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PRESIDENT'S 2012 TRADE AGENDA

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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PRESIDENT'S 2012 TRADE AGENDA

WEDNESDAY, MARCH 7, 2012

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

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Wyden, Menendez, Carper, Cardin, Hatch, Grassley, Roberts, and Thune.

Also present: Democratic Staff: Russ Sullivan, Staff Director; Amber Cottle, Chief International Trade Counsel; Hun Quach, International Trade Analyst; Gabriel Adler, Senior International Trade and Economic Advisor; and Chelsea Thomas, Professional Staff. Republican Staff: Chris Campbell, Staff Director; Everett Eissenstat, Chief International Trade Counsel; Paul DeLaney, International Trade Counsel; and Maureen McLaughlin, Detailee.

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

The CHAIRMAN. The committee will come to order.

Winston Churchill once said, "Success is not final." Last year was a banner year for trade. We passed 3 free trade agreements to open new markets for U.S. exporters. We renewed Trade Adjustment Assistance to help U.S. workers retrain for a global economy. We renewed two important preference programs to lower costs for U.S. manufacturers and retailers.

We achieved great success, but we cannot let this success be final. We must press for continued success in 2012. An aggressive trade agenda is key to creating good jobs, including agricultural jobs in my home State of Montana. Export-related jobs pay 13 to 18 percent more than the national average.

Concrete goals will ensure continued success. We should set 3 major trade goals for 2012: (1) approving permanent normal trade relations with Russia; (2) concluding the Trans-Pacific Partnership negotiations; and (3) addressing the challenges posed by China.

First, we must seize the opportunity provided by Russia's entry into the World Trade Organization. Russia is now the 6th-largest economy in the world and growing fast. Russia's GDP is expected to surpass Germany's by 2029, and Japan's by 2037.

For U.S. companies to take advantage of this growing market, Congress must repeal the Jackson-Vanik Amendment and establish permanent normal trade relations with Russia, known as PNTR.

PNTR is a 1-way street. Passing PNTR would double U.S. exports to Russia in 5 years, and we give up nothing in return. Not a single U.S. tariff will be reduced as part of this deal. If we do not pass PNTR by this summer, United States companies will lose out to competitors in China, Europe, and the 150 other members of the WTO.

As our economy continues to recover, we simply cannot let that happen. I traveled to Russia last month, and I saw a country with vast potential for U.S. business. I also saw a country with a troubled democracy and human rights record. I heard about the importance of PNTR from some unexpected sources, namely democracy, human rights, and transparency activists.

The activists all have serious concerns about Russia, but they all support PNTR. They explain that PNTR is no gift to the Russian government; to the contrary, they explained, repealing Jackson-Vanik weakens the ability of the hard-liners in Russia to rally anti-American forces. Repealing Jackson-Vanik will open Russia to U.S. companies and promote competition, openness, and transparency. I look forward to working with you, Mr. Ambassador, and my colleagues to repeal Jackson-Vanik this summer.

The second ambitious goal that we should meet this year is the conclusion of the Trans-Pacific Partnership, or TPP, negotiations. The TPP provides a tremendous opportunity to tie together and expand trade among some of the most dynamic economies in the world.

Japan, Canada, and Mexico now want to join the negotiations. Adding these countries would increase the number of TPP consumers by 50 percent. With their inclusion, the TPP would account for a full 40 percent of the world's GDP.

I know you are examining whether these countries are ready to quickly accept the high-standard commitments of the TPP. I look forward to consulting with you on that question. I hope that our new FTA partners—Colombia, Panama, and South Korea—are added to the list of potential TPP entrants as well.

Our third goal for 2012 must be meeting the challenge of China. China is the 2nd-largest economy in the world, and the 3rd-largest destination for U.S. exports. It is a country exploding with potential for U.S. companies and their workers, but the challenges that China poses are also real.

Senator Grassley and I requested a study that uncovered $50 billion of U.S. intellectual property stolen in China each year. China's under-valued currency also continues to cost U.S. jobs. Too many Chinese imports to the United States are dumped or subsidized. It is past time to address these problems.

A recent World Bank study outlined a series of dramatic steps that China should take to reform its own economy. They include shifting away from market-distorting policies that favor state-owned enterprises in China and harm U.S. exporters. I know you know all about this study, Mr. Ambassador, and I was briefed by Mr. Zoellick, the World Bank president, about it.

What is important to me about this is that China requested the study. China knows that it has to be thinking ahead. China is a virtual partner in this study. There are five very significant recommendations, as you know, that the bank made to the govern-

ment of China as to how to modernize its economy. I think it is a good framework for us to utilize as we are talking with China.

China's new leaders, I think, should heed this advice. But we cannot simply wait for China to act, we must obviously take steps here at home. The Interagency Trade Enforcement Center that the administration recently announced is an important step in that direction, and I hope the Senate will further enhance USTR's effectiveness in dismantling trade barriers in China and around the world. This has been USTR's core mission from day one. No agency is better positioned to perform this role than the USTR.

I look forward to working with you, Mr. Ambassador, and also with other government agencies to address these important challenges that China poses. So let us heed Mr. Churchill's advice and remember that "success is never final." Let us build on the bipartisan trade successes of last year, and work together on even greater trade successes this year. By so doing, let us work together to create the jobs our economy needs right now.

[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. Welcome, Mr. Ambassador. I appreciate the work you do. Mr. Chairman, I want to thank you for holding this hearing. Our economy demands a robust international trade policy, and my hope is that this hearing will contribute to the continued development of that agenda.

To grow our economy and access new customers abroad, we need a trade policy that truly opens markets to U.S. goods and services. Trade already accounts for approximately 14 percent of our Nation's GDP, and we have yet to reach our full potential.

In 2011, our Nation's exports totaled nearly $1.5 trillion. In 2010, companies from my home State of Utah exported over $13.8 billion in goods alone to countries around the world. Last year, President Obama finally sent to Congress our long-stalled free trade agreements with Colombia, Panama, and South Korea. Congress readily approved them. As a result, the American worker can soon harvest the market access opportunities that they bring.

These are positive developments, but the fact remains that President Obama delayed sending the agreements for years, while he pursued what we consider to be a misguided health care law, and other domestic spending programs.

Now that the trade agreements are law, President Obama is eager to take the credit. Yet it is important to remember that it was President Bush's vision of an aggressive market-opening U.S. trade policy that made all 3 trade agreements possible to begin with.

President Bush believed strongly in the power of trade, and matched his belief with action. He relentlessly pursued Trade Promotion Authority and, once achieved, quickly negotiated 12 free trade agreements with 17 countries. Even U.S. participation in the Trans-Pacific Partnership, which some view as President Obama's

signature trade initiative, was actually initiated by President Bush and his team in 2008.

The United States needs that same level of commitment and leadership from our President today if we are going to create the framework for prosperity tomorrow. Our workers and job creators face significant and growing challenges in the world. There are over 300 trade agreements in force around the globe, but the U.S. is a party to only 14.

China has been growing at an average rate of between 8 and 10 percent for many years, and several studies project China will surpass the United States as the world's largest economy over the next decade. Meanwhile, the U.S. economy is projected to grow at around 2.3 percent this year, too low to have much impact on the persistently high unemployment rate we have suffered under this administration.

Unfortunately, instead of the strong leadership and bold trade vision that America needs to grow the economy, our President is satisfied with just nibbling at the edges of a comprehensive and coherent trade agenda. I think it is time to move past the achievements made possible under Trade Promotion Authority of 2002 and move forward with a new trade agenda of substance to address the opportunities and challenges the world presents now.

Mr. Ambassador, I believe you are willing to do that, and I have great respect for you in that regard. The President's new legislative trade priority, securing permanent normal trade relations with Russia, is, in my opinion, a poor substitute.

The President would have the Congress pass PNTR and ignore Russia's rampant corruption, theft of U.S. intellectual property, poor human rights record, and adversarial foreign policies for a market that amounts to 0.05 percent of U.S. exports. Moreover, it is a market we will have access to anyway, on an MFN basis under the terms of our 1992 trade agreement, once Russia joins the WTO.

I just wish the President and his administration were straight with us and the American people. We hear a lot of rhetoric about how the President will only pursue trade policies consistent with his values, especially when it comes to the labor policies of our democratically elected friends in Latin America. But somehow those values vanish in the context of trade with Russia, a corrupt and autocratic regime.

A quick review of the Obama administration's other trade priorities reveals a similar lack of substance and vision. The President's most recent executive order, creating an Interagency Trade Enforcement Center, an event Ambassador Kirk called the most significant commitment of resources and expertise devoted to trade enforcement in 50 years, appears to do nothing more than detail personnel from one agency to another, while replicating the core statutory mission of the Office of the U.S. Trade Representative. At the same time, the President seeks to end USTR's special role in trade policy through a trade agency reorganization, ending 50 years of achievement by a talented, nimble, and effective agency.

Now, we need less hyperbole and more concrete action. We can start with Trade Promotion Authority. I was quite disturbed to hear comments that the President will seek TPA when he decides

that he needs it. TPA is not something the President asks for after an agreement is negotiated.

TPA establishes the foundation upon which trade agreement negotiations and meaningful consultation take place. Article 1, section 8 of the Constitution vests Congress with the authority over tariffs. Absent congressional delegation of that authority, and consensus directives through TPA, the President has no authority or guidance from Congress upon which to negotiate.

Federal Register notices and staff-level meetings are not a substitute for TPA. Moreover, many of the elements of the current Trans-Pacific Partnership negotiation do not reflect congressional directives.

Finally, few countries will conclude a meaningful trade negotiation with the United States unless the President has the authority to negotiate through TPA. But TPA will not become law without sustained engagement by the President in a substantive and meaningful way.

Now, I do appreciate the President's interest in concluding the Trans-Pacific Partnership agreement, but unless this administration engages with Congress on TPA, and soon, I fear that this important initiative will fail under the weight of empty rhetoric without action, and that the American people will be left with an Obama trade policy that is really nothing more than false hope.

One final point. I did write you and Secretary Geithner about trade and currency policies on September 28, 2011 and January 18, 2012. I might mention, the administration has not responded to either letter. The American people have a right to know what the Obama administration position is on currency. Therefore, I would ask that both my letters be placed into the hearing record at this point, and that the administration response be included in the record when it is received, Mr. Chairman. I thank you for this time.

The CHAIRMAN. Without objection.

[The letters appear in the appendix on p. 39.]

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

The CHAIRMAN. Ambassador Kirk, you know the drill. It is all yours. Welcome. We welcome you before the committee. I personally think you have done a great job. I know you work very hard on behalf of the United States with respect to other countries. You have a small, nimble agency which I think increases its effectiveness, and I appreciate all that you have done.

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

Ambassador KIRK. Mr. Chairman, thank you for your kind words. It has been a privilege to work with you and the other members of this committee. I very much appreciate the opportunity to visit with you today about our 2012 trade agenda.

As you referenced in your remarks, Mr. Chairman, it was a little over a year ago that we shared with you our commitment to advance the trade agreements with Korea, Colombia, and Panama, to

work with you to renew Trade Adjustment Assistance, as well as extending our trade preference programs.

At that time some, frankly, questioned whether our efforts were taking too long, or if we were seeking too much. But working with you and other members of Congress, all of this and more was accomplished last year. Together, we did the hard work necessary to pass these measures on one historic evening, and we built what I believe is a new bipartisan template for trade policy that opens markets and levels the playing field for American businesses, workers, farmers, ranchers, manufacturers, and service providers.

This year, with your help, we will advance another ambitious trade agenda, and I would like to highlight just a few of our key initiatives from the President's trade policy agenda for 2012.

First, as you noted, the recent U.S.-Korea trade agreement will enter into force on March 15th. At the same time, we continue to work diligently with the governments of Colombia and Panama to fulfill their commitments, so that those agreements can come into force as soon as possible, as well.

We are also moving full speed ahead in our negotiations in the Trans-Pacific Partnership. Building on the broad outlines of the announcement last November at APEC by our leaders, we seek to conclude a landmark TPP agreement this year. It will address cross-cutting issues, such as promoting regulatory coherence among our partners, and participation of more small businesses in Asia-Pacific trade, as well as regional supply chains that promote U.S. jobs.

As we consider the entry of additional countries, we will continue to coordinate closely with you to ensure that any new participants meet the TPP's high standards and address concerns raised by you and other stakeholders.

As we move toward negotiating outcomes, the administration will explore issues regarding additional Trade Promotion Authority necessary to approve the TPP and future trade agreements. This year we will continue our efforts to have even tougher trade enforcement, which has been a priority for the Obama administration from day one.

Our new Interagency Trade Enforcement Center will challenge even more aggressively the kinds of unfair trade practices that USTR fights fiercely every day, from China's improper restrictions on industrial raw materials to improper subsidies by the EU and other partners.

As we consider enforcement, I want to especially thank this committee for working together to defend the rights of U.S. workers and businesses who face unfairly subsidized imports from countries like China, and you stood up for them by working to pass, in a bipartisan manner, legislation to address the GPX lawsuit.

This year we are also ready to seize the benefits and enforcement tools available to the United States as Russia seeks and prepares to join the World Trade Organization. To do so, we must work together to terminate Russia's Jackson-Vanik status as soon as possible. Only then will American firms enjoy the same benefits of Russia's WTO membership as our international competitors.

President Obama's pursuit of enhanced trade to support American jobs extends across all geographic regions and all major eco-

nomic sectors. At the President's direction, we are engaged with the European Union to deepen our trans-Atlantic trade relationship, and we are also eager to work with Congress to make immediate progress with sub-Saharan Africa as well as CAFTA countries on issues like third-country fabric and textiles and apparel rules of origin.

At the World Trade Organization, we will continue to look for fresh, credible approaches to market-opening trade negotiations in the Doha Development Round, and along with it plurilateral options such as services. Working together, we can stay on track to meet the President's goal to double U.S. exports and support more jobs for more Americans. I appreciate your thoughtful consideration of these critical issues and your continued support of a forward-leaning, job-creating trade agenda.

Thank you.

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

The CHAIRMAN. Thank you, Mr. Ambassador.

I would like to talk a little bit about Russia PNTR. What benefits will U.S. companies receive when Russia joins WTO?

Ambassador KIRK. First of all, I appreciate your comments in your opening remarks, Mr. Chairman. I would associate myself with all of them.

Were we to not address the Jackson-Vanik application of Russia, we would be limited to those benefits per our bilateral agreement, but we would lose all of the ability to enforce them and hold Russia accountable to the commitments it is making as a member of the World Trade Organization.

If we act as you have suggested, and we agree to lift the Jackson-Vanik restrictions and extend to Russia permanent normal trade relations, then our exporters, our farmers, and ranchers not only have the benefits of the tariff cuts, but more important, we have the ability to hold Russia accountable when they do not live up to those commitments.

The CHAIRMAN. Now some people say, if the United States grants PNTR to Russia, the United States is giving something to Russia, when in fact the opposite is true. That is, if we repeal Jackson-Vanik and Russia joins the WTO, the Duma passes it, then frankly we will be getting something. That is, the United States' people will be getting the benefits of the WTO. Whereas, if Jackson-Vanik is not repealed, the United States is not getting the benefits of Russia's entrance into the WTO. Is that correct?

Ambassador KIRK. That is absolutely correct. Mr. Chairman, your expression of it as a 1-way street is exactly correct. Russia is reducing their tariffs, bringing them down to the norms. The United States has to make not one single change in our laws, our tariffs, or duties. If Russia moves into the World Trade Organization and we do not act, then our exporters are going to be at a competitive disadvantage. This is decidedly in our interests to address this.

The CHAIRMAN. Can you tell me, are Jewish groups in Russia in favor or not in favor of the repeal of Jackson-Vanik?

Ambassador KIRK. Well, Mr. Chairman, you have the advantage of having been to Russia more recently than I have. I am a bit

hesitant to try to speak on behalf of a group as broadly as all Jewish groups in Russia. I will say many of those who advocated for Jackson-Vanik at the time, both in Russia and here, feel that it served its purpose.

Jackson-Vanik was about allowing Russian Jews to be able to emigrate more freely from that country. I am told some 2, almost 2.5 million Jews have now had that ability to do that, and they are living in Europe, the United States, many in Israel. So in some cases, Jackson-Vanik has served the purpose.

The CHAIRMAN. It is my very strong impression that Jewish groups are in favor of repeal. I talked with a fellow, Rabbi Goldstein, who is one of the chief rabbis in Russia, and he told me he very strongly favors repeal of Jackson-Vanik. He even said to me, "Senator, we will be your foot soldiers in the United States. I will organize in the United States, because it is just very important that Jackson-Vanik be repealed."

What about human rights groups? Human rights groups, for some time, have been using Jackson-Vanik as leverage. Is it your understanding that human rights groups in Russia favor or do not favor repeal of Jackson-Vanik?

Ambassador KIRK. My sentiment is similar to what you expressed. While there are still very serious concerns about human rights and a more full seeding of democracy, they see the lifting of Jackson-Vanik—and frankly, Russia being a part of a rules-based system—as aiding that, as not being contrary to our broader concerns about human rights.

The CHAIRMAN. All right. Now, I see Senator Cardin here. He and other Senators have raised various very important concerns about the *Magnitsky* case in Russia. That is, where a lawyer, Magnitsky, died while in prison. He could well have been murdered while he was in prison. My question is, when we address this issue of repealing Jackson-Vanik, there are some very serious issues the United States has with Russia. This is one. How do you suggest this be dealt with?

Ambassador KIRK. Well, I believe we can do both. Senator Cardin has spoken out very strongly on this. I think, as you know, Senator, his concerns are shared by the administration. First of all, the administration has acted. The State Department's policy right now is to deny visas to those who were involved in the torture or abuse of other human beings.

This administration—President Obama issued an executive order that accomplishes, for the most part, what Senator Cardin is seeking to do by his legislation. But, as you have noted, I think we have to move on parallel tracks. We will continue to engage and press Russia on issues of human rights, but when it comes to Russia's entry into the World Trade Organization, which they will do later this summer, it is equally important that we lift the Jackson-Vanik restrictions so that our farmers, ranchers, and businesses are not put at a competitive disadvantage.

The CHAIRMAN. It is a very vexing question here, and that is Russia's providing arms to Syria. That is pretty serious. Should that get in the way of repeal of Jackson-Vanik?

Ambassador KIRK. Senator, I do not want to sound insensitive. We are very concerned, and I know the administration has spoken

very critically of Russia's actions with respect to Syria, but I believe this Congress can address all of those, and do them on parallel tracks. It is still the responsible thing to do, to move as you suggested and lift Jackson-Vanik and grant Russia permanent normal trade relations status.

The CHAIRMAN. Senator Hatch?

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

Welcome, Mr. Ambassador. We appreciate you being here today. USTR's fiscal year 2013 budget justification states, "In fiscal year 2013, USTR will be finalizing the legal text of, and seeking congressional approval for, the first tranche of the TPP agreement, the President's signature trade initiative, and is expected to begin integrating additional TPP members, including Japan, Canada, and Mexico, in what would be cumulatively the single-largest trade agreement initiative by trade volume in U.S. history."

Now, according to this statement, the administration intends to complete the TPP negotiation and get it approved by Congress before Japan, Canada, Mexico, or any other country, joins. Is that correct?

Ambassador KIRK. Well, our first objective, Senator Hatch, is to complete work on the text—which was the directive our leaders gave us in APEC—and see if we cannot get that done this year. We welcome the expression of interest by Japan, Canada, and Mexico in particular. If you will recall, part of our rationale for moving forward with the TPP negotiations is, we see it as an open architecture.

We believe this can be the vehicle by which we rationalize trade throughout the Asia-Pacific, but I want to be careful. I do not know that we have made a final decision that we have to conclude before we welcome others, but we want to make sure that any new partners understand the standards and objectives that we are attempting to achieve in the Trans-Pacific Partnership, and that they are willing to meet those standards before we bring them into the process.

Senator HATCH. It also appears from this statement that President Obama has already decided to integrate Japan, Canada, and Mexico into the TPP. Now, that is correct, is it not?

Ambassador KIRK. We have not predetermined anything. We very much welcomed their expression of interest, but as we have noted, and in working with this committee, we have a very defined process by which we work with you, and House Ways and Means and others, to make a determination for entering FTA negotiations with any partner. We have begun that process, but we want to work through that process before we make a final judgment.

Senator HATCH. All right. Does the administration plan on concluding the TPP, the President's signature trade initiative, without TPA?

Ambassador KIRK. Well, we are working diligently, as you have noted, to try to conclude work on the text of the agreement. We will also engage with Congress on the steps that we would need to implement a new Trade Promotion Authority, not only for TPP but for others.

But we believe not having TPA right now does not hinder those negotiations. We are proceeding as if we have had it. As you have

referenced, we have had, Senator, almost 350 consultations with Congress, so there are no surprises here, but we believe we can move forward on a parallel track.

Senator HATCH. My staff is ready to sit down with your team to start negotiating the terms of the TPA today. Can we get those negotiations started on that basis?

Ambassador KIRK. Senator, we are pleased, and we welcome you and your staff's strong interest on this. At the appropriate time, we will be more than happy to sit down with you and other members to begin to develop the outlines of Trade Promotion Authority.

Senator HATCH. All right. As you know, Mr. Ambassador, trade enforcement is a high priority for Senators on both sides of the aisle here in the Senate. This committee worked for years with USTR to ensure that American interests are defended and our agreements enforced.

I am very troubled, however, that the pattern of the President's trade policy by press release continues unabated. The creation of the Interagency Trade Enforcement Center is, in my opinion, a perfect example.

Now, the ITEC was touted in the State of the Union address and promoted in multiple press releases and press calls with senior officials. Such a high public profile makes one think that the creation of ITEC is an event of great significance. In fact, during one of these press briefings, you yourself called the ITEC "the most significant commitment of resources and expertise devoted to trade enforcement in more than 50 years."

Now, despite deploying senior political officials to do press calls, no one from your office or the administration has offered to brief any Senator on this committee or our staff about this new initiative, not before, during, or after its creation. Now, is this what the President means by "unprecedented congressional consultations"?

Ambassador KIRK. Senator, I very much respect and appreciate your support for our trade initiatives. But I would have to note that, from the very beginning of the first trade agenda that we presented to this committee in 2009, the Obama administration made it plain that we believed, in order to get the American public back on board with our trade strategy, we could not just focus on negotiating FTAs, we had to be more faithful to enforcement.

I would submit, respectfully, that we have a stronger record on trade enforcement than any administration over the last 20 or 30 years. The President gave notice to the Congress that he wanted to address enforcement in his State of the Union address, that we were going to make this a priority.

We have visited with a number of members of Congress and your staff on this, and we are moving forward with what I believe is an appropriate and a thoughtful approach to bringing all of our resources together so that our enforcement activities are not hindered, or at all slowed down, by a lack of resources.

Senator HATCH. Well, my concern is, why no consultations on the ITEC? There have not been any consultations.

Ambassador KIRK. Well, we have just created the ITEC, and we will be happy to continue to work with this Congress. But the President has made it known: we will not yield in our responsibility to stand up for the rights of American workers and manufac-

turers and farmers, and we will continue an aggressive trade enforcement policy to effectuate that.

Senator HATCH. My time is up, Mr. Chairman.

The CHAIRMAN. Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Ambassador Kirk, it is good to see you. Thank you for always being so accessible. As chairman of our subcommittee here, our Trade Subcommittee, it has always been easy to get in touch with you, and I appreciate that.

I want to start my questioning with the Anti-Counterfeiting Trade Agreement matter that you and I have been discussing. This, of course, is an international accord that seeks to establish online intellectual property rights and disciplines in the intellectual property rights area.

As we have talked about, many in our country believe that it raises many of the same issues that have been on the table in what is called the Protect IP Act, and also the SOPA legislation, the Stop Online Piracy Act.

Now, right before the hearing, the Obama administration sent me a letter indicating that they believe the agreement is legally binding, and that, of course, is in line with the conversation that you and I had late yesterday. So, I appreciate that.

Let me turn now to some of the implications, since the administration has now—and it has been a long time in coming; we have been talking about that—finally articulated a position that the administration considers the agreement legally binding.

So my first question is, if I and my colleagues here in the Senate pass legislation to enhance competition and innovation on the Internet that runs contrary to the provisions of ACTA, could ACTA party nations retaliate against the United States or sue us in international court if we pass legislation like that?

Ambassador KIRK. Well, Senator, first of all, thank you for your strong interest in making sure the United States has the strongest intellectual property rights protection for our industries, since I think we all understand a critical part of our competitiveness lies in our innovation, and we have to combat piracy and theft of that innovation around the world. That is singularly what ACTA was designed to address.

It would be difficult for me to answer a complete hypothetical on what other countries would do, but I would say ACTA, as in any other FTA that we have entered, does nothing to constrain this Congress from continuing to pass legislation to regulate in the interest of the safety, the health, and protection of America's families and our economy.

So, nothing in ACTA would constrain this Congress from acting in the future. If Congress were to address additional IPR protections, then at that time we would work with Congress to make sure that our international commitments are left in place, and advise what steps would be necessary to protect us then.

Senator WYDEN. Mr. Ambassador, respectfully, I differ on this point. It seems to me that this really boxes the Congress in on some very important questions with respect to promoting Internet freedom, and competition and innovation on the net, because the Congress is now going to have to sort of be looking over our shoul-

der with respect to whether or not we have done something that could cause an active party nation to sue us.

So my question on this point is, all over the world you have parliaments and legislators having debates, the people's representatives, having debates on whether or not to pass ACTA. Why should the U.S. Senate not consider something like this? As you know, the traditional practice is, when something is considered a treaty, a binding agreement, it comes to the U.S. Senate. It comes to Chairman Baucus's committee. Why should the Senate not be debating and considering something like this?

Ambassador KIRK. Well, Senator, we have had, I think, lengthy conversations with you and your staff, and I know you have written us, State, and others, and we have given you a written response to that. We believe it is a legally binding agreement, entered by the executive administration with the authority given by this Congress. It has been used by previous administrations to enter agreements where Congress has frankly asked us to act.

You mentioned the 2008 pro-IP Act. In that legislation, Congress expressly directs the executive branch "to work with other countries to establish international standards and policies for the effective protection and enforcement of intellectual property rights." So this agreement was entered into with the express direction of Congress to take these steps to make sure American innovation is protected around the world. I will draw——

Senator WYDEN. Just on that point, Mr. Ambassador. Millions of Americans e-mailed and called the Congress with respect to Protect IP, and it was withdrawn at this time.

Mr. Chairman, I know I will have some additional questions, and I thank you for your courtesy.

The CHAIRMAN. Thank you, Senator.

Senator Carper?

Senator CARPER. Thanks. Thanks, Mr. Chairman.

Mr. Ambassador, it is great to see you. The President has, I think, made a number of excellent appointments to his Cabinet, and I put you right at the top of the list. That is the good news. Unfortunately, I am the only one who feels that way. [Laughter.]

Ambassador KIRK. I hope not, but thank you.

Senator CARPER. No. I think we all feel that way. Thank you for the good work that you and your team continue to do.

Believe it or not, we make a whole lot of things in Delaware that are sold all over the world. You must think I am Johnny One-Note, because one of the issues I talk with you most about is poultry. I like to think our economy sort of stands on 3 or 4 legs, including tourism, including agricultural, manufacturing, legal services. We have a lot of folks incorporated in our State. So, there is a lot of diversity to our economy.

But our agricultural economy, which is pretty significant—very significant, actually—is 80 percent poultry. So that is one of the reasons that I am always mindful in raising this issue with you, and your folks, and with Secretary Vilsack.

You all have been great, very, very supportive, and we are grateful for the attention that the President and the Vice President paid to this. We are not the only State that raises chickens, but we have

300 of them for every person in Delaware, so it is a matter of special concern to us.

I think until just a couple of years ago, Russia and China were the top two countries for U.S. poultry exports. For every five chickens that are raised in the U.S., we export one. If you go back 20 years ago, out of every 100, we exported three. So, there is a dramatic increase, I think almost a doubling of poultry exports just in the last 5 or 6 years. So this is a matter of interest to a bunch of States.

But recently this has shifted as a result of factors including, as you know, Russia's ban on U.S. poultry a couple of years ago and China's imposition of unfair antidumping and countervailing duties. I really do appreciate the administration's work on both of these issues, most recently with regard to the dispute settlement process, and the matter with China.

As you know, the poultry industry, as I said, is really important to us. We export not only out of the Delmarva Peninsula, but all over the country. One out of every five chickens that we raise, we send someplace else, we sell someplace else. So, it is really important to try to open new markets where we can.

Many believe that one of the new markets that could be very promising is India, and I would welcome any thoughts that you have there. We are not allowed to sell much poultry into India, but it could be a huge market for us.

But many believe that the Trans-Pacific Partnership agreement will set the standard for agreements going forward, making it of the utmost importance that we ensure poultry producers get a fair shot there.

Last year, I believe Mexico was the 2nd-largest market for U.S. poultry exports. Number two. However, it has come to my attention that the Mexican government has brought an antidumping case against the U.S. poultry industry, which the industry asserts is frivolous. I would be concerned in supporting Mexico joining the TPP discussions, if they were to impose the established duties on U.S. poultry.

I am just going to ask if you might provide us with an update as to any action we are taking to resolve this particular situation with Mexico, and also any thoughts you have on the export of poultry to India. Thank you.

Ambassador KIRK. Senator, thank you for your comments about our work. I would say broadly, I think all of the members of this committee understand how extraordinarily important export markets are to all agriculture. It is the most export-dependent of any industry. The good news is, over the past 2 years, as we have sought to meet the President's goal of doubling exports, our agricultural exports are up dramatically.

In fact, 2011 was a record year, just slightly under, I believe, $148 billion, and across the board. One of the reasons is that, as new consumers around the world have more money to spend, and they are moving from diets that may have consisted solely of rice and grains, they now have a need and a taste for protein. Typically they start with pork and poultry. So, this is significant to us.

As you noted, we have challenged China's antidumping duties they placed on U.S. poultry in the WTO, and frankly just yesterday

we requested consultations with India over actions they have taken to bar poultry in their market, for all the reasons that you articulated, and we continue to dialogue with Mexico over their actions.

But I would note that still, as much as we are pursuing new markets, Canada and Mexico continue, in most cases, to be two of our best three trading markets around the world. But we will continue to aggressively work with our Secretary of Agriculture and others to make sure that we have access to these critical markets.

Senator CARPER. All right. Well, it is important to a lot of States, and especially to ours and to Delmarva as well. So, I would just say "thank you" for raising these issues with India, Mexico, China, and others. I would just urge you to, as we say in Delmarva, keep squawking.

Ambassador KIRK. We will keep squawking. I would note though, again, this is another reason we believe getting Russia into the WTO would give us an advantage we do not have, because we would have the ability to challenge some of their agriculture policies we believe are not based on sound sanitary and phytosanitary practices.

Senator CARPER. Good. Good for you. Thanks so much. Keep up the good work.

The CHAIRMAN. Thank you, Senator.

Senator Roberts?

Senator ROBERTS. Thank you, Mr. Chairman. Thank you for holding the hearing. Thank you, Mr. Ambassador, for taking the time out of your very valuable time. Thank you for emphasizing the increase in our exports. That is certainly good news, in keeping with world demand.

I have a repeat question that Senator Hatch brought up. As usual, he was right on target. The administration having TPA before trying to initiate other trade negotiations, I think that would signal the administration's seriousness, not only to our TPP partners, but to the world, that the United States is ready to open markets for U.S. exporters regardless of where they are.

Now, you said the administration will explore issues regarding additional Trade Promotion Authority necessary to approve the TPP and future trade agreements. What are we talking about? What issues do you expect to explore?

Ambassador KIRK. Well, Senator, again, thank you for your strong support, particularly of our passing the trade agreements last year.

One of the things we want to do is make sure that when we work with you, which we will to draft new Trade Promotion Authority, we are also addressing issues that are relevant in today's economy. For example, when we last had TPA, it did not envision, perhaps, some of the challenges that we are trying to address in the Trans-Pacific Partnership, of dealing with countries in which there is a predominance of state-owned enterprises or some of the issues that are imbedded in having a more digital economy and making sure that we have an open architecture for that.

So we want to make sure that we engage with you on these next-generation issues so that it is broad enough that they can be addressed, not only in the Trans-Pacific Partnership, but in any future trade agreements we might see.

Senator ROBERTS. Well, we look forward to working with you on that. I am sorry the Senator from Delaware has left, indicating he has 300 chickens for every American. I was going to ask him if they were free-range chickens, but that is another issue that probably we do not want to get into.

At any rate, we have more cows than people in Kansas. They are in a better mood right now. You have the same thing in regards to Texas. Give me an update on China, Taiwan, and Japan in regards to beef exports. We have talked about poultry, and we have talked about pork. Let us move to beef. My cowboys want to know why we are not exporting to those three countries.

Ambassador KIRK. Well, Senator, as you know, those are critical markets to us, and we have been struggling for almost 10 years now to get back into that Asia-Pacific market. The good news is, our beef exports are up dramatically across the board, and particularly in Korea.

We continue to work with this committee and others to get full normalization of our beef exports in all of those markets. So our objective for China, Taiwan, and Japan is no different than it is for other markets, and that is to have those countries allow our U.S. protein, which is some of the safest for consumers around the world, into those markets absent some sound scientific basis to keep it out of those markets.

We have been pressing Taiwan and Japan in particular. I think you know we have pressed China. Secretary Vilsak and I have raised this at the highest levels. We are somewhat encouraged Japan is moving to a scientific study now to address some of the concerns we have raised, and hopefully we may be able to see some movement back into that market. We had what we thought was a common-sense agreement with Taiwan last year about this time, but as you know we retreated for them. But rest assured, this remains very high on our agenda.

Senator ROBERTS. Well, I hope they can approach it with a sound science approach, as opposed to the political approach, which is very easy to do. I thank you for your cooperation with the Secretary.

You have established—not you, but the administration has established—an Interagency Trade Enforcement Center. I thought that was brought up by Senator Hatch—and perhaps the chairman—and it was by executive order. If there is one thing I am a little fatigued about, it is basically that I am about executive ordered-out. This is a new enforcement unit. I do not know how many folks you have envisioned.

I do not know if they have parking places, and if they are permanent, and everything else, but I always thought that basically you folks did that at USTR, and I do not know why establishing another layer by executive order, not even coming to this committee, will increase your ability to better coordinate with existing trade-related organizations. So what metrics support this conclusion, this demand for enforcement? Where is the reason for this, and how many folks are you talking about now?

Ambassador KIRK. Well, currently USTR—thank you. I appreciate all of the members' comments about our work at USTR—the strength of it is, we are one of the smaller, more nimble agencies

of government. But what I have heard from members on both sides of the aisle, and you have heard from the administration, is we all realize that just entering new trade agreements is only half the story. We have to make sure we get the full benefits of them.

One of the things that this committee asked me to do, when I came before you for a confirmation, was to enforce our agreements. Now, we have done, I think, a more than commendable job in doing that at USTR. For example, we have doubled the number of cases we have brought against China. We have probably a 99-percent success rate on cases we bring at the WTO.

But the President believes we should not be constrained from moving as aggressively as we can, not just against China, but any of our trading partners, to deal with subsidies, to deal with unfair competition. And so, as part of the outgrowth of this National Export Initiative, the President has directed all of us in the administration to work more closely together. That is what we are seeking to do through this Trade Enforcement Center, and it will make sure that we are not resource-constrained as we seek to deal with unfair trade barriers around the world.

Senator ROBERTS. I appreciate your answer.

Mr. Chairman, my time is up, but I would only say that, if Senator Coburn was here, he would point out that the GAO has identified 32 areas of duplication in your annual report, and it would seem to me that you could do the job at USTR. You have a great record going.

I do not know why you have to add an additional marine grade, and then call them something else, and have them enforce it. You are doing it. If you need more people you ought to just do it under the USTR. Why, by executive order, are we doing this? You do not have to answer that. I think you have already tried.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you. Thank you, Senator.

Senator Grassley?

Senator GRASSLEY. Mr. Chairman, I have a very short statement that I want to put in the record, then I will ask questions. Most of my statement is talking about the need for Trade Promotion Authority and that we need to be talking about that more.

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

Senator GRASSLEY. Ambassador Kirk, welcome. I have the same interest that Senator Roberts had about the coordinating committee, or whatever it is. But I would like to ask you in addition to what Senator Roberts did, do you have a recent example of where USTR, or another agency, has failed to properly coordinate the trade enforcement matter, that you have not had cooperation?

Ambassador KIRK. It is not that we have not had cooperation, but I think it is a thoughtful, appropriate step by the President to make sure we are being as efficient as we can. I would say, in some of our cases in particular that involve countries in which we have to translate huge volumes of documents, and in particular where we have to gather a lot of information, given the size, the modest size of our legal staff at USTR, we have to be very discriminating in which cases we take.

We have not in the past had translation services imbedded within our agency, so in many cases we are going to State and other agencies to get those. I think the President wisely brought all the agencies, whether it is the ITA at Commerce, elements of State, Agriculture, together to make sure we can work as cooperatively and efficiently as possible, and hopefully do it in a more cost-efficient manner to the taxpayers.

Senator GRASSLEY. In regard to WTO and Russia, I will ask a question first, and then I want to say something about it. What assurances could you give me that the administration will succeed in getting an enforceable SPS agreement with the Russians on pork? You may recall that last year you and I exchanged issues on this. Quite frankly, I am surprised that this is still an issue.

Unless I was misled, when Senator Leahy, I, and others were in Moscow last June, we discussed this with the Russian Foreign Minister. At that time there were meetings going on in Geneva over this issue, and of course Russia is very interested, at least it was under the previous administration, under Medvedev, to get into the WTO. So this is still an issue, evidently. So where are we on it?

Ambassador KIRK. Well, as you know, because of the support of you and Chairman Baucus and many others and the leadership of our President, we are now in a position that Russia was formally invited to join the World Trade Organization at our 8th ministerial meeting in Geneva in December. Russia will finalize their process of what they need to do, probably sometime this summer, they have told us.

So specifically to address your concerns about SPS, unless the United States lifts the Jackson-Vanik restrictions and grants Russia permanent normal trade relations status, we will be in the unique position that we will have some access to the tariff reductions because of our previous bilateral treaty, but we will not have the benefits of any of the enforcement ranges.

So, in order for us to address Russia's practices, for example, that you implied do not meet SPS standards, it is critical that we lift Jackson-Vanik and grant them PNTR so that we have full access to the range of enforcement tools that would be available through the World Trade Organization.

Senator GRASSLEY. So in other words, we are not going to get out of Russia agreements that they are going to abide by the normal SPS agreements? We are going to have to let them into the WTO and then take them to the WTO to get what we consider ought to be a level playing field, even for their entrance into the WTO?

Ambassador KIRK. No. No, Senator. I want to make it plain: Russia is making those commitments as part of their accession to the WTO.

Senator GRASSLEY. All right. All right.

Ambassador KIRK. Because we have Jackson-Vanik, we have had to invoke something called non-application, which means, if we do not lift Jackson-Vanik, then we do not have the benefits of those commitments that Russia has made. So, quite the contrary, they are making them, but for us to have the benefits of them, we need to grant them permanent normal trade relations status.

Senator GRASSLEY. My last question would be, is the USTR going to use the opportunity of high-level discussions with the EU to ad-

dress some of the challenges that U.S. agriculture faces with the EU? And you are engaging in these high-level discussions right now with the EU.

Ambassador KIRK. We absolutely will, Senator. Again, we appreciate your strong support of our efforts. We had a very good success as a result of these negotiations. I think 2 weeks ago we announced a reciprocal certification unit for organic products. We still have challenges because of Russia's renewable energy directive, and others.

But, as part of this high-level working group, we are broadly having a discussion about all issues that would allow us to deepen our trade relationship, which by way of background is by far the strongest commercial relationship in the world.

My directive to our team is that everything is on the table, but we should invoke the trade equivalent of the Hippocratic Oath and make sure we do no harm. But we are putting everything on the table.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Menendez? Oh, sorry. Senator Thune has returned. Thank you, Senator. You are next.

Senator THUNE. Thank you, Mr. Chairman. I want to thank you and the ranking member for having the hearing today. Ambassador Kirk, thank you for your willingness to testify.

We all know how important trade is to our economy. Ninety-five percent of the world's population lives outside the United States, yet we generate more than a fifth of the world's income.

So the way to maintain that level of income is to continue to open up markets and expand the sale of American-made goods and services. I may not agree with every approach to trade advocated by the President, but I certainly believe that, working together, we can continue what I think is an incredible success story that is America's export economy.

Just this week we saw—Chairman Baucus and I were able to work with our colleagues to get through the Senate something that—in a matter of days—is an important trade enforcement law, which around here, I might add, is warp speed. That does not happen very often. But I hope that the President will sign that into law, and I look forward to working cooperatively on a trade agenda moving forward.

I wanted to highlight a couple of things quickly, if I might. The first is Japan's inclusion, and the potential importance of that inclusion, in the TPP from the perspective of American agricultural exports. Japan is the world's 3rd-largest economy, and has historically been a very important market for our exports. Their interest in joining TPP leads me to believe that they are committed to adopting the high standards of the TPP.

However, there remain a significant number of outstanding issues that need to be addressed concerning the persistent barriers that they put up to certain segments of American agriculture, as well as autos and services, for that matter, and including issues regarding Japan Post.

Can you assure me that you will remain vigilant in addressing these concerns so that, if Japan does eventually join the TPP nego-

tiations, we will be likely to see real benefits to our farmers, ranchers, manufacturers, and service providers?

Ambassador KIRK. Senator, absolutely, I will give you that assurance. First of all, thank you, Chairman Baucus and other members of the committee, for the very important action that you took to protect American manufacturers and exporters against dumping, and the speed with which you addressed it.

I do think that speaks well of how quickly we can work together, as a Congress, to do things that are in the interests of American businesses and workers. So, thank you for that. I think you know we have pressed, and are going to continue to press, Japan to fully open their market and meet their obligations with respect to opening their agriculture, and on insurance, whether they join TPP or not.

I want to make it plain: we do not see any linkage of those. These are issues we have been pressing Japan for action on. Second, we welcome Japan's interest in joining the Trans-Pacific Partnership as we do Canada's and Mexico's, but, as we have said to all of the members, this is something countries aspire to, and that means you have to be willing to meet the high standards we are seeking to achieve throughout the partnership and that everything has to be on the table.

Now, we are encouraged with Prime Minister Noda's leadership on this, but one of the things about our Federal Register system is, Japan knows fully the concerns that you have expressed, and other stakeholders, and we are going to engage them very honestly on how we would address those concerns, particularly with respect to autos, and the insurance markets, and agriculture.

Senator THUNE. All right. Good. Thank you.

As you probably know, my home State of South Dakota is a major ethanol producer. I would like to bring your attention to concerns I am hearing from ethanol producers regarding actions by Brazil, which consumes about a third of our ethanol exports and is America's largest ethanol export market.

Our Nation has gone from a net importer of ethanol as recently as 2008 to exporting 1.2 billion gallons last year, which far exceeds the export volumes of any other nation. Recently, however, the U.S. ethanol industry has complained that, while the U.S. has removed our barriers to ethanol imports, Brazil has been erecting barriers to our ethanol exports.

Specifically the State of São Paulo, which serves as the entry point for almost three-fourths of all exports from the U.S., recently announced a discriminatory tax scheme, whereby imported ethanol must pay the ICMS sales tax at the point of Customs entry, while at the same time deferring payment of the ICMS tax for domestic product.

As a result of this policy, American ethanol exports through São Paulo are being disadvantaged by requiring them to pay a tax upon entry, but at the same time a domestic product is allowed to pay the tax at a later date, if at all. In light of that, I would be interested in knowing what efforts you might be engaging in, or are planning to engage in, to address claims that these recent efforts are erecting technical barriers to trade, or otherwise preventing free and fair trade with Brazil.

Ambassador KIRK. Senator, we believe, as you do, this should be an open and unfettered market. I do think—and not to be repetitive—it is a very good-news story, how quickly we went from producing a limited amount of ethanol to being a net exporter. That is a tremendous export opportunity for us. We have heard from the same industries you have. We will use every bit of leverage we have, to be frank, including the forthcoming visit from President Rousseff, to raise these issues.

When President Obama visited Brazil last year at this time, I think you know we created, through USTR, a trade agreement enhancement committee. We will be meeting next week, and we will raise all of these issues. We might, with your permission, like to reach out with you to get a little more background.

Senator THUNE. Yes. We would be happy to provide that, and I hope that you would be able to engage them on this issue when you meet with them. That would be very helpful.

Ambassador KIRK. We would be happy to.

Senator THUNE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Snowe?

Senator SNOWE. Mr. Ambassador, welcome.

Back in June, I sent a letter, along with some other colleagues, concerning the TPP with respect to the impact it would have on the rubber footwear industry. As you know, in our State, and actually in the country, we have the last rubber athletic footwear manufacturer, New Balance, that provides more than 2,000 jobs in this country and almost 900 jobs in the State of Maine.

The concern is that the agreement will not exclude the reductions in duties on imported products from Vietnam, which is really the largest producer of rubber footwear, and would have a severe impact on an industry and jobs with respect to New Balance.

So can you tell—I know we have had some conversations with your staff, and this is a very serious issue, because it would be to the detriment of this industry that is invaluable and manufactures shoes and footwear for our military as well. But it would provide a severe disadvantage to this industry, without question, since Vietnam pays on average 46 cents an hour, whereas New Balance pays $10 an hour.

So can you tell us the status of those negotiations and discussions? Because I understand there will be a market access discussion with Vietnam with respect to the TPP.

Ambassador KIRK. I am happy to try to provide further clarity on that. But again, thank you, Senator, for your extraordinary service to our country throughout your time in the Senate.

Senator SNOWE. Thank you.

Ambassador KIRK. I appreciate your education of me on a number of issues, from softwood lumber to footwear.

Senator SNOWE. You have been very responsive, and I appreciate that.

Ambassador KIRK. It has been a pleasure to work with you.

Senator SNOWE. Thank you.

Ambassador KIRK. I hope you believe that this administration, if anything, is wedded to a principle that we have to convince the American public, if we want them to believe in the power of trade

to improve our lives, that trade is a vehicle that not only gives us consumptive benefits, which is a great thing for all families, but trade is also a tool by which we create jobs.

We have done everything we can, and are attempting in this TPP, whether it is in footwear or others areas, to make sure we have a proper balance, that we continue to give American families the consumptive benefits, but that we help Americans who are still making products, and doing what the President has simply said: we want to innovate, we want to make more products, and we want to sell them around the world.

That is what we are attempting to achieve in our textile negotiations in the Trans-Pacific Partnership. I have visited a number of times with the textile industry. Good or bad, it would not surprise any of you, I think they feel, as an industry, they have perhaps been harmed more by our trade policy over the last 30, 40 years.

But what is remaining of our textile industry is vibrant. It is fully integrated in many cases. We want to make sure that what we achieve is a proper balance in this Trans-Pacific Partnership, and does not operate to their disadvantage.

We want the benefits of whatever we do in textiles to accrue to the members of the Trans-Pacific Partnership and not other countries. That is the balance that we are seeking to achieve, and that is what we sought to achieve with what we have put forth on the table in terms of the proposals on rules of origin and yarn forward provisions.

Senator SNOWE. Well, I just cannot underscore enough the severe impact it would have on a manufacturer like New Balance, which is the last rubber athletic footwear manufacturer in the United States, if those reduced duties are included, because it would be devastating.

We have lost, basically disproportionately, that part of the industry with respect to shoe production in America. I know when I began in Congress, I think that perhaps foreign import penetration was about 45 percent. Obviously now it is up to 99 percent. There is very little left in the United States, and New Balance happens to be an ideal example of how they can succeed. They have been innovative. They have a remarkable workforce. They are technology-driven. They do extraordinary work, and they should not be penalized.

So, if this is allowed—I mean, the disparity between wages alone, I think, illustrates the problem, and the inequities that exist. So, if we enshrine that in this trade agreement, it absolutely would devastate thousands of jobs that this great company provides here in America. So, I hope that we can continue to work on that.

Even a phase-out period would not work in this instance because of the significant difference between wages between these two countries alone. So I cannot underscore—in fact, I have sent you a letter to invite you to come and visit Maine and New Balance. We have several facilities in Maine, and I think it would be worth your while to see a rarity that now exists in America, with respect to manufacturing shoes, and in this case athletic footwear.

Ambassador KIRK. Well, I appreciate that invitation. As you know, I have visited Maine before with Congressman Michaud and visited paper mills. I had some extraordinary blueberries. But I

would welcome the opportunity to come back and learn more about footwear. But I would note—because L.L. Bean will call, and others—I know New Balance is the last tennis shoe maker, but we do have a handful of industries that make footwear.

Senator SNOWE. Right, they do. Like, literally a handful. I mean, we have lost 28,000 jobs in this industry since 1997. There is no reason to lose this invaluable industry. I cannot underscore that enough, and I hope that we can continue to have those conversations.

Ambassador KIRK. We absolutely can.

Senator SNOWE. All right. Thank you.

Ambassador KIRK. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Menendez? Well, I see Senator Cardin just arrived. Technically, he is ahead.

Senator Cardin, are you ready, or do you want to wait?

Senator CARDIN. I am ready. I rarely have a chance to go before Senator Menendez.

The CHAIRMAN. Here is your shot. Here is your chance.

Senator CARDIN. I love the way seniority works. I am going to take my time now. Thank you, Mr. Chairman.

The CHAIRMAN. Go ahead.

Senator CARDIN. I am ready to go.

The CHAIRMAN. This is the special seniority rule.

Senator CARDIN. I appreciate that.

First, Mr. Ambassador, thank you very much. I listened to your exchange with the chairman as it related to the human rights dimension of Jackson-Vanik. I guess I want to make a couple of points, if I might, just to start off. The first is that we all understand that the primary reason why Jackson-Vanik was enacted was to deal with the emigration issue from the former Soviet Union. That issue is nowhere near the dominant issue it was when it was first enacted.

I might tell you, I am proud of what that provision did. There were naysayers back in those days who said, do not mix trade with human rights. The fact that we were able to put such a spotlight on the human rights issue has allowed thousands of people to be freed from the former Soviet Union. So, it served a very, very important purpose, as you pointed out.

I might say, there were those who said, when we took up sanctions against the apartheid government of South Africa, why are we penalizing the people? Let us put that on a totally separate track. We did not. We first did it on our own, that is, the United States, and then other countries followed us. As a result of that action, and the international community coming together, we were able to bring down the apartheid government of South Africa with a minimal amount of violence.

So, when we look at this as an opportunity, I see this as an opportunity to advance human rights, and I must tell you that, I could argue with you about whether it is still needed. We know that the government imposed new emigration restrictions on April 7, 2010, a new law that says the state may restrict people from leaving the country, or defendants in criminal cases.

It is now routinely used by corrupt law enforcement officers in cases like the Sergei Magnitsky case. So, the government is still using this as an oppressive means to carry out their policies. We know, in the Magnitsky case, that you had a person who tried to bring corruption to the attention of the Russian government. He was arrested, tortured, and killed in prison, and has garnered a great deal of international support.

I say that because, what we do here in this Congress will have a direct impact on what happens internationally. We know that in Europe they are considering laws similar to what we have done to deny visa privileges to those who are involved in gross human rights violations.

I take issue with just a couple of your statements, just so we are on the record on it. The administration has taken good steps in this area to deny visas to those who are involved. But there is more that needs to be done, and with the Magnitsky legislation that I filed with many co-sponsors, we have a much more transparent process. We also deal with assets that are under American control.

So I accept your offer to work together on this, and I would like to just put in the record of this committee the statement that was made by Secretary Clinton where she said, "I am not standing back waiting. I would like to very affirmatively offer to you the opportunity to work together because I think we can do both," talking about human rights and trade. I interpret your comments to be the same.

But let me just point out, it is difficult to get action on this type of legislation. Russia PNTR is a bill that will get to the Senate floor, and we are going to do everything we can to make sure that the Magnitsky-type bill also gets to the Senate floor.

I look forward to working with you on this issue—as I take your comments to the chairman, your willingness to work together—and hopefully finding a way that these bills can become law. I welcome any further comments that you may want to make for the record in the 50 seconds I have left.

Ambassador KIRK. Senator, in case you have other questions, we appreciate your strong leadership on this, as you have shown in other areas of human rights, and we will work with you on it. I think Secretary Clinton's statement is one I fully associate with. I would just only echo, I think we can do both. We do look forward to working with you.

Senator CARDIN. Thank you.

Mr. Chairman, thank you. I want to thank Senator Menendez for his courtesy.

The CHAIRMAN. Thank you, Senator. Also, while we are passing thanks around here, thank you. I think you are very seriously and wisely addressing an extremely important issue with wisdom and effectiveness. I just thank you, how you are trying to solve this, as we all are together. Thank you very much.

Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman.

Ambassador, thank you very much for your service. I am always happy to yield to my colleague from Maryland, especially on such an important topic, which I share his view on.

Ambassador, few industries have more significant, high-paying, productive jobs than the bio-pharmaceutical sector. In my home State, that is nearly 195,000 jobs alone. So on the Trans-Pacific Partnership, I am trying to understand why the administration has not yet tabled in negotiations a time frame for the regulatory protection of data for biologics, and specifically a proposal for 12 years of regulatory data protection for biologics, consistent with U.S. law.

This has strong bipartisan support in the Congress. So, does the administration recognize the importance of this innovative area for job creation and innovation? If so, will you table, in May's negotiating round in Dallas, a proposal for 12 years of data protection for biologics?

Ambassador KIRK. Well, let me first of all state, Senator, that the administration absolutely understands the importance of this issue. Again, the President has spoken time and time again to the link between our investment in innovation and R&D, not only in pharmaceuticals and manufacturing, to the health of our economy, and that is why we seek, across the board, the strongest protection for intellectual property rights, the strongest inducements to bring these new products to market.

But as you know, and I will be very candid, there is a strong divergence of thought between the administration and Congress in terms of whether that should be 12 years or 7 years. Because of that, we have been working diligently with both members of Congress and the administration to find the proper balance. That is why we have not yet tabled a specific proposal on that.

But we have made very plain to our TPP partners that we need to have a chapter that addresses this, not only for the protection of intellectual property rights but also, frankly, to induce the companies to bring these important lifesaving drugs, in many cases, to market sooner rather than later.

Senator MENENDEZ. Well, if the administration's goal is to foster greater job growth at home by the greater export of U.S. products abroad, why is it that we would not seek to pursue in the TPP that which is U.S. law today, which is the 12-year time frame?

Ambassador KIRK. Senator, I can only speak honestly, that the administration, in the President's budget request, tabled a 7-year proposal. You know there is a difference of thought on this. But out of respect for the strong views of many of you in Congress, that is precisely the reason we have not yet tabled a specific time line within the TPP.

Senator MENENDEZ. All right. Do you have any sense of when we are going to get to that time frame?

Ambassador KIRK. We are going to have to get to it before we conclude work on the text.

Senator MENENDEZ. Well, that is for sure.

Let me ask you about something else that may not be in your particular trade agenda, but is in mine. That is something that I care about very deeply: the cotton trust fund. In New Jersey, we have—and there are other States. Some of my colleagues on this committee actually enjoy the reality that there are companies in our States. I have three shirt manufacturers that employ over 300 people. I know there are several others who have the same realities in their States.

And yet, they find themselves in the situation which allows their foreign competitors to import a foreign-produced shirt to the United States duty-free, while a very steep tariff is charged on the materials an American company needs to produce the very same product in America, so that a shirt made abroad of cotton comes into the United States duty-free, but a United States manufacturer imports that cotton and then ultimately has to pay a very steep tariff to produce the very same shirt that came in duty-free from foreign competitors. That is not about creating American jobs at the end of the day.

So we have been looking to reauthorize the program of duty refunds to domestic cotton shirt manufacturers—it existed at one time under the cotton trust fund, but it lapsed—who are faced with an unfair playing field, resulting from trade agreements with the Andean, Caribbean, and African countries. Those agreements allow finished shirts to enter duty-free, whereas imported fabrics face duties as high as 15.5 percent. So the cotton trust fund used to offset that.

Does the administration support the reauthorization of the cotton trust fund to keep these jobs in the United States?

Ambassador KIRK. Senator, you are correct in that I will have to make sure that I am up to speed on the trust fund. I would say generally the provisions that you reference with respect to Africa and CAFTA are part of our preference programs, which this Congress wisely renewed when you passed the trade agreements.

We do think those are important to literally help the poorest farmers in the world have some ability to move out of poverty and move into a more reasonable lifestyle, and they are critically important to many of our manufacturers who source materials from many of those countries, whether they are finished or unfinished.

For our textile industry in particular, many of them are fully integrated, producing the yarns, the fabrics, the cotton here, but then manufacturing them at plants they own in South America. But I would need to learn more about it.

Senator MENENDEZ. Well, we look forward to working with you, because all those countries that you mentioned would still be able to import to the United States. But the difference is—the only difference here is between sending the shirt with the very same fabric that is imported to the United States for a domestic producer to create, and having that shirt already assembled and sold here in the U.S., and then saying to a U.S. company, oh, by the way, against that competition you are going to have to pay for the fabric that they did not have to pay for at all. That is fundamentally unfair. If we are talking about creating jobs in America, we can still have the competition from abroad, but have the jobs in America.

Thank you, Mr. Chairman.

Ambassador KIRK. Thank you.

The CHAIRMAN. Thank you, Senator.

Ambassador Kirk, two questions. First, where do you see getting, this year and the next couple of years, the biggest bang for your buck? What is the top priority to get the best results, most effective in terms of American jobs, American companies, American businesses just doing a lot better? There is a long list of programs, a

long list of initiatives. But what is kind of at the top of your list if you were going to prioritize this? What is number one?

Ambassador KIRK. Short-term, literally our 3-, 6-month strategy: get the FTAs that we passed with Panama, Colombia, and Korea into force, because that gives us immediate benefit.

The CHAIRMAN. All right. What else?

Ambassador KIRK. Near-term, do everything we can to see if we cannot get this Trans-Pacific Partnership, the text of that agreement, in a position that then we can quickly move with you to approve that.

The CHAIRMAN. Have you quantified what increase in jobs that will mean for Americans——

Ambassador KIRK. Senator, I know. I will get you——

The CHAIRMAN [continuing]. Or increase in GDP? Some metric that makes some sense?

Ambassador KIRK. Yes, we do. It would be our 3rd-largest market if you put those nine countries together now. They are already our 3rd-largest market. I think I want to say it would be 3 times the impact of Korea, which we put at about—for some reason I am thinking $40 billion. So you are talking hundreds of thousands of jobs, and that is just if we stay with those nine. Obviously we have ambitions beyond that.

The CHAIRMAN. If we add the others, what is the increase in American jobs?

Ambassador KIRK. If you applied the calculus that I think most of us agree with, every billion dollars in exports is 5,000 jobs and upwards of $40 billion in goods, and not calculating services you easily get into 280,000-something jobs, which we think is on the conservative side.

The CHAIRMAN. How much will it help you achieve your goals, this legislation that Senator Thune and I passed through the Senate—it passed the House and will soon be on the President's desk—addressing the market or non-market status of China, namely that you can proceed as if it is a market economy?

Ambassador KIRK. We think it is critically important. As you know, there are hundreds of industries that believe they have been besieged with cheap products dumped on this market. We have to have the ability to protect them, and we have to have the ability to apply countervailing duties and antidumping penalties. This legislation is critical to maintaining that protection for our manufacturing base. I think that was——

The CHAIRMAN. Is there any way you can quantify what difference it will make?

Ambassador KIRK. Senator, let me try to get back to you with a number on that. We know there are 21 cases pending that involve literally hundreds of thousands of U.S. workers. This is decidedly more defensive. If I can get you better data than that, I will.

The CHAIRMAN. I appreciate that. I hope you try.

Ambassador KIRK. We will. And Senator, if I might, the other two, again, are enforcement and then, as you noted, our strategy with China. If China were to fully meet the commitments they made going into the WTO, you mentioned just the calculation of what we think we lose in the software industry. That could be a huge opportunity for us. So we have been making the case to China

that the World Bank study now makes, for some time, that it is not just in the U.S.'s interests. We can help China——

The CHAIRMAN. Have you any numbers that show what the increase in jobs would be in the United States if China "played fair"?

Ambassador KIRK. If you believe just that one slice of the pie that you referenced, the $50-billion figure in the software industry, and we are looking at everything from investment to them opening up government procurement——

The CHAIRMAN. Right.

Ambassador KIRK [continuing]. When you are talking $50 to $100 billion, that is hundreds of thousands of jobs for American workers.

The CHAIRMAN. I think obviously we must take advantage of every opportunity, and one is that Mexico, Japan, and Canada would like to join this. That is leverage for us on those countries.

Ambassador KIRK. Yes.

The CHAIRMAN. Japan and beef, for example. I think it is just outrageous that Japan does not allow beef in, claiming that our beef is not safe. It is setting up false health standards. At one time Japan did take a lot more American beef, and then there was the Mad Cow scare, but now that the OIE said it is fine, Japan should fully open up.

The second is lumber with Canada. Since I have been in the U.S. Senate, Canadian lumber has always been a problem. We have softwood lumber agreements, et cetera. Then we have to go back and sue again because they are not living up to it. One time they bored holes in their lumber. There were all kinds of ways to get around it.

I think there is an opportunity here to make sure that finally Canada, by standards of fair trade, does not subsidize and dump in the United States. Disputes are not in these binational courts, but rather disputes we might have with Canada would be in Federal courts and not these trade courts, which I think tend to diminish our efforts in this country. So I just urge you very strongly to take advantage of this opportunity to exercise a lot of leverage on Canada on lumber, and Japan on beef, among others.

Ambassador KIRK. Yes.

The CHAIRMAN. Senator Wyden?

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

There are a couple of other areas I want to get into with you, Mr. Ambassador, and then return back to the intellectual property issue, particularly as it relates to TPP, where we have had some discussions as well.

On the TPP negotiations on footwear and apparel, you recently said the choice is cheaper tennis shoes versus jobs. I know you had some discussion here with Senator Snowe, and I have heard you say that. I just think that is a false choice. I think we can have both.

There are thousands and thousands of good-paying jobs in the design, R&D, and marketing of footwear. Just to make clear, I want to work closely with you on this issue, because I want those jobs and manufacturing jobs considered during the TPP negotiations.

Now second, on a housekeeping matter, I just want to make sure that the record is clear on that. You were at Ways and Means last week, and you mentioned that, by one measure, the United States enjoyed a trade surplus in solar technology. I think you know, and we have shown it to your office, I have done a report on this question of green goods.

My sense is what you were talking about were the 2010 trade figures, because the recent figures are out. No matter how you measure it, in 2011 the U.S. suffered a massive trade deficit in solar technology, particularly in cells and modules that make up the solar panels. This reversal, in my view, is due to China. This deficit concerns me. I know it concerns you. I just wanted to make that clear for the record as well.

Let me turn and wrap up with some questions again about intellectual property, because the same issues that were on the table in the Protect IP Act, the Stop Online Piracy Act, the discussion we had with respect to ACTA, are now on the table in the negotiations about the Trans-Pacific Partnership agreement, the TPP discussions.

I am getting a lot of questions and complaints and concerns from people who care passionately about Internet freedom, what is going to happen with respect to technology policy, about the fact that right now one is required to obtain a security clearance and permission by the administration to see documents relating to the TPP negotiations.

The public, particularly those who feel so strongly about this issue, which has generated enormous interest across our country, the public just feels shut out with respect to this debate about Internet freedom and competition and innovation.

I just want to get a sense of why the administration agreed to this process for these discussions. It does not seem to me to be in line with the President's commitment to transparency and open government. Give me your sense about how we got into this, and then what can we do to turn it around? Because I think millions of Americans, as we saw in the discussion with Protect IP and SOPA, they want to be part of these discussions, and they are feeling locked out in one proceeding after another.

Ambassador KIRK. Well, Senator, if I might, if I can go back to one of my guiding principles when I was Mayor, and privileged to serve as Mayor of Dallas, and we were in a situation like this, I would always tell my staff, the truth is an option. So let us go back to one thing. One, you can be helpful. First, we do not help ourselves by trying to conflate the recent debate over PIPA and SOPA with what we are doing in TPP, because nothing could be further from the truth, first of all.

So, one, you can help us in making sure people understand this is completely the opposite. None of the issues of which you had the most concern over, those provisions in SOPA or PIPA, is included in the TPP, first of all, so that concern is unfounded.

I think we have some credibility on this because, when we were negotiating ACTA, many of the same voices that raised legitimate concerns on PIPA put out a tremendous amount of misinformation about ACTA, which was subsequently shown to be not true. What we are doing in our work in ACTA and TPP, frankly, is the oppo-

site. We are trying to make sure that we promote the free flow of data and information.

We have no provisions at all trying to restrict the flow of information, and we are following the same balanced approach in the TPP that Congress established when you passed the Digital Millennium Copyright Act. They are complemented by what we are trying to do on market access-opening provisions.

So I think the first thing is to make sure we get the truth out: these are two different animals. Second, as I mentioned to Chairman Baucus and Ranking Member Hatch and others, we have engaged in more public consultations over this Trans-Pacific Partnership, probably by 10-fold, with Congress compared to all of our provisions that we have been negotiating.

We have had just over 350 consultations with Congress alone, many more with our stakeholders. We have had stakeholders participate as observers in a number of our sessions, negotiating, including those who are concerned about these issues.

We are proceeding with the same negotiating parameters in this Trans-Pacific Partnership that the United States has negotiated in every trade agreement over the last 20 to 30 years. So, nothing that we are doing is different. We have moved to disclose more information sooner than any previous administration, as we did in the case of ACTA.

But the reality is, because these are very complex negotiations, we are representing the United States and the President as your counsel, as are our other partners. You can understand there is a certain degree of discretion that has to occur in order to get these countries to sit down at the table and negotiate with us.

But I would defend our record for transparency, for inclusion of all groups, against any other administration. I think we have gone further, and we are absolutely acting consistently with the President's commitments that he made in terms of having a more transparent administration.

Senator WYDEN. Mr. Ambassador, let us take your statement—and that is why I wanted you to kind of expand on your thinking—and juxtapose it along the lines of what people who care about these issues are coming to me and telling me. They are saying right now there is currently a requirement for a security clearance to see TPP text and documents that can impact Internet freedom. That is what people tell me, that they have to have a security clearance to see the documents. So we put that alongside your statement.

Let me ask you about something that might clear this up, and actually get this resolved. What is wrong with letting the public see the text in real time, of at least what your office is proposing, as it relates to Internet freedom? In other words, I have heard your views. I have tried to tell you what people are coming and telling me.

I am saying to a public official who always looks to try to work with me, why do we not resolve this, and resolve it by putting out the text in real time of what the proposals are with respect to issues that can touch on Internet freedom, certainly what people feel will touch on Internet freedom?

What would be wrong with putting that online, so we could dispose of this issue, show that once again the President, whom I know feels strongly about transparency and openness, is demonstrating that, and we put this issue to bed?

Ambassador KIRK. Well, again, Senator, we have moved—if you look at our modus operandi on ACTA, as soon as we had enough of a convergence among our negotiating partners and we thought we had the text, we moved to do that. When we did, I would remind you, at least our office received a fairly stern message from the two committees who oversee my work that this not become the norm for USTR for the practical reason—and I understand the need; more of this is when we disclose.

But the practical answer to, what is wrong with putting it all out now, nothing, unless you do not ever want to negotiate a trade agreement, because no one will sit at the table and negotiate with us if we put all the terms of every text out. It is an evolving process.

Second, with respect to the security clearance required, as you know as chairman of the Trade Subcommittee, this Congress mandates that I have a number of trade advisory committees because of the complexity of trade deals. You want to make sure that we have, first of all, thoughtful intelligence from those affected by that. All of them operate as what we call, Senator, cleared advisors.

That is because of congressional law. You give us the latitude, for those who serve on these advisory committees and have passed the security clearance, we do share the text with those, whether it relates to Internet or agriculture or pharmaceuticals or any of the multitude of trade advisory committees that we have.

That is one way that we make sure that we have the interests of different communities voiced and taken into account in our trade policy. It is a very thoughtful policy. It serves us well. I believe it is the most appropriate way for us to go forward.

Senator WYDEN. Mr. Ambassador, just let us see if we can wrap up on this point. I also serve on the Intelligence Committee, so day after day I see just how you draw the bright lines with respect to security clearances and matters that can be classified and deserve special treatment because of the implications they can have for national security in particular.

I just think—and you mentioned the norm. The norm changed, Mr. Ambassador, on January 18, 2012, where millions and millions of Americans said, we will not accept being locked out of debates about Internet freedom. They just said, we have to have a chance on something that is so important to innovation and competition, we have to have a chance to be heard. And I am not asking for everything to be published, and certainly I respect your judgment with respect to issues that affect national security and classified matters.

But issues that pertain to freedom and innovation on the net are policy questions, and the American people want a chance to participate. I am going to give you the last word on it, but it relates a bit to what we wrapped up with on the ACTA discussion.

That is one topic, and now we are having some of the same issues being raised on TPP. These questions are not hypothetical, Mr. Ambassador. They are not. The prospect of the Congress of the

United States passing a piece of legislation, for example, that changes the Digital Millennium Copyright Act, and does it in a way that is inconsistent with ACTA, that is very real. These are not hypothetical, speculative questions.

We are not going to resolve all of them today, and I understand that, but what I hope we will do, and what I want to take a few extra minutes for—and I appreciate your courtesy on this—is to make clear how important it is that you throw open the doors of your agency, so that the public can be heard with respect to their views on Internet freedom.

Because I thought you made an excellent presentation in terms of describing how you are handling the process. When I walk out of this room, I am going to get more calls, and they are going to say, I still have to get a security clearance in order to have a chance to see something about Internet regulation. That does not make sense.

So let's you and I see if we can work this out, take away from this my position that I feel very strongly with respect to TPP, about getting the proposals that you are looking at from a policy standpoint—not the classified matters—getting them online so that the public can have a chance to be heard on it.

I do not think these are going to be speculative questions. We learned, on January 18th of this year, that these issues are not speculative anymore, something that just kind of, people are going to talk about in the abstract. They are very real. People want to be heard.

Last word to you.

Ambassador KIRK. Senator, I could not agree with you more. There is no form of government that is closer to the people than local government. There is no form of—and no disrespect to the Senate or the Congress. I am proud to serve here. But I understand the need for transparency in government as much as any other official. This President does. But, just as we have a representative form of government, that is why we have elections.

It is why you sit here, because the people of your State collectively understand everybody in your State cannot come to Washington, so we have elected representatives whom we count on who will express the voice, and not just those you agree with but those you disagree with.

Then this Congress further refines and understands that, while you retain the constitutional authority to enter commercial treaties, as a practical matter this Congress is not going to sit down and negotiate with other countries, so you have ceded that authority to the administration.

In part of that, you have directed us to have a very balanced committee of advisors that represents a broad range of thought of those affected by trade policy, so all these voices, these concerns you have heard, have been expressed.

Now, I would submit to you again—and I agree with you, you and I are going to the same place—and I will tell you, Senator, we have done so much to reach out to stakeholders across the board to hear their concerns, not just on issues of digital freedom but on every element of what we are tabling within the TPP.

But as you understand, as an elected official, hearing from all of these voices, and everyone getting exactly what they want, are two different things. I think we have had the most open, transparent process ever. We have taken more steps to put more information before the public on our websites, on our TPP websites, than ever before.

But we have to maintain that balance between making sure that we have the space we need to negotiate with nine very different countries that may have different thoughts on the issues of Internet freedom, of Internet protection, than we, and have that in a constructive way while at the same time making sure that our public is informed until we get to the point of making sure we keep our businesses and industries competitive. That is what we have tried to do, is strike that proper balance. I think we have done that.

I know you care about it, and that is why we will always listen to your thoughts and guidance on this. But I would just take issue that I do believe we have absolutely met the President's commitment of having one of the most transparent administrations ever.

Senator WYDEN. I had promised you the last word, Mr. Ambassador, and I will just amend that pledge for 10 seconds or thereabouts. [Laughter.]

There is no question that is the way it used to work. I think what the public is saying is, we have to do better, and particularly because the Internet is the engine of innovation and competition in so many of the new jobs. So take away that you got a specific request this afternoon for at least putting the portions of the text—not the classified matters—that relate to Internet freedom policy online. I think the American people want it.

With that, Mr. Ambassador—it has been a long morning—the Senate Committee on Finance is adjourned.

Ambassador KIRK. Senator, if I might make just one final——

Senator WYDEN. Of course.

Ambassador KIRK. Not on this, but this committee has had a remarkable ability of scheduling these hearings on my wife's birthday, which the first three were. [Laughter.]

This year we missed it by 2 days. But, notwithstanding, my wife will celebrate another milestone on Friday. I think she is watching, so I did want to take this opportunity to wish her a Happy Birthday. [Laughter.]

Senator WYDEN. I like that a lot. I am sure she knows, since your Dallas days, the sacrifices for public service. We appreciate what you do.

The Committee on Finance is adjourned.

[Whereupon, at 11:50 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Hearing Statement of Senator Max Baucus (D-Mont.)
Regarding Job Creation, U.S. Exports and the President's 2012 Trade Agenda
As prepared for delivery

Winston Churchill once said, "Success is not final."

Last year was a banner year for trade. We passed three free trade agreements to open new markets for U.S. exporters, we renewed Trade Adjustment Assistance to help U.S. workers retrain for a global economy, and we renewed two important preference programs to lower costs for U.S. manufacturers and retailers.

We achieved great success, but we cannot let this success be final. We must press for continued success in 2012. An aggressive trade agenda is key to creating good jobs, including agriculture jobs in my home state of Montana. Export-related jobs pay 13 to 18 percent more than the national average.

Concrete goals will ensure continued success. We should set three major trade goals for 2012: approving permanent normal trade relations with Russia; concluding the Trans-Pacific Partnership negotiations; and addressing the challenges posed by China.

First, we must seize the opportunity provided by Russia's entry into the World Trade Organization. Russia is now the sixth-largest economy in the world and growing fast. Russia's GDP is expected to surpass Germany's by 2029 and Japan's by 2037.

For U.S. companies to take advantage of this growing market, Congress must repeal the Jackson-Vanik amendment and establish permanent normal trade relations with Russia, known as PNTR.

PNTR is a one-way street. Passing PNTR would double U.S. exports to Russia in five years. And we give up nothing in return; not a single U.S. tariff will be reduced as part of this deal.

If we don't pass PNTR by this summer, U.S. companies will lose out to competitors in China, Europe and the 150 other members of the WTO. As our economy continues to recover, we simply can't let that happen.

I traveled to Russia last month, and I saw a country with vast potential for U.S. business. I also saw a country with a troubled democracy and human rights record, and I heard about the importance of PNTR from some unexpected sources – democracy, human rights and transparency activists.

The activists all have serious concerns about Russia, but they all support PNTR. They explained that PNTR is no gift to the Russian government. To the contrary, they explained, repealing Jackson-Vanik weakens the ability of the hardliners in Russia to rally anti-American forces.

Repealing Jackson-Vanik will open Russia to U.S. companies and promote competition, openness and transparency. And I look forward to working with you and my colleagues to repeal Jackson-Vanik this summer.

The second ambitious goal that we should meet this year is the conclusion of the Trans-Pacific Partnership, or TPP, negotiations. The TPP provides a tremendous opportunity to tie together and expand trade among some of the most dynamic economies in the world.

Japan, Canada and Mexico now want to join the negotiations. Adding these countries would increase the number of TPP consumers by 50 percent. And with their inclusion, the TPP would account for a full 40 percent of the world's GDP. I know you are examining whether these countries are ready to quickly accept the high-standard commitments of the TPP. I look forward to consulting with you on that question. And I hope that our new FTA partners – Colombia, Panama and South Korea – are added to the list of potential TPP entrants as well.

Our third goal for 2012 must be meeting the challenge of China. China is the second-largest economy in the world and the third-largest destination for U.S. exports. It is a country exploding with potential for U.S. companies and their workers, but the challenges that China poses are also real.

Senator Grassley and I requested a study that uncovered $50 billion of U.S. intellectual property stolen in China each year. China's undervalued currency also continues to cost U.S. jobs, and too many Chinese imports to the United States are dumped or subsidized.

It is past time to address these problems. A recent World Bank study outlined a series of dramatic steps that China should take to reform its own economy. They include shifting away from market-distorting policies that favor state-owned enterprises in China and harm U.S. exporters. China's new leaders should heed this advice, but we cannot simply wait for China to act. We must take steps here at home.

The Interagency Trade Enforcement Center that the Administration recently announced is an important step in the right direction. I hope the Center will further enhance USTR's effectiveness in dismantling trade barriers in China and around the world. This has been USTR's core mission from day one. No agency is better positioned to perform this role than USTR.

I look forward to working with you on other steps the U.S. government can take to address both the opportunities and challenges that China poses to our companies and workers.

So let us heed Mr. Churchill's advice and remember that success is never final. Let us build on the bipartisan trade successes of last year. Let us work together on even greater trade successes this year. And, by doing so, let us work together to create the jobs our economy needs right now.

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Statement of Senator Chuck Grassley
Senate Finance Committee Hearing
The President's 2012 Trade Agenda
March 7, 2012

I appreciate your coming before the committee today, Ambassador. This committee has a number of crucial issues to address in the near future as we build off the passage of the three free trade agreements last year.

The importance of export markets to U.S. businesses and farmers only increases with time. Yet, it seems we have an ever-increasing list of issues to deal with to make sure U.S. products have a level playing field internationally.

It is important for us to hear the administration's trade agenda so we can work together on the many goals we share.

But, setting an agenda for expanding trade is a two-way street. President Obama has his priorities, and Congress has priorities. While I support the U.S. participating in the Trans-Pacific Partnership negotiations, it is time we had a sincere debate, and passage of Trade Promotion Authority.

I support USTR working towards expanding trade opportunities. In fact, I hope this administration will seek out opportunities beyond TPP. But Congress has certain objectives it expects in free trade agreements.

Having the debate and passage of Trade Promotion Authority will allow the administration and this Congress to get on the same page so we can work effectively towards the same goal. And the goal is simple: increasing markets for U.S. exports, which is good for businesses, workers, and farmers.

STATEMENT OF HON. ORRIN G. HATCH, RANKING MEMBER U.S. SENATE COMMITTEE ON FINANCE HEARING OF MARCH 7, 2012 PRESIDENT'S 2012 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:

Mr. Chairman, thank you for holding this hearing. Our economy demands a robust international trade policy, and my hope is that this hearing will contribute to the continued development of that agenda. To grow our economy and access new customers abroad, we need a trade policy that truly opens markets to U.S. goods and services.

Trade already accounts for approximately 14 percent of our nation's GDP — and we have yet to reach our full potential. In 2011, our nation's exports totaled nearly $1.5 trillion dollars. In 2010 companies from my home state of Utah exported over $13.8 billion in goods alone to countries around the world.

Last year, President Obama finally sent to Congress our long-stalled free trade agreements with Colombia, Panama and South Korea. Congress readily approved them. As a result, the American worker can soon harvest the market-access opportunities they bring.

These are positive developments.

But the fact remains that President Obama delayed sending the agreements for years while he pursued his misguided health care law and other domestic spending programs.

Now that the trade agreements are law, President Obama is eager to take credit. Yet, it is important to remember that it was President Bush's vision of an aggressive market-opening U.S. trade policy that made all three agreements possible. President Bush believed strongly in the power of trade — and matched his belief with action. He relentlessly pursued Trade Promotion Authority and, once achieved, quickly negotiated twelve free trade agreements with seventeen countries. Even U.S. participation in the Trans-Pacific Partnership, what some view as President Obama's signature trade initiative, was actually initiated by President Bush and his team in 2008.

The United States needs that same level of commitment and leadership from our President today if we are going to create the framework for prosperity tomorrow. Our workers and job-creators face significant and growing challenges in the world. There are over 300 trade agreements in force around the globe, but the U.S. is a party to only 14. China has been growing at an average rate of between 8 and 10 percent for many years, and several studies project China will surpass the United States as the world's largest economy over the next decade. Meanwhile, the U.S. economy is projected to grow at around 2.3 percent this year, too low to have much impact on the persistently high unemployment rate we have suffered under the Obama Administration.

Unfortunately, instead of the strong leadership and bold trade vision America needs to grow the economy, President Obama is satisfied with just nibbling at the edges of a comprehensive and coherent trade agenda. It is time to move past the achievements made possible under Trade Promotion Authority of 2002 and move forward with a new trade agenda of substance to address the opportunities and challenges the world presents now.

The President's new top legislative trade priority, securing permanent normal trade relations with Russia, is a poor substitute. The President would have Congress pass PNTR and ignore Russia's rampant corruption, theft of U.S. intellectual property, poor human rights record, and adversarial foreign policies for a market that amounts to .05 percent of U.S. exports. Moreover, it is a market we will have access to anyway on an MFN basis under the terms of our 1992 trade treaty once Russia joins the WTO.

I just wish the President and his Administration were straight with us and the American people. We hear a lot of rhetoric about how the President will only pursue trade policies consistent with his *values*, especially when it comes to the labor policies of our democratically elected friends in Latin America. But somehow those values vanish in the context of trade with Russia, a corrupt and autocratic regime.

A quick review of the Obama Administration's other trade priorities reveals a similar lack of substance and vision. The President's most recent executive order creating an Interagency Trade Enforcement Center, an event Ambassador Kirk called *the most significant commitment of resources and expertise devoted to trade enforcement in fifty years*, appears to do nothing more than detail personnel from one agency to another while replicating the core statutory mission of the Office of the U.S. Trade Representative. At the same time the President seeks to end USTR's special role in trade policy through a trade-agency reorganization, ending 50 years of achievement by a talented, nimble, and effective agency.

We need less hyperbole and more concrete action. We can start with Trade Promotion Authority. I was quite disturbed to hear comments that the President will seek TPA when he decides that he needs it. TPA is not something the President asks for after an agreement is negotiated. TPA establishes the foundation upon which trade agreement negotiations and meaningful consultation takes place.

Article 1 section 8 of the Constitution vests Congress with the authority over tariffs. Absent Congressional delegation of that authority and consensus directives through TPA, the President has no authority or guidance from Congress upon which to negotiate. Federal register notices and staff-level meetings are not a substitute for TPA. Moreover, many of the elements of the current Trans-Pacific Partnership negotiation do not reflect Congressional directives. Finally, few countries will conclude a meaningful trade negotiation with the United States unless the President has the authority to negotiate through TPA. But TPA will not become law without sustained engagement by the President in a substantive and meaningful way.

I appreciate the President's interest in concluding the Trans-Pacific Partnership agreement, but unless this Administration engages with Congress on TPA, and soon, I fear that this important initiative will fail under the weight of empty rhetoric without action, and that the American people will be left with an Obama trade policy that is really nothing more than false hope.

One final point. I wrote you and Secretary Geithner about trade and currency policies on September 28, 2011 and January 18, 2012. The Administration has not responded to either letter.

The American people have a right to know what the Obama Administration's position is on currency. Therefore, I would ask that both my letters be placed into the hearing record, and that the Administration response be included in the record when it is received.

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United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

September 28, 2011

Secretary Timothy Geithner
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Ambassador Ron Kirk
Office of U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Secretary Geithner and Ambassador Kirk:

I am writing to request the Administration's views regarding the propriety and legality of S. 1619, The Currency Exchange Rate Oversight Reform Act, introduced by a bipartisan group of Senators on September 22, 2011. As you know, Senate Majority Leader Reid has placed S. 1619 on the Senate Calendar and scheduled a roll call vote on the Motion to Invoke Cloture on the Motion to Proceed on the bill for Monday evening October 3, 2011. Before the Senate moves forward, it's imperative that the 100 members of this body have a full understanding of the Administration's views on this legislation.

Secretary Geithner, as Secretary of the Department of Treasury, please provide any constitutional, legal, or other policy concerns the Administration has with the currency provisions included in the bill. Moreover, please explain which provisions in the bill the Administration supports and why. Please also provide a substantive analysis that explains the bases that underlie the Administrations concerns or support for each provision.

Ambassador Kirk, as the United States Trade Representative, please provide the Administration's views regarding the World Trade Organization (WTO) and trade policy implications of S. 1619. Please explain whether the Administration believes that The Currency Exchange Rate Oversight Reform Act conflicts with any WTO obligations, and if so, in what way. If not, please explain why the Administration believes that S. 1619 is consistent with WTO rules. Please also provide a substantive analysis that explains the bases that underlie the Administrations trade policy views regarding the bill.

As the U.S. Senate will have its first vote on whether or not to move forward with S. 1619 at 5:30 pm on Monday October 3, 2011, please respond to this letter in writing by no later than 5:00 pm Monday, October 3rd. Senators deserve to know the Administration's position and views regarding this piece of legislation prior to conducting any votes to ensure an informed and meaningful debate.

Thank you for your prompt reply. As the provisions included in S. 1619 have all been present in some form in earlier versions of currency legislation introduced in the Senate, I expect that you and your teams have had plenty of time to analyze and form opinions on each provision. Therefore, I expect substantive and authoritative responses from you before Congress is called to vote on this legislation.

Sincerely,

Orrin G. Hatch
Ranking Member

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

January 18, 2012

Secretary Timothy Geithner
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Ambassador Ron Kirk
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Secretary Geithner and Ambassador Kirk:

During the Eighth Ministerial Meeting of the World Trade Organization (WTO) in Geneva, Switzerland, the United States agreed to participate in a WTO seminar on the relationship between currency exchange rates and international trade on March 27 and 28, 2012. As you know, Congress is intensely interested on the effect of misaligned currencies on international trade flows. In fact, I wrote to both of you on September 28, 2011, seeking the Administration's views on then-pending legislation in the U.S. Senate that would impose additional tariffs on products from countries with fundamentally misaligned currencies. Unfortunately, neither of your offices responded to that request. As a result S. 1619 passed the U.S. Senate on October 11, 2011 by a vote of 63 to 35 without the benefit of the Administration's views.

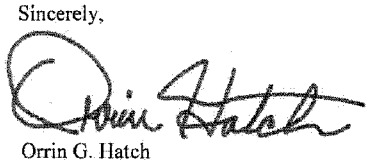
During debate over S. 1619, I offered an alternative proposal designed to enhance multilateral and plurilateral pressure on countries that misalign their currency. If adopted, my amendment would have directed the Administration to work within the World Trade Organization and the International Monetary Fund to develop effective rules and remedies to mitigate the adverse trade and economic effects of fundamentally misaligned currencies, and to encourage countries with fundamentally misaligned currencies to modify their currency practices. Given strong Congressional interest in these currency matters, and the fact that the Administration will participate in the seminar at the WTO specifically addressing the relationship between currency exchange rates and international trade, please provide, by March 5, 2012: (1) the Administration's position regarding S. 1619; (2) a summary of the Administration's positions on the relationship between trade and currency policies that will be presented at the upcoming WTO seminar; (3) a list of the individuals who will be representing the United States at the WTO seminar; (4) a list of individuals presenting at the request of the United States and an overview of the substance of their presentations; and (5) what the Administration seeks to achieve at the WTO seminar.

My amendment also established a new negotiating objective for future and ongoing negotiations, such as the Trans Pacific Partnership (TPP) negotiations, which would prohibit parties to the

agreement from fundamentally misaligning their currencies and commit parties to the agreement to work together to mitigate the adverse trade and economic effects of non-party currency misalignments. Many stakeholders consider currency manipulation a key policy issue impacting trade and America's competitiveness in a global economy. Many also believe that currency practices must be directly addressed in bilateral and multilateral trade negotiations, particularly negotiations such as TPP which are designed to address "21st Century" international trade issues. Addressing currency manipulation in the TPP becomes particularly important as the Administration considers the possibility of new TPP participants, such as Japan, who have demonstrated a pattern of currency interventions. Given Japan's professed interest in joining the TPP, I respectfully request that the Administration provide its views regarding the inclusion of such a currency provision as a key negotiating objective in the TPP.

I look forward to your response.

Sincerely,



Orrin G. Hatch
Ranking Member

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Senator Hatch:

Thank you for your letter regarding the effect of misaligned currencies on international trade flows. We share your concerns on currency misalignment – including, in particular, the undervaluation of China's currency – and addressing it is a top priority for the Administration.

The Administration has pressed China at every opportunity for policy changes that yield greater exchange rate flexibility, and we will continue to do so. The RMB has appreciated in inflation-adjusted terms over 13 percent against the U.S. dollar since June 2010 and over 40 percent since 2005. While progress has been made, it is insufficient. Treasury will continue to monitor closely the pace of RMB appreciation and we will continue to urge strongly those actions necessary for greater exchange rate flexibility, a more level playing field, and a more pronounced and sustained shift to consumption-led growth in China.

In addition to our aggressive bilateral engagement, including through the Strategic and Economic Dialogue, we have pursued this issue with our allies and partners around the world and through the International Monetary Fund and the G-20. The United States has successfully built broad support in the G-20 for a commitment to market-determined exchange rates. At the G-20 Leaders Summit in Cannes last November, G-20 members, including China, committed to "move more rapidly toward more market-determined exchange rate systems and enhance exchange rate flexibility to reflect underlying economic fundamentals, avoid persistent exchange rate misalignments and refrain from competitive devaluation of currencies."

As part of our engagement, we used the recent seminar in the World Trade Organization as an opportunity to emphasize the importance of market-determined exchange rates in promoting more balanced global trade and faster and more efficient global adjustment of external imbalances. Deputy USTR Ambassador Punke and Treasury Deputy Assistant Secretary for International Monetary and Financial Policy Mark Sobel made our case advocating the benefits of a flexible exchange rate.

While the primary focus of the seminar was the impact of exchange rates on trade, rather than a review of countries' exchange rate policies *per se* or the WTO rules, we expect that those issues will continue to be discussed in the WTO, informed in part by the results of last month's seminar. We will keep you and your staff apprised as these discussions unfold.

We also appreciate your interest and views on how currency issues could figure in future and ongoing negotiations. Like you, we have taken note of considerable stakeholder interest in this issue, and we will want to be in close contact with you as we consider possible approaches to address persistent exchange rate misalignments.

Finally, you asked about the pending currency legislation. The President has been clear that we strongly share Congress's objective of providing a level playing field with China for our workers and companies. Aspects of the pending legislation do, however, raise concerns with our international obligations; if legislation were to advance, those concerns should be addressed. For any approach to be effective, it must be consistent with our international obligations.

We look forward to continuing to work closely with you and all members of Congress so that U.S. firms and workers benefit fully from our bilateral and multilateral trade arrangements.

Sincerely,

Timothy F. Geithner
Secretary of the Treasury

Ronald Kirk
U.S. Trade Representative

Testimony of Ambassador Ron Kirk
United States Trade Representative

March 7, 2012
Senate Finance Committee Hearing
211 Dirksen Building
Washington, D.C.

Chairman Baucus, Ranking Member Hatch, members of the Committee, thank you for the opportunity to testify.

This time a year ago, I shared with you the Obama Administration's ambitious plan to open new markets for U.S. exporters and level the playing field for American farmers, ranchers, businesses, and workers. Working together over the past year, we showed what we can do to help our companies grow and put Americans back to work. We resolved the outstanding issues and passed three improved trade agreements with Korea, Colombia and Panama with strong bipartisan support. We extended the Generalized System of Preferences (GSP) and the Andean Trade Preference Act (ATPA). And to support workers transitioning to new jobs, we renewed a streamlined Trade Adjustment Assistance (TAA) program. Thanks to our combined efforts, today U.S. trade policy is increasingly responsive to the concerns of more Americans, and the playing field is more level for our businesses, workers, farmers, ranchers and families who depend on the well-paying jobs that U.S. exports support.

This year, we can build on the momentum created by our bipartisan efforts and forge ahead with another ambitious trade agenda in 2012.

In his State of the Union address, President Obama laid out a blueprint for an economy that's built to last. It's built on the notion that if American businesses do what they can to bring jobs back to the United States, we will do everything we can to help them compete and succeed. The dedicated team of trade and legal experts at the Office of the United States Trade Representative (USTR) is front and center in that mission. Our efforts are helping to keep us on pace to meet the President's National Export Initiative goal of doubling exports by the end of 2014. We are opening new markets for U.S. exports, and we are ensuring U.S. companies and workers aren't at a disadvantage with their foreign counterparts as we continue to strengthen the rules-based trading system.

Today, I can proudly report to the Committee and Congress that the trade agreements we passed together are well on their way toward being implemented and entering into force. Right now, final plans are being made between the U.S. government and the government of Korea to bring the U.S.-Korea trade agreement into force on March 15. Similarly, we are continuing close coordination and consultation with the governments of Colombia and Panama to ensure they fulfill their commitments to bring those trade agreements into force as soon as possible.

Strong trade enforcement continues to be a top priority for the Administration. As you know, we believe the U.S. Court of Appeals for the Federal Circuit wrongly decided the case of *GPX International Tire Corp. v. United States* (*GPX* case), wherein the Court held that the Department of Commerce (Commerce) lacks the legal authority to impose countervailing duties

(CVDs) on subsidized imports from countries with non-market economies, such as China and Vietnam. The flawed decision jeopardizes the ability of the United States to remedy the harmful effects of unfairly subsidized imports, and would impair Commerce's ability to ensure that our nation's manufacturers and workers have the opportunity to compete on a level playing field with our trading partners. Notwithstanding the strength of our legal position, legislative action clarifies the law and avoids harm from injurious, subsidized goods. I appreciate your efforts in passing legislation that remedies the court's flawed ruling.

As Russia is set to join the World Trade Organization this year, the Administration is seeking legislation from Congress to ensure that American firms and American exporters enjoy the same job-supporting benefits of Russia's membership in the WTO rules-based system as our international competitors. Specifically, we must work together to terminate application of the Jackson-Vanik Amendment and authorize the President to extend permanent normal trade relations status to Russia as soon as possible. Bringing Russia, the largest market currently outside the WTO, into the rules-based global trading system will provide the United States with more enforcement tools to secure enhanced market access for both U.S. goods and services and a level playing field for U.S. exporters and service providers in Russia. We are committed to working with Congress to ensure that Russia has the responsibilities as well as the rights of a true trade partner.

As we continue to strengthen the rules-based trading system and hold our trading partners accountable for their obligations, we are also thinking creatively about how to enhance our trade enforcement capabilities. That is why President Obama signed an Executive order to support a new trade enforcement unit—the Interagency Trade Enforcement Center (ITEC), which will significantly enhance the administration's capabilities to prioritize and aggressively challenge unfair trade practices around the world, including those in China. The ITEC will represent a more aggressive "whole-of-government" approach to addressing unfair trade practices. Congress' support for this initiative will enable the Administration to investigate and pursue enforcement cases critical to the needs of U.S. business and workers throughout the country.

We are committed to ensuring that our trading partners adhere to WTO rules as well as trade agreement obligations through negotiation when possible and litigation where appropriate. For example, just yesterday, we filed a challenge to India's non-science based ban on certain key U.S. agriculture exports, like poultry meat. The Obama Administration is also defending U.S. manufacturers' right to a level playing field as we seek a solution with the EU that will remove improper subsidies from the global aerospace market, and as we press China to move promptly to remove their improper export restrictions on key industrial raw materials. We continue to seek market access in China for suppliers of electronic payment services as China effectively blocks U.S. and other foreign suppliers from participating in China's large and growing market for card-based transactions.

We must also address what seems to be the Chinese government's reflexive resort to trade actions in response to legitimate actions taken by the United States or other trading partners under their trade remedies laws. This type of conduct is at odds with fundamental principles of the WTO's rules-based system and we will vigorously protect our rights. The Administration is currently challenging China's apparent improper imposition of duties on American broiler

chicken products as well as China's anti-dumping and countervailing duties on hundreds of millions of dollars worth of American steel exports to China. In addition to pursuing these cases vigorously in 2012, the Obama Administration will bring additional cases – regarding practices of China and other WTO trading partners – as appropriate to enforce WTO commitments.

Given the importance of our growing trade relationship with China, the United States will use all available tools in 2012 to ensure that China engages in fair play on trade and that U.S. exporters have a fair shot to compete in China. In addition to enforcement efforts that aim to end discriminatory policies and unfair subsidies, we will also continue to press China – through the Strategic & Economic Dialogue, the Joint Commission on Commerce and Trade, and other ongoing engagement – to open investment opportunities, to complete negotiations to join the WTO Government Procurement Agreement by offering comprehensive coverage of its procurement, and to increase transparency and eliminate market access barriers and distortions in areas ranging from agricultural goods to services.

This year, the Administration will also seek China's complete implementation of its commitments to strengthen IPR protection and enforcement, including eliminating the use of illegal software by Chinese government entities. Likewise, focus will remain on ensuring an end to discriminatory "indigenous innovation" policies, as the Administration continues its efforts to protect the value of U.S. intellectual property and technology in China and support IP-related American jobs here at home. Last month's agreement between China and the United States to significantly increase market access for imported movies is a positive development in this regard, as was China's action last year to remove local content requirements for wind energy equipment in China.

The Trans-Pacific Partnership (TPP) is a top priority for the Administration this year. Through the TPP, the Obama Administration is advancing the United States' multifaceted trade and investment interests in the dynamic Asia-Pacific region, where experts estimate that economies will grow faster than the world average through 2016. Building on the broad outlines announced last November in Honolulu, in 2012 the United States will seek to conclude a landmark, high standard TPP agreement with like-minded partners including Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. The agreement will address new cross-cutting issues such as promoting regulatory coherence among the countries, including with respect to sanitary and phytosanitary measures, enhancing the participation of small businesses in Asia-Pacific trade, and building regional supply chains that promote U.S. jobs. We will also decide with TPP partners on the entry of additional countries that have expressed interest in joining the negotiations, including Canada, Japan, and Mexico. In ongoing bilateral consultations with these potential partners, the United States continues to make clear that any new participants must be able to meet the high standards agreed by all TPP negotiating partners and be prepared to address specific issues of concern. Of course, we have and will continue to consult closely with Congress on the TPP. As we move toward negotiating outcomes and new partners, the Obama Administration will explore issues regarding additional trade promotion authority necessary to approve the TPP and future trade agreements.

The Administration is exploring with our trading partners creative approaches to fostering increased regional trade and investment integration worldwide, not only through the Trans-

Pacific Partnership and across the Asia-Pacific, but also with the European Union and in response to historic transitions and changing conditions in areas such as the Middle East and North Africa (MENA).

We are engaging with the EU through a High-Level Working Group on Jobs and Growth to deepen and enhance our strong transatlantic trade and investment relationship, which already sustains several millions of jobs in the United States, and has the potential to sustain more. We are working with the EU to identify new opportunities to enhance international competitiveness and job creation in both of our markets.

We are working with regional partners in a Trade and Investment Partnership Initiative in the Middle East and North Africa. This effort will include a broad set of initiatives, including agreements, where appropriate, designed to increase job-supporting trade and investment between the United States and the region, as well as within the region. This initiative will build on specific steps taken in 2011 and early 2012 with a number of partners to boost trade, expand investment and support small and medium-sized enterprises.

We are also seeking to make additional progress with countries in sub-Saharan Africa and the Western Hemisphere. I have spoken with members of Committee about our plans in these areas, and the Administration is eager to work with Congress right away to pass legislation that extends the third-country fabric provision of the African Growth and Opportunity Act (AGOA) to 2015 and identifies South Sudan as a listed sub-Saharan African country, as well as legislation to make technical corrections to the textile and apparel rules of origin in the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR). At the same time, we intend to work with Congress and AGOA partners toward defining and achieving a seamless renewal of AGOA beyond 2015. And while we move quickly to implement new agreements with Colombia and Panama, we are also working with partners throughout the Western Hemisphere to enlarge the benefits of our existing agreements by exploring new areas to promote enhanced trade, such as regulatory cooperation.

Our pursuit of enhanced trade to support American jobs extends across all geographic regions and all major economic sectors as well. That is why we are successfully pursuing measures to enhance market access for America's manufacturers, farmers, ranchers, and service providers around the world. For example, when we put our free trade agreements with Korea into effect in mid-March there will be important new export opportunities to that country for the American automobile industry, which has accounted for 23.2 percent of the increase in manufacturing production since the U.S. economic recovery began. We recently concluded an important arrangement with the EU that will benefit American farmers and ranchers, create more opportunities for small businesses, and result in good jobs for Americans who package, ship, and market organic products. And we will continue to press trading partners to remove restrictions on market access for U.S. beef exports.

At the WTO, we continue to look for fresh, credible approaches to market-opening trade negotiations. We remain open to pursuing progress under the framework of the Doha Round where there are reasonable prospects for producing significant results. And we will work with other members to ensure that the vital, ongoing work of the WTO's various committees remains

vigorous and relevant to the world we live in. At the same time, we are ready to consider other options where more progressive WTO members have expressed interest, such as services.

All of these initiatives help contribute to the goal the President set two years ago of doubling U.S. exports over five years. Thanks to our bipartisan efforts, we remain on track to meet that goal: in 2011, overall U.S. goods and services exports exceeded $2.1 trillion, which represents a 33.5 percent increase over 2009. Export gains continued across all major sectors in 2011: services exports were up 19.7 percent over 2009; manufacturing exports were up 33.4 percent; and agricultural exports were up 38.6 percent.

Working together, we can ensure our trade policy continues to help create the jobs Americans want and provides for new opportunities for our workers, businesses, farmers, and ranchers. I look forward to our discussion today. Thank you.

we wear™ jobs

Written Testimony
Submitted by the
American Apparel & Footwear Association (AAFA)

Before the
Senate Finance Committee
On
The President's 2012 Trade Agenda

March 7, 2012

Thank you for providing us this opportunity to provide written testimony for today's hearing titled "The President's 2012 Trade Agenda". We believe that, if done correctly, U.S. trade policy holds immense potential to grow the U.S. apparel and footwear industry, create U.S. jobs, help hardworking American families, and support the U.S. economy.

Imports are Good for American Workers, American Families, and American Businesses
The American Apparel & Footwear Association (AAFA) is the national trade association representing the apparel and footwear industries, and their suppliers. Our members produce and market sewn products throughout the United States and the world. In short, our members make everywhere and sell everywhere.

And despite many rumors of our demise, the U.S. apparel and footwear industry today is still a major industry, employing millions of people in the United States.

The basic premise is this: When we wear clothing and footwear, we wear more than the garments and shoes themselves. We wear the innovation and intellectual property that make the shoes and clothes better. We wear the socially responsible and sustainable supply chains and the product safety systems that make the clothes and shoes safer and more responsible. And we wear the U.S. jobs involved in creating and delivering an ever wider variety of clothes and shoes to hardworking American families at lower prices.

And when we talk of jobs in the 21st century U.S. apparel and footwear industry, we are talking about 4 million U.S. workers. These are the Americans - seen and unseen - who design shoes and clothes, perform R&D, cut and sew, oversee production, handle customs and logistics, ensure compliance, market and merchandise product, and work on the sales floor. And these numbers don't even include the thousands of jobs of U.S. workers in transportation, distribution, warehousing, and logistics who support our industry.

With 98 percent import penetration in apparel and 99 percent import penetration in footwear, these 4 million U.S. workers are almost entirely dependent upon U.S. imports.

In fact, about 75 percent of the retail value of most clothing and footwear comes from pre- and post-production activities in the United States. So when we wear our clothing and shoes, we wear the realization that imports create jobs in the United States in addition to creating consumer choice and affordable style.

1601 North Kent Street
Suite 1200
Arlington, VA 22209

(703) 524-1864
(800) 520-2262
(703) 522-6741 fax
www.wewear.org

And these jobs are high-valued added jobs. The average hourly earnings for a worker in a U.S. apparel factory is $11.96/hour, while the average hourly earnings for a worker in a U.S. apparel or footwear brand (U.S. wholesale apparel and piece good trade) is

$25.35/hour and the average hourly earnings for a worker in the retail side of the apparel and footwear business is $14.50/hour. Likewise, the average hourly earnings for a worker in transportation and logistics, a key link in the apparel and footwear supply chain, is $21.65/hour.

We wear also the knowledge that this industry -- often described as a "sunset" industry by those who only view an industry's value through its U.S. manufacturing footprint -- is the largest consumer products industry in the United States. With annual sales of $340 billion, we outstrip many other "big" industries, including the $17 billion spent on bottled water, the $22 billion spent on video games, the $75 billion spent on fast food, the $127 billion spent on soda, the $175 billion spent on new cars, and the $277 billion spent on alcoholic beverages.

And while we are proud of our domestic manufacturers and the jobs they support, many of which equip our servicemen and servicewomen with the uniforms and boots to protect them in the field, we are also proud of the many other high value, well-paying U.S. jobs our members provide.

As such, we believe that the U.S. trade policy agenda and future U.S. trade negotiations must reflect the reality that imports, and trade overall, are good for American families, American workers, American businesses, and the American economy.

U.S. trade policy must be fundamentally realigned to incorporate this reality, including:

1) Realigning Trade Policy to Help U.S. Workers, U.S. Families, & U.S. Businesses
As previously noted, 99% of all shoes and 98% of all clothing sold in the United States today is imported. Yet, the United States still continues to charge duties on U.S. imports of footwear and apparel, much of which has not been manufactured in the United States for decades, if ever. And these import duties are high. While duties on all U.S. imports average a low 1.5%, duties on U.S. imports of footwear average 11% and duties on U.S. imports of apparel average 13%.

These duties aren't paid by the foreign country or the foreign exporter. They are paid by the U.S. company, who must incorporate that import duty into the price they charge U.S. consumers. And these duties are regressive, with the highest duties on apparel and footwear, with some as high as 67.5%, falling on the lowest-cost clothes and shoes. What's worse is that these import duties act as a hidden tax on hardworking American families, with most not knowing that 10, 20, 30% of the price they pay at the cash register for one of life's necessities is because of import duties.

These high import duties, which protect no one, also serve as a disincentive to U.S. companies to invest in new technologies and new products. Not only do the import duties raise the price of shoes and clothes, meaning that U.S. companies sell less, but the high import duties can price the most technologically-advanced clothing and shoes out of the market altogether.

Thankfully, a fast-growing number of progressively-minded members of Congress are introducing and championing legislation that recognizes that these import duties protect no one and only serve to hurt hardworking American families, American workers, and American businesses.

As such, we urge the Committee to support these efforts by quickly considering and approving the following legislation:

- Affordable Footwear Act (S. 1069) – This bi-partisan, commonsense legislation temporarily eliminates the import duties on low-cost footwear, children's shoes, and other types of high-dutied footwear no longer made in the United States, or about 1/3 all of footwear import duties.
- U.S. OUTDOOR Act (S. 704) – This bi-partisan legislation would temporarily eliminate the import duties on certain types of "recreational performance outerwear." This outerwear has never been made in the United States and represents the most technologically-advanced outerwear on the market today.

We also urge the Committee to immediately re-start the Miscellaneous Tariff Bill (MTB) process as well as quickly approve legislation that would renew the hundreds of MTB provisions expiring at the end of this year. The MTB process is a non-controversial and bi-partisan process that allows for the temporary elimination of import duties on products no longer manufactured in the United States, like many types of

footwear and apparel. Just as important, the MTB process recognizes the reality of today's global supply chains by creating a mechanism to allow for the import, duty-free, of critical inputs no longer made in the United States that are used in U.S. manufacturing, including U.S. footwear, apparel, and textile manufacturing.

2) Realigning U.S. Trade Policy to Help the Countries that Need it Most While Also Helping U.S. Workers, U.S. Businesses and U.S. Families

U.S. trade policy can be a powerful tool, not only to help U.S. workers, U.S. consumers, and U.S. businesses, but also to help the world's poorest countries rise out of poverty. Not only is helping the poorest countries rise out poverty the right thing to do, and a core American value, but it also serves America's interests on four other fronts: 1) creating new markets for U.S. products, U.S. agriculture, and U.S. services; 2) promoting America's security; 3) lowering the costs of products for hardworking American families, and 4) helping U.S. companies better compete in the global economy.

At the same, it has been proven time and again over the last two centuries that apparel and footwear are the first stepping stones towards industrialization and building a viable economy. Not only is this truth woven into the fabric of American history, this story has played out more recently in Taiwan, Korea, Costa Rica, India, Indonesia, and now China.

Yet, Congress' key trade policy tool to promote development, the Generalized System of Preferences (GSP) program, statutorily excludes apparel, footwear, and related fashion products like travel goods from receiving any benefits. Starting with the African Growth & Opportunity Act (AGOA) and the Andean Trade Promotion & Drug Eradication Act (ATPDEA) a decade ago and most recently with the Haiti HOPE/HELP Acts, however, Congress has begun recognize the key role the apparel and footwear industries can play in development.

As such, we urge the Committee to quickly consider and approve the SAVE Act (S. 1244), bi-partisan, commonsense legislation that would allow duty-free access to the U.S. market for apparel from the Philippines, a key U.S. ally and former U.S. colony, as long as the apparel, for the most part, is assembled with U.S.-made fabrics.

Further, we urge the Committee to tackle overall trade preference reform to ensure that the world's poorest countries obtain real and meaningful access to the U.S. market for the products they are most likely to produce – apparel and footwear – for all of the reasons outlined previously. A good first step for the Committee would be to quickly consider and approve the Asia-South Pacific Trade Preferences Act (S. 1443).

3) Realigning FTA Negotiations to Reflect Today's Global Economy

We applaud the Obama administration for embarking on an ambitious effort to conclude negotiations towards a 21st century Trans-Pacific Partnership (TPP) Free Trade Agreement. We believe, however, that President Obama is missing two key ingredients that are necessary for making these efforts a success.

First, the Committee must quickly consider and approve Trade Promotion Authority (TPA). TPA enables the Obama administration to negotiate in good faith with our TPP partners. More importantly, TPA makes clear not only to the Obama administration, but to our TPP partners the priorities of the United States in negotiating a commercially-meaningful, 21st century TPP agreement.

Second, we urge the Obama administration to recognize and we urge the Committee to make clear that the successful conclusion of negotiations towards a 21st century TPP agreement requires the United States to abandon policies that clearly don't help U.S. workers, U.S. companies, or U.S. families, policies that clearly don't work in today's global economy.

The U.S. government's continued pursuit of 20th century "yarn-forward"-style rules for apparel and textiles in the TPP is one such failed policy that must be abandoned immediately. Almost two decades of U.S. trade policy have proven that "yarn-forward" rules have failed to promote trade. Despite the proliferation of U.S. free trade agreements over the last two decades that have embraced the "yarn-

forward" rules for apparel, the percentage of U.S. apparel imports from our FTA partners continues to fall precipitously, from 40.3% of total U.S. apparel imports in 2001 to a record low of 17.2% in 2011. The "benefits" of "yarn-forward" have failed to materialize on the export side either. For example, U.S. textile exports to the four TPP partner countries with whom the United States already has FTAs – Australia, Chile, Peru, and Singapore – actually fell slightly (-0.1%) between 1999 (shortly before the FTAs were implemented) and 2011. The bottom line is that antiquated "yarn-forward" rules don't reflect the realities of today's global economy, where apparel is made everywhere and sold everywhere, using textiles and other inputs made anywhere.

Meanwhile, claims that U.S. textile manufacturers can only compete in a lopsided playing field in FTAs when given the "protections" of a "yarn-forward" rule just don't live up to the numbers. While U.S. textile exports to the four TPP FTA countries fell slightly between 1999 and 2011, U.S. textile exports to another country with whom we don't have an FTA or "yarn-forward" rules – China – surged 658.7%, more than sextupling in just over a decade. And this isn't just small potatoes. U.S. textile manufacturers exported over $1.1 billion worth of yarns and fabrics to China in 2011, making China the 2nd largest market for U.S. yarn and the 3rd largest market for U.S. fabric.

"Yarn-forward" rules don't help U.S. manufacturers. To the contrary, such restrictive rules hurt U.S. manufacturers. As with many great U.S. industries, the China numbers also show that U.S. textile manufacturers can not only survive, but thrive when given a level playing field. Imagine what duty-free access to these markets could do to boost U.S. textile exports to new heights.

Just as important, dogged pursuit of 20th century "yarn-forward" rules in the TPP not only hurts the U.S. apparel industry and the millions of U.S. workers the industry employs, it also severely impairs the ability of the United States to reach the many goals it hopes to achieve in the negotiations.

Over 60% of the duties our current TPP partners pay on their exports to the United States are on apparel. For TPP partner Vietnam, that number exceeds 80%.

As such, negotiations over the apparel provisions cannot be done in a vacuum. Decisions over granting meaningful access to the U.S. apparel market will directly impact the ability of the United States to secure meaningful market access in the TPP countries for U.S. agriculture, U.S. manufacturing, and U.S. services, as well as securing robust provisions on the Internet, State-Owned Enterprises (SOEs), labor rights, the environment, intellectual property rights (IPR), and investment.

Despite this fact, the U.S. government continues to attempt to negotiate the apparel provisions of the TPP in a vacuum. The Obama administration must recognize and the Committee must make clear that the continuation of this policy will serve no one's interest. Such a policy will not only harm the millions of U.S. workers in the apparel industry, but also the countless millions of farmers and workers employed in U.S. agriculture, U.S. manufacturing, and U.S. services.

4) Realigning U.S. Trade Policy to Create a Predictable Business Environment

Congress has long used trade policy in a concerted effort to make U.S. farmers, U.S. manufacturers, and U.S. businesses more competitive in the global economy. Yet many of those efforts have fallen far short of expectations. The lofty goals behind such programs as the African Growth and Opportunity Act (AGOA), the Miscellaneous Tariff Bill (MTB), the cotton and wool trust funds, the Andean Trade Promotion & Drug Eradication Act (ATPDEA) as well as behind key provisions in U.S. FTAs like the U.S./Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) have not been realized.

These programs and provisions have fallen short of expectation not because the core concepts underpinning the programs were wrong, but because either 1) they included provisions legislated by Congress, or interpreted by the administration, that did not reflect economic realities or 2) key provisions have not been renewed in a timely manner. Both of these points go to the heart of what is necessary for a successful U.S. trade policy – a predictable business environment.

On the first point, we would like to highlight two examples. The first is the so-called "abundant supply" mechanism in the apparel provisions under AGOA. The mechanism was based on the laudable goal of

creating a vertical textile and apparel industry in Africa. However, the timeline for achieving that goal did not reflect the realities of the global apparel industry. So, instead, of creating a vertical industry in Africa, the provision, before it was subsequently removed by Congress, only served to drive many U.S. apparel brands and retailers out of Africa, many of whom have never returned. The second is a provision created by Congress under CAFTA-DR that is intended to grow U.S. denim fabric exports to and U.S. jeans imports from the Dominican Republic. The so-called "DR 2:1" program was modeled on a similar, successful program with Nicaragua under CAFTA-DR. However, because of an overly restrictive interpretation of the rule by the U.S. government that failed to take into account the realities of the industry or the market, the program has failed miserably.

On the second point, companies in the U.S. apparel and footwear industry make sourcing or manufacturing decisions 9-12 months before any product is actually delivered. This timeline is necessary to meet the sometimes contradictory demands of just-in-time inventory and quick replenishment required in today's market. So, for example, when Congress renews the Andean Trade Promotion & Drug Eradication Act (ATPDEA) multiple times for 6 months, 8 months, 10 months, or 2 months, and then allows ATPDEA to lapse altogether only to retroactively renew the program 8 months later, it is no surprise that U.S. apparel imports from Colombia have slid 72.3% and U.S. textile exports have fallen 40.4% since 2004. Likewise, Congress allowed the cotton and wool trust funds, two successful programs designed to enable U.S. cotton shirt and wool suit manufacturers to recover the cost of the high import duties on key inputs (cotton shirting fabrics and wool) no longer made in the United States to expire in 2010. Despite desperate pleas from these U.S. manufacturers, who now have no choice but to bear the full brunt of these import duties on critical inputs, Congress has failed to renew these programs.

The U.S. apparel and footwear industry is not alone in needing such a predictable business environment. As such, AAFA urges the Committee to quickly consider and approve:

- AGOA 3rd Country Fabric Provision – This provision, which expires September 30, 2012, accounts for virtually all apparel trade under AGOA. Many apparel firms have already canceled orders for fall 2012 because of concern that Congress won't renew the provision.
- Renewal of the cotton and wool trust funds – As previously stated, these programs are critical to U.S. cotton shirt and wool suit manufacturers and the thousands of U.S. workers they employ.
- Nicaragua TPL Provision – While this provision does not expire until 2014, many U.S. apparel companies have started to suspend orders based on concerns that the provision won't be renewed by Congress.
- CAFTA-DR Fixes – These fixes, supported by the entire U.S. textile and apparel supply chain, and every CAFTA-DR partner, have been waiting for Congressional approval for over a year.

5) Realigning Customs to Better Reflect Today's Global Economy

The approximately 4 million U.S. workers employed U.S. apparel and footwear industry depend on trade. Yet, the agency tasked with managing trade flows, U.S. Customs and Border Protection (CBP), for a variety of reasons, has made that trade more difficult. The industry has embraced CBP programs to enhance security and improve commercial enforcement, participating in programs such as C-TPAT at a much higher degree than most other industries. Despite those efforts, the industry remains subject to a much higher level of scrutiny by CBP than most other industries.

We urge the Committee to quickly consider and approve customs reauthorization legislation that would 1) rebalance CBP's role between trade facilitation and security and 2) employ account management and other programs to reduce to immense burden of commercial enforcement on the industry.

We believe that U.S. trade policy and future U.S. trade negotiations can truly be a "win-win-win-win" for U.S. worker, U.S. manufacturers, U.S. consumers, and the U.S. apparel and footwear industry, but only if that trade policy recognizes and embraces the realities of today's global apparel and footwear value chains and the 4 million U.S. jobs dependent on it.

Thank you for your time and consideration in this matter.

Please contact Nate Herman at 703-797-9062 or by e-mail at nherman@wewear.org if you have any questions or would like additional information.

Statement of Business Roundtable for the Record
Senate Finance Committee
Hearing on The President's 2012 Trade Agenda
March 7, 2012

The Honorable John M. Engler
President, Business Roundtable

Business Roundtable respectfully submits for the written record of this hearing the attached international trade and investment policy section of its March 2012 *Taking Action for America* report. That report provides a comprehensive plan for U.S. economic growth and job creation. The entire report is available at www.brt.org/takingaction.

Business Roundtable (BRT) is an association of chief executive officers of leading U.S. companies with over $6 trillion in annual revenues and more than 14 million employees. BRT member companies comprise nearly a third of the total value of the U.S. stock market and invest more than $150 billion annually in research and development – nearly half of all private U.S. R&D spending. Our companies pay $163 billion in dividends to shareholders and generate an estimated $420 billion in sales for small and medium-sized businesses annually.

OPEN MARKETS FOR INTERNATIONAL TRADE AND INVESTMENT

Fast Facts

- In 2008, more than 38 million jobs in America — more than one in five — depended on international trade — exports and imports.[i]
- In 1992, a year before the implementation of a series of U.S. bilateral, regional and multilateral trade agreements, the total of trade-related jobs in the United States was only 14.5 million.[ii]
- The growth of 24 million new trade-related jobs for U.S. workers in two decades demonstrates clearly that trade is an important engine for economic growth and job creation.
- In 2009, more than 275,000 U.S. companies exported merchandise to customers abroad, and nearly 180,000 U.S. companies imported raw materials, components and finished products for U.S. manufacturers, services providers and consumers.[iii]
- Exports also support higher-paying jobs. Positions in the manufacturing sector linked to the export of goods pay on average 18 percent more than other jobs.[iv]
- Trade agreements are essential to creating economic and strategic benefits for the United States.

U.S. exports represent a significant share of U.S. GDP and have increased over time, showing the importance of exports to U.S. economic growth and job creation.

Source: U.S. Department of Commerce, Bureau of Economic Analysis

Existing U.S. trade agreements represent a large share of U.S. exports, and there is room for more agreements.

Source: Bureau of Economic Affairs, Foreign Trade Division, Exports to Foreign Countries, U.S. State Department

- The Uruguay Round of multilateral trade negotiations, which resulted in the creation of the World Trade Organization (WTO), was projected to add at least $70 billion to global economic output. More than a quarter of this gain — $19.8 billion — was estimated to accrue to the United States.[v]

- About 40 percent of U.S. exports now go to the nation's Free Trade Agreement (FTA) partners, and U.S. exports to FTA partner countries are growing faster than U.S. exports to countries that do not have FTAs with the United States. In 2011, the United States had a roughly $50 billion manufactured goods trade surplus with its 17 FTA partner countries combined.[vi]

- The U.S. FTAs in effect in 2008 (before the global recession) generated $305 billion in U.S. output (2.1 percent of GDP), expanded U.S. exports of goods and services by $463 billion, and supported 5.4 million U.S. jobs.[vii]

- The recently approved FTAs with South Korea, Colombia and Panama are expected to increase U.S. exports by more than $10 billion and reinforce important national security and foreign policy relationships.[viii]

- Investment in the United States is also essential to economic growth and job creation.

- U.S. affiliates of foreign companies employed 5.3 million Americans in 2009 — 4.7 percent of private-sector employment.[ix]

- In 2007, more than 63 million[x] Americans worked for U.S. multinational companies — either directly or through their supply chains — and U.S. multinational companies have accounted for nearly one-third of the growth of real private-sector GDP since 1990.[xi]

- With more than 95 percent of the world's population[xii] — representing 80 percent of the world's purchasing power[xiii] — outside the United States, U.S. economic growth and job creation depend on expanding U.S. trade and investment opportunities, so U.S. companies can sell more American products and services to these customers.

Vibrant and open markets for international trade and investment are a necessary prerequisite for generating new economic growth and job creation opportunities for U.S. businesses and workers. Increased use of bilateral and regional trade and investment agreements with like-minded countries and a strong system of multilateral agreements and rules under the WTO create these opportunities by eliminating trade and investment barriers and preventing discriminatory treatment of foreign goods, services and investment. In contrast, measures that close off markets from competition or are discriminatory quickly dampen international commerce and undermine

economic growth and job creation. International trade and investment agreements are also essential to ensuring fair and competitive business practices across countries. They provide the rules under which the United States and its businesses and workers can enforce their rights to open markets and prevent discriminatory treatment.

***"Open markets are** essential for **U.S. economic growth and job creation,** and international trade and investment agreements are critical tools to open markets and keep them open."*

- Douglas R. Oberhelman, Chairman and CEO, Caterpillar Inc., and Chair, Business Roundtable International Engagement Committee

The United States initially led the way in using bilateral and regional trade agreements to expand trade quickly by opening markets more deeply and setting strong rules for international commerce. Given that 95 percent of the world's population lives outside the United States and the rapid rise of the middle class in China, India, Brazil and other emerging markets, the United States needs to lead the way again. Today, all our major trading partners have aggressive bilateral and regional negotiating strategies to compete more effectively for these customers and grow their own economies. For instance, according to the WTO, 297 bilateral and regional trade agreements are currently in force internationally, with another 192 announced or under negotiation.

Until this year, the United States had only 11 regional and bilateral trade agreements in force. The recent passage of trade agreements with South Korea, Colombia and Panama and the ongoing Trans-Pacific Partnership negotiations will help U.S. companies and workers keep pace with their foreign competitors in opening markets for U.S. businesses and workers. However, they are not enough to help U.S. businesses and workers be competitive in world markets and to ensure that high U.S. standards for trade are adopted globally.

For U.S. companies and workers to grow their exports, maintain and create jobs, and improve their international competitiveness, the United States needs an active trade and investment policy designed to open foreign markets and keep them open. For many U.S. exporters — both small and medium enterprises and larger companies — and their workers, U.S. export credit financing from the U.S. Export-Import Bank is a critical piece of such a policy. The U.S. Export-Import Bank enables them to sell their goods and services to foreign customers in today's highly competitive international marketplace, where many foreign competitors enjoy strong export credit support from their own countries. For example, in FY2011, the bank facilitated roughly $41 billion in U.S. export sales by more than 3,600 U.S. companies, supporting nearly 290,000 U.S. jobs.[xiv]

To succeed, a robust strategic trade policy requires U.S. domestic policies that will build a highly skilled workforce, strengthen America's leadership in research and development, enforce and

protect U.S. intellectual property rights around the world, and institute globally competitive corporate tax policies. In addition to leveling the playing field for U.S. companies and workers competing abroad, improved access to foreign markets will spur domestic output and the creation of high-paying jobs in America. These benefits do not merely flow to large multinational companies. Indeed, as U.S.-based multinationals expand, they source more inputs from small businesses and the local communities that depend on them.[xv]

Competition breeds innovation, and one of America's greatest comparative advantages is its ability to generate new ideas, products and services. Supporting the nation's entrepreneurs, global companies, local businesses and their workers will require a strong and proactive commitment from political leaders to pursuing a forward-looking and sustained trade and investment agenda.

Solutions

→ Develop and implement active international trade and investment initiatives to help U.S. companies and workers increase their competitiveness in international markets and ensure that U.S. and foreign markets remain open for investment:

- Provide the President with new and updated international trade and investment negotiating authority;
- Aggressively pursue strategic bilateral and regional initiatives like the ongoing Trans-Pacific Partnership and a proposed Trans-Atlantic Partnership;
- Revitalize multilateral and plurilateral negotiations at the WTO;
- Vigorously enforce U.S. rights to open markets and nondiscriminatory treatment under existing and future international agreements; and
- Grant permanent normal trade relations status to Russia.

→ Constructively engage China and other emerging growth countries:

- Target the elimination of market access barriers and discriminatory treatment of exporters and investors through more dynamic bilateral, regional and multilateral initiatives, including investment treaty negotiations;
- Enforce U.S. rights under international trade and investment rules to ensure that U.S. companies and workers are not disadvantaged by discriminatory foreign policies, such as indigenous innovation and other local preference requirements, and that countries comply with those rules; and

- Enhance multilateral efforts to address currency issues, and resist counterproductive unilateral currency-related sanctions.

→ Reauthorize the U.S. Export-Import Bank on a long-term basis before its current short-term extension expires, with a sufficient increase in its lending cap, so it can continue to help U.S. exporters compete for sales abroad and support the U.S. jobs that depend on those sales.

→ Eliminate U.S. regulatory impediments to exports, including through export control reforms.

→ Modernize and reform U.S. domestic policies along the lines proposed in the other sections of BRT's March 2012 *Taking Action for America* report to help U.S. companies and workers better compete globally to expand the U.S. economy and support jobs in America.

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Comments for the Record

U.S. Senate
Committee on Finance

Hearing on the President's 2012 Trade Agenda
Wednesday, March 7, 2012, 10:00AM
215 Dirksen Senate Office Building

By Michael G. Bindner
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Alexandria, VA 22304

Chairman Baucus and Ranking Member Hatch, thank you for the opportunity to submit comments for the record on this issue. We will leave it to the Administration witness to discuss their plans and will instead concentrate on how our tax reform plan impacts trade in general and trade with China in particular. As you know, the Center for Fiscal Equity has a four part proposal for long term tax and health care reform. The key elements are

- a Value Added Tax (VAT) that everyone pays, except exporters,
- a VAT-like Net Business Receipts Tax (NBRT) that is paid by employers and includes the employer contribution to OASI, but, because it has offsets for providing health care, personal retirement accounts, education benefits and family support, does not show up on the receipt and is not avoidable at the border,
- an employee payroll tax to for Old Age and Survivors Insurance (OASI) and
- an income and inheritance surtax on high income individuals so that in the short term they are not paying less of a tax burden because they are more likely to save than spend – and thus avoid the VAT and indirect payment of the NBRT.

A Value Added Tax (VAT) is suggested because of its difficulty to evade, because it can be as visible to the ultimate consumer as a retail sales tax and **because it can be zero rated at the border for exports and collected fully for imports**. As such, it is superior to proposals for a FairTax or 9% National Sales Tax. As many others, particularly Michael Graetz, have pointed out, resorting to a VAT rather than imposing trade sanctions has the effect of imposing higher costs on imports and lower costs on exports, without provoking retaliation from our trading partners – mostly because our trading partners **already use such a regime.** By not adopting a similar tax structure, we essentially tie the hands of our exporters in the fight for international market share. There can be no retaliation when using VAT is already the international standard. In short, if the U.S. adopted a VAT, China would have no countermove as the use of VAT is part of global trade structures.

It is also important is to exercise care in delineating what is funded by a VAT. We believe that VAT funding should be confined to funding domestic discretionary military and civilian spending. Zero rating a tax supporting such spending is totally appropriate, as foreign consumers gain no benefit from these expenditures. Likewise, making imports fully taxable for this spending correctly burdens the consumers who fully benefit from these services. As importantly, making such a tax visible provides an incentive to taxpayers to demand less of such spending.

The NBRT would not be border adjustable because it is designed to pay for entitlement costs which benefit employees and their families directly, so that it is appropriate for the foreign beneficiaries of their labor to fund these costs. Additionally, the ultimate goal of enacting the NBRT is to include tax expenditures to encourage employers to fund activities now provided by the government – from subsidies for children to retiree health care to education to support for adult literacy. Allowing this tax to be zero-rated at the border removes the incentive to use these subsidies, keeping government services in business and requiring higher taxation to support the governmental infrastructure to arrange these services – like the Committee on Ways and Means.

If the NBRT is enacted in this way, the United States should seek modification to our trade agreements to require that similar expenditures not be funded with taxes that are zero rated at the border. As foreign consumers benefit from subsidies for American families, American consumers benefit from services provided to overseas workers and their families. This benefit should be recognized in international tax and trade policy and American workers should not be penalized when other nations refuse to distribute the cost of benefits to foreign workers to the American consumers who receive the benefit of these services. If our trading partners do not match this initiative, some items of spending could be shifted from NBRT funding to VAT funding, so that we are not making unilateral concessions in this area.

Separation of Old Age and Survivors Insurance Payroll taxes from the NBRT is necessary unless the employee contribution is to be totally eliminated with a uniform benefit or uniform. A separate payroll contribution is required as long as benefit levels are set according to income. If a uniform benefit is desired, then payroll taxes can be discontinued and the NBRT expanded. **Employee contributions could not be zero rated at the border. If employer contributions are equalized and contributed to a public system, however, they could be incorporated into a VAT rather than an NBRT. This allows the Social Security system to benefit from foreign labor where outsourcing has occurred. Indeed, it would be an essential expansion of the tax base if globalization is to continue unabated.**

The prospect of Personal Retirement Accounts can also be considered, although doing so is like holding a lightning rod in a thunderstorm. I do agree with President Obama that such accounts should not be used for speculative investments or even for unaccountable index fund investments where fund managers ignore the interests of workers. Investing such accounts in insured employee-ownership of the workplace would have an entirely different outcome, especially if voting shares occurred on an occupational basis with union representation. **The impact at the international level of such employee-ownership if extended to subsidiaries and the supply chain is also potentially profound, especially in regard to transfer pricing and the international growth of the union movement.**

Personal accounts invested in index funds do not have that feature, although they do serve to support American retirees who because of them have a financial interest in firms utilizing foreign labor, particularly low-wage Chinese labor. The proposed USA accounts proposed by President Clinton had the same feature, although as a supplement to the Social Security benefit rather than a partial replacement, although this feature would be muted by enactment of value added taxes. The flaw in using foreign investment to make up for lost worker revenue is that eventually foreign workers either radicalize or become consumers and demand their own union rights.

China is sitting on a time bomb, and this time bomb has nothing to do with its U.S. Treasury holdings. These holdings are secure as long as the Congress and Administration deal realistically with the expiration of the 2001/2003/2010 tax cuts at the end of next year by offsetting any cuts made permanent with spending cuts or and making sure that any tax reform raises the additional revenue required to cover the difference. Rather, their difficulties arise from their treatment of domestic migrants from rural areas working in Chinese factories. Eventually, these migrants will object to the locality system imposed upon them and demand the same level of pay, benefits and consumerism as is earned by those designated as urban. When this occurs, the valuation of the Yuan will occur, assuming that the Chinese Communist Party survives. We do not make this assumption, however.

It would be better for all concerned if American workers were already in an ownership position due to repeal of the Taft-Hartley Act prohibitions on concentrated pension fund ownership and the enactment of personal retirement accounts. If employee-owned firms extended this ownership to their overseas subsidiaries and purchased their supply chains, they could change the equality system in advance of revolution – however quick adoption of our suggestions to expand employee-ownership is probably less likely than revolution in China.

The tendency for consumerism to follow industrialization is why globalization is a poor substitute for expanding the domestic population, as the Center proposes with its expanded **Child Tax Credit, which we propose as an offset to the NBRT**.

In the long term, the explosion of the debt comes from the aging of society and the funding of their health care costs. Some thought should be given to ways to reverse a demographic imbalance that produces too few children while life expectancy of the elderly increases.

Unassisted labor markets work against population growth. Given a choice between hiring parents with children and recent college graduates, the smart decision will always be to hire the new graduates, as they will demand less money – especially in the technology area where recent training is often valued over experience.

Separating out pay for families allows society to reverse that trend, with a significant driver to that separation being **a more generous tax credit for children**. Such a credit could be "paid for" by ending the Mortgage Interest Deduction (MID) without hurting the housing sector, as housing is the biggest area of cost growth when children are added.

While lobbyists for lenders and realtors would prefer gridlock on reducing the MID, if forced to chose between transferring this deduction to families and using it for deficit reduction (as both Bowles-Simpson and Rivlin-Domenici suggest), we suspect that they would chose the former over the latter if forced to make a choice. The religious community could also see such a development as a "pro-life" vote, especially among religious liberals.

Enactment of such a credit meets both our nation's short term needs for consumer liquidity and our long term need for population growth. Adding this issue to the pro-life agenda, at least in some quarters, makes this proposal a win for everyone.

The expansion of the Child Tax Credit is what makes tax reform worthwhile. Adding it to the employer levy rather than retaining it under personal income taxes saves families the cost of going to a tax preparer to fully take advantage of the credit and allows the credit to be distributed throughout the year with payroll. The only tax reconciliation required would be for the employer to send each beneficiary a statement of how much tax was paid, which would be shared with the government. The government would then transmit this information to each recipient family with the instruction to notify the IRS if their employer short-changes them. This also helps prevent payments to non-existent payees.

Assistance at this level, especially if matched by state governments may very well trigger another baby boom, especially since adding children will add the additional income now added by buying a bigger house. Such a baby boom is the only real long term solution to the demographic problems facing Social Security, Medicare and Medicaid, which are more demographic than fiscal. Fixing that problem in the right way definitely adds value to tax reform.

The fourth proposal is a surtax on high incomes from inheritance, wages, dividends and capital gains (essentially all income with the exception of sales to a qualified ESOP). It would fund overseas military operations, which are often debt financed, and net interest and debt repayment.

Explicitly identifying the high income surtax with net interest payments highlights the need to raise these taxes as a means of dealing with our long term indebtedness, especially in regard to debt held by other nations. While consumers have benefited from the outsourcing of American jobs, it is ultimately high income investors which have reaped the lion's share of rewards. The loss of American jobs has led to the need for foreign borrowing to offset our trade deficit. Without the tax cuts for the wealthiest Americans, such outsourcing would not have been possible, **including the creation of Chinese industry designed to sell to Americans**. Indeed, there would have been any incentive to break unions and bargain down wages if income taxes were still at pre-1981 or pre-1964 levels. The middle class would have shared more fully in the gains from technical productivity and the artificial productivity of exploiting foreign labor would not have occurred at all. Increasing taxes will ultimately provide less of an incentive to outsource American jobs and will lead to lower interest costs overall.

The final question is the repatriation of profit from overseas subsidiaries, including profits parked in China. Under a consumption tax regime, there would be no separate levy on profit. Value added taxes are already paid in the country where the product is sold and these taxes include both the contributions of labor and capital. For the purposes of businesses, profit should not be taxed again when repatriated, except to the extent that this profit results from value added in the United States. Use of VAT exemptions must not be allowed as a tax avoidance scheme. Products with parts that have been produced or developed in the United States, then sent elsewhere for assembly, must reacquire any obligation to pay that was shed at the border. Not providing for this contingency opens the door for a great deal of abuse.

The source nation of dividend income, meanwhile, must be irrelevant for purposes of collection of the proposed high income and inheritance surtax. The subject of this tax is not the income of the business, which has been shifted to the NBRT for individual filers, but the income of households for personal consumption and savings. The existence of this tax takes into account the decreased likelihood that this income will be spent and therefore taxed under NBRT and VAT regimes and to safeguard savings opportunities for the non-wealthy, who would otherwise be priced out of the market for investments by higher income individuals who, because they have greater opportunities to save, garner greater and greater shares of America's wealth. The proposed surtax is an attempt to level the playing field so that everyone can invest.

Thank you again for the opportunity to present our comments. We are always available to discuss them further with members, staff and the general public.

PhRMA

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Submission for the Record

Re: The President's 2012 Trade Agenda, March 7, 2012

The Pharmaceutical Research and Manufacturers of America (PhRMA) appreciates the opportunity to provide this written submission for the record in conjunction with the hearing held on March 7, 2012, to examine the U.S. trade policy agenda and its relationship to U.S. economic growth and job creation. In this statement, we focus on the contributions of the research-based biopharmaceutical industry to the U.S. economy and to U.S. exports, as well as the importance of enhancing the global competitiveness of our industry through negotiating and enforcing strong trade agreements containing high-standard, market-opening commitments and intellectual property rights (IPR) protections. A good example of such an agreement is the Korea-United States FTA (KORUS FTA), which we believe will serve to strengthen the U.S. economy, jobs, and exports. We also discuss the importance of initiatives like the proposed Trans-Pacific Partnership (TPP) trade agreement in creating more consistent, market-based policies in the treatment of biopharmaceutical products by other governments, especially given the proliferation of restrictive, discriminatory practices in some markets that threaten the ability of our industry to compete globally.

PhRMA represents the country's leading innovative biopharmaceutical companies. The United States is a leader in discovering and developing innovative medicines and vaccines that enable patients to live longer, healthier, and more productive lives, and offering new hope to those suffering from life-threatening disease or disability. PhRMA member companies make substantial investments in research and development to understand the underlying causes and pathways of disease, test potential new medicines for safety and clinical efficacy, and refine complex molecules and biotechnology processes to manufacture new medicines. In 2010, our industry invested an estimated $67.4 billion in research and development for new medicines.

In order to continue to foster economic growth in the United States and the much-needed medical breakthroughs that will save lives, the U.S. Government must continue to pursue public policies that promote innovation, and that require protection of IPR and the removal of critical barriers to market access. Free trade agreements offer a compelling approach to addressing many of the concerns affecting our industry in exporting to and competing effectively in foreign markets.

The Biopharmaceutical Industry's Contributions to the U.S. Economy and U.S. Exports

The U.S. biopharmaceutical industry is a major U.S. employer, supporting 4.0 million jobs, including direct employment of more than 650,000 Americans[1]. In 2009, every direct job in the biopharmaceutical sector supported nearly five jobs in other sectors.[2] The industry consists of companies ranging from large, multinational enterprises to medium and small companies. It also supports a network of suppliers, distributors and others who contribute to ensuring patients receive the medicines they need.

PhRMA member companies are important drivers of high-quality, innovative job creation in the United States, investing more per employee in research and development than any other manufacturing sector.[3] Our industry is also a significant contributor to U.S. economic growth. Each job in the biopharmaceutical sector contributed more than double the average contribution to gross domestic product (GDP) from jobs in the rest of the economy.[4] For every dollar that biopharmaceutical companies contributed to GDP in 2008, the ripple effect of that activity supported another $1.91 in contribution to GDP from other sectors.[5]

These figures are driven to a significant degree by exports. In fact, biopharmaceutical exports have grown over the past five years, supporting domestic jobs even in the midst of the current global recession. Between 2006 and 2011, the U.S. exported more than $248 billion in biopharmaceuticals – a 40 percent increase, from $32.1 billion in 2006 to $45.6 billion in 2011. This made the biopharmaceutical sector the sixth largest U.S. exporting industry.[6] Our industry has shown strong export performance in the recent past, increasing exports by almost 150 percent in the last decade.[7]

As strong as our recent performance has been, it could be even stronger. Barriers to exportation still remain, as do limits on the ability to market and distribute innovative biopharmaceutical products in particular countries. We are encouraged by the important steps the KORUS FTA makes towards eliminating those barriers and creating new export opportunities that will lead to high-skilled, high-value job creation in the United States.

The KORUS FTA Represents a "Gold Standard" for Opening Foreign Markets to U.S. Biopharmaceutical Innovative Products and Protecting the Intellectual Property Embedded in Those Products

PhRMA believes that the KORUS FTA, which enters into force today, represents the most thorough articulation in any U.S. FTA of commitments to open markets, institute ethical business practices, promote transparency, and strengthen IPR protection. Additionally, the Pharmaceuticals and Medical Devices chapter of the KORUS FTA provides a strong precedent

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[1] Battelle Technology Partnership Practice, *The U.S. Biopharmaceuticals Sector: Economic Contribution of the Nation*, July 2011. Battelle Memorial Institute. Prepared for the Pharmaceutical Research and Manufacturers of America. (Battelle Report).
[2] Id.
[3] N. D. Pham, "The Impact of Innovation and the Role of Intellectual Property Rights on U.S. Productivity, Competitiveness, Jobs, Wages, and Exports," (Washington, DC: NDP Consulting, 2010).
[4] Archstone Consulting and L. R. Burns, The Biopharmaceutical Sector Impact on the U.S. Economy: Analysis at the National, State and Local Levels (Fact Sheet), (Washington, D.C.: Archstone Consulting LLC, 2010).
[5] Id.
[6] U.S. International Trade Commission, Trade DataWeb, accessed March 9, 2012, at http://dataweb.usitc.gov/ (query run of U.S. domestic exports classified by 4-digit NAIC code 3254).
[7] Id.

for future U.S. free trade agreements. Overall the chapter sets a high standard for market-opening that our industry strongly supports as the basis for building on in future U.S. FTA negotiations.

Faithful implementation by Korea of all provisions in the KORUS FTA will make many meaningful strides toward ensuring that U.S. biopharmaceutical companies have fair and non-discriminatory access to this important market. In this regard, we remain concerned that the Korean Government has not implemented certain provisions requiring transparency and due process in the manner that Korea prices and reimburses biopharmaceutical products. We strongly urge the U.S. and Korean Governments to work together quickly to implement fully these provisions related to the independent review mechanism.

For the U.S. biopharmaceutical industry, the KORUS FTA, particularly its transparency and IPR provisions, represents a 21st century standard that should stand as a basis to be built upon (with reference to U.S. law) in other U.S. FTAs, including the TPP that is currently being negotiated. The KORUS agreement will enable the innovative biopharmaceutical industry to put its export "muscle" to work, growing the U.S. economy and contributing to the creation of high-paying and high-skilled U.S. jobs in the process. We appreciated the Committee's efforts to push for congressional passage of the KORUS FTA in October 2011 and look forward to working with the Administration and the Congress to ensure full implementation of the agreement.

The Role of Trans-Pacific Partnership Negotiations in Shaping the Global Competitiveness of the U.S. Innovative Biopharmaceutical Industry

PhRMA favors a commercially meaningful TPP that provides a comprehensive policy mechanism for addressing intellectual property rights and removing market access barriers that hamper our industry's global competitiveness, particularly with the four countries with which the United States does not have existing free trade agreements (Brunei Darussalam, Malaysia, New Zealand and Vietnam). The TPP is especially important given the likelihood that it will serve as a "docking station" for other countries in the Pacific region (including in the nearer term, possibly Japan, Canada, Mexico, and in the longer term, potentially China, to name a few) to join on to in the future.

A strong TPP template that builds on the elements of the KORUS FTA, reflects U.S. law, and establishes a new model for future U.S. free trade agreements will best enhance the ability of the U.S. biopharmaceutical innovative industry to expand U.S. exports and create high-skilled, high-value science and engineering jobs.

Key elements the TPP should contain to achieve these goals include:

Maintain high-standard protection for intellectual property rights, as reflected in KORUS and U.S. law, coupled with rigorous enforcement. High-standard protection for and enforcement of intellectual property rights provide the framework for U.S. companies to retain high-quality knowledge-based jobs in the United States, and for U.S. innovative companies to continue to invest in technological advances. This is no less true for U.S. innovative biopharmaceutical firms, which depend on strong IPR protection to provide market-based incentives for innovation, creativity and advanced global drug discovery, the benefits of which

improve patient care around the world. Robust IPR enforcement and protection help to maintain the levels of R&D investment required for development of new medicines, including biological pharmaceutical products (e.g., recombinant therapeutic proteins, vaccines). Given the substantial complexities of bringing biologics to market, e.g., lower clinical success rates, the high costs of building specialized manufacturing facilities, and the significant capital investment required to establish and sustain biotech firms, it is critical that the TPP include twelve years of regulatory data protection, as reflected in U.S. law, for these products.

Promote greater transparency in government policy and regulatory decision-making. Government decisions on how drugs are approved, regulated, priced and reimbursed and made available to patients should be made transparently and be guided by scientific principles. Manufacturers and other stakeholders should have meaningful opportunities for input to health authorities and other regulatory agencies regarding these decisions, and a right of appeal on specific decisions to an independent, objective court or administrative body. These issues affect innovative and generic manufacturers alike and deserve attention in the TPP negotiations.[8]

Provide clear, market-based support for innovation. The TPP agreement should include specific commitments to promote regulatory transparency, accountability and objectivity, particularly in government drug approval and drug reimbursement processes. Regulatory barriers can too often result in delaying or restricting patient access to the latest innovative medicines. Restrictions on biopharmaceutical reimbursement proposed as fiscal policy measures often are disproportionate to the share of pharmaceuticals relative to overall healthcare expenditures. The KORUS FTA seeks to address this issue. For example, it contains a commitment to promote the development of high-quality patented and off-patent biopharmaceutical products as part of improving public health as well as the obligation to appropriately recognize the value of patented products when setting government reimbursement levels.

Engage on foreign government price control and cost containment policies. Government price controls and cost containment policies include a wide range of practices, including for example, direct and indirect price controls, profit controls, *ad hoc* government price cuts, international and therapeutic reference pricing, mandatory rebates, physician budget constraints, marketing approvals, limits on promotion of medicines, and many others. Such policies can delay or reduce the availability of new medicines and limit market entry prospects for U.S. biopharmaceutical companies. The TPP provides the opportunity to engage other governments on the broad range of policies used to control prices and contain costs in the biopharmaceutical sector.

Ensure the TPP empowers patients. Patients, physicians and other healthcare providers are key stakeholders in government regulatory and policy decision-making processes. The TPP should require that all stakeholders have access to the information necessary to allow them to make informed decisions.

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[8] See, for example, PhRMA-GphA Joint Transparency Principles.

The TPP should require governments' healthcare programs to respect the specialized expertise and therapeutic judgment of all healthcare providers, including physicians and nurse practitioners. Healthcare professionals should have the freedom to prescribe medications that best address patients' needs.

Regarding the possible expansion of the TPP beyond the current nine members, PhRMA, on January 13, 2012, submitted comments to USTR on Japan's, Canada's, and Mexico's interest in joining the agreement. We welcome these countries' interest in the TPP.

Given the size of Japan's economy, if the result of current deliberations among the United States, Japan, and the other TPP participants were that Japan becomes a TPP negotiating partner, the portion of the regional economy covered by the potential agreement would significantly increase. Furthermore, the current high standards in Japan in the areas of biopharmaceutical regulation, intellectual property protection, and policy transparency would contribute to achieving U.S. goals in the ongoing TPP negotiations.

Canada's entry into the TPP could further facilitate trade and economic cooperation with the United States, but there are a number of serious issues related to the Canadian IP system which are increasingly restricting access for U.S. biopharmaceutical companies and adding to their significant regulatory burden. Our specific concerns include limitations on data protection, weak patent enforcement, and no provision of patent term restoration. PhRMA believes these issues need to be meaningfully addressed before Canada joins the TPP negotiations.

Mexico's entry into the TPP also could further facilitate trade and economic cooperation between our two countries. However, PhRMA believes that Mexico must first be in compliance with its commitments related to regulatory data protection under the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) before it joins the TPP negotiations. Additional concerns include the inability to remove infringing copies of patented products from the marketplace or prevent their launch and the difficulty in obtaining effective preliminary injunctions or final decisions on cases regarding infringement of patent rights within a reasonable time, as well as collecting adequate damages when appropriate.

U.S. Trade Policy in General Should Address Other Governments' Trade Policies that Limit the Ability of U.S. Biopharmaceutical Companies to Compete

The long-term importance of the TPP for the U.S. biopharmaceutical industry is that it will limit the ability of future parties to the agreement to implement policies that discriminate in favor of domestic producers while restricting the ability of U.S. biopharmaceutical companies and other multinational firms to compete. Such violations of national treatment often appear to be prohibited by existing international trade agreements. Despite these existing agreements, however, governments have succeeded in imposing discriminatory rules and practices, including requirements to establish local manufacturing or transfer intellectual property, that adversely affecting the market access of innovative biopharmaceutical producers. Other governments impose official and unofficial regulations that, in effect, prevent market entry. Often these rules exploit gaps in the trade agreement disciplines on national treatment. Examples include:

Turkey GMP Regulation: The Government of Turkey has imposed a regulation that requires the Turkish Ministry of Health to conduct good manufacturing practice (GMP) inspections rather than continuing to recognize GMP certificates from high-standard countries. Unfortunately, Turkey does not have sufficient inspectors to carry out the manufacturing plant certifications. Therefore, this measure amounts to a *de facto* ban on pharmaceutical imports in the guise of sound health policy. PhRMA greatly appreciates the Administration's ongoing efforts to support resolution of this critical issue, and we encourage continued engagement through the use of all available trade policy tools.

Argentina Import Restrictions: The Government of Argentina has imposed various import restrictions, including new measures that require companies to balance their own foreign trade account; that is for every dollar that they import, they must have one dollar worth of exports. Pursuant to this unofficial policy, several companies have reported that shipments of various pharmaceutical products have been stopped by Customs. These measures amount to quantitative restrictions on imports and are preventing market entry. PhRMA has noted with great interest the President's announcement to create an Interagency Trade Enforcement Center (ITEC) charged with investigating unfair trading practices. We believe that the series of actions Argentina has taken over the past year should be a priority matter for the new ITEC.

Chile Patent Enforcement: Chile has thus far failed to comply with a patent enforcement requirement contained in Article 17.10.2 of the U.S.-Chile FTA. Specifically, Chile has not yet established a satisfactory mechanism to enable effective patent enforcement before marketing approval decisions are made and implemented. This deficiency is particularly troubling given that Chile is a participant in the TPP negotiations, an agreement which is expected to include higher standards than those contained in the U.S.-Chile FTA. PhRMA welcomes efforts by the Chilean government to enact new legislation aimed at establishing an effective patent enforcement mechanism that would bring Chile closer to compliance with its FTA obligations; however we remain concerned that the final legislation could fall well short of Chile's FTA obligations. We appreciate the Administration's ongoing efforts to support resolution of this issue, and we encourage the Administration to continue to press Chile to resolve this issue as a good faith indication of Chile's intent to conclude a high-standard TPP agreement.

U.S. Congress Should Quickly Pass Permanent Normal Trade Relations with Russia to Protect and Bolster U.S. Biopharmaceutical Jobs and Exports

The U.S. innovative biopharmaceutical industry supports Russian accession to the WTO. Russia received approval to join the WTO in December 2011 and will become a formal member by mid-2012. Russia's $17.5 billion dollar biopharmaceutical market grew at approximately 16% in 2011[9] and innovative medicines account for roughly 75% of the market in terms of value.[10]

If Congress fails to pass Permanent Normal Trade Relations (PNTR), the United States will not receive the same benefits as all other WTO members at the time of Russian accession. In short, the U.S. biopharmaceutical industry and all other U.S. manufacturers, service providers, and agricultural interests will be left behind. Extending PNTR with Russia will ensure:

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[9] "*Russia: Pharmaceutical Market Growth Story Continues.*" January 17, 2012. Business Monitor International.
[10] Pharmexpert Market Research Center. (http://www.pharmexpert.ru/)

Equal treatment for U.S. biopharmaceutical exports. Many U.S. and foreign manufacturers operating in Russia source products from the United States. If Congress fails to extend PNTR, these manufacturers will have an incentive to discontinue sourcing products from the United States. Instead, these companies may choose to source from countries that have PNTR with Russia because their products face less uncertainty and risk than those originating in the United States. This could result in unwarranted U.S. job losses.

Six years of regulatory data protection for U.S. biopharmaceutical companies. Russia's new law to protect biopharmaceutical clinical test data – a pre-condition for U.S. support for Russian accession – does not enter into force until Russia becomes a full member of the WTO. Strong regulatory data protection is critically important to the industry's ability to develop innovative, life-saving medicines. However, if the United States does not extend PNTR, Russia is entitled to withhold this accession benefit from U.S. biopharmaceutical companies.

U.S. recourse to WTO dispute settlement proceedings against Russia. Operating in the Russian market can be difficult because the enforcement of laws, regulations, and guidelines is often inconsistent. Additionally, some current policies and laws, including a local manufacturing requirement for a growing list of products that was developed in a non-transparent manner and pricing policies that favor domestically produced medicines over imported products, clearly discriminate against U.S. biopharmaceutical firms. Many of these policies could be found to be inconsistent with WTO rules, but the U.S. Government would not be able to raise these issues or initiate a WTO case against Russia without PNTR.

Conclusion

The U.S. biopharmaceutical industry is both a leading export industry and a strong contributor to U.S. economic expansion through the creation of high-skilled, high-value, knowledge-based jobs. As such, our industry relies heavily on comprehensive, high-standard trade agreements to open foreign markets and help create new export opportunities for U.S. biopharmaceutical innovative medicines. Our industry supports trade agreements that provide strong and comprehensive protection for intellectual property rights, make government pricing and reimbursement policies more transparent and accountable and remove discriminatory trade barriers that limit or prevent entry for U.S. research-based medicines.

The KORUS FTA includes "gold standard" provisions that recognize the value of innovation, increase transparency and create a Medicines and Medical Devices Committee for addressing future developments in our sector. Faithful implementation by Korea of all commitments in the agreement is critical, and PhRMA looks forward to working with the Administration and Congress to ensure full implementation of the independent review mechanism provision. We also support Russia's accession to the WTO and urge this Committee to move PNTR legislation forward expeditiously over the months ahead.

Finally, the TPP negotiations represent an opportunity to raise the level of trade commitments by key U.S. trading partners on the protection of intellectual property rights and related undertakings affecting market entry and competitive opportunities for the U.S. biopharmaceutical industry. We believe the TPP's ambition should be to provide a template for future trade liberalization, not only in the Asia Pacific region, but also for future U.S. free trade

agreements with potential trade partners in any part of the world. The U.S. biopharmaceutical industry is global in scope, and we have the potential to increase our R&D investment and level of U.S. employment every time foreign markets become more open. Using U.S. trade agreements, and U.S. trade policy broadly, to address and dismantle trade barriers our industry faces in overseas markets is a winning strategy that adds to the innovative capacity and global competitiveness of the United States, while also expanding valuable employment opportunities for knowledge-based workers. PhRMA looks forward to working with the Committee and its Members in support of the objectives outlined in this Statement.

100 Years Standing Up for American Enterprise

U.S. CHAMBER OF COMMERCE

Statement of the U.S. Chamber of Commerce

ON: **The President's 2012 Trade Agenda**

TO: **United States Senate Committee on Finance**
215 Dirksen Senate Office Building

BY: **U.S. Chamber of Commerce**

DATE: **Wednesday, March 7, 2012, beginning at 10:00 A.M.**

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is pleased to submit this testimony for the record on the U.S. trade policy agenda and the future of U.S. trade negotiations. The U.S. Chamber is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

No priority facing our nation is more important than putting Americans back to work. Fully 8.3% of the U.S. workforce is unemployed — a figure that soars to 15% when those who have stopped looking for jobs and the millions of part-time workers who want to work full time are included. As a nation, the biggest policy challenge we face is to create the 20 million jobs needed in this decade to replace the jobs lost in the current recession and to meet the needs of America's growing workforce.

World trade will play a vital role in reaching this job-creation goal. When President Barack Obama delivered his State of the Union address in January 2010, the U.S. Chamber and the rest of the business community welcomed his call for a national goal to double U.S. exports within five years.

The rationale is clear: Outside our borders are markets that represent 80% of the world's purchasing power, 92% of its economic growth, and 95% of its consumers. The resulting opportunities are immense.

Already, more than 38 million Americans jobs depend on trade. One in three manufacturing jobs depends on exports, and one in three acres on American farms is planted for hungry consumers overseas.

Nor is trade important only to big companies. Often overlooked in the U.S. trade debate is the fact that more than 97% of the quarter million U.S. companies that export are small and medium-sized enterprises (SMEs), and they account for nearly a third of U.S. merchandise exports, according to the U.S. Department of Commerce. In fact, the number of SMEs that export has more than doubled over the past 15 years.

The bottom line is simple: If America fails to look abroad, our workers and businesses will miss out on huge opportunities. Our standard of living and our standing in the world will suffer. With so many Americans out of work, opening markets abroad to the products of American workers, farmers, and companies is a higher priority than ever before.

A Bold New Trade Agenda

In October 2011, Washington sent a message to the world: American trade policy is back in business. Congress approved trade agreements with South Korea, Colombia, and Panama with the support of large, bipartisan majorities just nine days after receiving implementing bills from the White House.

These votes show that America can still lead on trade. Given the broad consensus that exports must play a central role in creating American jobs and boosting economic growth, we must capitalize on this momentum. In the Chamber's view, it's time to think big. It's time to commit to an aggressive new international trade and investment agenda.

The U.S. Chamber of Commerce has solicited input from its membership on new ideas for the American trade and investment agenda. Our members — including small, medium-sized, and large companies in every sector of manufacturing, services, and agriculture — replied that the United States should pursue new agreements that can deliver significant commercial benefits.

In addition, our members replied that we should look for opportunities to create new trade rules to keep up with today's rapidly changing global economy. That means we need our agreements to address such challenges as regulatory barriers to trade and tap the potential of the digital economy. We need to look beyond tariffs to trade in services and the flow of investment across borders, and we should strengthen the multilateral rules-based trading system.

The 2012 Agenda: PNTR for Russia

While much of this testimony focuses on a long-term international trade and investment agenda, we begin with the Chamber's top trade priorities before the Congress this year: Approval of Permanent Normal Trade Relations (PNTR) for Russia and reauthorization of the Export-Import Bank of the United States.

On December 16, 2011, trade ministers at the 8th WTO Ministerial Conference celebrated the conclusion of 18 years of negotiations for Russia to accede to the WTO and invited Russia to become the organization's 154th member. In those negotiations, Russia committed to enact a host of reforms to meet its extensive commitments to the WTO, and Moscow is expected to complete this work and formally join the WTO in July 2012.

That Russia will join the WTO is no longer in doubt. In fact, at this juncture, the United States can neither help nor hinder Russia in doing so. However, the U.S. Congress must act to ensure that the United States benefits from the reforms Russia is undertaking as it joins the WTO. Specifically, Congress must pass a short and simple bill that grants Russia Permanent Normal Trade Relations and repeals the Jackson-Vanik amendment with respect to Russia (see details below). Failure to do so will put U.S. workers, farmers, and businesses at a unique disadvantage in the growing Russian marketplace and drive new sales, exports, and job-creation opportunities to our European and Asian competitors.

The far-reaching multilateral trade agreement governing Russia's accession requires Moscow to implement a host of economic reforms that will open the Russian market to U.S. goods, services, and investment; ensure greater respect for the rule of law; and protect intellectual property. Among the commitments made by Russia as a condition of its accession to the WTO are the following:

- Russia will cut tariffs on manufactured goods from an average of 10% to 7%, with steeper cuts on priority goods, including:
  - Eliminating duties on information technology products;
  - Cutting duties on wide body aircraft from as high as 20% to 7.5%;
  - Slashing the average tariff on chemicals to 5.3% from as high as 20%; and
  - Cutting tariffs on combine harvesters from 15% to 5%.
- Russia will reduce duties on farm products to 10.8% from 13%, with notable gains for key U.S. products, including:

  - Expanding market access for beef, poultry, and other products on a duty-free or reduced-duty basis;
  - Requiring use of international standards and enforceable disciplines against trade restrictions that are not science-based; and
  - Capping farm subsidies at $9 billion in 2012 and cutting them in half by 2018.
- Russia will open its services markets to U.S. firms. Among other measures, Moscow will allow 100% U.S. ownership of companies in banking, securities, nonlife insurance, telecommunications, audiovisual, wholesale, distribution, retail, and franchises.
- Russia will for the first time be bound by the intellectual property commitments of the WTO TRIPS Agreement. Russia's accession package includes strong commitments relating to enforcement on the Internet and new copyright and patent protections.
- Russia will cut its maximum customs clearance fee by two-thirds to about $1000.
- Russia's accession will allow recourse to the WTO dispute settlement system for trade disputes.

PNTR's Benefits Go to the U.S.

One little understood aspect of this process is that Congress does not vote on Russia's accession to the WTO and has no authority to block it. Rather, Congress must approve PNTR and repeal the Jackson-Vanik amendment with respect to Russia if American companies, workers, and farmers are to benefit from Russia's new openness as it joins the WTO.

Under WTO rules, every WTO member must grant all other members unconditional Permanent Normal Trade Relations (also known as "most-favored nation" status). This obligation originated in the WTO's predecessor, the 1947 General Agreement on Tariffs and Trade, and it mandates that any advantage granted to one WTO member by another member must be accorded unconditionally to all other members. The United States will be in clear violation of this rule if it fails to repeal Jackson-Vanik with regard to Russia. Russia would thus be fully within its rights to withhold the benefits of its accession-related reforms from U.S. companies.

The Jackson-Vanik amendment to the Trade Act of 1974 was devised to press the Soviet Union to allow the emigration of Soviet Jews, prisoners of conscience, and victims of religious persecution. With respect to Russia, Jackson-Vanik has fully accomplished its objective. With the collapse of the Soviet Union two decades ago, Russia established freedom of emigration for all citizens. Since 1992, U.S. presidents of both parties have issued annual certifications of Russia's full compliance with the Jackson-Vanik amendment.

Because no other WTO member has a law similar to Jackson-Vanik, all of Russia's trading partners except the United States will immediately benefit when Russia joins the WTO in July. If Jackson-Vanik remains applicable to Russia, the United States will be in violation of WTO rules. Failure to approve PNTR and repeal Jackson-Vanik with regard to Russia would allow Moscow the right to discriminate against U.S. companies and the workers they employ and deny them the full benefits of Russia's market-opening reforms. Meanwhile, European and Asian companies will be able to build on their already significant head start in tapping the growing Russian market.

Russia is the world's 11th largest economy and the last major economy to join the WTO. The President's Export Council estimates that U.S. exports of goods and services to Russia — which, according to estimates, topped $10 billion in 2011 — could double or triple once Russia joins the WTO. Many U.S. companies are already active in Russia; to illustrate, the American Chamber of Commerce in Russia has more than 700 members. For many of these companies, Russia has proven to be a lucrative market for high quality goods and services.

Business opportunities in Russia are significant and are expected to grow substantially after Russia finalizes its accession to the WTO. The World Bank forecasts WTO accession could increase Russian GDP by 3.3% in the medium term and by 11% over a longer period as greater openness and competition in the marketplace compel the Russian economy to become more efficient. Russia's economy has been dominated by natural resource extraction and state-owned and state-influenced enterprises; joining the global rules-based trading system will foster diversification and openness and directly benefit consumers.

One often-posed question is: What happens if Russia fails to meet its commitments? In the area of intellectual property protection, for example, Russia continues to present significant challenges to U.S. innovators and creative artists. The Chamber will continue to urge the U.S. government to remain vigilant in ensuring that Russia implements its intellectual property commitments in full and makes greater progress with respect to combating online piracy.

However, addressing these challenges will be easier once Russia joins the WTO. Other countries will for the first time be able to use the WTO dispute settlement process to hold the Russian authorities accountable should they fail to fulfill their commitments as a new member of the organization. The WTO dispute settlement process affords graduated responses to the arbitrary imposition of trade barriers, including the possibility of WTO-sanctioned retaliation. At present, no such recourse exists, and U.S. authorities have few options to respond to Moscow's arbitrary trade actions. However, the United States cannot avail itself of WTO dispute settlement unless it grants Russia PNTR.

Russia's accession to the WTO has been a bipartisan American foreign policy goal for many years. In 1993, Russia applied to join the General Agreement on Tariffs and Trade (GATT), the precursor to the WTO. After years of talks, the Bush Administration took a big step forward in 2006 when it signed a bilateral agreement with Russia to address particular trade concerns. (Any WTO member may insist that an acceding nation negotiate such an agreement as a condition for accession.) The Obama Administration concluded the multilateral negotiations for Russia's accession in December 2011.

The longstanding bipartisan goal of bringing Russia into the global rules-based trading system is finally within reach. The only question now is whether U.S. companies, workers, and farmers will be able to secure the benefits of Russia's accession to the WTO. The answer rests with the Congress, which must approve PNTR and repeal Jackson-Vanik with respect to Russia.

The 2012 Agenda: Reauthorize the Ex-Im Bank

In addition, the Chamber strongly urges that Congress approve a four-year reauthorization for the Export-Import Bank of the United States (Ex-Im) that also sufficiently increases its lending cap. Ex-Im's temporary reauthorization will expire on May 31, and failure

to reauthorize its operations at an internationally competitive level would seriously disadvantage U.S. companies—small and large—in foreign markets, costing thousands of U.S. jobs.

Ex-Im has a proven record of success. Far from being a burden on the taxpayer, Ex-Im turns a profit for the American taxpayer. Since 2005, Ex-Im has returned more than $3.4 billion to the Treasury above all costs and loss reserves, including $700 million in FY 2011 alone.

Nor does Ex-Im only help big business. In fact, small businesses account for 87% of Ex-Im's transactions; further, these small business transaction figures are in addition to the tens of thousands of small and medium-sized businesses that supply goods and services to large exporters. In FY 2011, Ex-Im provided more than $6 billion in financing and insurance for U.S. small businesses — an increase of nearly 90% since FY 2008. Ex-Im has set the goal of adding 5,000 new small businesses to its portfolio by 2015.

Another myth holds that Ex-Im competes unfairly with private financial institutions. In fact, Ex-Im covers critical gaps in financing for U.S. exports to developing countries where commercial-bank financing is unavailable or insufficient. Ex-Im also acted to fill the void when the availability of private-sector trade finance fell by 40% during the 2008-2009 financial crisis. In the aircraft sector, a new multilateral agreement doubled the fees for export credit financing, thereby addressing the concern that some export credit financing was below market rates.

Ex-Im lending exposes the taxpayer to very little risk. Borrowers have defaulted on less than 2% of all loans backed by Ex-Im since its inception in 1934, a default rate lower than commercial banks. Ex-Im loans and guarantees present very low risks because they are backed by the collateral of real goods for which a buyer has already been found and a price has been agreed. As a result, Ex-Im poses none of the risks to taxpayers that, for instance, government-sponsored enterprises in the housing sector ultimately did.

Failure to reauthorize Ex-Im would amount to unilateral disarmament in the face of other nations' aggressive trade finance programs. For example, the export credit agency in Canada has extended three times as much export financing as Ex-Im; Japan more than five times; and China an estimated eleven times. Failure to reauthorize Ex-Im will put billions of dollars in U.S. exports and thousands of American jobs at risk.

With economic growth and job creation the top priorities for the United States, Ex-Im has an important role to play. In FY 2011, Ex-Im supported export sales that created or sustained approximately 290,000 U.S. jobs at over 3,600 companies. With unemployment still high, the time is now to renew Ex-Im so these jobs are not put at risk.

Also on the 2012 agenda, the Chamber supports the immediate enactment of a package of U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) technical fixes approved by the CAFTA-DR trade ministers more than a year ago. Equally important is an extension to the African Growth and Opportunity Act (AGOA) third-country fabric provision, which accounts for nearly all U.S. apparel imports under the AGOA. Continued inaction on these measures — especially since there appears to be widespread support for their passage — creates uncertainty that dampens trade and deters investment. Finally, as with Russia, Congress should approve the long-pending bill extending PNTR to Moldova.

Trade Promotion Authority

Looking beyond these immediate priorities, a pro-jobs trade agenda must include more market-opening agreements such as those recently approved with South Korea, Colombia, and Panama. But first, the president needs the authority to negotiate such agreements — Trade Promotion Authority (TPA). Congress has granted every president since FDR the authority to negotiate market-opening trade agreements in consultation with Congress.

The U.S. Constitution gives the Congress authority to regulate international commerce, but it gives the president authority to negotiate with foreign governments. TPA permits the executive branch to negotiate agreements in consultation with the Congress; when an agreement is reached, Congress may approve or reject it, but not amend it.

TPA lapsed in 2007. That's unacceptable; every American president needs TPA, and every president should have it. Potential partners won't negotiate seriously if they know agreements could be picked apart by Congress.

Without TPA, the United States is relegated to the sidelines as other nations negotiate trade agreements without us — putting American workers, farmers, and companies at a competitive disadvantage. Already, more than 300 free trade agreements are in force around the globe, but the United States is a party to just 14 such agreements covering 20 countries. And that includes the most recent three, which have yet to be implemented.

The last time Congress passed TPA, in 2002, it took more than a year for a bill to reach the president's desk. We need to start the ball rolling now.

Trans-Pacific Partnership

With whom should the United States negotiate? The Trans-Pacific Partnership (TPP) is the one trade agreement under negotiation today in which the United States actually has a seat at the table.

It's a great place to start. Asia is accounts for half of the world's population and is projected to account for a large share of its economic growth for years to come. To boost U.S. exports and create jobs at home, the United States needs to improve its access to Asian markets.

The United States is behind the eight ball in Asia. The U.S. share of Asia's international trade has actually declined by 9% since 1990 as Asian nations have negotiated preferential trading agreements among themselves. The proliferation of bilateral and regional trade accords globally is particularly intense in Asia. Intra-Asian trade now accounts for half of the region's total international commerce — up from just a quarter in 1985.

As Asian production chains have expanded to meet booming regional demand, U.S. suppliers of intermediate goods are being left behind. Many U.S. manufacturers and farmers are being displaced by local competitors or firms based in the EU or Australia, which are forging their own preferential trade deals across the region.

In short, Asian nations are designing a new architecture for trade in the global economy's most dynamic region — threatening to draw "a line down the middle of the Pacific." The TPP is our chance to ensure the United States is in the game in Asia. Embracing nine countries today, many hope additional countries will accede over time.

Working closely with the Office of the U.S. Trade Representative, the Chamber is leading the business community's efforts to create new discipline relating to regulatory coherence, competition policy, and state-owned enterprises. In some of these cases, new rules are being framed with a view toward possibly extending them one day to other nations.

Transatlantic Economic and Trade Pact

As we consider new trade accords with our biggest commercial partners, Europe calls out for attention. Indeed, the European Union is by far America's largest international economic partner and, in the size of its economy, our only true economic peer.

Further, while polls suggest many Americans have an ambivalent attitude toward trade agreements, a recent Pew poll found that Americans support increased trade with Europe by a healthy 58% to 28% margin.

Last year, the Chamber supported a study to gauge the potential benefits of eliminating tariffs between the United States and the European Union. While European and U.S. tariffs are often low, the sheer volume of transatlantic commerce is so large that one-third of all tariffs on U.S. exports to the world are paid to the EU. The study found that eliminating transatlantic tariffs would boost U.S.-EU trade by more than $120 billion within five years. It would also generate GDP gains of $180 billion — a budget-neutral boost to the U.S. and EU economies.

Today, the Chamber is broadening its proposal for a Transatlantic Economic and Trade Pact that eliminates tariffs, ensures compatible regulatory regimes, and addresses investment, services, and procurement.

The global context is important as well. The EU has a free trade agreement with Mexico and is negotiating one with Canada. Does it make sense for tariffs and other trade barriers to remain in force on the third and largest leg of European-North American trade?

The Multilateral Agenda

The U.S. business community remains committed to the World Trade Organization (WTO) and the global rules-based trading system. However, the WTO's Doha Round has stalled, and it's unclear any "early harvest" or limited agreement can be reached. Negotiators can't let this impasse linger forever. The United States and other parties need to choose one of three courses: find a way to conclude the Round; find a way to agree on some limited set of deliverables, harvesting, for instance, the promising results of the trade facilitation negotiations; or abandon the negotiations once and for all.

At some point, even the third of these bad options is preferable to the ongoing impasse because it would allow WTO members to set a new agenda for the organization. The WTO is too important to leave it tied up in knots. Even if it can't resolve the 20th century issues on display in

the Doha Round, it needs to play a role in the 21st century challenges to the global rules-based trading system.

What else should the WTO do? Interest is growing in the idea of an agreement among a "coalition of the willing" that would liberalize trade in services under the WTO. Such an International Services Agreement would go beyond what was achieved in the 1995 General Agreement on Trade in Services (GATS).

A focus on services is a natural for the United States. America is by far the world's largest exporter of services, which topped $600 billion dollars last year. The United States is home to large numbers of world beating services firms in such sectors as audiovisual, banking, energy services, express delivery, information technology, insurance, and telecommunications.

U.S. services companies have seen regulatory barriers multiply in ways that could not be foreseen when the GATS was negotiated nearly two decades ago. New challenges include cyber security, movement and storage of data, the free flow of commercial information on the Internet, privacy, and supply chain challenges that go beyond familiar customs clearance matters.

An International Services Agreement would present opportunities to address the opportunities and challenges of the digital economy and the spread of global supply chains. Doing so at the WTO would strengthen the global rules-based trading system, which some believe has been weakened by the long impasse in the Doha Round.

This approach would also present powerful incentives for countries to join in. Benefits would be extended only to those countries that sign up, and there is ample precedent for "plurilateral" agreements among a set of path-breaking countries expanding over time to cover all or a vast majority of world trade in the sectors addressed.

The United States should consider working with like-minded countries to pursue additional sectoral agreements that have broad appeal across the WTO membership in such areas as trade facilitation and environmental goods and services.

New Partners for FTAs

In addition to these regional and multilateral proposals, the business community is keen to see new free trade agreements (FTAs) negotiated bilaterally as well. As mentioned above, the U.S. Chamber believes we should pursue new trade deals that can deliver significant commercial benefits. Also, we should look for opportunities to create new trade rules to keep up with today's rapidly changing global economy.

Given their economic potential, Brazil, Egypt, India, and Indonesia are all countries named by Chamber members as interesting potential FTA partners. However, in each case a great deal of work would need to be undertaken before negotiations could begin. For instance, Brazil's leaders have not given a clear signal of interest in launching negotiations with the United States, though Brazilian officials have done so in the past.

With regard to Egypt, the Chamber-based U.S.-Egypt Business Council recently worked with the Center for Strategic and International Studies on a study assessing the potential benefits

of a U.S.-Egypt FTA and presenting recommendations for steps to take that could pave the way for the launch of negotiations.

In the case of India, U.S. officials are focusing — quite appropriately — on negotiations for a bilateral investment treaty. Similarly, the recently launched U.S.-Indonesia Commercial Dialogue may afford opportunities to assess Indonesia's preparedness to negotiate a trade agreement (though the optimal path forward would be for Indonesia to join the TPP).

In addition, Chamber members have called attention to the strong growth prospects of many countries in Africa, where the United States lacks a developed network of trade agreements comparable to those in, for instance, the Americas. The United States should dedicate greater resources and attention to ensure U.S. firms can get in on the ground floor of Africa's economic development.

International Investment

In addition, it's clear that the United States must dedicate more attention to seizing the benefits of international investment. International investment is a two-way street, with benefits flowing from both foreign investment in the United States and U.S. investment abroad.

Foreign companies employ more than 5.3 million Americans and support an annual payroll of more than $400 billion, according to the U.S. Department of Commerce. These foreign-headquartered companies purchase more than $1.8 trillion in inputs from local suppliers and small businesses and account for more than one-fifth of all U.S. merchandise exports.

However, U.S. firms' investments abroad also bring real benefits to Americans, including on the jobs front. Studies have found that U.S. companies that invest abroad tend to create more jobs in the United States and pay higher wages than companies focused solely on the domestic market. Indeed, the U.S. Department of Commerce reports that U.S. multinational corporations added 289,000 U.S. jobs between 2007 and 2009 even as the sharpest recession in a generation caused the U.S. economy to shed more than eight million jobs overall (see graph on next page).

U.S. multinationals have continued to concentrate their high-wage, high-skill jobs in the United States, according to the same report. The roughly $6 trillion in annual revenue U.S. multinationals earn through their foreign operations help fund their research and development activities, 84% of which continue to be performed in the United States.

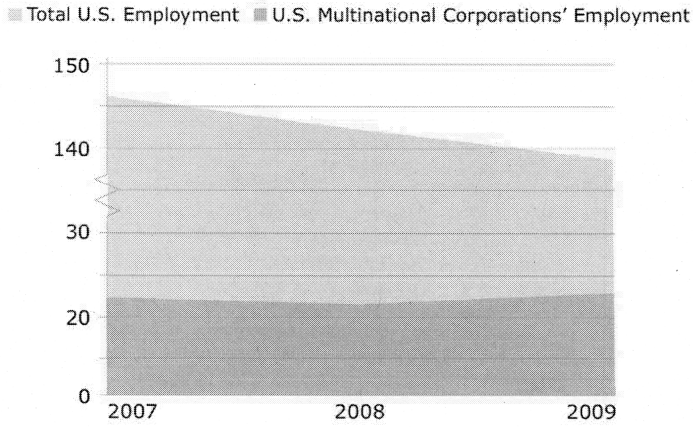
Polls show many Americans believe "offshoring" is a major driver of job loss, but the facts show the movement of jobs to foreign locations accounts for a tiny fraction of layoffs. For example, the Bureau of Labor Statistics reported the separation of 184,493 workers from their jobs in the third quarter of 2011 in "mass layoffs" (i.e., layoffs of 50 or more workers). However, only 110 of these layoffs resulted from movement of work to an overseas location — or 0.0006% of the total.

Some charge that international investment is really about substituting foreign production for domestic production and thus replacing U.S. workers with low-wage foreign labor. In fact, just 8.9% of the production of foreign affiliates of U.S. multinationals is sold in the U.S. market,

according to data compiled by the U.S. Department of Commerce. In other words, 92% of their production is sold abroad.

Job Losses and U.S. Multinational Corporations

As the broader economy shed eight million jobs in 2007-2009, U.S. multinational corporations actually created 289,000 new American jobs



"Operations of U.S. Multinational Companies in the United States and Abroad: Preliminary Results From the 2009 Benchmark Survey," by Kevin B. Barefoot and Raymond J. Mataloni Jr., Bureau of Economic Analysis, U.S. Department of Commerce, November 2011. http://www.bea.gov/scb/pdf/2011/11%20November/1111_mnc.pdf.

To remain a leader in the global economy, the United States must lead on both sides of the investment equation. That means the United States needs to update its approach to protecting U.S. investments abroad to reflect the changing global economy. We need to guarantee better market access and treatment for U.S. investors abroad, stem the growth of restrictive and controlling performance requirements that seek to impose controls over investments, and level the playing field for U.S. investors competing with state-owned commercial actors.

We need to negotiate more investment protecting agreements. The U.S. ranks 44th in the world in the number of bilateral investment treaties (BITs) it has in place; by contrast, Germany and China have 133 and 121 such treaties, respectively. Negotiations with key countries such as China and India have stalled while organized labor and environmental groups lobby the administration to load up investment agreements with labor and environmental provisions. These efforts are ultimately aimed at undermining ongoing and future negotiations, if not the entire BIT program.

Given America's need to create jobs, rebuild our infrastructure, and remain the world's pre-eminent innovation hub, we have no choice but to actively court in-bound investment with a welcoming policy environment. American companies seeking to be global players must have the unwavering support of the U.S. government behind them in promoting and protecting their

investments abroad. Going forward, the needs of international investment, outbound and inbound, demand greater policy attention from the Administration and the Congress.

* * *

For the Chamber, the agenda is clear. The United States cannot afford to sit on the sidelines while others design a new architecture for the world economy and world trade. The United States needs a laser-like focus on access to foreign markets. In the short term, this means approving PNTR for Russia and reauthorizing the Ex-Im Bank. It also means renewing the president's Trade Promotion Authority to allow the negotiation of additional multilateral, regional, and bilateral trade agreements. The U.S. Chamber of Commerce looks forward to working with the members of the Committee to advance a bold trade agenda to generate growth, opportunity, and jobs.

USCBC
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The President's 2012 Trade Agenda

Testimony of John Frisbie, President, US-China Business Council
to the Senate Committee on Finance
March 7, 2012

The US-China Business Council (USCBC) is the leading organization that represents American companies doing business in China. Our membership consists of nearly 240 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 continuing to work with Congress to address trade and investment barriers in the world's second-largest economy through appropriate and effective means.

USCBC and its member companies support a strong, mutually beneficial commercial relationship with China. Though we have many challenges in our commercial relationship, we have made many positive strides over the past three decades, thanks to the collaborative work of the government, business community, and other stakeholders.

Our commercial relationship with China is critical to America's future economic success as well as to the overall health of the world economy. China is probably a $200 billion market for American companies today, providing an important source of revenue growth and job support at a time of challenge in much to the rest of the world economy. However, more work needs to be done in order to fully develop commercial ties, tackle unresolved issues, and bring greater benefit American companies, workers, farmers, and consumers.

Last month, the US-China Business Council's board of directors issued a Statement of Priorities in the US-China Commercial Relationship, which we believe will provide focus on issues that can help advance economic growth and job creation. The priorities fall into the following areas:

- Ensure fair and open investment environments that create jobs.
- Reduce trade barriers and enforce globally-accepted trade rules.
- Ensure competitive neutrality and improve transparency.
- Provide consistent, strong IPR protection.
- Adhere to mutually beneficial innovation policies.

USCBC recommends a mix of specific objectives under each of these principles, as described in the attached statement. We lend our full support to achieving these objectives and look forward to working with Congress on these important issues.

Attachment

THE US-CHINA BUSINESS COUNCIL

美 中 贸 易 全 国 委 员 会

US-China Business Council Board of Directors
Statement of Priorities in the US-China Commercial Relationship

February 10, 2012

The US-China Business Council supports a strong, mutually-beneficial commercial relationship with China. The relationship has made many positive strides over the past three decades, thanks to the collaborative work of the governments, business communities, and other stakeholders in both countries.

More work needs to be done in order to fully develop commercial ties, tackle unresolved issues, and bring greater benefit to each country's economy, companies, employees, farmers, and consumers. The US-China Business Council calls upon the US and Chinese governments to work together on the following priority issues in the commercial relationship, and lends its full support to achieving the goals listed below.

Ensure Fair and Open Investment Environments that Create Jobs

- **Pledge to openness** The United States and Chinese governments should jointly affirm the principle that foreign direct investment is good for economic development, employment, innovation, competition, consumers, and public welfare. Government reviews of prospective investments in either country should be free from political interference and limited to legitimate national security concerns.
- **Encourage Chinese investment in the United States** The job-creation benefits of foreign direct investment underscore the importance of bringing more Chinese investment into the United States. The US government and private sector organizations like USCBC should continue to demystify for Chinese investors the rules for investing in the United States and work with state and local governments to spread best practices for attracting Chinese investment. The US and China should continue the sub-national dialogue on investment involving governors, mayors, and respective business communities.
- **Reduce foreign ownership restrictions in China** China's recently revised Catalogue Guiding Foreign Investment maintains foreign ownership restrictions in nearly 100 manufacturing and services sector categories in China. These restrictions inhibit foreign investment in key sectors and prevent the full economic benefits of foreign investment from being realized. Given China's desire to invest more in the United States, reducing or eliminating these ownership restrictions faced by American investors in China would be a positive way to build broader support for Chinese investment in the United States.

- **Reduce barriers to financial services investments in China** Global financial services companies provide products and services that are essential to China's goal of economic rebalancing. In addition, China has articulated its interest in having Shanghai become a financial center. Achieving these goals likely will be difficult without greater openness to foreign participation. China will be better able to achieve these goals by:
    - Reducing or eliminating foreign investment equity ownership limits in key financial services sectors, including domestic commercial banks, securities firms, and insurance and asset management companies;
    - Reducing other restrictions that limit foreign financial services firms' ability to participate actively in the market, such as the required five-year market presence before foreign securities firms can obtain a license to conduct business in China's market;
    - Improving its complex, time-consuming branch application and approval process and ensuring equal treatment for all applicants, regardless of ownership. Foreign banks should have greater freedom to select branch locations based on consumer demands. Foreign-invested insurers in China should be treated the same as domestic insurers in the branch and sub-branch application and approval process.
- **Finalize the US model Bilateral Investment Treaty (BIT) and resume BIT negotiations with China** A BIT provides one of the best opportunities to reduce investment barriers in both countries and improve protections for US and Chinese investors in each others' markets. The US should finalize its internal review of the US model BIT and resume negotiations with China as soon as possible. The most important elements of a strong US model BIT are national treatment provisions that apply to both new and existing investments ("pre-establishment"), and a "negative list" approach that covers all investments except those specifically excluded in the agreement.

Reduce Trade Barriers and Enforce Globally Accepted Trade Rules

- **Continue to use World Trade Organization (WTO) cases to settle trade disputes** In addition to reducing trade barriers, China's WTO entry in 2001 introduced a neutral, third-party dispute settlement mechanism for dealing with commercial issues that cannot be resolved by good-faith bilateral negotiations. Both countries have effectively used this channel to resolve trade disputes in a non-politicized manner and should continue to do so.
- **Ensure anti-dumping (AD) and countervailing duty (CVD) decisions are non-politicized** AD and CVD cases must be fact-based, shielded from political pressures, and fairly adjudicated based on international norms. AD and CVD actions should not be used for retaliatory purposes.
- **Increase the use of internationally-harmonized standards for goods and services sold in China's market** The use of internationally-harmonized standards in China is one of the best ways to ensure that Chinese consumers have access to a wide range of choice in the latest products and services and that Chinese products and services are accepted and competitive internationally. China has significantly increased its participation in the setting and use of international standards in recent years, but foreign companies continue to observe the persistence of Chinese "homegrown" standards and the adoption of revised versions of international standards that in effect serve as barriers for foreign products in the China market. To more effectively align with international standards, China should use global standards as the basis for Chinese standards wherever practical and adopt a more transparent, market-led approach to standards setting and development.

- **Increase financing support for US exports to China** Despite substantial growth in US exports to China over the past decade, the US share of Chinese imports has fallen to 7 percent from 10 percent in 2000. A worthy goal of the Obama administration's National Export Initiative should be to reclaim a 10 percent share of China's imports by 2014. To help accomplish this goal, the US should reauthorize the Export-Import Bank of the United States and prioritize financing in support of exports to China.
- **Accelerate sensible US export control reforms** Export controls are an important part of ensuring the security of the United States. The Obama administration should continue its reform efforts that will ensure US security is not undermined while eliminating unnecessary licensing controls on products no longer a threat to US security. Such reforms will boost US exports and help support and create jobs. The United States should move forward more quickly with modifications of non-controversial items even as more difficult reform vetting continues. Those modifications should include items that can be delisted for countries such as China because they are available on the open market from non-US sources.
- **Promote mutual cooperation on environmental technologies** The United States and China should seek more opportunities for mutual cooperation in developing and deploying energy efficiency and environmental sustainability technologies, which will benefit both nations. China should reduce tariff levels on energy and environmental sustainability products and eliminate non-tariff barriers to environmental goods, technologies, and services, including local content requirements, in accordance with the Asia-Pacific Economic Cooperation (APEC) initiative in this area.
- **Provide up-to-date subsidies notifications to the WTO** China should provide regular, detailed and complete reports to the WTO on all national, provincial and local subsidies, in compliance with its WTO commitments. Greater transparency would enhance the likelihood of constructive discussion on this important trade issue.
- **Remove non-tariff barriers to trade** China's market has a variety of trade-limiting regulations that should be removed, including discriminatory import licensing restrictions on agricultural products (such as cotton and fertilizer), limitations on express delivery services, and duplicative local domestic testing requirements that require many imported goods to be tested and certified by domestic laboratories regardless of whether they have already undergone similar tests internationally.

Ensure Competitive Neutrality and Improve Transparency

- **Ensure equal treatment in government procurement for all legal entities in China, regardless of ownership** China should finalize the 2010 draft Administrative Measures for Government Procurement of Domestic Products to ensure that goods and services provided by all legal entities in China are treated equally during procurement processes, regardless of ownership. These Measures, with additional modifications for information technology products, would roughly parallel similar rules applied to Chinese companies in the United States.
- **Join the Government Procurement Agreement (GPA)** China should join the WTO's GPA under meaningful terms, such as expanding the sectors and levels of government that are subject to the agreement. If China can address these points and other points and join the GPA, many of each side's concerns with "Buy American" and "Buy Chinese" procurement practices will be positively addressed.

- **Strengthen Implementation of the Administrative Licensing Law** China should make a renewed effort to fully implement the 2003 Administrative Licensing Law, which provides strong protections for applicants and aims to streamline many of China's burdensome and duplicative licensing and approval processes. In particular, China should actively enforce provisions that require agencies to accept and act upon applications within specific timelines.
- **Further improve rule-making transparency** China's central government has significantly improved rule-making transparency over the past several years, but further improvements are needed. China should fully implement its commitment to publish all draft trade and economic-related laws, administrative regulations and departmental rules for a full 30-day period, but it should also consider going further by posting draft regulations on a designated website for a 60- or 90-day public comment period.
- **Ensure a level playing field in third country markets** It is normal to expect that American and Chinese companies will increasingly compete in third-country markets. Maintaining a level playing field is the best way to ensure that this competition does not contribute to bilateral trade tensions. The US Export-Import Bank should offer financing that is competitive with terms that Chinese companies may enjoy from China's Ex-Im Bank. At the same time, China could send a positive signal of adhering to international norms by following OECD rules on export financing.
- **Eliminate duplicative and inconsistent payroll taxes** The US and China should quickly move to ensure their respective companies and employees are not required to pay payroll taxes (social insurance taxes in China) in both countries. In the interim, participation in China's social insurance system should be made optional for foreign and dispatched employees upon written agreement with their employer. In addition, foreign employees should be allowed to opt out of basic medical insurance upon demonstrating proof of existing coverage. Finally, foreign employees should not be required to contribute to China's unemployment insurance system, since China's visa requirements make it unlikely that a foreign worker would be able to remain in the country after becoming unemployed.

Provide Consistent, Strong IPR Protection

- **Continue to strengthen enforcement of intellectual property rights (IPR) in China** IPR protection is increasingly viewed as in China's own interest as it seeks to develop an innovative economy. It is also critically important to US companies that do business with China. China's new State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods should continue and expand upon the positive results of the 2010-2011 special IPR enforcement campaign. We encourage the US government to actively engage with the new Leading Group to support its success in reaching this goal.
- **Adopt a stronger deterrent against counterfeiting** China should adopt the WTO-consistent deterrent of criminal penalties in cases of commercial-scale infringement, and broaden the use of higher penalties and stronger deterrents against all types of IPR infringement, including patent, copyright, trademark, and trade secrets violations.
- **Improve enforcement of online trademarks and counterfeits** Internet platforms are a growing means for counterfeiters to market and sell counterfeit goods, but present special challenges for rights-holders and enforcement officials alike. China should strengthen enforcement of intellectual property online and release new rules to clarify the rights and

responsibilities of rights-holders, Internet service providers, and website owners to deal with counterfeit products and pirated works.

- **Remove market access barriers for legitimate products** For example, China should remove the limit on the number of movies allowed to be imported each year and eliminate blackout periods for screenings, so that legitimate product can replace pirated product in the marketplace.

Adhere to Mutually Beneficial Innovation Policies

- **Continue to implement China's pledge to delink its innovation and government procurement policies** This issue impacts China's ability to become a global innovative economy and the level playing field for American companies in the China market. Progress is being made. China should be commended for the November 17, 2011 State Council directive to local governments to halt implementation of any measures that link innovation and government procurement, and should be encouraged to continue those efforts until all such policies are eliminated. Another important specific step that China should take is the finalization and issuance of Implementing Regulations to China's Government Procurement Law with the removal of references to indigenous innovation in Article 9 of the draft regulations.
- **Follow internationally proven, effective innovation incentives** China should use non-discriminatory tax policy incentives that do not have domestic intellectual property ownership requirements and allow all domestic enterprises, including wholly foreign-owned enterprises and joint ventures, to equally access government-funded innovation programs. Non-discriminatory access to government-supported innovation programs is one of the hallmarks of the US and other innovative economies around the world.
- **Restore full participation of the US Office of Science and Technology Policy (OSTP) in the US-China Innovation Dialogue** This dialogue is focused on bringing global best practices to China's innovation policies and ensuring a level playing field in innovation and technology industries. Congress should immediately remove counterproductive restrictions on OSTP's participation in this important dialogue to allow it to proceed and enable it to meet its goals.