

PRESIDENT'S 2011 TRADE AGENDA

HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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MARCH 9, 2011
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Printed for the use of the Committee on Finance

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U.S. GOVERNMENT PRINTING OFFICE

74-816—PDF

WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
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PRESIDENT'S 2011 TRADE AGENDA

WEDNESDAY, MARCH 9, 2011

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

The hearing was convened, pursuant to notice, at 9:37 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Kerry, Wyden, Stabenow, Cantwell, Nelson, Menendez, Carper, Cardin, Hatch, Grassley, Snowe, Roberts, Coburn, and Thune.

Also present: Democratic Staff: Russ Sullivan, Staff Director; Chelsea Thomas, Professional Staff; Rory Murphy, International Trade Analyst; Amber Cottle, Chief International Trade Counsel; Ayesha Khanna, International Trade Counsel; and Michael Smart, International Trade Counsel. Republican Staff: Chris Campbell, Staff Director; Everett Eissenstat, Chief International Trade Counsel; and David Johanson, International Trade Counsel.

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

The CHAIRMAN. The hearing will come to order.

Ralph Waldo Emerson once said, "To map out a course of action and follow it to an end requires courage."

As any Montanan knows, you must understand the lay of the land before you can map out a course of action. You must see the mountains, the valleys, the rivers, and, more than anything else, you must have courage to face the challenges that lie ahead.

The President's trade agenda sets an ambitious goal—double U.S. exports by 2015. But it will take courage from the administration and the Congress to map a course of action, and it will take even more courage to follow that course until we reach that goal.

To do so, we must take two major steps. We must approve our pending free trade agreements, otherwise known as FTAs, and we must meet the challenges that China presents.

First, it is time to quickly resolve the outstanding issues on our pending FTAs with Colombia, Panama, and Korea, and we must approve all three agreements this year.

Colombia has a strong and growing economy. It is among the largest markets in Latin America for exports, and it is a strategic partner in our fight against drug trafficking and terrorism.

I traveled to Colombia 2 weeks ago. I met with President Santos, his ministers, Colombia's top prosecutor, labor leaders, and others.

I was struck by the progress that Colombia has made in strengthening labor rights, reducing violence, and stepping up prosecutions.

Colombia has enacted reforms to make it easier for workers to form unions and bargain collectively. It has reduced the homicide rate of union members by nearly 90 percent. And it is prosecuting labor violence cases identified by Colombian labor unions as top priorities.

But more steps are needed, and President Santos has begun to take them. I believe that he is going to work with us to take more steps. But he needs to know what we want him to do. We must map a course, and we must act now.

American farmers lost \$1 billion in sales to Colombia over the last 2 years. And while China has tripled its share of the Colombian market, ours has declined by 20 percent. American jobs are at stake.

Last month, Senator Hatch and I sent a letter asking you to come to the hearing today prepared to discuss the specific issues that Colombia and Panama need to address, and we asked you to come prepared to announce an expeditious timetable for moving these agreements through Congress. We look forward to discussing both issues with you.

We must also consider the U.S.-Korea free trade agreement. President Obama mapped out a course of action for this agreement last June. He and South Korean President Lee pledged to resolve U.S. concerns regarding access to Korean beef and auto markets.

In December, the United States and Korea reached an agreement resolving the U.S. concerns on autos. The President promised to keep working on beef, but we do not yet have an agreement.

We know this course of action is challenging, but our goal is achievable. We are simply asking Korea to consult with us on a roadmap to full market access in the future.

We urge you to follow that course of action that the President set out last June until we reach this goal. And this course of action to approve the pending FTAs will succeed only if we ensure that all Americans will benefit. We must extend Trade Adjustment Assistance to keep American workers and businesses globally competitive.

In addition to the pending FTAs, there is a second step in achieving our goal of doubling U.S. exports. We must map a course of action that leads to a stable and dynamic economic relationship with China.

Ambassador Kirk, under your leadership, the USTR has taken affirmative steps to compel China to abide by its international commitments. You initiated the first safeguard action against a surge of Chinese imports. You brought a WTO case to end China's wind power subsidies. And you challenged China's improper export restrictions of critical raw materials.

But more steps must be taken. Additional problems remain.

One U.S. company estimated that only 25 percent of its software in China is legal, and economists have estimated that China's currency manipulation may cost up to 1.4 million U.S. jobs.

I look forward to helping you map a course that navigates these challenges. As Emerson said, it requires courage to map a course of action and follow it.

So, let us summon up the courage to resolve the outstanding issues with the pending FTAs and approve them this year, and let us summon the courage to address our challenges in our economic relationship with China. By doing so, I believe we can achieve the goal of doubling our exports and creating jobs that our economy needs.

[The prepared statement of Chairman Baucus appears in the appendix.]

The CHAIRMAN. Senator Hatch?

**OPENING STATEMENT OF HON. ORRIN G. HATCH,
A U.S. SENATOR FROM UTAH**

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

I firmly believe that America benefits from an aggressive trade agenda that opens markets to U.S. products around the world. Over 95 percent of the world's population lives outside of the United States, and, as these economies grow, they offer new markets and new opportunities for those willing and able to seize them.

Our workers can compete, and we can win in these markets. I am confident of that. We can help by negotiating good deals that tear down barriers to our products and level the playing field for our workers. And then we need to get out of the way.

We cannot saddle our workers with burdensome regulations, high taxes, and government deficits, and then expect them to win in the global marketplace and a global economy. We must do better than that.

At the risk of sounding like a homer, to see what works, all you have to do is take a look at my home State of Utah. Sound fiscal policy, a light regulatory burden, and low taxes make Utah one of the most competitive States in our Nation. Utah is the only State in the country to double exports in the last 5 years. Utah is leading the pack when it comes to growing jobs and expanding exports.

The same sound regulatory, fiscal, and tax policies that work in Utah should inform our policies here if we are to succeed as a Nation.

As ranking member on this committee, I am committed to pursuing these policies. As the White House looks for solutions to our most pressing problems, I would encourage them to look beyond Pennsylvania Avenue. My home State of Utah is a good place to start.

As a Nation, we have a lot of work to do in order to get the economy back on track, and, in my opinion, the administration wasted crucial time, almost 2 years, pursuing sideshows like stimulus spending for government jobs and health care reform instead of taking on a pro-growth economic agenda that would provide jobs in this country. And, as a result, unemployment remains far too high, and Congress is just now getting to an agenda that will lead to meaningful economic growth, lasting job gains, increased productivity, and the dynamic economic expansion that citizens have been patiently waiting for.

At the top of the pro-growth agenda happens to be trade policy. Yet, instead of leading the way, we are falling behind our trading partners. While we wait, other countries are writing the rules of trade. While we hesitate, other countries are opening up markets

for their workers. And, if this sorry record is not corrected, U.S. workers will continue to lose out on the economic opportunities afforded by free and open trade.

A case in point. Colombia. In 2008, the United States was the main supplier of corn, wheat, and soybeans to Colombia, accounting for 71 percent of the market. Today our market share is just 27 percent.

It does not take a Ph.D. in economics to understand this collapse. While our trade agreement with Colombia collected dust, other countries were surging ahead. The same pattern holds in Panama, where we continue to lose out on lucrative government procurement projects.

Some suggest that the strong interest in quick approval of our trade agreements with Colombia and Panama is driven by partisanship. Now, I am not going to pull any punches here. That is totally false. There is strong bipartisan support for these agreements in this committee and in the Senate.

Any further doubts can be laid to rest by a recent letter from a bipartisan group of former government officials, including USTR, White House Envoys to the Americas, and Assistant Secretaries of State, all calling for prompt ratification of our pending trade agreements with Colombia and Panama.

Now, I appreciate the work that the administration has done with regard to Korea. That should have been approved a long time ago. Korea is a friend. It is an ally of the United States. And, while we need to see more progress on beef access, it remains a strong agreement. I support it, and I want to see it move as soon as possible. But I do not believe the President will ever act on the Colombia and Panama agreements unless these agreements move along with Korea.

And this skepticism is not unjustified. In 2009, the administration said they were developing a plan of action to address the pending trade agreements in consultation with Congress and pledged to address any issues promptly. That was in 2009.

Later, at the Summit of the Americas, President Obama directed Ambassador Kirk to lead a review of the Colombia agreement to solve outstanding issues. In 2010, the administration laid out general concerns, but vowed to move the agreements forward at the appropriate time.

A little later, they pledged to strengthen relations with key partners, with the goal of moving forward with existing agreements in a way that upholds our values. Then in 2011, President Obama vowed to pursue agreements with Panama and Colombia.

Just a month ago, the President instructed USTR to immediately intensify engagement with Colombia and Panama. And just yesterday, we received testimony that says you were on track to resolve outstanding issues with Panama and are committed to addressing issues related to Colombia, both sometime this year.

Now, some might call this progress. But are we really any closer to having these agreements before Congress today than in 2009?

I find it hard to believe that the problem is a lack of information. The problem is a lack of political will and a lack of political courage.

So far, the administration has talked a big game on these trade agreements, but when the game time rolls around, they always shrink from action.

At some point, despite all the words, it is the administration's inaction that speaks volumes. This failure to act raises strong doubts about whether the President is serious about moving these agreements at all.

Given past rhetoric, the recent promises of intensified engagement, commitments to work, and being on track are all fine and good, but these promises are woefully inadequate.

After 2 years, it is still an open question whether the President will ever see fit to submit the Colombia and Panama agreements to Congress any time in the near future, if at all.

Let me be clear. If the President will not act, I will. If the President ignores the will of the Congress and sends the Korea agreement without Colombia and Panama, I will do everything possible, everything that I can to make sure that those two agreements are considered at the same time as Korea.

Given the gap between promises made and promises kept, I do not believe the President has given Congress much choice when it comes to the Colombia and Panama trade agreements.

If we are to serve the national interest and get these two agreements approved, Congress must act with or without presidential leadership.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Thank you very much.

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

The CHAIRMAN. I would like to, before we begin, quickly recognize Colombia's Ambassador to the United States, Gabriel Silva, who is in the audience.

Thank you, Ambassador, for all of your work and, also, for hosting me in Colombia just a few weeks ago. It was an unforgettable trip.

I would now like to introduce Ambassador Kirk. Ambassador Kirk, thank you very much for coming today. Welcome to the Finance Committee, and we look forward to your testimony.

As you know, the usual practice is to have your entire statement submitted for the record, and I urge you to summarize it in about 5, 6, 7 minutes. And following that, of course, the committee will have some questions.

Why don't you proceed? Welcome. Thank you for your good work. You work very hard. It is a tough job. You have a good lean and mean agency. I know you like to keep it that way.

STATEMENT OF HON. RONALD KIRK, U.S. TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT, WASHINGTON, DC

Mr. KIRK. Mr. Chairman, thank you so much for your kind words. Thanks for the opportunity to be back with you again.

You recognized the ambassador from Colombia. If I might, we also are joined by the ambassador from South Korea. We are pleased to have his strong support in our work on South Korea.

And one brief moment of personal privilege. You have a remarkable ability to schedule my appearances at the hearing on my wife's birthday, and today is another one of those. So I know she is watching at home, anxious I do not mention a number. But I do want to acknowledge it and wish her a happy birthday.

The CHAIRMAN. Well, the committee wishes her a very happy birthday.

Mr. KIRK. And this is a special birthday. So we are pleased about that.

Mr. Chairman, Ranking Member Hatch, other members of the committee, it is a great opportunity to come to you and talk about the President's trade agenda.

In 2010, President Obama and our administration followed through on our commitment to develop a trade policy that solves problems and supports jobs for American businesses, workers, farmers, ranchers, and manufacturers.

We have enforced our trading rights and held our trading partners accountable. We have worked to open markets to help U.S. producers reach the more than 95 percent of the world's consumers outside of the United States, including through our efforts with China and our leadership in the Trans-Pacific Partnership.

We are on pace, indeed, to reach President Obama's goal in the National Export Initiative to double U.S. exports by the end of 2014. In 2011, we will expand on this jobs-focused, comprehensive trade policy to open markets for made-in-America products and goods and services and keep them open through our strong and dedicated enforcement actions.

As many of you know, I had the opportunity—central to that agenda, as you had mentioned, is the movement and conclusion of our pending free trade agreements and sending them to Congress for your approval as they are ready.

This week, we informed your committee that we are, in fact, prepared to begin deliberative work with you on the text of the U.S.-Korea free trade agreement as soon as you are ready to do so.

It is time that we realized the promise of the more than \$10 billion in increased exports and goods and more than 70,000 jobs associated with this agreement.

Improving access to the Korean beef market remains a high priority for us as well, and we commit to working with you in close consultation to further open that market consistent with international guidelines.

In the meantime, as others have noted, a ratified U.S.-Korea agreement will progressively reduce tariffs on our beef products to zero and enable our producers to build on the exponential growth of exports to Korea, which reached \$518 million last year, which was an increase of 140 percent in value.

We seek the same widespread support for the pending trade agreements with Panama and Colombia that we have generated through our work on the Korea agreement. And our goal is to have all three agreements with the outstanding issues addressed and approved by Congress.

On February 9, I advised the House Ways and Means Committee that President Obama had directed me to intensify our engagement with Colombia and Panama to resolve the outstanding issues as

quickly as possible this year and submit them to Congress immediately thereafter.

The next day, on February 10, I met with Vice President Varela from Panama, and our teams have subsequently met and agreed upon actions that, when implemented by Panama, will ready that agreement for congressional consideration.

On February 11, administration officials began our consultations on Colombia with key stakeholders and members of Congress, including House and Senate leadership.

On February 15, USTR led an interagency mission comprised of the State Department, Labor Department, and officials of the White House, to Bogota, Colombia. We have since met multiple times with stakeholders and members of Congress to review our findings and assess our next steps.

I am also pleased to announce that tomorrow, senior Santos administration officials will be in Washington to continue our talks on our shared goals to protect labor rights and workers. We are working with them to resolve serious outstanding issues regarding the protection of internationally recognized labor rights, violence against labor leaders, and the prosecution of perpetrators, so that we can advance the agreement for your consideration.

We are also supportive of the efforts the Santos administration is making to address Colombia's challenges, including initiatives such as their land reform.

At the same time, we call on Congress to keep faith with America's workers here at home and renew Trade Adjustment Assistance now.

Also, our Generalized System of Preferences and the Andean Trade Preferences Act merit renewal for as long a period of time as possible. And finally, we continue to lead the effort toward a balanced and ambitious outcome in the Doha round of WTO negotiations, and to grant Russia permanent normal trade relations status to ensure that American firms fully participate and benefit as Russia prepares to join the WTO this year.

Mr. Chairman, I look forward to a constructive dialogue with the committee and welcome your questions at this time.

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

The CHAIRMAN. Thank you, Ambassador.

I traveled to Colombia a week and a half ago to find out what is going on and should there be more provisions in this agreement or not, and, frankly, I must tell you that, based upon several days in that country, meeting with the president, with the new attorney general, with members of the Supreme Court, three different meetings with labor leaders, with groups that are pushing demobilization, with many others, including the minister of agriculture, who is aggressively pushing the land restitution—that is, farmers who were displaced because of terrorism activity could get their land back, and so on and so forth—that country is working mightily to address all of its concerns, and I am very impressed with what they have done.

When I met with labor leaders in the three different meetings, I also came away with a very strong impression that this agreement is not going to cost one job in Colombia, not one. In fact, I

asked that question. I said, "Will this agreement cost any jobs in Colombia?" The answer I got was, virtually no.

Second, I pointed out that this agreement, this proposed agreement—the actual agreement has not been signed—has labor protection provisions. No other FTA that Colombia has concluded with other countries has labor protection provisions.

So logically, I asked the labor leaders there, "Doesn't it make sense to go ahead and make sure this agreement is approved, because that will provide greater labor protection in Colombia than labor leaders currently have? And wouldn't failure to ratify also lose those labor protections?" And that was a logical question to which one would expect a logical answer. I got no answer, because they know the answer.

It is very clear to me that this agreement does not in any way damage labor in Colombia. In fact, it helps labor in Colombia because of the labor provisions that this agreement has, not present in any other FTA that Colombia is conducting.

Now, obviously, some of the labor leaders will have grievances. Labor leaders in every country have grievances. They gave me a list of things they would like to see accomplished, so on and so forth.

One was to eliminate the cooperatives they are developing. We do not outlaw cooperatives in the United States. It is a bit difficult, I pointed out to them, to put in a provision that outlaws a certain organizational tool, like, say, cooperatives. We do not have that provision in the United States. Well, they understood that, that is probably right.

So all I am saying, Mr. Ambassador, the time is here. The time is now. In fact, the time has passed to ratify the Colombia free trade agreement. It has long passed.

I mentioned in my opening remarks we are losing market share hand over fist. Hand over fist, we are losing market share. I mentioned China in my statement, but just parochially, let me just talk about one product—wheat. The Canadian market share in Colombia has grown drastically. It surpassed that of the United States. And Colombia, as you know, is about to conclude a free trade agreement with Canada.

It will be very difficult for the United States to regain lost market share. It would be more difficult if there is no FTA.

I might also remind all of us in this room, because sometimes this does not come out a lot, that we have virtually no tariffs on Colombian products coming to the United States, whereas Colombia has tariffs—I have forgotten the average—15 percent, something like that, on American products going to Colombia.

This is a one-way trade deal in our favor. It is a free trade agreement. I have never seen a free trade agreement before. This is a free trade agreement. And I just urge the administration to very quickly move on Colombia.

It is clear to me that none of these agreements is going to pass unless they are all packaged, either one package, or locked so closely together it is clear that they are all going to be acted on.

I have talked to members of the House, and they say they very much will delay, I know, the passage of Korea if there is no clear

signal that there is also going to be passage of Colombia and Panama this year.

So my time is up, but I just might give you just a few seconds to explain in even more detail. What are you doing to assure this committee that you are going to work to get the Colombia agreement ratified?

Mr. KIRK. Let me do so, and I will try to do so succinctly, but directly as possible.

The CHAIRMAN. My time is up. Fifteen, 20 seconds, if you could.

Mr. KIRK. Well, we share the commitment, the sentiments expressed by you and the ranking member that we not lose share in Colombia.

But not only were we concerned when we came into office about not losing market share in other markets, we were equally concerned about not losing any more confidence of the American public that, frankly, questions the wisdom of our trade policy and the value proposition of it.

The public does not question whether or not we can go do a deal to save more stuff, but they do question whether we will do trade deals that also advance our broader American principles about how we ought to treat workers, how we are to take care of the environment, how well do we improve the lots of others, and that is what we are working on with Colombia.

The good news is, we have had much more engagement. Our team was there the week before you were. We believe we can wrap up our negotiations with them quickly.

But there are core issues that are important to this administration and the American public that we will not compromise on. I will tell you—and I laid those out in my opening statement—we are as encouraged as you were by the actions and what we heard from the Santos administration.

And so, in many cases, what we are working on feels like we are pushing on an open door. And so I am confident that we are going to continue to make progress. Our goal is to wrap up these negotiations.

But I would not be much of a lawyer or negotiator if I were to start out by saying, as a matter of principle, we are going to vote on these whether we get action or not.

So, I have heard your concerns. We have our commitment. I think we have proven our resolve with what we have done on enforcement, what we have achieved with China and Korea.

The CHAIRMAN. I appreciate it. My time is up. Before I turn to Senator Hatch, just one point here.

They are going to walk away from the United States if we do not do this deal with Colombia. Go to 2006, how could they depend on the United States anymore if we just do not act?

There are huge, strategic, geopolitical reasons for us to conclude this agreement with Colombia.

China now is the biggest market—the country with whom Colombia trades more than any other country now is China, not the United States. If we do not conclude this, the trend lines are pretty clear what they will be. This is a no-brainer, Mr. Ambassador, a no-brainer, and I just hope we get this passed quickly.

Senator KERRY. Mr. Chairman, before you recognize Senator Hatch, I will not be able to ask questions before the joint session because of where I am, but I just wanted the record to reflect I would like to associate myself with your remarks. I think they are very important, and I appreciate them.

The CHAIRMAN. Thank you. Thank you, Senator.

Senator Hatch?

Senator HATCH. Thank you. Thank you, Mr. Chairman.

Welcome to the committee. We are happy to have you here. But I have to say, I have never seen such a foot-dragging situation. I do not blame you necessarily for that. I blame the administration for that. It is pathetic.

I talked with President Santos, as well, and I have to say, they want to have an agreement. They want to work. And, if you look at these last two presidencies there, they have been terrific. They have done an awful lot to clear up problems that organized labor had in the past.

And when do you reach a point where you say, "Hey, let's recognize the tremendous things that they have done?" Well, I could go on and on, but let me just say this. The President's trade policy agenda speaks of "unprecedented levels of input," from Congress and claims "unprecedented transparency," and further claims "outreach of unprecedented scale and scope," including consultations with your "partners" in Congress.

Well, I have not seen any outreach. Your priorities and policies are far from transparent, and you appear more than willing to ignore our bipartisan input. We are bipartisan here on this committee.

On February 14, the chairman and I wrote to you and asked you to today identify specific steps Colombia and Panama should take and a timetable for moving both agreements through Congress. And in response, you sent us a letter on Monday about technical discussions regarding the Korea FTA, with no mention of Colombia or Panama.

You may be ready to begin technical and drafting discussions regarding Korea, but let me be clear. My team is ready to begin technical discussions for all three agreements today.

Are you ready? If not, please tell me exactly which provisions of the current Colombian or Panamanian FTAs you are going to change that keep us from starting to draft implementing bills now. Why can we not get started with technical discussions on all three of these agreements?

Mr. KIRK. Well, Senator, as you know, the issues with respect to Panama and Colombia and Korea are all different. Korea is—

Senator HATCH. They are not that complicated either.

Mr. KIRK. If I might answer your question.

Senator HATCH. Go ahead.

Mr. KIRK. With respect to Korea, we were dealing with issues of market access. With Colombia, we are not dealing with the FTA. We are dealing with very serious issues and concerns by members on both sides of the aisle, whom we have consulted with regularly, about the failure to implement, in many minds, a proper regime to ensure at least minimal rights of protection for labor organizers

and workers, and then have a judicial regime in place to address those.

And we are encouraged as you are by the actions of the recent Santos administration. We think we have an opportunity to bring to closure those outstanding issues. With respect to Panama, we have fewer than a handful of issues to be resolved, all of which are pending before their parliament.

And, as I said in my opening remarks, as they move through and conclude those, we will be prepared to bring that agreement to you—

Senator HATCH. Why don't we begin drafting now? You know most of the parameters; you know most of the issues. We would be happy to work with you, and we want to get this done.

I do not, for the life of me, understand why we cannot do all three of them. These are not that complex. I have to admit, I think the administration is being run into the ground by some of its supporters.

Mr. KIRK. Senator, I respectfully and strongly disagree with you. We think the issues on Panama and Colombia go to the core of why Americans have lost faith with our trade policy, because they do not believe we will stand up for the rights of workers, and they do not believe we will have agreements that do anything but focus on opening market share and that deal with many Americans' concerns that our trade policies create a perverse incentive for people to move jobs elsewhere.

Now, we think we can bridge this gap, and we have worked very hard to do so. But we think the correct thing to do is, since we have finished with Korea, and you are talking about losing market share, let's move on that.

We believe we are going to be in a position to move forward with Panama and Colombia really quickly as we resolve these issues.

Senator HATCH. Look, I am counting on you doing exactly that. I have great respect for you. I want to support you in every way I possibly can, and I know that you are—hopefully, you are not the one foot-dragging in this thing.

Let me just ask another question. The President's trade agenda states the goal of extending normal trade relations status to Russia this year. Now, according to the State Department, citing the International Labor Organization—I know a lot about that, having been chairman of the Labor Committee—debt bondage and forced labor are a major problem in Russia.

For example, the State Department found that an estimated 40,000 North Koreans are subjected to forced labor in Russia.

Are you concerned about labor? Specifically, if you want to get specific, in the logging industry? Now, in its determination to seek normal trade relations with Russia, did the administration take into consideration labor conditions in that country?

You seem to be so concerned about Colombia and Panama. What about Russia?

Mr. KIRK. We are concerned about Russia, and we are concerned about labor conditions everywhere. But there are two different efforts involved. One is trying to bring in one of the largest economies in the world. We have very few solutions for Russia's behav-

ior, which frustrates many American exporters right now, because they are outside of a rules-based system.

Because of our leadership, we have worked with Russia to address many of their outstanding issues that American businesses brought to us, and it looks reasonably likely that Russia will be admitted to the WTO.

So the question before this body is going to be, are we going to be the ones responsible for bringing Russia into the WTO? But by leaving Jackson-Vanik in place, then no American businesses benefit from those reduced tariffs. We would not have access to those.

Secondly, our standards for an FTA are much higher and different than they are for admission into the WTO, and that is one reason—whether it is in the case of Colombia or Korea or any of our other FTAs—they are much more encompassing and deal with labor rights, environmental standards, investor rights, as you know.

But we believe they are equally important, but think the sound policy for this Congress is to make sure American businesses are not left behind should Russia accede to the World Trade Organization later this year.

Senator HATCH. Mr. Chairman, my time is up, but it looks like a double standard to me.

The CHAIRMAN. Senator Wyden?

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

Mr. Ambassador, you and I have talked about how I believe the Internet will soon become the biggest shipping lane in the world, and that is because of the increasing role that the Internet plays in how commerce is conducted and societies are organized.

And we are already seeing countries all over the world establishing significant barriers to trade that is conducted over the Internet. As of now, China, Vietnam, and as many as 40 other countries are blocking products and trade facilitated by the Internet for what amounts to commercial or protectionist reasons.

So what I would like to do this morning is see if we can break some new ground on trade policy and ask you this. Would you agree that, for the future, binding and enforceable trade commitments on cross-border data transfers ought to be a priority? That is for future trade agreements as we go forward. We would say that protecting digital goods and our opportunities to create jobs as a result of Internet-based commerce, that that ought to be a priority for future trade agreements.

Mr. KIRK. Senator, thank you for your question. As you know, this has been a priority for our administration.

Senator WYDEN. Not getting binding and enforceable agreements. I ask the question for a reason. We have not made it a priority to get binding and enforceable agreements.

So that is my question. For the future, can we make that a priority?

Mr. KIRK. I want to make sure that I fully understand. I know you are asking a very technical question. I want to have an opportunity to examine all the elements before I make that commitment.

I would tell you this, and you know, this administration has worked very hard to make the enforcement of America's intellec-

tual property rights and copyrights act the strongest as we can in all of our agreements.

We successful concluded the negotiations on the Anti-Counterfeiting Trade Act. We successfully resolved a long-time case with the European Union over the enforcement of the Intellectual Trade Act agreements in the WTO. And as we are moving forward in our Trans-Pacific Partnership, we are looking to make sure that we have the strongest protection, particularly for digital goods.

Senator WYDEN. I am talking about keeping the Internet open.

Mr. KIRK. I understand that, Senator.

Senator WYDEN. Yes. Intellectual property—I am glad that you are focused on it. But I am talking about keeping the Internet open. And tell me, again, how far is the administration prepared to go for the future? We are not talking about unraveling anything on the books today.

I would like to see us set the bar so that, for the future, when we are talking about what I believe is going to be the shipping lane of the 21st century, that we are going to make it a priority to keep the Internet open and to secure cross-border data transfer agreements that really have some teeth in them.

Mr. KIRK. Senator, I am reasonably certain that I agree with you. But because you have asked such a technical question, I—

Senator WYDEN. I am going to quit while I am ahead. Thank you. Let me ask you a question with respect to Doha.

The committee has made clear that no Doha agreement is better than a bad one, and, obviously, we would like a good agreement passed by the Congress.

In your view, would a good Doha agreement include meaningful disciplines on fish subsidies?

Mr. KIRK. Absolutely, Senator. And this is one area where, frankly, the United States has provided very strong leadership within the WTO, a negotiating group looking at environmental and other issues on that, and we continue to press for that.

But if I might quickly just validate your point that, while we continue to lead and work for an ambitious conclusion to the Doha round, because we believe this could be an extraordinary shot to the world's economy, we adhere to our basic principle that the bill on the table does not provide that ambitious—

Senator WYDEN. Let me see if I can get one other one in. I am concerned that some of our Trans-Pacific Partnership partners may lack the capacity to implement their trade commitments in an acceptable timeframe, and it would be unacceptable, of course, for the U.S. market to remain wide open pursuant to those commitments while, for example, Vietnam struggles to implement its obligations.

I do not want to get into a situation in which we are immediately forced to pursue a dispute settlement-kind of approach.

What is the USTR proposing within the Trans-Pacific Partnership to hold countries accountable to their commitments?

Mr. KIRK. Well, one, all of the nine partners that have come together to work on what we have all agreed and hope to strive for, which is the most advanced trade agreement and building the 21st-century model, came into this with an understanding we would have to achieve at very high levels.

We understood we were asking quite a bit of Vietnam, but at least to this point, Senator, in every one of our rounds, they understand what is expected of them and have agreed that they want to get there.

Now, there may be some cases where we can help them in terms of technical capacity, but we have made it plain, and we have not backed off of that expectation, that they are going to have to run and meet a very high standard that has been set by all of the members.

Senator WYDEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Cardin?

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

Mr. Ambassador, it is a pleasure to have you again before our committee. I think we have to learn from some prior agreements. And I listened to your rationale as to why we should support Russia's entering the WTO, and I thought back and the same arguments were made when China was before us and you sought those agreements.

So I just want to go back a little bit, because I think we need to pay attention to some of the, I think, mistakes we made in previous agreements.

When we entered into the agreement with Mexico, we thought that sidebar agreements on labor and environment would work. They did not work. And now I think we are all committed to making sure we have strong labor standards and environmental standards in core agreements.

And I can tell you, I will be looking very carefully at the agreements that come forward to make sure that we are urging and have enforceable standards for the international labor standards and agreements on environment.

When I look at the accession of China to the WTO, I now look at the currency manipulation issue, and I know if I asked you a question on that, you are going to say that is Treasury, not USTR.

But I can tell you this. The manipulation of currency by China is a matter of major trade concern to this Senator, and I think to the Senate. And, yes, progress has been made, but it has been slow and it disadvantages U.S. manufacturers and producers, and it will continue to be an issue that is going to be raised.

But following up on what Senator Wyden has said on the Internet, let me carry it over to intellectual property.

When I take a look at China today, knowing how well they could enforce laws against the theft of intellectual property—whether it is creative works or whether it is manufactured goods or whether it is clothing or whether it is other ways that they have stolen our intellectual property—I know that we could have better enforcement.

And I know you are taking steps to do something about it today, but when you come to us and ask us to approve additional agreements or to act on a way in which Russia can enter the WTO, I am going to be asking you, what guarantees have you put in writing in agreements to make sure that we are protecting American manufacturers, producers, and creators of intellectual property rights?

And I am just not going to knee-jerk approve these agreements unless I know that we have effective remedies in our agreements. I remember fighting very hard to protect America's antidumping and countervailing duty laws, only to find decisions in the WTO that have made those issues much more ineffective.

So what type of priorities are you going to bring forward to this committee to make sure that we have internationally recognized remedies against countries that otherwise would steal our intellectual property rights or violate their agreements without adequate enforcement?

Mr. KIRK. Senator, in my previous response, there are two things we can do. One, we have our rights that broadly constrain and govern the activities of all members of the World Trade Organization.

First of all, we absolutely associate ourselves with your concern, and other members of the committee, about Russia's behavior.

But at the point that Russia is eligible and meets the requirements to join the WTO, the fundamental decision is, are we going to give the benefits of that to American workers?

Senator CARDIN. Just to make this clear. That is the same argument you just made previously, and you only have certain leverage times to make progress. Once they are in the WTO, our chances of getting enforceable provisions in an understanding with the United States evaporates.

Mr. KIRK. Well, there is a second, and we do not have a—we are not proposing a free trade agreement with Russia or with China.

But through our work on the Anti-Counterfeiting Trade Act, which has been very successful, we have strengthened the protection, since you asked about intellectual property rights.

Over and over, about 60 percent of the trade in intellectual property and copyrighted goods, through our strong defense and prosecution of our rights under WTO, we have enhanced that protection in the European Union. We have done so in China, through every session we have had with China. Whether it was in our Strategic Economic Dialogues, through our joint commissions on commerce and trade, and the eight face-to-face meetings between President Obama and President Hu, we have pressed the need for China to behave responsibly with respect to protection of intellectual property rights and property rights.

We have made significant progress. We got some of the strongest commitments out of President Hu's visit this year, and we are going to follow those. For the first time, China committed that they are going to put money into the hands of their government officials to buy legal-sale software. They have committed that they are going to audit that for the first time. And we have spent a lot of time with your businesses and others and understand the loss to American manufacturers and workers from those pirated and copyrighted goods. But we have to be vigilant in engaging China on that and seeking the protection of our rights, and we will do that with China.

Should Russia become a member of the WTO, we will do the same with them as well.

Senator CARDIN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Thune, you are next.

Senator THUNE. Thank you, Mr. Chairman.

Ambassador Kirk, thank you for being with us today. And I am sure you have heard it already from many of my colleagues, but there is a great concern about the slow rate at which these trade agreements are being submitted to the Congress and what is happening in the meantime.

If you look at what we have seen, the EU and South Korea free trade agreement goes into effect July of this year. Since the U.S.-Colombia FTA was signed, Columbia has active agreements with Canada, Chile, the EU, Brazil, and Argentina, and, as a result of that, farm exports in Colombia fell by 48 percent in 2009 and another 45 percent in 2010.

The point is, every day that passes, we are losing market share in these countries, and our farmers, ranchers, and small business owners are paying a price for these lost markets. And the Chamber of Commerce has indicated that we could lose 380,000 jobs if we fail to implement the pending free trade agreements.

So, you have heard it from everybody else, but we have to just get this done. And it strikes me that the President, although, in his rhetoric, has been very supportive of these free trade agreements, there just has not been any action.

And I guess my question for you is, what changes is the President seeking in these agreements, and do you believe that renegotiating agreements in this manner will damage our ability to negotiate future free trade agreements? I think most people would say that a deal with the United States ought to be a deal.

Mr. KIRK. Senator, first of all, I agree with you. And, as I have said earlier, we absolutely share the commitment, I think, of every member of this committee, and I would say most of the members of Congress, that we want to do everything we can to open up markets, advance America's interests around the world.

But when we came into this job, when I was here 2 years ago, I was very honest with this committee and told you we thought we had a broader responsibility than just coming in and picking up the three pending free trade agreements and saying, find a way to get them passed.

We were very concerned that we were operating in an environment in which an overwhelming majority of Americans does not believe in the wisdom of our trade policy, and you have more Americans than not, by a huge margin, who believe that we have made a tradeoff, frankly, of jobs for cheaper clothes and food, and they do not believe in that.

So what we have sought to do was not just come up with a way forward, which we had on Korea and Panama and Colombia, but do so in a way that we begin to try to restore faith with the American public in the wisdom of what we are doing, because we cannot grow this economy the way we want to in the future if we are not involved in global trade.

So we have no disagreement with you there, but we think the time that we have invested in proving that we would stand up for workers' rights has helped to put us in the position where we are stronger today.

We believe working with the Congress to keep faith with American workers and approving Trade Adjustment Assistance as you did in 2007 is part of the reason why we are here today.

So my only response to you is that we want to do that, but we cannot just look at one side of the equation. I think we have to treat this holistically, and we are moving forward.

I have outlined the issues that we have to resolve with Panama and Columbia. I think we are going to have those results sooner than later. We have set a goal of having them done this year.

I have heard from you. You would like to move all three of them together. But for the same reasons many of you have articulated, we should not wait on Panama and Colombia. I would suggest to you that Korea is ready. Let's get it going.

We will be moving. We will be wrapping up those negotiations with Panama and Colombia, and, as they are ready, we will move them forward.

But as we do that, let us also make sure that we renew Trade Adjustment Assistance. And for those who want to help Colombia, Colombia is being harmed every day that we allow the Andean Trade Preferences Act to sit on the sidelines and not be approved.

So there are a number of things that we can do to help out Colombia while we conclude our talks with the Santos administration.

Senator THUNE. There was a March 2nd letter in which six former trade reps and other former officials stated that U.S. exports of corn, wheat, and soybeans to Colombia dropped from 1.1 billion in 2008 to 343 million in 2010, which represents a 68-percent decline.

And, as I said before, we are seeing Colombia reaching out to China, Brazil, the EU, and others for trade. It seems to me at least that, when you talk about public support in this country not being there for these agreements, I know where I come from, they are. Our economy depends upon being able to export things that we raise and grow to other countries around the world.

So, if we do not get this done, how long do you think it is going to take us to get that 1.1-billion baseline back to where it was in 2008, and how much is the total loss to U.S. exporters from delay in presenting these agreements to Congress?

Mr. KIRK. Well, we do not want to see any loss, and let me give you the other side of the story. Our ag exports are at the highest level they have been except for one year. At \$119 billion, they are up 18 percent.

Believe me, we care very much about the dependency on America's farmers and ranchers on export markets, and we have worked closely with Secretary Vilsack at the Department of Agriculture and Secretary Locke to address many of those concerns. We will continue to do so.

I want to make it plain. We do not disagree with your goal. We do believe there is a right way to get there, and there are certain core values that we have to address and have the American public believe that we will not compromise on.

I think we are headed there. We share Chairman Baucus's—we share his sense of the opportunity that we have presented to us with the Santos administration, and I believe we are closer than many of you think we are to having a final resolution of these.

The CHAIRMAN. Thank you very much.
Senator Nelson, you are next.

Senator NELSON. Thank you, Mayor Kirk, for your long-time public service, as one of the most outstanding mayors in the country, and now for your continued service.

I want to add my comments to the chairman's comments. I support the Colombia Free Trade Act. I have been there. I have been there in the capacity as part of the Intel Committee, as well as the Armed Services Committee.

I visited with then Defense Minister Santos, when Colombia pulled off one of the most magnificent ruses of all time that allowed us to get three Americans out of the jungles, having been held by the FARC for a half a dozen years, and now the defense minister is now president.

This is good for our country, and it is certainly good for my State, because we have a great deal of trade, both ways with Colombia. The same with Panama as well. And I cannot quite understand why the administration would not heed my pleas that a minimal amount of money go into the Corps of Engineers' request for funds for the deepening of channels of some of our east coast ports, because, after I left President Santos and Colombia, I went to Panama and, of course, I went out there to see the expansion of the Panama Canal.

And we are going to have these big ships coming through—they think in 2014, I think it will be 2015—that will not have to go to the west coast, but will be able to unload on the east coast because they will be able to get through.

These are container ships that have twice the number of containers of existing ships that can come through the existing Panama Canal. And we need to simply make our east coast ports Panamax-capable.

So, since this is going to have a lot to do with trade and, if the rumors are correct, may have a lot to do with your future position in the administration, we have to get the administration ready to do this, without me having to get on bended knee and clasp my hands and beg and beg and beg for Army Corps of Engineers money to deepen the channels.

You do not need to comment on it. I just want to get it out there. But I support these trade agreements.

Now, this I do not understand. The President has already issued a proclamation with regard to the Bahrain free trade agreement, which would affect an amendment that is going to help yarn coming in, and it is going to directly affect one of my industries up in the panhandle of Florida, Chipley, FL.

Has your initial determination that this modification would be good for the U.S., has it changed?

Mr. KIRK. Senator, I will be honest. I will have to look more deeply into that. Generally, though, it is other agencies. The ITC/ITA will make those investigations. Then they will come to us to make a recommendation to the President.

Usually they do an exhaustive amount of research of the impact of bringing in these yarns on components on domestic industry, but I am not quite familiar with this one specific case. If I can follow up and get the details on it, I will be happy to answer that.

Senator NELSON. You ought to get on your people, because we told your folks that I was going to bring this up to you today.

Mr. KIRK. I will.

Senator NELSON. And you have indicated in a letter to me, obviously written by your folks, which is fine, that you all were working on this, and the president has already made a proclamation, and the question is, when is it going to get implemented? So that is the question.

Mr. KIRK. I will follow up on that.

Senator, if I might, to your comments on the Panama Canal. There was a number—and I have visited your State a number of times. Those ports from Tampa or Orlando, they are—many of them are using funds, if I might make—I cannot speak for the corps, but they are using funds that were provided through the Recovery Act for many of our ports in Florida to be ready to handle those wider cargo ships.

Senator Cardin is not here, but in particular, I know they are doing the same thing at the Port of Baltimore. So we do not often talk about some of the good that has come from the Recovery Act.

Senator NELSON. Right. But they have the deep channel. What we have in our Florida ports is a depth of about 42 feet. For the big Panamax ships, you have to bring that down to 50 feet. And all we need is—we will advance the money down in Florida. All we need is—and this has already been authorized for the Corps of Engineers. We just need a de minimis amount of money put in for a new start in appropriations.

And I'll be doggone, I begged Jo-Ellen Darcy, the assistant secretary, to do this for a couple of our ports, and it was not put in the President's budget. I am mystified as to why, because we have to get ready for these ships that they say are coming in 2014. We have to get the dredging done now.

The CHAIRMAN. Thank you, Senator.

Senator Coburn?

Senator COBURN. Thank you. Ambassador Kirk, welcome. Good to talk with you on the phone the other day.

The first thing, I just want you to know that I very much align with what Senator Hatch said on the agreements. I have no intention of giving a vote for the South Korean trade agreement unless the other two are on track to be voted in very short term. So you will not have my vote for that trade agreement unless those other two are moving.

The second thing is, I want to relate a story to you, because it goes along with what Senator Cardin had to say and, also, Senator Hatch had to say in terms of Russia coming into the WTO.

Myself, Senator Schumer, and Senator Graham met with the secretary of commerce, your equivalent, essentially, or soon to be equivalent, 3 years ago, and when I was questioning him on intellectual property, he told me, in no uncertain terms, China had no intention of honoring WTO's agreements on intellectual property, because they were a developing country.

Statement, straight out of the book. And I believe him, because I believe their actions have been just that. We lose tens of billions of dollars a year to thievery of our intellectual property to China,

every year. And what I would like to know is what exactly are we doing about it.

What are we doing about it at every level, not an agreement between the President and President Hu. What do we see in a manifest that says there is a change in honoring WTO's agreements on intellectual property? Because I have not seen it. Most American software companies have not seen it, and most other American manufacturers, whether it is through reverse engineering of patented items and then producing and competing with us on our intellectual property, have not seen it.

And when we have people in the WTO who have no intention of honoring their agreements, what makes us think we can trust an agreement between President Obama and President Hu on something that they have flatly said they do not intend to honor?

Mr. KIRK. Well, we utilize every tool and resource that we have to enforce intellectual property rights. We have taken China to cases since our administration has been in, one. We have highlighted our willingness to use enforcement tools, and we have utilized them. We have won a number of important cases against China on American copyright issues that were very important, critical issues, within the first 12 months of our being in office. And we continue to engage them, whether it is through bilateral meetings at the presidential level, through the Strategic Economic Dialogue, through the JCCT, and every other forum, that they are going to have conform their behavior.

We are not satisfied with China's pace of progress on this, and, believe me, we meet with industry representatives from software, hardware, manufacturing, biotech, on a weekly/daily basis to work out an appropriate strategy for them. But it is too important to just say we are going to walk away from the table.

We think getting China to behave in a more responsible manner not only helps American industries, but China is begrudgingly beginning to understand that it is going to help them attract some of the innovative businesses that they want, and see the development of their own innovative industries.

But I can assure you, Senator, we use every available venue, every available tool that we have at our disposal to get China to behave differently.

Senator COBURN. Well, this is one Senator who thinks we should quit hitting them with a flyswatter and start hitting them with a hammer. And if, in fact, they do not change their behavior on intellectual property, I am going to be of the mind to try to do just that through the Congress.

So the signal needs to be sent that their response thus far is highly inadequate. It is thievery. It is state thievery what China is doing to American intellectual property today, and it cannot be said to be any less than that, and they admit they plan on stealing it.

So, when you have somebody in the WTO who admits they have a policy of stealing our intellectual property, and we are working through means at bureaucratic levels to change that, I think what we need is a different approach, and I think they need to know we mean business.

I would like to see us develop an approach that is much stronger, not on the individual basis, something that might cause some significant pain, although we find ourselves now with relatively little ability to do that, since they hold such a high percentage of our debt.

Mr. KIRK. Again, Senator, I would be happy to follow up with you, because I think this administration, more so than any in recent memory, has demonstrated more resolve to take on China in more forms. We did it on the 421 case with tires. We are doing it with the recent 301 case. And we have gotten their attention. They understand that. But I would welcome the opportunity to follow up with you and go through in detail all that we are doing.

Senator COBURN. I thank you.

The CHAIRMAN. Thank you, Senator.

Senator Grassley?

Senator GRASSLEY. Thank you very much for coming, Ambassador. You have had the privilege to witness firsthand traveling in my State of Iowa and participating in my ambassador's tour, how important trade is for my State, and I thank you for participating in that.

It has already been mentioned, but I wanted to just reiterate my support for all three free trade agreements.

If the goal under the National Export Initiative is to double exports, I cannot think of a better way of doing it than passing those three agreements.

Farm groups, including the Farm Bureau, have spoken about how it represents \$3 billion of additional agricultural exports.

I am very encouraged by your testimony indicating that Korea is ready to go, and I would just respond by saying that we here are as well, and you have heard very positive comments about that from many members of this committee.

In regard to Japan and the Trans-Pacific Partnership, I would like to thank you for mentioning in your testimony the importance of the ongoing negotiations on that agreement. I would like to highlight a few points from a letter sent yesterday to President Obama regarding TPP. I was glad to join this letter, sent by Senator Johanns and 26 of my colleagues.

And, if that letter has not been put in the record, I would like to put it in the record, Mr. Chairman.

[The letter appears in the appendix on p. 48.]

Senator GRASSLEY. As you know, Japan has placed overly strict standards on U.S. beef imports since 2003 because of BSE. While this incident was serious, it is not indicative of U.S. beef.

American farmers and ranchers produce safe and high quality agricultural products, probably as safe as any place in the world.

As such, it is important that Japan recognize this fact and eliminate their restrictions placed on American beef over 20 months of age. If Japan wants to pursue more transparent trade relations with the United States, it is essential that they follow science based on the OIE recommendations and allow full beef imports from the United States.

I have serious concerns that any potential TPP agreement that includes Japan without a commitment to fully resolve this beef issue can unfairly harm U.S. producers.

So, Mr. Ambassador, could you talk about what your administration and you personally are doing to alleviate this problem and what specifically U.S. strategy is on allowing Japan to enter the TPP negotiations?

Mr. KIRK. Senator, thanks for your kind words, and thank you for the invitation to join you in Iowa for your ambassador's tour last year.

For you, and many members of the committee, I understand the beef and agricultural issues are important.

Let me give you assurance. Our strategy on getting beef in that market is not different as it relates to Korea or Japan or China.

As many of you know, because you have discrete industries, we have been effectively locked out of a lot of the Asian markets since the BSE scare. Our beef is safe. It has been scientifically proven to be safe. It meets international health standards. And our goal in every case, whether it is Korea, whether it is China, whether it is Taiwan, whether it is Japan, is to have them comply with those international standards.

Senator, if I can be candid, we are exceptionally frustrated with the slow pace of compliance in many of these markets.

You may not know, we have had probably not a month go by for the last 6 months that either Secretary Vilsack or someone from our Ag team has not been in one of these countries, negotiating with them, trying to gain their compliance. We will continue to do that.

Now, separately, let me say we absolutely welcome the announcement by Prime Minister Kan at the APEC summit last year of Japan's interest in joining TPP ultimately. We think the benefit of this Trans-Pacific Partnership will be realized when, in fact, it does become the free trade agreement of those Asia-Pacific economies.

But we have been very honest with Japan that this is an issue we would like to see them address and resolve, and we are not going to wait on their decision whether or not they are, in fact, going to try to engage us on TPP to try to gain their compliance on beef.

Senator GRASSLEY. My last question would be about pork in the country of Russia and Russia unilaterally reducing import quotas in non-science-based sanitary and phytosanitary restrictions on pork, because it has reduced U.S. exports to Russia by nearly 60 percent.

Could you provide an update on how the administration is addressing the sanitary and phytosanitary issues in Russia's WTO accession negotiations?

Mr. KIRK. Well, specifically, my answer would be the same, Senator. As you know, we worked very hard with their ambassador, even with President Medvedev when he met with President Obama last year, to open back up on poultry. And the same, we want them to comply with those standards. We have addressed as many of those issues as we could in resolving some of our bilateral issues.

And I want to make it plain. We absolutely share many of your anxieties about Russia coming into the WTO, but the reality is, unless we get them into a rules-based environment, our ability to

seek redress on many of these concerns is limited, because they are outside of the WTO.

And, in a broader case, as you know, Senator, one thing we have done because of the success we have had with the 301 report that Congress asked us to deliver to you each March on enforcing intellectual property rights in our FTAs, we are now doing the same report to you on countries' compliance with sanitary and phytosanitary standards, and that has become another tool, and you will be receiving that in the next several weeks.

The CHAIRMAN. Thank you, Senator, very much.
Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Ambassador, good to see you. Thank you for your briefing today. I wanted to ask you about the WTO decision that ruled in favor of U.S. claimants that Airbus had been receiving illegal subsidies from the European government. They found roughly 20 billion in illegal actionable items, including about 4 billion in launch aid subsidies.

So it is my understanding now that the final appellate decision in the U.S. case against the EC is scheduled to be rendered this spring.

So following that, if it is upheld, can you outline the next steps and actions the USTR intends to take to ensure that the EC complies with the decision? Because there is so much at stake here as it relates to jobs and job impact.

And, obviously, the precedent it sets—I think this is probably one of the largest decisions we have been involved in in a long time and, obviously, ruled in the U.S.'s favor.

How do we ensure the implementation?

Mr. KIRK. Well, it is the largest, and it is the most complex. And, Senator, I thank you for your consistent involvement and assistance in helping us work through this.

We are awaiting the final decision of the appellate body, and, assuming that the European Union does an appeal, then they will either have—I forget the exact timetable—they have a reasonably short period of time to decide that they are going to conform their behavior to the appellate body's ruling that the assistance they have given, most of the launch aid that they have given to the Airbus, the WTO found to be noncompliant.

They have the opportunity to comply, and, if they do not, then we have several remedies that are available to us in terms of levying retaliatory action. But we are not quite there yet, and as soon as we get that final opinion and know whether, in fact, they are going to appeal or not, then we will be consulting with stakeholders on the appropriate way forward.

But this was an issue we have expended considerable resources on. It is one we take seriously because it goes to the core. One of our strongest manufacturing industries and hundreds of thousands of jobs in this case, and we will do everything we can to protect those.

Senator CANTWELL. I assume that means an aggressive response.

Mr. KIRK. Yes, ma'am.

Senator CANTWELL. Thank you. I saw online at—actually, it was a Texas publication, but citing your office, saying that during this

time period, we probably lost something like 60,000 aerospace jobs, and they cited the USTR report. I do not know if it is true or not.

But during this time period, there has been significant impact in the industry. So I think it is very important that the United States be aggressive when the WTO rules and that we do get some relief in this issue. So I thank you for that.

I wanted to ask you about Korea. I had to step out for a markup in another committee. There is a lot of dialogue about the various trade agreements and the proposed timeframe.

I am concerned, because the European Union-Korea free trade agreement goes into effect in July of this year, and so, obviously, that could put the U.S. at a disadvantage as it relates to access to markets.

So what are you thinking the timing is for us in getting this agreement implemented and the timeframe for submitting it to Congress?

Mr. KIRK. Senator, yours may not be as much a question as it is an answer, and you may have missed it. We sent a letter to the heads of our committees of jurisdiction, both Senate Finance and Ways and Means, earlier this week saying we are ready to begin work with them on structuring the text so that we can move forward immediately.

And I am sure you have heard the comments of many members of your committee. There are some who believe we should not move forward with Korea until we are ready to go on Panama and Colombia. We think the wiser course of action, since Korea is ready, is for us to move forward. We have heard the strong sentiments of this committee and others that you want us to move forward as aggressively with Panama and Colombia, and we are going to do that.

But for reasons that you outlined, it is important that we not lose share in Korea. Panama and Colombia are very important allies. They are good neighbors. We are making good progress. But Korea represents the largest market opportunity.

Korea is more economically compelling than the last nine free trade agreements the United States has done combined. We are talking \$10 billion in exports and goods, as estimated by the ITC, over 70,000 jobs, and since we have talked a lot about lost markets in these others, we were the number one exporter into Korea 4 years ago. Today we are number four.

We do not want to see that change. We think this is an extraordinary opportunity. We would like to work with the committee to move forward on that now and see it passed as soon as possible.

Senator CANTWELL. I know many members have worked and worked on these issues, and it does seem that it is a little more ready to go.

I would just say, on the Colombian issue, just from one Senator's perspective, the Colombian government needs to do something to guarantee the protection of their judiciary. Judges cannot ride back and forth to work on buses unprotected or unaccessed. We have a problem there with what has happened to labor leaders, and, to me, having a judicial system that is on par with the U.S. and other countries is very important to making sure that there is a fair system of the law in Colombia.

So, thank you very much.

The CHAIRMAN. Senator Stabenow?

Senator STABENOW. Thank you very much. I appreciate it. And welcome, it is good to see you again.

As you can tell, I think, in the questioning, that we have different views on how to proceed about opening markets and trade agreements.

I think there are differences in the committee. And I just want to note that for me, I would thank you for taking the time necessary to address the auto situation with Korea. There was a lot of pressure on the administration to move more quickly in a way that would have been very detrimental to millions of jobs in America, with the American manufacturing in the auto industry. And so I want to thank you for resisting the pressure and taking the time to address some very significant issues.

I think overall, what I have heard and I think most of us would come together on, relates to the enforcement end. We may disagree on exactly whether or not a trade agreement is put together correctly, whether or not it addresses all of the issues that need to be addressed, but we all want to make sure that markets are open for American businesses, American farmers.

We want to make sure that we enforce our trade agreements, that other countries are not stealing our ideas, most notably, China, but certainly other places.

So I would like to ask you, Mr. Ambassador, on the trade enforcement end, what we can be doing more to support your efforts and to be more aggressive in making sure other countries are following the rules.

And I do also want to thank you for the WTO cases you are bringing against China. I think that is very significant in what you are doing. But, frankly, we need to be moving even faster, even though you have been significantly active in this area.

I am concerned, when we look at China, for instance, and what they propose of an indigenous innovation policy, trying to block American companies from selling to their government, which controls much of their economy.

Senator Graham and I introduced legislation, the China Fair Trade Act, that would level the playing field there as it relates to China opening their doors and, also, signing what is the government procurement agreement.

China came into the WTO over 10 years ago now. They were supposed to sign this agreement to opening up their procurement through their government process, but have not done it, and I am wondering if the USTR has been moving or what you have been doing toward getting the Chinese to sign what is a very important agreement under the WTO to open up business opportunities for our businesses?

Mr. KIRK. Senator, first of all, thank you for your remarks about our work on the Korea free trade agreement. And the way we did that is the same template, and all that we are asking is for the same latitude to do that on Panama and Colombia—that stays on the table—to take advantage of these strong relationships as we have with Korea and Panama and Colombia and, frankly, get a better deal, and that is what our goal is.

On enforcement, I am very proud of the track record that we have, and we are getting some progress on China, because as you know, when we filed that 421 case, for example, on the safeguards, we were absolutely pilloried in the press and by many in this body, because they thought we were going to spark a trade war.

But this administration acted where no other administration had in seven previous cases, where an independent agency had found harm to American industries and workers. We were the first to stand up and hold China's feet to the fire.

Because of that, we are now beginning to see some movement on some of the issues you mentioned, and, specifically, the issue of indigenous innovation is one that concerns us greatly.

We got a commitment at this year's JCCT that China would back off a practice they had of saying you could only compete or apply for certain products if that product was made, manufactured, copy-righted in China. It was a back-door way to force many of our companies to hand over their intellectual property. We got them to drop that requirement and move away from that.

Secondly, you referenced their lack of movement on their accession and acceptance of the government procurement act. We now have an agreement with them that they will submit a revised offer this year; more importantly, they are going to have that cover many of their sub-central governments because, as you know, most of the procurement opportunities in China, because of their economy, are still controlled by the government.

So we are not done. We are still going to watch this very carefully. But we are encouraged that, if we can see follow-through on those two, that will go a long way to addressing two of our major concerns.

Senator STABENOW. Thank you. I would just say, as my time is up, that I would encourage you in working with Treasury to focus on currency manipulation, which is costing us jobs, on the other areas, where they are blocking through tariff or non-tariff situations, whether it is agricultural products getting in because of artificial pesticide standards or other kinds of artificial barriers, or whether it is manufacturing.

To me, where we can come together is on making sure the doors are open, the rules are fair, and that we are fighting for American jobs, because, in the end, that is really what this is about.

Thank you.

Senator HATCH [presiding]. Thank you.

Senator Roberts?

Senator ROBERTS. Well, I thank the ranking member and chairman for the time.

Ambassador Kirk, thank you for coming. You are very articulate, as always. Ambassador for trade and working very hard, and I appreciate that very much.

I think pretty much everything has been said, but I will probably say it again.

Right behind you is Ambassador Silva from Colombia, about two back. He is a veteran ambassador. I think you know him well. And he came to me with his able assistant, and knowing that I had known the previous ambassador and I had worked very hard to try to get a trade agreement with Colombia when all that talk was

started 5 years ago, and they had been successful with the FARC and the paramilitary.

I even know that because my daughter was a part of the World Food Program that got stuck between the paramilitary and the FARC. I did not know she was there. I would not have permitted her to go there had I known that. But such are daughters.

At any rate, I did not know what to tell him. I was embarrassed. I am embarrassed now, him sitting right behind you, working for 5 years to get this done. Win-win situation. Everybody said it was a win-win situation. Well, I think I can see the reason. I think Ms. Cantwell pretty well put her finger on it. We want to make sure that somehow the trucks are on a comparable basis with trucks in the United States.

I guess that is what she said, and then something about labor. I do not know why we do not do that in the International Labor Organization. You mentioned, sir, that rather than pushing for fast track for all three trade agreements—and thank you for sending the text up to this committee, and I hope we can get it done—but what do I tell the ambassador sitting behind you? We are going to do it for South Korea but not Panama and, more especially, Colombia after all the hard work?

I can tell you who does not care too much about the labor concerns, although I understand the labor concerns. But again, I think they could be addressed in another venue. And the environmental concerns, let us not forget about that. But that is Brazil and their regional trade agreement, the Mercosur agreement—I hope I am pronouncing that right—Argentina, Paraguay, Uruguay. Venezuela has signed a membership agreement. I doubt if they get in. I hope they do not get in. Bolivia, Chile, Ecuador, Peru, and Colombia.

And the ambassador pointed out to me that they used to import in regards to grain—feed, wheat, Kansas wheat—it was about somewhere between 42 and 46 percent, something in that neighborhood; now it is down to 20, headed toward 16.

And I can tell you that, basically, Canada and Argentina are supplying the majority of those foodstuffs as opposed to Kansas and the United States.

I just met with 105 presidents of the Kansas Farm Bureau last night. They wanted to know what is going to happen with the three trade agreements. And I said, “Well, I hope we can do one, but it does not look like we can do the other two.”

Why? You pretty well answered that question when you started off, when you said, you know, you said, rather than pushing for fast track for all three of the trade agreements, you were trying to influence public opinion.

What on earth have you said and can you really recognize or can you really determine any change in opinion with organized labor or some of the environmental groups in regard to their opposition, almost to any trade agreement, but more especially to Colombia? Have we changed public opinion about that, especially when it was a win-win?

Have we done that? I mean, what are we doing to change public opinion? If you ask the public's opinion—and I did not even give you a chance to answer, and I apologize. I will slow down here in a minute.

If you asked the question, "Would you support a trade agreement we have been working on for 5 years with Colombia to offset any possible relationship that could develop between the leadership of Colombia and Hugo Chavez, would you be for it?" I think probably you get about 75 percent who say, "Well, shucks yes. My word, why wouldn't we want to do that?" Or, "Do you think that we should help the one country of the 31 that are members of the southern command in terms of our national security who are American allies and have come through a very, very difficult time to achieve stability, and isn't it time to pass a trade agreement we have been working on for 5 years?" It is a win-win situation.

Now, that is my question and that is how I would pose it, and I think you would get an 80- or 90-percent approval.

So I guess my question to you is, what have we done from the standpoint of alleviating the concern of Americans for so-called cheap products coming into the United States and that concern, which I understand, and the need to go ahead and pass this Colombian trade agreement, along with the situation with Korea?

Mr. KIRK. Senator, you have asked me a lot of questions. Coming from a State like Texas, believe me, I share your concern, your sense of urgency. We have a trade policy that lets us take advantage of these opportunities, not move market share.

But as I said to my good friend Sam Johnson when I was in the House Ways and Means Committee, I have not just been in Texas and Kansas. I have been in Detroit. I have been in Pittsburgh. I have been in the Carolinas, and I have asked the American public that question, and you get different answers. And I know people feel very strongly about it in Kansas, but my job is to make sure that we get them to feeling a little bit better about it or less afraid of it in places like Detroit and Pittsburgh and the Carolinas so we can move forward.

What the Obama administration has said from the very beginning is, it was not just enough to come and go conclude agreements just because we think we can conclude them. We have a responsibility to listen to all Americans' concerns, both positive and negative, and honestly try to address them. We have done that by focusing more on enforcement. We have done that by making sure that we would address those issues that go to our core values.

That is what allowed us to move a Korea free trade agreement that was otherwise stalled, and we think that is what is going to allow us to move forward with Panama and Colombia.

We absolutely have given you a commitment that we are going to work to resolve those. We are encouraged by the actions we have seen by President Santos, and I understand your comments about Brazil. But Americans expect more from us than maybe some of these other countries do, and this is important to the Obama administration. We think it is important to the American public.

We think we have a discrete opportunity window to work with the Santos administration to do many things they have told us that they think it is in their interest to do.

And, if we can do that and link that to our approval of the free trade agreement, we think that is the most responsible thing to do, and we are moving just as quickly as we can to try to get that done.

Senator ROBERTS. Mr. Chairman, I would only observe that, if I were in Colombia's shoes and I had the United States of America trying to determine my labor policies and my environmental policies and hook them with a trade agreement, I would find another trade partner, and I think that is exactly what has happened.

I do not know what kind of public opinion effort that you can launch to have all 50 States say, yes, we want this agreement, but I tell you what, when the ambassador came to meet with me, I was embarrassed.

We just have a difference of opinion. That is all.

Senator HATCH. Thank you, Senator.

Senator Carper?

Senator CARPER. Thank you, Mr. Chairman.

Ambassador, welcome. It is great to see you.

I want to follow up just briefly on the line of—one of the many lines of questioning from Senator Roberts. But the one I want to follow up deals with Colombia, and it deals with our concerns about people in that country, leaders in that country, labor leaders particularly, being targeted for assassination.

It is something I have been concerned about, a lot of us have been concerned about. As we enter into an agreement or think about a trade agreement with that country, we want to make sure that no particular part of that country's leadership is being targeted. That includes labor leaders.

I read a piece recently, I think last week, in the news clips that come to me, about the murder rate of labor activists in Colombia, and the information that I seem to have recalled was that the murder rate has dropped, and it is actually now below that of the Colombia populous as a whole.

I just asked my staff, I said, "Just double-check that and give me a source on that," and apparently we have tracked it down most recently from the *New York Times*. I do not know if it is last week, this week, or not.

But I think we would all say one murder is one too many, but my sense is that there has been a change in mindset, there has been a change with enforcement, and it is better than it was.

Is it perfect? No. And I always like to say, if it is not perfect, make it better. Obviously, there is work still to be done.

But if what the *New York Times* is reporting, that the murder rate of labor activists has fallen below that of the Colombian populous as a whole, that is progress, that is encouragement.

Would you just comment briefly on that? And then I want to talk with you about chickens.

Mr. KIRK. Senator, we do believe they have made great progress under President Uribe, and, again, we think President Santos is making great progress. He has made a very strong commitment to improving labor standards, addressing some long-term structural issues. He appointed as his vice president a very strongly recognized figure in the labor community, and I cannot emphasize enough what a great opportunity and window we think we have to work with the Santos administration to address not—we are not trying, and I want to make it plain, we are not trying to impose the United States' labor and environmental principles on Colombia, but there are some internationally accepted rights that we think

we have an opportunity to address, and we think we have a discrete window of time that we can accomplish that in with the leadership of this administration.

Senator CARPER. Thank you. Back to Delaware. All politics is local, and the letter "C" figures large in the State of Delaware, the letter "C." Our congressional delegation, Coons—Chris Coons—Carney over in the House of Representatives, Carper. There is the three of us.

The letter "C" defines what our economy has been for years. In the beginning, corn. We raised corn and we fed chickens. We got into the chemicals business 200 years ago. Corporations, we have half of the New York Stock Exchange incorporated in Delaware. Cars, credit cards, cargo aircraft, the list goes on and on.

The biggest part of our economy, our ag economy, is chickens. Eighty percent of our ag economy in Delaware, poultry. The largest chicken-raising county in America, Sussex County, Delaware. The largest soybean-raising county in America, Sussex County, Delaware. It is a big deal for us.

You know we talked about this before. Many thanks for helping to back the Russians off so that they would allow American poultry to be sold again in Russia. One out of every five chickens raised in America goes to somebody else's pot in another country. We want to make sure that they can enjoy a delicious, healthy chicken.

Our friends in China responded, two chickens in every pot in China and Russia and other places as well. God bless the Russians; they like dark meat, we like white meat. It is a marriage made in heaven.

In China, we have gotten into this back and forth with China, as you know. We think they are dumping their tires in this country. We imposed a tariff on their tires a couple years ago.

They responded by imposing a tariff on poultry. We basically indicate that we are going to back off on the—phase out the tariff on their tires. They made permanent their tariff on our poultry.

So my question is, you have indicated that your office is trying to determine whether to appeal the imposition of these duties before the WTO gets to say whether or not they are too extensive.

Just share with us, if you will, where your folks are in your shop and the decision-making process on whether or not to appeal these duties to the WTO.

Mr. KIRK. On the case of poultry, we did appeal those. We were not successful, but the WTO found, because we did work with Congress—if you recall, there was a rider put on the appropriations bill in 2009 that blocked the Department of Agriculture study of the safety of Chinese chickens—we were able to resolve that. So the WTO found no basis, fortunately, for China imposing any penalties. Now, we still believe China is unfairly exercising those trade remedies through those countervailing duties, and we are studying that.

It is our practice and custom not to comment any further in terms of whether we would pursue additional strategies within the WTO, but I do understand our ambassador who is handling this is going to be meeting perhaps with you and Senator Coons and others this afternoon, and we can go into a little more detail on that then.

Senator CARPER. We will look forward to it. Thanks very much for being here. Thanks for the good work you are doing, and your team, as well.

Mr. KIRK. Thank you.

Senator CARPER. Thanks.

Senator SNOWE. Thank you, Mr. Chairman.

And welcome, Ambassador Kirk. Thank you very much for being here today.

I wanted to focus in on the whole currency manipulation issue, because it truly has devastated so many industries in my State and across the country, with the undervaluation of the currency by China specifically. And since it joined the WTO, we have lost more than 2.1 million jobs in the country and 10,000 jobs in the State of Maine.

And I have been concerned with successive administrations, both Democratic and Republican, that have not been willing to investigate the manipulation of currency and the undervaluation of the currency by the Chinese government. And it is clearly one significant obstacle to the President's agenda when it comes to exports, and it is a significant obstacle in preserving critical jobs in my State of Maine and, of course, across this country.

In fact, just yesterday, there was an article in the *Bangor Daily News*, talking about "East Millinocket opts to continue mill tax talks." There are two mills that have a combination of 650 jobs. One is closed that they are trying to reopen to be competitive, and the other they are trying to keep open, and now the potential new owners are asking for tax breaks worth \$48 million in order to make this kind of an investment.

That is where they are, and these companies are directly affected by what China does with respect to its policy.

So I want to get your views on this, because I noticed that there is no mention of China's currency practices in the 2011 trade agenda. Is there any reason for that? Because clearly this is a major issue that we ought to be addressing as a country, given the fact that we are losing jobs as a result of it.

Mr. KIRK. Senator, we share your concern. It is not expressly mentioned in our 2011 trade policy, as you know and others have noted. President Obama and Secretary Geithner—Treasury more directly has responsibility for making that determination in terms of the valuation of the currency.

But I think you know it is an issue that President Obama has directly pressed with President Hu on a number of occasions and made a strong case, along with other leaders, particularly in the G-20 forum and other forums, that it would not only be in the world's interest, but China's, to allow their currency to float to a more normal level. But I would have to defer to them on that.

Let me say broader, our belief at USTR is that we have to be as concerned about other elements of China's policy. We take very seriously and share your concerns about the currency, but you missed some of the conversation one of your other colleagues raised about their policies on indigenous innovation, the application of their VAT policies, and their lack of enforcement and recognition of intellectual property rights and copyrights.

Those are areas that are more closely aligned with the work that we do at USTR, and we think it is critically important that we have a holistic approach to dealing with China's industrial and economic policy.

And we do believe we are making progress in that area in terms of some of the commitments and some of the results that we have seen through both the Strategic Economic Dialogue and our JCCT.

But we share your concern, and we are going to continue to press China both on currency, but we are also going to continue to press them on enforcement of intellectual property rights and having an industrial policy, frankly, that just gets government's thumb off the scale.

Senator SNOWE. I think it is critical. Frankly, I have been part of many hearings in this committee, and we have talked about these issues with various secretaries and ambassadors, obviously to Trade, as a trade representative, and we have not made any progress.

But what I am seeing is the continuation of decimating our industries in, certainly, Maine, and just barely surviving and trying to be competitive. I am trying to say they are under-valuing their currency by more than 40 percent.

That is why Senator Sherrod Brown and I have introduced legislation so that the Commerce Department will have a lower threshold on which to investigate these trade-distorting practices of currency manipulation, and that can be a means for imposing counter-vailing duties on those imports that directly benefit from that policy.

I think that that is critically important. I think we have to be aggressive about it. Even Chairman Bernanke took the position that China's currency manipulation provides, and I quote, "an effective subsidy for Chinese exporters."

Do you agree with that statement?

Mr. KIRK. I have not seen that particular statement, but I think the administration has spoken to our concern over the operation of their currency and, in fact, the effect that it has on both China's exports, with more damaging effects it has on our ability to get into that market.

Senator SNOWE. So, within your jurisdiction of negotiating trade agreements, would you be willing to support a requirement that is a precondition to entering into any new trade agreement, that the President certify that there has been no governmental currency manipulation or intervention?

Mr. KIRK. Senator, I would have to take that—I would have to see that language, in particular.

Senator SNOWE. Well, I just think we are going to have to take concerted action. I think it would be important for all of the departments, your agency, obviously, along with Commerce and Treasury, to have a coherent strategy when it comes to currency manipulation and, in particular, China, because it is having a cause and effect. There is a definite correlation between the currency manipulation policy, the very deliberate tactical strategy, that is decimating our jobs here in this country and certainly in my State of Maine.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman.

Thank you, Ambassador, for your service to our country.

I have two lines of questioning that I want to pursue with you. One is about intellectual property rights. The other one is about online piracy.

I appreciate the work that you are doing to create a new standard for environmental and worker protections in these free trade agreements. At the same time, I remain very concerned about intellectual protection, property right protections in other agreements that remain below U.S. standards, and that are found in some of the free trade agreements that, in fact, we are talking about.

The innovative biopharmaceutical industry is responsible for over 3 million jobs here in the United States. And at a time of economic challenges, it is imperative that strong IP standards be part of future trade agreements.

Can you inform the committee how USTR is working to ensure that the highest IP standards are included for example, in the Trans-Pacific Partnership and in other FTAs for all of our industries, including the pharmaceutical industry?

That is my first question.

And the second question is, I appreciate the work that you are doing to address the online piracy issues that are harming both nonprofit and commercial journal publishers in our country. Combatting online piracy is critical to ensuring that the U.S. remains a leader in science and innovation and to retaining good jobs in the United States.

The publishers impacted by IPR violations directly and indirectly employ over 50,000 workers annually; and, in my home State of New Jersey, over 3,000. So, during the 2009 meeting of the U.S.-China Joint Committee on Commerce and Trade, your Chinese counterparts pledged to strengthen domestic library efforts to protect copyright.

In particular, Chinese copyright authorities agreed to conduct random inspection of libraries. The problem, however, here, as in all of these provisions and agreements, is enforcement. We can have all the laws and all the agreements in the world. If there is no enforcement, it is meaningless, and that is a key, in my mind, to resolving IP problems in China over the long term.

In the past 2 years, online journal piracy conditions on the ground have not improved. Chinese inspections of libraries have been certainly, to say the least, not thorough. Libraries can easily hide infringement if they are notified of inspections beforehand.

So we need to work with the Chinese to develop specific guidelines for inspections and audits to reduce the upstream part of the piracy supply chain.

What progress can be expected on this issue under the JCCT this year? Those are my two areas.

We talk about trade and creating jobs here in America. Well, this is about jobs in America. The president talked in his speech about innovation. We want to be at the apex of the curve of intellect and innovation, which means creating opportunities to export American goods and services abroad.

It does not matter, if all of these intellectual property rights are largely taken away by other countries at the end of the day. So I would like to hear how vigorously you are going to be engaged in this, and particularly in these two areas.

Mr. KIRK. Senator, thank you. Your articulation of the question, I think, provided both the necessity and the level of attention we are paying to this and many of the strategies we are employing. You wisely noted that, in the State of the Union address, the President talked about how we would win the future, and a big part of that is about buying out and innovating.

We lose the benefit of that innovation, that investment in research and development, because at times, like you well know, that is not protected.

We did devote a considerable amount of time at this year's JCCT to the challenge of piracy and theft through academic libraries.

We have the strongest commitment from China we ever had before that they would deal with a couple of situations, and in one case where we know who the perpetrator of that is. China made a commitment. They are going to have an enhanced 6-month enforcement effort.

What we have pressed them for is for a more systemic approach to this, because what we have seen in the past, to be honest, is, as we get ready for a JCCT, we get a short campaign. What we have tried to impress on them is that we need a long-term resolution.

Senator MENENDEZ. They have perfected the Texas 2-step.

Mr. KIRK. Now, let's not beat up on my— [Laughter.]

Senator MENENDEZ. It is a very nice dance. The problem is, we take a step forward and then, you know.

Mr. KIRK. But we are going to continue to watch that, and, as you know, we have spent quite a bit of time with the publications issue.

Broadly, Senator, it has been a good year for us in our efforts in terms of, overall, battling online piracy. We did have a conclusion of the text among 21 or so of the larger economies within the WTO on the Anti-Counterfeiting Trade Act. We successfully got a ruling against the European Union as it relates to the application of the ITA within that arena.

As you know, Congress mandates that we provide a report to you every year, a Special 301 report on our current FTA partners' implementation of their IPR commitments.

One of the successes that we had, particularly as it relates to your concerns about the pharmaceutical industry, is getting an agreement with Israel to amend their laws and open up their market in a way that is going to be very beneficial to the pharmaceutical industry.

Within the TPP—I think that was the last issue we raised—our goal, obviously, is to have the strongest intellectual property rights that we can. We want to make sure that we protect that American innovation.

We would like to also make sure that we are responsive to global concerns, that we have a way to get particularly life-saving and -enhancing drugs into the hands of some of the poor countries.

So we are working to strike the appropriate balance there. We would welcome the thoughts of you and your staff and your industry.

Senator MENENDEZ. Mr. Chairman, if I may, just briefly. I appreciate your answer. Also, on the online piracy, it is a huge issue for us. And so I hope that we can work with you, as well as give you some specifics of violations that are creating real consequences here at home so that you will be able to push the envelope.

Mr. KIRK. We would welcome that.

Senator MENENDEZ. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator, very much.

Mr. Ambassador, I would like to just talk a little bit about Korea and beef. Last June, President Obama and South Korean President Lee pledged to address U.S. concerns regarding access to the Korean beef market and also the autos market, which led to side agreements, although the FTA was signed a long time ago.

And in December—that statement I read to you was in June of last year. In December of last year, the two governments reached an agreement on autos, but not on beef. And when President Obama announced the autos agreement, he said he would continue working to ensure “full access for U.S. beef to the Korean market.” That was last December. Those are the President’s words: “full access for U.S. beef to the Korean market.” And, as you know, there has been no progress.

And, as you also know, I am not asking for full access. What am I asking for? I am asking for Korea to consult with the United States on the path to full access. That is not asking very much, but that is what I am asking, so long as that path is consistent with sound science. As you know, the OEI says American beef is fine.

So any Korean complaint that it is not safe, those complaints are false. Sound science says this American beef is fine. And the President did say last June that he would continue to work to ensure full access.

So I am asking you, what steps have you taken to secure that pledge?

Mr. KIRK. Senator, as you know, we did raise this issue with the Koreans, and, obviously, we were not as successful as we would like to be in getting it addressed during the FTA. But we have not and will not back off that comment we have made not just to you, but we have made to all of our cattle ranchers and agricultural industries, to have our trading partners play by the rules. And so you have our commitment. We are going to continue to engage Korea.

As you know, largely thanks to your efforts, separate from the FTA, we do have a beef protocol that opened Korea’s market back up that has allowed us to see the extraordinary growth in penetration into that market, as we are seeing now, with over \$518 million in exports, up 140 percent.

And it was for that reason, notwithstanding the efforts that we made on beef, that we believed the wise course was to go forth with the FTA, and one that has the full support of many in the cattle and beef industry.

We will continue to work with you and to work with the Koreans to see if we cannot seek the consultations that you have requested.

I do not believe that is unreasonable, so that we can go forth and meet the standard.

I think in the protocol it says they would open up the market, in which that was, quote-unquote, full public acceptance of the safety of American beef. We think we need a standard that is more definitive.

The CHAIRMAN. Well, if Korea is not going to agree today, what makes you think they are going to agree tomorrow?

Mr. KIRK. Senator, we are going to continue to press them, and I think we will have an opportunity—

The CHAIRMAN. I hope so, because I think it is virtually a necessary condition for us to move forward on this whole range of issues we are talking about, the FTAs, TAA, ATPA, all of them. All of them. All these, they all come together.

Mr. KIRK. We understand that, but we think we have an opportunity, that we can do a lot of good with passage of that FTA and the overall economic benefit.

The CHAIRMAN. You have more opportunity to get more beef into Korea, too.

China, IPR. I was just struck with Senator Snowe's statement. It is true. You and I and this committee and many others have discussed IPR infringement in China. There has been a lot of talk, a lot of talk for a good number of years, but not a lot of action.

And we press and we press, and you and others say we are working as hard as we can. But that is about as far as it gets. Words are about as far as we get.

So let me just suggest a couple things that we are trying to do to help. You know about one of them, and that is that Senator Grassley asked for, I think it was, the International Trade Commission to do a report on China's IPR practices. And as you know, the first study described China's IPR practices, and that is already out.

But the second report is due in May, and that will give us hard data on the domestic impact of those practices. And I am not going to ask you what you can do about that, but I know that you are going to take that report and use that as leverage to advance the ball here.

A lot of the problem, too, is enforcement, as has been mentioned. So my question to you is, what do your experts say needs to be done in China to better enforce? What is their problem more specifically, not the generality, not the general, but more specifically? Let us drill down here. What is the problem?

Mr. KIRK. Well, there are a number. I wish there was just one problem with China.

The CHAIRMAN. I know that. Name the top two or three or four and then what are you doing about those, what is our country doing about those.

Mr. KIRK. As you have noted, part of our frustration in the past was, they have said, okay, we are going to highlight this and we are going to—since most of their purchases are by their government, and we have estimates from industry and others that 90-plus percent of their government use of software is pirated software. That is unacceptable. In the past, they have made a commitment that they would begin to buy and use legal software. They put no

resources behind that. They gave their sub-governments no money whatsoever to do that. We have gotten a commitment from them this year that they will fund that and not only at the national level, but at the sub-central level where most of their governmental purchases apply.

Secondly, they made a commitment for the first time that they are going to audit that and report to us on their compliance with that. And even though it would not be acceptable, we have heard from industry, from Microsoft and others, if we could reduce that number to 50 percent, the economic gain, the jobs gained here in the United States, would be extraordinary.

I want to make it plain that that is not enough alone, but those are two things that we are going to pay special attention to, because, if the government begins to value and use it, that has huge ripple effects throughout their economy.

The CHAIRMAN. Has USTR or anyone else in this administration developed a specific comprehensive strategy and plan with lots of different data sets as to what needs to be done in China? Assuming that the United States' plans were implemented in China so that the result would be a very significant reduction in intellectual property infringement, have you developed such a plan? Do you know, one, two, three, four, five, six, seven, what has to be done in China? For example, what judges have to be hired, whether they have to be paid, how they have to be trained.

Second, what has to be done at the provincial level, who has to do what there? Audits—the number of audits and frequency of the audits, who does the audits, how many dollars have to be spent just for enforcement at all these different levels.

I am asking, have you developed such a plan? Because, otherwise, we are just talk, and then not much gets accomplished.

Mr. KIRK. I understand, and that is precisely what we do, and that is the value of the JCCT versus the Strategic Economic Dialogue, which tends to be more high-level.

The CHAIRMAN. Can you send me a copy of that plan?

Mr. KIRK. We will be happy to sit down and brief your staff, send that brief to your staff and show you exactly what it is.

The CHAIRMAN. I would like to see what it is, what it is that you—and the dollars behind it, the people behind it, the numbers behind it, not just generalizations.

Mr. KIRK. We will give you what level of specificity we have. I do not want it at all implied that, given the resources we have at USTR, that we have the ability to go in and tell China how many people—

The CHAIRMAN. We have lots of different ways to skin a cat. You have lots of companies, American companies, that were on the short end of the IP infringement. They have resources. They can help you develop that plan. That is often the way things work around here.

Our people we work for—we work for the people of this country, and they sometimes have ideas, and then it is up to us, as public officials, to decide which ideas are good ideas and separate the good from the bad.

So I am just saying, I mean, come on, Mr. Ambassador, you are a smart man. You know how to utilize resources, and you know

how to persuade people to join the team. I do not accept that point that, oh, we do not have—

Mr. KIRK. I did not say we do not have it. I just said I was not sure we had it to your level.

But I would tell you that just about every case of success we have had with China, whether it is prosecuting cases or whether it is through consultations, reforming their behaviors, is because we do rely heavily and consult with business and industry on a regular basis, and that is an effective partnership and tool that we utilize.

The CHAIRMAN. My time is up. But they complain to me, so I complain to you. So you have to get the job done.

Mr. KIRK. Yes, sir.

The CHAIRMAN. Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

Ambassador Kirk, you said that there are different standards for WTO membership than FTAs. Yet, you can say that you cannot move forward with Colombia and Panama because of “core values.” And you are willing to compromise those values for Russia, at least that is the way it looks to me. It looks like a double standard to me.

But let us turn to the TPP trade agreement. Did you require changes to the labor laws in Vietnam, Malaysia, or Brunei before moving forward?

Mr. KIRK. We are tabling the highest standards, and we will be tabling. I do not know that we have gotten to the labor chapters yet. But our goal in the Trans-Pacific Partnership, whether it is Vietnam, whether it is Malaysia, whether there are any other partners, that they will meet those standards as it relates to how we expected labor and environmental standards to be articulated in the TPP. And, yes, sir, we would expect that.

We have not completed those. We are not nearly as advanced in those agreements. But we have set a very high level of expectations and expect those to be met.

Senator HATCH. What about Russia?

Mr. KIRK. It would be the—again, Senator, we are not—I want to make it plain. I do not see this as a double standard. We are not negotiating an FTA with Russia and, I absolutely, the administration shares your concerns about their behavior.

But the reality is, should Russia accede to the WTO, at that point this Congress will have to make a decision whether or not you leave Jackson-Vanik in place, which dates back to the Cold War. And we understand why it was put there, but that decision would mean that U.S. businesses would be denied the opportunity to compete in that Russian market as every other member of the WTO would be.

The United States would be left standing on the sideline. And so I am not at all making a case that Russia has advanced and addressed every issue, but, if they are going to be accepted into the WTO, at that point, this administration and Congress will have to make a decision whether or not we want American businesses and exporters to have the benefits of that.

It does not say that our engagement with them is over, but at least we will have the largest economy not in a rules-based trading

system, now in a venue where we have the ability to confront them and have more solutions than we have now.

Senator HATCH. Finally, I just want to point out that the Canada-Colombia agreement is expected to enter into force on June 30, and I just do not see why we do not get this done.

I really think our country does a pretty poor job in this hemisphere in many ways. Here is our own hemisphere, and we cannot get agreements with a country where two successive presidents have been heroic in bringing about peace and freedom in Colombia.

And our long-term relationship with Panama, it seems to me, would say, my gosh, we ought to do everything in our power to make sure that that relationship continues in a very positive way.

Now, I believe that you are sincere. I think you want to do this. But I have to tell you, I think we ought to pass all three of these at the same time, and I hope you will get them all three done so that we can do it. And I am going to be dedicated to getting that done, and I think there are a lot of others on both sides of the aisle who think we have played around with this enough. We do not treat our own hemisphere as decently as we do the rest of the world, and I find that appalling. And I am not just blaming this administration. I think prior ones could have done much better, too.

So I just want to enlist your help to get this done. Quit playing around with it. If you put your best foot forward and start saying, this is what is going to happen, it is going to happen. So I am counting on you getting it done.

Mr. KIRK. Well, we look forward to working with you to get it done. I can assure you that the Obama administration values the strategic partnership with Panama and Colombia, and there is a reason that President Obama announced in the State of the Union address that he is going to be traveling to South America here in the next several weeks.

So we have a shared objective.

Senator HATCH. Yes. But if he is ignoring Colombia as he travels down there, and Panama, too—

Mr. KIRK. Wherever the President is means he is not somewhere else, but he is going to South America. We value this partnership. As I have told you, I think we have laid out a way forward. We adhered to every commitment we made at Ways and Means. The Santos administration will have a team here tomorrow, and we will report to you all as soon as we can on the progress on that and what we think is a way forward to allow us to achieve a shared goal.

Senator HATCH. Can we start drafting?

Mr. KIRK. I do not know the real point to that. Senator, I would not be much of a negotiator—

Senator HATCH. What is the problem? I mean, my gosh—

Mr. KIRK. Because we are still at the negotiating table, Senator, and that is not the way to get someone to move and work with you. If you tell them you are going to go, they do not have to do anything. And there are issues that are important to this administration that we have articulated.

We think there are issues that are shared by the Colombians, and we think we have an opportunity during these next several

weeks to get them resolved, and we are going to work as quickly as we can to do that.

Senator HATCH. Well, we will be interested in sitting down and drafting as soon as you get that done. I do not know why Canada can do these things and we cannot.

Mr. KIRK. We are the United States.

Senator HATCH. You mean we are so doggone dumb we cannot figure it out. [Laughter.]

Mr. KIRK. I would not say we are dumb. I have a flag on my lapel and not a maple leaf.

Senator HATCH. The Canadians are very, very good in many ways, but my gosh.

Mr. KIRK. Well, these values are important to us. Senator, listen: I think we have the shared goal. I believe we can get there, and we look forward to working with you on that.

Senator HATCH. And we hear this every year.

Mr. KIRK. Listen, we have brought forward—we have done more, and I do not want to be argumentative. I hear you, that is important to us. We are going to do everything we can——

Senator HATCH. Well, I do not want to unduly——

Mr. KIRK [continuing]. To move forward.

Senator HATCH. I do not want to move in an undue fashion either, but my gosh, I am sick of it, and I think we have to get going. And I think we ought to be helping these friends of ours south of us.

When they are as heroic as they are in Colombia, I mean, my gosh, that alone ought to cause us to put every effort we possibly can into getting this passed.

As far as Korea, it is an absolute disgrace that it has taken this long. There is \$11 billion in positive trade there, at least.

How long is it going to be before Korea starts saying, “Well, we have to——”

Mr. KIRK. Senator, we are ready. We have sent you—we can begin drafting the text on Korea this afternoon. We are ready to go.

Senator HATCH. Then start drafting the text on Colombia, and we will be much happier up here. I am counting on you. You have been a mayor of one of the biggest cities in this country. You know what it is like to deal with these Democrats down there. It is terrible.

Mr. KIRK. Well, fortunately, I had a Democratic city council, and we got quite a bit done. But my job is to work with everybody.

Senator HATCH. Then you know how tough it is to deal with the Republicans, too.

Mr. KIRK. Yes, sir, I do. Listen, we have a great opportunity and, Senator, I am more optimistic than not that we are going to be at a very good place sometime soon. We just ask for a little bit of forbearance.

Senator HATCH. Well, let's get it done.

The CHAIRMAN. Thanks, Senator. It is clear that the President's visit to South America is going to be a great success, at least in Brazil. I do not know what other countries he is going to.

But when I was in Brazil, they are very much looking forward to it, and it is a great opportunity for the United States to cement

the relationship with a very vast, very dynamic country. Brazil is on the move.

One little secret, though, is that Brazil is basically holding up the Doha round with their very high industrial tariffs that they do not want to reduce.

So when people talk about the United States and the Doha round, I think it is important to remind those same people that Brazil is probably more than any other country, among the BRIC countries, maintaining high industrial tariffs in its own country, and they have to get those down.

One other point about Colombia. As you know, any agreement protects ILO core labor standards. Now that is very important. This agreement protects the ILO core labor standards, the basic one, the core of labor standards, which will be enforced under this agreement, if it is ratified.

When I hear you talk a little bit about how Americans are very nervous about trade, do not like our trade agreements, I want to remind you, in my State, people have the same view as they do in South Dakota. Senator Thune said, his people want this Colombia free trade agreement, because there are a lot of farmers there; same thing in Montana. And to be honest, when I hear you speak, it sort of sounds like you are more concerned about labor rights in Colombia than you are about labor in the United States, because all your comments and words are, "Oh, we have to help Colombia labor provisions." Colombia labor provisions.

I would think most Americans would care more about America's labor rights than about Colombia's. I do not mean to be critical of what has been addressed, and I think it is a major accomplishment, and it is basically the framework of that May 10th agreement a couple, 3 years ago. That is fine.

I would just remind everybody that core labor standards are protected in that agreement, and they are not going to be protected in other agreements, as I have said, that Colombia might reach with other countries.

Mr. KIRK. Mr. Chairman, if I gave you that impression that I care more about labor rights elsewhere than here, then let me make this perfectly clear.

What has driven our trade policy from day one is that this President understands and appreciates the only way we are going—one of the ways that we are going to keep America's economy vibrant is that we have to continue to lead and to create opportunities for American goods, exports, products that we grow and sell around the world.

We did that and, as you know, I have been to Montana. I come from Texas. But my wife—I sent her my birthday greetings today, you heard me say—comes from Cleveland. And most of my relatives are in Detroit, and I did not think it was enough for me just to operate on what I have heard in Montana, in Dallas.

I can assure you, and you have heard it from your colleagues here, when I go east of that Mississippi River, and when I have been in Detroit and Pittsburgh and I have been in Senator Snowe's district, there is not that excitement about moving forward with our trade as there is in Montana. And the concern of Americans, in particular, is that, if we do not insist, if we do not take the op-

portunity of handing that gold standard, which many countries see, of a free trade agreement with the United States, if we do not use that unique opportunity to make sure they have the strongest labor rights, and that they, in fact, enforce them, many Americans believe that creates a perverse or reverse incentive for companies here to take manufacturing jobs, to move them to another country that does not have the same labor standards.

So when we articulate those concerns, it is precisely because we are trying to be responsive to American workers who want to know that we are not going to use our trade agreements as a tool to ship jobs overseas.

The CHAIRMAN. And do you think, if everybody in Cleveland were to sit down in front of you and you were to explain, as you would, objectively, honestly, the terms of this agreement, that they would not be in favor of it?

If you explained to them this is a one-way deal, you explained to them that we have virtually no tariffs on products coming from Colombia, but they have tariffs on ours, it is a one-way deal; if you explained to them how much market share we have lost; if you explained to them not one job would be lost in Colombia as a consequence of this agreement, and all the terms, you mean to tell me that people in Cleveland would not think that is a pretty good deal?

Mr. KIRK. I mean to tell you not only in Cleveland, but I can promise you, you can find them in Ohio, you can find them in Montana, you can find them in Texas. Senator, they do not—

The CHAIRMAN. Ambassador, you are not answering my question.

Mr. KIRK. They do not believe.

The CHAIRMAN. You are not answering my question. You are speaking in generalities, just people do not like free trade agreements.

I am saying, if they knew the terms of this specific agreement, anybody you talk to, it is so much—as I said earlier—a no-brainer. I think with respect to this particular agreement, people would say, yes, this is good for America.

Mr. KIRK. Listen, we have made that case. We are going to continue to make that case. We believe that it is good for America and, I believe, for jobs. But, Senator, you can talk to the people—and I have raised that issue and I have made that case in those places, and they do not always believe us, but we still owe them the responsibility to get the strongest agreement that we can.

But, listen, I share your concern. We want to get there, and we are going to work just as hard as we can so that we can move forward.

The CHAIRMAN. First of all, thank you for choosing Montana for the APEC conference this coming spring. I must tell you that our host committee is a little worried that the U.S. Government is going to put more pressure on the host committee to raise more resources than they otherwise were asked to raise, because of the budget constraints facing the USTR and the government.

So I am just saying, they have that concern.

Mr. KIRK. Not as concerned as I am, but I will be happy to have that conversation with you off the record. We had a pretty clear ex-

pectation from the host committee. If they will meet that level of fundraising, then I think we will be fine.

The CHAIRMAN. They will meet their commitment. They do not want the goal post moved.

Mr. KIRK. No.

The CHAIRMAN. That is the concern.

TAA: what are you doing to get Congress to pass TAA?

Mr. KIRK. We are hoping, Senator, with your leadership and your commitment, we can get TAA passed. The administration has been very firm, and I know we have talked a lot and heard a lot from the committee this morning that you see a linkage of Colombia and Panama.

But I believe—part of my answer when you asked, when I talk with people, whether it is in Ohio or Pittsburgh, one of the things that helps buys us credibility that they think we have heard them is we can show that we have funded TAA, as Congress over the years and the administration has promised they would. So the President—

The CHAIRMAN. Why has the administration backed off from its support for TAA?

Mr. KIRK. Trade Adjustment Assistance?

The CHAIRMAN. Yes. Because—

Mr. KIRK. We absolutely have not.

The CHAIRMAN. Yes, you have. I will tell you why. Your budget only asked for TAA for workers programs, but does not ask for firms, farmers, and communities, all of which were found in the 2009 bill.

You backed off. So why do you not fully support TAA?

Mr. KIRK. Senator, listen, I would have to defer to OMB in terms of the particular budget submissions, but, as you know, this Congress is right now having to make some very difficult decisions, as the American public is, on how you are going to meet your goals to restrain spending and attack the deficit, which means everything is not going to be funded at the level that it has been before.

I would probably have to refer you to OMB in terms of the exact level of requests for Trade Adjustment Assistance.

The CHAIRMAN. I think it is a disappointment that they backed off, because I think this is important.

What can you tell us about trade agency consolidation? The President mentioned it in his State of the Union address. So what is going on?

Mr. KIRK. Well, I cannot tell you much more. It is being directed from within the White House. I think the President wisely realizes that, as the American public is, we are going to have to learn how to be more efficient, how can we do more with less.

The President wisely noted you have nine different agencies with responsibility for trade. We are one of them. He has asked a group of leaders to look at our operations and see—make sure, first of all, there is no duplication, where we can work more collaboratively.

I think the best use of my time is to go out and attack some of these challenges that you have articulated. We are privileged to lead the USTR, one of the smaller, more nimble agencies within the Federal Government, and we will keep doing our job to the best of our ability. But if there are recommendations that can help us

work more thoughtfully and efficiently, at the appropriate time, we will be happy to engage.

The CHAIRMAN. I am concerned, frankly. In theory, it sounds good. Who can be against it, in theory? But in practice, it could be a nightmare, an absolute nightmare.

For example, let us say USTR was consolidated with the U.S. Export/Import Bank. You have two different missions. You would have so many layers of bureaucracy to go through. You have to get the signoff to get agreement, all that nonsense. You could not. You would be hamstrung.

So I just urge you to remember what our goal is. Our goal here is to be efficient, quick, to the point, effective, and I just urge you to keep that in mind and keep this committee fully informed, because this committee cares a lot about your agency.

As you said, you are small, you are nimble. You can act quickly, and I just want you to maintain that ability.

Mr. KIRK. We appreciate your support, and we share your concern on that.

The CHAIRMAN. Thank you very much, Mr. Ambassador. You have spent a lot of time here.

Mr. KIRK. It is always a privilege.

The CHAIRMAN. And wish your wife happy birthday again for us.

Mr. KIRK. Thank you.

The CHAIRMAN. The committee is adjourned.

[Whereupon, at 11:54 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Hearing Statement of Senator Max Baucus (D-Mont.) Regarding the President's 2011 Trade Agenda

Ralph Waldo Emerson once said:

"To map out a course of action and follow it to an end requires courage."

As any Montanan knows, you must understand the lay of the land before you can map out a course of action. You must see the mountains, the valleys, and the rivers, and more than anything else, you must have courage to face the challenges that lie ahead.

The President's trade agenda sets an ambitious goal – to double U.S. exports by 2015 – but it will take courage, from the Administration and Congress, to map a course of action. And it will take even more courage to follow that course until we reach that goal.

To do so, we must take two major steps. We must approve our pending free trade agreements, or FTAs, and we must meet the challenges China presents.

First, it is time to quickly resolve the outstanding issues in our pending FTAs with Colombia, Panama, and Korea, and we must approve all three agreements this year.

Colombia has a strong and growing economy, it is among the largest markets in Latin America for U.S. exporters, and it is a strategic partner in our fight against drug trafficking and terrorism.

I traveled to Colombia two weeks ago. I met with President Santos, his ministers, Colombia's top prosecutor and labor leaders. I was struck by the progress that Colombia has made in strengthening labor rights, reducing violence and stepping up prosecutions.

Colombia has enacted reforms to make it easier for workers to form unions and bargain collectively. It has reduced the homicide rate of union members by nearly 90 percent, and it is prosecuting labor violence cases identified by Colombian labor unions as top priorities.

But more steps are needed, and President Santos has begun to take them. I believe that he is willing to work with us to take more steps, but he needs to know what we want him to do. We must map a course, and we must act now.

American farmers lost \$1 billion in sales to Colombia over the last two years. And while China has tripled its share of the Colombian market, ours has declined by 20 percent. American jobs are at stake.

Last month, Senator Hatch and I sent a letter asking you to come to the hearing today prepared to discuss the specific issues that Colombia and Panama need to address, and we asked you to come prepared to announce an expeditious timetable for moving these agreements through Congress. We look forward to discussing both issues this morning.

We must also consider the U.S.-Korea Free Trade Agreement. President Obama mapped out a course of action for this agreement last June. He and South Korean President Lee pledged to resolve U.S. concerns regarding access to the Korean beef and auto markets. In December, the United States and Korea reached an agreement resolving U.S. concerns on autos. The President promised to keep working on beef, but we do not yet have an agreement.

We know this course of action is challenging, but our goal is achievable. We are simply asking Korea to consult with us on a roadmap to full market access in the future. I urge you to follow the course of action that the President set out last June until we reach this goal.

This course of action to approve the pending FTAs will succeed only if we ensure that all Americans will benefit. We must extend Trade Adjustment Assistance to keep American workers and businesses globally competitive.

In addition to the pending FTAs, there is a second step in achieving our goal of doubling U.S. exports. We must map a course of action that leads to a stable and dynamic economic relationship with China. Ambassador Kirk, under your leadership, USTR has taken affirmative steps to compel China to abide by its international commitments. You initiated the first safeguard action against a surge of Chinese imports, you brought a WTO case to end China's wind power subsidies, and you challenged China's improper export restrictions of critical raw materials.

But more steps must be taken - additional problems remain. One U.S. company estimated that only 25 percent of its software in China is legal, and economists have estimated that China's currency manipulation may cost up to 1.4 million U.S. jobs. I look forward to helping you map a course that navigates these challenges.

As Emerson said, it requires courage to map a course of action and follow it.

So let us summon the courage to resolve the outstanding issues with the pending FTAs and approve them this year. And let us summon the courage to address the challenges in our economic relationship with China. By doing so, I believe that we can achieve the goal of doubling our exports and creating the jobs our economy needs.

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TOM CARPER

UNITED STATES SENATOR · DELAWARE



COMMITTEE ON FINANCE

U.S. Trade Representative Ambassador Kirk on President Obama's Trade Agenda

Statement of Senator Tom Carper

Today's hearing on President Obama's trade agenda is of great importance to me and to my home state of Delaware. I would like to thank U.S. Trade Ambassador Ron Kirk for his hard work in advancing the President's trade agenda, which includes a commitment to proceeding with key international trade agreements. Moving forward with these trade agreements is a fundamental step in our continued work to strengthen the U.S. economy and make firm our economic recovery. Solidifying our trade agreements with other countries is also vital to the President's goal of doubling exports in the next five years – a goal that I strongly support. While there are a few issues that I know are being worked out in finalizing the agreements, I support moving forward with trade agreements with Korea, Colombia and Panama and believe that we can resolve these issues in the near term.

If we are to succeed economically today, the U.S. must keep up with the global economy and maintain a competitive advantage abroad. In Delaware, where we have more chickens than people by a margin of 300 to one, our chicken industry has grown to be an international industry. Today, about one out of every five chickens produced by local growers on the Delmarva Peninsula are exported overseas. As the worldwide demand for protein continues to increase in the coming years, ensuring that more and more of our Delaware chickens can be sold overseas is a top priority for me. Ultimately, selling more chickens in countries around the world means more jobs and revenue for farmers in the First State, and not just for those who sell chickens, but for the thousands more who are part of the larger supply chain. It is estimated that the Free Trade Agreements with Korea, Colombia and Panama will lead to an additional \$150 million a year in export revenue for the U.S. chicken industry and will create 13,500 new jobs in the industry, resulting in an additional \$11 million per year in export revenue and 1,000 new jobs in the chicken industry in Delaware.

In order to sell more of our commodities overseas, like chickens, we must remove trade barriers that prevent other countries from buying our goods. Tariffs like those that American businesses are faced with in Korea, which average 54 percent, have hindered our companies from gaining access to important markets overseas. Colombia is advancing in its trade relations with Canada and China, giving greater access to their goods each day that we wait. The time to act is now, and while there is still a bit more work that needs to be done, I am confident that we can work together here in Congress and with the Administration to advance these three trade agreements.

SUBMITTED BY SENATOR GRASSLEY

United States Senate

WASHINGTON, DC 20510

March 8, 2011

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Obama:

We write to you regarding Japan's interest in joining the Trans-Pacific Partnership (TPP) negotiations.

We appreciate your Administration's efforts to expand the presence of U.S. businesses and exports in the vital Asia-Pacific region through the TPP. Expanded trade is needed for economic growth, as well as for the continued competitiveness of our businesses, workers, farmers, and ranchers. Further expanding our market access in important economies of this region will provide significant opportunities for our exporters and will favorably reorient the region economically and geopolitically towards the United States.

It is also encouraging that the leaders of the Japanese government have expressed their interest in joining the TPP and thus eliminating their tariff and non-tariff trade barriers to U.S. goods and services. However, given Japan's historical intransigence in allowing market access for American agricultural goods, we write to express reservations regarding Japan's inclusion in these negotiations until certain conditions are met. In addition to prohibitively high tariffs on many agricultural goods, Japan has discriminated against U.S. beef imports with restrictions that are inconsistent with international standards and not based on scientific criteria.

As you know, Japan closed its market to U.S. beef in December of 2003, after the discovery of a Canadian-born cow infected with bovine spongiform encephalopathy (BSE) in the United States. At that time, Japan was the largest export market for U.S. beef, valued at \$1.4 billion. Since then, Japan has had restrictions in place on U.S. beef imports and currently only allows imports of beef from cattle aged 20 months and younger.

The United States has spent years putting in place an effective system of interlocking safeguards that has successfully prevented BSE from becoming established in our country. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service has aggressively enhanced our BSE surveillance system since 1990, testing at levels forty times higher than recommended by the World Organization for Animal Health (OIE). As a result, out of a U.S. cattle inventory numbering nearly 100 million head every year, there have only been three confirmed cases of BSE since 2003—the one imported Canadian cow and two atypical cases of cattle born in the U.S. prior to our 1997 feed ban—and none since 2006 (In contrast, Japan, with an annual cattle inventory of only 4.5 million head, has had thirty-six cases of BSE since 2003). Because of these efforts, the United States has been classified as a controlled risk country by the

OIE, which indicates that U.S. beef products are completely safe for export and consumption. Incidentally, this is the same BSE risk status classification as that of Japan.

American farmers and ranchers produce the highest quality agricultural products in the world. When given the opportunity to compete on a level playing field, they will thrive, creating more jobs and revenue at home while providing foreign customers affordable access to our products across the world. Japan's agricultural sector stands in stark contrast as one of the most highly protected in the world. If Japan asks for inclusion in the TPP negotiations, we encourage you to press Japanese leaders to immediately relax its restrictions on U.S. beef to be fully consistent with OIE guidelines and reopen its market. At the very least, Japan should agree to immediately relax its age restrictions to 30 months and address other issues necessary to achieve a commercially-viable, science-based import protocol, while also laying a clear pathway for eventual full OIE compliance. Likewise, we would have serious reservations with any TPP agreement submitted to Congress that includes Japan if it has not made commitments to fully complete this process, as well as eliminate tariff and non-tariff barriers on its TPP partners' agricultural exports.

Trade agreements must solidify economic relations and foster mutual trust. Japan's past actions pose serious concerns that require your consideration and leadership in addressing; future commitments must ensure that Japan will abide by internationally-accepted, science-based trading standards that will be vigorously enforced.

Very truly yours,

Mig Johnson
Pat Roberts

John Hower

Chuck Grassley

to Ben Ray Lujan

Markwayne Mullins
Sally Clark

Jim Inhofe

John Boozman

Ray Bennett

Jerry Moran

Michael B. Eiji

Jan Riel

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Paul Cohen

Rob Antman

Mike Crago

Wm F. B. S.

Jon Tustin

John Barrasso

Conrad

John

John Cornyn

Key Bailey Hatchison

Mark Udall

Lyndee

**STATEMENT OF HON. ORRIN G. HATCH, RANKING MEMBER
U.S. SENATE COMMITTEE ON FINANCE HEARING OF MARCH 9, 2011
ON THE PRESIDENT'S 2011 TRADE AGENDA**

WASHINGTON – U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, today delivered the following opening statement at a committee hearing examining the Obama Administration's trade agenda with U.S. Trade Representative Ron Kirk:

I firmly believe that America benefits from an aggressive trade agenda that opens markets to U.S. products around the world. Over ninety-five percent of the world's population lives outside the United States. As these economies grow, they offer new markets and new opportunities for those willing and able to seize them.

Our workers can compete and win in these markets. I am confident of that.

We can help by negotiating good deals that tear down barriers to our products and level the playing field for our workers.

And then, we need to get out of the way.

We can't saddle our workers with burdensome regulations, high taxes and government deficits and then expect them to win in the global economy.

We must do better than that.

At the risk of sounding like a homer, to see what works all you have to do is take a look at my home state of Utah.

Sound fiscal policy, a light regulatory burden and low taxes make Utah one of the most competitive states in the nation.

Utah is the only State in the country to double exports in the last five years. Utah is leading the pack when it comes to growing jobs and expanding exports. The same sound regulatory, fiscal and tax policies that work in Utah should inform our policies here if we are to succeed as a nation.

As Ranking Member of this Committee, I am committed to pursuing those policies.

As the White House looks for solutions to our most pressing problems, I would encourage them to look beyond Pennsylvania Avenue.

My home state of Utah is a good place to start.

As a nation, we have a lot of work to do in order to get the economy back on track. In my opinion, the administration wasted crucial time — almost two years — pursuing sideshows like stimulus spending for government jobs and health care reform, instead of taking on a pro-growth economic agenda.

As a result, unemployment remains far too high, and Congress is just now getting to an agenda that will lead to meaningful economic growth, lasting job gains, increased productivity, and the dynamic economic expansion that citizens have patiently been waiting for.

At the top of a pro-growth agenda is trade policy. Yet instead of leading the way, we are falling behind our trading partners. While we wait, other countries are writing the rules of trade. While we hesitate, other countries are opening up markets for their workers.

And if this sorry record is not corrected, U.S. workers will continue to lose out on the economic opportunities afforded by free and open trade.

A case in point: Colombia.

In 2008, the United States was the main supplier of corn, wheat and soybeans to Colombia, accounting for seventy-one percent of the market. Today, our market share is just twenty-seven percent.

It does not take a Ph.D. in economics to understand this collapse.

While our trade agreement with Colombia collected dust, other countries were surging ahead.

The same pattern holds in Panama, where we continue to lose out on lucrative government procurement projects.

Some suggest that the strong interest in quick approval of our trade agreements with Colombia and Panama is driven by partisanship.

I am not going to pull my punches here. That is false. There is strong bipartisan support for these agreements in this Committee and in the Senate.

Any further doubts can be laid to rest by a recent letter from a bipartisan group of former government officials — including USTRs, White House Envoys to the Americas, and Assistant Secretaries of State — all calling for prompt ratification of our pending trade agreements with Colombia and Panama.

Now, I appreciate the work that the Administration has done in regard to Korea.

Korea is a friend and ally of the United States.

And, while we need to see more progress on beef access, it remains a strong agreement.

I support it, and want to see it move as soon as possible.

But I don't believe the President will ever act on the Colombia and Panama agreements unless these agreements move with Korea.

This skepticism is not unjustified.

In 2009, the Administration said they were *developing a plan of action to address the pending trade agreements in consultation with Congress* and pledged to address any issues promptly.

Later, at the Summit of the Americas President Obama directed Ambassador Kirk to lead a review of the Colombia Agreement to solve outstanding issues.

In 2010 the Administration laid out general concerns but vowed to move the agreements forward at the appropriate time. A little later, they pledged to *strengthen relations with key partners...with the goal of moving forward with existing agreements in a way that upholds our values.*

Then, in 2011, President Obama vowed to pursue agreements with Panama and Colombia.

Just a month ago, the President directed USTR to immediately intensify engagement with Colombia and Panama.

And just yesterday we received testimony that says you are on track to resolve outstanding issues with Panama and are committed to addressing issues related to Colombia, both sometime this year.

Now, some might call this progress. But are we really any closer to having these agreements before Congress today than in 2009?

I find it hard to believe that the problem is a lack of information. The problem is a lack of political will, and a lack of political courage.

So far, the administration has talked a big game on these trade agreements, but when game time rolls around, they shrink from action. At some point, despite all the words, it is the administration's inaction that speaks volumes.

This failure to act raises strong doubts about whether the President is serious about moving these agreements at all. Given past rhetoric, the recent promises of *intensified engagement*, commitments to work, and being *on track* are all fine and good.

But these promises are woefully inadequate.

After two years, it is still an open question whether the President will ever see fit to submit the Colombia and Panama agreements to Congress anytime in the near future, if at all.

Let me be clear. If the President will not act, I will.

If the President ignores the will of Congress and sends the Korea agreement without Colombia and Panama I will do everything I can to make sure that those two agreements are considered at the same time as Korea.

Given the gap between promises made and promises kept, I don't believe the President has given Congress much choice when it comes to the Colombia and Panama trade agreements.

If we are to serve the national interest and get these two agreements approved, Congress must act with — or without — Presidential leadership.

Thank you Mr. Chairman.

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Testimony of United States Trade Representative Ron Kirk

Wednesday, March 9, 2010

Senate Finance Committee

Washington, DC

Good morning, Chairman Baucus, Ranking Member Hatch, Members of the Committee. Thank you for the opportunity to discuss the President's Trade Agenda.

In 2010, the Obama Administration followed through on the commitments we made before you last year. We developed a trade policy that reflects our common goal of creating jobs and solving problems for American businesses, workers, farmers, and ranchers.

This Administration promised to enforce our trading rights and hold our trade partners accountable. We have kept our promise – from steps to stop a harmful surge of Chinese tires, to wins at the WTO for our aerospace and agriculture sectors, to the first labor enforcement consultation brought under a U.S. trade agreement.

In our efforts to help ensure American firms can sell their goods to the 95 percent of the world's consumers that live outside our borders, we have also kept our promise to open markets. We reached an agreement with Korea that is better for our auto industry and workers. We made important progress on negotiations in the nine-country Trans-Pacific Partnership. And we worked to dismantle barriers in China on issues ranging from indigenous innovation to intellectual property rights.

We also promised to solve problems, many of which had an impact on your constituents, and have done just that. Just last week, we reached agreement with Mexico to put us on a path to resolve the longstanding trucking dispute. In January we announced that we would move forward with arbitration under the Softwood Lumber Agreement to hold Canada to its obligations. We also successfully fought to reopen the European Union market to American beef, to reopen global markets to American pork after the outbreak of H1N1, and to reopen Russia's market to U.S. poultry.

Our work is producing results. U.S. goods and services exports through 2010 were up \$261 billion over 2009. We are on pace to reach President Obama's National Export Initiative (NEI) goal of doubling exports by the end of 2014. The NEI's success will require a vigorous trade policy that opens markets and creates commercial opportunities for American firms.

The 2011 Trade Policy Agenda builds on the significant progress we made in 2010 with a job-focused, comprehensive trade policy that benefits American businesses, workers, farmers and ranchers. Opening global trade markets and enforcing America's trade rights continue to be key components of our economic recovery effort.

Central to this agenda will be to continue our hard work to address outstanding concerns with the pending free trade agreements and to move those agreements to Congress as they become ready. I am pleased to announce that the U.S.-Korea trade agreement is ready for your consideration.

We have completed the preparatory work on the implementing legislation and associated documents and are prepared to begin technical discussion with this committee as soon as you are ready to do so. KORUS has already won widespread support from business, labor, agriculture, and services groups across the country. It is time to ensure that the promise of KORUS is fully realized – more than \$10 billion in increased exports of goods alone, and more than 70,000 American jobs. President Obama is eager to see this agreement ratified, as are many of you, and requests that Congress vote on this agreement this spring.

Improving access to the Korean beef market is an important issue. The President and I commit that we will continue to work, in close consultation with you, to further open Korea's market consistent with international guidelines. In the meantime, U.S. exports of beef and beef products continue to grow. Last year, they reached \$518 million, an increase of 140 percent in value over the previous year. Once the Korea agreement enters into force, our beef exports will grow even more as American producers enjoy the progressive elimination of Korea's high tariff on beef.

With the same engagement and bipartisan cooperation as on the Korea agreement, we will address outstanding concerns relating to the Panama and Colombia agreements. We will not be left behind as others secure greater market share at the expense of American exporters. To compete, we must access the world's fastest growing markets on a playing field that is both level and reflects our values as Americans.

Over the past months, we have made real progress on the Panama Agreement. Panama has already begun reforming its labor regime to achieve consistency with the pending agreement and has also taken significant steps to achieve greater tax transparency, including the signature of a tax information exchange agreement with the United States in November 2010. One day after my House testimony, I met with the Vice President of Panama to discuss Panama's progress and the remaining steps needed to resolve issues on labor and tax. Senior officials and technical teams met further on February 28 to clarify those issues. We are on track to resolve the issues this year and will send the agreement to Congress once that is complete.

There has also been important activity regarding the Colombia agreement since I testified before the House Ways and Means Committee last month. Soon after that hearing, officials from USTR led a mission to Bogota with officials from the Departments of State and Labor and the White House. Over the last few weeks, we have met with this committee's staff as well as stakeholders to consult and seek advice on the issues raised. Together, we are working without delay to assess what we can do on issues regarding laws and practices affecting the protection of internationally-recognized labor rights, as well as issues concerning violence against labor leaders and the prosecution of the perpetrators. The Obama Administration and the Santos Administration have a shared commitment to protect labor rights and workers from violence. I am committed to working with you to address the concerns identified this year and to prepare the agreement for Congressional consideration immediately thereafter.

As we look to the future, the President has made one thing abundantly clear: we will not sign agreements for agreements' sake. They must be enforceable and of the highest standard, in the interests of our workers, farmers, ranchers and businesses. They must not simply replicate the templates of the past, but build frameworks for the future.

This is our guiding philosophy for another critical objective: the successful conclusion of the Trans-Pacific Partnership trade agreement, or TPP. With your help and support, in just over a year, the United States has joined the TPP, welcomed Malaysia and Vietnam as new TPP members, and put this nine-country trade agreement on an ambitious negotiating schedule. We are proposing new and challenging 21st century issues to our negotiating partners even as other Asia-Pacific countries are clamoring to join TPP talks. In just over a year, TPP has become the single most important regional trade negotiation and the platform for economic integration in the world's most dynamic region.

In addition to TPP, we want to do even more in the Asia Pacific as we seize the once in nearly two-decade opportunity to host the Asia-Pacific Economic Cooperation (APEC) Forum this year. Part of our focus in our APEC host year will be practical and concrete steps to make it cheaper, faster, and easier for U.S. small businesses to sell American goods and services throughout a region comprising more than half of global GDP and over 40 percent of the world's trade.

In the World Trade Organization, we are working toward ambitious and balanced outcomes in the Doha Development Round of trade negotiations. To move an agreement forward, we need market access commitments from all countries – including the advanced emerging nations – commensurate with their role in the global economy. We will continue our efforts to bring Russia into the WTO – including work with Congress this year to grant Russia Permanent Normal Trade Relations, so that American firms can fully benefit when Russia has the responsibilities as well as the rights of a true trade partner.

We are also continuing to deepen our trade relationships with our North American and European partners, including enhanced regulatory cooperation through the North American Free Trade Agreement (NAFTA) and forums such as the Transatlantic Economic Council. Last month, we also held the first ministerial meeting of the Central American Free Trade Agreement-Dominican Republic (CAFTA-DR) and advanced several initiatives to broaden and deepen regional trade and investment in Central America. These efforts will better protect and inform our citizens while enhancing the competitiveness of our economies.

We also have a unique opportunity to continue – through the African Growth and Opportunity Act (AGOA) and related trade capacity building – to assist women and men throughout sub-Saharan Africa create life-changing opportunities through trade. As we face the expiration of AGOA's third country fabric provisions next year and of the broader AGOA in 2015, we will seek to work with Congress to determine which initiatives, current and future, can best boost U.S.-sub-Saharan Africa trade and use trade and investment policy as an engine to catalyze development.

We also play a critical role in the Administration's effort to strengthen intellectual property protection and enforcement of intellectual property rights both here and overseas, through our coordination of IP trade policy and our active participation in the Administration's broader Intellectual Property Enforcement Advisory Committee. We finalized the text of the Anti-Counterfeiting Trade Agreement – a landmark new tool that strengthens international cooperation and enforcement practices to fight counterfeiting and piracy.

Engagement with China – including through the Joint Commission on Commerce and Trade – has been very productive, showing real results in addressing “indigenous innovation” policies,

improving intellectual property right protections – including through greater use of legal software – securing technology neutrality in the telecommunication and smart grid sectors, and providing new opportunities for U.S. firms in the wind power market. Importantly, China agreed to delink its innovation policy from the provision of government procurement preferences and to cover sub-central entities in its next offer to join the World Trade Organization (WTO) Government Procurement Agreement.

We also have much to show for our trade enforcement agenda, and every intention to expand this important facet of a comprehensive trade policy. This Administration promised to enforce our trading rights and hold our trade partners accountable. That is a promise kept. Enforcing our agriculture rights has meant American ranchers are selling more beef to Europe than they have in decades. We have successfully reopened to U.S. pork the Russia, Indonesia and China markets that were closed following the outbreak of H1N1. And we initiated the first ever labor enforcement consultation under a U.S. trade agreement.

At the same time, we've continued to defend our rights in the WTO. In December, the WTO upheld our right to take action to stop a harmful surge of Chinese tire imports into the United States – a decision made by President Obama in September 2009 that has helped to restore U.S. tire industry jobs. That decision came just two months after we won another decision in the WTO, affirming our right to apply anti-dumping and anti-subsidy remedies to China and other nonmarket economy countries.

We also won a WTO case against EU Subsidies to Airbus. In the largest case ever heard by a WTO panel, the United States proved that more than \$18 billion in subsidies conferred on Airbus by the EU and member countries were illegal. And we are pursuing cases against discriminatory barriers in China's electronic payments market to ensure our financial services companies can compete fully in this important sector. China's misuse of trade remedies in the steel sector and China's use of illegal subsidies to promote green technologies. This Administration's commitment to ensuring – through dialogue whenever possible and litigation when necessary – that our trading partners adhere to WTO rules is unwavering.

We also must renew expired trade preference programs – the Generalized System of Preferences and the Andean Trade Preferences Act. These programs help foster economic growth for the world's poor and create well-paying American jobs here at home – they should be renewed.

Finally, but very importantly, we must work together to support a comprehensive trade agenda that keeps the faith with America's workers and provides a long-term extension of Trade Adjustment Assistance programs, which have helped so many Americans get back on their feet. These extensions should be paid for in a way that maintains investments critical for our nation's competitiveness.

I look forward to our dialogue today and to future discussions. By working together, we can use common sense and find common ground on trade in order to create jobs and new opportunities for American workers, businesses, farmers, and ranchers. Thank you.

UNITED STATES SENATE

COMMITTEE ON FINANCE

HEARING ON THE 2011 TRADE AGENDA

MARCH 9, 2011

QUESTIONS FOR AMBASSADOR RON KIRK

Questions from Chairman Baucus

Question 1

I support the President's budget request for FY12 that provides \$51.3 million to USTR. This represents an increase of \$3.4 million over the previous year and the largest increase for USTR's budget since FY09. This increase means USTR can focus on priorities such as helping small and medium-sized companies increase their exports, reaching a successful conclusion of the Trans-Pacific Partnership free trade agreement, and by ensuring our trading partners meet their international trade obligations. I will work with my colleagues to make sure USTR has adequate funding to do the job. **In the meantime, how will the President's FY12 budget proposal affect USTR's ability to advance these priorities?**

Answer:

In the FY 2012 budget planning process, USTR used rigorous zero-based budgeting principles. This required strategic prioritization of all mission-related activities from the "bottom-up." The result was a set of twenty (20) program initiatives, serving six major national trade goals that represent all of the key activities of USTR. These program initiatives are pursued collaboratively by USTR's component offices and cut across the full range of USTR's major areas of responsibility.

As a result, USTR's FY 2012 budget request invests in critical efforts to provide jobs here at home by increasing American exports to other countries, through market-opening initiatives, and through monitoring and enforcement of America's rights in a rules-based trading system. The

budget supports the President's goal of creating two million additional American jobs by doubling exports in five years.

This increase will fund program adjustments necessary to make trade policy a powerful contributor to the President's national economic agenda for revival of the global economy and renewal of growth that benefits all people. The \$3.4M provides for 16 more full time equivalents (FTEs) and associated increased travel. This will add capability to the Office of the General Counsel (general enforcement); Office of Southeast Asia and the Pacific (TPP); Office of Small Business, Market Access and Industrial Competitiveness (SME initiative); and the Office of Intellectual Property and Innovation (IP monitoring and enforcement), among others.

This increase follows two years of strong fiscal discipline at USTR, where personnel, travel, and office expenses were pared back to ensure that this Administration is spending every dollar wisely. The President's FY 2012 budget proposal combines this fiscal discipline with wise investments in a forward-leaning trade agenda—including efforts that will advance the National Export Initiative and strong enforcement of U.S. rights under existing trade agreements—to get American businesses growing through exports and help put American workers back on the job.

Question 2

I support the President's ambitious goal of doubling U.S. exports in five years. To measure the Administration's progress, I asked at last year's hearing for a report on USTR's efforts every six months. **As a preview to the next report, which is due this month, what progress has been made to reach the goal of the NEI? What is USTR's specific role in the NEI and how are you measuring success?**

Answer:

The Administration is on track to meet the President's NEI target. U.S. exports of goods and services in 2010 were up 17 percent compared to 2009. This is above the 15 percent annual export increase necessary to double exports by the end of 2014.

USTR's role in the NEI mirrors our core mission – to open foreign markets, reduce barriers to trade, and robustly enforce our trade agreements. To open new markets, we successfully resolved the outstanding issues with Korea so that Congress can approve this important trade agreement -- and we are continuing to work with Colombia and Panama. We also are moving expeditiously on the Trans-Pacific Partnership Agreement negotiations. And we're pressing our trading partners hard, especially China, India, and Brazil as key emerging markets for a more ambitious and balanced result, in the WTO Doha negotiation.

We are also continuing our efforts to address a broad range of barriers to U.S. exports. For example, working with the White House, [Department of Commerce](#), and others, we secured important trade commitments from China in 2010 relating to IPR enforcement, indigenous innovation and government procurement.

On the trade enforcement front, U.S. enforcement successes in 2010 include a WTO panel finding that the EU (France, Germany, Spain, and the UK) conferred approximately \$20 billion in illegal subsidies to Airbus and a successful challenge to EU duties on certain high-tech products, ensuring that U.S. producers would continue to be able to export those products to Europe duty-free under the WTO's Information Technology Agreement. In late 2010, we finalized the text of the Anti-Counterfeiting Trade Agreement (ACTA). This agreement is an important new tool to fight the global growth in counterfeiting and piracy, which threatens jobs that depend on innovation, including those in the United States.

The Trade Promotion Coordination Committee has developed metrics that will be reported in the upcoming National Export Strategy report detailing Administration progress in implementing the NEI. Where feasible, USTR quantifies the estimated value of new market opening agreements and the estimated value of markets preserved or opened by enforcement actions.

USTR is also actively participating in the Administration's NEI public outreach events with our Export Promotion Cabinet counterparts to encourage businesses, especially small businesses, to begin or expand their exports. As an agency we are also increasing outreach to businesses both small and large, state and local governments, and other stakeholders to educate them on the trade agenda and export opportunities which will support economic growth and jobs at home.

Question 3

As part of its WTO accession, China agreed to strong provisions on data protection. However, while Chinese law officially establishes a 6-year period of protection, its current regulations fail to define key concepts such as "new chemical ingredient" and "unfair commercial use." **What recent discussions has USTR had with its Chinese counterparts on this issue? What additional steps can you take to compel China to apply data protection provisions that are consistent with its WTO accession protocol?**

Answer:

USTR continues to engage with China's State Food and Drug Administration (SFDA) and other Chinese agencies on the issue of regulatory data protection in the context of the Joint Commission on Commerce and Trade (JCCT). We have urged SFDA to improve its regulatory system to ensure that the test and other data submitted for purposes of marketing approval for new pharmaceutical products is effectively protected against unfair commercial use for the full six-year period that is established in China's law. SFDA is currently conducting studies of possible amendments to its regulatory system that could, among other things, clarify concepts such as "new chemical ingredient". We also discussed this issue further in the April 11-12 meeting of the JCCT Pharmaceutical and Medical Device Sub-Group. We are also working with industry to organize a program in cooperation with SFDA, other Chinese agencies, and innovative Chinese pharmaceutical firms, to discuss these studies, which are yet to be released, in an effort to ensure that any amendments to China's regulatory system will in fact improve the predictability and consistency of China's data protection regime.

Question 4

In April 2009, Turkey implemented a requirement for inspections of pharmaceutical manufacturing facilities exporting to Turkey. U.S. pharmaceutical manufacturers are concerned that Turkey does not have the capacity to conduct these inspections in a timely manner, thus delaying the entry into market of pharmaceutical products. **What steps has USTR taken to engage with Turkey on this issue? What steps will you take to urge Turkey to ensure it has adequate capacity to conduct these inspections and avoid delays of marketing approval?**

Answer:

The Administration has brought this problem to the attention of Turkish authorities from the beginning, raising it at both working and cabinet levels on multiple occasions. Through the new Framework for Strategic Economic and Commercial Cooperation (FSECC), Ambassador Kirk and Secretary of Commerce Locke have made clear to their Turkish counterparts that Turkish government actions regarding Good Manufacturing Practices (GMPs) certificates for pharmaceuticals have created a very significant barrier to bilateral trade. The Administration has also reached out to Turkish Ministry of Health officials through expert level discussions in order to promote understanding and cooperation between regulators, with the aim of enhancing MOH capacities to carry out future inspections in an effective and above all timely manner. We have also strongly encouraged direct communication between Turkish authorities and U.S. pharmaceutical firms.

Senior officials from USTR and a number of U.S. agencies have been firm in noting to the Turks that immediate action is needed. We will continue to pursue this issue in upcoming meetings with Turkish officials, including if necessary the next meeting of the FSECC, now envisioned for the fall of 2011.

Question 5

I am concerned that despite years of promises from China, they are failing to systematically improve their protection and enforcement of U.S. intellectual property rights (IPR). Despite commitments during the U.S. – China Joint Commission on China and Trade (JCCT), China has failed to set objective, measurable benchmarks or a timeline to show success in reducing IPR infringement. **And President Hu’s visit to the United States failed to substantive progress on this issue. What is your plan to address this issue? How can we work with you to make sure China focuses on systemic IPR enforcement, both throughout the government and more broadly?**

Answer:

We will continue to engage China at all levels to address IPR protection and enforcement in China. The 2011 Special Campaign to crack down on IPR infringements has recently been extended, which Chinese officials have represented as evidence of the seriousness with which they take this problem. We are evaluating the effectiveness of the campaign and have held discussions with Chinese officials on how to translate lessons learned and effective operational mechanisms into long-term sustainable policies to have a meaningful effect on addressing rampant IPR infringement in the market.

During the recent State visit, President Hu Jintao committed to delink innovation policies from government procurement. We are closely monitoring compliance with this commitment, at both the central and sub-national levels of government, focusing on changes to existing measures and efforts to ensure new measures are consistent with President Hu’s promise.

Also during the State visit and the December 2010 meeting of the Joint Commission on Commerce and Trade (JCCT), China took new steps on software piracy by committing to allocate budget funding for legal software purchases by government agencies, as well as making a commitment to audit the use of the legal software and publish the results of those audits. Furthermore, China said it would promote the use of licensed software in private companies and in state owned enterprises through software asset management programs. We recently heard that the Copyright Protection Center, a branch of the National Copyright Administration of China, will be publishing guidelines for use by enterprises, including state owned enterprises, to

implement software legalization programs and software asset management. We are encouraging China to make additional efforts in the context of the “Special Campaign against counterfeiting and piracy” that was launched by the State Council in October.

Looking more broadly, this is a long term challenge where we must stay the course to achieve durable, systemic improvements. We believe that our approach of consistent U.S. engagement in every appropriate setting on these issues is bearing fruit, and that your efforts to date, as well as your continued close collaboration going forward, contribute importantly to the progress being made.

Question 6

The United States will host the next meeting of the Strategic and Economic Dialogue in May. I am concerned that we still do not have a comprehensive U.S. Government strategy for dealing with U.S. – China economic affairs and as a result, critical issues such as indigenous innovation and IPR do not receive the focus they deserve. **What can we do to ensure that important trade issues remain a focus of the S&ED? Should the U.S. Government set benchmarks by which to measure progress on the economic track of the S&ED?**

Answer:

The S&ED provides the US Government with an important avenue to engage with the Chinese on key economic issues needing attention in both the short and long term. Trade and investment have been and will continue to be a priority area for S&ED discussions. This year, in addition to discussions on important areas of concern for the longer term, we will seek immediate progress on key trade issues, including outcomes that build upon trade and investment commitments China made during President Hu's recent visit to Washington, like innovation and intellectual property rights protection. We will then draw on the progress in this forum to move forward further on the array of specific trade problems through the JCCT and other mechanisms. In other words: we are focused and we are persistent, assessing our work at each step to ensure that China is implementing its past commitments, and striving to ensure we make continued, concrete progress on these issues with coordinated use of all the tools we have available.

Question 7

In April 2010, Senator Grassley and I requested that the U.S. International Trade Commission conduct a study to quantify the impact of China's IPR and indigenous innovation policies on the U.S. economy and U.S. jobs. The first study made clear that China's IPR and indigenous innovation practices affect a range of U.S. industries. And the second report will provide hard

data quantifying the impact of these practices on the United States. **How will you use this report?**

Answer:

We will study the forthcoming USITC report carefully and determine the most appropriate way to use it after we see its content. The first study's documentation of China's problematic IPR and "indigenous innovation" policies, including the interrelationship between those policies and procurement, standards, antitrust, and other policies, has already been very helpful in informing our trade policy formulation and implementation work at USTR. The first study is also serving the useful purpose of better-educating U.S. stakeholders, and further strengthening the factual basis for the Administration's outreach to the Chinese government to address problematic policies. We hope to use the second study in similar ways.

Question 8

In December, Brazil issued regulations that would ban the use of affiliate reinsurance. These regulations contravene legislation passed by the Brazilian Congress in 2007, which opened the reinsurance market leading to significant investment by U.S. and other foreign insurers. **Can you tell us what the United States is doing to ensure Brazil removes these restrictions to the use of affiliate reinsurance?**

Answer:

We have engaged broadly and at high levels to express our concerns to the Brazilian government and insurance industry. Officials from State, USTR, and Treasury have reached out to their Brazilian counterparts. We also have worked to build international support for our efforts, engaging with representatives of Japan, Spain, and the EU. We will continue pressing Brazil's regulatory authorities to work with the affected companies to minimize disruption to their operations and the Brazilian insurance market.

Question 9

Mr. Ambassador, I am concerned about Japan's favorable treatment of Japan Post and the negative impact of this treatment on U.S. insurance companies operating in Japan. I appreciate your efforts to persuade the Japanese Government to discontinue this disparate treatment. **What steps are you taking to convince Japan to cease this discrimination?**

Answer:

We have serious and long-standing level playing-field concerns regarding Japan Post in the insurance, banking, and express delivery sectors. We have raised these concerns at every appropriate opportunity with the Japanese Government and believe that Japan is fully aware of our concerns. We are continuing to urge Japan to address our concerns and to abide by its WTO obligations.

Question 10

Last June, President Obama and South Korea President Lee pledged to address U.S. concerns regarding access to the Korean beef and autos markets. In December, the two governments reached a deal on autos, but not beef. When President Obama announced the autos agreement he said he would continue working to ensure "full access for U.S. beef to the Korean market". But there has been no progress. As you know, I am not asking for full access when the FTA enters into force. I am only asking Korea to consult with us on a path to full market access in the future, consistent with sound science. **Mr. Ambassador, what specific steps are you taking to secure this agreement from Korea?**

Answer:

The beef issue remains a top priority for the Administration, and we will continue to urge Korea to open its market to the full range of U.S. beef and beef products, consistent with science and international standards. At this time, the biggest barrier to U.S. beef sales in Korea is the 40% tariff levied against U.S. beef imports. The U.S.-Korea trade agreement would bring that tariff to zero over 15 years, enabling America's beef producers to build on the exponential growth of exports to Korea – which reached \$518 million in 2010, a one-year increase of 140 percent in value.

But time is of the essence. Korea is currently negotiating an FTA with Australia, our major competitor for the Korean beef market. If Australia concludes and implements an FTA with Korea before we do, the tariff cuts for Australian beef may take effect before those on U.S. beef, giving the Australian exporters a tariff advantage for at least the next 15 years.

Questions from Senator Hatch

Question 1

In the 2009 Trade Policy Agenda the President vowed to use all tools available to address this economic crisis. The Administration acknowledged that one of those tools is Trade Promotion Authority. The 2009 Agenda also said that: "We will only ask for renewed trade negotiating authority after engaging in extensive consultations with Congress to establish the proper constraints on that authority and after we have assessed our priorities and made clear to this body and the American people what we intend to do with it." It has been two years since that statement was written. **Please explain what the Administration believes are the "proper constraints" on trade negotiating authority? Has the Administration sufficiently assessed its trade priorities to determine whether the President will seek trade negotiating authority?**

Answer:

In the past, Congress has subjected Trade Promotion Authority to a variety of conditions, such as notice, consultation, reporting requirements, limits on the time during which TPA was in effect, rules for extending those periods, requirements to make progress in meeting Congressionally-established negotiating objectives, and constraints on tariff proclamation authority. Should Congress consider legislation to renew of Trade Promotion Authority, we anticipate it will want to examine whether conditions of these kinds, or others, will help to enhance the Congressional-Executive trade partnership that TPA was designed to achieve.

We look forward to working closely with you and your colleagues over the coming weeks on securing Congressional approval of the final three pending trade agreements concluded under the last enactment of Trade Promotion Authority, as well as on other critical trade legislation such as renewal of the TAA, GSP, and ATPA programs. Once we have completed work on these matters, we would be pleased to consult with you and other Members regarding whether it would be advisable to consider other appropriate trade legislation, such as TPA renewal.

Question 2

The 2011 Trade Policy Agenda states: “We will seek appropriate Congressional approval as necessary for the authorities to move forward with new and forward-looking pacts, such as TPP.” **Can you please explain what the phrase “appropriate Congressional approval as necessary for the authorities to move forward” means? What is your timing for seeking such authorities?**

Answer:

Once Congress completes its consideration of the three pending trade agreements and other priority trade legislation, and as the TPP agreement negotiations approach their conclusion, we will want to consult with you and other interested Members regarding how best to secure passage for that agreement and other major trade agreements the Administration may conclude. Among the issues we would wish to explore is whether some form of renewed Trade Promotion Authority for approving the TPP agreement and other future trade agreements may be advisable.

Question 3

The President’s Trade Agenda provides that expanded trade with Colombia and Panama hinges upon those two countries reforming their labor regimes. It states no such requirement for Russia, a country to which the Administration would like to extend normal trade relations this year. **Has the Administration undertaken a review of Russia’s labor policies? Will the Administration require changes to Russia’s labor laws before pressing for a Congressional vote on permanent normal trade relations with Russia?**

Answer:

Standards for a Free Trade Agreement are different than they are for joining the World Trade Organization. FTA obligations are comprehensive, and include labor rights, environmental standards and investment. That is why the Administration has worked with Colombia and Panama to address outstanding labor concerns. Nonetheless, the Administration regularly reviews Russia’s labor policies and practices in numerous Congressionally-mandated reports, including the annual Human Rights Report and Trafficking in Persons Report, which the State Department produces, and the Department of Labor’s annual Findings on the Worst Forms of Child Labor, as well as its List of Goods Produced by Child Labor or Forced Labor and List of Products Produced by Forced or Indentured Child Labor. In addition, representatives of the Administration regularly engage on labor-related issues with representatives of the Russian

government and civil society, and share best practices, including through such mechanisms as the International Visitor Leadership Program.

The Administration raises its concerns about Russia's business law at appropriate opportunities, and will continue to do so. However, the vote on terminating Jackson-Vanik and extending PNTR to Russia is necessary to ensure that American workers can benefit fully from the market access commitments Russia will undertake when it accedes to the WTO.

Question 4

Last Friday, the Congressional International Anti-Piracy Caucus, on which I serve as a co-chair with Senator Sheldon Whitehouse and Representatives Bob Goodlatte, and Adam Schiff, sent a letter to Vice President Joe Biden in advance of his trip to Russia. The letter encouraged the Vice President to make infringement of American content and software a priority in his discussions with Russian officials. **Considering Russia's blatant disregard for intellectual property rights and your efforts to bring them into the World Trade Organization, can you give us an update on where things stand regarding this matter?**

Answer:

It is my understanding that the Vice-President raised intellectual property rights (IPR) issues with President Medvedev directly, including piracy on the Internet. The Vice-President emphasized the need for Russia to improve its protection of IPR; President Medvedev acknowledged that IPR protection and enforcement is a priority, and confirmed that his Government is working on this issue. In fact, the Russian Federation has taken important steps to improve the protection and enforcement of IPR as part of its process to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) through adopting four important pieces of legislation as agreed at the June 2010 Obama-Medvedev summit: 1) legislation granting *ex officio* authority to Russia's customs officials, 2) amendments to Part IV of the Civil Code (governing intellectual property rights); 3) amendments to the Law on Licensing to prevent infringers from renewing their licenses, and 4) amendments to the Law on the Circulation of Medicines to protect undisclosed test and other data.

Through the United States-Russia Bilateral IP Working Group, USTR continues to press the Russian Government to take further action to protect IPR. For example, in the next meeting of the IP Working Group, scheduled for the middle of April, we will discuss Russia's effort to combat piracy on the Internet, including Russia's legislation on liability for Internet Service

Providers as well as investigations/prosecutions of companies that illegally distribute copyrighted material on the Internet.

Question 5

In today's global economy, IP protection and enforcement are indispensable components of U.S. trade policy. That is why I continue to support a framework that would provide additional tools to the U.S. Trade Representative to spur countries to take specific steps to stop these violations. Take Russia for example, they continue to remain on the USTR's Priority Watch List year after year, and Russia fails to make significant progress with respect to its commitments to the 2006 Bilateral Agreement on Protection and Enforcement of Intellectual Property Rights. **Do you believe that USTR needs additional tools to reign in the rampant IP theft occurring overseas?**

Answer:

The protection and enforcement of intellectual property rights (IPRs) is fundamental to American competitiveness, job creation and manufacturing strength. As President Obama confirmed in this year's State of the Union address, "The first step in winning the future is encouraging American innovation....In America, innovation doesn't just change our lives. It's how we make a living."

Taking up this charge, the President's 2011 Trade Policy Agenda articulated an IPR trade policy strategy emphasizing the protection of American innovation and jobs, and stressing the importance of intellectual property protection to the U.S. economy. The Agenda noted in particular that "the competitive advantage of American workers is eroded when piracy, counterfeiting, and other intellectual property theft threaten American brand-name products, copyrighted content, and patented inventions....Providing more certainty in this regard can embolden these American job-creators to export, and can help to create a global environment that encourages creative, innovative solutions to the world's most pressing problems."

USTR works to protect American IPRs and to promote U.S. competitiveness and jobs through a variety of mechanisms – including negotiating international IPR agreements, including state-of-the-art IPR provisions in U.S. free trade agreements (FTAs), monitoring IPR protection and enforcement by our trading partners, including through the annual Special 301 Report, and enforcing international rules to protect American innovators' IPRs, including in the World Trade Organization. USTR undertakes this strategy in close coordination with other relevant U.S. agencies, stakeholders, trading partners and Congress. For example, this year USTR and partner countries representing more than half of global trade finalized the text of the Anti-Counterfeiting Trade Agreement (ACTA). The agreement is an important new tool to fight the global scourge of counterfeiting and piracy, which threatens jobs that depend on innovation – including those here in the United States.

Likewise, USTR engages in intensive bilateral negotiations with our trading partners that have achieved tangible results. For instance, The United States won wide-ranging commitments from China including to eliminate discriminatory “indigenous innovation” criteria used to select industrial equipment for preferential treatment, ensuring access to China’s market for American machinery manufacturers, as well as commit to open and neutral standards for 3G and future technologies in one of the world’s largest telecommunications markets. Similarly, with respect to Russia, following direction from Presidents Obama and Medvedev, respectively, USTR and Russian government officials worked to resolve key bilateral issues related to the WTO accession process, including encouraging Russia to enact certain legislation critical to protecting intellectual property. These efforts have added significant momentum to Russia’s effort to join the WTO, which will create new market opportunities for U.S. exports of goods and services.

As the foregoing discussion illustrates, USTR is making robust use of existing trade policy tools to spur progress in this area. I look forward to working with you and other Members of Congress to explore options for further enhancing our efforts to ensure adequate and effective protection of the intellectual property rights of America’s artists, creators and producers around the world.

Question 6

On December 10, 2010, in Brazil the National Private Insurance Council (CNSP) promulgated two regulations that unexpectedly and substantially reversed the market opening of the Brazilian reinsurance market as called for by legislation passed by the Brazilian Congress in 2006 (Supplementary Law 126/2007). We understand these regulations were issued without any notice or opportunity for industry to comment on the regulations before they were promulgated. This action causes great concern because many local and global reinsurers have invested significant capital and human resources in Brazil as a result of Supplemental Law 126/2007, which liberalized the Brazilian market. **How will USTR ensure that these rollback regulations are addressed and reformed to ensure that the insurance industry can serve the rapidly growing Brazilian market on a level playing field? Will the President and the team travelling with him to Brazil raise these concerns during his visit?**

Answer:

We have engaged broadly and at high levels to express our concerns to the Brazilian government and insurance industry. Officials from State, USTR, and Treasury have reached out to their Brazilian counterparts. We also have worked to build international support for our efforts, engaging with representatives of Japan, Spain, and the EU. We will continue pressing Brazil’s regulatory authorities to work with the affected companies to minimize disruption to their operations and the Brazilian insurance market.

Question 7

As Japan continues to seek to join the Trans-Pacific Partnership negotiations, it is critically important to ensure that that state-owned entity, Japan Post, competes on a level playing field with the private sector, before any decision is made to invite Japan to join the negotiations. USTR, at all levels, continues to raise U.S. concerns with preferential treatment for Japan Post during bilateral consultations and in Geneva. Japan, however, has introduced legislation under consideration by Japan's parliament that would expand Japan Post's ability to compete with the private sector participants – without first establishing a level playing field. **Will you and your team ensure establishment of a level playing field for U.S. businesses competing with Japan Post before considering Japan for admission to the TPP negotiations?**

Answer:

Japan Post is an area of strong concern that we are urging Japan to address in the near term. We continue to raise these serious level playing field concerns at every appropriate opportunity with the Japanese Government. Japan's Government has not yet made a decision on whether it will seek to join the Trans-Pacific Partnership negotiations. The Administration will continue to call for Japan to address our concerns in the near term and to abide by its WTO obligations.

Question 8

The Codex Alimentarius Commission is an international organization that establishes international standards in the area of food safety. Codex designations are also benchmark standards for food safety measures adopted by Members of the World Trade Organization. Under the principles of the Codex, the food safety standards of this organization shall be based on "sound scientific analysis." I am concerned, however, that some of our trading partners are seeking to thwart the adoption of science-based standards at the Codex. In doing so, these countries are threatening to impede imports of U.S. food and agricultural products, including products produced in Utah. Moreover, if the Codex does not base its standards on science, the very credibility of this organization will be at stake, an outcome that will have major repercussions for the international trading system. The 34th Session of the Codex will be held in July 2011. **What steps is the Office of the U.S. Trade Representative taking, in conjunction with the U.S. Department of Agriculture, to see that the Codex indeed adopts science-based standards at its upcoming conference?**

Answer:

USTR and USDA are working closely on an outreach plan to contact every CODEX Member and to ask for their support for the adoption of science based measures, such as the adoption of the eight pending MRLs for ractopamine, at the July CODEX Commission meeting in Geneva.

Question 9

We continue to face challenges overseas that threaten the value of U.S. intellectual property at the expense of U.S. innovation and jobs. This situation undermines the President's call in the State of the Union address to grow innovation here at home. At this time of great economic instability, it is imperative that strong IP standards be a part of any future trade agreement. **What is USTR doing to ensure that the TPP builds off the KORUS Agreement to provide the highest IP standards and prevents the erosion of IP rights in the region?**

Answer:

Let me assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation, is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS.

To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection. We have, and continue to, work on our proposals in consultation with the Congress and all relevant stakeholders.

Question 10

Brazil is the eighth largest global economy and has a large and growing market for information technology products. Yet, Brazil is not a member of the Information Technology Agreement. As

a result, U.S. exports face import taxes of 16% as well as many internal taxes in Brazil. **Given the importance of the market to U.S. exporters, will the President press the Brazilian government to join the Information Technology Agreement when he meets Brazilian President Rousseff?**

Answer:

USTR, together with the U.S. IT industry, has long been pressing Brazil to join the Information Technology Agreement (ITA). Of the top 10 largest economies in the world, Brazil is the only country that has not agreed to join the ITA and eliminate its tariffs on key information technology products. We have explicitly requested that Brazil join the ITA as part of the overall market access package in the Doha negotiations, and we will continue to press Brazil, bilaterally and multilaterally, at every level and at every opportunity.

Question 11

The Information Technology Agreement (ITA) has lowered consumer prices while increasing product trade and employment. Since the ITA came into force in 1996, however, the product scope of the agreement has not been expanded to include new innovations and improved technologies. On March 7th, 40 trade associations representing the global high-tech industry rallied in support of launching a new tariff-reduction initiative that would significantly expand product coverage of the ITA by removing tariffs on tech products currently not covered. Such a new agreement would generate significant and immediate benefits. **Do you believe in order to promote trade in high-tech products and enhance American innovation that the ITA needs to be significantly expanded as proposed by the industry associations? How will USTR move ahead with such and expansion?**

Answer:

The Information Technology Agreement (ITA) is a great example of a win-win trade agreement that can benefit everyone by promoting U.S. trade, jobs, and economic growth while lowering prices for global consumers. The agreement has been extremely successful, with global trade in IT products more than tripling from \$1.2 trillion in 1996 to \$4 trillion in 2008.

I am pleased that global industry supports a new initiative. Over the past month, we have been exploring the best way to move such an initiative forward. I have instructed my staff work with interagency colleagues and stakeholders to develop a proposal to expand both the product scope of the ITA to provide duty-free treatment for more information and communications technology (ICT) goods, and to expand the geographic scope of the agreement to bring in major IT producing countries that are not yet participants, such as Brazil.

Question 12

Thank you for your response to my question regarding the TPP at the hearing. **As a follow up, have you communicated to TPP trading partners that you will require them to change their domestic labor laws prior to sending the TPP to Congress for a vote, as you have insisted with Colombia and Panama?**

Answer:

We have begun engagement with TPP partners on their labor laws and practices and intend to address concerns about TPP partners' labor laws and their consistency with the labor obligations that result from the negotiations. In doing so, we will work with Congress and stakeholders.

Question 13

When will the Model Bilateral Investment Treaty review conclude? Can the Administration proceed with BIT negotiations with China, India, and Vietnam without the new Model BIT? Please provide a list of BITs in force and being negotiated by China, India, and Vietnam and with which countries. **Without investor-state protections, how will American businesses and their investments be protected in foreign markets where they operate? How many BITs have been signed and implemented around the world since the Model BIT review was launched in 2009? Please provide a list of the top ten trading partners with the United States and the BITs that each of the ten countries has with other countries.**

Answer:

The Administration has received a large amount of input from the full range of stakeholders regarding many important issues in the model BIT. We want to ensure that we have a full

opportunity to carefully consider all such input before completing the review. We recognize the importance of moving forward with the model BIT review and the BIT program.

Since the beginning of the BIT review, the Administration has continued to hold technical-level discussions with our negotiating partners, including China, India, Vietnam, Mauritius, Pakistan, and Georgia. Where possible, we have continued discussions with these countries as our internal deliberation process on the model BIT moves forward. In addition, we have continued to explore the possibility of future BIT negotiations with other key countries, such as Russia, Indonesia, and certain sub-Saharan African countries. USTR and the State Department co-lead these negotiations and discussions, with participation of other agencies.

As stated in the President's Trade Agenda, in 2011 the Administration will build on the substantial progress made in 2009-2010 in the model BIT review. Our objective is to produce an updated model that preserves core investor protections without compromising governments' ability to regulate in the public interest, fosters competitive neutrality in foreign markets dominated by state-owned enterprises and other mechanisms of state influence and control, and enhances transparency and labor and environmental protection.

Successfully completing the model BIT review will permit the intensification of key BIT negotiations, will provide significant benefits for U.S. investors abroad, and, in turn, will benefit the U.S. economy and workers. For instance, a BIT with China would open many of China's strategically closed markets, and improve competitiveness of U.S. firms. Ensuring a level playing field with respect to third country investors is even more important today given the European Union's newly assertive role in international investment negotiations. Under the Lisbon Treaty, the European Union now has authority to negotiate investment agreements on behalf of its member states; China, India, Russia, and Mercosur top the EU negotiating agenda.

Please provide a list of BITs in force and being negotiated by China, India, and Vietnam and with which countries.

BITs In Force

China, India, and Vietnam have BITs in force with the following economies:

China: Albania, Argentina, Australia, Austria, Bahrain, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cambodia, Cameroon, Chile, Colombia, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guyana, Hungary, Iceland, Indonesia, Iran, Italy, Jamaica, Japan, Jordan, Korea, Kuwait, Laos, Latvia, Lebanon, Lithuania, Luxembourg, Madagascar, Mexico, Mongolia, Morocco, Myanmar, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, Uruguay, Vietnam

(In recent years, China has also concluded trade agreements containing investment chapters with New Zealand and Peru (which entered into force in 2008 and 2010, respectively).)

India: Australia, Austria, Belgium, Bosnia and Herzegovina, Colombia, Croatia, Czech Republic, Denmark, Egypt, France, Germany, Ghana, Greece, Hungary, Indonesia, Italy, Kazakhstan, Korea, Mauritius, Mexico, Morocco, Mozambique, Netherlands, Oman, Portugal, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, United Kingdom

(In recent years, India has also concluded economic agreements containing investment chapters with Singapore and Korea (which entered into force in 2005 and 2010, respectively). In February of this year, India signed such an agreement with Japan.)

Vietnam: Australia, Austria, Belarus, Belgium, Bulgaria, Cambodia, Chile, China, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hungary, Indonesia, Italy, Japan, Korea, Latvia, Malaysia, Netherlands, Poland, Romania, Singapore, Sweden, Switzerland, Tajikistan, Thailand, United Kingdom

BITs Under Negotiation

We are unable to identify with certainty with which countries China, India, and Vietnam are currently negotiating BITs, as that information is not always disclosed publicly. However, we are aware from publicly available information of the following BIT negotiations involving each country:

China: Canada; Japan and Korea (trilateral negotiation)

(China is also negotiating investment issues as part of its FTA negotiation with Australia.)

India: Algeria, Azerbaijan, Brazil, Canada, Cuba, El Salvador, Georgia, Ghana, Guyana, Iraq, Kenya, Lebanon, Lithuania, Malta, Nepal, Nigeria, Norway, Peru, Seychelles, Slovenia, South Africa, Tanzania, Tunisia, UAE, Venezuela

Vietnam: Canada, Estonia, Israel, Morocco, Saudi Arabia, Tanzania, Tunisia

Without investor-state protections, how will American businesses and their investments be protected in foreign markets where they operate?

In the absence of a BIT (or free trade agreement investment chapter), including investor-State arbitration provisions and other legal protections, U.S. investors must generally rely on the legal

remedies provided by the domestic laws of the countries in which they operate (or seek to operate).

How many BITs have been signed and implemented around the world since the Model BIT review was launched in 2009?

The current model BIT review was launched in February 2009. From the beginning of 2009 through mid-2010, more than 100 BITs concluded worldwide (according to UNCTAD). (We are seeking to obtain updated information for the period since then.)

Please provide a list of the top ten trading partners with the United States and the BITs that each of the ten countries has with other countries.

No.	Trading Partner	BIT Partners
1	Canada	Argentina, Armenia, Barbados, Costa Rica, Croatia, Czech Republic, Ecuador, Egypt, El Salvador, Hungary, Jordan, Latvia, Lebanon, Panama, Peru, Philippines, Poland, Romania, Russia, Slovakia, South Africa, Thailand, Trinidad and Tobago, Ukraine, Uruguay, Venezuela
2	China	Albania, Argentina, Australia, Austria, Bahrain, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cambodia, Cameroon, Chile, Colombia, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guyana, Hungary, Iceland, Indonesia, Iran, Italy, Jamaica, Japan, Jordan, Korea, Kuwait, Laos, Latvia, Lebanon, Lithuania, Luxembourg, Madagascar, Mexico, Mongolia, Morocco, Myanmar, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, Uruguay, Vietnam
3	Mexico	Argentina, Australia, Austria, Belarus, Belgium, China, Cuba, Czech Republic, Denmark, Finland, France, Germany, Iceland, India, Italy, Korea, Netherland, Panama, Portugal, Slovakia, Spain, Sweden, Switzerland, Trinidad and Tobago, United Kingdom, Uruguay

4	Japan	Bangladesh, China, Egypt, Hong Kong, Korea, Laos, Mongolia, Pakistan, Peru, Russia, Sri Lanka, Turkey, Uzbekistan, Vietnam
5	Germany	Afghanistan, Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Dominica, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Gabon, Georgia, Ghana, Greece, Guinea, Guyana, Haiti, Honduras, Hong Kong, Hungary, India, Indonesia, Iran, Israel, Jamaica, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Laos, Latvia, Lebanon, Lesotho, Liberia, Lithuania, Macedonia, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Moldova, Mongolia, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saudi Arabia, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Serbia, Sierra Leone, Singapore, Slovenia, Somalia, South Africa, Sri Lanka, Sudan, Swaziland, Syria, Tanzania, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uganda, Ukraine, Uruguay, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe
6	United Kingdom	Albania, Angola, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bolivia, Bosnia and Herzegovina, Bulgaria, Burundi, Cameroon, Chile, China, Colombia, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Dominica, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Georgia, Ghana, Grenada, Guyana, Haiti, Honduras, Hong Kong, Hungary, India, Indonesia, Jamaica, Jordan, Kazakhstan, Kenya, Korea, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Lithuania, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Morocco, Nepal, Nicaragua, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Russia, Saint Lucia, Senegal, Singapore, Sierra Leone, Slovenia,

		South Africa, Sri Lanka, Swaziland, Tanzania, Thailand, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen
7	Korea	Albania, Algeria, Argentina, Austria, Bangladesh, Belarus, Belgium, Bolivia, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Chile, China, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Egypt, El Salvador, Finland, France, Germany, Guatemala, Honduras, Hong Kong, Hungary, India, Indonesia, Iran, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Laos, Latvia, Lebanon, Lithuania, Malaysia, Mauritania, Mexico, Mongolia, Morocco, Netherlands, Nicaragua, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, Vietnam
8	Taiwan	Belize, Costa Rica, Guatemala, Macedonia, Marshall Islands, Saint Vincent and the Grenadines, Swaziland, Thailand
9	Brazil	Chile, Cuba, Denmark, Finland, Korea, Netherlands, Portugal, Venezuela
10	France	Albania, Algeria, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, Bolivia, Bosnia and Herzegovina, Bulgaria, Cambodia, Chile, China, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Georgia, Ghana, Guatemala, Haiti, Honduras, Hong Kong, Hungary, India, Indonesia, Iran, Israel, Jamaica, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Liberia, Lithuania, Macedonia, Madagascar, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Morocco, Namibia, Nepal, Nicaragua, Nigeria, Oman, Panama, Pakistan, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, Sudan, Sri Lanka, Syria, Tajikistan, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zimbabwe

Questions from Senator Rockefeller

Question 1

I understand that USTR has been a fervent advocate on behalf of U.S. companies in Japan on the Japan Post issue, specifically the lack of a level playing field for U.S. companies in competition with Japan Post's businesses.

The Japan Post issue has been a bipartisan and bicameral concern for a number of years. We want to make sure that Japan will live up to its General Agreement on Trade in Services and World Trade Organization commitments to provide a level playing field for all participants in the Japanese marketplace. I and other members are also very concerned about possible legislation that would expand the operations of Japan Post.

Given serious Congressional concerns please tell me how we are moving to get Japan to deal with its current violations of General Agreement on Trade in Services with regard to the Japan Post entities and its World Trade Organization obligation to provide national treatment of all market participants?

What is USTR's plan to get the Japanese government to set aside its announced legislation designed to expand Japan Post in violation of its World Trade Organization commitments?

Perhaps most important, how can we support your efforts?

Answer:

We have serious and long-standing level playing field concerns regarding Japan Post in the insurance, banking, and express delivery sectors. We have raised these concerns at every

appropriate opportunity with the Japanese Government and believe that Japan is fully aware of our concerns. We are continuing to urge Japan to address our concerns and to abide by its WTO obligations.

We are monitoring the situation carefully with respect to any legislation related to Japan Post. The Japanese government has proposed legislation that would open the door for the Japan Post insurance and banking companies to expand the scope of their business before a level playing field is established. We continue to call on Japan to ensure that it achieves a level playing field before allowing any changes in the scope of Japan Post Insurance's business operations.

Questions from Senator Conrad

Question 1

Mr. Ambassador, as you know, North Dakota is a major producer of high quality beef. Expanding export markets is critical to North Dakota ranchers.

Several years ago, South Korea made a commitment to fully re-open open its market to U.S. beef, consistent with international scientific standards. But Korea is not doing so. It continues to impose unjustified restrictions on our beef.

Now, I am realistic. I understand that Korea is supremely sensitive on the issue of exports from older cattle and certain product lines where the Korean public believes, incorrectly, that there is a BSE risk. Despite the scientific consensus that these products are safe, Korea is unlikely to change its position on these points, much as I would like for them to do so.

At the same time, I agree with the President, who said during the campaign that we cannot just let our trading partners walk away from their commitments on international trade. So I believe we must insist that South Korea provide compensation in the form of increased access to other areas of its beef market in return for its failure to keep its original commitment. For example, Korea could choose, without re-opening the FTA, to provide accelerated reductions in the tariffs on US beef until it agrees to accept the full range of US beef exports, thereby making our exports more competitive than those of our trading partners.

Without some agreement along those lines, it will be very difficult for me to support this FTA. To me, this is a very reasonable request that recognizes political reality in South Korea while demonstrating that we will stand up for the rights of American beef producers.

What will you do to ensure our beef producers are fully compensated for Korea denying us the full access to its beef market that it had previously agreed to?

Answer:

The beef issue remains a top priority for the Administration, and we will continue to urge Korea to open its market to the full range of U.S. beef and beef products, consistent with science and international standards. At this time, the biggest barrier to U.S. beef sales in Korea is the 40% tariff levied against U.S. beef imports. The U.S.-Korea trade agreement would bring that tariff to zero over 15 years, enabling America's beef producers to build on the exponential growth of exports to Korea – which reached \$518 million in 2010, a one-year increase of 140 percent in value.

Questions from Senator Wyden

Question 1

Russia, a major world economy, may become of a Member of the WTO this year. **Given the challenges we've had holding China accountable to its WTO commitments, is it reasonable to believe that USTR would need significant new resources, particularly within the office of the General Council, to monitor and enforce Russia's WTO promises?**

Answer:

The Administration looks forward to welcoming the Russian Federation into the World Trade Organization (WTO) and is working to support Russia in reaching that goal. Although Russia is the seventh largest economy in the world, it is only our 24th largest trading partner; China is our second largest trading partner. The President has expressly noted that the United States-Russia economic relationship is well below its potential and USTR is working to expand trade and investment with Russia. As part of that effort, USTR works diligently to monitor and enforce Russia's existing international commitments, and will do the same with respect to Russia's WTO obligations following its accession. Pursuant to USTR's monitoring and enforcement mission, I look forward to the opportunity to work with your office, and the relevant committees, to ensure

that USTR has the resources necessary to ensure that American workers, farmers, ranchers and companies enjoy the full benefits of Russia's WTO obligations.

Question 2

The U.S. government recently initiated an arbitration process to address the latest violation of the U.S. – Canada Softwood Lumber Agreement by Canada. This latest trade agreement violation by Canada, which deals with a massive subsidy to British Columbia's softwood lumber industry, has been particularly harmful to Oregon's forestry industry companies, workers, and communities. British Columbia's violation first became known to U.S. industry and the U.S. government in 2007, yet the enforcement step of initiating arbitration did not happen until 2011.

What will the USTR do differently in the future to ensure that violations of any U.S.-Canada lumber agreement are promptly addressed?

Answer:

This Administration has made enforcement of the Softwood Lumber Agreement (SLA) a top priority and is fully committed to its swift enforcement and requires. USTR actively manages the SLA and will continue to evaluate and act on any evidence of non-compliance to ensure that the Agreement is enforced.

Undertaking an arbitration against Canada under the SLA is a serious step. It would not be prudent for the U.S. Government to launch an arbitration before completing an analysis of the situation and without trying to resolve the issue outside of litigation. Each arbitration USTR has pursued against Canada has involved unique fact patterns. The Grade 4 issue is the most complex of the three cases the United States has brought against Canada under the SLA. Once we determined that Canada was not prepared to address the apparent violations we identified, and that we were in a position to most effectively advocate our position before a tribunal, the United States took timely action to hold Canada accountable for circumventing the Softwood Lumber Agreement.

Question 3

I am concerned about the increase in export fees on small businesses, including hardwood lumber manufacturers. USDA approved an APHIS phytosanitary fee increase from \$50.00 to \$99.00 during 2007, and then to \$106.00 effective October 2011 for the export of hardwood lumber products; a 100% increase in fees which cannot be passed through to foreign customers. American companies are absorbing these cost increases which causes additional reduction in jobs and threat of plant closings.

I understand that on March 4, 2011 Edward M. Avalos, Undersecretary of Marketing and Regulatory Programs, sent the USTR a letter about USDA's efforts to work with the hardwood industry to encourage the acceptance of a kiln dried program which would allow private agencies to administer the equivalent phytosanitary certificate and thereby reduce the costs to users while protecting the integrity of the program. The primary focus to gain acceptance is on China and Europe. **Because of the importance this program would have to provide the industry significant savings, would the office of the USTR be willing to work with USDA/APHIS to encourage EU and China to accept this alternative approach?**

Answer:

USTR is committed to working with USDA and all interested stakeholders to identify creative mechanisms to address the economic concerns of our industry.

On the Anti-Counterfeit Trade Agreement (ACTA):**Question 4**

Is it correct that the Administration believes that ACTA is an Executive Agreement that articulates a common understanding about how intellectual property rights will be enforced and that it does not impact the scope of those rights?

Answer:

Yes, ACTA is an Executive Agreement that does not affect the scope of intellectual property rights. ACTA Article 3(1) provides that ACTA "shall be without prejudice to provisions in a Party's law governing the availability, acquisition, scope and maintenance of intellectual property rights."

Question 5

Does the Administration believe that no changes in U.S. law, or the application of U.S. law, are required for the U.S. to be consistent with the understandings articulated in ACTA?

Answer:

Yes. ACTA can be implemented without new legislation.

Question 6

Does the Administration believe that the provisions of the Digital Millennium Copyright Act found in 17 U.S.C. sec. 512, and as interpreted by the courts, are consistent with ACTA, and ACTA in no way impacts U.S. law with respect to third-party liability?

Answer:

The ACTA is consistent with United States law, including with the Digital Millennium Copyright Act.

Question 7

If the Administration signs ACTA, doing so will not prevent the U.S. from changing its law, including in a number of specific areas like injunctive relief, damages for patent infringement, access to orphaned copyrighted works, and statutory damages, correct?

Answer:

The ACTA was drafted to reflect both the general principles and specific provisions of U.S. law in the areas the agreement covers. That said, the agreement does not constrain Congress' authority to change U.S. law.

Question 8

Does the Administration believe that the Congress and the courts are not bound by ACTA? If they are not bound by ACTA, they are therefore not constrained from developing guidelines that pertain to the issuance of injunctions against third parties, providing statutory licenses as an appropriate remedy, awarding continuing royalties in lieu of injunctions, or to implement reasonable exceptions to remedies in order to advance the public interest or to combat anti-competitive practices, correct?

Answer:

The ACTA was drafted to reflect both the general principles and specific provisions of U.S. law in the areas the agreement covers. As a result, U.S. courts can continue to apply U.S. law and remain in conformity with the agreement. As noted above, ACTA does not constrain Congress' authority to change U.S. law.

Question 9

Does the Administration believe that ACTA is to be interpreted and implemented in a manner that recognizes the importance of balancing the interests of right holders and intermediaries and users, and that it ensures that measures and procedures to enforce intellectual property rights are fair and equitable?

Answer:

Yes. In the preamble, the Parties note their desire to address the problem of infringement of intellectual property rights "in a manner that balances the rights of relevant right holders, service providers, and users. In addition, Article 6.2 of ACTA provides that "[p]rocedures adopted, maintained, or applied to implement the provisions of [Chapter II] shall be fair and equitable, and shall provide for the rights of all participants subject to such procedures to be appropriately protected."

Question 10

Will the Administration oppose any efforts to use ACTA to develop barriers to legitimate commercial activity or to undermine fundamental principles such as freedom of expression, fair process, and privacy?

Answer:

Yes. The Administration would oppose such efforts.

Question 11

Does the Administration intend to encourage overseas enforcement of intellectual property rights, including in the digital environment, in a manner consistent with the balanced way these rights are enforced in the U.S.?

Answer:

Yes. We believe that appropriately balanced enforcement systems are critical to protecting U.S. right holders and fostering e-commerce.

Question 12

Does the Administration intend to promote an open and transparent process in the way ACTA is implemented and shaped in the future, including in the ACTA committee? Will the Administration's views on intellectual property rights enforcement be informed by seeking the points of view by a wide variety of interested parties, including consumers?

Answer:

Yes, as stated in the President's Trade Policy Agenda, the Administration is committed to conducting its trade policy efforts based on high standards that reflect American values on public engagement and transparency. USTR will continue to consult with stakeholders, both formally, through our ITAC advisory system, and informally. This will help ensure that we receive appropriate input, including with respect to matters addressed in the ACTA committee.

Question 13

Will the U.S. apply the civil enforcement section of ACTA to patents and the protection of undisclosed information?

Answer:

ACTA permits a Party to exclude patents and the protection of undisclosed information from the obligations set out in the agreement's civil enforcement section. The United States will not apply the provisions of that section with respect to patents and the protection of undisclosed information to the extent of any inconsistency with U.S. law.

Question 14

Does the Administration intend to implement ACTA, including enforcement activities against third parties, in a way that does not to hinder the access and movement of legitimate generic medicines and will be consistent with the TRIPS Agreement, the WTO Declaration on TRIPS and Public Health and the WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property?

Answer:

ACTA is not intended to hinder the movement of legitimate generic medicines. In the preamble to the agreement, the Parties recognize the principles set forth in the *Doha Declaration on the TRIPS Agreement and Public Health*. Moreover, patents and protection of undisclosed information fall outside the scope of ACTA's provisions on border measures. (See Section 3, footnote 6.)

On the Trans-Pacific Partnership Agreement (TPP):

Question 15

Because the Internet represents the shipping lane of the 21st Century, do you agree that obtaining from our trade partners binding trade commitments on cross-border data transfers should be an economic and trade priority of the United States?

Answer:

We are working hard to develop TPP commitments that enhance the ability of our companies to operate effectively on a cross-border basis. Moving data may be critical to such trade, particularly for companies seeking to take advantage of the Internet, an area U.S. companies have pioneered and which is a great source of our companies' competitiveness. We are looking very closely at how we could accomplish this goal. Given the number of stakeholders involved, this is a complex undertaking, but we are committed to trying to address this issue in a way that supports our interests.

Question 16

Will the Administration seek to incorporate a substantive right on cross-border data transfers in the TPP?

Answer:

Yes, if possible.

Question 17

With respect to enforcement of intellectual property in the digital environment:

Will the Administration seek to ensure that intermediaries face no liabilities in TPP countries that they would not face in the U.S.?

Answer:

Our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including with current TPP partners Australia, Chile, Peru, and Singapore. To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal.

We note that those past FTAs contain provisions modeled on the U.S. Digital Millennium Copyright Act, which addresses limitations on liability for ISPs. We are seeking commitments that would be similar to, and consistent with, provisions found in U.S. law.

- A. Will the Administration seek to ensure that any enforcement actions taken against websites in TPP countries are done in a transparent way and will include meaningful due process?**

Answer:

Transparency and due process are important aspects of the U.S. IP enforcement regime. We are seeking commitments in the TPP that are fully consistent with these principles; in this regard, if there are any concerns with particular TPP partners, we would appreciate any suggestions that you or other members of Congress might have.

- B. What is the U.S. proposing in the TPP talks to ensure that the integrity of the Internet and fundamental principles of free speech are protected during any efforts to combat copyright infringement?**

Answer:

The TPP offers an important opportunity to incentivize innovation and creativity throughout the region. Our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS, and FTAs with current TPP partners Australia, Chile, Peru, and Singapore. In that connection, we note that these past FTAs contain copyright and enforcement provisions that are modeled on U.S. law, and therefore fully consonant with ensuring the integrity of the Internet as well as the fundamental principle of free speech.

Question 18

Will the Administration seek to obtain strong, binding commitments to combat trade in illegal timber and wood products?

Answer:

The Administration proposed at Round 6 in Singapore provisions that would commit TPP countries to have measures that would make it unlawful to, among other things, import or export wildlife and wild plant products, which include “timber and wood products,” that are taken in violation of conservation laws of other countries. We also proposed provisions relating to regional cooperation, information sharing and law enforcement cooperation to enhance efforts of TPP countries to combat illegal logging and associated trade.

Question 19

Will the Administration seek binding commitments to eliminate illegal, unreported, and unregulated fishing and to establish disciplines on fish subsidies?

Answer:

The Administration also proposed at Round 6 a variety of commitments to enhance measures in place in regional fisheries management organizations (RFMOs) that seek to eliminate illegal, unreported, and unregulated (IUU) fishing, as well as commitments on fisheries subsidies, including those that contribute to overfishing and overcapacity.

Question 20

The Intellectual Property Rights Chapter of the TPP negotiating text was recently leaked and posted onto the Internet. The document is classified as “TPP Confidential.” **To what extent, if any, does this classification differ from the standard “Confidential” classification established by Executive Order 12958 and its successors?**

Answer:

Answer: The “TPP Confidential” marking denotes TPP-related materials classified at the confidential level as provided in Executive Order 13526 (successor to EO 12958) on the basis that they pertain to foreign government information, consistent with Sections 1.2(3), 1.4(b), and 6.1(s) of the Order.

Can anyone with a Confidential security clearance view a document classified “TTP Confidential”? If not, what additional access restrictions apply, and what is the basis for these restrictions?

Answer: As is the case with other “confidential” materials, a person with a valid “Confidential”-level security clearance would have to have a “need to know” in order to have access to “TPP Confidential” materials.

Question 21

How does the Executive branch determine when the negotiating texts of free trade agreements should be classified “Secret?” Which negotiating texts are classified at this level? The relevant Executive Orders state that information shall be classified “Secret” if the unauthorized disclosure of that information could reasonably be expected to cause serious damage to US national security, in a way that the classifying authority is able to identify or describe. Please describe how the disclosure of the negotiating texts of trade agreements could cause serious damage to US national security.

Answer:

TPP negotiating texts have been classified exclusively at the “Confidential” level. There are no other free trade agreement negotiations currently underway.

Question 22

There are discussions about whether Japan may be in a position to join the TPP talks. As you know, the Japan Post presents a major, unfair challenge to many American service providers. **Will USTR insist that Japan come into compliance with its WTO services obligations prior to joining the TPP talks?**

Answer:

Japan Post is an area of strong concern that we are urging Japan to address in the near term. We continue to raise these serious level playing field concerns at every appropriate opportunity with the Japanese Government. Japan's Government has not yet made a decision on whether it will seek to join the Trans-Pacific Partnership negotiations. The Administration will continue to call for Japan to address our concerns in the near term and to abide by its WTO obligations.

Questions from Senator Stabenow

Question 1

As Chairwoman of the Senate Committee on Agriculture, Nutrition and Forestry, and a member of the President's Export Council, I have been closely watching the ongoing Trans-Pacific Partnership negotiations. While I share your strong desire to open up new markets, I hope that USTR will address the concerns of our nation's dairy farmers, who worry that the current concentration of the dairy industry in New Zealand could adversely affect them. **Can you give me an update on the Administration's efforts to address these concerns?**

Answer:

We view the TPP negotiations as an important element in our efforts to expand our trade in the Asia-Pacific region, including export opportunities for U.S. dairy products. We recognize the import sensitivities on dairy products from New Zealand, and are working very closely with U.S. industry to develop our approach to dairy in the TPP negotiations.

Question 2

Earlier this year the United States requested that an independent arbitration panel look into violations by Canada of the terms of the Softwood Lumber Agreement (SLA)—specifically, government timber pricing practices in British Columbia that appear to circumvent the terms of the trade agreement. I applaud your continued efforts to enforce this Agreement. However, this is the third time the United States has had to request arbitration due to Canada's non-compliance, and I am deeply troubled that Canada continues to fail to uphold its end of the Agreement. These issues go to the very core and purpose of the SLA, which is to ensure fair competition between U.S. and Canadian lumber producers, which in turn allows our landowners to get a fair price for their timber. I believe that the SLA can work as intended as long as both sides fully adhere to the carefully negotiated terms. **But if Canada does not live up to its obligations, can I get your assurances that the United States is fully committed to swift enforcement action to rectify the harm inflicted on American lumber manufacturers, millworkers, and private forestland owners?**

Answer:

This Administration has made enforcement of the Softwood Lumber Agreement (SLA) a top priority and is fully committed to its swift enforcement. USTR actively manages the SLA and will continue to evaluate and act on any evidence of non-compliance to ensure that the Agreement provides the level playing field it was designed to create for U.S. producers.

Undertaking an arbitration against Canada under the SLA is a serious step. It would not be prudent for the U.S. Government to launch an arbitration before completing an analysis of the situation and without trying to resolve the issue outside of litigation. Each arbitration USTR has pursued against Canada has involved unique fact patterns. The Grade 4 issue is the most complex of the three cases the United States has brought against Canada under the SLA. Once we determined that Canada was not prepared to address the apparent violations we identified, and we were in a position to most effectively advocate our position before a tribunal, the United States took timely action to hold Canada accountable for circumventing the Softwood Lumber Agreement.

Question 3

Intellectual property is a competitiveness and jobs issue for America. I believe there is a strong connection between protecting intellectual property and having a strong manufacturing sector.

How can we develop a more comprehensive and results-oriented trade strategy that combats other countries' intellectual property theft rather than a strategy that focuses on individual meetings?

Answer:

The protection and enforcement of intellectual property rights (IPRs) is fundamental to American competitiveness, job creation and manufacturing strength. As President Obama confirmed in this year's State of the Union address, "The first step in winning the future is encouraging American innovation....In America, innovation doesn't just change our lives. It's how we make a living."

Taking up this charge, the President's 2011 Trade Policy Agenda articulated an IPR trade policy strategy emphasizing the protection of American innovation and jobs, and stressing the importance of intellectual property protection to the U.S. economy. The Agenda noted in particular that "the competitive advantage of American workers is eroded when piracy, counterfeiting, and other intellectual property theft threaten American brand-name products, copyrighted content, and patented inventions....Providing more certainty in this regard can embolden these American job-creators to export, and can help to create a global environment that encourages creative, innovative solutions to the world's most pressing problems."

USTR works to protect American IPRs and to promote U.S. competitiveness and jobs through a variety of mechanisms – including negotiating international IPR agreements, including state-of-the-art IPR provisions in U.S. free trade agreements (FTAs), monitoring IPR protection and enforcement by our trading partners, including through the annual Special 301 Report, and enforcing international rules to protect American innovators' IPRs, including in the World Trade Organization. USTR undertakes this strategy in close coordination with other relevant U.S. agencies, stakeholders, trading partners and Congress. For example, this year USTR and partner countries representing more than half of global trade finalized the text of the Anti-Counterfeiting Trade Agreement (ACTA). The agreement is an important new tool to fight the global scourge of counterfeiting and piracy, which threatens jobs that depend on innovation – including those here in the United States.

Likewise, USTR engages in intensive bilateral negotiations with our trading partners that have achieved tangible results. For instance, The United States won wide-ranging commitments from China including to eliminate discriminatory "indigenous innovation" criteria used to select industrial equipment for preferential treatment, ensuring access to China's market for American machinery manufacturers, as well as commit to open and neutral standards for 3G and future technologies in one of the world's largest telecommunications markets. Similarly, with respect to Russia, following direction from Presidents Obama and Medvedev, respectively, USTR and Russian government officials worked to resolve key bilateral issues related to the WTO accession process, including encouraging Russia to enact certain legislation critical to protecting

intellectual property. These efforts have added significant momentum to Russia's effort to join the WTO, which will create new market opportunities for U.S. exports of goods and services.

I look forward to working with you and other Members of Congress to ensure adequate and effective protection of the intellectual property rights of America's artists, creators and producers around the world.

Questions from Senator Cantwell

Question 1

Protecting intellectual property rights, which are the underpinning of so much of our economy in Washington State, is of great interest to me. US industry continues to face real threats to the value of intellectual property that endanger US innovation and jobs. This is true for a number of industries in the state of Washington, including our bio-medical, pharmaceutical, and bio-tech industries.

The KORUS agreement does a good job of imposing very high standards on intellectual property rights to protect US innovators and jobs. But I am hearing concerns that other agreements the US is currently in the process of negotiating entry to, specifically the Trans Pacific Partnership, have a lower standard for IP protection. **Given that the Trans Pacific Partnership is viewed by some as a trade platform that could eventually expanded to include China and India - two countries with which the US has had IP enforcement issues with - what are we doing extend the protections that we fought so hard for in KORUS into other agreements that we may be contemplating? And specifically, what are we doing to protect our country's bio-medical, pharmaceutical, and bio-tech industries in this regard?**

Answer:

Let me assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS.

To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text

on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection. We have, and continue to, work on our proposals in consultation with the Congress and all relevant stakeholders.

Question 2

Ambassador Kirk, in his joint press conference with President Hu, President Obama noted that high rate of software piracy in China means fewer jobs and less economic growth both in the United States and China. At the JCCT, China agreed to do several things as part of its software legalization program.

How are the Chinese following through on their JCCT commitments regarding software legalization?

More broadly, how does USTR ensure that the software the Chinese government is buying is actually legitimate?

Overall, what is USTR's strategy to keep the Chinese focused on making sure the software purchased by its government, enterprises, and state-owned enterprises is legally licensed?

Answer:

We continue to engage China at all levels to address software piracy. I agree that this is a major problem; in fact, it was raised by the President during the recent State visit by President Hu Jintao. During that visit and the preceding meetings of the Joint Commission on Commerce and Trade (JCCT), China took new steps on software piracy by committing to allocate budget funding for legal software purchases by government agencies, as well as making a commitment to audit the use of the legal software and publish the results of those audits. Furthermore, China said it would promote the use of licensed software in private companies and in state owned enterprises through software asset management programs. We are encouraging China to make additional efforts in the context of the "Special Campaign against counterfeiting and piracy" that was launched by the State Council in October.

While we must see how these steps work out in practice, and much more work remains to be done, China's recent commitments mark a significant opportunity for genuine progress on this difficult issue. As always, we will monitor progress on these issues to make sure that China is

following through on its commitments, using such tools at the JCCT IPR working group, and other opportunities. We expect to see concrete and measurable results, including indications of a more robust market for legal software. We also look forward to studying the results of the forthcoming ITC study on the quantitative effects of IPR infringement and “indigenous innovation” policies in China.

Question 3

There is only one Bahrain producer of the subject cotton shells produced from high quality cotton yarns, and that producer is related to the sole U.S. comforter producer that supports the rule change. We are aware of numerous other US producers of bedding products. **How many of these US producers has the ITC, USTR or Commerce contacted to determine whether these other US producers would be harmed by the proposed rule change, and what have these US producers told the ITC, USTR or Commerce?**

Answer:

- In July, 2009, the Committee for the Implementation of Textile Agreements (CITA), which is chaired by the Commerce Department, of which USTR is a member, requested public comment on the proposal by the Government of Bahrain for a rule of origin change for certain bedding products. CITA received one comment in support of the proposal from Sandler, Travis and Rosenberg on behalf of West Point Home.
- In March, 2010, the U.S. International Trade Commission (USITC) requested public comment on the probable effects of the proposed rule of origin change. USITC received two comments, one from West Point Home, Inc in support of the change, and one from the National Council of Textile Organizations, opposing the change based on a concern over substitutable products.
- In August, 2010, USTR was contacted by representatives of an additional U.S. company with objections to the proposed rule change. This company is concerned that imports from Bahrain of certain comforter shells made from certain combed compacted cotton yarns on a duty free basis would be harmful to the part of their business which imports similar goods from China.

The proposed rule covers certain high quality cotton yarns (over 102 metric) and shells produced from these yarns. These high quality yarns and shells are significantly more expensive than

other cotton yarns and fabric commonly imported from China. In the July 2010 ITC report, the ITC stated that no separate import data was available for these high quality yarns and shells. In reaching its conclusion that US bedding producers would not be adversely affected by the proposed rule change, however, the ITC relied upon general import data that covered both shells consisting of high quality cotton yarns and shells consisting of other low cost cotton yarns.. Has the ITC requested information from US producers and importers on the volume and cost of shells produced from high quality cotton yarns imported from China? If not, how can the ITC and USTR conclude that these US comforter producers will not be harmed by a proposed Bahrain FTA rule change applicable to high priced shells produced from the subject cotton yarns? In other words, it seems that the comparison that was done to arrive at a conclusion of no harm to U.S. industry was not an “apples-to-apples” comparison. On the one hand, the ITC appears to have considered imports from Bahrain of comforter shells made with high quality yarns and fabric. On the other hand, the ITC appears to have considered imports from other sources (primarily China) of comforter shells regardless of the quality of yarn and fabric used to make them. Since the latter category includes shells made from lower quality yarn and fabric, average unit values of the shells in that category are lower than what they would be if the ITC had taken into account only shells made using high quality yarn and fabric, which is the Bahraini object of comparison. By not doing an apples-to-apples comparison, the ITC may have skewed its results in a way that would minimize, and perhaps eliminate, any adverse impact of the proposed rule change on U.S. producers of bedding that rely on shells made with high quality yarn and fabric imported from China and elsewhere in the world.

If that is not the case, please explain why it is not the case.

Answer:

- In March, 2010, the U.S. International Trade Commission (USITC) requested public comment on the probable effects of the proposed rule of origin change. USITC received two comments, one from West Point Home, Inc in support of the change, and one from the National Council of Textile Organizations, opposing the change based on a concern over substitutable products.
- The full text of the USITC report may be found at:
<http://www.usitc.gov/publications/332/pub4173.pdf>.

In 2007 and 2008 the average unit values of cotton comforter shells from Bahrain were significantly less than the average unit values of cotton comforter shells from China, and the average unit values of cotton comforter shells from Bahrain have significantly increase only

recently. Since the only exporter of the subject products from Bahrain is related to the only US comforter producer supporting the rule change, how has the ITC verified the data on the cost of subject imported cotton shells from Bahrain? For example, a related party importer of a duty free cotton shell has an incentive to declare a high value on imports to avoid US tax obligations.

Has the ITC confirmed the cost of production or other market data to support the cost of the subject imported cotton shells from Bahrain?

Answer:

- In its report, the USITC explains that, in addition to the solicitation of public comments in March, 2010, “Commission staff obtained U.S. government production and trade data, and contacted domestic firms and U.S. importers to collect the necessary information to develop the probable effects advice.” (page iii).
- The USITC report may be found at: <http://www.usitc.gov/publications/332/pub4173.pdf>.

The US producers of finished comforters are in an extremely precarious competitive position. The comforter market is dominated by imports, predominately from China. This is confirmed by ITC data that show imports of finished comforters are more than six times greater than imports of cotton shell components. The subject high priced compacted yarns and shells are not produced in the US. Thus, the problem for US comforter producers is that they must import cotton shell components, and pay a seven percent duty, and at the same time compete against finished comforter imports. According to ITC statistics, certain finished comforters may be imported into the US at a price that is as little as \$2 per unit more than the price that US comforter producers must pay for imported cotton shell components used to produce finished comforters in the US. Competition to make major sales in the US market is very price sensitive. As a result, US producers of comforters are forced into a “buy versus make” decision. In short, US comforter producers are in a very import sensitive industry, and could easily be forced to simply import finished products rather than make the products in the US – costing US jobs and US exports. **Based on this import sensitivity, how will the proposed rule change, which will give only one US comforter producer a seven percent cost advantage, impact the entire US industry? How will the rule change impact overall US exports, US jobs, US production and capacity utilization if only one US comforter producer receives duty free treatment on its inputs and other US comforter producers are faced to compete with lower cost finished comforter imports and pay a seven percent duty on their input materials? Will other US producers lose sales or be forced to import finished comforters as a result of only one US producer receiving a seven percent cost advantage?**

Answer:

- USTR staff conducted additional consultations the staff of the USITC on cotton comforter shells, the product that is the subject of the proposed change in the FTA and also on finished comforters. USITC staff agreed to provide technical assistance to USTR on these products reflecting the most recent trade data available.
- This data shows that there is a large and growing volume of imports of comforter shells from China, at average prices considerably below products of Bahrain and an absence of imports of finished comforters from Bahrain (even with the availability of duty-free treatment for imports of finished comforters). In addition, given China's position in the finished comforter market, this data indicates that eliminating a 7 percent duty on imports of a subset of comforters shells from Bahrain would be unlikely to have a significant adverse effect on the U.S. industry importing shells from China and finishing them in the United States.
- Specifically, data provided by the staff of the USITC indicates that, with respect to comforter shells, including but not limited to those of certain compacted ring spun cotton yarn, imports from China represent approximately 84 percent of total U.S. imports of these products. Imports of these products from China have increased 51 percent in the first 11 months of 2010 compared to the same period in 2009. At the same time, imports of comforter shells from Bahrain declined 36 percent, and Bahrain's share of total U.S. imports of these products declined from 17 percent to 9 percent.
- The USITC staff also provided data on the average unit value of U.S. imports of comforter shells from Bahrain and China. This data shows that the value of imports of these products from Bahrain is approximately 20 percent, or 60 percent higher than the corresponding imports from China, depending on the specific 10-digit Harmonized Tariff System classification that applies to the relevant imports.
- The staff of the USITC also provided USTR with information reflecting the most recent trade data for imports of finished comforters from China and Bahrain. That data indicates that U.S. imports of finished comforters has generally declined, while imports of comforter shells has increased. The information provided by the USITC staff also indicates that under the rules of origin of the United States– Bahrain FTA, finished comforters made in Bahrain from non-originating yarns, including compacted, ring spun cotton yarn, are already eligible for duty free treatment. Trade data also indicates that notwithstanding the availability of duty-free treatment for finished comforters from Bahrain, for the years 2006 through the first 11 months of 2010, there were no imports of finished comforters from Bahrain. In fact, imports of finished comforters from China accounted for approximately 75 percent of total U.S. imports in 2009 and the first 11 months of 2010. Thus, with respect to finished comforters, it does not appear that Bahrain's products compete in the U.S. market with imports from China.

Question from Senator Nelson**Question 1**

During the President's upcoming trip to South America, do you expect him to discuss the Administration's plans for travel exports - particularly the Visa Waiver Program with Brazil and Chile? Additionally, as the Administration looks to double exports through its National Export Initiative, can you please comment on your office's efforts to advocate for travel-related exports?

Answer:

The Administration recognizes the enormous value of the U.S. tourism industry, and the billions of dollars of export revenue that it generates for U.S. companies and workers. The Visa Waiver Program (VWP) is administered by the Department of Homeland Security (DHS) in consultation with the Department of State. In the last two years, nine countries have been added to the VWP, bringing the current number of participating countries to 36. Today approximately half of the total overseas visitors to the United States enter through the VWP. Information regarding the eligibility of particular countries for the VWP can be provided by DHS and the Consular Affairs Bureau of the Department of State.

USTR works closely with other agencies to advocate on behalf of U.S. tourism exporters, and in particular to address impediments to U.S. trade. For example, in December 2010, under the auspices of the U.S.-China Joint Commission on Commerce and Trade, the United States and China agreed to implement Phase 3 of the Memorandum of Understanding (MOU) opening the market for the sale of packaged leisure travel from China to the United States to three additional provinces in China. Since the initiation of travel under the Memorandum of Understanding in 2008, total passenger travel from China to the United States has increased by 23 percent, a total export value of \$5.5 billion (as of July 2010). China is our fastest growing market and by 2015 it is projected to become the 6th largest arrival market for the United States (up from 16th before the MOU in 2008). We will continue to press China to broaden the scope of access to include additional provinces.

Questions from Senator Menendez**Question 1**

I would like to thank you for your efforts, as well as those of your staff, to advance progress on online piracy issues harming non-profit and commercial journal publishers. Combating on-line piracy is critical to ensuring that the U.S. remains a leader in science and innovation and to retaining good jobs in the United States. The publishers impacted by IPR violations directly and indirectly employ over 50,000 workers nationally and more than 3,000 jobs in my home state of New Jersey.

During the 2009 meeting of the U.S.-China Joint Committee on Commerce and Trade (JCCT), your Chinese counterparts pledged to strengthen domestic library efforts to protect copyright. In particular, Chinese copyright authorities agreed to conduct random inspections of libraries.

Enforcement is the key to resolving IP problems in China in the long-term. In the past two years, however, online journal piracy conditions on the ground have not improved. Chinese inspections of libraries have not been thorough. Libraries can easily hide infringement if they are notified of inspections beforehand. We need to work with the Chinese to develop specific guidelines for inspections and audits to reduce the upstream part of the piracy supply chain.

What progress can be expected on this issue under the JCCT this year?**Answer:**

We continue to work on this issue to ensure that U.S. journals are protected in China. In 2009 we made progress on this issue at the JCCT meeting when China announced the issuance of a notice to state-run libraries instructing them to strengthen protection of copyright-protected academic and medical journals. In 2010, we pressed them again during the December JCCT Plenary to ensure that China's National Copyright Administration (NCA) investigated complaints by our right holders and China agreed to take prompt action at the conclusion of their investigations into web-based enterprises' piracy of electronic academic journals. We are hopeful that in 2011 NCA will take the appropriate steps to shut down the websites that sell the infringing copies of the journal articles, and that the Chinese Government will conduct more vigorous inspections of the State-run libraries to ensure these practices do not keep flourishing. USTR officials raised our concerns about this issue in March 2011 meetings in Beijing.

Question 2

We all know that free trade policies have opened up the doors of opportunities in our global market and have created jobs in areas that never before existed. However, our main concern should be whether or not these jobs are going to the American people. I voted against the North American Free Trade Agreement in 1993 not because I didn't think it would increase the fluidity of our international trade market, as it certainly has. I voted against it because I believe we should support policies that bolster the American economy first and foremost. I will remain just as vigilant as we continue to see an increase in outsourced American jobs. Just recently, L'Oreal factory in Clark New Jersey, a major manufacturing plant, has announced plans to close its facility and move 300 jobs to Mexico.

How can I tell just one of those 300 honest and loyal factory workers, who had invested twenty or more years in the factory, that his job has been sent to Mexico? Can I tell him to uproot his family and try his luck elsewhere without any guarantee of success?

Answer:

First, it is unfortunate that the factory closed and jobs were lost. Changes in the relative competitiveness of a firm or a factory are usually the result of several factors, and trade can be one of the contributors. As a society we have an obligation to assist those who bear the brunt of that change. To limit the impact of dislocations and to support new jobs for workers in transition, this Administration supports renewal of Trade Adjustment Assistance. We hope that Congress will secure long-term reauthorization of this key program.

Second, we believe that trade is essential to American economic growth and success. To reach our full potential for innovation, economic growth and sustained employment, America must engage globally to sell more goods and services abroad.

With the goal of better jobs for more Americans, we will craft new trade initiatives to increase our country's and our citizens' ability to compete in the global marketplace. Policies that support education, infrastructure, innovation, and investment here at home will also support our export strategy and its expected dividend of better job growth here at home.

Question 3:

As you know, Ambassador Kirk, the Colombian Free Trade Agreement was not brought to the Senate for ratification due to concerns about violence and human rights violations directed at union members in Colombia. According to the State Department's Human Rights Report on Colombia for 2009, violence and discrimination against union members discouraged some workers from joining and engaging in union activities. The Ministry of Social Protection reported that 28 trade unionists were killed during 2009, compared with 38 in 2008, while the National Union School (ENS), a labor rights NGO, reported that 39 trade unionists were killed, compared with 49 in 2008. The National Union School and government figures differed because of different methodological conceptions of trade union membership. According to data provided by the government and ENS, during the year the homicide rate per 100,000 was five for unionists and 35 for the general population. Nevertheless, any homicide associated with one's association, such as trade union membership, is unacceptable in a free and democratic society.

What is USTR doing to ensure that the treatment of labor unions and their members are properly addressed and resolved so that the Colombia Fair Trade Agreements can have a chance of passage in the Senate?

Answer:

On April 7, 2011, the United States and Colombia announced an agreement on an "Action Plan Related to Labor Rights" that significantly expands the protection of labor leaders and organizers, bolsters efforts to punish those who perpetrate violence against such persons, and strengthens labor laws and their enforcement. The Action Plan was developed as a result of the President's insistence that a number of serious labor concerns be addressed before the agreement could be moved to Congress. The Action Plan includes major, swift and concrete steps the Colombian Government has agreed to take to address outstanding labor concerns. For instance, the Colombian Government committed to amend the Criminal Code to criminalize anti-union threats and certain discriminatory practices; to increase resources, expand training, and improve procedures to secure more effective prosecution of labor violence cases; and to broaden access to protection programs for labor leaders and organizers under threat of violence. Colombian Government implementation of this Action Plan should clear a path forward for Congressional consideration of the Colombia FTA.

Question 4:

With respect to Panama, is it not the expectation that Panama would adopt the five core ILO labor principles: freedom of association; the effective recognition of the right to collective bargaining; the elimination of all forms of compulsory or forced labor; the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor;

and, the elimination of discrimination in respect of employment and occupation. **Is it your understanding that Panama has accepted these principles and is ready to implement them?**

Answer:

Panama accepted International Labor Organization (ILO) labor principles as part of the trade agreement, and recently took concrete steps to strengthen the protection of labor rights in Panama. As part of the United States – Panama Trade Promotion Agreement, both Parties commit to adopt and maintain in their laws and practice the five fundamental labor rights as stated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. These rights are related to forming and joining unions, collective bargaining, elimination of forced labor and child labor, and employment discrimination based on gender, race or other factors. Both Parties are also required to effectively enforce – and may not waive – labor laws related to the fundamental labor rights. Additionally, Panama has taken several steps to address outstanding labor concerns we have raised with them over the past two years. With respect to enforcement of its labor laws, Panama has issued executive decrees to address the misuse of subcontracting and temporary work contracts, to strengthen collective bargaining and the right to strike, and to prevent employer interference in union activities. Panama’s Labor Ministry has issued a resolution to increase labor inspections in the maritime sector, and to ensure that maritime workers are aware of their rights. To address concerns related to labor laws, Panama’s legislature recently passed labor reforms to ensure that companies in the Barú special economic zone are not exempt from key labor rights provisions, as well as legislation to ensure labor rights are respected in export processing zones and to eliminate restrictions on collective bargaining in companies less than two years old. President Martinelli signed these bills into law on April 5, 2011.

Question 5:

This issue has been a long-standing area of dispute between Mexico and the United States. In fact, the cross-border trucking agreement as part of the North American Free Trade Agreement has not been implemented since the agreement took effect in 1995. The United States decided to

bar Mexican trucks on U.S. roadways due to safety and security concerns. Mexico's response was to retaliate with \$2.5 billion worth of tariffs on U.S. exports. I understand the pilot program the Department of Transportation implemented in 2007 was stopped due to its inability to gather a statistically valid sample to validate the safety and security standards were being met. In the recent agreement that President Obama and President Calderon signed, another pilot program will be implemented. **Do you have confidence that this time we will get it right – that Mexican trucking companies will be able to comply with our standards and regulations and that Mexico will lift the tariffs it has imposed on U.S. products?**

Answer:

On March 3, President Obama and Mexican President Calderón announced that the United States and Mexico have found a clear path to resolving the cross-border long-haul trucking dispute. This path will allow for the establishment of a reciprocal, phased-in program built on the highest safety standards that will authorize both Mexican and United States long-haul carriers to engage in cross-border operations. Once a final agreement is reached, Mexico will suspend its retaliatory tariffs in stages beginning with reducing tariffs by 50 percent at the signing of an agreement and will suspend the remaining 50 percent when the first Mexican carrier is granted operating authority under the program. Mexico will terminate all current tariffs once the program is normalized. USTR will continue to work with the Department of Transportation to ensure that the new program emphasizes safety, security, and efficiency, and is consistent with our NAFTA obligations.

Questions from Senator Carper

Question 1

As you know, Brazil issued regulations in December that would ban the use of affiliate reinsurance. USTR was helpful in getting Brazil to delay implementation of the regulations and in facilitating dialogue with industry. These regulations contravene legislation passed by the Brazilian Congress in 2007, which opened the reinsurance market and led to significant investment by U.S. and other foreign insurers. It is a perplexing action by the government, given the capacity the country needs as it prepares for the 2014 World Cup, 2016 Rio de Janeiro Olympics and other major infrastructure projects. **Can you tell us what the United States is doing to ensure that U.S. insurance companies have fair access to Brazil's insurance market by removing unfair restrictions to the use of affiliate reinsurance?**

Answer:

We have engaged broadly and at high levels to express our concerns to the Brazilian government and insurance industry. Officials from State, USTR, and Treasury have reached out to their Brazilian counterparts. We also have worked to build international support for our efforts, engaging with representatives of Japan, Spain, and the EU. We will continue pressing Brazil's regulatory authorities to work with the affected companies to minimize disruption to their operations and the Brazilian insurance market.

Question 2

In 2007, the Bush administration reached an agreement with Congress on environmental and worker protections that increased standards for these protections above current Free Trade Agreement standards. However, this agreement lowered Intellectual Property protections for pharmaceutical companies below U.S. standards and standards contained in previous Free Trade Agreements. In my home state of Delaware, the innovative biopharmaceutical industry is responsible for more than 11,000 direct jobs, and at this time of economic malaise, it is imperative that strong Intellectual Property standards be part of any future trade agreements. **Can you please comment on how you and your team plan to ensure that U.S. innovative industries, including pharmaceutical companies, which represent engines of America's future growth and our competitive advantage, will receive the highest levels of protection in the Trans-Pacific Partnership?**

Answer:

The TPP offers an important opportunity to incentivize innovation and creativity throughout the region. I agree that effective IPR protection and enforcement is an important element in encouraging innovation in new technologies, including medical technologies such as biopharmaceutical products, and will stimulate investment in research and development, facilitate exports of U.S. products and contribute to the creation of American jobs. Let me assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation, is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS, and FTAs with current TPP partners Australia, Chile, Peru, and Singapore.

To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection. We have, and continue to, work on our proposals in consultation with the Congress and all relevant stakeholders.

Questions from Senator Grassley

Question 1

Last week President Obama and President Calderon announced an agreement in principle that will hopefully lead to a resolution of the trucking dispute. The proposal will remove the tariffs currently applied to 99 U.S. products, including those from my home state of Iowa. However, this is only the suspension of tariffs, not the elimination. If the U.S. fails to comply with the terms of the agreement Mexico can, and I assume will, reinstate tariffs to current levels, which have cost the U.S. millions of dollars in exports and hurt industries vital to the U.S. economy.

What can we do to assure the permanent removal of the tariffs on U.S. products so we can begin to gain back the jobs and export losses from the last two years?

Answer:

Now that we have reached an agreement with Mexico on a path forward, the proposed agreement between the Department of Transportation and Mexico has been published for public comment in the *Federal Register*. We expect the final agreement to be signed in late May or early June.

Once a final agreement is reached, Mexico will suspend its retaliatory tariffs in stages beginning with reducing tariffs by 50 percent at the signing of an agreement and will suspend the remaining 50 percent when the first Mexican carrier is granted operating authority under the program. Mexico will terminate all current tariffs once the program is normalized. USTR will continue to work with the Department of Transportation to ensure that the new program emphasizes safety, security, and efficiency, and is consistent with our NAFTA obligations.

Question 2

Iowa is by far the largest gelatin producing state in the country. Japan and other countries continue to keep out U.S. gelatin of bovine origin, citing BSE risk, even though our gelatin meets

all OIE standards and should be allowed in under Japan's WTO obligations. Overcoming barriers to U.S. beef is a very high priority, but it is a different issue than the one presented by gelatin. **Please explain what the administration is doing to gain market access for U.S. gelatin in Japan.**

Answer:

USTR and FDA have raised this issue at senior levels on numerous occasions with the Japanese government. We will continue to press Japan to open its market to US gelatin based on science, consistent with international standards, and in a commercially viable manner.

Questions from Senator Snowe

Question 1

The U.S. – Canada Softwood Lumber Agreement has been plagued with Canadian non-compliance issues. As you know, the U.S. has initiated three arbitration proceedings in an attempt to address the most egregious violations – winning two, while the third proceeding is still ongoing. Unfortunately, our government at times is slow to initiate enforcement steps called for under the agreement. We must understand that delayed enforcement action in response to oftentimes blatant SLA violations results in jobs saved in Canada at the expense of U.S. jobs. **What obstacles do you face when it comes to initiating dispute resolution under this Agreement? What steps will USTR take to streamline the Administration's process for making these decisions and take action to protect American jobs? What additional authorities do you need to better enforce the SLA?**

Answer:

This Administration has made enforcement of the Softwood Lumber Agreement (SLA) a top priority and is fully committed to its swift enforcement and requires no additional authorities to do so. USTR actively manages the SLA and will continue to evaluate and act on any evidence of non-compliance to ensure that the Agreement provides the level playing field it was designed to create for U.S. producers.

Undertaking an arbitration against Canada under the SLA is a serious step. It would not be prudent for the U.S. Government to launch an arbitration before completing an analysis of the situation and without trying to resolve the issue diplomatically. Every arbitration USTR has pursued against Canada has involved unique fact patterns. The Grade 4 issue is the most complex of the three cases the United States has brought against Canada under the SLA. Once we determined that Canada was not prepared to address the apparent violations we identified, and that we were in a position to most effectively advocate our position before a tribunal, the United States took timely action to hold Canada accountable for circumventing the Softwood Lumber Agreement.

USTR has promptly addressed any apparent violations of the SLA and will continue to do so. In addition to the current arbitration, the U.S. Government has a successful track record of prevailing in two arbitrations under the SLA – in no small part due to our careful due diligence before launching an arbitration. We also imposed import charges on certain softwood lumber products in April 2009 when Canada did not comply with the first arbitral decision. In March 2011, Canada took measures to comply with the second arbitral decision by putting in place additional export charges.

Question 2

What assurances can you give this Committee that the Administration is committed to ensuring the strongest possible protections overseas for the intellectual property of all U.S. innovative sectors? Can you assure us that the Administration will seek the inclusion of the highest of IP standards in the Trans-Pacific Partnership Free Trade Agreement, which is currently in negotiation?

Answer:

The TPP offers an important opportunity to incentivize innovation and creativity throughout the region. I can assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation, is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS, and FTAs with current TPP partners Australia, Chile, Peru, and Singapore.

Question 3

I have heard concerns from constituents and local officials in Maine about the investor-state dispute resolution process in the investment chapter of the U.S-South Korea Free Trade Agreement. **How do you respond to concerns of some state and local officials that the investment chapter could subject laws in Maine and other states to challenge in foreign tribunals?**

Answer:

Investor-State arbitration provides foreign investors with the option to pursue binding international arbitration if they believe the host government has violated the investment rules of a trade agreement (for example, if a government illegally seized a foreign investor's factory). Investor-State arbitration provides critical protections to U.S. investors overseas, especially in countries that do not have fair or independent court systems. U.S. companies have used investor-State arbitration to win or settle over 30 disputes and recover hundreds of millions of dollars in damages. These results benefit not just the investors themselves, but also the many other U.S. companies that export to, or are affiliated with, these investors, allowing our companies and workers to enjoy even more of the growth and employment benefits that international trade and investment offer.

At the same time, investor-State arbitration does not prevent the U.S. government or state and local governments from regulating in the public interest, for example to protect public health, safety, or the environment. A few points are notable:

We could never be required to change our laws. Nothing in our investor-State arbitration provisions, including those in the U.S. – Korea trade agreement, prevents the U.S. government or a foreign government from protecting health, safety, the environment, or other public interests. If we were ever to lose an investor-State case, we could only be required to pay compensation – we could not be required to change any of our laws or regulations.

We have never lost a case. The United States has never lost an investor-State case or paid a penny to settle an investment dispute. At the same time, foreign investors rarely pursue investor-State arbitration against the United States, opting instead to use the independent, fair, and high-quality U.S. court system when they are concerned about government treatment here.

We include safeguards to prevent abuses. Our investor-State arbitration provisions include safeguards to penalize investors who bring frivolous suits, ensure transparency and public participation, and provide opportunities to challenge awards. Many of these safeguards were

developed in response to Congressional direction in the Trade Act of 2002 to ensure that we maintain the ability to protect the public interest.

Question 4

It has been one year since the Assistant USTR for Small Business position was created. Please address the obstacles that challenge American small businesses as they seek to export, solutions you envision to circumvent those barriers, and explain how you propose to measure the success of the Assistant USTR for Small Business, Market Access and Industrial Competitiveness in advancing trade opportunities for small business. **What results can small businesses expect from the successful implementation of your initiatives in the next year? Five years?**

Answer:

USTR is focused on making trade work for small businesses, helping them increase their sales to customers abroad and thus create jobs at home. We do this by negotiating with foreign governments to open their markets and reduce trade barriers, and enforcing our existing trade agreements to ensure a level playing field for American workers and businesses of all sizes. Agency-wide, we are working to better integrate SME issues and priorities into our trade policy, and increase our outreach to small businesses.

In 2010, three new reports requested from the U.S. International Trade Commission by the USTR offered critical insights into key trade barriers affecting these businesses. We will continue to seek to reduce these barriers through negotiation and cooperation with our trading partners and through enforcement action when necessary.

Under the SME initiative, USTR's small business office, working closely with USTR's geographic and functional offices, is developing ideas and advancing efforts to enhance activities that could benefit SMEs. These include efforts to address tariff barriers, burdensome customs procedures, discriminatory or arbitrary standards, and lack of transparency relating to relevant regulations in foreign markets which present particular challenges for our SMEs in selling abroad.

The ability for USTR to address SME concerns through the fact finding and consultation mechanisms built into our bilateral and regional trade agreements and dialogues is an important asset for USTR now and in the coming years. For example:

- As USTR moves forward with negotiations through the Trans-Pacific Partnership, USTR has designated a point person for SME issues, and is consistently emphasizing the needs of smaller businesses in order to help them participate more actively in Asia-Pacific trade and address trade barriers that affect SME access to these foreign markets.
- Under APEC's core agenda of trade and investment liberalization and facilitation, USTR is continuing to focus on concrete actions to make it cheaper, easier, and faster for U.S. businesses, and in particular for SMEs, to trade in the region.
- USTR is seeking to establish, where appropriate, working groups on small and medium-sized enterprises to facilitate expanded SME trade opportunities under our FTAs and develop SME-related activities with our FTA partners.
- USTR is also utilizing other trade fora such as the U.S.-India Trade Policy Forum and the Transatlantic Economic Council, to address SME opportunities and challenges on a regional basis with our trading partners.

This range of activities will yield new market access opportunities for American SMEs in coming years. If approved, the trade agreements with Korea, Colombia, and Panama will also yield important new export opportunities for small businesses each year. In 2008, U.S. SMEs exported \$11.2 billion in merchandise to Korea, representing 35 percent of total U.S. exports to Korea – and above the 31 percent of SME share of U.S. exports to the world.

We are also working with partner TPCC agencies to improve the availability of online resources for SMEs within the next year, such as a new FTA tariff web-based tool to help SMEs take better advantage of existing FTAs. Additionally, we are working with SBA and FTA partners to encourage the establishment of Small Business Development Centers (SBDCs) which can serve as counterparts to U.S. SBDCs.

Question 5

I strongly disagree with the World Trade Organization Appellate Body's decisions on the practice of "zeroing," the antidumping methodology used to capture the full margin of dumping in unfair trade cases. On February 18th I sent a letter to Commerce and USTR urging that you do everything possible to address the concerns of the American manufacturing industry by preserving maximum flexibility for our government in implementing these provisions. **What is the current status of the Administration's rule-making on zeroing? Do you plan to ask Congress to seek changes to enforce our trade rules and make U.S. trade remedy laws more effective in achieving their stated goals of offsetting foreign subsidies and unfair pricing practices that injure American industries?**

Answer:

I share your concerns with regard to the WTO decisions on zeroing, and I agree on the importance of maintaining the effectiveness of U.S. trade remedy laws. The Administration is currently working to implement the WTO decisions in a way that maintains our ability to effectively to enforce U.S. trade laws. At this time, it appears that implementation pursuant to the Department of Commerce's proposal can be achieved without seeking statutory amendments.

The current status of the Administration's rule-making is as follows. In December, the Department of Commerce published a notice in the Federal Register proposing to change the methodology for calculating weighted average dumping margins and assessment rates in certain antidumping proceedings, including administrative reviews. The notice provided an opportunity for public comments. The Department is currently in the process of reviewing the substantial number of comments received in response to the notice. The Administration will also continue to consult with Congress as it considers how to proceed on this matter.

Questions from Senator Crapo**Question 1**

It is good to hear President Obama's emphasis on exports and support for doubling exports by 2015. I understand that, through the National Export Initiative, the Administration is seeking funding for a number of export promotion programs. **Can you please explain how this funding is expected to result in additional exports and U.S. jobs?**

Answer:

Additional resources for export promotion activities will help more U.S. firms, especially small- and medium-sized businesses, which may lack the resources and training to begin or expand their exports, take better advantage of the expanded export opportunities overseas that USTR obtains through its negotiation and enforcement of trade agreements. The Department of Commerce estimates that every billion dollars in U.S. goods exports supports approximately 6,000 jobs.

Question 2

I strongly agree that expanding market opportunities for U.S. goods and services around the world must be part of the effort to improve our nation's economy, and advancing the pending free trade agreements with Colombia, Panama and South Korea must be part of this effort. The President's 2011 Trade Policy Agenda, like the one before it, provides very little detail on the advancement of the pending free trade agreements.

Farm families need more export opportunities. More than 50 percent of Idaho wheat depends on export markets, and Colombia is the U.S. wheat industry's largest South American market, with a market share of nearly 70 percent. U.S. growers are understandably worried that they are going to lose as much as 40 percent of this essential market share to Canada, threatening U.S. jobs, if Canada approves an FTA with Colombia ahead of the U.S. **It is frustrating to have to tell U.S. farm families that, after years of waiting for more market access through trade agreements, there is still more waiting needed. Can you please respond to this concern?**

Answer:

Our goal is to have all three pending agreements, once their outstanding issues have been addressed, approved by Congress as early as possible this year. Earlier this month we notified the full Committee that we are ready to begin work on the text of the implementing bill for the Korea FTA as soon as you are able to schedule those sessions. We are working to advance the Colombia and Panama agreements too, with the broadest possible bipartisan and stakeholder support, because of their importance to the United States.

Once these the outstanding issues are addressed, the Administration will be ready to prepare the Agreements for Congressional consideration.

Question 3

Please elaborate on what additional measures you will implement to ensure that Canada lives up to its Softwood Lumber Agreement obligations and fully comply with all aspects of the agreement? Can you share with us the steps the USTR is taking in preparation for the expiration of the current agreement, both with respect to responses to potential new Canadian violations, as well as an extension and/or renegotiation of the current agreement?

I am also interested in receiving feedback from the USTR as to its plan to ensure compliance of the SLA during the final two years of the agreement. **With the current pending arbitration case almost four years old, is the USTR exploring ways to expedite the review and arbitration process?**

Answer:

This Administration has made enforcement of the Softwood Lumber Agreement a top priority and is fully committed to its swift enforcement. With respect to our plans to ensure compliance in the final two years of the Agreement, USTR actively manages the SLA and will continue to evaluate and act on any evidence of non-compliance to ensure that the Agreement provides the level playing field it was designed to create for U.S. producers.

With respect to the expiration of the SLA which is set to occur in October 2013, USTR will engage in an interagency, as well as public process, to solicit the views of Congress and interested stakeholders on extension of the Agreement.

Regarding the current arbitration over timber pricing practices in British Columbia, we launched an arbitration in January 2011 and are working with the Department of Justice to ensure timely proceedings and issuance of a decision.

Question 4

How do we move forward on IPR protection in China now that President Hu's visit is over? There were big announcements during the Hu visit, but it does not appear we are back to the same old set of problems with China. **What are the objective, measurable benchmarks**

and timelines for Chinese compliance and success in the recently-announced delinking of indigenous innovation and government procurement rules? What steps are the Chinese taking to address reports of widespread piracy in their enterprises, including the State-Owned Enterprises?

Answer:

We will continue to engage China at all levels to address IPR protection and enforcement in China. The 2011 Special Campaign to crack down on IPR infringements has recently been extended, which Chinese officials have represented as evidence of the seriousness with which they take this problem. We are evaluating the effectiveness of the campaign and have held discussions with Chinese officials on how to translate lessons learned and effective operational mechanisms into long-term sustainable policies to have a meaningful effect on addressing rampant IPR infringement in the market.

During the recent State visit, President Hu Jintao committed to delink innovation policies from government procurement. We are closely monitoring compliance with this commitment, at both the central and sub-national levels of government, focusing on changes to existing measures and efforts to ensure new measures are consistent with President Hu's promise.

Also, during the State visit and the December 2010 meeting of the Joint Commission on Commerce and Trade (JCCT), China took new steps on software piracy by committing to allocate budget funding for legal software purchases by government agencies, as well as making a commitment to audit the use of the legal software and publish the results of those audits. Furthermore, China said it would promote the use of licensed software in private companies and in state owned enterprises through software asset management programs. We recently heard that the Copyright Protection Center, a branch of the National Copyright Administration of China, will be publishing guidelines for use by enterprises, including state owned enterprises, to implement software legalization programs and software asset management. We are encouraging China to make additional efforts in the context of the "Special Campaign against counterfeiting and piracy" that was launched by the State Council in October.

Question 5

The piracy rate for software in China remains alarming. The National Export Initiative presents one opportunity to put some focus on this problem. To be effective, there must be a strategy around how we solve specific problems in specific countries and metrics around success. Too often, success is defined as more people working on the issue or more resources spent. **It seems**

that there needs to be a metric that ensures a substantial increase in software sales over the next three years, and that needs to be a goal of NEI, what is your plan for this?

Answer:

We continue to engage China at all levels to address software piracy. I agree that this is a major problem; in fact, it was raised by the President during the recent State visit by President Hu Jintao. During that visit and the preceding meetings of the Joint Commission on Commerce and Trade (JCCT), China took new steps on software piracy by committing to allocate budget funding for legal software purchases by government agencies, as well as making a commitment to audit the use of the legal software and publish the results of those audits. Furthermore, China said it would promote the use of licensed software in private companies and in state owned enterprises through software asset management programs. We are encouraging China to make additional efforts in the context of the “Special Campaign against counterfeiting and piracy” that was launched by the State Council in October.

While we must see how these steps work out in practice, and much more work remains to be done, China’s recent commitments mark a significant opportunity for genuine progress on this difficult issue. As always, we will monitor progress on these issues to make sure that China is following through on its commitments, using such tools at the JCCT IPR working group, and other opportunities. We expect to see concrete and measurable results, including indications of a more robust market for legal software. We also look forward to studying the results of the forthcoming ITC study on the quantitative effects of IPR infringement and “indigenous innovation” policies in China.

Question 6

China remains closed to U.S. beef imports. China is potentially a \$200 million market for US beef. In January 2011, a high-level U.S. negotiating team spent more than 10 days in China trying to reopen the only country still completely closed to U.S. beef. **What is the USTR doing to re-open this market to US beef and when should we expect more progress with China?**

Answer:

USDA and USTR officials met several times in 2010 with counterparts in China to resume U.S. beef access negotiations. These efforts culminated in a delegation to Beijing in January 2011 led by USTR's Chief Agricultural Negotiator and USDA's Farm and Foreign Agricultural Services (FAS) Under Secretary and including technical experts from APHIS, FDA, FSIS, FAS, AND USTR. While an agreement has not yet been achieved, the January meetings were important in establishing clarity on conditions needed by both countries for trade to resume, after a stall in negotiations dating back to 2007. USDA and USTR will attempt to build on these extensive discussions with China throughout 2011 in an effort to reach an agreement that would allow trade to resume based on science, consistent with international standards, and in a commercially viable manner.

Question 7

Historically, Japan was the top market for U.S. beef exports, with approximately \$1.4 billion in sales. In 2010, we exported \$640 million in US beef in Japan, below the pre-BSE levels due to Japan's 20-month age restriction. **After seven years of little progress on this issue, what is the U.S. government doing to address this non-science based discrimination against U.S. beef exports?**

Answer:

USTR, in close collaboration with USDA, continues to urge the Japanese Government to resolve this issue so that we can normalize beef trade in this key Asian market based on science, consistent with international standards, and in a manner that is commercially viable. USTR and USDA continue to engage with Japan's Government on this important issue at multiple levels and at every opportunity.

Question 8

Recent reports have suggested that Japan may also join the Trans-Pacific Partnership. **Will resolving Japan's 20-month age restriction be a central part of Japan's entry into TPP negotiations with the United States?**

Answer:

As I conveyed during the Committee's March 9 hearing, Japan's restrictions on the imports of U.S. beef remain a major concern for the Administration. We have been urging Japan to resolve this issue based on science, consistent with international standards, and in a commercially viable manner. Japan's Government has not yet made a decision on whether it will seek to join the Trans-Pacific Partnership negotiations. The Administration will continue to call for a resolution in the near term to this priority market access concern.

Question 9

I was pleased to hear that President Obama will soon send implementing legislation for the Korea-U.S. FTA to Congress. The United States is not the only country negotiating a free trade agreement with Korea. South Korea reached an agreement with the European Union that goes into effect July 2011. Beef's biggest competitor is Australia, a country who is very close to finalizing a free trade agreement. If Australia reaches an agreement before the U.S., its beef producers will have a competitive advantage over our exporters, being able to sell more of their product at a cheaper price. **Do you agree that we cannot afford to jeopardize South Korean market share any longer?**

Answer:

We agree that time is of essence. Australia is our major competitor for the Korean beef market, and in 2010, Australia had 53% of the market share while the United States had 32%. If Australia concludes and implements an FTA with Korea before we do, the tariff cuts for Australian beef may take effect before those on U.S. beef, giving the Australian exporters a tariff advantage for at least the next 15 years. Timely approval and implementation of the U.S.- Korea trade agreement will ensure that we receive full benefits of the agreement's tariff reductions on beef – elimination of Korea's 40% tariff on beef over 15 years – boosting our exports which have already reached \$518 million in 2010, an increase of 140 percent in value over 2009.

Question 10

Taiwan's non-science based reasons for restricting beef imports are crippling U.S. beef sales in Taiwan. **What is the U.S. government doing to address this issue?**

Answer:

Taiwan continues to maintain barriers that limit access of U.S. producers to the Taiwan market. Some of these barriers are inconsistent with our bilateral protocol with Taiwan on beef and beef products that was agreed to in November 2009, and others, such as Taiwan's ban of beef containing trace amounts of ractopamine, are inconsistent with recommendations of recognized international scientific bodies as well as Taiwan's own risk assessment in 2007. USTR, in close collaboration with USDA, continues to urge Taiwan at every opportunity to resolve this issue so that we can normalize beef trade based on science, consistent with international standards, and in a manner that is commercially viable.

Question 11

When should Congress expect the U.S. government and the Mexican government to sign the final agreement on the cross-border trucking pilot program? When the agreement is signed, will the first half of the tariffs be temporarily suspended or eliminated? At what point will the retaliatory tariffs be eliminated?

Answer:

Now that we have reached an agreement with Mexico on a path forward, the proposed agreement between the Department of Transportation and Mexico has been published for public comment in the *Federal Register*. We expect the final agreement to be signed in late May or early June.

Once a final agreement is reached, Mexico will suspend its retaliatory tariffs in stages beginning with reducing tariffs by 50 percent at the signing of an agreement and will suspend the remaining 50 percent when the first Mexican carrier is granted operating authority under the program. Mexico will terminate all current tariffs once the program is normalized. USTR will continue to work with the Department of Transportation to ensure that the new program emphasizes safety, security, and efficiency, and is consistent with our NAFTA obligations.

Question 12

There are many overseas challenges that undermine the value of U.S. intellectual property at the expense of U.S. innovation and jobs. **Given the TPP is being billed as a "model 21st Century trade agreement" and regional platform that could potentially expand exports to a growing**

region, is it consistent for the U.S. to sign an agreement that could lower IPR standards for industries that are at the core of our economy? What is the USTR doing to ensure that the TPP builds off the Korea-U.S. FTA Agreement to provide the highest IPR protections?

Answer:

Let me assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation, is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS.

To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection. We have, and continue to, work on our proposals in consultation with the Congress and all relevant stakeholders.

Question 13

In 2007, the Bush administration reached agreement with the Congress on environmental and worker protections that increased standards above current FTA standards. However, one criticism raised by stakeholders is that it also lowered IPR protections for pharmaceuticals below U.S. standards and those found in previous FTAs. How is the USTR working to ensure the highest IPR standards are included in the TPP for all our industries, including pharmaceuticals?

Answer:

The TPP offers an important opportunity to incentivize innovation and creativity throughout the region. Let me assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation, is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region.

To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection. We have, and will continue to work on our proposals in consultation with Congress and all relevant stakeholders.

Question 14

U.S. leadership in intellectual property innovation warrants efforts to ensure all trade tools are used to support innovation and high-value domestic jobs. **How can the U.S. develop a more comprehensive and results-oriented trade strategy? Should we be looking at areas where the U.S. can initiate its own trade violation investigations or do we need new legislation in the customs arena to combat IPR infringement?**

Answer:

The protection and enforcement of intellectual property rights (IPRs) is fundamental to American competitiveness and job creation. As President Obama confirmed in this year's State of the Union address, "The first step in winning the future is encouraging American innovation....In America, innovation doesn't just change our lives. It's how we make a living."

Taking up this charge, the President's 2011 Trade Policy Agenda set out a comprehensive IPR strategy regarding the protection of American innovation and jobs, which stresses the importance of intellectual property protection to the U.S. economy. The Agenda noted in particular, "the competitive advantage of American workers is eroded when piracy, counterfeiting, and other intellectual property theft threaten American brand-name products, copyrighted content, and patented inventions....Providing more certainty in this regard can embolden these American job-creators to export, and can help to create a global environment that encourages creative, innovative solutions to the world's most pressing problems."

USTR works to protect American IPRs and to promote U.S. competitiveness and jobs through a variety of mechanisms – including negotiating international IPR agreements, including state-of-the-art IPR provisions in U.S. free trade Agreements (FTAs), monitoring IPR protection by our trading partners, including through the annual Special 301 Report, and enforcing international rules to protect American innovators' IPRs, including in the World Trade Organization. USTR undertakes this strategy in close coordination with other relevant U.S. agencies, stakeholders, trading partners and Congress. For example, this year USTR and partner countries representing more than half of global trade finalized the text of the Anti-Counterfeiting Trade Agreement (ACTA). The agreement is an important new tool to fight the global scourge of counterfeiting

and piracy, which threatens jobs that depend on innovation – including those here in the United States.

Likewise, USTR engages in intensive bilateral negotiations with our trading partners that have achieved tangible results. For instance, The United States won wide-ranging commitments from China including to eliminate discriminatory “indigenous innovation” criteria used to select industrial equipment for preferential treatment, ensuring access to China’s market for American machinery manufacturers, as well as commit to open and neutral standards for 3G and future technologies in one of the world’s largest telecommunications markets. USTR also initiated a Section 301 investigation under existing legislative authority with respect to China’s green technology policy, which resulted in a U.S. challenge filed before the World Trade Organization.

Similarly, with respect to Russia, following direction from Presidents Obama and Medvedev, respectively, USTR and Russian government officials worked to resolve key bilateral issues related to the WTO accession process, including encouraging Russia to enact certain legislation critical to protecting intellectual property. These efforts have added significant momentum to Russia’s effort to join the WTO, which will create new market opportunities for U.S. exports of goods and services.

I look forward to working with you and other Members of Congress to ensure adequate and effective protection of the intellectual property rights of America’s artists, creators and producers around the world.

Question 15

The USITC is conducting a Section 332 Investigation on the effects of China’s IPR infringement and its indigenous innovation policies on U.S. competitiveness. The first study shows that IPR theft is widespread across a range of industries, and a forthcoming second report will focus on the domestic jobs impact. **What options does the U.S. have to use this data to secure change from China? Are there cases that the Administration or the USITC can initiate to address these problems?**

Answer:

We will study the forthcoming USITC report carefully and determine the most appropriate ways to use it after we see its content. The first study’s documentation of China’s problematic IPR and “indigenous innovation” policies, including the interrelationship between those policies and procurement, standards, antitrust, and other policies, has already been very helpful in informing our trade policy formulation and implementation work at USTR. The first study is also serving

the useful purpose of better educating U.S. stakeholders, and further strengthening the factual basis for the Administration's outreach to the Chinese government to address problematic policies. We hope to use the second study in similar ways.

Questions from Senator Roberts

Question 1

Ag had a record setting year in 2010 in terms of exports. However, we sit by and watch other countries which have trade agreements with Colombia and Panama eat up our market share with better access to their markets. Argentina is a perfect example of this. Between 2008 and 2010, U.S. market share for corn, wheat, and soybeans in Colombia dropped from 71% to approximately 27%. Interestingly, Argentina's market share for those same commodities rocketed up about the same amount as our loss. **If we continue to put off the Colombia trade agreement, do you see a scenario in which U.S. exporters will be able to regain lost market share? Along that same line, there was a recent trip down to both Colombia and Panama related to the trade agreements. What were the results of that trip and do we have a clear path forward?**

Answer:

At the President's direction, in early 2011 the Administration intensified its engagement with both Colombia and Panama to resolve the outstanding issues related to those trade agreements.

In the case of Colombia, As a result of these intensified efforts, the Administration secured commitments from the Government of Colombia that address these concerns. On April 7, President Obama and President Santos announced an agreement on an "Action Plan Related to Labor Rights" that significantly expands the protection of labor leaders and organizers, bolsters efforts to punish those who perpetrate violence against such persons, and strengthens labor laws and their enforcement. The Action Plan contains specific, detailed actions that, when taken by Colombia, will allow the Administration to move the trade agreement forward for Congressional consideration.

In the case of Panama, the Administration has been working closely with the government to resolve outstanding issues related to labor and tax transparency. Once Panama completes action

on the outstanding issues, we will be prepared to move the agreement to Congress. Panama has made good progress on the outstanding labor concerns. We understand that President Martinelli has signed the last changes into law. Panama also signed a Tax Information Exchange Agreement in November, consistent with internationally agreed standards as established by the OECD. We expect that Panama will ratify the TIEA in the near future.

American businesses, workers, farmers and ranchers are highly competitive, but they do risk being left at a disadvantage as Colombia and Panama enter into trade agreements with third countries. Advancing these free trade agreements to Congress with the outstanding concerns addressed will contribute to President Obama's goal of not just remaining competitive in global markets but doubling U.S. exports by the end of 2014.

Question 2

China is potentially a \$200 million market for US beef. However, China is currently closed to US beef imports. In January 2011, a high level U.S. negotiating team spent more than 10 days in China trying to reopen the only country still completely closed to U.S. beef. **What is USTR doing to re-open this market to US beef and when should we expect more progress with China?**

Answer:

USDA and USTR officials met several times in 2010 with counterparts in China to resume U.S. beef access negotiations. These efforts culminated in a delegation to Beijing in January 2011 led by USTR's Chief Agricultural Negotiator and USDA's Farm and Foreign Agricultural Services (FAS) Under Secretary and including technical experts from APHIS, FDA, FSIS, FAS, AND USTR. While an agreement has not yet been achieved, the January meetings were important in establishing clarity on conditions needed by both countries for trade to resume, after a stall in negotiations dating back to 2007. USDA and USTR will attempt to build on these extensive discussions with China throughout 2011 in an effort to reach an agreement that would allow trade to resume based on science, consistent with international standards, and in a commercially viable manner.

Question 3

Historically, Japan was the top market for U.S. beef exports at \$1.4 billion. In 2010, we exported \$640 million in US beef in Japan which is far short of pre-BSE levels due to Japan's 20 month age restriction. **After seven years of limited progress on this issue, what is the U.S. government doing to address this non-science based discrimination against US beef?**

Answer:

USTR, in close collaboration with USDA, continues to urge the Japanese Government to resolve this issue so that we can normalize beef trade in this key Asian market based on science, consistent with international standards, and in a manner that is commercially viable. USTR and USDA continue to engage with Japan's Government on this important issue at multiple levels and at every opportunity.

Question 4

Recent reports have suggested that Japan may also join the Trans-Pacific Partnership (TPP). Recently, I joined my colleagues, lead by former Ag Secretary now Senator Mike Johanns, in signing a letter requesting a resolution of the current 20 month age restriction before Japan joins the TPP. **Will resolving Japan's 20 month age restriction be insisted upon before Japan enters into TPP negotiations with the United States?**

Answer:

As I conveyed during the Committee's March 9 hearing, Japan's restrictions on the imports of U.S. beef remain a major concern for the Administration. We have been urging Japan to resolve this issue based on science, consistent with international standards, and in a commercially viable manner. Japan's Government has not yet made a decision on whether it will seek to join the Trans-Pacific Partnership negotiations. The Administration will continue to call for a resolution in the near term to this priority market access concern.

Question 5

Taiwan's recent actions to enforce a zero-tolerance policy in regard to ractopamine are crippling US beef sales in Taiwan. Taiwan's actions are inconsistent with international scientific guidelines and its own risk assessment findings from 2007. **What is the US government doing to address this issue? Is the US Government working with Taiwan to establish a temporary maximum residue level (MRL) for ractopamine, to be used until Codex issues an MRL in July 2011? Will you commit to keeping me informed on any and all developments concerning this unscientific barrier to beef exports?**

Answer:

Taiwan continues to maintain barriers that limit access of U.S. producers to the Taiwan market. Some of these barriers are inconsistent with our bilateral protocol with Taiwan on beef and beef products that was agreed to in November 2009, and others, such as Taiwan's ban of beef containing trace amounts of ractopamine, are inconsistent with recommendations of recognized international scientific bodies as well as Taiwan's own risk assessment in 2007. USTR, in close collaboration with USDA, continues to urge Taiwan at every opportunity to resolve this issue so that we can normalize beef trade based on science, consistent with international standards, and in a manner that is commercially viable. I and my staff will certainly keep you informed as we continue our efforts to resolve this issue.

Question 6

Taiwan has suggested they would like the US beef industry to provide Taiwan with a similar export program they have with the European Union. According to industry representatives, an EU style (non-hormone) program is roughly less than 2-3% of US grain fed production. **Is it reasonable for the US beef industry to invest all the effort to overhaul their production systems to conform with non-science based standards in Taiwan? What assurances do we have that Taiwan won't find something else (non-science based standard) to limit/ban beef imports from the US?**

Answer:

As stated above, it is our position that the appropriate way to resolve this issue is for Taiwan to ensure that it makes the necessary changes to its measures such that beef trade can be normalized based on science, consistent with international standards, and in a manner that is commercially viable.

Question 7

Codex Alimentarius Commission (i.e. CODEX) is the United Nations international commission responsible for setting science-based standards for food safety. USDA-Food Safety Inspection Service is responsible for the United States Government participation in CODEX.

Unfortunately, the increasing "politicization" of international standards organizations CODEX represents a major threat to U.S. agriculture. Legitimate international standards prevent US agricultural commodities from being the victim of non-science based rules that countries use to ban imports from the US without being subject to retaliatory tariffs. In short, it does not matter how many tariffs our trade agreements eliminate or reduce, non-tariff barriers like this prevent free and fair international trade. **Given CODEX's vital importance to U.S. agriculture, is USTR working with USDA to increase its focus on CODEX activities? In preparation for the July CODEX meeting, what is the US Government doing to promote inter-agency coordination, including US Trade Representative, the State Department, and USDA-Foreign Agricultural Service participation, to continue to promote CODEX's science-based standards and not allow CODEX to become "politicized"? Is USTR working with other US Government agencies to conduct timely outreach to foreign governments (e.g. Australia, NZ, and Brazil) to build support for our CODEX positions?**

Answer:

USTR and USDA are leading an interagency outreach effort to contact every CODEX Member and to ask for their support for the adoption of science based measures such as the adoption of the eight pending MRLs for ractopamine at the July CODEX Commission meeting in Geneva.

Question 8

Could you provide an update on the status of the WTO case against the EU which found that Airbus benefitted from illegal subsidies? What steps you plan to take to ensure compliance with the ruling, which, if upheld on appeal, found roughly \$20 billion in illegal European subsidies?

Answer:

The Panel decision against the EU is currently on appeal. The WTO Appellate Body is scheduled to issue its report at the end of April or beginning of May. If the Appellate Body upholds the Panel's findings, the EU, France, Germany, Spain, and the UK will have 90 days

from the date of adoption of that report to withdraw export subsidies, and six months to withdraw any other subsidies or remove their adverse effects. At the end of this period, WTO rules provide a procedure to assess whether the EU has complied with its obligations. If necessary, we will invoke those procedures, and take every other step needed to ensure that the EU and its member States withdraw their subsidies or eliminate their adverse effects.

Questions from Senator Enzi

Question 1 Engaging China on Removing VAT Rebate

I appreciate USTR's commitment to continue to press the issue of China's manipulation of its VAT rebate. **Could you please provide an update on what the U.S. Government is doing in the context of the JCCT and other arenas to achieve the elimination of China's VAT rebate on soda ash?**

Answer:

We have been using a variety of venues, including the U.S. China Joint Commission on Commerce and Trade (JCCT), to press China to eliminate its distortive VAT practices that harm our industries, like our soda ash industry. Exporters of U.S. soda ash, which is produced in a more environmentally friendly way than Chinese soda ash, compete directly with Chinese exporters in many Asian markets and are particularly concerned about China's current VAT rebate practices. China is encouraging exports of soda ash by providing for a high VAT rebate for those exports. This practice gives China's soda ash exports – as well as soda ash producers – a clear advantage over the more environmentally friendly U.S. soda ash exports and producers in third country markets.

Question 2 Engaging China on Removing VAT Rebate

What coordination is happening with the Department of Commerce and Department of Treasury in engaging China on its VAT rebate on soda ash?

Answer:

The JCCT is co-chaired on the US side by USTR Ambassador Kirk and Commerce Secretary Locke, so we coordinate closely on issues we raise to the Chinese side through the JCCT, including the VAT rebates issues.

The Obama Administration is also raising concerns about China's VAT system in the Strategic and Economic Dialogue (S&ED). In this effort, USTR and Commerce have been working closely with the Department of Treasury to press China to take steps to move toward a VAT system that operates consistent with international norms and has a neutral impact on international trade.

Question 3 Soda Ash in Morocco and Enforcing Existing Free Trade Agreements

The Government of Morocco denies the preferential treatment afforded transshipped U.S. soda ash exports in violation of the 2006 U.S.-Morocco Free Trade Agreement. This is the case even though U.S. soda ash exporters have clearly documented that the soda ash is of U.S. origin and has not been transformed in any way from the time it leaves the United States to the time it arrives in Morocco. USTR has repeatedly underscored the priority of enforcing this country's trade agreements. **Please summarize what steps are being taken to resolve this issue with Morocco.**

Answer:

USTR has been in close touch with the U.S. soda ash producers who have alleged that treatment by Moroccan customs authorities of their exports violates the Free Trade Agreement's requirements related to preferential treatment of goods under the Agreement. Along with our colleagues in other agencies and the U.S. Embassy in Rabat, we are investigating the facts of this case and will use upcoming meetings with the Moroccan government, as appropriate, to highlight any concerns we have.

Question 4 Increasing Market Access for U.S. Lamb Overseas

Members have rightly raised the need to increase market share for U.S. beef overseas. I agree that this needs to be done, particularly when it comes to exporting to Asian markets.

However, in addition to beef, Wyoming also produces some of the world's finest lamb. **Although we face tough competition from exporters like New Zealand in the area, I would**

like to know what USTR is doing to promote market access for U.S. lamb, specifically in the context of the Trans-Pacific Partnership talks.

Answer:

In the TPP market access negotiations, the United States is negotiating bilaterally with those countries with which we do not have existing free trade agreements—Brunei, Malaysia, New Zealand and Vietnam. The United States seeks immediate elimination of tariffs on U.S. lamb in order to gain improved market access opportunities for U.S. lamb producers.

Questions from Senator Thune

Question 1 Intellectual Property

In the context of trade with China, how does the Administration plan to move forward and strengthen the security of our intellectual property in China now that the Hu visit is over?

I understand the ITC is conducting a Section 332 Investigation on the effects of China's IP infringement on US competitiveness. **What options do you have to use this data to secure change from China? Are there cases that the Administration or the ITC can initiate to address these problems?**

Answer:

We will continue to engage China at all levels to address IPR protection and enforcement in China. The 2011 Special Campaign to crack down on IPR infringements has recently been extended, which Chinese officials have represented as evidence of the seriousness with which they take this problem. We are evaluating the effectiveness of the campaign and have held discussions with Chinese officials on how to translate lessons learned and effective operational mechanisms into long-term sustainable policies to have a meaningful effect on addressing rampant IPR infringement in the market.

Regarding the ITC investigation, we will study the forthcoming USITC report carefully and determine the most appropriate ways to use it after we know its content. The first study's documentation of China's problematic IPR and "indigenous innovation" policies, and the interrelationship between those policies and procurement, standards, antitrust, and other policies, has already been very helpful in informing our trade policy formulation and implementation

work at USTR. The first study is also serving the useful purpose of better educating domestic US stakeholders, and further strengthening the factual basis for the Administration's outreach to the Chinese government to address problematic policies. We hope to use the second study in similar ways.

Question 2 Intellectual Property

It seems that there needs to be a metric that measures improvements in IP security over the next few years. **How do you plan to measure and report to Congress on the effectiveness of IP security efforts in overseas markets?**

Answer:

The protection and enforcement of intellectual property rights (IPRs) is fundamental to American competitiveness and job creation. As President Obama confirmed in this year's State of the Union address, "The first step in winning the future is encouraging American innovation....In America, innovation doesn't just change our lives. It's how we make a living."

Taking up this charge, the President's 2011 Trade Policy Agenda set out a comprehensive IPR strategy regarding the protection of American innovation and jobs, which stresses the importance of intellectual property protection to the U.S. economy. The Agenda noted in particular, "the competitive advantage of American workers is eroded when piracy, counterfeiting, and other intellectual property theft threaten American brand-name products, copyrighted content, and patented inventions....Providing more certainty in this regard can embolden these American job-creators to export, and can help to create a global environment that encourages creative, innovative solutions to the world's most pressing problems."

USTR works to protect American IPRs and to promote U.S. competitiveness and jobs through a variety of mechanism, and measures the adequacy and effectiveness of intellectual property protection and enforcement by our trading partners, including through the annual Special 301 Report.

The Special 301 Report review process examines IPR protection and enforcement in U.S. trading partners. The Special 301 designations and actions announced in the Special 301 Report are the result of close consultations with affected stakeholders, interested parties, foreign governments, the U.S. Congress, and of interagency discussions within the U.S. Government. USTR, together with the interagency Special 301 subcommittee, works to make a well-balanced assessment of intellectual property protection and enforcement, as well as related market access issues, in accordance with the statutory criteria set out by Congress in the Special 301 statute.

This assessment is necessarily conducted on a case-by-case basis using detailed metrics, taking into account diverse factors such as a trading partner's level of development, its international obligations and commitments, the concerns of rights holders and other interested parties, and the trade and investment policies of the United States.

I look forward to working with you and other Members of Congress to ensure adequate and effective protection of the IPRs of America's artists, creators and producers around the world and to measure and report to Congress on the effectiveness of IPR security efforts in overseas markets.

Question 3 Ethanol

If Congress were to allow the tariff on imported ethanol expire at the end of this year and replace the existing Volumetric Ethanol Excise Tax blender's credit with an ethanol producer tax credit, would that comply with WTO trade obligations? What other trade implications are associated with such a change?

Answer:

There would be no legal impediment under the WTO if Congress chose to allow the surcharge to expire and to repeal the blender's credit. However, it is important to note that the blender's credit does not fall within the scope of the WTO Agreement on Agriculture. That means the credit is not counted against the annual "Aggregate Measurement of Support" (AMS) that the agreement allows the United States to provide U.S. agricultural producers. Our annual AMS ceiling is currently \$19.1 billion.

If Congress were to shift the credit from blenders to ethanol producers, however, the support provided by the new credit program would be counted against our annual AMS. Thus, the level of support provided by the ethanol producer tax credit, together with the level of support provided by other U.S. farm programs, would have to fit within our current \$19.1 billion allowance.

Question 4 Agriculture Trade

With regards to the Panama and Colombia Free Trade Agreements, are there any U.S. agriculture related issues that have yet to be resolved before these agreements are submitted to Congress?

Answer:

No, there are no outstanding agriculture-related issues that need to be resolved prior to submission to Congress.

Question 5 Agriculture Trade

Recently, a bipartisan group of Senators led by Senator Johanns, wrote to you to express our position that Japan should further open its market to U.S. beef exports as a condition to participating in the Trans Pacific Partnership negotiations. **Would you agree with that position? Do you believe that Japan is any closer to accepting U.S. cuts of beef based on O.I.E World Organization for Animal Health guidelines?**

If not, what are their reasons?

Answer:

As I conveyed during the Committee's March 9 hearing, Japan's restrictions on the imports of U.S. beef remain a major concern for the Administration. We have been urging Japan to resolve this issue based on science, consistent with international standards, and in a commercially viable manner. Japan's Government has not yet made a decision on whether it will seek to join the Trans-Pacific Partnership negotiations. The Administration will continue to call for a resolution in the near term to this priority market access concern.

I understand there is a growing recognition within Japan on the need to move on this issue, in light of the fact that numerous other markets are already open to U.S. beef on the basis of science and international standards. We will continue to engage with Japan on this issue at multiple levels.

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**SENATE FINANCE COMMITTEE
HEARING ON
THE PRESIDENT'S 2011 TRADE AGENDA**

March 9, 2011

STATEMENT BY

STEPHEN J. UBL

PRESIDENT AND CEO

THE ADVANCED MEDICAL TECHNOLOGY ASSOCIATION (AdvaMed)

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Bringing innovation to patient care worldwide

We thank the Committee for holding this important hearing today on the U.S. trade policy agenda. We strongly support efforts to expand market access for U.S. products abroad through new FTAs as one means of increasing U.S. competitiveness in a global economy and creating jobs at home.

AdvaMed is the world's largest medical technology association. AdvaMed represents the world's leading medical technology innovators and manufacturers of medical devices, diagnostic products and medical information systems. AdvaMed is proud to represent an industry that brings new hope to patients around the world. U.S. companies are still benchmark manufacturing leaders in terms of total production, innovation and highest quality products. Our member companies manufacture nearly 90% of the \$94 billion U.S. health care technology market, and nearly 50% of the \$240 billion of medical technology products that are purchased globally each year. In 2009, U.S. exports in medical devices and diagnostics totaled over \$33.2 billion.

The size of AdvaMed member companies spans the full spectrum from large multinationals to very small start-ups. About two-thirds of AdvaMed members are small in size but are among the most dynamic in terms of innovation. Indeed, the medical technology industry is fueled by intense competition and the innovative energy of small companies – firms that drive very rapid innovation cycles among products, in many cases creating new product iterations every 18 months. Accordingly, our US industry succeeds most in fair, transparent global markets where products can be adopted on their merits without excessive regulatory hurdles or inappropriate reimbursement policies.

Medical technology products improve people's lives and contribute to economic progress. In a world of shrinking healthcare resources, medical technology products are an investment in our most valuable resource – the health of our people. The returns on that investment are the long-term benefits that can be achieved when we provide the resources needed for the best medical care. These benefits include greater quality of life, productivity and economic competitiveness.

Impact of Free Trade Agreements on Medical Technology Exports

Because of the relative size of the Korean market for medical technology, compared to the markets in Colombia and Panama, we have devoted limited staff time to focus on the Korea-U.S. Free Trade Agreement (KORUS). Also, the KORUS has specific provisions addressing the concerns of the medical technology industry. Provisions in the FTAs with Colombia and Panama, such as the elimination of tariffs on medical devices and diagnostics, would lower costs for our members' products entering those markets.

The KORUS illustrates the benefits that FTAs can bring to the medical technology sector and to job creation in the U.S. Korea is an extremely important market for United States medical technology exporters. According to the U.S. Department of Commerce, Korea is the fifth largest export market for U.S. medical device manufacturers. U.S. manufacturers exported over \$700 million worth of medical technology products to

Korea in 2009, while Korea exported \$253 million in medical technology products to the United States. The U.S. International Trade Commission estimates that the Korean medical device market will grow 10-15 percent in the next several years. With a growing economy, the Korean people will come to demand an even higher level of health care and, with it, will come increased U.S. export opportunities. AdvaMed views the implementation of the Korea-U.S. Free Trade Agreement as an opportunity to increase exports of medical technology products to this expanding market.

However, access to the Korean market is currently limited by excessive tariffs; pricing and reimbursement policies that discriminate against foreign manufacturers; burdensome product-testing requirements; and inappropriate requirements to register products in their country of origin and re-register following a change in manufacturing location. Korea was not a party to the Uruguay Round “zero-for-zero” tariff elimination initiative for medical devices, and maintains import tariffs on a range of medical technology products, including most of our top export categories.

AdvaMed strongly supports adoption and implementation of the U.S.-Korea FTA as quickly as possible as it will serve to assist in eliminating tariffs and non-tariff measures applied to medical technology products by Korea. We anticipate that implementation will provide greater access and a more equal competitive arena for U.S. medical technology in the Korean market. The effect of implementation of the U.S.-Korea FTA will be to increase the availability of medical technology in the Korean market, thereby allowing increased access by Korean patients to the most innovative technologies and treatment options.

The U.S.-Korea FTA is the first U.S. free trade agreement with specific provisions for the medical technology industry. Chapter 5 of the FTA contains a number of protections for the medical technology industry, and also attempts to address many of the concerns that have been experienced by our industry and that remain pervasive. Some of the provisions most beneficial to the medical technology industry include the following:

- The agreement acknowledges the importance of access to medical technology to the provision of high quality health care and the importance of patented products in reducing other more costly expenditures;
- It provides for the promotion of innovation and timely and affordable access to safe and effective medical devices through transparent and accountable procedures;
- It calls for fair, reasonable and non-discriminatory procedures for the setting of reimbursement prices that are mainly derived from market competition;
- In instances where non-competitive practices define reimbursement rates, the manufacturer is permitted to apply for increased level of reimbursement based on the product’s safety or efficacy;

- Transparency of regulations and rules affecting medical technology is provided, including advance publication of rules prior to implementation with a reasonable opportunity (at least 60 days) to provide comment;
- Requests for approval or reimbursement for medical technology products will be processed within a reasonable timeframe;
- Applicants will be provided within a reasonable and specified time all procedural rules, methodologies, principles, and criteria, used to determine pricing and reimbursement for medical technology, including detailed written information regarding the basis for the decision or recommendation;
- Applicants will be provided timely and meaningful opportunities to provide comments at relevant points in the pricing and reimbursement decision-making processes;
- An independent review process will be provided that may be invoked at the request of an applicant directly affected by a recommendation or determination;
- Reimbursement decision-making bodies will be open to all stakeholders, including innovative and generic companies; and
- A membership list of all committees related to the reimbursement and pricing of pharmaceutical products and medical devices will be made publicly available.

Additionally, under the FTA's strong dispute settlement provisions, implementation of the FTA will mean that the medical technology industry will gain very important procedural safeguards against arbitrary and non-transparent reimbursement and regulatory decisions by Korea.

The implementation phase of the agreement is critical in ensuring the success of these provisions and will offer challenges to maintain their letter as well as spirit. The negotiation of these provisions and their inclusion in the FTA is a tribute to the effort by USTR, working with our industry.

We view these as essential protections that will better ensure a more competitive, less arbitrary market in Korea. Implementation of the FTA will ensure these hard won provisions are brought to life.

Impact on U.S. Jobs

The medical technology industry is a powerful economic driver in the United States. In the United States in 2008, the medical technology industry employed 422,778 workers; paid \$24.6 billion in salaries; and shipped \$135.9 billion worth of products.

Until 2003, the United States ran a significant trade surplus in medical technology products. The U.S. industry is witnessing a slow-down in the value of exports, largely as

a result of foreign government reimbursement and regulatory policies. The industry needs U.S. Government support to address these issues and to eliminate other market access restrictions.

Examining the industry on a state by state basis, according to recent data, the median figure for all states in the United States indicates the following:

- Each medical technology job generates an additional 1.5 jobs in that state.
- Each medical technology payroll dollar generates an additional \$0.90 in earnings in that state;
- Each dollar of medical technology sales generates an additional \$.90 in sales in that state.

Implementation of the FTA would help United States retain and expand jobs in the U.S. Decreasing tariff and non-tariff barriers will obviously lead to more sales of U.S. medical technology products in Korea. Implementation of the FTA would therefore benefit not just the medical technology sector, but also would create positive collateral benefits to the U.S. economy as a whole. These benefits are in addition to the benefit that will accrue to the Korean people, benefits derived from obtaining the most innovative products, increased patient choice and treatment options, and improved quality of life.

Non-implementation would put us at a disadvantage because, as other nations establish FTAs with Korea, the U.S. domestic industry would face increased competition. For example, some U.S. firms manufacture in the European Union (EU), which has negotiated an FTA with Korea. If, as a result, shipping manufactured medical technology products from the EU becomes more cost-effective than shipping it from U.S. manufacturing plants, valuable jobs could shift overseas.

Conclusion

The United States must negotiate and implement strong FTAs as one means of providing a level playing field for U.S. firms and improving U.S. competitiveness in the global market place. We cannot afford to cede U.S. leadership on international trade to other countries. The KORUS provides an illustration of the benefits that FTAs can bring to the U.S. medical technology industry. These benefits are the result of improvements in market access that the agreements provide. This improved market access will help U.S. medical technology firms increase their exports, with a direct and strong impact on employment in the United States. Adoption of FTAs will benefit U.S. workers, the U.S. economy, and patients overseas.

ANNEX I

Medical Devices – Harmonized Tariff Schedule (HTS) Codes

HTS Heading	HTS Description	Tariff Rate in Korea's 2005 Schedule
2844.40	Radioactive elements and isotopes	0
3005	Wadding, gauze, bandages and similar articles for medical, surgical, dental or veterinary purposes	0
3006.10	Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure and similar sterile material	0
3006.20	Blood-grouping reagents	0
3006.30	Opacifying preparations for X-ray examinations; diagnostic reagents designed to be administered to the patient	0
3006.40	Dental cements and other dental fillings; bone reconstruction cements	0
3006.50	First-aid boxes and kits	0
3407 <i>Excluding 3407.00.2000 (modeling clay)</i>	Preparations of dental wax or dental impression compounds; other dental preparations of plaster	6.5
3821	Prepared culture media for development of micro-organisms	6.5
3822	Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents	3822.00.10.00-3822.00.10.90: 0 3822.00.10.91: 6.5 3822.00.10.92: 8 3822.00.10.93: 0 3822.00.10.99: 8 3822.00.20.11-3822.00.20.90: 0 3822.00.20.91: 6.5 3822.00.20.92: 8 3822.00.20.93: 0 3822.00.20.99: 8
4015.11	Surgical gloves, of vulcanized rubber other than hard rubber	8
4015.19.0510	Medical gloves, of natural rubber	8
4015.19.0550	Medical gloves, other	8
4206.10.30	Articles of gut for use in the manufacture of sterile surgical sutures	8
6115.12.10	Surgical panty hose of synthetic fibers	13
6115.19.20	Surgical panty hose of other textile materials	13

6115.92.30	Surgical stockings of cotton	13
6115.93.30	Surgical stockings of synthetic fibers	13
6307.90.60	Surgical drapes of fabric formed on a base of paper or covered or lined with paper	10
6307.90.68	Surgical drapes of spunlaced or bonded fiber fabric; disposable surgical drapes of man-made fibers	10
6307.90.72	Other surgical drapes	10
6307.90.89	Surgical towels	10
8419.20	Medical, surgical or laboratory sterilizers	0
8419.90.5040, 8419.90.9040	Parts and accessories for medical, surgical or laboratory sterilizers	0
8543.89.85	Electrical machines and apparatus for electrical nerve stimulation	0
8713	Carriages for disabled persons, whether or not motorized or otherwise mechanically propelled	0
8714.20	Parts and accessories of carriages for disabled persons	0
9001.20	Sheets and plates of polarizing material	8
9001.30	Contact lenses	8
9001.40	Spectacle lenses of glass, unmounted	8
9001.50	Spectacle lenses of other materials	8
9003.11	Frames and mountings of plastic	8
9003.19	Frames and mountings of other materials	8
9003.90	Parts for frames and mountings, spectacles, goggles or the like	8
9004.10	Sunglasses	8
9004.90	Spectacles, goggles and the like, protective	8
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, and electro-medical apparatus and sight-testing instruments; parts and accessories thereof	8
9019 <i>Excluding 9019.10.2020 and 9019.10.2030 (hand-held massagers and parts thereof)</i>	Mechano-therapy appliances; massage apparatus; psychological aptitude testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof	0
9020.00.60	Breathing appliances and gas masks	8
9020.00.90	Parts and accessories for breathing appliances and gas masks	8
9021	Orthopedic appliances, including crutches, surgical belts and trusses;	0

	splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof	
9022 <i>Excluding 9022.19.0000, 9022.29.4000, 9022.29.8000, and 9022.29.0700 (non-medical equipment; smoke detectors and parts thereof)</i>	X-ray equipment	8
9025.11	Liquid filled clinical or veterinary thermometers	8
9025.19.00.40, 9025.19.80.40	Other clinical thermometers	8
9402	Medical, surgical dental or veterinary furniture and parts thereof	0
9608.20.0000*	Felt-tipped and other porous-tipped pens and markers.*	8

Source: U.S. Harmonized Tariff Schedule, Advanced Medical Technology Association, Korea 2005 Tariff Rate Schedule as reported on the APEC Tariff Database

*Note: Skin markers for surgery are included in this category; if the tariff cannot be removed from the entire category, AdvaMed recommends creating a more specific eight- or ten-digit code for the surgical markers and lift the tariff on that code.

ANNEX II

Top 10 U.S. Medical Technology Exports to Korea, 2005

HTS Heading	HTS Description	U.S. Dollars	Tariff Rate in Korea's 2005 Schedule	Est. Cost of Tariff in 2005
3822000002	Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents	\$60,375,932	0	-
9001200000	Sheets and plates of polarizing material	\$59,222,040	8	\$4,737,763
9018908000	Instruments and appliances used in medical, surgical, dental or veterinary sciences, and electro-medical apparatus and sight-testing instruments	\$54,706,123	8	\$4,376,490
9018390030	Bougies, catheters, drains and sondes and parts and accessories	\$30,466,031	8	\$2,437,282
9022140000	X-ray equipment	\$23,303,336	8	\$1,864,267
9018120000	Ultrasonic scanning apparatus	\$22,946,442	8	\$1,835,715
9018906000	Electro-surgical instruments and appliances and parts and accessories	\$21,185,957	8	\$1,694,877
9018199560	Parts and accessories for electro-diagnostic apparatus	\$19,734,740	8	\$1,578,779
8419200000	Medical , surgical or laboratory sterilizers	\$18,614,420	0	-
9018130000	Magnetic resonance imaging apparatus	\$18,614,420	8	\$1,489,154
Total (Top 10)		\$329,888,696		\$20,014,327
Total Export Value		\$623,185,405		

Source: U.S. Department of Commerce, U.S. International Trade Commission, Korea 2005 Tariff Rate Schedule as reported on the APEC Tariff Database



**American
Forest & Paper
Association**

**American Forest & Paper Association
Donna Harman, President & CEO
Statement Submitted for the Record**

**Senate Committee on Finance
The President's 2011 Trade Agenda
March 9, 2011**

The American Forest & Paper Association, Inc. (AF&PA) is pleased to submit this written statement to the Senate Finance Committee on the President's 2011 Trade Agenda. AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners. Our companies make products essential for everyday life from renewable and recyclable resources that sustain the environment. The forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP. Industry companies produce about \$175 billion in products annually and employ nearly 900,000 men and women, exceeding employment levels in the automotive, chemicals and plastics industries. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 48 states.

The United States is one of the world's most diverse exporters of sustainable forest products. In 2010, U.S. exports of forest products reached an estimated \$27.4 billion – composed of \$20.3 billion of paper and wood pulp and \$7.1 billion of wood products. Exports account for about 15% of total sales of U.S. forest products. In addition, the industry benefits from indirect exports – i.e., domestic sales of paper, paperboard and wood packaging materials that are used to package and transport goods exported by other U.S. industries.

The Obama Administration has recognized the importance of exports as a source of economic growth and job creation, especially with global economic growth expected to outpace the growth of the U.S. economy. Last year, the Administration pledged to double U.S. exports in the next five years. Opening up foreign markets to U.S. exports should be a major component of the Administration's strategy to achieve that goal.

Successful completion of the Doha Round of multilateral trade negotiations that includes a strong agreement to eliminate tariffs by advanced developing countries, especially Brazil, China and India, is a priority for the U.S. forest products industry. However, the Doha Round negotiations have made little progress to date so it is critical for the U.S. to conclude market-opening bilateral and regional trade agreements. Our major competitors are not waiting around and are instead negotiating barrier-reducing trade agreements for their companies. To move forward on a market-opening U.S. trade agenda, it is essential to achieve the rapid

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America's Forest & Paper People® - Improving Tomorrow's Environment Today®

implementation of all three pending FTAs with South Korea, Colombia and Panama. The Administration should also press for the rapid conclusion of the Trans-Pacific Partnership Agreement negotiations.

Doha Round of Multilateral Trade Negotiations

AF&PA support the Administration's efforts to obtain economically meaningful market access in the Doha Round negotiations of the World Trade Organization (WTO). We believe that sectoral tariff elimination should be a principal negotiating modality of the Non-Agricultural Market Access (NAMA) talks. It is critical for the U.S. forest products industry that the elimination of tariffs on wood and paper products through a forest products sectoral agreement be a U.S. negotiating priority. For such a sectoral accord to be viable, all developed countries, including Japan and South Korea, and advanced developing countries that are significant producers, represent major markets, and have substantial forest resources – e.g., Brazil, China, India, Indonesia, Malaysia – must participate fully.

With U.S. tariffs on pulp and paper at zero and on wood products nearly so, the U.S. forest products industry has been forced to operate under a significant competitive disadvantage vis-à-vis emerging producing countries such as Brazil, China, Indonesia, and Malaysia. High tariffs, combined with non-tariff barriers, have allowed countries in Asia and South America to build world-class paper and wood processing industries, at times supported by government financial assistance, which compete with U.S. suppliers both at home and abroad. Under these circumstances, AF&PA believes that only a sectoral agreement eliminating tariffs, as opposed to a formula cut, will provide real and substantial market access for U.S. forest product producers.

The Doha Round should address the distorting effects of subsidies provided by foreign governments. Specifically, WTO members should agree to prohibit all subsidies in capacity-sensitive sectors, whether such subsidies are provided directly or indirectly through government owned or government controlled banks, with possible exceptions for capacity closure and associated worker adjustment assistance schemes. This would entail an expansion of existing subsidies disciplines, and be enforceable through the WTO dispute settlement process.

U.S.-South Korea Free Trade Agreement

The U.S.-South Korea Free Trade Agreement (Korea FTA) meets AF&PA's overall goal of achieving free trade in forest products and should be implemented immediately. The U.S. and Korea enjoy a strong and mutually beneficial economic relationship and both countries would benefit from deepening and expanding these ties.

In 2010, U.S. paper and paperboard exports totaled \$242 million and wood pulp exports totaled \$216 million. Korea participated in the World Trade Organization's

Uruguay Round zero-for-zero tariff agreement on pulp and paper, so all its pulp and paper tariffs already have been eliminated. Nonetheless, U.S. paper and paperboard producers stand to gain from the FTA as a result of increased exports of other U.S. products using paper and paperboard packaging.

U.S. wood exports to South Korea in 2010 were an estimated \$203 million, of which more than 80 percent was in the form of logs, timber and pulpwood. On most of these unprocessed wood products, where tariffs are already fairly low, Korea agreed to immediately eliminate tariffs upon implementation of the FTA. Initially, Korea sought to exclude certain value-added wood products – e.g., sawn wood, flooring, plywood and builders' joinery – from tariff reduction in the FTA, but at the end agreed to phase-out the tariffs on these products over a period of 3-10 years. With the phase-out of tariffs on value-added wood products, U.S. producers are expected to become more competitive in relation to other major suppliers to the Korean market.

A non-tariff issue of longstanding concern to AF&PA has been Korean government subsidies to their coated paper producers. AF&PA conducted an in-depth study that documented direct and indirect subsidies being channeled through government-owned or government-controlled banks, keeping several of the otherwise bankrupt paper companies in business. During the FTA talks, U.S. negotiators pressed this issue with their Korean counterparts and as a result, the FTA provides for the establishment of a joint committee on trade remedies to deal with bilateral trade remedy issues. AF&PA would urge that the U.S. government use this forum to monitor and engage with Korea to address industrial subsidies issues as they arise.

U.S.-Colombia Free Trade Agreement

AF&PA believes that the U.S.-Colombia FTA (Colombia FTA) will advance the economic interests of both the U.S. and Colombia and will benefit the U.S. forest products industry. This is the best opportunity to strengthen economic and trade ties with a country that is the second largest market for U.S. products in South America, after Brazil.

Until the global recession, Colombia was a growth market for U.S. forest products. In 2007, U.S. pulp, paper and wood exports to Colombia exceeded \$213 million, an 83 percent jump from 2002. The global recession reduced that significantly, but exports have rebounded to an estimated \$248 million in 2010 (of the total, paper, paperboard and converted products account for \$159 million).

America's market is already open to forest products imports from Colombia. Under most-favored nation tariff rates and preference programs such as the Andean Trade Preference Act and the Generalized System of Preferences, nearly all of Colombia's forest products exports to the U.S. already enter duty-free. However, U.S. exporters entering the Colombian market currently face average import tariffs of 12.5 percent on paper products and 12.3 percent on wood products. Upon implementation of the FTA, 44 percent of U.S. paper product exports and 69 percent of U.S. wood products exports will receive immediate duty-free access. Tariffs on certain high-value priority wood products will be eliminated immediately. The industry will also benefit from the

overall reduction of tariff barriers for all U.S. exports as expanded exports of U.S. agricultural and manufactured products to Colombia will increase domestic demand for paper and wood packaging materials.

U.S. forest products companies operate in a global market where issues surrounding the legality and sustainability of timber and other manufactured forest products are growing in importance. AF&PA believes the Colombia FTA, with the establishment of the Environmental Affairs Council, will facilitate the development and improvement of environmental protection, including improved forestry practices.

AF&PA supports the Colombia FTA and urges Congress to pass implementing legislation as soon as possible. The agreement will lower trade barriers for U.S. forest products and will promote sustainable development and management of environmental resources in Colombia.

U.S.-Panama Free Trade Agreement

Panama is a relatively small market for U.S. forest products. In 2010, the industry's exports to Panama were about \$80 million. The implementation of the Panama FTA will provide improved market access for U.S. forest products in relation to other suppliers and together with the Central American FTA, lead to stronger ties between the U.S. and the region.

Summary

AF&PA believes that an effective WTO Doha Round must include significant reduction in trade barriers, particularly in the higher-tariff advanced developing countries. However, even if there is a breakthrough in the negotiations this year, and the signs are not very positive that this will happen, a Doha Round agreement will have only minor benefit for U.S. exporters in the first several years. In the meantime, it is critical for the U.S. to pursue market-opening bilateral and regional free trade agreements.

The Korea, Colombia and Panama FTAs are in our nation's economic and trade interests, and are good for American manufacturers and workers. Quick action is needed on all three FTAs. All three countries have concluded FTAs with other major trading countries, some of which - including Canada - compete with the U.S. forest products industry around the world. If more time is allowed to pass without increased U.S. access to these foreign markets, AF&PA is concerned that current customers in South Korea, Colombia and Panama will develop new commercial relationships with suppliers from competing countries who will benefit from preferential market access as a result of their FTAs. This could result in a loss of existing and future export opportunities for U.S. forest products companies and their workers. For these reasons, AF&PA strongly urges the Obama Administration and Congress to quickly implement the pending free trade agreements with South Korea, Colombia and Panama.

INTERFAITH WORKING GROUP ON TRADE AND INVESTMENT

A WASHINGTON-BASED WORKING GROUP WITH REPRESENTATIVES FROM A RANGE OF FAITH-BASED ORGANIZATIONS COMMITTED TO ASSERTING A STRONGER PRESENCE OF COMMUNITIES OF FAITH IN PUBLIC POLICY DISCUSSIONS ON INTERNATIONAL TRADE AND INVESTMENT.
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March 4, 2011

Dear Member of Congress,

The Interfaith Working Group (IWG) on Trade and Investment includes religious denominational offices and faith-based organizations working in the U.S. and abroad. We represent a broad coalition, and we bring the wisdom of our traditions to bear on decisions concerning U.S. trade policy. As the work of the 112th Congress begins to take shape, we want to share our concerns regarding trade policy with you.

The IWG is particularly focused on the effects of U.S. trade policy on impoverished people in our trading partner countries. Our international partners in Latin America, Africa, and Asia tell us that trade liberalization in its present form has caused tremendous harm to impoverished communities around the world.

In coming months, you will likely have the opportunity to consider the pending trade agreements with South Korea, Panama, and Colombia. Moreover, the Obama Administration is currently negotiating a Trans-Pacific Partnership Agreement that will include Pacific-rim nations. As you engage these and other trade-related discussions, we hope that you will take the following priorities into consideration:

Trade should not undermine rural livelihoods. While farming is a way of life for many of the world's poor, trade in agriculture is dominated by multinational corporations that control and distort the market. Import deregulation has been especially devastating for local agriculture.

- We believe that trade agreements should permit countries full flexibility to determine food policy and protect small-holder farmers from dumping and import surges.
- Tools such as tariffs, quotas, strong anti-trust regulations, and public support for farm inputs and food reserve programs have an important role to play in ensuring stability in food prices and agricultural incomes.

Trade should empower countries to regulate investment in order to facilitate development.

Developing countries should not be deprived of the ability to ensure that the benefits of trade are widely shared. So-called "investor-state" processes included in trade agreements grant foreign corporations greater rights than national businesses through access to tribunals that can overrule government decisions. This often leads to the dismantling of environmental, public health, or safety protections.

- We believe that investor-state processes should be excluded from all trade agreements.
- Governments should remain free to utilize performance requirements (such as local content requirements, local hiring minimums, etc.) to achieve development goals.

Trade should not impede access to medicines in poor countries. Nearly two billion people lack regular access to medicines in developing countries, and one contributing factor is the high price of monopolized medicines. Intellectual property provisions in trade agreements can restrict generic competition, leading to medicine prices that are unaffordable for most people.

- Trade agreements should look to the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) as the maximum standard of intellectual property

protection required, and should build in flexibilities to support public health in developing countries.

Trade agreements should be formulated with full democratic accountability and citizen participation. Under “fast track” Trade Promotion Authority, Congressional involvement is limited, and public input is restricted. The result is that global trade rules are driven by narrow commercial interests. Fast track authority last expired in 2007.

- We urge you to oppose any legislation that would reinstate this antidemocratic mechanism. Full public participation is needed to create a moral and legal framework for trade agreements.

Our hope is to help shape an approach to U.S. trade policy that complements rather than hinders international development efforts. Trade agreements must strike a balance between creating a predictable structure for international trade and preserving the policy space necessary for governments to foster economic, social and human development for all their citizens. **A framework for a new way forward for trade can be found in the TRADE Act**, introduced in the 111th Congress by Sen. Sherrod Brown and Rep. Michael Michaud.

We affirm the importance of international trade in an interdependent world. Our concern is for the character and quality of these trade relationships. NAFTA and CAFTA have demonstrated that the current trade model hurts people living on the economic edge in both the U.S. and developing countries. It is time to make a change. It is time to place trade in the service of the common good for people here and abroad.

We are more than happy to make our member groups available as a resource. Please contact us through David Golemboski at 202-347-9797, ext. 212 or dgolebowski@networklobby.org, or Martin Shupack at 202-481-6934 or mshupack@churchworldservice.org.

Sincerely,

The following members of the Interfaith Working Group on Trade and Investment:

Center of Concern
 Church World Service
 Columban Center for Advocacy and Outreach
 Conference of Major Superiors of Men
 Holy Cross International Justice Office
 Leadership Conference of Women Religious
 Maryknoll Office for Global Concerns
 Medical Mission Sisters, Alliance for Justice
 Mennonite Central Committee U.S. Washington Office
 Missionary Oblates of Mary Immaculate, Justice Peace/Integrity of Creation Office
 NETWORK: A National Catholic Social Justice Lobby
 PLANT (Partners for the Land & Agricultural Needs of Traditional Peoples)
 Presbyterian Church (U.S.A.), Office of Public Witness
 Sisters of Notre Dame de Namur, Justice and Peace Office
 United Church of Christ, Justice and Witness Ministries
 United Methodist Church, General Board of Church and Society
 Witness for Peace



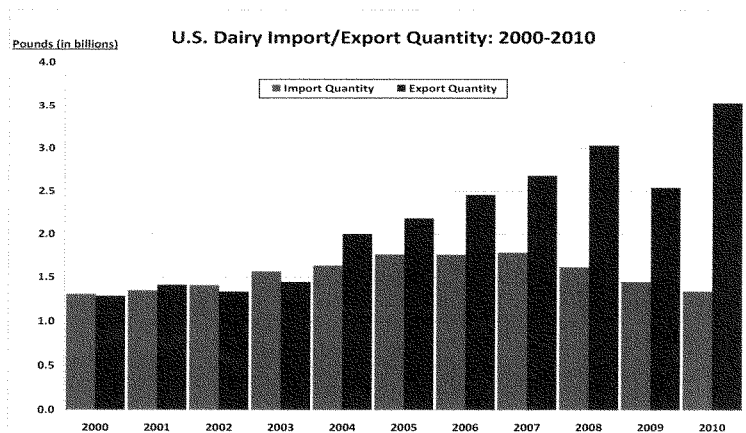
Testimony of the International Dairy Foods Association before the Senate Finance Committee with regard to the hearing on President Obama's Trade Policy Agenda

9 March 2011

On behalf of our roughly 550 member companies representing a \$110-billion a year industry, the International Dairy Foods Association (IDFA) appreciates the opportunity to submit testimony to the committee. IDFA member companies compete in the U.S. and foreign markets and are deeply committed to improving international trade opportunities for dairy products.

Dairy exports have grown into a vitally important aspect of the U.S. dairy industry. In 2010, the U.S. exported over \$3.7 billion worth of dairy products around the world, up 64% from 2009 and the second-highest level ever. The U.S. ran a dairy trade surplus last year of over \$1.2 billion. These numbers are a clear departure from a decade ago when the U.S. dairy industry historically ran a trade deficit.

Over 10 percent of U.S. farm milk production now ends up in dairy exports and there is a huge potential to increase this number. Developing and newly industrialized economies offer stronger consumption growth rates for food products generally and dairy products in particular. Although Mexico and Canada are the major recipients of US dairy products, dairy exports to Asia have shown tremendous growth in recent years. Exports last year to China were up 73 percent, to Japan up 55 percent, to the Philippines up 137 percent, and to Vietnam up 177 percent.



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With the right policies, we are confident that this trend will continue. In 2009, the Innovation Center for U.S. Dairy, funded by dairy producers, commissioned a study by Bain & Co. which projected that net import demand for dairy products would grow faster than net export supply through 2013. The study found that this demand growth would come primarily from developing economies in Asia, Latin America, North Africa and the Middle East. This will lead to a “latent demand gap” (global shortfall between consumption and production forecasts) of 100,000 metric tons of dairy protein by 2013 (equivalent to 7 billion pounds of milk). Importantly, the U.S. is well positioned to capture the opportunity of filling the demand gap in the near term (10-15 years). Beyond this 10-15 year window of opportunity, new sources of low cost supply will emerge as competitors. Thus, there is an urgent need to take the appropriate policy action to ensure that U.S. industry is able to meet this growing demand before other suppliers.

The study recommended that the dairy industry become a “consistent exporter” and that we change many of our domestic and international policies in order to position our industry to take advantage of this opening. IDFA agrees with this recommendation and urges the committee to review the report which can be found here:

<http://www.usdairy.com/Globalization/GlobalImpactStudy/Pages/BusinessCase.aspx>

The report specifically recommends against establishing policies that would create a “Fortress USA” and attempt to focus merely on our domestic market with policies that will insulate our industry from international markets.

Although many dairy policies are not within the jurisdiction of this committee, its members should be aware that policies that would create a “Fortress USA” by establishing a growth management program to address volatility have gained considerable momentum over the past several months and are being seriously considered. Studies of milk supply control programs established in other countries such as Canada and the European Union have shown that exports decline and imports increase under such programs. If growth management, or price stabilization, programs are established here, they will undermine the efforts of this committee and the Administration to increase exports through the National Export Initiative (NEI).

Before the U.S. dairy industry can fully realize its global potential, we also need international agricultural policies that are more market oriented. Dairy manufacturers cannot fully compete in global markets unless there is a reduction of dairy product tariffs, subsidy practices, and technical trade barriers that currently impair U.S. exports. Bi-lateral and multilateral free trade agreements provide extremely important opportunities to advance trade liberalization and break down trade barriers that obstruct the global growth of the dairy industry. As

more market barriers fall, and the historical gap between U.S. and world dairy market prices closes, competitive opportunities for U.S. dairy foods expand and more U.S. firms can make inroads into foreign markets.

Free trade agreements are an extremely important opportunity to advance dairy trade and break down barriers that obstruct the global growth of the dairy industry. The agreements currently pending before, including those with Colombia, Panama, and South Korea, offer enormous potential for growth in new markets for U.S. dairy products. FTAs such as these allow U.S. dairy companies to improve market opportunities and access for their exports.

In particular, quick action is needed to move the Korea-U.S. Free Trade Agreement (KORUS-FTA) forward as South Korea's dairy market is particularly important to American exporters. Assuming the U.S. is able to make full use of the new market access opportunities negotiated, this agreement embodies what IDFA believes is one of the most important free trade deals for the American economy since the North American Free Trade Agreement.

The KORUS agreement represents a tremendous opportunity for the U.S. dairy industry to increase and sustain its growing presence in an extremely important economic region. South Korea's dairy market is already very important to American exporters. Currently, duties on U.S. dairy exports to Korea are subject to high tariffs starting at 36 percent, while most of Korea's agricultural exports enter the U.S. market at about 10 percent. Despite these barriers, in 2010 South Korea constituted the U.S. dairy industry's sixth largest export market and imported over \$115 million worth of American dairy products, which was a 72 percent increase over 2009. South Korea was the fourth largest export destination for U.S. cheeses and curds and the eighth largest export destination for ice cream and related products.

Estimates from the U.S. International Trade Commission (ITC) Report: U.S.-Korea Free Trade Agreement "Potential Economy-wide and Selected Sectoral Effects" indicate that full implementation of the KORUS agreement would increase U.S. dairy exports by \$175–336 million (249–478 percent).¹ The report notes that the domestic Korean dairy industry is currently unable to supply total Korean demand for dairy products. One-half of non-fluid dairy consumption in Korea is supplied by imports. If the market access opportunities for the U.S. dairy industry under the KORUS-FTA are fully realized, U.S. farmers, processors and their suppliers are well positioned to meet this demand.

¹ Impact relative to a 2008 base. See chap. 2 of U.S. International Trade Commission U.S.-Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects report for additional information regarding the economy-wide analysis:
<http://www.usitc.gov/publications/pub3949.pdf>

Perhaps most importantly, the ITC report estimated that the dairy sector would be among the industries seeing the largest gains in output and employment. Based on Commerce Department multipliers, such an increase in U.S. dairy exports could mean 10,000 or more additional U.S. jobs when considering the effect across the dairy industry value chain.

In addition to supporting the approval of the KORUS-FTA at the earliest opportunity, IDFA also strongly supports quick approval of the FTAs with Colombia and Panama. The estimated benefit to the U.S. dairy industry over the first several years of each of these agreements will be an additional \$25 million per year, on average.

If congress fails to act, these tremendous opportunities for market expansion and resultant job growth in the U.S. will be critically threatened, especially in light of the rapid pace at which the European Union has negotiated competing FTAs with these countries.

IDFA urges members of this committee and Congress to work diligently to approve these long-pending free trade agreements. The advancement of these FTAs is viewed by IDFA as a crucial step forward in the industry's continued overseas growth and logical progression towards becoming a significant global dairy industry player and "consistent exporter". In particular, the KORUS-FTA is a key building block and a critical step forward for the U.S. dairy sector to increase and sustain its growing presence in an extremely important economic region.

The Trans-Pacific Partnership negotiations (TPP) are another important building block towards trade policies that will facilitate U.S. dairy's expansion into the important Pacific Rim market. IDFA is encouraged by the recent inclusion of Vietnam in the TPP talks and ongoing discussions with Japan as another potential entrant. The Pacific Rim is the U.S. dairy industry's fastest growing export region, totaling over \$1.2 billion in dairy exports during 2010, an increase of over 100 percent from 2009. As these economies continue to develop and incomes grow, consumption of animal proteins such as dairy and other value-added agricultural products increase as well. Local production of dairy products in this region is often constrained by the lack of manufacturing facilities making U.S. dairy processors uniquely positioned to meet consumer demand that local manufacturers are not able to supply.

This opportunity will not be fully realized unless the U.S. promotes sound trade policy that focuses on market access in the regions and addresses important technical trade barriers. As the economies and incomes of these Asia-Pacific countries have grown, they have struggled with the need and ability to implement science-based regulatory systems that allow for free and fair access for U.S. dairy products. These systems are often fractured and

inconsistent across the region. The TPP negotiations and other dialogue, such as economic and trade-related discussions with China, are vital venues in building the regulatory coherence and sound science-based policies within the region that will permit U.S. dairy and other agriculture exports open access to these crucial markets.

China is currently the U.S. dairy industry's largest export destination outside North America, and one of its fastest growing markets. China imported \$237 million of U.S. dairy products in 2010, a 73 percent increase over the previous year. However, this vital market has been plagued with uncertainty for nearly a year, as China has failed to agree upon an acceptable dairy health certificate with the United States. While dairy exports are currently able to enter the country through the legacy certificate, and U.S. interagency efforts to reach an agreement have been admirable, this unfavorable risk-management situation reflects the importance of market access issues as a focus of U.S. trade policy towards China. Other issues deflect important political attention away from those that directly affect the ability of U.S. dairy processors and other companies to do business in China. For example, any congressional attempts to force China to move more quickly to allow market forces to influence its currency are likely to be counter productive and would likely put dairy exports further at risk from retaliatory trade actions.

IDFA is also strong proponent of the successful completion of the Doha Development Round of the World Trade Organization (WTO) and is hopeful that the U.S. will provide leadership in pushing for a breakthrough in the long-stalled negotiations before the year ends. Multilateral negotiations in the WTO provide one of the best and most important opportunities to strengthen international trade rules to remove artificial advantages or protections and truly open markets for U.S. dairy products and dairy-containing foods.

It is essential for Congress and the Administration to remain ambitious in all three "pillars" of the agriculture negotiations: market access, elimination of export subsidies and trade distorting domestic support. Furthermore, successful completion of the Doha round would provide an excellent framework for the writers of the upcoming farm bill to ensure that U.S. agricultural policies are WTO compliant and non-trade distorting, which will provide for a level playing field and shield U.S. agriculture from unnecessary trade retaliation.

IDFA appreciates the opportunity to provide comments on the magnitude of these issues and the importance of a robust trade policy to our industry. Thank you.

Statement for the Hearing on President Obama's Trade Policy Agenda

**by Thomas A. Hammer, President
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**Senate Finance Committee
March 9, 2011**

Mr. Chairman and distinguished Members of the Committee, thank you for holding this hearing on President Obama's trade policy agenda. The National Oilseed Processors Association (NOPA) thanks you for the opportunity to submit our comments on the President's trade policy agenda on current trade issues such as the pending trade agreements with Colombia, Panama, and South Korea and prospects for the WTO Doha Development Agenda.

NOPA is a national trade association comprised of 14 members engaged in the production of food, feed, and renewable fuels from oilseeds, including soybeans. NOPA's member companies process more than 1.7 billion bushels of oilseeds annually at 63 plants located in 20 states throughout the country, including 57 plants that process soybeans. Each one of these operates as a small business generating services and opportunities for farmers and ranchers in the rural communities they serve.

NOPA has long been a leader in supporting commercially meaningful market access and global trade liberalization. NOPA supports the WTO Doha Development Agenda (DDA) as a means to reform agricultural and food trade policy, promote global food security through furthering open trade, gain substantial improvements in market access, phase out all forms of export subsidies, and increase trade liberalization in the agriculture and food sector.

To this end, we vigorously support the elimination of Differential Export Taxes (DETs). DETs distort global trade in oilseeds and oilseed products, and more recently biodiesel. Under the system of differential export taxes as imposed by Argentina, soybean exports are taxed at a rate higher than the rates on soybean meal, soybean oil and soy biodiesel. The lower tax burden on meal, oil and biodiesel creates a strong economic incentive for processing soybeans in Argentina and exporting the value-added products rather than the raw product. As a result, DETs have effectively distorted the competitive balance among the world's major soybean processors. If the DDA is successful in disciplining and/or eliminating all other forms of export competition, such as export subsidies and export credits, we fear that DETs might well become the favored instrument to be used by commodity exporters in other countries for an increasing number of agricultural and industrial products. NOPA believes it is imperative that language be included in the final DDA Agreement to eliminate the differential element of export taxes.

American agribusiness is at risk of being left behind as a result of the long delay in the passage of these pending agreements. Many of our major trading partners, especially in Asia, have turned to bilateral economic agreements to promote trade at the expense of U.S. exports. South Korea is not waiting for the United States, but is negotiating FTAs with other major economies, including the EU and India, to the disadvantage of U.S. business. It is only a matter of time before South

Korea joins with other nations, such as China, Australia and New Zealand, in negotiating additional bilateral agreements.

These trade agreements are important to the overall economic health of farmers, ranchers, agricultural processors, and the entire value chain. Our industries play a vital role in the prosperity of rural communities. Agriculture is responsible for one out of every 12 jobs in America and is responsible for creating employment opportunities for people in urban, suburban, and rural communities across the country. The Department of Agriculture estimates that every billion dollars in agricultural exports supports 9,000 jobs. A decline in our exports means a decline in work for the entire supply chain. We must do whatever we can to assure that we are creating opportunities and jobs.

In President Obama's State of the Union Address on January 27, 2010, he announced the National Export Initiative (NEI), with a goal of doubling exports over the next five years. The President once again mentioned in his State of the Union Address on January 25, 2011, the goal of doubling our exports by 2014. The negotiation and implementation of FTAs and other trade expanding arrangements will lead to increased opportunities for oilseed processors, farmers, ranchers, and agribusiness. The three pending FTAs represent immediate growth opportunities in both revenue and jobs and support the NEI goal of doubling exports by 2014.

However, trade expansion between the United States, South Korea, Colombia and Panama are at risk because our competitors are moving quickly to gain market access. They are moving forward with their own FTAs. This is not a trivial concern. There are 13 such agreements in place or in the works involving some 50 nations around the world. They include some major agricultural producing and exporting countries: Chile, Australia, New Zealand, Canada, the 27-nation European Union, Mexico, Mercosur (Argentina, Brazil, Paraguay and Uruguay), Peru and the ASEAN bloc. In fact, South Korea's FTA with the European Union is set to enter into force on July 1, 2011. This, coupled with the failure to implement the U.S.-Korea Free Trade Agreement (KORUS FTA), will put U.S. food and agriculture products at a severe disadvantage with respect to competition from the European Union in the Korean market.

According to an analysis by the American Farm Bureau Federation, the KORUS FTA would result in \$1.8 billion in additional sales to Korea, a 46 percent increase over existing sales. These new exports would create thousands of new jobs across the agricultural sector, in rural communities and throughout the economy. For three years, these important benefits have been forfeited while the implementing legislation has been on hold.

We can lose jobs as our market share declines, we can relinquish our export sales to countries that have implemented their own FTAs, or we can create new jobs by expanding exports to South Korea, Colombia, and Panama.

NOPA strongly believes that the Administration should continue to negotiate multilateral trade agreements, such as the DDA, and regional trade agreements, such as the Trans-Pacific Partnership (TPP) Agreement. First and foremost, however, the Administration should send implementing legislation to the Congress on the three pending FTA agreements as soon as possible. NOPA encourages Congress to proceed expeditiously to ratify the pending agreements

with South Korea, Panama, and Colombia. Below is a detailed description of each agreement and the benefits to the U.S. soybean industry and our animal and livestock customers.

U.S. – Korea Free Trade Agreement (KORUS)

The United States is already Korea's top supplier of a broad variety of agricultural exports at \$5.8 billion in 2010, including fish and forest products, making Korea the fifth largest export market for U.S. farm products. The new agreement is expected to expand those sales even further. The U.S. is the No. 1 supplier to Korea of many farm products, including almonds, beef, fresh cherries, hides and skins, poultry, soybeans, corn, and wheat. With the agreement, the average agricultural tariff for U.S. goods will fall from the current 52 percent to 4 percent in 15 years. The tariff reductions will help the U.S. compete against China and Australia, which have increased their presence in Korea's \$12 billion agriculture market. The tariff reductions will help the U.S. compete against Korea's other major agriculture suppliers and help keep the United States on a level playing field with Korea's current free trade partners, such as Chile, and any future trade partners.

Product	2006	2007	2008	2009	2010
Soybeans	\$113.1 M	\$158.4 M	\$186.7 M	\$276.0 M	\$311.9 M
Soybeans Oil	\$ 27.7 M	\$ 46.4 M	\$ 66.8 M	\$ 55.9 M	\$ 32.4 M
Soybean Meal	\$ 17.2 M	\$ 38.0 M	\$ 82.0 M	\$116.0 M	\$ 95.5 M
	\$158.0 M	\$242.8 M	\$335.5 M	\$447.9 M	\$439.8 M

Soybeans and Products: The greatest potential benefit for the soybean sector is likely to come from improved access to Korea's 300,000-ton market for food quality soybeans. Korea has agreed to immediately eliminate its 5-percent tariff on food-use soybeans. In addition, Korea will also establish a Tariff Rate Quota (TRQ) for identity-preserved soybeans for food use (the production of soybean curd). This quota will operate outside the current state trading entity, which has charged a reported \$250 per ton markup on soybean imports supplied to soybean curd processors. The TRQ will be operated by an association of food-grade soybean processors. Korean tariffs on soybeans for crushing will decline from the current 1 percent autonomous tariff to zero upon implementation of the KORUS FTA.

Soybean Oil and Meal: Korean tariffs on imports of crude soybean oil (the majority of Korea's soybean oil imports) will decline from the current 5.4 percent WTO tariff in 10 equal annual reductions. Refined oil tariff rates will decline from the current 5.4 percent in five equal annual reductions. Korea's 3 percent tariff on soybean flour and meal will immediately go to zero. U.S. livestock and poultry producers consume over 29.49 million tons of soybean meal.

Pork: Korea's tariffs on imports of more than 90 percent of U.S. pork products will become duty-free on January 1, 2014. This includes all frozen pork products and processed pork products. Fresh and chilled products will be phased out in 10 years and subject to a 10-year safeguard that is higher than historical trade and grows six percent annually. Date-certain duty-free access allows for U.S. exports to compete on a level playing field with other Korean free trading partners. In addition to ambitious market access gains, the Republic of Korea has agreed to

accept all pork and pork products from USDA-approved facilities. This provision ensures that trade will be possible without onerous technical or sanitary barriers.

The KORUS FTA will add hundreds of millions of dollars to the U.S. pork industry in additional pork exports. Exports positively impact the price of live hogs, and therefore the agreement will benefit all U.S. pork producers. In 2009, exports to South Korea were 103,553 metric tons valued at \$216 million. The United States is the largest foreign supplier of pork to South Korea. Major competitors include the EU, Canada, Chile and Australia. The U.S.-Korea FTA will give U.S. pork preferences in this lucrative market over other foreign competitors.

Poultry Meat and Egg Products: Korean tariffs on imports of chicken cuts, including the dominant U.S. frozen leg import category, will decline from the current 20 percent to zero in 10 equal annual reductions with the exception of frozen breast and wings, which will decline in 12 equal reductions. Korean tariffs on frozen turkey cuts will decline from the current 18 percent in seven equal annual reductions. Korean tariffs on egg products (egg yolks are the key import item) will decline from the current 27 percent in 12 equal annual reductions.

Korea's most significant poultry meat imports are frozen cuts, such as legs and wings, followed by frozen turkey cuts, such as legs and wings. The U.S. is the leading supplier, with an average market share of 53 percent, followed by Brazil and the European Union.

U.S.-Colombia Trade Promotion Agreement (CTPA)

The CTPA achieves two key trade objectives for the United States: it makes agricultural trade a two-way street, and it levels the playing field with respect to third-country competitors in the Colombian market.

<u>Product</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Soybean Meal	\$ 76.7 M	\$ 73.8 M	\$120.6 M	\$ 39.2 M	\$ 15.0 M
Soybean Oil	\$ 2.2 M	\$ 6.8 M	\$ 71.0 M	\$ 1.3 M	\$ 17.5 M
Soybeans	\$ 65.4 M	\$ 91.0 M	\$ 96.0 M	\$100.4 M	\$ 70.7 M
	\$144.3 M	\$171.6 M	\$287.6 M	\$140.9 M	\$103.2 M

Upon implementation of the CTPA, U.S. exporters will receive immediate duty-free treatment on products accounting for more than half the value of current trade. Currently, no U.S. agricultural exports enjoy duty-free access to Colombia. In contrast, over 99.9 percent of Colombia's current exports already receive duty-free treatment into the U.S. market under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), legislation passed by Congress in 2002. Most Colombian applied tariffs range from 5 to 20 percent for agricultural products and, in many cases, these tariffs now restrict U.S. exports.

Sanitary & Phytosanitary (SPS) Measures: Colombia also agreed to recognize the U.S. meat and poultry inspection system as equivalent to its own system. The U.S. and Colombia agreed to establish an SPS Committee to expedite resolution of technical issues.

Soybeans and Soybean Products: Colombia's WTO tariff bindings on soybeans and soybean products range from 75 to 150 percent. Colombia's applied tariff rates range from 5 to 20 percent on some products, while other products are subject to Colombia's price band system with tariffs ranging up to the WTO bound level, depending on world prices. Colombia will immediately eliminate tariffs on soybeans and soy meal and flour. Colombia will provide immediate duty-free access for crude soybean oil through a 31,200-ton TRQ with four percent annual growth. Colombia will phase out the out-of-quota tariff of 24 percent for crude soybean oil over 20 years. Colombia will phase out its 24 percent tariff for refined soybean oil over 5 years.

Pork: The CTPA negotiated between the U.S. and Colombia, once fully implemented, will significantly benefit U.S. pork producers. Under the terms of the CTPA, the tariffs on some pork and pork products will be eliminated immediately, while the tariffs on others will be phased out over a 5-year period.

Live hog prices are positively impacted by the introduction of new export markets. According to Iowa State University economist Dermot Hayes, the Colombia agreement, when fully implemented, will cause live U.S. hog prices to be \$1.15 higher than would otherwise have been the case.

Poultry: In 2010, the United States exported \$21.4 million of poultry and poultry products to Colombia. Colombia's WTO tariff bindings on poultry range from 70 to 209 percent. Colombia's applied tariff rates range from 5 to 20 percent on some products, while other products are subject to Colombia's price bands with tariffs ranging from zero percent up to the WTO bound rate, depending on world prices. The United States secures a 27,040-ton TRQ at zero duty with four percent annual growth for chicken leg-quarters. Colombia will phase out the out-of-quota tariff of 164.4 percent for fresh, chilled and frozen chicken leg-quarters and of 70 percent for processed chicken leg-quarters over 18 years with a grace period during the first six years. Colombia will have access to a safeguard on chicken leg-quarters in the event of an annual import surge during the 18-year tariff phase-out period.

Colombia will also establish a zero-duty, 412-ton TRQ with 3 percent annual growth for "spent fowl," typically post-production layers. The 45 percent above-quota tariff on spent fowl will be phased out over 18 years. Colombia will have access to a safeguard on spent fowl in the event of an annual import surge during the 18-year implementation period.

U.S.-Panama Trade Promotion Authority Agreement

The U.S.-Panama Trade Promotion Agreement provides for a growing market for U.S. agricultural products. U.S. agricultural products exported in 2010 were \$463 million, compared to \$212 million in 2006.

Over 88 percent of U.S. exports of consumer goods and industrial products to Panama will be duty-free immediately upon entry into force of the agreement, and an additional four percent will be duty-free within five years. All remaining tariffs will be eliminated within ten years.

Product	2006	2007	2008	2009	2010
Soybean Meal	\$27.5 M	\$42.5 M	\$59.0 M	\$51.8 M	\$ 57.5 M
Soybeans Oil	\$ 1.2 M	\$ 2.6 M	\$ 8.9 M	\$ 2.6 M	\$ 5.5 M
Soybeans	\$ 1.1 M	\$ 1.8 M	\$ 1.1M	\$ 1.5 M	\$ 2.2 M
	\$29.7 M	\$46.9 M	\$69.0 M	\$55.9 M	\$ 65.2 M

Oilseeds and Vegetable Oil: Panama's tariffs on oilseeds and vegetable oils range from zero to 30 percent. All fat and oil tariff lines will be eliminated within 15 years or less.

- Oilseeds. Panama will lock in duty-free treatment for U.S. exports of both soybeans and soybean meal immediately.
- Soybean Oil. The tariff on crude soybean oil will be eliminated immediately. The tariff on refined soybean oil will be phased out within 15 years, with an initial grace period and a safeguard.
- Corn Oil. The tariff on crude corn oil will be eliminated immediately. Panama will establish a duty-free preferential TRQ for refined corn oil. The initial duty-free TRQ will be 368 tons with a 5-percent compound growth rate. The over-quota tariff on refined corn oil will be phased out within 10 years, with an initial grace period and a safeguard.

Pork: U.S. pork exports to Panama are currently restricted by a very limited quota and out-of-quota duties as high as 80 percent. However, the Panama Trade Promotion Agreement, if implemented, will provide immediate duty-free treatment on pork variety meats and expanded market access for U.S. pork through tariff rate quotas. U.S. pork competes in Panama with pork from Canada and the EU. The Panama Agreement, if implemented, will give U.S. pork products a competitive edge in the market.

Poultry: Panama's tariffs on poultry range from 5 to 260 percent. Tariffs will be eliminated immediately on frozen whole turkeys, most frozen turkey cuts, and mechanically de-boned chicken. Tariffs will be eliminated within five years on chicken wings and other turkey meat, as well as processed chicken and turkey. The agreement establishes a preferential duty-free TRQ for chicken leg quarters that starts at 660 tons and grows each year by a 10-percent compound rate. The over-quota tariff will be eliminated in 18 years with no tariff reductions for the first 10 years. All other poultry tariffs will be eliminated within 15 years or less. Under the CBI, U.S. tariffs on poultry imports from Panama currently are zero. The U.S.-Panama TPA continues this zero-duty treatment.

Agricultural Market Access: More than half of current U.S. farm exports to Panama will receive immediate duty-free treatment, including high quality beef, mechanically de-boned chicken, frozen whole turkeys and turkey breast, port variety meats, whey, soybeans and soybean meal, crude vegetable oils, cotton, wheat, barley, most fresh fruits, almonds, walnuts, many processed food products, distilled spirits, wine, and pet food.

U.S. farm products that will benefit from expanded market access opportunities through tariff-rate quotas include the following: pork, chicken leg quarters, dairy products, corn, rice, refined corn oil, dried beans, frozen French fries, and tomato products. Tariffs on most remaining U.S. farm products will be phased out within 15 years.

Agricultural Regulatory Issues: Panama will recognize the equivalence of U.S. food safety inspection system for meat and poultry, and the U.S. regulatory system for processed food products. The agreement streamlines import documentation requirement for U.S. processed foods and ensures Panama's continued recognition of the U.S beef grading system and cuts nomenclature.

As demonstrated from the above data, the three pending free trade agreements provide significant opportunity for U.S. agriculture. We urge Congress and the Administration to proceed to expeditiously ratify the pending FTAs with South Korea, Panama and Colombia.

Thank you for allowing NOPA to share its views on the pending free trade agreements and the ongoing Doha multilateral trade negotiations. We look forward to working with you and the Committee in address the challenges and opportunities in facilitating growth and jobs in U.S. agricultural trade and creating economic growth in rural communities across the country.

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Comments in response to:

The President's 2011 Trade Agenda - Hearing

March 9, 2011

Comments submitted by:

Securities Industry and Financial Markets Association

1101 New York Avenue, NW

Washington, D.C. 20005

Securities Industry and Financial Markets Association Comments on Pending Free Trade Agreements, the Trans-Pacific Partnership, and Industry Efforts in China

March 23, 2011

Mr. Chairman, Ranking Member, and Members of the Committee, the Securities Industry and Financial Markets Association (SIFMA) appreciates the opportunity to comment in support of the U.S.-Colombia Trade Promotion Agreement (Colombia TPA), the U.S.-Panama Trade Promotion Agreement (Panama TPA), and the U.S.-Korea Free Trade Agreement (KORUS FTA).¹ These agreements represent a key building block of President Obama's efforts to open foreign markets to U.S. workers, business, consumers, and investors, resulting in new opportunities to create U.S. jobs and bolster economic growth. Consequently, we strongly encourage the Administration to renew efforts to pursue international economic engagement on global, regional, and bilateral tracks.

Access to foreign markets and the ability to provide products on a global basis is critical to the continued success of the U.S. financial services industry. The exports of financial services totaled \$55.4 billion in 2009, with a surplus of \$39 billion — this helps support millions of jobs in the U.S., both within the industry and in supporting sectors. Open and fair global capital markets reduce the cost of capital for U.S. companies in all sectors of the economy, and enable continued growth and expansion.

In addressing the specific requests of the Committee, our comments will focus on the following key points: 1) the benefits of the pending agreements to the U.S. economy; 2) the costs of delaying approval of the agreements; 3) the agreements' impact on the financial

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

services industry; 4) the importance of concluding other pending regional and global negotiations; and 5) the need for improved access to the Chinese financial services sector and the development of a level playing field.

Benefits to the American Economy

As the U.S. and global economy navigate through a sustained period of weak economic growth, the pending agreements would provide debt-free stimulus to the American economy by opening new markets for U.S. goods and services. The agreements complement and support the Administration's National Export Initiative that pledges to "remove barriers to trade and open new markets, make sure that trade is free and fair, and work with the world community to promote strong balanced growth worldwide that will benefit everybody."² Nearly 6 million U.S. jobs are supported by goods exports, which is more than 5 percent of private industry jobs.³ President Obama has stated that a 1 percent increase in exports would create 250,000 jobs.

In the aftermath of the global economic crisis, international trade agreements are an important means of promoting greater cross-border cooperation, transparency, predictability, and accountability in financial services, which is critical to continuing the global recovery. G20 leaders have highlighted the critical role that vibrant financial markets play in providing the credit and capital essential for economic growth, especially in developing countries. Financial services firms operating in a sound regulatory environment help companies manage risk, raise debt and equity, carry out acquisitions or sales, and help individuals plan and invest for the future. Capital markets facilitate economic growth and development by substantially broadening the range of vehicles for savings and investment, and lowering the cost of capital for businesses and entrepreneurs.

This, in turn, supports economic growth and job creation. Consequently, global investors will benefit from more attractive investment opportunities, exporters will be able to access a more vibrant export market for goods and services, and workers will benefit from increased job opportunities.

SIFMA appreciates both the Chairman's and the Ranking Members' strong support for the pending free trade agreements and agrees they should be concluded this year.

KORUS FTA

Notably, U.S. services exports to Korea totaled \$12.6 billion in 2009 (most recent data available). Following ratification of the KORUS FTA, U.S. goods exports to Korea are projected to

² National Export Initiative, July 2010.

³ U.S. Korea FTA Business Council Factsheet, <http://www.uskoreafta.org/sites/default/files/Benefits-KORUS.pdf>, Accessed February 1, 2011.

increase by \$10 billion to \$11 billion annually, according to estimates by the U.S. International Trade Commission. Implementing the agreement would create about 70,000 American jobs.⁴

Colombia and Panama TPAs

Under the Colombia and Panama TPAs, more than 80 percent of U.S. consumer and industrial products, and more than half of current U.S. farm exports will enter Colombia and Panama duty-free immediately. The agreements will also strengthen intellectual property and investor protections, open services markets, and enhance transparency in government procurement.

The services sector is the largest part of the U.S. economy — accounting for more than 93 million jobs and almost 77 percent of private sector GDP in 2009. Also in 2009, U.S. exports to Colombia totaled \$9.4 billion, while U.S. imports totaled \$11.3 billion. Importantly, the agreement prohibits discriminatory treatment of U.S. companies and creates increased market access, with comprehensive liberalization across the spectrum of service industries.

Not only will all three agreements be important for our clients in the agriculture, manufacturing, and services sector, financing the increased exports and U.S. business activity in all three countries will benefit our industry directly.

Costs of Delay

The United States stands to lose more than 380,000 jobs if it fails to implement its pending trade agreements with Colombia, Panama, and South Korea, while the European Union, Canada, China and other countries move ahead with their own agreements with the those countries, according to a study by the U.S. Chamber of Commerce.⁵

KORUS FTA

To fully reap the benefits of the agreement, the KORUS FTA must be implemented in a timely manner. The European Union, an economy of similar size and composition to the U.S., recently concluded a free-trade agreement with Korea and is scheduled to begin implementing it July 1, 2011. Under the agreement, EU bilateral exports to Korea are expected to increase by as much as 82.6 percent, as barriers to EU-based firms are reduced and eliminated.⁶ Korea is also in the process of negotiating trade agreements with Australia and India. According to

⁴ Report to the President on the National Export Initiative: The Export Promotion Cabinet's Plan for Doubling U.S. Exports in Five Years, http://www.whitehouse.gov/sites/default/files/nei_report_091510_short.pdf, Accessed February 1, 2011.

⁵ The State of World Trade, U.S. Chamber of Commerce, <http://bit.ly/helF74>, Accessed February 22, 2011

⁶ The Economic Impact of the Free Trade Agreement (FTA) between the European Union and Korea http://trade.ec.europa.eu/doclib/docs/2010/may/tradoc_146174.pdf, Accessed February 1, 2011.

official White House economic estimates, if competing economies reach and implement their pacts first, the U.S. stands to lose about \$30 billion in exports.⁷

Colombia and Panama TPAs

According to the Committee on Ways & Means (Republican Staff) study based on technical assistance provided by the independent, nonpartisan U.S. International Trade Commission:⁸

- If the EU-Colombia Trade Agreement is implemented and the U.S.-Colombia Trade Promotion Agreement (CTPA) is not, U.S. exports to Colombia of:
 - Machinery and equipment would decline by 15 percent, totaling \$155 million in lost revenue;
 - Textiles and apparel would decline by 11 percent and 21 percent respectively, combining for nearly \$21 million in lost revenue;
- If the Canada-Colombia Trade Agreement is implemented and the U.S.-Colombia Trade Promotion Agreement (CTPA) is not:
 - Export and agricultural sectors would collectively experience a 35 percent reduction in U.S. exports to Colombia, totaling more than \$56 million in lost revenue.

Impact on Financial Services Firms

The KORUS FTA will generate significant benefits for U.S. financial services firms and their customers, including:

- 100 percent ownership, as well as the right to establish their corporate form of choice;
- National treatment to foreign financial sector participants and investors on the same basis as domestic investors for regulatory and other purposes;
- The right to supply specific financial services on a cross-border basis, including portfolio management services for investment funds in Korea, and the ability for portfolio managers to manage their portfolios from their regional or head offices outside of Korea;
- Enhanced regulatory transparency. Securities firms in Korea are often confronted with non-tariff barriers in the form of regulatory restrictions and

⁷ Elizabeth Williamson, *US Vows New Push in Korean Trade Pact*, The Wall Street Journal, June 25, 2010. <http://online.wsj.com/article/SB10001424052748704846004575333303589295326.html>, Accessed February 1, 2011.

⁸ House Ways and Means Republican Staff Study, May 10, 2010. <http://bit.ly/by20ro>, Accessed February 22, 2011. *NOTE Further benefits of the Panama and Colombia agreements can be found in a study provided to the Senate Foreign Relations Committee which was conducted by Sen. Lugar's staff. <http://bit.ly/h9i6kC>*

a lack of transparency in the development, implementation and application of regulations. These barriers prevent access in much the same way as tariffs, but unlike tariffs, no quantitative mechanism exists to reduce them;

- The transfer of information into and out of its territory for data processing where such processing is required in the institution's ordinary course of business;
- Strong provisions to protect U.S. investors and U.S. investment against arbitrary, confiscatory and discriminatory government action, including compensation for expropriation, commitments to fair and equitable treatment and most-favored nation treatment, and an objective and independent investor dispute settlement mechanism to resolve individual disputes; and
- In addition to establishing regular bilateral dialogues between regulators, which would enable more effective regulatory cooperation, the financial services agreement also provides provisions protecting each trading partner's sovereignty and regulatory approaches.⁹

The Colombian agreement has been overwhelmingly approved by Colombia's Congress and will serve to benefit the more than 10,000 U.S. companies that export to Colombia, of which about 8,500 are small- and medium-sized firms. The pending agreement with Panama is also a vital piece of the trade puzzle and its ratification would complete the series of bilateral trade agreements currently outstanding. As with the KORUS FTA, the Colombia and Panama agreements provide similar benefits to the financial services industry:

- Full rights to establish or acquire existing financial institutions in Colombia and Panama to supply a complete range of financial services, including:
 - The right to 100 percent ownership;
 - Extensive rights to establish in the judicial form that best suits the business model of financial services firms.
- Non-discriminatory, national treatment for financial services firms, including on the types of services provided to customers;
- Automatic binding of future liberalization through most favored nation (MFN) treatment whereby both Colombia and Panama agree that if they liberalize further in the context of another FTA, then that liberalization is offered automatically to the U.S.; and
- Enhanced regulatory transparency and important regulatory reforms, such as more regularized and transparent regulatory procedures, the adoption

⁹ U.S. Korea Business Council Factsheet, <http://www.uskoreafta.org/sites/default/files/Financial-Services-KORUS.pdf>, Accessed February 1, 2011.

of a negative list approach to financial sector regulation, and a regional integration of data processing.

Pursue Regional and Global Agreements

Increasingly important to the future of the U.S. economy and the financial services sector is the conclusion of the Trans-Pacific Partnership (TPP), a regional trade agreement that includes Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, the United States, and Vietnam. We welcome U.S. Trade Representative Ambassador Ron Kirk's comments regarding his intentions of concluding TPP negotiations by the annual Asia-Pacific Economic Cooperation (APEC) meeting in Hawaii in November 2011. We fully support this effort and believe its conclusion is critical to sustain a dynamic economy and create and retain high-paying, high-quality jobs in the U.S.

SIFMA believes that a high standard, comprehensive, and broad-based regional agreement would represent a key building block in opening foreign markets to U.S. business, consumers, and investors, resulting in new opportunities to create jobs, and bolster economic growth. Such an agreement among TPP markets can also serve as a launch pad for the addition of like-minded countries.

In developing a 21st century agreement, the Administration should build on "best of breed" provisions from recent agreements, such as those in the KORUS FTA, rather than simply inventorying provisions from existing FTAs with TPP countries. The recently concluded Santiago negotiations represent a key milestone to concluding the TPP agreement and provide a forum to address outstanding regulatory barriers and non-tariff barriers.

A mere recounting of existing agreements would not reflect the global and rapidly changing nature of the financial services sector. We encourage the inclusion of language similar to the 1998 Rwanda Bilateral Investment Treaty (BIT) that allows for an arbitration mechanism to allow investors to work with competent investment authorities for a joint determination on the issue.

While U.S. exports to the Asia-Pacific have increased by 63 percent over the past five years, the U.S. share of trade in the region has declined by 3 percent in favor of U.S. competitors.¹⁰ Last year, China and the 10 Southeast Asian ASEAN nations ushered in the world's third-largest free-trade area. According to the United States Trade Representative, in addition to the ASEAN-China trade deal, there are now 175 preferential trade agreements in force that include Asia-Pacific countries. More are on the way, with an additional 20 agreements awaiting implementation and more than 50 others under negotiation. A recent study forecasts that the U.S. could lose as much as \$25 billion in annual exports just from the discriminatory effects of an East Asia Free Trade Area that excludes the U.S. Exclusion from

¹⁰ USTR Fact Sheet, <http://www.ustr.gov/about-us/press-office/fact-sheets/2009/december/economic-opportunities-and-tpa>, Accessed February 1, 2011.

economic opportunities already is becoming evident and such exclusion will cost American jobs.¹¹

Finally, we note that the Doha Round has been stalled for more than two years. We encourage Congress and the Administration to work with members of the G20 and other major global trading partners to ensure the successful completion of these negotiations. The G20 finance ministers reaffirmed their commitment to concluding the Doha round in the February 2011 communiqué, pledging also to “refrain from introducing, and oppose protectionist trade actions in all forms.”¹²

A recent Peterson Institute for International Economics study projected a boost of between \$180 billion and \$520 billion annually to global exports. Likewise, the potential GDP gains are significant, estimated between \$300 billion and \$700 billion annually, and are expected to be well balanced between developed and developing countries.¹³

A Level Playing Field in China

The development and liberalization of the financial services sector in China is essential to help sustain a global economic recovery and allow financial services firms to compete on a level playing field in the world’s second largest economy. The industry is currently working through a number of government-sponsored forums, primarily the Strategic and Economic Dialogue, to foster a constructive, sustained dialogue with our Chinese counterparts to resolve these issues.

While China has been slow to provide market access for foreign firms, they continue to expand their global presence. In the past year, the Industrial & Commercial Bank of China has acquired a U.S. broker-dealer, a U.S.-based depository institution, and is expanding its presence in the European Union with branches in Paris, Brussels, and Amsterdam.

China is also striving to create a world-class financial exchange through the implementation of the Shanghai Stock Exchange Strategic Plan. The plan is intended to develop “one of the most influential bourses in the world, boasting a mature stock market, an improved bond market, a highly developed fund market, an abundance of securities derivatives and an increasingly rational investor structure.”¹⁴ In February 2011, the Shanghai Stock Exchange and the Brazilian BM&FBovespa signed a Memorandum of Understanding to allow Brazilian companies the right to list on Chinese exchanges.¹⁵

SIFMA supports full market access and national treatment for financial services firms seeking to establish operations in China. While China has worked to expand their international

¹¹ Demetrios Marantis, “U.S. Trade Priorities in the Asia-Pacific: TPP and Beyond,” January, 2010.

¹² G20 Finance Ministers Communiqué, February 19, 2011.

¹³ “What’s on the Table? The Doha Round as of August 2009,” <http://piie.com/publications/wp/wp09-6.pdf>, Accessed February 1, 2011

¹⁴ *Shanghai bourse eyes Asia’s top market by 2020*, <http://bit.ly/hOeMCS>, Accessed February 10, 2011.

¹⁵ Irene Shen, *Shanghai exchange in pact with Brazil bourse*, China Daily, February 18, 2011. <http://bit.ly/gBEhSY> Accessed February 22, 2011

financial presence, access for foreign firms has not kept pace. Without improved market access, regulatory transparency, and increased qualified domestic institutional investor (QDII) and qualified foreign institutional investors (QFII) quotas, financial services firms will be unable to service their clients' needs in China and unable to compete at a global level.

Underscoring the importance of the globalization of the financial services industry and access to growing markets, Treasury Secretary Timothy Geithner recently said:

"As developing economies in the most populous countries mature, they will demand more and increasingly sophisticated financial services, the same way they demand cars for their growing middle classes and information technology for their corporations. If that's true, then we should want U.S. banks positioned to compete abroad."¹⁶

To achieve these aims, more work must be done to liberalize China's financial services sector and allow for the development of a level playing field.

Conclusion

SIFMA believes these trade agreements and market access issues offer Congress and the Administration an opportunity to secure open and fair access to foreign markets for U.S. firms and their clients. To sustain its recovery, the financial services sector must continue to position itself globally to meet the demands of its U.S. and foreign clients.

Free-trade agreements and access to growing markets are key components of the global economic recovery. The financial services sector helps to facilitate and support these bilateral agreements. For the financial services industry to help multinational companies take advantage of these global opportunities, they must have the ability to provide, for example, currency-related products, deal with cross-border tax differences, offer country risk assessments, develop global cash-management facilities, and provide country-specific investment advice and solutions: all key services provided by global financial institutions to promote U.S. exports.

SIFMA looks forward to continuing to work with Congress and the Administration to pursue free-trade agreements, and engage on other global, regional, and bilateral tracks that enhance U.S. competitiveness abroad and support jobs at home.

¹⁶ Noam Scheiber, *The Escape Artist*, The New Republic, February 10, 2011. Page 7. <http://bit.ly/hnqjsk>, Accessed February 15, 2011.



I. The Sierra Club's 2011 Trade Agenda

We applaud President Obama's leadership in identifying the shortcomings of our current trade policy and calling for long-overdue reform. Trade done the right way can foster development and economic growth while also protecting workers and the environment both in the United States and abroad.

Oppose Korea, Panama and Colombia

We believe that the pending bilateral trade agreements negotiated under the Bush Administration with South Korea, Colombia, and Panama fall far short of President Obama's promise of a "smart, fair and strong" trade policy that would create jobs and protect the environment. In the 21st century, our trade agreements should support our broader goals and values of creating good jobs, spurring sustainable development, and protecting the environment and our natural resources. These pending agreements do not support these goals.

U.S.-South Korea FTA

Similar to previous FTAs, the Investment Chapter of the U.S.-South Korea FTA provides foreign investors and corporations expansive rights to directly challenge public interest laws and regulations for compensation before international tribunals, bypassing domestic courts.

The Trade Act of 2002 clearly requires that foreign investors are not accorded greater substantive rights than those found in U.S. law. However, the U.S.-South Korea FTA fails to meet this critical "no greater rights" test. Instead, the U.S.-South Korea FTA significantly raises the likelihood of additional costly investor-state cases targeting U.S. laws and regulations. The agreement allows foreign investors to assert that environmental or public health measures constitute an "indirect expropriation" of their business interests or violate a "minimum standard of treatment" in a wide range of circumstances that would not be compensable in U.S. courts. We are also troubled that the U.S.-South Korea FTA allows foreign investors and corporations to bring suit over natural resource, services and infrastructure contracts with the federal government.

While we are encouraged that the Administration attempted to achieve greater market access for American autoworkers and manufacturers, we are concerned that the agreement could have the impact of weakening South Korea's emissions standards.

U.S.-Colombia FTA

We are particularly concerned about the Colombia Free Trade Agreement given the routine failure of enforcement of essential labor rights in Colombia and recent modifications to domestic laws designed to draw foreign investment. Colombia is the most dangerous country in the world to be a trade unionist. We are also concerned by issues of land tenure, displacement and victims' restitution in Colombia. Indigenous groups are facing a worsening threat of extinction. These groups' cultural and physical extinction is due in large part to violence and displacement over the mineral wealth, natural resources, and biodiversity found in their territories.

U.S.-Panama FTA

Although this agreement includes the improved environmental and labor provisions outlined in the May 10th, 2007 Bipartisan Trade Agreement, it uses the same flawed foreign investor language used in the North American Free Trade Agreement (NAFTA) and the Central America- Dominican Republic-U.S. Free Trade Agreement (CAFTA-DR) that allows foreign investors to challenge our domestic environmental, zoning, health and other public interest policies. In addition, the U.S.-Panama Free Trade Agreement (FTA) would make federal and state procurement policies, devised to reward environmentally-sustainable companies, subject to challenge in international trade tribunals.

Ensure that the Trans-Pacific Partnership (TPP) is truly a 21st Century Trade Agreement

Promote Transparency

While we appreciate the opportunities the Administration has provided for civil society participation around the Trans-Pacific Partnership FTA, it remains absolutely clear that important policy discussions are being held and decisions are being made without the input of civil society (outside of the limited access provided to non-industry cleared advisors). Indeed, the overall level of transparency does not meet the standard expected of a 21st century trade agreement.

Enhanced transparency in the TPP process would have many benefits. A more diverse array of informed observers having access to text could safeguard against errors and the risks posed by limited understanding of possible consequences of proposals. An open process could also build confidence among the public and elected officials that TPP talks will indeed replace the past trade pact model – through which benefits and privileges were bestowed on various special interests and large multinational firms to the detriment of many in signatory countries.

In the past, nontransparent trade negotiations have produced agreements with expansive implications on the daily lives of millions of people, but the text of these agreements are only made public after they have been signed and sealed. If TPP talks are truly intended to result in a new model, then a negotiating process with greater transparency and regular access to draft text is necessary. This is the only way to ensure that those who would live with the results can have a meaningful part in the process.

Citizens and legislators would never tolerate the text of domestic legislation being kept secret until it was passed. Yet, the TPP could require that wide swaths of our domestic policies be altered under terms that do not facilitate later modifications as governments or public demands change. Indeed, the enforceability and permanence of such terms, with later changes to an adopted TPP requiring agreement by all of the signatory countries, necessitates extreme care and complete transparency on the front end.

Reform the Investment Rules in the Trans-Pacific Partnership

We are eager to support trade policy that fosters sustainable development while also protecting workers and the environment in the United States and abroad. But we cannot support a new trade agreement that includes one of the most troubling aspects of past trade agreements – investment rules that provide sweeping rights to multinational corporations at the expense of sound governance.

While we applaud the bipartisan trade policy announced on May 10, 2007, which contains vital reforms to our trade pacts' Environment Chapters, the Investment Chapters of our trade agreements impact environmental governance in ways that can be equally as significant as the Environment Chapters. Specifically, under the investor-state provisions contained in some free trade agreements, laws aimed at protecting the environment are often challenged outside of domestic judicial systems. A 21st Century trade agreement should encourage the development of strong legal frameworks and governance practices to protect the environment. It should not contain provisions that effectively chill such efforts by exposing environmental protection laws to untenable legal challenges.

Our groups have followed this issue closely since NAFTA, and have observed numerous investor-state cases where common sense environmental protections have come under attack, from bans on toxic chemicals to regulations on zoning and land use. Most recently, we've seen a Canadian mining company, Pacific Rim, open a subsidiary in the U.S. and use CAFTA to sue the government of El Salvador as it attempted to safeguard its people and environment from ecologically devastating mining practices. Our groups have raised significant and well-documented concerns on this issue in past negotiations yet our suggestions for meaningful reform have been largely unheeded.

We believe the investor-state dispute mechanism should be replaced with a state-to-state mechanism to guarantee the crucial role of governments in protecting the public interest. Short of this reform, broad provisions like the right to a "minimum standard of treatment"

should be narrowed, exceptions should be incorporated to protect legitimate environmental laws, and domestic remedies should be exhausted.

President Obama has said “With regards to provisions in several FTA’s that give foreign investors the right to sue governments directly in foreign tribunals, I will ensure that this right is strictly limited and will fully exempt any law or regulation written to protect public safety or promote the public interest.” We hope the Trans-Pacific Partnership will achieve that goal.

Curb Trade in Illegal Wood Products in the Trans-Pacific Partnership

We believe the TPP should include language that would ban the import of wood, wildlife or products thereof if they are harvested in contravention of the laws of the country of origin. The TPP is an ideal place to build on regional cooperation to curb the illegal trade in timber, timber products, fish and wildlife, and parts thereof. The TPP includes many of the major importing countries as well as several of the main exporting countries of these products. Having all TPP countries agree to ban imports of illegally sourced products would be a major step forward.

Support Efforts to Eliminate Harmful Chinese Subsidies on Clean Tech

On September 9, 2010, the United Steelworkers union (USW) filed a petition with the United States Trade Representative (USTR) seeking an investigation into policies used by the Government of China to distort trade and investment in clean energy technologies. On December 22, 2010, USTR announced that the U.S. has requested consultations with the Government of China under the dispute settlement provisions of the World Trade Organization (WTO).

We have been a tireless advocate of the need to build a clean energy economy here in the United States and believe that this petition addresses critical elements of ensuring that the global clean energy economy is built in such a way that it ensures economic prosperity and security for all nations. We are pleased with the steps the Obama Administration has taken and intends to take to address China’s practices in the clean energy technology sector.

The Government of China has taken significant strides to support its clean energy sector domestically, which we greatly applaud. However, China’s rapid ascendancy in the clean technology sector is due not only to legitimate policies, but also could be the result of unfair and illegal policies and measures. We believe it is critical to address these measures, which range from restrictions on rare earth exports that threaten global supply chains, technology transfer requirements and discrimination against foreign goods and firms. If these measures are allowed to continue, they could undermine the foundation of the clean energy economy we all seek to create.

Of particular concern are attempts to restrict exports of rare earth elements which impede the ability of clean energy technology producers worldwide to have a fair shot at

becoming competitive on the global playing field. Producers in all countries – whether the U.S., Germany, India, Brazil, or China – must have the same opportunities to access the basic building blocks of a clean energy economy in order to successfully compete in growing markets. However, Chinese restrictions on critical inputs have shifted global production to China, preventing a diverse and competitive global marketplace for clean energy technology.

In addition to the trade distorting effects associated with restrictions on rare earth exports, we are concerned with trade-distorting subsidies many of which are directly export related. China's technology transfer requirements force foreign companies to license key technological innovations to Chinese joint venture partners, which raises concerns for us. This tactic is used as a quid-pro-quo for investing in the production of clean energy technology goods in China. For clean technology businesses that successfully profit from years of research and development to pioneer technological breakthroughs, this policy can have a devastating effect. Similarly, China's discrimination against foreign goods and firms can shield China's producers from competition. If left unchecked, such policies present substantial barriers to development of clean technologies anywhere outside of China, which is not the sustainable, competitive, and fair economy we all seek.

We do not confine our concerns regarding these policies to their effects on the United States. Many other nations are building their clean energy technology industry through fair and legitimate policies that will ensure that they develop and grow. It is critical that these nations continue to pursue innovation and growth that will create a mature sector capable of powering the global economy. We fear that the measures China is pursuing will result in inequality and instability in this sector that will disproportionately benefit China in the near term while greatly disadvantaging all major economies in the long term. Ultimately, by weakening the ability of major economies to compete we are weakening critical domestic political support for the policies need to secure our collective future.

We support USW's petition and the work of the Obama Administration to address it. We believe that in order to address climate change we must pursue a global clean energy transition that provides jobs and security for all nations' workers and companies. Only then will we be able to break our global dependence on 19th century fuels and get to work building a 21st century clean energy economy.

Achieve Full Funding and Enforcement for the U.S. Lacey Act

In May 2008, the U.S. passed groundbreaking amendments to the U.S. Lacey Act to ban trade in illegal plant products, including wood. As the U.S. government continues to refine and improve implementation and enforcement, we support its dedicated effort. A July 2010 study released by the London-based think tank Chatham House, based on data from twelve countries involved in the global trade of timber and wood products, emphasized the key role of legislation such as the amended Lacey Act. It also underscored the importance of full and effective implementation of the Lacey Act moving forward. Strong enforcement and adequate funding for the Lacey Act would bring a multitude of environmental, social and economic benefits to the U.S. and global

markets. Lacey Act implementation would level the playing field for responsible manufacturers, particularly in the U.S., supporting the many jobs provided by the U.S. forest products industry. Making Lacey work will require a modest investment but will yield a massive return.

In order for implementation and enforcement of the Lacey Act to be as effective as possible, funding is needed in fiscal year 2012 for the declaration process overseen by the U.S. Department of Agriculture's Animal Plant Health Inspection Service (APHIS); for international outreach and trainings supported by the U.S. Agency for International Development (USAID) and the U.S. Department of State; and for enforcement activities by the U.S. Department of Interior's Fish and Wildlife Service (FWS). We recommend \$5.5 million for APHIS, \$4 million for USAID and State, and \$4 million for FWS.

Ensure Peru Fulfills its Environmental Commitments under the FTA

We share this goal as outlined in the President's 2011 trade policy agenda. It is critical that Peru make meaningful progress on a series of priority actions. Peru deserves credit for its initial forestry reforms, including the creation of a new environmental ministry and strengthened penalties for a wide suite of environmental crimes. But we are concerned that without an increase in political will from President García's administration, Peru will remain in a position of non-compliance with the Annex on Forest Sector Governance. Indigenous groups have asked that all new concessions be suspended, in line with ILO recommendations. In addition, it is critical to guarantee that the government of Peru follows due process --especially in the ongoing legal charges against indigenous leaders - and shows true good faith in their dialogues with these groups.

Incorporate Environmental Standards in U.S. Trade Preference Policy

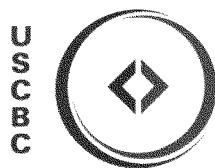
President Obama's 2011 trade agenda includes the goal of the Administration working with Congress to secure long-term reauthorization of U.S. trade preference programs. We share this goal and add the goal of incorporating environmental standards into our trade preference programs. The United States has long granted trade preferences to developing countries that meet various criteria. These criteria, which are stipulated by the Generalized System of Preferences (GSP), have changed with time -- reflecting U.S. economic and foreign policy priorities. While the criteria include non-support for terrorism, enforcement of intellectual property rights, and respect for internationally recognized worker rights, the GSP does not include environmental criteria. With the current U.S. GSP program in serious need of renewal and environmental issues taking on growing urgency, now is the time to correct that omission.

Trade policy is one means by which the United States expresses its values and advances both foreign and domestic policy goals. The evolution of the GSP criteria has reflected this and revising the GSP to include environmental criteria would be consistent with the law's history and intent. The stated purpose of the GSP is to promote economic growth in the developing world. Environmental sustainability underlies economic growth and development. As we discuss U.S. trade preference policy, the world faces the interwoven

challenges of alleviating extreme poverty and protecting our natural environment. Achieving these goals in unison is the only way to improve human development while ensuring the continued prosperity of future generations.

More often than not, GSP has been allowed to expire and then is later renewed retroactively. This places developing countries at a huge financial disadvantage, especially in light of the current economic downturn. Most recently, as GSP was allowed to expire on December 31, 2010, developing countries have been forced to pay customs duties on exports to the United States. Although these funds would be returned retroactively when the program is ultimately renewed, this places a large financial burden on firms in these poor countries. Uncertainty about the renewal of GSP can have the effect of discouraging its use because it makes sourcing plans uncertain and potentially costly. Furthermore, while exporters may be reimbursed for the duties accrued, American consumers are not reimbursed for the higher costs of imported goods.

It is time to revisit U.S. trade preference policy to create an avenue for increasing environmental protection and thus sustainable development. The climate change crisis has highlighted the need for the international community to work together on environmental issues; this coordination must extend into the trade arena. This moment of crisis provides an opportunity to rethink patterns of growth, ways of measuring progress, and the means to build more resilient systems. Environmental sustainability underpins economic growth and development. If development is to be sustainable, economy, society and the environment must be interconnected in ways which are mutually reinforcing.



THE US-CHINA BUSINESS COUNCIL

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US-China Trade Policy: Issues and Solutions

**Testimony of the US-China Business Council
to the Senate Committee on Finance
March 9, 2011**

The US-China Business Council (USCBC) is the leading organization that represents American companies doing business in China. Our membership consists of more than 220 companies in manufacturing, services, agriculture, and resource industries. USCBC has a long history of working with the US government to eliminate market access barriers in China so that American businesses and workers can prosper from that country's tremendous economic growth. To this end, we look forward to working with the 112th Congress and continuing to coordinate with the Obama administration to address trade and investment barriers in the world's second-largest economy.

China is a cornerstone for US exporters. It is the only major US export market over the past decade to have provided the 15 percent annual growth rate needed to meet the Obama administration's goal of doubling US exports by 2014. At roughly \$92 billion, China was our third-largest export market for goods in 2010. US exports to China will have increased 468 percent since 2000, the last full year before China joined the World Trade Organization (WTO). If US exports to Hong Kong—a major through-point for US goods destined for China—are added, the 2010 export figure jumps to \$118 billion.

That's not the end of the story, however. US companies also profit from China's growing domestic market through their investments. Sales in China of products made there by US majority-owned affiliates totaled \$87 billion in 2008, the latest year for which these statistics are available. Local product sales between 2000 and 2008 increased 431 percent. These sales are vital to US companies' operations here at home. The reality of the global marketplace is that we cannot make everything in the United States and be competitive in far away markets such as China because of lead times, transportation costs, and the need for many businesses to be closer to their customers. More than 90 percent of sales by US majority-owned companies operating in China over the last decade were to China or other foreign markets, with a mere 8 percent being exported back to the United States. This fact is reflected in USCBC's most recent Annual Member Priorities Survey where 96 percent of respondents indicated that they invest in China primarily to access or serve China's domestic market (see http://uschina.org/public/documents/2010/membership_survey.pdf), as well as in the findings of our colleagues at the various American Chambers of Commerce in China.

The services story is also one of strength, albeit one that needs to get stronger. Services exports to China hit \$15.3 billion in 2009. China was our seventh-largest export market for services that year. Local services sales reached \$11.6 billion in 2008.

Add it all up, eliminate overlaps, and China is probably well over a \$150 billion market for US companies. It is a meaningful market for US companies and for American jobs. The commercial relationship with China has many problems, but the reality of these numbers tells us why getting this relationship right is critical to US interests.

Top Challenges for US Companies in China

Though it has resulted in economic benefits, the US-China trading relationship is not without challenges. Underlying these challenges is a debate within PRC policy circles over foreign involvement in the Chinese economy. While many policymakers there embrace the benefits of market liberalization, others feel that foreign businesses play too large a role and unfairly stunt the development of domestic industry. The result is a cautiously liberalizing economy that is too often defined by protectionist tendencies.

One manifestation of those protectionist trends can be seen in China's policies to support "pillar" industries and build national champions. In USCBC's most recent annual membership survey, respondents described various areas in which China favors domestic competitors, such as in standards setting, government procurement, administrative and business licensing, and enforcement of laws and regulations. Chinese economic policies and practices that run counter to US interests have also appeared in China's innovation policies, intellectual property rights (IPR) protection, investment restrictions, and market access barriers.

On all these fronts, the Obama administration complements the efforts of US industry. The administration's general policy of addressing issues through bilateral and multilateral dialogue and defending US rights when good-faith negotiation fails has proven to be the right strategy when dealing with issues American companies face in China.

Indigenous innovation

A good example of how real progress can be made on critical issues for US industry is last year's advocacy effort on China's indigenous innovation policies. China, like all countries, is interested in fostering innovation to drive economic growth. To achieve that goal, China launched in 2006 its "indigenous innovation" program, which has subsequently appeared in a range of PRC policies and regulations, including those related to IPR, standards, taxation, and government procurement.

In late 2009 and early 2010, China released several key rules to create lists of favored innovative products that would receive preferences in government procurement. This approach runs counter to international best practices, creates market access barriers for US companies, and would ironically undermine true innovation, rather than enhance it. Once on a product list with market protections, a company may have less motivation to continue to innovate since it is guaranteed sales with no further improvements to its products. Managing numerous product lists at the central and local levels is cumbersome, and such periodic lists are quickly outdated as new,

innovative products are developed. The only certain outcome from a product list is discriminatory treatment in the marketplace and substandard technologies. The answer is to do away with product lists and procurement preferences, a firm advocacy point of the US government and the private sector during the past year. In place of product lists, we have encouraged China to follow international best practices for innovation incentives and use non-discriminatory tax, research and development support, and other programs to reach its innovation goals.

The Obama administration efforts, combined with industry's work on the issue, bore fruit during PRC President Hu Jintao's recent visit with China's commitment to delink its innovation policies from its government procurement preferences. Though the value of this commitment will lie in its implementation, the administration's efforts in coordination with industry have provided a platform from which to press China to evolve its innovation policies in a nondiscriminatory way. To this end, the administration should press China to make the necessary changes to relevant laws, regulations, and policies, including publicly releasing drafts of these revisions for review and comment. USCBC looks forward to continuing to coordinate with the administration on how best to achieve these desired outcomes.

Intellectual property rights

China's IPR situation remains a key concern for US companies. China's poor record of IPR protection influences what products foreign companies are able to research, manufacture, and sell in China's market, and counterfeit products made in China often confront US companies in other markets as well. Two-thirds of respondents in USCBC's 2010 survey of China's business environment said that China's inadequate IPR protection impacts their business in some way. In addition, IPR is a component of many other high-profile issues, from the threat of compulsory licensing under the PRC Antimonopoly Law to incorporation of patents into standards.

We should keep in mind, however, that some areas of China's IPR regime—both the legal framework and some areas of enforcement—have improved over the years. The severity and nature of the problems vary considerably depending on the industry and the type of IPR involved. The solutions and approaches that the US government takes must be crafted to tackle these multiple challenges. For companies in certain sectors, such as movies and software, piracy of copyrighted material is without doubt their top problem in China and needs to be addressed. For other companies, China's courts are becoming a more reliable channel for resolving IPR cases.

The Obama administration has given great attention to IPR in its dealings with China. Yet one priority policy action to pursue is the adoption of tougher deterrents in China, such as allowing criminal sanctions to be applied in cases of commercial scale. Counterfeit goods hurt consumers, in China and the United States, by exposing them to substandard and potentially harmful goods. Counterfeits also harm businesses through loss of sales and undermine consumer confidence. An effective deterrent can help to address those problems.

Standards and conformity assessment

Another top area of concern for USCBC companies is China's developing standards system. Though China has made progress in some areas, foreign companies remain concerned

about several trends, including barriers to participate in standards-setting activities and the development of China-specific standards and technical policies that effectively block market access for US companies.

China also requires that most products sold in China be tested for compliance by a Chinese certification body, rather than by an internationally accredited third-party certifier or through self-certification, as is common in other countries. This denies market access for US testing and certification service companies and increases the time and cost burden for businesses producing a variety of goods covered under China's conformity assessment regimes.

The Office of the US Trade Representative (USTR) has rightfully focused attention on this issue by creating an annual report for technical barriers to trade. The administration should continue to coordinate with industry to address issues involving standards-setting and conformity assessment in China.

Investment restrictions

As explained in the introduction to this testimony, investments in China are important for many American companies and complement operations here in the United States. But the opportunities for foreign investment in China are uneven across industries. In many sectors, China allows foreign companies to establish wholly foreign-owned enterprises (WFOEs); in fact, 75–80 percent of US investment going into China is in 100-percent American-owned facilities, not joint ventures. In other key sectors, however, foreign companies are limited to minority ownership or face other restrictions. Agriculture, automobile, chemical, express delivery, insurance, securities, and telecom companies all face these limits, for example. China's Catalogue Guiding Foreign Investment in Industry, last revised in 2007, lays out categories where foreign investment is encouraged, restricted, or prohibited in sectors across the economy. China is in the process of revising the catalogue, and USCBC submitted recommendations to key agencies of the PRC government that most restricted or prohibited sectors be further opened to foreign investment. A top US government priority in 2011 should be to ensure that China releases a draft of the proposed revisions to the catalogue for public comment prior to finalization and implementation.

In addition to selectively restricting areas for foreign investment, China factors in "national economic security" during reviews of mergers and acquisitions that involve foreign companies. China's Antimonopoly Law also has provisions that could be used to promote domestic companies at the expense of foreign enterprises.

We should keep in mind that China is also encouraging its domestic companies to invest in the United States and other overseas destinations. Any US governor or mayor will affirm the value of foreign direct investment in creating jobs and economic growth: US states and cities continually organize delegations to China to attract investment to their local economies. We should ensure that China's central and local government officials and company executives understand the mutual interest in maintaining open and fair investment and trading regimes; treatment of foreign companies in China will influence treatment of Chinese companies here.

To solidify this mutual interest, the Obama administration should coordinate with Congress to move forward with negotiations on a meaningful bilateral investment treaty (BIT) with China--one that includes strong national treatment provisions, applies to new and existing investments

(“pre-establishment”), and applies to all investments except those specifically excluded in the agreement (“negative list” approach). The Chinese have expressed interest in negotiating a BIT, and doing so provides one of the best opportunities to further open markets for US companies and improve protection for American investments in China.

Market access barriers

Despite the unquestionable growth in US exports to and local sales in China, numerous restrictions remain that limit the products and services foreign companies can provide to the Chinese market. USCBC details our members’ top concerns each year in our submissions to the US government in advance of the meetings of the Joint Commission on Commerce and Trade (JCCT) and in our testimony for the administration’s annual review of China’s WTO compliance record. Some barriers are technical and include China-specific product standards that limit the types of goods that can be sold in China. In other instances, foreign companies cannot receive the necessary licenses to provide their goods or services. Many of these barriers are individual trade issues that the administration continues to pursue under JCCT working groups and other forums.

Foreign companies are particularly restricted in China’s services sector. Notably, however, increasing the participation of foreign companies in this sector would benefit China’s economy and help it meet its goals of creating employment, promoting domestic consumption, and improving the efficiency of its markets. For example, allowing greater foreign access to China’s logistics and legal services industries would have a multiplier effect for businesses across the board by creating a more efficient commercial environment in China. Closer alignment with international standards—and increased market access for foreign conformity assessment bodies—would increase the quantity and quality of product testing and certification and better integrate China into the world economy. Insurance industry reforms and openings would help promote domestic consumption by improving the safety net for Chinese households. Though US officials have raised restrictions in this sector within certain JCCT working groups, both meetings of the JCCT under the Obama administration have resulted in minimal progress for services companies. With services accounting for more than three-quarters of the US economy and about one-third of total US exports, this an area where meaningful progress will greatly benefit American businesses and workers.

One services industry that does not receive sufficient attention is the financial sector. Capital markets play a central role in economic development and further openings will help China achieve its goals of building a more services-based, consumer-driven economy. Though the recent financial market problems in the United States and resulting economic downturn have impacted China’s views of financial reforms, we need to resume our advocacy efforts with China on continuing financial reforms, which will ultimately assist in addressing issues such as global imbalances, exchange rate policy, and increasing China’s domestic demand.

Government procurement

As noted previously, access to China’s government procurement market is a top issue for US companies. USCBC members are particularly concerned about procurement policies and trends that seem designed to promote China’s own “national champions” with protected market positions and preferential treatment. Adding another layer to government procurement discrimination in China are “buy local” policies issued by several provincial- and municipal-

level governments. There are two developments worth noting that deserve priority advocacy attention.

First, China agreed during President Hu's January visit to submit a revised offer this year to join the WTO Government Procurement Agreement (GPA). In that commitment, China agreed to include purchases by sub-central entities. GPA entry would help US companies gain better access to China's government procurement market, if China's offer is a meaningful one. To be meaningful, the offer should include a more comprehensive list of government entities covered, procurement thresholds closer to international norms, and a timelier implementation schedule than in China's previous offers. It is important to note that although the GPA's principle of national treatment may help address some issues related to procurement, China's indigenous innovation policies are larger than the limited scope of the GPA. Nevertheless, we encourage the administration to continue working with China and other signatories to pursue robust GPA accession commitments from China.

Second, the PRC government is revising its procurement rules in ways that will affect market access for US companies operating in China. The government is considering new draft rules on domestic content requirements and draft regulations that affect the treatment of foreign-invested companies as domestic enterprises. The Obama administration must continue to press China to move toward a nondiscriminatory government procurement regime.

Administrative licensing

Foreign companies in China must often jump a wide variety of bureaucratic hurdles to establish and operate their businesses. Companies report that managing the licensing process in China requires an inordinate amount of their time and resources. These challenges include, but are not limited to, approvals for new or modified products, office licenses and renewals, approvals for different aspects of projects or investments, and licensing for various business administrative functions. Inconsistencies across different agencies, levels of government, and regions create uncertainties that undermine business planning. Often the licensing requirements for foreign entities differ from those for Chinese companies, raising questions about China's commitment to its national treatment obligations.

USCBC's analysis has found that China's campaign for more transparent and efficient government in recent years has yielded some improvements, but there remain many agencies, levels, and regions of government where opacity, inefficiency, and inequity continue. Licensing issues are diverse and vary across industries. The Obama administration pursues these issues on an individual basis through various JCCT working groups. But the process may benefit from more macro-level discussions that analyze the matter in a cross-cutting manner to look for ways to address the overarching issue of how PRC ministries and agencies at all levels manage the issuance and review of administrative licenses.

Transparency

Transparency covers the full extent of a country's rulemaking system, including the solicitation of public feedback during the creation of new laws and regulations, government decision making, and the availability of information on costs and markets. The matter impacts a host of issues that affect companies' daily operations, such as administrative licensing, IPR protection,

standards setting, and investment policy. A lack of transparency also exacerbates perceptions of discrimination against foreign companies.

USCBC welcomes efforts by the PRC State Council to improve transparency in PRC government rulemaking, but much work remains. Though the National People's Congress has fully complied with commitments to post new laws for a 30-day public comment period, PRC ministries and agencies under the State Council have a much poorer record. The administration brings focused attention to this issue each year through the US-China Transparency Dialogue, led by the Department of Commerce's Office of the General Counsel. As this issue affects multiple areas important to US companies, US officials must continue to press China to improve government transparency.

Currency—Not a Top Issue for Most US Companies

USCBC supports an exchange rate that better responds to China's global trade flows, and reforming PRC monetary policy is in China's own economic interest. But China's exchange rate has never ranked as a top issue for USCBC members in our annual membership survey and is probably not the significant factor in the US trade deficit that some make it out to be. For example, the renminbi (RMB) appreciated nearly 20 percent between 2005 and 2008 as a result of steady engagement and negotiation. During this period, the US trade deficit with China continued to grow. Clearly other factors drive our bilateral trade deficit with China, as USCBC's analysis has shown. Our report on this topic can be found at www.uschina.org/public/documents/2010/currency_trade_deficit.pdf. Focusing on the exchange rate to solve the US trade deficit is the wrong approach.

Some US policymakers think that the United States should enact legislation that imposes tariffs on imports from China to offset currency undervaluation. The application of duties on this basis is of questionable WTO legality and would focus the world's attention on US trade remedy policies and away from China's exchange rate policies. It would also require the Department of Commerce to estimate the "true" exchange rate—a process that will be highly subjective and potentially politicized.

The Obama administration had it exactly right last year when it said it would pursue a multilateral approach to exchange rate issues. China is not the only country with monetary policies that concern other trading partners. Global exchange rate imbalances require a multilateral discussion and solution. US officials should continue to complement G-20 dialogue on this matter with bilateral discussions under the Strategic and Economic Dialogue and in meetings with other concerned trading partners. But tariff legislation will do more harm than good for the American economy.

Recommendations for Action

Listing the problems is one thing; effectively addressing them is another. Often achieving policy results in China is difficult, frustrating, and time consuming. As we consider ways to improve on that record, however, we should be mindful that unilateral actions that might help one group of Americans frequently threaten to adversely affect another group of Americans. Picking winners

and losers among ourselves to address problems with China seems counterproductive and usually results in divisive policy options.

USCBC, with its 38 years of experience, believes that the best course of action for our country's overall approach to China consists of a stepped-up advocacy effort involving the US government, the private sector, and a multilateral approach, and the continued use of effective, WTO-consistent trade remedies when good faith negotiations fail.

More effective advocacy

If there were a single agency or official that controlled China's economic policies, it would be easy to structure and target our advocacy efforts. Unfortunately, the bureaucratic owners of these policies are many and diffuse throughout the PRC government. We therefore need to pursue consistent, sustained bilateral dialogue and expand it to include the range of senior officials and agencies that devise and impact trade and industrial policies. The Obama administration increasingly uses this approach and should be encouraged in this process.

The simple fact is that the breadth and depth of the relationship has outgrown the bilateral negotiating and dialogue structure of the past two decades, and the Obama administration is correctly pursuing a path of revamping and expanding the structure to better fit today's reality.

As this structure develops, however, several other features are needed to improve the prospects for success:

- Consistent and supportive engagement with the two highest levels of the PRC government—president and premier—on the need for a level playing field and China moving ahead with further economic reforms and openings. It is important that messaging on these broad concepts is done at the levels above the bureaucratic silos. USCBC was pleased with the attention that President Obama devoted to the economic and commercial issues in advance of and during President Hu's recent visit.
- Close US interagency coordination of each of the dialogues to ensure consistent, sustained engagement and negotiation throughout the year. This may require a more active White House role.
- Private sector advocacy directly to the PRC government. USCBC will continue to press for policy changes that will level the playing field for US companies.
- Multilateral consistency on the issues. US companies are not alone in facing market access barriers in China, and the US government should not be alone in seeking to have those barriers eliminated. Coordinating messaging with other governments can work, as we have seen with some of the modifications that China has made to its indigenous innovation rules. We should build upon that model.
- Finally, US leadership on investment and trade openness. We must not pursue protectionist policies or actions that will undermine our credibility and give China an excuse to continue on their own protectionist path.

Legally sound remedies

When good-faith dialogue fails to resolve issues, USCBC supports using legally sound trade remedies and dispute settlement mechanisms to address concerns. US companies have the right to seek assistance by petitioning the Department of Commerce to apply antidumping (AD) or

countervailing duties (CVD) to products they suspect are unfairly supported by PRC government policies. These WTO-legal remedies are intended to provide a fair opportunity for both sides to argue over objectively established criteria. As a consequence, it is important that the United States use WTO-consistent means to go after bad practices by our trading partners so that we can hold them accountable by the same rules. The recent WTO ruling against applying both anti-dumping and countervailing duties to imports from China does not change this approach. The United States can still apply anti-dumping duties or countervailing duties to rectify unfair Chinese pricing, but just cannot apply duplicative duties.

To that end, we should keep in mind that US antidumping rules for nonmarket economies, which are employed in cases involving goods from China, calculate the normal value of a product. They are not based on any undervalued Chinese costs or prices, but on the value of the costs and prices of that product as if it were produced in a comparable market economy. That comparison between the normal value and the actual delivered US price from the nonmarket economy (which includes any benefit from an undervalued currency) produces the AD margin. As a consequence, US law does not need to change to address concerns about China's exchange rate—the law already provides such a remedy.

The WTO's dispute-settlement process is another tool for the US government and US companies to use when good-faith bilateral negotiations fail. USTR has taken eleven cases to the WTO against China and has won three; four others were resolved by China before WTO action was required; and four are still pending. USBC has consistently supported WTO cases when well-defined, winnable, and supported by industry and will continue to do so in the future.

Congressional support

The administration is not the sole driver of US-China trade policy. Congress has an important role to play and can help achieve meaningful results in several ways.

First, Congress should increase resources for US trade agencies. To better enforce our trade rights, Congress should increase funding to USTR and other trade agencies so that they can effectively pursue American rights through bilateral engagement and under the WTO. The tremendous growth in China's economy and in the size of our commercial relationship has not been matched by the capacity and expertise needed.

To help US companies better access the opportunities of China's market—particularly for small and medium-sized companies—Congress should also increase funding to the US Foreign Commercial Service so that it can expand its support presence in China. Such a proposal was put forth in the US-China Market Engagement and Export Promotion Act (HR2310), introduced in the last Congress by Representative Rick Larsen and now Senator Mark Kirk. Though our nation is looking for ways to tighten its belt, improving the capacity of our government to promote and protect American businesses and workers in China will yield great returns.

Second, Congress, the administration, and the private sector should better coordinate to reinforce our shared goals on improved market access and leveling the playing field. It is vital that China hear from all three constituencies—the administration, Congress, and the private sector—on the importance of these issues. American companies are on the front lines of dealing with the

policies I have mentioned today. Better coordination between the US public and private sectors on these issues will help create a more comprehensive yet focused approach to the US-China commercial relationship.

Finally, members of Congress should also directly engage with PRC government officials and their counterparts in the National People's Congress to raise these concerns. Congressional delegations that travel to China often meet with high-ranking members of the PRC government. These meetings are an important addition to engagement from the administration and private sector. Holding them will help ensure China has a more comprehensive understanding of our nation's views and concerns.

Conclusion

USCBC companies are committed to the Chinese market but have serious concerns about the policy trends there that favor domestic companies. Our members want solutions to these specific problems, however, not sanctions that would disrupt the relationship.

Addressing the issues directly is the best way to support American businesses and workers. Unfortunately, there is no silver bullet or magic wand that will solve many of these problems easily. Resolution of these issues requires a strong overall message to China's top leadership from the administration, Congress, and business leaders and sustained and expanded engagement across the board on the various specific issues we face.

Our bilateral commercial relationship with China plays an important role in the recovery and future growth of the US economy, and it will be difficult to meet President Obama's goal of doubling US exports by 2014 without it. The administration's approach toward China has begun to show signs of progress, though it will be ultimately measured by how China adheres to its commitments. We must build upon that foundation with China by expanding trade dialogues, promoting US products and services, negotiating a meaningful BIT and GPA accession, and resisting calls for protectionism within our own country that undermine the credibility of our efforts. As challenging as it may be, this relationship is worth the effort.



**U.S. Wheat Associates
National Association of Wheat Growers**

**Submission for the Record
To the Senate Committee on Finance
Hearing on The President's 2011 Trade Agenda
March 9, 2011**

The free and fair flow of trade is essential to U.S. wheat producers as roughly half of their wheat production is exported each year. In the most recent marketing year of 2009/10, the United States exported 24 million metric tons (MMT) of wheat, roughly 40 percent of production. World wheat exports in 2009/10 were estimated at 135.8 MMT, with the United States accounting for nearly 18 percent of global exports.

The National Association of Wheat Growers (NAWG) was founded more than 60 years ago by producers to work together for the common good of the industry. Today, NAWG works with its 21 state associations and many coalition partners to unite the wheat industry on issues as diverse as federal farm policy, environmental regulation and the future commercialization of biotechnology in wheat.

U.S. Wheat Associates (USW), the wheat industry's export market development organization, conducts training and provides information to customers in more than 100 countries on behalf of America's wheat producers. USW's activities are made possible by producer check off dollars managed by 18 state wheat commissions and cost-share funding from the Market Access Program (MAP) and Foreign Market Development (FMD) program administered by USDA's Foreign Agricultural Service. USW works on behalf of American wheat producers to increase wheat exports by collaborating with foreign government officials and industry representatives to address market constraints and opportunities.

A brief overview of the U.S. wheat industry's trade priorities is provided below. Fact sheets on the pending free trade agreements are also included.

FREE TRADE AGREEMENTS (FTAs)

The U.S. wheat industry strongly supports the ratification of the pending free trade initiatives and encourages the administration to resolve all outstanding issues and send implementing legislation for all three agreements to Congress for immediate ratification. Ratification of the United States-Colombia Trade Promotion Agreement is a top industry priority as U.S. wheat market share is at risk. Argentina enjoys advantages from the Mercosur agreement allowing for duty free access. Canada signed and ratified a free trade agreement in 2010 and implementation is expected to be complete in early 2011. This will allow Canadian wheat to immediately enter the country at zero duty, putting the U.S. at an increased disadvantage to both Argentina and Canada. Based on

direct input from Colombia's milling industry, at current prices, U.S. wheat producers across the country stand to lose up to \$100 million in wheat sales every year we must compete without a ratified FTA. Additionally, econometric analysis indicated that U.S. producers would have gained \$0.10 per bushel in their farm gate price if the Colombia agreement had been implemented ahead of other countries.

U.S. wheat growers are at a competitive disadvantage without new bilateral and regional agreements as other competing wheat producing nations move ahead briskly to sign their own bilateral agreements in several key U.S. markets. U.S. producers are supportive of new free trade initiatives such as the Trans Pacific Partnership to increase market access, but place ratification and implementation of pending free agreements as a priority.

WTO/DOHA

U.S. wheat producers support the eventual passage of a successful Doha agreement that balances reductions in domestic support with significant new market access, particularly in the advanced developing countries, as the best opportunity to generate significant new sales of U.S. wheat. We support current USTR efforts to quantify the current country-specific offers through a bilateral process.

Reciprocal market access for the U.S. wheat industry will be obtained through tariff reductions, but more importantly by limiting tariff loopholes and reducing exemptions on sensitive and special products, as well as the limited use or elimination of the special safeguard mechanism. Advanced developing nations such as China, India and Brazil should not be granted the same special and differential treatment as other developing nations.

In addition, we support the elimination of the monopoly practices of export state trading enterprises (export STEs), the continued use of monetization in food aid programs and the utilization of export credit guarantee programs.

We support Russia's accession to the WTO as a stand-alone undertaking, not as part of a trilateral customs union. We are alarmed by the rising influence of the country's state trading enterprise, the United Grain Company, in the market and increased domestic support payments. Further, Russia should commit to WTO rules relating to import restrictions, export STEs and domestic support prior to admission, not after.

OTHER ISSUES

The monitoring and enforcement of trade practices is critical to ensure the FTA and WTO agreements achieve new market access for U.S. producers. We support efforts to enforce compliance of WTO member country commitments pertaining to domestic support and market access.

We also encourage science based requirements for sanitary and phytosanitary (SPS) requirements to ensure measures are not artificially applied to limit U.S. wheat exports.

Trade is critical to the export dependent U.S. wheat industry. The ability to compete on a fair and level playing field with other wheat exporting countries is essential to the economic well being of U.S. wheat producers, and for continuing a positive trade balance for agriculture.



Fact Sheet: U.S.-Colombia Free Trade Agreement
(U.S.-Colombia FTA)
January 2011

The U.S.-Colombia Free Trade Agreement is crucial to the U.S. wheat industry to maintain sales and market share in an increasingly competitive trade environment. In 2009/10, Colombia was the eighth largest market in the world for sales of U.S. wheat. A fully implemented free trade agreement will immediately eliminate the country's price band system and remove tariffs on U.S. wheat imports upon implementation. This would level the playing field, ensuring U.S. products can compete in the Colombian market.

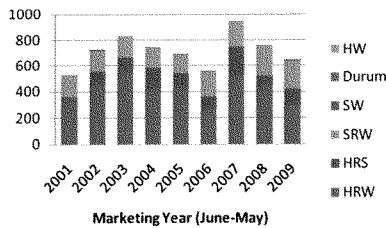
The U.S. wheat industry faces tough competition in Colombia:

Colombia is dependent on imports to satisfy 97 percent of its wheat demand. The U.S., Canada and Argentina are the principal sources of Colombia's wheat imports. **In 2007/08, U.S. wheat dominated Colombia's wheat market with a share of almost 70 percent.** The value of U.S. wheat exports to Colombia that year reached \$330 million, making wheat the second largest agricultural export from the United States. **However, U.S. share fell to 46 percent in 2009/10**, while Canadian wheat market share increased from about 24 percent in 2007/08 to 33 percent in 2009/10. Argentina's market share has grown from almost zero to an average of over 250,000 metric tons since 2005.

U.S. wheat producers stand to lose up to \$100 million in sales PER YEAR without a FTA.

Argentina enjoys advantages from the Mercosur agreement allowing for duty free access that puts U.S. wheat producers at a disadvantage. This agreement has been in place since 2005. Canada signed and ratified a free trade agreement in 2010 and implementation is expected to be complete in early 2011. This will allow Canadian wheat to immediately enter the country at zero duty, putting the United States at a disadvantage to both Argentina and Canada. Colombia signed a trade agreement with the EU in 2010 that will also allow for duty free market access to Colombia when implemented.

Colombia's Wheat Imports from the U.S. by Class
1,000 Metric Tons



The U.S. agreement was signed in November 2006, Colombia's legislature ratified the agreement in October 2007 and their Constitutional Court completed its conformity review in 2008. Ratification of the agreement has been held up in the United States on concerns over environmental and labor in Colombia. The Obama Administration has stated that it will develop benchmarks on these issues for the Colombian government to implement before sending the agreement to the U.S. Congress for ratification.

U.S. wheat producers face an increasingly competitive and uncertain market in Colombia:

Despite long-standing ties with Colombian millers, the U.S. wheat industry will continue to lose market share to Canada, Argentina and possibly the EU under implemented FTAs. Based on direct input from Colombia's milling industry, at current prices, U.S. wheat producers across the country stand to lose up to \$100 million in wheat sales every year we must compete without a ratified FTA. In that case, tariffs on U.S. wheat could fluctuate between 10 and 15 percent and move as high as the WTO bound rate of 124 percent. Additionally, Colombia has long made use of a WTO illegal "price band" scheme to control agricultural imports through variable duties that fluctuate based on changes in world prices.

Ratify the U.S./Colombia FTA Immediately:

The U.S. wheat industry, along with other agricultural commodity groups, supports immediate ratification of the U.S./Colombia free trade agreement so U.S. producers can compete fairly in the Colombian market.

Years ago, the U.S. opened its market to imports from Colombia through trade preference acts. As a result, more than 90 percent of Colombian imports already enter the U.S. marketplace duty-free. By contrast, U.S. exports to this market, including wheat, face tariffs that often soar into the double digits. Colombia enjoys nearly free access to our marketplace while our access to its market remains limited.

The U.S./Colombia FTA will fix this imbalance by forging a mutually beneficial, reciprocal partnership. Four-fifths of U.S. consumer and industrial products and more than half of all U.S. farm exports, including wheat, will enter Colombia duty-free immediately upon implementation of the agreement.

Without the U.S./Colombia FTA, U.S. wheat growers and producers will face an uphill battle in this hard-fought and critical export market resulting in millions of dollars in losses of both exports and jobs.

Colombia's Wheat Imports from the U.S. by Class
1,000 Metric Tons

June - May Crop Year	HRW	HRS	SRW	SW	Durum	HW	Total
2009	299	119	215	13	0	0	645
2008	447	73	229	0	3	0	751
2007	522	220	204	0	0	0	947
2006	262	101	189	0	3	0	555
2005	428	112	145	0	6	0	691
2004	421	161	155	0	3	0	739
2003	547	112	161	0	0	0	820
2002	454	101	161	6	2	0	723
2001	363	0	165	0	0	0	528

Source: USDA, Federal Grain Inspection Service

Revised: January 24, 2011



Fact Sheet: U.S.-Korea Free Trade Agreement (KORUS FTA)

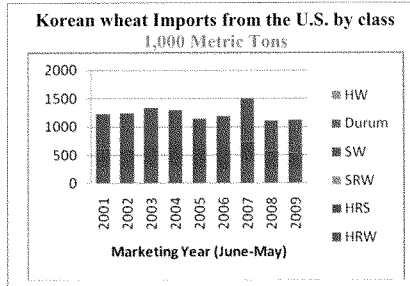
The U.S.-Korea Free Trade Agreement (KORUS) is important to the U.S. wheat industry in maintaining exports in an increasingly competitive trade environment. The U.S. wheat industry applauds the administration's effort to reach a side agreement in December 2010 to clear the path for ratifying and implementing the agreement. U.S. wheat exports to Korea have been trending lower since the mid-1990s, with occasional peaks in demand occurring. **The value of wheat exports to Korea in 2009 was listed at \$271 million**, making it the third largest U.S. agricultural export item to Korea.

U.S. wheat producers face competition in Korea:

U.S. wheat producers face stiff competition from Australia and Canada for the milling wheat market in Korea. Korea also purchases substantial quantities of feed wheat, but the U.S. is not price competitive in the feed wheat market in most years. **Between 2000 and 2009, U.S. market share in the milling wheat sector has ranged from a low of 34 percent to a high of 63 percent.** Meanwhile, Australia's share has ranged from 31 to 46 percent and Canada's from 5 to 35 percent.

Australia has made the largest gains in the Korean market through the Australian Wheat Board (AWB) monopoly practices. During the years that the AWB operated a monopoly on Australian wheat exports, they were able to control price and offer a special quality of Australian wheat to the Korean market, often at prices below similar quality U.S. wheat.

Canada's wheat export monopoly, the Canadian Wheat Board (CWB), also plays this game, with market share increasing substantially in certain years at the expense of the U.S. industry.



The EU signed an agreement with Korea in 2010. The approval process is underway in the EU, and the agreement is expected to be in full force by July 1, 2011. Australia and Korea finished their fifth round of FTA negotiations in May 2010. A Korea-Australia FTA would be harmful to U.S. wheat producers if it is signed and implemented before the U.S. agreement. Canada is also negotiating a FTA with Korea.

Upon implementation, U.S. wheat will secure permanent duty-free access to the Korean market.

Upon implementation:

An agreement was reached between U.S. and Korean negotiators in 2007. A key parliamentary committee in Korea approved the bill in April 2009, which means all that is remaining in Korea to ratify the agreement is a final floor vote in the National Assembly. Ratification of the agreement by the U.S. Congress is expected after a side agreement was reached in 2010 that resolved outstanding issues on automobiles.

U.S. wheat imports face a 1.8 percent tariff and permanent removal of this duty, although minor, nevertheless reduces the price of U.S. wheat imports and **allows U.S. producers to compete with cheaper sourced imports and maintain dominant market share**. While the European Union (EU) is not a regular milling wheat supplier to Korea, lower tariffs granted to EU wheat imports from implementation of their free trade agreement could also threaten U.S. market share.

The U.S. wheat industry, along with other agricultural commodity groups, supports immediate ratification of the U.S.-Korea free trade agreement.

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Revised: January 7, 2011



Fact Sheet: U.S.-Panama Trade Promotion Agreement

Panama is a consistent market for U.S. agriculture and it imports all of its wheat needs, with consumption averaging around 125,000 metric tons per year. U.S. market share for wheat has averaged approximately 90 percent since 2000. In 2009, wheat exports were valued at just over \$30 million.

An agreement was signed between negotiators from the U.S. and Panama in June 2007. Panama's legislature ratified the agreement in July 2007, but the U.S. Congress has yet to ratify the agreement. In 2010, the European Union (EU) and Canada signed agreements with Panama, but have yet to ratify these agreements.

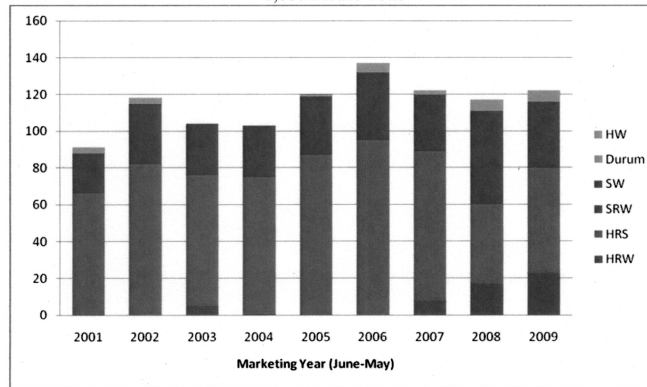
Concerns on Panama's labor laws and their status as a tax haven have held up movement on this agreement. A Tax Information Exchange Agreement (TIEA) was signed with the United States in November 2010 that removes the concern on the country's tax transparency. In addition, many of the labor concerns have also been addressed by the government of Panama.

The agreement would lock in a zero duty rate for U.S. wheat and remove any possibility of tariffs being raised

Upon implementation, the agreement would lock in a zero duty for U.S. wheat producers and remove the potential for the duty on U.S. wheat to rise to the bound level of three percent. This ensures that U.S. wheat will remain competitive against our origins.

The U.S. wheat industry, along with other agricultural commodity groups, supports immediate ratification of the U.S.-Panama free trade agreement.

Panama's wheat imports from the U.S. by class
1,000 Metric Tons



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Revised: January 7, 2011

