you wish, please elaborate, clarify, or correct your statement in any way.

The statement is quoted in full below. It was made in June 2003 in support of the U.S. decision to file the biotech complaint against the EC at the WTO regarding their moratorium on approval of biotech products. The contextual reference is that a number of Sub-Saharan African countries were experiencing drought and famine, but U.S. food aid was curtailed due on EC policy on biotech corn. There was a concern that if they accepted U.S. biotech corn, their fears were that the EU would ban their exports of agricultural products:

"EU's illegal moratorium has had a negative ripple effect of creeping regulations and non-science based decisions, which have resulted in denying food to starving people" said Isi Siddiqui, CropLife America's vice president, biotechnology and trade. "The WTO requires that international trade rules be based on sound science, and today's decision will send that strong message to the EU, and other countries in Asia, Africa and Latin America.." (Quoted from the Southeast Farm Press, entitled Farm Groups Support WTO case filing, dated June 3, 2003).

Biotechnology offers important opportunities for benefits to farmers, producers and consumers. Biotech food crops require extensive data and thorough review for food and environmental safety by USDA, EPA and FDA before they can be planted by U.S. farmers in the United States. I believe the WTO made an important statement on this technology when it found in favor of the United States in its challenge of the European Communities moratorium on approval of these products. If confirmed, I will support appropriate application of both biotechnology and promotion of trade in these products.

Question 2

CropLife has taken some positions that many find to be controversial. Are there major positions that CropLife has taken, or views that CropLife is perceived to hold, that are inconsistent with your own or with those you will represent, should you be confirmed? If so, please elaborate.

As discussed in #4 below, if any matter specifically involving CropLife came to USTR, I would refrain from participating in it.

Question 3

What type of positions or policies will you support in order to be sure that America's trade objectives do not cause harm to those living world's poorest developing countries? I am particularly interested in learning your views about how the U.S. can facilitate responsible agricultural development and food production in poor countries and how the delivery of food aid can be improved to assist this objective.

I am supportive of the United States' commitment to work as part of a collaborative global effort centered on country-led processes to improve food security. Momentum is building for global action on this issue, as evidenced by the 2009 L'Aquila G8 Summit statement on Global Food Security. If confirmed, I will work as part of the Administration's effort on this issue and seek the advice of interested US stakeholders, including Members of Congress.

Question 4

Are you committed to ensuring that your past ties with CropLife do not influence your ability to place the interests of the public and the nation above your former employer's, should you be confirmed? If so, how will you ensure your former employer's positions don't influence your own?

Absolutely. If confirmed, my sole duty would be to the serve the interests of American people without regard to any effect my actions might have on CropLife. Moreover, as provided for in my ethics agreement of September 25, 2009, I will fully comply with "Ethics Pledge" signed by all President Obama's appointees. Pursuant to that pledge, for two years after the date of my appointment, I will not participate in any particular matter involving specific parties that is directly and substantially related to CropLife.

ANSWER TO QUESTION FROM SENATOR SCHUMER**Question**

Increased opportunities for New York's dairy industry to participate in fair trade are very important to helping my farmers recover from the financial crisis they have been experiencing this year. As such, I am concerned about trade barriers that prevent U.S. dairy products manufacturers from exporting to India. Since 2006, India's market has been completely closed to U.S. dairy products. India's continued stonewalling of U.S. efforts to resolve this issue is deeply concerning, and I was pleased to hear from Ambassador Kirk that the issue of dairy market access would be a top issue on the agenda at the October 26th meeting in India of the U.S.-India Trade Policy Forum.

What progress was made on this issue at the TPF?

Has the United States raised this issue in the WTO? What has been India's response?

What steps will you take to help ensure that the recent discussions with India will translate into useful steps towards resolution of this issue that has been plaguing my dairy products manufacturers for so many years?

What steps will you take to resolve this issue if continued discussions fail to resolve this issue within the next several months?

I certainly appreciate the importance of improving market access for U.S. producers of high quality dairy products, including products from New York State. I fully recognize the importance of job creation, and, if confirmed, will make market access for U.S. products a top priority in our dialogue with India. As you note, last month the United States held the annual Trade Policy Forum in India, which provided the United States with the opportunity to convey to the Indian Government concerns regarding market access for U.S. dairy products. Please be assured that, if confirmed, I will monitor the situation closely and will continue to consult with U.S. stakeholders, including Members of Congress.

ANSWER TO QUESTION FROM SENATOR STABENOW

Question

I am concerned about the potentially damaging impact the inclusion of US-New Zealand dairy trade would have on Michigan's dairy producers under a Trans-Pacific Economic Partnership Agreement.

New Zealand's dairy industry is virtually one dairy company controlling around 95% of the milk produced there. Additionally, New Zealand exports almost all of its production, and is expected to dump its product onto world markets when times get tough like they are this year.

What will you be doing to help avoid negative impacts on our dairy industry if the Administration decides to move forward with the Trans-Pacific Economic Partnership?

I understand that Michigan dairy producers have concerns regarding potential U.S. participation in the Trans-Pacific Partnership Agreement. If confirmed, I will work closely with you and your dairy producers to address their sensitivities and priorities in any initiative that the Administration pursues in its trade policy agenda.

ANSWERS TO QUESTIONS FROM SENATOR NELSON**Question 1**

The Florida citrus industry is the State's second largest, contributing over \$9 billion to our economy and 90,000 direct and indirect jobs throughout Florida and the country. Florida accounts for 67 percent of total U.S. citrus production and ranks first in the value of production of oranges, grapefruit, and tangerines. Given your long tenure the California Department of Food and Agriculture, how do you view import sensitive crops such as citrus?

I recognize the importance of citrus to Florida agriculture. If confirmed, I look forward to consulting often to make sure I fully understand and take into consideration your views and the views of the Florida citrus industry as well as those of industries representing other import sensitive crops.

Question 2

Recently, a sugar industry group comprised of the American Sugar Alliance and the National Chamber of Sugar and Alcohol Industries in Mexico offered a set of recommendations to improve and facilitate government cooperation and coordination between the United States and Mexico on sugar trade policy. These recommendations include improved data collection, improved government coordination of U.S. – Mexico sugar policies, improved coordination on U.S. - Mexico sugar production levels and the creation of a Mexico-U.S. Sugar Commission to resolve trade disputes between the two countries. What are your views on these recommendations?

I understand that USTR is reviewing the recommendations we received from the American Sugar Alliance and consulting with other United States agencies. I understand that a bilateral government-to-government sugar working group has been meeting regularly for the last few years and its work has improved the flow of data regarding sweetener trade between the two countries. I will work to continue to this dialogue with Mexico to ensure we have the best data possible as the U.S. and Mexican sweetener markets become more integrated.

Question 3

Dr. Siddiqui, you currently serve as the Vice President for Science and Regulatory Affairs at CropLife America, a consortium of pesticide producers. If confirmed, what steps would you take to assure that there is no conflict of interest between your work for the pesticide industry and your new role as chief agricultural negotiator in the Office of the U.S. Trade Representative?

If confirmed, my sole duty would be to the serve the interests of American people without regard to any effect my actions might have on CropLife America. Moreover, as provided for in my ethics agreement of September 25, 2009, I will fully comply with "Ethics Pledge" signed by all President Obama's appointees. Pursuant to that pledge, for two years after the date of my appointment, I will not participate in any particular matter involving specific parties that is directly and substantially related to CropLife America.

ANSWERS TO QUESTIONS FROM SENATOR BUNNING

Question 1

Dr. Siddiqui, I assume you are familiar with legislation recently passed by Canada that would effectively ban cigarettes made with U.S. burley tobacco. My understanding is that Canada's legislation is intended to ban tobacco products that are appealing to youth. Are you aware of any evidence that cigarettes made with U.S. burley tobacco are more appealing to youth than purely flue-cured cigarettes?

I share your understanding that Canada's legislation (C-32) is aimed at protecting youth against the dangers of smoking. I am not aware of any studies that indicate that cigarettes made with burley tobacco are more appealing to youth than purely flue-cured cigarettes.

Question 2

The Canadian legislation does not ban purely flue-cured cigarettes, which make up vast majority of the Canadian market, but it bans American blend cigarettes – a distinctively American product. In your opinion, did Canada choose the least trade-restrictive means of accomplishing its goal of reducing youth smoking?

As I understand it, Canada's legislation (C-32) seeks to reduce youth smoking by prohibiting cigarettes from being marketed if they contain any listed food flavorings or additives. I am not in a position to measure the specific trade effects of C-32 at this time or other alternatives that Canada might have adopted. However, I would note that the United States and other countries have enacted more focused measures that prohibit the sale of flavored cigarettes of the type most directly marketed to children. If confirmed, I will continue to monitor this matter closely as Canada develops implementing regulations and will work with you and your staff on this issue of importance to you and your constituents.

ANSWERS TO QUESTIONS FROM SENATOR CRAPO**Question 1**

Many of us recognize the importance of a well-negotiated World Trade Organization (WTO) Doha agreement, but we need a deal that is going to work for the American economy, including American agriculture. There are many industries in Idaho, including the dairy industry which depends on good trade agreements to help create jobs and opportunities. How does USTR plan to ensure that in any final Doha agreement we are not moving backward with respect to current market access opportunities and instead are improving the status quo, including in key developing country markets?

I agree that it is important for a Doha agreement to work for the American economy, including American agriculture. I think the Administration has been very clear on the need for greater market access contributions by key emerging markets which are some of the fastest growing and increasingly important in today's global economy. If confirmed, I will insist on a deal that achieves significant new opportunities for U.S. exporters, including American farmers and ranchers.

Question 2

How will you work with the U.S. Department of Agriculture (USDA) and the White House to ensure that all three are sharing information and coordinating messages on restoring beef trade, especially with our Asian partners?

In my role as Senior Trade Advisor to Secretary Glickman, I served as a liaison to USTR and therefore have a good working knowledge of how to coordinate with our sister agencies and the White House. If confirmed, I will continue to ensure that all three are on the same page particularly as it relates to expanding beef markets in Korea, Japan and China.

Question 3

Mexico is the U.S. beef industry's number one export market. However, we are still missing a lot of value because Mexico is not accepting product from cattle over 30 months of age. What will you do as the Chief Agricultural Negotiator to address this issue and get full access for U.S. beef into Mexico?

This Administration is committed to ensuring strong enforcement of existing trade rules, including those of the WTO SPS Agreement. 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 Ambassador Kirk, USDA and other agencies to engage with Mexico, as well as other trading partners, to normalize our trade in beef in these important markets in a commercially viable manner based on science and international standards. And, where they should fail to do so, I will, together with USTR trade officials, aggressively utilize, in cooperation with other Administration and Congressional colleagues, all available tools in the WTO and other mechanisms.

Question 4

How will you work with the U.S. beef industry to engage them in the process during trade negotiations and dispute resolution?

I understand that U.S. beef industry representatives are active members of the formal Advisory Committee system in both the Agricultural Policy Advisory Committee and the Animal and Animal Product Agricultural Technical Advisory Committee with which USTR and USDA consult regularly. I also understand that U.S. beef industry representatives regularly submit comments in response to USTR requests for comments and views with regard to both trade negotiations and WTO dispute settlement cases. As an informal matter, I understand that Ambassador Kirk and other USTR trade officials have met with U.S. beef industry representatives frequently. If I'm confirmed, I can assure you that I will continue this high level of engagement and regularly consult with the U.S. beef industry.

Question 5

Trade commitments already made in the WTO and in free trade agreements are likely to result, in most years, in the U.S. sugar market being over-supplied. Additional import commitments would only make management of the domestic sugar program even more difficult and could result in substantial costs to the government. Given this situation, shouldn't U.S. trade negotiators make clear that they will not offer any new trade concessions that would increase the inflow of sugar into the U.S.?

This Administration fully understands the level of sensitivity associated with sugar. If confirmed, I will work closely with USDA, U.S. stakeholders, and with you regarding international trade commitments related to this commodity. As the Administration develops its trade policy agenda going forward, I fully appreciate the importance of an open and inclusive dialogue with Congress on trade. If confirmed, I can assure you that I will come to you early and often to consult and to listen.

Question 6

The costs faced by U.S. farmers have risen dramatically in recent years. Given these changes in cost structure, and the strong concern about the adequacy of world food supplies, does it make sense to undertake commitments in the WTO that could result in undercutting the safety net established for U.S. farmers by the new Farm Bill? Will you work to ensure that any commitments made will not undercut this safety net?

The WTO negotiations on agriculture are intended to address three areas: domestic supports, market access and export competition. If confirmed, I will work with you to ensure a balanced and ambitious Doha outcome across these three areas that works for America's farmers, ranchers and agribusinesses.

ANSWER TO QUESTION FROM SENATOR ENZI

Question

As the Chief Agricultural Negotiator, you may be pressured by some countries to allow livestock and high-risk ruminant products into the United States from nations known to have foot-and-mouth disease. Animal health safeguards must be based on internationally recognized scientific standards, especially for a disease as contagious and economically threatening as foot-and-mouth disease. Do you believe that FMD poses a significant threat to our domestic livestock industry and that our trade policies need to reflect this risk?

I agree that it is extremely important to ensure that our SPS measures are based on international standards, including those established by the World Organization for Animal Health (OIE). The use of science-based guidelines helps to ensure the safety of domestic and imported products. FMD is one of many significant threats to our domestic industry, and, if confirmed, I will work with Ambassador Kirk, USDA, and Congress to ensure that all U.S. SPS measures, like the ones related to FMD, are science-based, reduce the risk to the food supply from various animal and plant diseases, and ensure the safety of the American food supply.

COMMUNICATION

December 4, 2009

Dear Senate Committee on Finance,

Islam Siddiqui must not be confirmed by the senate for Chief Agriculture Negotiator at the US Trade Representatives Office.

As you may know, Siddiqui was a registered lobbyist from 2001 through 2003 promoting pesticides for Croplife America. He wanted to allow pesticides to be tested on children. He has fought to keep ozone depleting chemicals and persistent pollutants, like DDT in use. He was instrumental in securing an exception for American Farmers from the 2006 worldwide ban of the chemical methyl bromide, which depletes the ozone layer. Siddiqui has also resisted the labeling of genetically modified foods and has tried to weaken the Clean water Act as well as the Endangered Species Act.

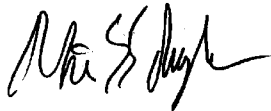
As the vice President of Science and Regulatory affairs for Croplife America he has undermined local food and sustainable agriculture.

Siddiqui has been touted for his role in the first phase of developing National Organic Standards, but during the Clinton years he allows genetically engineered crops and the use of sewage sludge fertilizers and irradiated foods to be labeled as organic.

Kathleen Merrigan helped to write the nations organic standards on the Senate Agriculture Committee and would be a better fit as someone who would represent a broad view of American agriculture.

Please don't let a promoter of toxic chemicals to be in the position to push his practices onto the US and the rest of the world. Please ban his nomination entirely!

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