

# PRESIDENT BUSH'S TRADE AGENDA FOR 2002

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HEARING  
BEFORE THE  
COMMITTEE ON WAYS AND MEANS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SEVENTH CONGRESS  
SECOND SESSION

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FEBRUARY 7, 2002  
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**Serial No. 107-57**

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## **PRESIDENT BUSH'S TRADE AGENDA FOR 2002**

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**THURSDAY, FEBRUARY 7, 2002**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 11:00 a.m., in room 1100 Longworth House Office Building, Hon. Bill Thomas (Chairman of the Committee) presiding.

[The advisory announcing the hearing follows:]

# ADVISORY

## FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE  
January 29, 2002  
No. FC-13

CONTACT: (202) 225-1721

### **Thomas Announces a Hearing on President Bush's Trade Agenda for 2002**

Congressman Bill Thomas (R-CA), Chairman of the Committee on Ways and Means, today announced that the Committee will hold a hearing on President Bush's trade agenda for 2002. **The hearing will take place on Thursday, February 7, 2002, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from United States Trade Representative Robert B. Zoellick. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

#### **BACKGROUND:**

From November 9-14, 2001, trade ministers representing 140 countries met at the Fourth World Trade Organization (WTO) Ministerial Conference in Doha, Qatar, where an agreement was reached to launch a new round of multilateral trade negotiations. A schedule for negotiations will be formulated shortly, and the United States and its trading partners will be tabling negotiating proposals. In addition, negotiations to establish the Free Trade Area of the Americas (FTAA) are reaching a critical stage with the approaching deadline of May 15, 2002, for initiating market-access talks.

Negotiations to establish bilateral free trade agreements (FTAs) with Singapore and Chile are scheduled to conclude later this year. All of these negotiations cover agriculture, services, industrial tariffs, and investment, to name a few of the sectors where the United States stands to gain new export opportunities.

At the same time, the Administration is considering other possible FTAs to improve U.S. access to foreign markets. On December 6, 2001, the House passed H.R. 3005, a bi-partisan bill to renew the President's authority to present legislation implementing trade agreements to Congress for approval without amendment (otherwise known as Trade Promotion Authority). This legislation contains extensive negotiating objectives and consultation requirements. H.R. 3005 was approved by the Senate Finance Committee, as amended, on December 18, 2001.

In announcing the hearing, Chairman Thomas stated: "A tried and true medicine for a weakened economy is expanding trade, and the House has moved ahead to grant President Bush and Ambassador Zoellick the tools that need to open foreign markets to U.S. products and services. Right now, as we await Senate action, markets are being pried open in Latin America, Asia, and Europe, for the goods and services of our competitors. Our trading partners are signing new trade agreements monthly that leave the United States out. As the Senate considers H.R. 3005, the Committee will be engaged in close consultations with the Administration on priorities for the new round of WTO negotiations, the FTAA, and on additional negotiations to establish free trade agreements with close trading partners and allies. We will actively encourage the Senate to deliver tools needed by the Bush Administration to ensure that future trade agreements include, rather than exclude, the United States."

**FOCUS OF THE HEARING:**

The hearing is expected to examine current trade issues such as: (1) the President's trade agenda in light of House passage of H.R. 3005, (2) the success of the WTO Ministerial Meeting in Doha, (3) prospects for the FTAA, (4) H.R. 3009, a bill passed by the House to extend and expand the Andean Trade Preference Act, which is awaiting Senate action, (5) the functioning of the WTO dispute settlement system and cases that have been brought against the United States, including the challenge to the Foreign Sales Corporation and Extraterritorial Income Exclusion rules, (6) the steel safeguard determination due March 6, (7) progress in negotiations to establish trade agreements with Singapore and Chile, (8) other potential candidates for free trade agreement negotiations such as Australia, New Zealand, and Central American countries, and (9) the pending accession of Russia to the WTO and H.R. 3553, a bill to remove Russia from Title IV of the Trade Act of 1974, the so-called Jackson-Vanik amendment.

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

**Please Note:** Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to "[hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov)", along with a fax copy to 202/225-2610 by the close of business, Thursday, February 21, 2002. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the full Committee in room 1102 Longworth House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse unopened and unsearchable deliveries to all House Office Buildings.

**FORMATTING REQUIREMENTS:**

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to "[hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov)", along with a fax copy to 202/225-2610, in Word Perfect or MS Word format and MUST NOT exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov>.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman THOMAS. If our guests could find seats, please. Good morning to all of you.

Welcome, Ambassador Zoellick. Thank you for joining us today.

This is the Committee's fourth hearing this week on the President's budget; and, as I have said, the President has stated three very clear goals in the context of his fiscal year 2003 budget plan: win the war, protect the homeland and revive the economy.

The events of September 11 have challenged us in many ways, and we are being tested militarily and in our domestic economy and our commitment to remain engaged on the world economic stage. As we work to revitalize the economy, nearly 8 million people remain unemployed. We believe free trade will fuel the engines of economic growth and create new jobs and new income here and abroad—I am sorry. You guys ready to go?

The United States is the world's largest exporter and for good reason. Our firms and workers are highly productive and committed to competing and winning in international commerce. Competition breeds innovation, and innovation leads to new and better-paying jobs. International trade agreements generate economic growth, spawn technological advances and help to advance American foreign policy objectives. One of every \$4 in the U.S. economy is linked to trade. Twelve million Americans owe their jobs to exports. Each trade agreement excluding the United States represents an opportunity lost for American business and the workers they employ.

Those who complain about unfair treatment we receive abroad or unfair advantages enjoyed by their international competitors should see the importance of moving forward with negotiations. Unless we aggressively negotiate in our own interests, we will face the same disadvantages in the future.

We cannot negotiate, however, unless Congress gives the President the tools he needs. Senate passage of Trade Promotion Authority (TPA) passed by the House last year would complete Congress' commitment that American business have a fair chance to compete and win in the international arena. We will actively encourage the Senate to deliver tools the President needs to ensure America stays competitive.

The Senate has also not yet passed the Andean Trade Promotion Act and the Drug Eradication Act, part of a comprehensive approach to fight the illegal drug trade that continues to plague that region, indeed, our Nation as well. This bill will offer the people of these nations—Colombia, Peru, Bolivia, Ecuador—the opportunity to develop legitimate businesses, rather than engage in the production of illegal drugs.

In December, the Foreign Sales Corporation (FSC) replacement, the Extra Territorial Income Exclusion Act of 2000, was ruled an illegal export subsidy by the World Trade Organization (WTO). I intend to hold full Committee hearings and a series of subcommittee hearings to examine the issue, and the Committee will undertake the necessary and appropriate legislative steps to meet our WTO obligations.



We must preserve the international competitiveness of U.S. interests. We have railed long and hard against those who do not comply to international agreed-upon rules. It is then in our own interest when we have received the judgment against us to make sure that we comply with those rules as well.

Mr. Ambassador, you succeeded in breaking through the WTO deadlock that had prevailed since Seattle. As a result, we have an agreement on the need for a comprehensive 3-year negotiation covering the range of trade barriers in agriculture, especially services, industrial tariffs and investment. This Committee will work closely with you to develop priorities for the new round of WTO negotiation, the Free Trade Area of the Americas (FTAA), the indicated Singapore and Chilean free trade agreements (FTA) and, hopefully, additional negotiations that we can agree on and you have been able to arrange for us so that we can continue creating new arrangements with our close trading partners and allies.

At this point, I would recognize briefly the gentleman from Illinois, the Chairman of the Trade Subcommittee.

[The opening statement of Chairman Thomas follows:]

**Opening Statement of the Hon. Bill Thomas, a Representative in Congress from the State of California, and Chairman, Committee on Ways and Means**

Good morning. Welcome, Ambassador Zoellick, and thank you for joining us today. This is the Committee's fourth hearing this week on the President's budget. And, as I've said, the President has stated three very clear goals in the context of his fiscal year 2003 budget plan: win the war, protect the homeland, and revive the economy.

The events of September 11 have challenged us in many ways. We are being tested militarily, in our domestic economy, and in our commitment to remain engaged on the world economic stage. As we work to revitalize the economy, nearly eight million people remain unemployed.

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At this point, I would recognize, briefly, the gentleman from Illinois, the chairman of the trade subcommittee.

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Mr. CRANE. Thank you, Mr. Chairman. I want to join in warmly welcoming Ambassador Zoellick to the Committee and to commend him on the impressive breakthrough he achieved at the World Trade Organization Ministerial meeting in Doha. As you know, I led a delegation of 19 from this Committee to Seattle in 1999, where we observed firsthand the deadlock and suspicion among our trading partners in the WTO.

Mr. Ambassador, at Doha you cleared away a black cloud on the horizon of our international economic strength. Americans are once again leading at the international negotiating table. The paychecks of hard working folks in plants and on farms across this country will be more secure as the result of the markets the new Doha Round can open.

As they say at Cape Canaveral, "We've got a launch." We also have a schedule and an outline of what can be achieved in terms of reducing unfair disparities in tariffs faced by American companies, discriminatory rules governing services unfamiliar and burdensome products standards and regulations and unnecessary threats to their investments.

Finally, you succeeded getting countries to commit to a deadline of 2005, and if I could do one thing today, it would be to urge you to stick to that date. It is great to have you before us today knowing that the Committee and the House have made the hard choices necessary to pass Trade Promotion Authority and we are only awaiting action on the other body. The rapid 18 to 3 bipartisan approval in the Finance Committee tells me that we struck the right balance in the House even from where I sit at one end of the seesaw.

Last year at this time when getting Trade Promotion Authority out of the House was in question, our economic future as a country was also warned out. Now I believe Congress may be very close to giving you and the President the tools you need. Our trading partners have been very active in opening and expanding markets for their exports, and I am optimistic we are positioning ourselves to do the same.

I believe that this year 2002 will be a significant year for the United States trade policy. We look forward to enhancing the Andean trade bill, concluding bilateral FTAs with Singapore and Chile which were initiated by President Clinton, initiating several other FTAA negotiations, achieving key milestones in negotiations to es-

establish a Free Trade Area of the Americas and positive movement in many WTO matters, including agriculture services and industrial tariffs. The year ahead in trade holds the promise of job creation, economic growth and making the world more secure by expanding commercial ties among countries that should be doing more to work together.

I look forward to working, or hearing from you first and working with you on our trade priorities along with President Bush, and I thank you, Mr. Chairman.

[The opening statement of Mr. Crane follows:]

**Opening Statement of the Hon. Phillip M. Crane, a Representative in Congress from the State of Illinois**

Thank you, Mr. Chairman. I want to join in warmly welcoming Ambassador Zoellick to the Committee and to commend him on the impressive breakthrough he achieved at the World Trade Organization (WTO) Ministerial meeting in Doha.

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The paychecks of hard-working folks in plants and on farms across this country will be more secure as the result of the markets the new Doha Round can open. As they say at Cape Canaveral: "We've got a launch." We also have a schedule and an outline of what can be achieved in terms of reducing unfair disparities in tariffs faced by American companies, discriminatory rules governing services, unfamiliar and burdensome product standards and regulations, and unnecessary threats to their investments. Finally, you succeeded getting countries to commit to a deadline of 2005 and, if I could do one thing today, it would be to urge you to *stick to that date*.

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Our trading partners have been very active in opening and expanding markets for their exports and, I am optimistic we are positioning ourselves to do the same. I believe that this year, 2002, will be a significant year for United States trade policy. We look forward to enacting the Andean Trade bill, concluding bilateral FTAs with Singapore and Chile which were initiated by President Clinton, initiating several other FTA negotiations, achieving key milestones in negotiations to establish a Free Trade Area of the Americas (FTAA), and positive movement in many WTO matters including agriculture, services, and industrial tariffs.

The year ahead in trade holds the promise of job creation, economic growth, and making the world more secure by expanding commercial ties among countries that should be doing more to work together. I look forward to hearing about the trade priorities as you and President Bush see them.

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Chairman THOMAS. Prior to hearing from you, Mr. Ambassador, I will recognize the gentleman from New York, Mr. Rangel, for an opening statement.

Mr. RANGEL. Mr. Chairman, I intend to pass and to yield to Sandy Levin, but before I do I want to join with you in congratulating our trade representatives on these international efforts on behalf of our country.

I also would want to point out that this Committee in particular takes great pride in the unity that we have in the past shown in

terms of our trade policy as the Congress tries to—in terms of foreign policy, and I think that the trade bill with China as well as the Caribbean Basin Initiative (CBI) and the opportunities that we have made and you continue to expand in Africa throws away our party labels and makes us proud to provide the leadership that is expected of us by the House members.

Having said that, it is apparent that on many tax policies especially as relates to FSC and in certain areas how we treat labor and environment and investments for U.S. firms that you know, as I do, that there are basic policy differences between our parties politically.

I want to thank you for the time you spend with me and Democrats, but I also want to ask you publicly to consider whether or not you can attempt to use your good office and that of the Administration to try to break down the political positions that both sides of the aisles of this Committee finds it so easy to lock ourselves into. And it is going to take a little more than just the shuttle that you so effectively ride between Democrats and Republicans, but it really means that if the President is talking about bipartisanship, he should know that it stops when it gets to this Committee. And so I hope you would consider that.

One of the examples, of course, is that some people believe that when you win by one vote and you have a half dozen Democrats it is bipartisan. It is OK with me because I can be just as political as anyone else. But it would seem to me when you go into an agreement with the Caribbean countries and then find out you have to renege on that agreement in order to pick up a vote that we should expect the Administration would resent this type of behavior no matter which party is the offending party.

It is my understanding that you have taken the position that this measure would have little commercial impact on the Caribbean countries. Well, this is not the position taken by the Caribbean countries, and I do hope that at some time and point we might be able to review what the Congress has done that does violence to what you are supposed to be doing representing all of us.

I would like to yield to Mr. Levin to get involved with more substantive issues. Thank you.

[The opening statement of Mr. Rangel follows:]

**Opening Statement of the Hon. Charles B. Rangel, a Representative in  
Congress from the State of New York**

I want to join with Chairman Thomas in congratulating our trade representative on his international efforts on behalf of our country. I also would want to point out that this Committee takes pride in the unity that we in the past have shown in terms of our trade policy, as the Congress tries to show unity in terms of foreign policy. And I think that the trade bill with China as well as the Caribbean Basin Initiative and the opportunities we have made as we continue to expand in Africa throws away our party labels and makes us proud to provide the leadership that is expected of us by the House Members.

Having said that, it is apparent that on many tax policies—especially as they relate to FSC and, in certain areas, how we treat labor and the environment and investment for U.S. funds—you know as I do that there are basic policy differences between our parties politically.

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tively provide between Democrats and Republicans. What it really means is that, if the President is talking about bipartisanship, he should know that it stops when it gets to this Committee. And I hope that you would consider that.

One of the examples of that is when some people believe that, when you win by one vote and you have a half a dozen Democrats, it is bipartisan. It is o.k. with me because I can be just a political as anyone else. But it would seem to me that when you go into an agreement with the Caribbean countries and then find out that you have to renege on that agreement in order to pick up a vote, that we should expect that the Administration would resent this type of behavior, no matter which party is the offending party.

It is my understanding that you have taken the position that this measure would have little commercial impact on the Caribbean countries. Well, this is not the position taken by the Caribbean countries. And I do hope that, at some point in time, we might be able to review what the Congress has done that does violence to what the U.S. is suppose to do representing all of us.

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Mr. LEVIN. Well, I am not sure I can be more substantive than you, Mr. Rangel, but thank you for yielding and for your comments in truly the substance of trade. It was necessary to launch a new round at Doha, although there were some serious omissions and many vaguenesses.

We welcome you here today, Ambassador. Your role was clearly important in the launch of Doha and I commend you for that. Doha followed several years of hard work, and I emphasize that, and progress, and I emphasize that also, on the trade front. Cambodia, CBI, Africa, Vietnam, China permanent normal trade relations (PNTR), U.S.-Jordan FTA.

It is important to note those efforts for two reasons. One, and very importantly, they were developed in a broad bipartisan manner, and that is the only way we can move ahead productively on international trade. That is why I respectfully suggest that it is counterproductive to indicate, as you do in your testimony, that the thrust for trade liberalization had been lost before 2001 or that it was necessary to restore American leadership.

I don't believe that leadership had been lost. Indeed, there have been new energy in 1999 and 2000 on important issues of trade. Negotiations in 1999 and 2000 grappled with the integration among other issues of core labor and environmental standards into trade agreements. The list of successful initiatives is impressive: The textile and apparel agreement with Cambodia, which included positive incentives for the enforcement of labor standards—and our staff was there and reported back that it is working; the efficacy of the legislation which expanded trade with Africa and the Caribbean countries while strengthening the labor provisions and building upon complement charities in the textile and apparel industry of our country; the China PNTR legislation which we worked on for a year, and that was the key, I think, to moving the issue within the WTO, which recognized the importance of the trade remedy laws and which created a commission to monitor the rule of law, human rights and labor rights in China. And the U.S.-Jordan agreement, which included provisions on core labor and environmental standards enforceable in the same way as any other provision in the agreement.

As I see it, the Fast Track bill that passed the House was a serious step backward from this progress, as was the exchange of let-

ters relating to the Jordan agreement, and also the failure to even raise the labor standards issue prior to Doha and at Doha through a working group on labor. The Rangel substitute that garnered 161 votes would have sustained the momentum in these areas as well as addressing, and I emphasize this, other key issues. I expect that its equivalent will be introduced within the next week or so in the U.S. Senate, and unlike the procedure that was adopted here that did not even allow us to introduce the bill on the Floor as a substitute for full debate, there will be ample time to debate that and other proposals in the Senate.

On Monday, this last Monday, Representatives Bentsen and Eshoo along with Mr. Rangel, Mr. Matsui, myself, and others introduced a bill to renew trade adjustment assistance (TAA) and to improve it. We need those reforms, including a strong health provision. However, improved TAA should not be used as a rationale to pass a flawed Fast Track bill. We need to get right both trade policy and a safety net for those who are hurt by the impact of international trade. We need to shape trade policies to both maximize its benefits, and there are many, and minimize its detriments, and there surely are some, and not only help those who lose out.

There are some, and I understand and respect their opinion though I very much disagree with it, who do not believe that we need to shape trade policy in this regard. In a sense, that is the basic issue confronting this issue on steel. One approach is to simply let the market run its course no matter what the consequences and rely only on a safety net to catch all those who suffer the consequences. My own judgment is that such an approach would be bad for the Nation, bad for our Nation's economy and bad for the many adversely affected companies, workers and communities.

We have—I am almost done, Mr. Chairman—we have a much better alternative. With a sensible, balanced set of policies, with broad perspectives and open minds rather than narrow thinking, we can do better in this case and in general in our approach to trade issues on a truly bipartisan basis.

I appreciate that you journeyed over here to talk to Mr. Rangel and to me over the recess. I encourage you to continue to work with us on the specifics on each of the issues as they emerge. I also urge the Administration to exercise its leadership in the legislative process to build a truly bipartisan consensus on trade policy. It will by no means be easy, but if we confront the tough issue head on, real progress can be made. Thank you.

[The opening statements of Mr. Levin and Mr. Ramstad follow:]

**Opening Statement of the Hon. Sander M. Levin, a Representative in  
Congress from the State of Michigan**

It was necessary to launch a new Round at Doha although there were some serious omissions and many vaguenesses. We welcome you here today, Ambassador—your role was clearly important in the launch at Doha, and I commend you for that.

Doha followed *several years of hard work and progress* on the trade front: Cambodia; CBI; Africa; Vietnam; China PNTR; U.S.-Jordan FTA. It is important to note these efforts for two reasons. One, and very importantly, they were developed in a broadly bi-partisan manner—and that is the only way we can move ahead productively on international trade. That is why I respectfully suggest that it is counterproductive to indicate as you do in your testimony that the “thrust for trade liberalization had been lost” before 2001 . . . or, “that it was necessary to restore American leadership.” I do not believe that leadership had been lost.

And two, indeed, there had been new energy in 1999 and 2000 on important issues of trade. The negotiations in 1999 and 2000 grappled with the integration—among other issues—of core labor and environmental standards into trade agreements.

The list of successful initiatives is impressive:

- the textiles and apparel agreement with Cambodia, which included positive incentives for the enforcement of labor standards. Our staff was there and reported back it is working;
- the Africa-CBI legislation which expanded trade with Africa and the Caribbean countries, while strengthening the labor provisions and building upon complementarities with the textile and apparel industry of our country;
- the China PNTR legislation—which we worked on for a year and was the key in moving the issue within the WTO—recognized the importance of the trade remedy laws and created a Commission to monitor labor rights in China; and
- the U.S.-Jordan agreement, which included provisions on core labor and environmental standards enforceable in the same way as any other provision in the agreement.

The Fast Track bill that passed the House was a serious step backward from this progress, as was the exchange of letters relating to the Jordan agreement and also the failure to even raise the labor standards issue prior to Doha, and at Doha, the working group on labor.

The Rangel substitute that garnered 161 votes would have sustained the momentum in these areas, as well as addressing *other key issues*. I expect that its equivalent will be introduced within the next week or so in the U.S. Senate. Unlike the procedure that was adopted here, that did not even allow us to introduce the bill on the floor as a substitute with full debate, there will be ample time to debate that and other proposals in the Senate.

On Monday, Reps. Bentsen and Eshoo, along with Mr. Rangel, Mr. Matsui, myself and others introduced a bill to renew Trade Adjustment Assistance and improve it. We need those reforms, including a strong health provision. However, improved TAA should not be used as a rationale to pass a flawed fast track bill. We need to get right both trade policy and a safety net for those who are hurt by the impact of international trade. We need to shape trade policy to both maximize its benefits—and there are many—and minimize its detriments—and there clearly are some—and not only help those who lose out.

There are some, and I understand and respect their opinion though I very much disagree with it, who do not believe that we need to shape trade policy in this regard. In a sense, that is the basic issue confronting this country on steel. One approach is to simply let the market run its course, no matter what the consequences, and rely only on a safety net to catch all those who suffer the consequences. My own judgment is that such an approach would be bad for the nation, bad for our nation's economy and bad for the many adversely affected companies, workers and communities.

We have a much better alternative. With a sensible, balanced set of policies, with broadened perspectives and open minds rather than narrow thinking, we can do better—in this case and in general in our approach to trade issues, on a truly bi-partisan basis.

I appreciate that you journeyed over here to talk to Mr. Rangel and to me over the recess. I encourage you to continue to work with us on the specifics of each of the issues as they emerge. I also urge the Administration to exercise its leadership in the legislative process to rebuild a truly bi-partisan consensus on trade policy. It will by no means be easy, but I think that if we confront the tough issues head-on, real progress can be made.

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**Opening Statement of the Hon. Jim Ramstad, a Representative in Congress  
from the State of Minnesota**

Mr. Chairman, thank you for calling this important hearing on the President's trade agenda for opening foreign markets for American products.

In this difficult and challenging time, it is absolutely critical to job creation and our economic security to expand trade and market America's goods and services to the world's consumers.

The House took an important step forward in December when it passed Trade Promotion Authority for the President. I hope the Senate will act soon on this critical tool for American job creation.

Over 25% of the growth in our national economy over the last decade is tied directly to international trade. Exports from my home state of Minnesota have increased over \$6 billion in the last decade. Over 270,000 jobs in Minnesota manufacturing exist because of trade, and trade-related jobs pay 13 to 18% more than other jobs.

The U.S. is rapidly falling behind in our efforts to sell our products abroad. We are a party to just 3 of the nearly 130 free trade agreements currently in force around the world. And while our competitors continue to negotiate free trade agreements with the rest of the world, the U.S. remains outside the process because of a lack of Trade Promotion Authority for our President.

I appreciate Ambassador Zoellick's testimony today concerning the trade challenges and opportunities ahead. I admire his excellent leadership of USTR, which has already led to a successful WTO Ministerial Meeting in Doha, progress on laying the groundwork for a Free Trade Area of the Americas, and successful free trade agreement negotiations with our close trading partners.

I look forward to working with the Administration and my colleagues on a trade agenda that will create high-quality jobs and open markets for American businesses and workers.

Thank you, Mr. Chairman.

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Chairman THOMAS. Thank you very much.

Mr. Ambassador, welcome. Through no preplanning or collusion in any way, I understand this is the first anniversary of your swearing in as Ambassador, so I take the opportunity to welcome you on your first anniversary. Thank you for appearing before us again. Any written statement you have will be made a part of the record, and you address us in any way you see fit.

**STATEMENT OF THE HON. ROBERT B. ZOELLICK, UNITED STATES TRADE REPRESENTATIVE**

Mr. ZOELLICK. Thank you, Chairman and Mr. Rangel and Chairman Crane and Mr. Levin, for both informal and formal opportunities to be with you. This Committee's work has been absolutely crucial in allowing us to regain momentum on trade to open markets for America's farmers, ranchers, workers and families. And I want to thank to start off, Chairman, in particular your role with Trade Promotional Authority and also the attention you are devoting to the FSC issue because it has been critical for us.

And I want to thank Mr. Rangel for—I know the FSC issue is a difficult one and I appreciate your effort to try to be of assistance on this and also the role you played in putting together the AGOA, African Growth and Opportunity Act, bill, along with Mr. Levin and others, which I think has been a real foundation for our relation with Africa. I am going to be going there next week and I appreciate your help with that.

I also want to thank Mr. Levin for making the trek to Doha with us. I know it wasn't easy and it was very important to have you on the scene. I appreciated it and I appreciate we had some chance to work together, and I am also pleased that we were able to extend at the end of this year the Cambodia provisions that you referred to and which you contributed much to.

I would like to thank Mr. Tanner and Mr. Jefferson for their leadership on TPA. Together, I think all of our comments fit on one



point and that we have made some headway in the year 2001 but we have got some more work to do.

There are a number of key components to our strategy. First, we are building momentum for liberalization and we are doing so on multiple fronts. We are trying to create a competition in liberalization with the United States as the center of a network because frankly it will help U.S. leadership and will give us more leverage to get more things done.

Globally we have the launch at Doha, but I also think we all take some pride in finally getting China in the WTO after 15 years and Taiwan after 9 years. I know this took a lot of work before I was on the scene with PNTR, Mr. Levin, Mr. Matsui, and Ms. Dunn, in terms of trying to get that piece of legislation through.

And I think now the good news is that the Doha agenda is off to a pretty quick start. In the past week we have started in Geneva to get the negotiating framework in place. Regionally we have the Free Trade Area of the Americas, and here is an incredible opportunity to create the largest free trade area in the world among 34 democracies.

We will start this spring with the market access negotiations, and later this year after the Brazilian elections, the United States and Brazil, two of the biggest economic powers, will be the cochairs to move this forward.

Bilaterally a number of you referred to Jordan and Vietnam, and we are pleased we got those passed. Those weren't so easy along the way and that was an accomplishment of last year.

We are now obviously trying to complete the Chile and Singapore Free Trade Agreements started by President Clinton. And this is one, as I mentioned to you, as we move in the final stage it is significantly importance to get the guidance from this Committee on some of the sensitive provisions.

As I noted in the testimony, we are looking at the possibilities with you of new free trade agreements. The Caribbean Basin Trade Partnership Act passed by the Congress encourages us to look at free trade with Central America, and the President spoke about our interest in moving forward with that. The AGOA bill talks about our interest in free trade with Africa, which would be a tremendous breakthrough for that continent and our relations with it.

And frankly we do have some catching up here to do. The European Union (EU) has 29 free trade and customs agreements, 22 of which they negotiated in the nineties, and they are negotiating 12 more while we have 3. Mexico has 8 free trade agreements with 32 countries. The Japanese are moving ahead and even the Chinese just coming into the WTO are now pursuing a free trade agreement with the countries of Southeast Asia. So our movement is none too soon.

Second, we are enforcing agreements in managing disputes because while we pursue new agreements we recognize we have to actively defend our interests by pursuing and enforcing vigorously our trade laws, and here I want to be very clear in assuring each and every one of you we will use all the tools at our disposal to fight unfair practices.

We are also trying to manage disputes in ways that solve problems and achieve results. I know a lot of you have an interest in

softwood lumber. Mr. Collins has talked to me about that. And then we have the critical challenge of the follow-through on China and Taiwan's accession because particularly in the case of China, we recognize this is a transformation of a country of 1.3 billion people and it is not going to be easy and we need to work together on it.

Third, we are trying to broaden the circle of trade opportunity, and here in particular there is an opportunity with developing nations. This is vital to build support for the global trading system, but it is also vital in these countries to support reform and rule of law in dealing with fundamental problems of poverty. Developing nations became key to putting together the coalition that was successful at Doha, and they will be key in anything else we do in the WTO. Indeed, all you have to do is look at the newspapers and you read about the reach of terrorism these days, you have a sense of how if this is going to be a long-term war and President Bush has clearly made clear that that is going to be a challenge for this generation, then we are going to have to address some of the other components.

Spig Ruginski made a comment over the weekend that I thought was powerful. He said, look, it is quite clear that poverty is not the root cause of terrorism, but it does provide fertile fields. And so, in that way, economic development and growth is a key component. The United States, I am proud to say, has been leading the efforts to try to help poor nations obtain the tools to participate in the global economy. Last year the United States spent \$555 million on capacity building because for a lot of these countries, take the African and Caribbean which I work with Mr. Rangel, they don't have people who can attend the negotiations and they certainly don't have the ability to follow through. So this is an element that I hope we can work on together.

We also believe in renewing and expanding the preferential agreements. This Committee took an important step in terms of the Andean Trade Preference Act, but I think it is highly unfortunate that it did expire after 10 years. And those four Andean countries are hurting right now at the same time they are trying to deal with the scourge of narcotics.

The Committee also had some efforts to try to strengthen AGOA, which we support, and I hope we can over the course of the coming months. I also don't want to lose sight of the generalized system of preferences, something that the Congress put in place about 26 years ago and which also expired last year, and that deals with 123 developing countries and 19 territories. That expired September 30 and so those countries now do not have the benefits.

There is also the possibility of bringing in new members. One of the ones that is most exciting is Russia. Our enemy during the Cold War now is going through the process of actually joining the WTO, adhering to the rules, and I hope to make progress on this this year.

Fourth, we are reaching out to key stakeholders. This in part involves a lot of listening, building networks, educating and acting. We are pushing on all fronts for America's farmers and ranchers, working with this Committee, but also with the Ag Committee. We are seeking to help industries and workers become competitive and

adjust to change. This is an area that I know is close to the heart for a number of you in the steel industry, Mr. English, Mr. Houghton, and Mr. Cardin, who I have talked to about this.

This is the Administration that launched the 201, and we are now in the final stages of that process. But I also want to point out that we have used these safeguards in other areas like wheat gluten and lamb, working out solutions that I think are important. Textiles is obviously a very sensitive area. This is another one where we are committed to the phaseout of the Apparel and Textile Agreement that will end quotas in 2005, but it has not been easy in this industry, and I have worked with Mr. Collins and others in terms of that adjustment.

A number of you have mentioned trade adjustment assistance, and Mr. Levin stressed this. I know the importance of this to many of your Members, and I just want to make clear, I am in full and emphatic agreement about the need to have good trade adjustment assistance programs if we are going to have a successful trade policy. And as my statement points to, and I hope my colleagues at the U.S. Department of Labor and the White House have also emphasized, I think there is a lot of common ground here that we can move forward on. I talked about this in the Senate yesterday, and I hope we will be able to have a product before long that we can all be proud of.

Also, part of reaching out is meeting with different groups, business, environment, labor leaders on a range of these issues. I was pleased, given the unusual security circumstances at Doha, that we were able to set up webcasts for the first time so we are able to draw in a lot of our advisers who couldn't make it to the scene.

I know a number of you, Mr. Doggett and others, have emphasized the North American Free Trade Agreement (NAFTA) Chapter 11. This issue came up in the course of all the Trade Promotion Authority bills. I just want you to know, I am in the process of meeting with all sides on this, the business community, the non-governmental organizations (NGOs), and others, to try to understand and sort through what we know is a tough issue. But reaching out also involves building the case for trade and correcting some misinformation. And here I think the American public suffer because they don't know what the benefits of cutting tariffs do.

For example, drawing on work of our predecessors in the Clinton Administration, we pointed out the very simple fact that the benefits of NAFTA in the Uruguay Round amount to about \$1,300 to \$2,000 a year for the average family of four in America. That is a hefty tax cut and it comes from growth and cutting tariffs. The University of Michigan has done a study, just a preliminary look at cutting just the tariffs on industrial goods and agriculture as part of a Doha agenda, and their estimate, admittedly a rough cut, is \$2,500 a year for a family of four in America.

If you look at particular sectors, Mr. Brady has an agriculture sector, one in three acres in America is planted for export; 25 percent of gross cash farm receipts are for export. So America's farmers depend on a healthy trading system.

Fifth and finally, Chairman, as you know, we have tried to work hard to connect our trade system to our values. Free trade is about freedom, and it is about opportunity and rule of law and openness,

but we also have issues that we need to deal with; for example, the crisis in public health in parts of the world, and I was very pleased and proud working with a number of you that in the Doha meeting we were able to come up with a statement that I felt went a long way toward reconciling that there are flexibilities in intellectual property that we need to use to deal with problems like HIV/AIDS, malaria, and tuberculosis in the countries of Africa and elsewhere because if these countries are plagued by epidemics there will be no economic growth and free trade won't be sufficient for them.

At the same time, we have to preserve intellectual property because the advances in this field are enormous in terms of their opportunity, including, as I have talked with some chief executive officers recently, the prospect of a vaccine for AIDS and what an extraordinary development that will be, but it won't happen unless intellectual property is protected.

There are other win-win ideas. I was pleased that World Wildlife Fund and some other environmental groups worked with us on fish subsidies at Doha. We are also trying to work with the small business community much better in our country and others and draw them into the trade system.

So to sum up, we have a very full trade agenda ahead. We are looking forward to completing Trade Promotion Authority as soon as possible so we can move forward on all fronts to tear down barriers, open markets globally, regionally and, very important for me, to have a framework of guidance from the Congress of your objectives and have the procedures. We are moving ahead on many crucial and, I know, sensitive issues. The Foreign Sales Corp., steel, softwood lumber, high fructose corn syrup, and in Geneva among our other goals we are going to push for a home run on agriculture, which is key to our agenda for trade. Thank you, Mr. Chairman.

[The prepared statement of Ambassador Zoellick follows:]

**Statement of the Hon. Robert B. Zoellick, United States Trade Representative**

Mr. Chairman, Representative Rangel, and Members of the Committee:

I would like to open by thanking each of you for the time, attention, and support that you and your staffs have given to me and my colleagues.

Last year the Committee accomplished much in a number of areas, so we are most appreciative of the energy you have devoted and the efforts made to place trade policy on America's priority agenda. Together, we have made a good start.

At the start of last year, the global trading system was under stress. The nations of the world had failed to launch new global trade negotiations in Seattle in 1999, the effort to bring China and Taiwan into the World Trade Organization had stalled, and Congress had twice failed to grant the President the trade negotiating authority that had lapsed in 1994. Numerous contentious trade disputes were piling up and the benefits of trade had been lost in the public debate. The thrust for trade liberalization had lost energy.

Against this backdrop, and with your help, President Bush pressed an activist strategy to regain momentum on trade. As he explained: "Our goal is to ignite a new era of global economic growth through a world trading system that is dramatically more open and more free." By doing so, we can improve the job opportunities, incomes, productivity, purchasing choices, and family budgets of America's workers, farmers, ranchers, small businesspersons, and entrepreneurs.

The President has promoted the agenda for trade liberalization on multiple fronts: globally, regionally, and with individual nations. This strategy creates a competition in liberalization with the United States as the central driving force. It enhances America's leadership by strengthening our economic ties, leverage, promotion of fresh approaches, and influence around the world.

## **Seizing the Global Initiative**

### **A. Launching New Global Trade Negotiations**

In 2001, the United States played a leading role in the launch of new global trade negotiations at Doha in November, overcoming the obstacles that plagued the prior effort in Seattle. We benefited greatly from the consultations and guidance we received in advance of the Doha meeting. I also deeply appreciated the personal support I received from my conversations with Chairman Thomas while we were in Doha and from Sandy Levin's extra effort to join us and discuss the fluid events on the scene. A Ways and Means session arranged by Chairman Thomas and Representative Rangel provided a useful opportunity for me to brief Committee Members on the results shortly after we returned from Doha.

The new WTO negotiating mandate lays the groundwork for an ambitious trade liberalization agenda in key sectors, especially agriculture, manufacturing, and services, targeted to be completed by 2005.

In agriculture, to achieve a program of fundamental reform, we committed to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.

In manufacturing, we secured a negotiating mandate to reduce or eliminate tariff and non-tariff barriers on industrial products, ensuring that the United States can pursue a variety of tariff liberalization initiatives, such as landmark agreements like the Information Technology Agreement (ITA). The mandate is comprehensive—no sectors or products are excluded from the outset for any WTO member.

And in services, the Doha Declaration sets a rigorous timetable for the pursuit of open markets in a number of key sectors for the United States, including telecommunications, financial services, audio-visual, express delivery, and other distribution services.

Many U.S. groups assisted us in the preparation of these negotiating mandates, and we are delighted by their strong statements of support after Doha. They have emphasized the interconnection of this work with economic recovery in America and around the globe.

At Doha, we also made significant progress in a number of other areas, some of which I will discuss later in this statement:

- WTO members adopted a political declaration that highlights provisions in the TRIPs agreement that provide Members with the flexibility to address public health emergencies, such as epidemics of HIV/AIDS, tuberculosis and malaria.
- The Doha Declaration includes a mandate to launch negotiations aimed at eliminating environmentally harmful fish subsidies and increasing market access for environmental goods and services. The agreement also includes an important new mandate to enhance the mutual supportiveness of multilateral environmental agreements (MEAs) and the WTO rules by strengthening the relationship between the two, institutionally and substantively.
- In the area of e-commerce, the declaration ensures that the WTO will remain active in this important and dynamic area through the continuation of its work program, while extending the ongoing moratorium on imposing customs duties on electronic transmissions. This work program will provide an opportunity for the United States to continue its efforts to press other countries to avoid unnecessary measures that would impede the growth of e-commerce.
- The review of WTO rules explicitly states that any negotiation of trade remedy laws will preserve the basic concepts, principles, and effectiveness of existing agreements, as well as their instruments and objectives, enabling us to pursue an offensive agenda against the increasing use of these laws against U.S. exporters while also addressing the underlying trade-distorting practices.
- The declaration includes an agreement providing for enhanced transparency in WTO Member government procurement procedures. This program should lead to improved disciplines in government purchases, making an important contribution to combating corruption.
- The declaration states a commitment to enhance cooperation between the WTO and the International Labor Organization.

To help maintain the momentum after the Doha agreement, the WTO economies agreed that Mexico will chair the WTO ministerial in 2003. As the incoming chair, Mexico can assist in promoting the pace of the new negotiations.

One of the important WTO entities in the months ahead will be the Trade Negotiations Committee. That committee took a number of useful steps at its meeting on February 1. It appointed the WTO Director-General to chair the committee's work (in an ex-officio capacity) until the January 2005 deadline set for the comple-

tion of the negotiations. This guarantees the committee will receive the necessary attention at the WTO's highest level. And the TNC adopted a structure for the negotiations that will help the negotiating process move forward in an orderly fashion.

In 2002, we will press forward with these negotiations, advancing new and detailed proposals to open further the world's agriculture, services, and manufacturing markets. We will also be advancing our affirmative agenda for reforming WTO trade rules and the dispute settlement system, and building on the opportunities presented by the new environmental negotiating mandate.

The United States will place special emphasis on our continued effort to insure the involvement of least developed nations, in order to assist them secure the benefits of trade and to keep all WTO members invested in the process. We will work with the WTO and others to provide the tools and training needed to help these nations participate more actively in the global trading system. In particular, developed nations, multilateral development banks, and other international institutions—such as UNCTAD and the World Intellectual Property Organization—should supply technical assistance to build the capacity of poorer countries to engage effectively in negotiations and the subsequent implementation of trade agreements. By providing such support, we will be helping these nations to integrate with the global economy—a key part of the strategy for economic development—while also strengthening the rules-based trading system.

#### B. Completing the Accession of China and Taiwan to the WTO

Last year, the United States also played a key role in breaking through logjams to complete the historic accessions of China (after a 15-year effort) and Taiwan (after a 9-year effort) to the WTO. This achievement built on the work of four U.S. Administrations, particularly that of Charlene Barshefsky, from whom I inherited an excellent bilateral agreement. Throughout 2001, we solved the multilateral dimension concerning agriculture, trading rights, distribution, and insurance, while navigating the extreme political sensitivities to enable China and Taiwan to join the WTO within 24 hours of one another.

These agreements integrate two of the world's largest economies into the rules of the WTO trading system and provide U.S. exporters with expanded access in growing markets ranging from automobiles and telecommunications to agriculture and chemicals. As a result, the President certified the requirements set by Congress through the leadership of Chairmen Thomas and Crane and Ranking Members Rangel and Levin and this Committee in the passage of the legislation extending Permanent Normal Trade Relations to China.

In 2002, the Bush Administration will work closely with other countries, as well as a private sector network we are interconnecting, to monitor China's and Taiwan's compliance. The backing we have received from the Congress—in terms of resources and attention—has been and will remain fundamental to the achievement of our mission. We will work with our businesses and with China and Taiwan to address problems and take action if necessary.

#### C. Advancing Russia's Accession to the WTO

The United States has begun a new era in its relations with Russia. Whether in the realms of security, foreign policy, or economics, President Bush has emphasized the need to move beyond Cold War strictures and stereotypes. As the President said in November during his meeting with President Putin, "we're working together to break the old ties, to establish a new spirit of cooperation and trust so that we can work together to make the world more peaceful."

To contribute to this vision for the 21st century, in 2002 we will continue our intensified effort to assist Russia's preparations to join the WTO. President Putin has made WTO membership and integration into the global trading system a top priority; we will support Russia as it promotes reforms, establishes the rule of law in the economy, and adheres to WTO commitments for a more open economy. This effort needs to include action by the Duma to establish an effective legal infrastructure for a market economy.

It is our expectation that the WTO will prepare a first draft Working Party report on Russia's accession in the first quarter of this year. We will work with Minister Gref—in cooperation with the EU and our other WTO counterparts—to address the gaps. Throughout this process, we look forward to consulting closely with the Congress and this Committee in particular.

To close out the history books of the Cold War, the President has urged the Congress to finally end the application of Jackson-Vanik to Russia. It has been over a decade since I worked on the unification of Germany with a fading Soviet Union that expired in 1991. Furthermore, Russia has been in full compliance with Jack-

son-Vanik's emigration provisions since 1994. My colleagues at the State Department and the NSC are, of course, consulting closely with various groups on the protection of freedom of religion and other human rights in conjunction with this action.

I understand that the first inclination of some might be to keep the Jackson-Vanik law in reserve as we negotiate Russia's accession to the WTO. I think this course would be a mistake, and would work against U.S. commercial and foreign policy interests. The Russians acknowledge they must abide by the WTO's rules, and we and 143 other economies will insist on that course as their WTO negotiations proceed. Yet the Russians are understandably sensitive about Jackson-Vanik, which places their trade relations with us in a different category. To use Jackson-Vanik in this way would signal that we still treat Russia as a former foe, not a possible friend. Working closely with the Congress, we will stress the need for Russia to offer fair market access—for example in agriculture—but we should do so according to the rules to which we maintain Russia should adhere. Congress exercises substantial oversight in these negotiations through existing consultation provisions.

#### **Pressing the Regional Initiative: The Free Trade Area of the Americas**

In April 2001, at the Quebec City Summit, the President inaugurated a reinvigorated push for free trade throughout the Americas. A number of Members of the Committee joined him to express their support and represent important perspectives.

At Quebec City, the leaders of 34 democracies of the Western Hemisphere agreed to proceed with detailed draft negotiating texts and to complete work no later than January 2005. Once implemented, the FTAA will be the largest free trade zone in the world.

The United States and its FTAA partners are working committedly toward this goal. By mid-May 2002, we will launch market-access negotiations on agriculture, industrial goods, services, investment, and government procurement. In October, trade ministers will meet in Quito to review the revised negotiating texts and to determine how to move forward. Upon the close of the Quito meeting, the United States and Brazil will begin a co-chairmanship of the FTAA process, providing an opportunity for cooperation with a key partner and economic power as the pace of negotiations accelerates.

Throughout the year ahead, we will also persist in our efforts to make the public case for NAFTA's benefits and consider additional ways to deepen integration throughout the Americas. NAFTA has been a case study in globalization, along a 2,000-mile border, by demonstrating how free trade between developed and developing countries can boost prosperity, economic stability, productive integration, the development of civil society, and even democracy.

#### **Moving Forward: Bilateral Free Trade Agreements**

In 2001, the Congress approved the U.S.-Jordan Free Trade Agreement with broad support, establishing America's third free trade zone, and our first with an Arab country. The Congress also passed the Bilateral Trade Agreement with Vietnam, achieving a principal goal of America's decade-long agenda to normalize relations with our former foe. Many of you played key roles in the development of these agreements and then shepherded the final packages successfully.

In 2002, we intend to complete free trade agreements with Chile and Singapore. Each of these agreements offer new opportunities for U.S. businesses and workers and will send a message to the world that the United States will press ahead with those that are committed to open markets—whether in the Western Hemisphere, across the Pacific, or beyond the Atlantic. As we move these FTA negotiations toward completion in the months ahead, we want to work closely with this Committee so we can try our best to address your concerns and interests.

In 2002, working with the Congress, we also hope to initiate talks on new bilateral free trade agreements. These agreements can open up a new front for free trade. They can create models of success that help reformers, break new ground for liberalization in changing or emerging sectors (e.g. biotech, high tech—including IPR-related sectors—and services), build friendly coalitions to promote trade objectives in other contexts (e.g. biotech, SPS topics), add to America's trade leverage globally, underpin links with other nations, and energize and expand the support for trade. New trade agreements also present fresh opportunities to find common ground at home, and with our trading partners, on the nexus among trade, growth, and improved environmental and working conditions.

Our aim is to achieve free trade agreements with a mix of developed and developing nations in all regions of the world. As the President announced in January,

and as Congress urged in the Caribbean Basin Trade Partnership Act, we want to explore a free trade agreement with the countries of Central America. Many Members of Congress have written me to express strong support for an FTA with Australia. I met with Australian Trade Minister Mark Vaile last week to discuss how best to move forward towards this goal, recognizing the need in particular to work on agricultural issues. The Africa Growth and Opportunity Act (AGOA) also urges us to advance the negotiations of FTAs with sub-Saharan Africa.

We are weighing these and other possibilities to extend free trade. We look forward to discussing these matters with the Committee and would benefit from your thoughts on these or other possible FTAs. It is our hope that we could use such an agenda to try to achieve the goals in the bills passed by the House and the Finance Committee.

**The Executive-Congressional Partnership: Trade Promotion Authority, the Andean Trade Preference Act, and the Generalized System of Preferences**

The Constitution vests the Congress with the authority “To regulate Commerce with foreign Nations.” It also extends the powers to the President to conduct relations with other countries. These two grants need to be reconciled effectively.

After 150 years of contentious Congressional trade debates over tariffs, culminating in the disastrous experience of the Smoot-Hawley bill, the Congress tried a different approach in 1934: The Reciprocal Trade Agreements Act, which created a new partnership between the Congress and the Executive branch to lower barriers to trade.

This partnership has been the foundation of America’s economic and trade leadership ever since. In 2001, the Bush Administration honored this rich tradition by working hand-in-hand with the Congress to open markets; we will build on this relationship in the year ahead. Frequent, substantive consultation is the hallmark of an effective trade policy. It helps to ensure that the Executive branch and the Congress work together to achieve America’s trade objectives.

A Congressional grant of Trade Promotion Authority would strengthen and guide the Executive-Congressional partnership, as it creates and formalizes new consultative mechanisms throughout the trade negotiation process. In 2001, we are grateful that the House of Representatives passed Trade Promotion Authority legislation and that the Senate Finance Committee gave a strong bipartisan endorsement to a similar bill, 18–3.

We are pressing to open 2002 with the prompt completion of Congressional action on TPA. We are pleased Majority Leader Daschle has pledged early action. By enacting TPA after a seven-year lapse of authority, Congress can promote America’s global leadership and give the President the tool he needs to strike the best trade agreements for America’s farmers, workers, families, and consumers. The revival of this trade authority—which prior Congresses granted to the previous five Presidents—will also contribute to our economic recovery by enhancing our ability to open the world’s markets for U.S. exports and lowering the costs of supplies for American families and businesses.

For all the benefits of trade, I recognize that trade can also lead to adjustment challenges. For this reason, the Bush Administration strongly supports reauthorization of Trade Adjustment Assistance (TAA) programs, which provide assistance for workers who lose their jobs because of trade. The Administration wants to work with Congress to improve the programs to make them more effective.

In particular, the Administration would like to consolidate TAA and NAFTA–TAA; ensure more rapid processing of petitions and delivery of services; and better coordinate Federal agencies and local authorities to improve delivery of all Federal assistance to communities and individuals affected by trade. Our primary objective is getting people back in jobs as quickly as possible, so we would like to work with Congress to create better incentives for reemployment. We also want to address concerns over limitations on the “shift-in-production” benefits provided by current programs. And we would like to work with Congress to address other areas that may not be adequately addressed at present.

We also urge the Congress to reauthorize and expand the Andean Trade Preference Act—a vital program for the four Andean developing country democracies on the front lines of the fight against narcotics production and trafficking. ATPA was enacted in 1991, and its expiration after ten years has caused real hardship for friendly countries with little margin to spare.

Finally, we respectfully hope to press the Congress to reauthorize the expired Generalized System of Preferences, a 26-year old U.S. program to promote economic growth in 123 developing nations and 19 territories by providing duty-free treatment for certain exports to the United States. The expiration of GSP access on Sep-



tember 30—shortly after September 11—raises anxieties around the developing world that the United States is ignoring the conditions that can become breeding grounds for those whose purpose is destruction, not construction and production.

### **Working with Developing Nations**

A free and open trading system is critical for the developing world. As President Bush has pointed out, “Open trade fuels the engines of economic growth that creates new jobs and new income. It applies the power of markets to the needs of the poor. It spurs the process of economic and legal reform. It helps dismantle protectionist bureaucracies that stifle incentive and invite corruption. And open trade reinforces the habits of liberty that sustain democracy over the long term.”

Last year, we began the important implementation of the far-sighted African Growth and Opportunity Act, which Congress enacted in May 2000. As you know, AGOA extends duty-free and quota-free access to the U.S. market for nearly all goods produced in the 35 eligible beneficiary nations of sub-Saharan Africa. In 2001, the United States lifted all duties on eligible apparel products exported from 12 AGOA nations to the United States. The Administration is fully committed to AGOA’s use and expansion: It opens the door for African nations to enter the trading system effectively, increases opportunities for U.S. exports and businesses, supports government reforms and transparency, and widens the recognition of the benefits of trade in the United States. Indeed, we support prompt Congressional action on legislation that will clarify and strengthen current provisions in the African Growth and Opportunity Act. Next week, I am traveling to Kenya, South Africa, and Botswana to listen and learn more about Africa’s needs, while conveying America’s support for Africa’s economic and political reforms and our interest in greater trade.

Through AGOA and other preferential trading ties, such as the Caribbean Basin Trade Partnership Act, we will support efforts to build the capacity of developing countries to take part in trade negotiations, implement complex trade agreements, and use trade as an engine of economic growth. The United States devoted more than \$555 million in trade-related capacity-building assistance to developing countries during fiscal 2001—more than any other single country. We will continue to work with other agencies of the U.S. Government, such as AID, and with multilateral and regional institutions, such as the World Bank, the Inter-American Development Bank, the African Development Bank, and the WTO to help developing nations to board the ship of trade so as to reach the shore of prosperity, opportunity, jobs, better health, the rule of law, and political reform. Congress’ advice, encouragement, and support is vital to this endeavor.

### **Monitoring and Enforcing Trade Agreements**

For the United States to maintain an effective trade policy and an open international trading system, our citizens must have confidence that trade is fair and works for the good of our people. That means ensuring that other countries live up to their obligations under the trade agreements they sign. Over the past year, we have aggressively monitored and enforced our agreements, reaching settlements benefiting American producers, exporters, and consumers in sectors such as entertainment (motion picture and television programming), high-technology (software and telecommunications) and agriculture (bananas, soybeans, lamb, rice, livestock, dried beans, stone fruit, fresh fruits and vegetables, processed foods, citrus, stuffed molasses, and wheat gluten).

In 2002, we will seek to resolve favorably other trade disputes in a way that best serves America’s interests. Among the most prominent cases are: softwood lumber with Canada; beef with the European Union; the Foreign Sales Corporation WTO case brought by the EU; and sweeteners with Mexico. To avoid large trade retaliation against U.S. exporters and the risks of spiraling conflict, we and other departments will need in particular to consult and work with the Congress closely to determine an approach to the recent FSC decision.

We plan a special effort around the world to address technology regulations (e.g., biotech) and science and health measures that impede farm exports and the productive development of agriculture.

### **Trade Laws Against Unfair Practices**

Given America’s relative openness, we can only maintain domestic support for trade if we retain strong, effective laws against unfair practices. This Administration has used and backed the use of these laws.

In Doha, working closely with the Commerce Department, we stressed and pressed this point vigorously. We then advanced an offensive agenda in this area. We targeted the increasing misuse of these laws, particularly by developing coun-

tries, to block U.S. exports. During 1995–2000, there were 81 investigations by 17 countries of U.S. exporters. Chemical, steel, and other metal producers are the most frequently targeted U.S. industries, although U.S. farm products are increasingly the victims. At present, there are over 60 orders against American companies in effect. The new negotiations launched at Doha will help us address significant shortcomings in foreign anti-dumping and countervailing duty procedures by improving transparency and due process.

Finally, the Doha Declaration makes clear that trade remedy laws are essential tools and should not be undermined. We won agreement that the new negotiations will preserve the concepts, principles, and effectiveness of the international provisions on which we rely, as well as the instruments we use. Moreover, the United States insisted that any discussion of trade remedy laws must also address the underlying subsidy and dumping practices that give rise to the need for trade remedies in the first place.

### **The Importance of Safeguards**

Maintaining public support for open trade means providing assistance to those industries that find it difficult to adjust promptly to the rapid changes unleashed by technology, trade, and other forces. We will continue our commitment to the effective and creative use of statutory safeguards, consistent with WTO rules, to assist American producers. Used properly, these safeguards—for example, Section 201 of the Trade Act of 1974—can give producers a vital breathing space while they restructure and regain competitiveness.

The Bush Administration has pursued innovative approaches with safeguards. For example, while ending the safeguards for the U.S. wheat gluten and lamb industries last year, we also provided them with additional financial assistance over a period of 2–3 years. The effect has been to assist them in following through on their transitions to competitiveness, while also helping to insulate our exporters from trade retaliation. The European Union agreed to lift its duties on U.S. corn gluten imports as part of our action on wheat gluten.

In June, the Administration requested a safeguards investigation by the U.S. International Trade Commission into whether increased imports were causing serious injury to the U.S. steel industry. Many of you urged this and the prior Administration to take this step, and we were pleased to work with you to do so after your unsuccessful efforts in the 1990s. The President's request was one part of a larger U.S. global steel initiative that also included the launch of new negotiations with our trading partners to eliminate inefficient excess capacity in the world's steel industry and to enhance international discipline over subsidies and other measures that distort markets.

On December 19, the International Trade Commission issued a report containing its recommendations. A plurality of the commissioners recommended various remedies for many of the steel product categories. The Administration has been reviewing the ITC's recommendations, as well as the views of a diverse collection of steel companies, labor unions, steel consumers, port authorities, and exporters. We recently received supplementary information from the ITC pursuant to a request I made last month on behalf of the Administration. We of course welcome further input from this Committee and the Congress. Based on this information, I expect the President will decide on a course of action in coming weeks.

### **Aligning Trade with America's Values**

America's trade agenda needs to be aligned securely with the values of our society. Trade promotes freedom by supporting the development of the private sector, encouraging the rule of law, spurring economic liberty, and increasing freedom of choice.

The trade system also needs to be alert to other challenges. Poor countries cannot succeed with economic reform and growth if they are eviscerated by pandemics. From its first days, this Administration recognized this economic, health, and social reality. We stressed that the international WTO Agreement on intellectual property (the TRIPs accord) contains flexibilities for developing nations to obtain access to critical medicines to help address public health emergencies, such as HIV/AIDS, tuberculosis, and malaria. The Administration played a key coalition-building role—working closely with African nations and Brazil, as well as with the pharmaceutical companies—to develop a special political declaration at Doha that highlights these flexibilities.

Flexibility on intellectual property, and lower-priced medicines, must be part of a larger global response to health pandemics, involving education, prevention, care, training, and treatment. The United States is the largest bilateral donor of funds

for HIV/AIDS, tuberculosis, and malaria assistance, providing over \$1 billion per year on related research, much of which helps to address developing country problems. (This represents nearly 50 percent of all international HIV/AIDS funding.) The United States was the first contributor, and remains the largest, at \$500 million, toward the international "Global Fund to Fight AIDS, TB and Malaria," which will allocate its first grants in April.

We are also stressing that it would be a tragedy and health setback if the promotion of the flexibilities within the TRIPs accord degraded into an assault on intellectual property. Effective protection of intellectual property is critical for developing nations, because we need to find and develop cures for diseases that ravage their societies. Similarly, biotechnology holds out tremendous potential for the developing world: It can increase food security and food production through higher yields and the reduction of fertilizer and insecticide inputs. New discoveries will add vitamins to foods, and counter malnutrition and disease. Furthermore, the local protection of intellectual property rights establishes the foundation for an attractive investment climate for industries of the future. Indeed, as developing countries have implemented the intellectual property protections in TRIPs, they have begun to benefit from increased technology transfer and investment—two key factors in long-term economic growth.

There are other areas where we are working to ensure our trade policies are supportive of related meritorious purposes. USTR has worked closely with Members of Congress on legislation that would support international efforts to stop trade in "conflict diamonds" (diamonds traded by rebel movements to finance conflict aimed at undermining elected governments). The bill approved by the U.S. House of Representatives in late November achieves this objective consistent with our international obligations. We will continue to work with other agencies and the Senate sponsors of the legislation to resolve any remaining issues and to help bring the Kimberley Process (the international negotiations aimed at preventing trade in conflict diamonds) to a successful conclusion.

#### **A Cleaner Environment and Better Working Conditions**

Free trade promotes free markets, economic growth, and higher incomes. And as countries grow wealthier their citizens demand higher labor and environmental standards. Furthermore, governments have more resources and incentives to promote and enforce such standards.

In 2001, we charted progress on incorporating labor and environmental concerns into U.S. trade policy. The U.S.-Jordan Free Trade Agreement is the first U.S. free trade accord to include enforceable environmental and labor obligations in the body of the agreement. The Administration also affirmed an executive order, and its implementing guidelines, for conducting environmental reviews of trade agreements. As part of this policy, USTR is conducting environmental reviews of the U.S.-Chile and U.S.-Singapore free trade agreements, the Free Trade Area of the Americas, and the WTO's new negotiating agenda.

The House and Senate Trade Promotion Authority bills contain provisions that will incorporate labor and environmental concerns into U.S. trade negotiations. We are drawing on this guidance—and would welcome additional insights—as we are pursuing these topics in our current FTA negotiations. Similarly, I am conducting discussions with NGOs and the business community to ascertain how we can address concerns posed about investment provisions involving private action. Working with our NAFTA partners last July, we issued additional binding interpretations for NAFTA panels that define more precisely the bases for their reviews.

As I noted earlier, the United States played a leading role in forging the compromise to incorporate environmental concerns into the new global trade negotiations. I have already discussed with numerous countries the critical importance of proceeding creatively and positively on this Doha agenda, because I believe it offers significant opportunities. We can take practical steps that show that good environmental policies and sound economics can be mutually supportive. In addition, we should create a healthy "network" between multilateral environmental agreements (MEAs) and the WTO, enhancing institutional cooperation and fostering compatible, supportive regimes. If we succeed, this precedent may be helpful in interconnecting the WTO with other specialized organizations, such as the ILO on labor policies and the WHO on health issues.

The Bush Administration has a sound track record of using our trade preference programs, and our trade negotiations, to improve working conditions in the context of trade liberalization. In May, the Guatemalan Congress enacted a significant package of reforms to the country's labor law following a U.S. review of the country's labor practices conducted under the Generalized System of Preferences program. In December, the United States and Cambodia extended our Bilateral Textile Agree-

ment, including an increase in the quota for textile exports from Cambodia in recognition of Cambodia's progress in reforming labor conditions in factories over the past three years. And in our negotiations for free trade agreements with Chile and Singapore, in accordance with the objectives in the TPA legislation, we will seek a meaningful set of cooperative provisions that will advance labor and environmental protection and projects, while promoting open markets.

We know the importance of these topics for many Members of the Committee, and we want to work with you to explore new approaches that break through old stereotypes. Some are concerned about a "race to the bottom," although others point to the benefits of trade and openness in spurring growth, productivity, higher incomes, and enhanced scrutiny of working and environmental conditions. Some stress the need to safeguard America's sovereign rights to select our own standards, while others want to deploy trade agreements to compel others to negotiate the standards we prefer. Some believe that the influence and investment of U.S. companies abroad will lead to higher standards and codes of behavior, while others fear the reach of globalized companies. It is our goal to use the TPA bills Congress has forged to bridge the differences, build a stronger consensus, and make a real, positive difference around the world.

### **Conclusion: Challenges on the Trade Horizon**

The United States has made considerable progress on the trade agenda in the past year, but still must do more to catch up with our trading partners. The European Union now has 29 regional and bilateral free trade or special customs agreements, 22 of which it negotiated in the past decade, and is in the process of negotiating with 12 more countries. Mexico sped past the United States after NAFTA to complete eight free trade agreements with 28 countries. Japan has completed a free trade agreement with Singapore and is exploring options with the ASEAN nations, Canada, Mexico, Korea, and Chile. Even China, just into the WTO, is pursuing an FTA with the ASEAN countries.

Altogether, there are 130 regional free trade and customs agreements in the world; the United States is a party to only three. There are 30 free trade agreements in the Western Hemisphere; the United States is a party to only one. In recent years, when the rules of trade have been set, the United States has frequently not been at the negotiating table.

In addition, there is a constant threat of markets closing and barriers rising. During periods of economic downturn and uncertainty, it is most important to affirm the drive toward free trade. In the past, governments have often resorted to protectionism in short-sighted attempts to shield their local industries from competition. In the face of these challenges, we must be even more vigilant in order to move ahead.

Opening markets, and liberalizing commerce, injects fresh dynamism and energy into the U.S. economy. Open trade cuts taxes on businesses and consumers. For example, NAFTA and the Uruguay Round agreements have resulted in higher incomes and lower prices for goods, with benefits amounting to \$1,300 to \$2,000 a year for the average American family of four.

There is even more to be gained. A University of Michigan study has reported that new global trade negotiations focused on tariff reductions on industrial and agricultural products could deliver an annual benefit of nearly \$2,500 for American families.

We will continue to make this case for the benefits of trade. Expanded trade—imports as well as exports—improves our well being: Exports accounted for 25 percent of U.S. economic growth from 1990–2000 and support an estimated 12 million jobs; these jobs are estimated to pay 13 to 18 percent more than other jobs. Trade also promotes more competitive businesses—as well as more choices of goods and inputs, with lower prices.

A free and open trading system is critical to a number of sectors of the U.S. economy. In U.S. agriculture, for example, one in three acres are planted for export and nearly 25 percent of gross cash sales are generated by exports. The value of U.S. exports of agricultural products is expected to be \$54.5 billion this year. U.S. farmers and ranchers are 2½ times more reliant on trade than the rest of the economy.

Last year, the Administration and the Congress together restored America's trade policy leadership all around the globe. There is no doubt the United States is back at the free trade table. In the year ahead, the Bush Administration will work in close consultation with the Congress to build on this leadership through the ongoing implementation of an activist agenda that seeks to vanquish the barriers to free trade and magnify the opportunities for growth and prosperity. By opening new markets, together we will be contributing to the enhancement of democracy, liberty,

security, innovation, political coalitions, economic growth, and openness in the United States and throughout the world.

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Chairman THOMAS. Thank you, Mr. Ambassador. As I indicated, the Foreign Sales Corporation issue will occupy some time before this Committee, hearings, both full Committee and subcommittee, examining legislative options. What we will be requesting from the Administration will be relatively close communications on what strategies the Administration is going to be pursuing. And I don't want any lengthy discussion now, but clearly at the Ambassador's choice he could either offer some brief comments, but I certainly expect shortly some written indication of the direction of the Administration's strategy so that we can coordinate the very real need to respond to this decision.

I might ask in that context, you have had communications with appropriate officials since a decision has been rendered, they are still in the process of determining the dollar amounts. What is the climate post decision?

Mr. ZOELLICK. Well, let me, Chairman, try to address the first one. We are very pleased with the prospect of working with the Congress, however all of you determine we can, obviously that involves heavily the Treasury Department, Office of Tax Policy, and the senior people there. But we as an Administration are trying to come up with interagency proposals on this and would be delighted to work with you and we appreciate your leadership on it.

In terms of the climate, Chairman, the frank answer is it is uncertain, as I think we have had a chance to talk among ourselves. This is an issue that has been around for a while. The United States had some of its legislation challenged, and we lost, we lost on appeal, and there was another round. And so frankly, my read of the situation is that the European Union, while not eager to retaliate, needs a sense that the United States is going to take the steps to come into compliance. They recognize this is an extraordinarily difficult issue, and it won't be done easily. That is why I think steps like hearings or other actions, things we can do from the Administration, will show good faith in taking on the topic.

The problem is we do have some near-term deadlines. By the end of April the WTO will have an arbitration panel that will decide the amount that the EU can retaliate. The EU has pushed for about \$4 billion based on some revenue estimates dealing with the FSC. We are obviously going to push very hard for a lesser number based on various arguments we make partly related to the trade effects. But by that time period there will be an amount that the European Union can retaliate, and then we face a question can we hold off that process by showing that we are taking this on. I believe there is a chance to do it from my conversation with Commissioner Lamy, I know others here have. But, I think we can only do so if we show there is a serious and good faith effort, Chairman.

Chairman THOMAS. Well, I don't think anyone believes that the approach ought to be to simply ignore the decision. But at the same time, as we investigate ways in which we change our Tax Code, somebody has to take into consideration the season. I know oftentimes when I sat down with Europeans or even with others in dis-

cussing our abilities to move forward, if it isn't in the first or the second or the third sentence, the fourth sentence includes a phrase something like the elections in France or the elections in Germany, and that we have to be sensitive during this period because they are having presidential or legislative elections in a particular European country.

None of us are going to use the fact that this is in fact an election year and a fairly important one in this country as an excuse not going forward because we are going to go forward with hearings. But somebody has to put it in the context that we are addressing this, and we will address it in a fundamental way, in a very difficult climate. And I am hopeful that as you continue to discuss this issue with others, that the context in which the House is attempting to move forward and resolve the problem, not patch it over, not come up with another gimmick but fundamentally resolve it, understand that this is not a 3-week or even a 6-month pursuit.

Second, I am pleased that the President, all of us are pleased with the President's push for permanent normal trade relations with Russia. My concern is, and I have introduced legislation to that effect, during the long and arduous, as you described, process with China, I thought that the normal trade relations (NTR) vote was a useful one to frequently check and require people to make sure that the process of negotiating with China was a truly rigorous one and did not slide off to a politically convenient structure because you were able to do so because you didn't have the NTR votes taking place.

And I do want to put in context the fact that with Russia we want to make sure that there are no foreign policy pressures or other departmental pressures in making agreements, that it has to be as firm and as sound as it was with China in dealing with Russia.

And lastly, the President going to China, you had indicated the importance of agriculture. Here we have an opportunity to stress with someone who is and will be a major competitor in the agricultural area that there is sanitary and FAO or Food and Agriculture Organization sanitary requirements, their biotech regulations all need careful scrutiny if we are going to continue this growing and I believe mutually beneficial relationship. I know you will be in there scrapping. But we want the President to know that these are issues that ought to be on the front burner with the Chinese because these agreements need to be closed quickly.

With that, I will turn to the gentleman from New York.

Mr. RANGEL. I think I have said most of all the nice things about you that I can this morning. So we might as well get to the other issues, and that is that when you are negotiating for the United States with the WTO in this FSC problem you are not to be heard to say that the President is not in charge of taxes or the Treasury is not in charge or taxes or it is the Congress or it is the Committee on Ways and Means, you are carrying our flag. And as it relates to overseas, in order to avoid an appearance of disunity here, it appears to me, Mr. Ambassador, that you are going to have to bring a team to work with this Committee. When I say Committee, I mean Republicans and Democrats, because if it appears as though the majority has a permanent solution to this problem

that the minority disagrees with, that is going to be just as public as it should be as relates to our Committee work.

So I would strongly suggest that you might want to put together a team from the executive branch to meet with us informally as a Committee to share with us your concerns so that we can as nearly as possible read from the same page, because there are all types of potential solutions to this problem but it doesn't mean that the end of today that we can all read from the same page.

And so, I know what you have been up against and you have done a tremendous job in trying to work between the Chairman and me, but that is OK for domestic stuff. But as it relates to dealing with the European Union I hope we can find at least an attempt to find a way that we can work more closely together. I discussed this with you privately. I just want to thank you for your agreeing to try to do that.

Mr. ZOELLICK. Mr. Rangel, just to add to what you and I have discussed, I want the whole Committee to know what I explained to Commissioner Lamy. We as an Administration will be putting together a task force, whatever one calls it, that is an interadministration group. Obviously the tax policy is the heart of it, but there are Commerce and U.S. Trade Representative (USTR) and others are very deeply involved. One of the things that I told him was that we would also be in consultation with tax policy experts, the business community, reaching out—we know this is a difficult problem—and then to try to come up with our series of ideas or proposals within some limited period of time, which we haven't yet defined.

I also told him that we would, through that group or another group, also want to have a similar discussion with Europeans, and here not only the Commission but with the Member States where the tax authority arises, because I know a number of you from both sides of the aisle have a sensitivity to making sure there is a level playing field here for tax systems.

And so if we are going to be able to put something together, together we need to try to do it so that the Europeans understand that this is finally over, we get it done.

So the third part obviously is, however the Committee and others want to try to work with us, we would be delighted to try to do so. What I want to emphasize here, I don't mean to suggest this is by any means an easy problem. And what I hope to do with the two of you and others on the Committee is frankly take our good faith action in tackling it, and I think the Europeans understand this is a big, big problem. As I have said to them, what would happen if the WTO said France had to change its tax law, how quickly would you be able to turn that around, going to the Chairman's point.

So I think we can win some time here, and I won't hazard a speculation exactly how long if we work on it together. That is what I have tried to get launched here. I will do my best to work with you on it.

Mr. RANGEL. Thank you.

Chairman THOMAS. The Chair notes that we are beyond second bells on a 15-minute vote. It will be followed by a 5-minute vote. And so we will probably not be able to sustain the Committee by

having Members go over and come back. So Mr. Ambassador, if you will allow us, the Committee will stand in recess until as soon as we can get back, hopefully shortly before noon.

[Recess.]

Mr. CRANE. [Presiding.] Our Chairman cannot get back here right now, but we will continue and, as I understand it, I am next in line since Charlie already got his 5 minutes. Is that correct?

Mr. RANGEL. If you are the Chairman, whatever you have to say I would bend over backward to make it so. I yield for the Chair.

Mr. CRANE. I thank you so much for that. I am meeting with Yugoslavian President Kostunica this afternoon, and one of the questions or the most important question from his perspective, of course, is reinstating NTR for Serbia and Montenegro. The Administration already has the authority to reinstate NTR but I am told we need to pass legislation. What is your position on this issue?

Mr. ZOELLICK. Chairman, we support the effort to try to restore the NTR for Yugoslavia, and we have been working with the Department of State in terms of trying to address the concerns that were reflected in the 1992 legislation to try to do so.

Mr. CRANE. Second question deals with your expressed interest in pursuing free trade agreements with especially our Latin American countries, but also I have heard of potential FTAs with Australia and New Zealand and South Africa and Morocco. What criteria are you using to identify potential candidates for bilateral FTAs?

Mr. ZOELLICK. Well, Chairman, I am particularly pleased you asked this because this is a topic that I wrote, as you know, to you, Chairman Thomas, Mr. Rangel, and Mr. Levin that I hoped we could get a good dialogue going forward.

The starting point is that Congress has passed legislation in the Caribbean Basin Trade Partnership Act that urged us to focus on the possibility of a free trade agreement with Central America. And the President spoke about our interest in pursuing that with the five Central American countries. In addition, AGOA also encouraged us to look at possible free trade agreements with African countries. And the South African Trade Minister has expressed an interest in exploring this perhaps in the context of the South African Customs Union. And that is one of the items I hope on my trip to Africa to explore it further.

But beyond that, Chairman, there are a number of benefits for this, I think. One is whether we can create some models of success; whether we can, for example, advance some of the trade agenda in a particular area; for example, in the high-tech area, intellectual property rights area, whether we can catch up in market access. For example, right now, Chile has an 8 percent tariff that doesn't apply to Canada but does apply to us, so we are losing vegetable oil and wheat and potatoes and other things. We also can use this to build support on other issues; for example, on biotech that a number of Members are interested in sanitary or the FAO sanitary issues. Another one is to support economic reform.

And what I think would be my suggestion is that we try to have an array of developing in developed countries in different parts of the world so we can create a network and show that the United



States is willing to look for free trade in Latin America, in Africa, in Southeast Asia and in other quarters.

Obviously, there is a dimension of this that could help our foreign relations. For example, Jordan was a free trade agreement, our first with an Arab country in the Muslim world. It is important to do that at this time. And Morocco would offer another possibility. So those are some of the criteria that we are looking at, but it is an area where I very much want to have a good consultation and dialogue with Congress.

Mr. CRANE. And a massive effort will be required for China to comply with all its commitments and as part of its WTO accession. And for the United States to monitor and seek compliance with these commitments, China must create or revise and enforce scores of laws and regulations. What is the Administration doing to establish a system for promoting compliance?

Mr. ZOELLICK. With the help of the Congress, which at the time that it passed PNTR gave some additional resources not only to USTR but to commerce and others, we are trying to do this at a number of levels. One is we have an interagency group that has taken each of China's commitments and assigned it to an agency, and we have monthly meetings where we track the follow up on that. But, in addition, we are trying to reach out to the private sector, because in a country of 1.3 billion people, a lot of the information will be gathered by American businesses in China. And we are trying to link into that network so we can identify the problems at an earlier point and try to resolve them.

Third, we are trying to work with other countries. The WTO itself has a special process related to China's follow-through, but with Europe and with other countries we have a common interest in this delivery.

And let me just emphasize this point most of all, Chairman, because it is one that Chairman Thomas raised. This is going to be a very long road. This is a country that is going through a huge transformation and in many cases what Beijing decides is not necessarily what the provinces will do. So we are going to have work on these. And while we are certainly willing to take the dispute resolution process as necessary, I do hope we can try to pursue this in a problem-solving mode.

In the area of soybeans and biotech, which Chairman Thomas mentioned, I just want to reassure you, the interest starts at the top. When President Bush was in China for the Shanghai APEC or Asia Pacific Economic Cooperation meeting, he emphasized the importance of that issue. And we got some headway on that one as an interim measure, but we are now focusing very heavily on the Chinese implementation of their biotechnology regulations.

Mr. CRANE. Thank you very much Mr. Ambassador.

Mr. Stark.

Mr. STARK. Thank you, Mr. Chairman. Mr. Ambassador, I would like to just touch on a topic. I have questions about FSC but another problem that seems to have invaded Capitol Hill has been the corporate ethics and some of the problems that many people have had recently with 401(k)s and accounting and so forth. And I wonder if it is your intention to voluntarily come to Congress and testify about your employment with the Enron Corporation and dis-

close all that you know, both formally and informally, to help us figure out what to do to see that that kind of thing doesn't happen again.

Mr. ZOELLICK. Mr. Stark, I am pleased to disclose all that I know. And as a starting point, I served on an advisory council, and I recused myself on all matters dealing with Enron. And before I left for India, I was asked by the Indian press whether I would push the issue and I told them I couldn't because I was recused. In addition, I was a stockholder and all this was disclosed at the time of my confirmation, and I sold my stock at a loss.

Mr. STARK. My concern is that you are probably aware of things that went on in the company when you were there. I am not suggesting that there was anything improper about your present position and your former position with Enron, but I am sure that you have a lot of helpful information that would be useful to us as we try and resolve this issue in the future.

Mr. ZOELLICK. Perhaps, but again, I know this is an important and sensitive topic and I know it is one there are hearings on right now. I served on an advisory Committee that met twice a year. This involved people like Paul Krugman of the New York Times. And so while I am happy to try and cooperate in any way we can in trying to deal with this issue, when you said—you used the words that said “my participation,” or some such words—

Mr. STARK. As I say, I knew you were on some kind of a board—but no more than the average person about what went on. On the FSC generally, there is I am going to say 20 or 30 major corporations in this country that get close to the \$4 billion benefit from FSC. And however you are able to negotiate that—these same companies, by the way, probably get 80 percent of the Ex-Im Bank guarantees and they probably get the majority of the AMT or alternative minimum tax giveback of 25. So they are quite comfortably compensated by our Tax Code.

If, as many of us feel, we are going to at best negotiate, what can you suggest to us or how can you assure us that if in fact there is \$4 billion of retaliation, let's say, or whatever it is, that that money will be paid by the corporations who have enjoyed the benefit and not by all the average people in America that you are saying maybe saved a thousand bucks because of NAFTA. It seems to me whatever we come up with, that the people who got the tax benefit ought to end up somehow paying for whatever retaliatory penalties we have to pay. Does that sound fair to you?

Mr. ZOELLICK. The problem with it, Mr. Stark, is that is not the way the trade retaliation works. The trade retaliation would not be a payment. This would be the EU's right to raise tariffs on products. So it wouldn't be payments. And one of the reasons why—

Mr. STARK. Exactly, Mr. Ambassador, what I am getting at. That the people who got the benefit, who have the \$4 billion in their pocket, these large American corporations would be the ones who would be retaliated against.

Mr. ZOELLICK. We don't know that. Unless we work something out with the Europeans, it is their choice.

Mr. STARK. There is certainly a way we could compensate. Let us assume that all of the tariff retaliation comes against agricultural products. Wouldn't it be fair then to raise the taxes on the

corporations who got the \$4 billion and distribute it through the Tax Code to the small farmers, for instance, who might suffer. All I am saying is, don't you think it would be worth our effort to make a good effort to see that we don't further hurt the average American who is already paying for the \$4 billion that these big corporations are getting?

Mr. ZOELLICK. A lot of average Americans work for those companies and they get their paychecks. All I can say is I think we need to resolve this problem or else we are going to get retaliation against us.

Mr. STARK. As well we should, and we got caught.

Mr. CRANE. The time of the gentleman has expired. Mrs. Johnson.

Mrs. JOHNSON OF CONNECTICUT. Thank you, and welcome, Mr. Ambassador. I wanted you to enlarge a little bit on how you see the negotiations going forward in regard to trade remedies and the great importance we put on our laws that allow us to protect ourselves against what we usually refer to as unfair trade barriers. And this will be a big issue in the upcoming round. And I would like to hear how you think that is going to go.

Mr. ZOELLICK. Well, first, we believe that effective trade remedy laws are absolutely critical. And we not only supported them but we have supported their use. And whether it be softwood lumber or steel, or other categories, indeed I made some suggestions yesterday about possibilities of doing this against the Canadian Wheat Board. So we think it is a key part of our overall trade policy.

At Doha, we did not agree to change our trade remedy laws. And we, of course, didn't change the laws. What we set out first was an offensive agenda because a number of countries are putting laws like this in place without the due process, without the procedures. And they are increasingly being used against American companies. In fact, there are about 60 orders in place right now against American companies and they tend to focus most on chemical, steel, other metal firms, but also being used against agriculture. For example, our poultry industry is very concerned about this.

Our first step is to make sure that whatever is done in this area, it gets others to have a better performance and up to the standards that we have.

Second, Congresswoman, there have been a number of decisions in the WTO which frankly we, and I think most of the Members of this Committee, disagree with. For example, they have not given, in our view, the due deference that should be given to the U.S. International Trade Commission (ITC) or the government in terms of a standard of review. And frankly, we would like to get those and some of those changed.

What we also agreed in Doha was very important from our point of view, was that there is—that we will not undermine the concepts, the effectiveness and principles that underlie these laws. And indeed we went back and fought again and said also the instruments which are applied. We also said if there is any discussion of these laws, you can't look at the remedy without looking at the disease. We have to go to the underlying problem of subsidies and dumping. So that is the framework for which the future of the Doha agenda will go forward.

And, again, our emphasis is primarily on the offense agenda because one of the issues that this Committee and all of us will be dealing with in the future is more and more countries are using these laws and they are going to be using them against American exporters and you are going to hear about it and I am going to hear about it.

Mrs. JOHNSON OF CONNECTICUT. Thank you very much.

Mr. CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Mr. Ambassador, I would like to talk about two points: one, about the general trade laws; and, second, about 201. I was not at the Senate hearing that you were at. But I think in questioning, Senator Rockefeller asked you about some of our trade laws, particularly in antidumping. And I think you said, well, there are certain things we have to negotiate and therefore we are prepared to put certain things on the table.

You may want to comment on that, because I was not there. But I would hope that you wouldn't put the antidumping laws on the table or really change our trade laws. Those are so important. And some of us who have been on the other side of this thing, being in business, have found ourselves really in very difficult straits. And I am not going to mention any names, but having been in business and being sort of thrown to the winds by our trade representatives at other times, it is good in terms of negotiating points—we will give you this, we will give you that—but the people who were given, it is very difficult. And that involves a lot of jobs. So I want to put in a plea for you to be very careful in terms of that. You may want to comment on that.

The second thing is in terms of 201. I am not a great historian but I do remember that in 1934—and, yes, I was alive in 1934—that Franklin Roosevelt and Cordell Hall organized the whole concept of relief for various industries. In other words, if an industry—the reason Congress gave the President that authority to be able to negotiate and be able to give relief, that he would give relief if an industry was in trouble.

And I know there are an awful lot of suggestions about steel. And as you know the statistics as well as I do, 39 or 40 companies are now in bankruptcy. But one of the things that I worry about is that when the President makes a decision, whatever that decision is, that he will do it in a meaningful way and not just have sort of a cosmetic approach. In other words, there are some suggestions now that with steel imports coming in at the usual number, the usual amount, that you would let those come in and then you would give a 25 percent tariff for everything surged over that.

That would be wrong, I think, because what it does is everybody is lining up and creating a tremendous surge, which would be unfortunate. So you may want to comment on both those issues.

Mr. ZOELLICK. Let me touch on the steel one first, Mr. Houghton. As you know, President Bush and this Administration initiated this 201 because we believe that safeguards have an important role. Members of this Committee were pushing for this for the prior years and could never get the initiation. And just to further underscore that, we worked last year to try to work out some of the safeguard issues related to the lamb and wheat gluten industries. And

this is based on the same strategic principle that you mentioned, which is there are times in which markets move more quickly than industries and the communities that live off them can adjust.

And so I am a firm believer that we need to have safeguard laws, but in a way that helps the adjustment process. The favored one that is pointed to in the 201 industry is the Harley Davidson industry, how it turned around. But we also have to be careful because it could just be a form of protectionism and that doesn't help anybody adjust. But if we have a restructuring plan and include time for an industry to catch its breath, I think that is an important part of the adjustment process.

In steel, after we received the ITC's recommendations—and as you know, they varied somewhat by Commissioner—we had very good discussions with all branches of the industry. The ports look at it a little differently. And some of the other users obviously have concerns. But what I can assure you is this is something now that is at the Cabinet level of discussions. We look at it very thoroughly, about the effects on the economy and on this industry. So it is getting a very serious examination. And I know the President has a personal interest in it from discussing it with him, and we are on track to try to get the decisions in early March.

Mr. HOUGHTON. Before you leave that, Mr. Ambassador, I guess my point is that if you do have relief, it ought to be real relief and it shouldn't be gobbled up with different proportions and surges and things like that. This is an industry—and I never was in the steel industry but I identify with them totally—that is not fat and happy. They really have done almost a resurrection of what they have been about in years in the past. And frankly they do need some help here, some real help.

Mr. CRANE. The time of the gentleman has expired.

Mr. ZOELLICK. I will speak briefly because I think part of my answer to Mrs. Johnson was on a similar point about the trade remedy laws. And what I was emphasizing is we know how important they are. I would not take your characterization or my exchange with Senator Rockefeller as being an accurate description of reality.

But here is the other situation that we face and then we will fight to protect these and I believe they need to be protected.

As I mentioned, there are two other things. One is at Doha. There were 141 countries that wanted us to at least discuss this topic. And so yes, we had to make a discussion should we crater the round—and that is what it would have involved—or should we try to craft what I think is a darn good agenda in terms of our offensive points without giving anything up defensively.

And the other point I will put on the table here is that we are going to need to figure out a way to get other people to improve their laws while protecting ours because there is now a gap. American lawyers, God bless them, and they have been going around the world helping other countries to put these in place, and they have nowhere near the standards, transparency, due process, that we have. And we are going to hear about it to increasing degrees, and that is what we will target in the negotiations.

Mr. CRANE. It is hard for any of us to believe that you were running your business back in 1934.

Mr. HOUGHTON. I didn't say that.

Mr. CRANE. Mr. Levin.

Mr. LEVIN. I am tempted to take up Mr. Houghton's question. Let me just say that I am not sure how people will read your answer, but I think the feeling is clear, as I stated in my opening statement, that just providing a safety net isn't enough. And I guess the Europeans have now suggested something that is essentially a way to finance a safety net.

Let me also, on the countervailing duties on antidumping, just indicate that I hope very much that we will be emphatic that we will not agree to renegotiate what we negotiated in great detail, at great length during the Uruguay Round. And the problem is that the language within the Doha agreement, I think is read by many people as essentially saying everything is on the table. And it may well be the judgment was we had to agree to that or else the round wasn't going to proceed. But that is the way it has been interpreted. And it is quite different the way it was worded in article 28 from the provisions, for example, on competition—and you know this, you negotiated it—where a decision to proceed had to occur by explicit consensus. And essentially there is no such language in the antidumping provisions, the provisions on rules.

But I don't want to make it more difficult for you. So let me just go on and just say a couple of other things quickly. On Chapter 11, we have talked about this and you and I have talked about other areas of disagreement and I won't go into them, the labor and environment provisions et cetera.

An investment in our bill that we brought up, we had some very specific provisions. And what I would like you to do, if you would, is to send to us your analysis of those provisions. We have talked about them, but we have never had any written communication as to any objections you have as to how we laid out what should be the negotiating objectives on Chapter 11. If you would do that, it will help the dialogue.

And in that regard, getting to Chile, we talked a little bit about this, but if you could give us a somewhat more specific timetable as to when you think the investment provisions will be taken up—you said you are going to be talking about market access next month—I forget, but if you could tell us the timetable on investment and also on the labor and environment provisions, just the timetable. We have our differences but let us see if we can possibly move ahead.

So let me talk for one minute about agriculture. Could you tell us—

Mr. ZOELLICK. About what?

Mr. LEVIN. Agriculture. Could you tell us how you think the present discussions or work on the farm bill could affect the negotiations on one of the two or three key sensitive issues, and some people think may be the most sensitive—I think there are others—in the next year or two?

Mr. ZOELLICK. Certainly, Mr. Levin. Since you mentioned the EU proposal, I don't want you to misstate it because I am not sure you would like it if you really looked into it. It is the idea of taxing the steel industry for a fund. That is what the Europeans did, and I am not sure our steel industry would be very excited about having a new tax imposed on it.

Mr. LEVIN. And the tax would essentially go to pay legacy costs. So that only addresses the safety net. I am not saying it is a good idea, but only addresses the safety net issue and not the basic issues of whether we want a steel industry, how it is structured, et cetera.

Mr. ZOELLICK. And, Mr. Levin, I would be pleased on the written points on Chapter 11. What I would urge we also do is we talk about it more, because I looked at a number of those points and I think they are focusing on a lot of the same issues that we are focusing on. I may feel, for example, that a required appellate level for an agreement that is not likely to have many appeals might be something that is not a workable approach, but we need to address that issue in some other way. So we will try to follow that up.

On your farm bill question, obviously, the Department of Agriculture is in the lead in terms of trying to deal with that. And you know, we support forward-looking farm legislation, as the President has made clear, that helps both the prosperity of our farmers but also meets our WTO commitments.

There is language in the House farm bill that authorizes the Secretary of Agriculture to make necessary adjustments if our spending exceeds WTO limits. And right now, the USDA or U.S. Department of Agriculture staff is working with the Committee to get a sense of how that would be administered, how it would work in the process. So it has been, you know—our emphasis is in the Administration that we need to have a farm program that allows us to meet the needs of farmers but also meets our international obligations and helps us to continue to move forward in terms of eliminating export subsidies, reducing production support and opening markets around the world. And I have talked with Members on both sides of the aisle on that in the Ag Committee about trying to do that.

Mr. CRANE. The time of the gentleman has expired. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman.

Mr. Ambassador, congratulations on your 1-year anniversary, and thank you for your outstanding leadership as our Country's Trade Representative. Certainly the President has the best and brightest on his trade team, and I certainly applaud the work that you are doing.

I want to raise an issue that is critically important to America's medical technology industry, very important segment of our economy as you know. And as you also know, on December 12, the Japanese Ministry of Health and Welfare adopted foreign reference pricing, commonly known as FRP, which is a new pricing policy going into effect April 1 which allows the Ministry to cut reimbursements for medical devices based on the overseas prices.

Our country has long opposed FRP schemes. They discriminate against the U.S. medical device community. They failed to recognize the high costs of doing business in Japan. Now, the way in which it was quickly adopted also violates U.S.-Japan trade agreements according to all neutral observers.

Congress, in a bipartisan way, has expressed its strong opposition to FRP. Letters have been sent from Senate and House leaders, Republicans and Democrats alike. Speaker Hastert and Rep-

representatives Dunn and Blunt raised their concerns during their trip in January last month. Secretary O'Neill has raised his concerns, as has your Deputy Huntsman.

Despite all of the efforts by Congress and the Administration, the Japanese do not appear willing to alter their proposal, which would be a huge, a huge setback to the progress that has been made over the last 15 years in opening up Japan's protective marketplace. Now since the MOSS or Market-Oriented Sector Selective trade agreements in 1986, aggressive U.S. trade policy has turned \$100 million device trade deficit into a \$1.3 billion trade surplus today. And we need that strong United States leadership to continue.

I know—we all know the President will be visiting Japan on February 17. And my question to you, Mr. Ambassador, I believe is a very, very critical one. If this policy is not removed by then, that is, the time of the President's visit to Japan on February 17, will the President raise our serious concerns and our strong opposition to FRP during his visit?

Mr. ZOELLICK. First, Mr. Ramstad, thank you for your kind words. I obviously can't say what the President will or won't do. I work for him and not vice versa.

Mr. RAMSTAD. Will you encourage him to raise this?

Mr. ZOELLICK. Yes. And indeed, he has helped and pressed on a number of trade issues, as I have mentioned, on these visits. He has always—frankly, it is a big help to me, more than willing to me to try and push these.

I will say that we have been working closely with the industry, as you know, and others—in addition, you know, Secretary Evans and Ambassador Baker—Senator Baker has been pushing it very vigorously. And I think there have been discussions this week, Mr. Ramstad, that are making some headway with the industry.

But we know the importance, and it is a critical industry for the United States and also it is an unfair pricing system. So we will work with the industry with it and I will certainly also talk to the White House and the President as they go forward.

Mr. RAMSTAD. The fact that you are encouraging the President to raise this is very encouraging to us certainly, and he is aware of the terrible consequences of such a policy; is that correct?

Mr. ZOELLICK. Yes, I am sure.

Mr. RAMSTAD. And just met, as I think you did or your Deputy Huntsman, with a number of Chief Executive Officers (CEO) from Medtronic—from Minnesota's medical valley, Silicon Valley—from Representative Thurman's district who were here. And this truly, this FRP scheme truly, truly has devastating consequences. I can't speak in strong enough terms as to how devastating to this critical industry, to our country, and to our economy.

So I am certainly glad we are on the same page. Appreciate the fact that you are going to encourage the President himself to raise this when he is visiting Japan on February 17, because this is so important to a big part of our economy and to the medical device community. So thank you very much, Mr. Ambassador.

Mr. CRANE. Mr. Tanner.

Mr. TANNER. Thank you, Mr. Chairman; and, Ambassador, thank you for being here. And I have got three items I would like to mention. They are enforceability issues, and I know we all agree that



whether we are for or against a particular bill, the enforceability of what we have is important to both the supporters and the non-supporters of what we are trying to do here.

So let me just mention these, if I could, and then you could respond. As you know, the House has passed and the Senate is considering to renew the extension of trade benefits to Andean countries. We have a telecommunications company that is involved in a dispute with Colombia. I have talked to you about it before and we get a lot of promises and assurances and so forth from the Colombians but nothing changes. Deadlines have passed without resolution. I understand that their own laws are not being followed with respect to the enforcement or execution of a judgment.

And my question is even though we have Andean Trade Preferences Act (ATPA) concessions, there is some conditionality in that regime where benefits could be suspended or lifted for a particular country. And I hope that we can give the attention it deserves to this situation, because it is one of really shocking non-compliance if one could use those terms.

Second, Korea has some new biotech regulations with respect to corn and soy items that many feel are regulations that are a barrier to trade and are done to stifle competition. Has to do with documentation, certification and so forth. I understand someone in your office has recently met with the Koreans and, if so, if you could give us the status of that involving corn chips and so on.

And then, finally, the EU has had a moratorium on biotech products from our agricultural sector. I understand they—the EU has recently suggested that they would start their approval process later this year having to do with such issues as traceability, labeling requirements and so forth. And if you could give us the status on that and where we are with that. It relates to the Korean situation as well. Thank you.

Mr. ZOELLICK. Sure. Well, first on the Colombian matter, as I know you have been pushing this issue and we have been working with you on it, I have written President Pastrana, and I have written Colombian Trade Minister Ramirez, and she responded in a way that she thought they were moving it forward. In fact, I saw her just this past weekend and raised it with her. She is going to be moving onto another post so I will have to follow up with somebody else in the process.

But I thought the next step is actually—we will meet with Nortel and get their side about why they don't think it is moving in the process, and then we will work with the Colombians further as we go forward. The ATPA right now, since it has not been passed, we can't use it in that way, but we can use it in terms of trying to get it passed. And the Colombians have been responsive in some other areas like acrylic fibers.

I will point out one point and this is an issue of perhaps interest to Mr. Levin and Mr. Doggett as well. This is one of the reasons that the investor provisions are a double-edged sword. This is a company that employs people in your district that wants to have investor provisions and wants to have them enforced. Some other people are then a little leery about how those work. So this gives you a little sense of the balance we need to strike here.

On the Korea biotech, I know generally about the work we have been trying to do with the Korea biotech. I don't know particularly about the corn one, so I will have to follow up on that one. You are right. It is definitely related to the larger problem out of the EU. And I am glad you raised it because I want to put a real focus on this this year, because biotech is so critical not only for our industry and our employment, but it is critical for the development of agriculture around the world, including a lot of developing countries. And frankly the EU sort of stymieing of this is totally unacceptable economically, and I think morally, because in many developing countries around the world, this will be what leads to increased yields, less use of fertilizer; you know, the development of nutrients in a lot of these products.

So I was in Europe in December. I talked to four or five commissioners on this. And frankly, Mr. Tanner, they are not going to move. And one of the things I am considering is bringing a WTO action against the fact that they are not approving products. And I am working right now to talk with other countries around the world to see if we might do so.

That is separate from the traceability and labeling. Right now, they are not approving a darn thing. But on top of that would be the traceability and labeling rules, and frankly we think they are unworkable. So we are also trying to work with industry to see how we can fix those.

Mr. CRANE. The time of the gentleman has expired. Mr. Cardin.

Mr. CARDIN. Let me thank you for the way you have had an open door policy with Members on both sides of the aisle and the way you have consulted with us. We very much appreciate that in the way you are conducting your office. Let me just mention two issues that we talked about before so that I can just advance these issues.

First on steel, we have talked about that frequently and I want to thank the Administration for the actions that it has taken. The key decision, of course, will be made next month, or by next month, on what remedy to seek in regards to the damages that were caused on our companies. I would just urge you to take advantage of at least recommending to the President a tariff significant enough that it will deal with the true cost of steel. And I would urge you to look in the range around 40 percent. I would also urge that you look at that revenue as being used to help deal with the legacy cost.

As you know, the European countries do not have to incur the costs of our trading partners, incur the costs because there is a social cost in their country, and that makes it difficult for U.S. steel to be competitive with the high legacy cost.

And last you have probably been the leader in encouraging the restructuring of the steel industry in the United States, and we have had different views on that over time. But I would urge you to look at the antitrust laws to see if there is a concern there and what we are trying to work out on the restructuring and whether we need to look at some recommendations in that regard so that the restructuring can move forward in an orderly way.

And then on the second issue that we have talked about, and that is the permanent normal trade relations with the former re-

publics of the Soviet Union. I look forward to working with you as we advance that legislation.

I would just caution that when we looked at PTNR for China it was with a strong WTO accession agreement, and that made it a lot easier for some of us to move forward in that area.

I would also point out that each of these republics are different and it would at least be helpful for us if we consider them independently. And with China, we put in a strong monitoring commitment on human rights, which is important in some of the former Soviet Union. So I would just urge, as this process unfolds, look for a way that we can bring broad consensus to the legislation that the Administration seeks. And I thank you for your help.

Mr. ZOELLICK. Would you like me to—let me take the last one first, because we haven't really discussed it today and I think it is very important and I appreciate your help and I take your counsel about looking at these individually. In the case of Russia in particular, one thing just so you know how the Administration looks at this, is that this is an important step in recognizing the Cold war is over. I mean it has been 10 years.

And so, as you know, the history of the Jackson-Vanik with Russia and China were always different. In terms of Russia, it had focused on immigration and human rights. And Russia has been in compliance since 1994. So the focus that we have had—and I look forward to working with you—is on human rights and religious groups to make sure we try to get the assurance that we need to be able to go forward. I would distinguish that, and if someone said, look, we like to keep this as a club over Russia as it gets into the WTO—and I want to try and explain why I think that would be a mistaken idea.

President Putin and the other Russians have said, look, we want to play by the same rules everybody else does. And so we will agree whether it is agriculture or other topics, but please don't use something that distinguishes us from the Cold war as Jackson-Vanik would. We are in the midst of 20 other applications. And this I think would be counterproductive if we use it in that way, and particularly we don't need it because the WTO accession requires a consensus, not only us, other countries. We have the ability to say no unless they take the steps.

And so I have had a number of meetings with the Russians in the nitty-gritty detail of this. They are making efforts to comply. We want to bring them into the system. We won't do it unless we have the right market access, agricultural communities are particularly concerned about this, and deal with the subsidy and other issues. But I think it would be wisest to focus the Jackson-Vanik issue on its origin with Russia, the immigration, the human rights, the freedom aspects. And I know that is one you worked on and I will be pleased to work with you in the future.

Mr. CARDIN. I understand that and I think that makes good sense. Looking forward to working with you.

Mr. ZOELLICK. Then on steel, obviously we are at a point when we are looking at the full range of remedies. As you know, the ITC commissioners, some suggested tariff rate quotas, some of them suggested higher tariffs. We are looking at the full range.

And on the issues of legacy costs there are different ways to try to address this and we are looking at the full range. As you know, USX or the United States Steel Corporation proposed basically \$13.5 billion over 10 years to deal with six companies. One of the issues we have to look at is what about the other six companies where you have workers that are similarly situated. And this has also led, I think, to a focus on wherever one goes about the programs for the workers, for example. You know, the Administration has had a proposal about a refundable tax credit for health insurance. Pension funds as you know, by and large for retirees, are covered by the PBGC or Pension Benefit Guaranty Corp. The numbers we have is that it should cover about 93 percent of the pensions. But I think one of the issues we will have to balance here is some fairness not only on steel companies but other companies. And for what it is worth, Congressman, my view on this is that try to focus the aid on the people who are going through the change.

Mr. CRANE. The time of the gentleman has expired. Ms. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman. Thank you, Mr. Ambassador, for being with us and staying for a rather long time as well. And we especially appreciate it down here on this row, because a lot of the time our guests have to leave and we never get an opportunity to ask questions. So we do appreciate you being here.

Ambassador, I just have a couple of issues that have been brought to me and as I can see from the line of questioning, other Members of this Committee have brought specific issues because of specific contacts they have had with people. And, quite frankly, I am always amazed at just how big this country is and the kinds of things we do and the kind of trade that goes on. There is so much going on.

But in saying that, as you know, during the negotiations over TPA there was a lot of concern in Florida specifically dealing with our citrus industry and other agriculture industries. Evidently there are some questions dealing with some of the cartel practices that I guess the Senate has maybe brought up to you. We just would like to know whether or not you plan to negotiate remedies to eliminate cartel practices and how do you plan to address them.

And then, second, with the TPA, while it gives you the tools to expand trade through U.S. and foreign tariff reductions, there are many unsubsidized U.S. agricultural commodities which have been forced to address what we believe to have been unfair imports repeatedly. Will you commit to us to avoiding U.S. tariff reductions for those commodities which have been faced with dumped and subsidized import competition like citrus?

Third, and I did get a memo, and I actually was surprised because I didn't remember hearing much about this during even TPA on the tariff reductions, how many other countries actually use this? And it was alarming to me that we weren't able to negotiate any of that when we were doing some of it, but on the idea why we would take a position that ties our hands on the issue and harms our import-sensitive industries while our trading partners take the opposite course in their own self-interest. And this is on our tariffs.

And then in the FTAA, are you prepared to sacrifice unsubsidized agricultural industries like citrus for the sake of a negotiating principle which only the United States follows?

Then the last comment that I need to make, it has come to my attention that in Florida, as you can imagine, we have a lot of people doing business in Peru and other areas. And it came to my attention that there is a business over there that has actually been trying to work with the government to take care of an issue where they feel like they have been harmed in telecommunications. And I guess the Senate actually put some language in their Committee report that is asking USTR to closely examine these matters and determine whether Peru should be designated as an ATPA beneficiary country because of these particular—I guess there are about three or four different cases. One just happens to come from Florida.

On the telecommunications issue, you might be familiar with it, Telephonico—maybe not.

Mr. ZOELLICK. Let me try on some of these. I think they are interconnected. There is a general theme of the citrus industry which wouldn't surprise me.

Mrs. THURMAN. I didn't think it would.

Mr. ZOELLICK. I think at least on the second and the fourth as I had them, there is language in the Trade Promotion Authority bill that establishes a series of additional procedures to deal with sensitive products, and citrus was kind of the lead in the train on this. And it would require that as we undertake any negotiations and if we want to try to negotiate any reductions in tariffs, we have to go to the National Trade Commission and have various reports done and then explain the logic for moving forward. And then, of course, it states clearly that any ultimate decision in change of tariffs belongs to the Congress and not us. And I would be happy again to give you more information about those provisions.

On the cartel point, I am not 100 percent sure I have this, but it is our negotiating position that we want to try to address the problems of state trading monopolies and state trading enterprises. This is most actively in the news actually related to the Canadian Wheat Board. And I think the practices are wrong. And I am actually talking with the wheat industry again tomorrow about some options we might be able to take dealing with that, using our unfair trade laws and maybe also the WTO.

On the Peru and telecommunications issue, I am afraid I don't know the precise points. Mr. Tanner mentioned—I don't know if it was with the Nortel and Colombian case, but I will be pleased to look into it with you.

I would say, again, and you can share this with your colleague, Mr. Doggett, this is one of the issues—why we have difficulty on these investment issues is that we want to try to protect our investors abroad and make sure they get the protection that foreigners get here. And sometimes that creates a little complexity in the legal regimes we have.

Mrs. THURMAN. To note this, it was in the Senate language on page 31. And that will give you an area to go to.

Mr. CRANE. The time of the gentlewoman has expired. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman. And, Ambassador, it is a privilege to have you here to comment upon, in the wake of the President's budget submission, our trade priorities. I want to congratulate you on the extraordinary job you have done in the last year. I thought your predecessor set a very high standard and I think you have done a remarkable job of strengthening our trade policy within a very short time and without as much cooperation from Congress as we and this Committee would have liked.

I have a couple of specific issues that I would like to raise with you. One, I would like to once again congratulate the Administration for launching its 201 action in steel. I realize this entailed a great deal of political capital on your part, that this was a controversial move in some areas of the business community and manufacturing.

As someone who represents a district that both produces steel and also has steel-consuming manufacturers, I appreciate the challenge that you faced in crafting that policy and that you have a final upcoming decision. As Chairman of the steel caucus, I would urge you to go to the President and urge him to pursue an aggressive solution to the 201 action, one that while I realize will create some animosities with some of our trading partners, one that I think is necessary for us to preserve on a level playingfield our domestic steel manufacturers. You are welcome to comment.

Mr. ZOELLICK. Well, I think the key point that you added, Mr. English, and thank you for your kind words on this, is that regardless of complaints from trading partners, safeguards provisions are acceptable under WTO rules. And we have been going back to the ITC to make sure we try to do this as cleanly as we can to proceed in accordance with those rules. And if we have the industry undertaking the restructuring as they will need to become competitive, I think safeguards are appropriate.

That is something that my Cabinet colleagues and I will be discussing with the President in the nature and the form. And as you probably point out, there is a balance here. You have different users and you have different steel industry companies that are developing different business plans in how they are trying to approach this. But I would really thank you and your leadership with the steel caucus all year for working with us on this so we can try to deal with what we know has been a difficult problem for many communities in America.

Mr. ENGLISH. One of the other issues that is frequently associated with steel and other heavy manufacturing is the status of our antidumping laws. And I know you have had some very difficult decisions to make on this as the Doha negotiation progressed. I wonder if you would care to comment on whether the Administration would be open to some ideas being advanced not only by myself, but by Mr. Levin and Mr. Cardin and Mr. Houghton, to potentially within the WTO standards strengthen our antidumping laws, take out some of the—take out or replace some of the provisions that have been proven to be antiquated and/or create problems. We have not had a major overall of our antidumping laws in quite a few years, and I don't count in this the minor revisions that were

made in 1994. I think a major overhaul of our antidumping laws has not been done since the seventies.

Would the Administration be open to entertaining this kind of initiative?

Mr. ZOELLICK. Well, first, we would certainly be pleased to discuss this with you and others on the Committee. And just to give you a sense of the importance of this, the House passed a resolution before we went to Doha that we looked at and followed very closely in terms of our approach in dealing with these issues in the WTO context.

On the domestic front, as you know, the Commerce Department applies these laws, and so I have to defer a little bit here to my colleague, Secretary Evans, but we work very closely together and we would be pleased to get into dialogue on these laws and how they could be improved and strengthened, obviously, in accordance with our WTO obligations.

Mr. ENGLISH. As the author of the House resolution, I am grateful you followed it religiously.

And one last point I would like to make. I noticed you recently visited Morocco. I was delighted to see that. My own view is that Morocco is potentially a good partner that we can engage in a bilateral trade agreement along with some of the other Magreb countries: Tunisia; potentially, Egypt. Would you like to comment on the potential for a bilateral or multilateral initiative here?

Mr. ZOELLICK. Also, Mr. English, I don't know if you were on this trip. Mr. Gephardt preceded me, and I know that he was interested in trying to express help in terms of strengthening U.S. trade with Morocco. So perhaps we can even get a broader base here. And I talked with Mac Collins about how he tried to promote some paper from Georgia in terms of sales.

Morocco is a country that has pushed forward with economic reforms and pushed forward with political reforms as well. There will be parliamentary elections. So at a time there is turmoil in the Magreb, I personally feel and I think all of us have a sense that it would be extremely good for the United States if we could strengthen the reform process in a way that also opens markets.

The Europeans have preferential access. We have lost out in various areas. So I think we can do good and do well at the same time through this negotiation. And I do believe that the Magreb made—there may be a window through some of the other Magreb countries.

You mentioned Egypt. And here we have had discussions, but I will also just share with you the need that we have to be realistic with Egypt. Right now, Egypt has not implemented some of the WTO obligations in terms of intellectual property and customs and other areas. We want to support Egypt and want to try to help Egypt but, going to Chairman Crane's questions about standards, one of the standards I look at is whether a partner is ready. And a good test as to whether they are ready is whether they are willing to follow through on the reforms and their current obligations. Morocco has. Egypt has some work ahead of it.

Mr. CRANE. Gentleman's time has expired. Mr. Doggett.

Mr. DOGGETT. Thank you Mr. Chairman, and Ambassador in the last year when you have come before this Committee on two occa-

sions, I have voiced my very strong concerns about the misuse of the investor State dispute provisions by multi nationals to challenge governmental actions that were designed to protect the water we drink and the food that we eat. But, during that year, there have been few public signs that anything is being done about it, though I was pleased there some cosmetic clarifications last July that were announced. And I believe that the concerns of every major environmental organization in the United States remain the same as when I raised this issue with you last year.

I know that within the last few days, as you testified, you met with one part of the environmental community to offer some trial balloons about how to address this concern.

But of course the Methonex case concerning the pollution of the water supply in California is still pending. The recent Lindane case is pending now, where there is a challenge to a Canadian pesticide ban even though the same pesticide is banned in the United States, by an American company that involves health and safety. Last week, a Chilean official was reported in the trade press to have said that Chile doesn't like the wording of Chapter 11 either. Given the threat to our environment and safety, the Chilean's stated concerns, and the year you have had to act, can you commit today that you will be personally urging that any trade agreement with Chile or any other agreement that you plan to negotiate and submit to Congress in the near future will have significant reforms in the investor-state issue?

Mr. ZOELLICK. Well, one thing I really differ with I guess, Mr. Doggett, in your statement is the notion of we are just raising trial balloons. I am in a very serious dialogue with people based on the concerns that you had, Sandy Levin and others have raised with both the business and environmental community. And let me tell you, what I am struggling with, and I'm honestly struggling with it, is we have a balance here, because on the one hand we want to try to make sure, as we have had testimony today from your colleagues—

Mr. DOGGETT. And I will be glad for you to supplement. I understand the need for the balance. That's what I asked about last year, so there is no conflict between what I am urging and the concern you raised with reference to Mr. Tanner, whether there was a contract breach. But what I want to know, is there going to be something you are urging to have happen in this on the Chilean agreement that you say you will be submitting?

Mr. ZOELLICK. We haven't decided on our position, because I'm honestly—

Mr. DOGGETT. After a year, you have not decided which way to go on it?

Mr. ZOELLICK. Well, one of the things that happened during the course of the year, Mr. Doggett, is I was getting advice from this Committee in terms of the TPA process, and I wish it would have happened earlier but it didn't happen until December. So working on that guidance, and I am trying and I am reaching out the best I can, Mr. Doggett, to get ideas, and I think it is best that I not decide until I do.

Mr. DOGGETT. Thank you, Mr. Ambassador. If you haven't decided, I can quite accept that as the answer, though I am troubled



by it. I know that you are aware of the Public Broadcasting System special that Bill Moyers did called "Trading Democracy." The Deputy Chief Negotiator of NAFTA, there before of course you were in charge, was quoted on the program as saying, "If expropriation means anything that diminishes the value of your investment, then that is probably a big mistake because that is just too greedy."

And I wonder if you agree with that view: Does NAFTA require compensation anytime governmental health and safety regulations diminish profits.

Mr. ZOELLICK. What I feel, Mr. Doggett, is we need to do two things. One is make sure that American investors abroad get the same protection that foreign investors get in the United States. And the second thing we need to do is to make sure that our ability to have health and safety, environmental regulation, is not compromised in any way. And that is what we are trying to do.

Mr. DOGGETT. Does that first principle mean that you also subscribe to the view that foreign investors should have more rights with regard to property than American citizens do?

Mr. ZOELLICK. No. And that is one of the reasons that we are trying to work to see, given the framework of these agreements—and you know it is important, but this is a serious topic and I want to deal with it seriously, and I believe we need to as well. We have had about 60 of these agreements and bilateral investment treaties. There are about 1,600 of these around the world. And one of the things we have to be careful about is also not leaving the United States in a bad position compared to other investors.

Mr. DOGGETT. Since the yellow light is on and I welcome your supplementation, am I correct that in a NAFTA arbitration panel, it is possible for a foreign corporation to deny this Committee, the public, and the press from reading legal briefs that are submitted, even if you personally think that the foreign investor's filing should be public?

Mr. ZOELLICK. I have to check on that, because one of the things we did in July was to try to make sure we opened up the documentation for the agreements. So one of the things in July, when you thought we weren't acting, might have been able to address this. But also I would say it is my view that all of these should be opened and the hearings should be opened up as well.

Mr. DOGGETT. And I urge you to begin with Chile. Just finally, Mr. Chairman, some have suggested that you were involved in plans to settle the *Loewen v. United States* case as soon as the fast track vote is over with. Are there any negotiations underway?

Mr. ZOELLICK. Is this the—

Mr. DOGGETT. The Mississippi Supreme Court case. You are not consulted about it in any way?

Mr. ZOELLICK. I monitor the case because I know that it is an important case, but I don't think we are part of it.

Mr. CRANE. The time of the gentleman has expired. Mr. Pomeroy.

Mr. POMEROY. I thank the Chairman. Mr. Ambassador, I think the President chose well when he selected you to be the Trade Representative, and I think you are doing a very good job on behalf of the Administration, on behalf of all of us. That is to say, we will always agree about the philosophical directions of your—the way you take your responsibilities. By and large I have found you per-

sonally, and your staff, particularly Ambassador Allen Johnson, to be very responsive to the issues that I have had relative to the North Dakota agriculture. I appreciate it.

Coming up next week is a termination that you will be making on this 301 petition brought against the Canadian Wheat Board. We are waiting with bated breath about what might happen there and appreciate the fact that tomorrow, you will be meeting with a number of Senators and some House Members—although most of us, unfortunately, will be clearing out of town without votes on this question—to further discuss it prior to the ruling.

There were some responses that you made yesterday that I find a little troubling as you testified at the Senate Finance Committee in terms of your thoughts on this matter. We have visited in the past, Mr. Ambassador, about the range of options: What do you do when you have an entity, Canadian Wheat Board, a state-subsidized monopoly, where it is illegal to sell wheat other than through this monopoly if you are in western Canada, and this monopoly we believe routinely exercises internal subsidies? Can't prove it because they adamantly refused us access to their books and have taken, in my opinion, extraordinary lengths to secure utter secrecy in internal pricing.

And finally, the ongoing frustration then resulting from languishing market price for wheat and the demise of the Durham wheat market in particular for U.S. farmers have really brought this situation to a very serious point that has caused very extensive evaluation of what our options might be. The section 301 wasn't picked in a vacuum; it was picked after very thorough deliberation in terms of the elements of establishing the case and then establishing the remedy under antidumping or a countervailing duty. It was exhaustively deliberated and determined that really the only shot was to go and sit for the section 301.

You hold your responsibilities at a very important point in time because issues that have—I mean that have been out there—they are fully ripe and they come to a point where they have to be resolved. Sometimes it seems to me that reality causing political forces is at a totally different track than the regimen of international trade laws, and somehow you have got to span those two. You have got to deal with real reality and the political consequences coming from it, as well as apply your expertise as our trade negotiator.

I am telling you that it is my sincere evaluation of the stakeholders in this question in North Dakota and through the northern tier of wheat production that anything less than a holding or finding under 301, the difficulty in establishing tariff rate quota to deal with it, is not going to be responsive to what they are hoping for. It is understood that that is going to be challenged, that that is going to involve a challenge that would even involve a risk of being overturned—WTO. But that is where they are, and that is the way they think this has to advance. And I wanted to bring you that message in these final days before you must make your determination. I would be interested in anything you care to say on the record.

Mr. ZOELLICK. First, Mr. Pomeroy, let us make sure if we can, if you are not going to be able to be there tomorrow, that we have

a chance to follow up by phone, because I want to compliment you because you have been leader on this and we have learned an awful lot from you and we very much appreciate the engagement as we have gone through.

Let me tell you how I briefly see it today, and I will discuss with your colleagues, is that the 301 just gets us the information and we work with you and others to try and really do a much more thorough job about trying to dig and get as much information surveys, and then to release that publicly. And then the question is what do we do with it.

The problem with the tariff rate quota, there is no doubt that under our NAFTA regulations and with a little bit more of an increase in the tariff under our WTO obligations, that we would be in violation, and then that means automatically they retaliate against us, probably the Ag commodities. Maybe some that hurts against North Dakota and it is not a durable solution.

So, then, the question is what can we do? And what I was putting forth yesterday, and I hope we can talk with the industry about it a little bit more, is I know some of their initial look at the antidumping countervailing suit—we think there is some additional information gained through the 301 process that is worth a look to see whether this might be a useful approach.

And indeed we looked at—and I know, because we are talking about farmers that don't necessarily have the ability to bring actions—but we have looked at other States who have supported groups, citrus in Florida for one, to be able to bring action. And I wanted to share our thoughts about one offensive route.

The other offensive route that we have talked about with you is the WTO case. And I talked about this with Chairman Bachus yesterday. And this is a very uncertain area in the WTO set of rules. And so there is no, you know, sort of clearance, and we may or may not be successful, but I think by pushing the issue in that route as well, we would be in a position to heighten it for the third element of the offensive, which is to do this in the context of the Doha agenda. And this is where we are good to have the round going because, look, I think these are monopolies and I think they are rotten and I think they allow various types of credits and subsidies and they ought to be changed.

And so we have a rules-based system as it is and, as you probably said, that is what we have to try to address. Just so you know, Mr. Pomeroy, we can talk about this more. I am not saying one or the other. I am looking at all three. And they might be able to help and interrelate with each other. And I know the tariff rate quota looks facially appealing.

But what I can't get over is if it is a violation, it won't last. Then where does it leave the North Dakota wheat industry? And that is kind of a summary of how I am looking at it. I feel and I felt for a long time that this State monopoly ought to be changed.

Mr. POMEROY. I will call you and I appreciate that invitation.

Mr. CRANE. The time of the gentleman has expired, and with that all time has expired, and we want to commend you, Mr. Ambassador, for your endurance and we look forward to working with you over the course of this year. And we are guardedly optimistic

that we will be able to make positive accomplishments, thanks to your efforts. And with that, the hearing stands adjourned.

[Whereupon, at 1:35 p.m., the hearing was adjourned.]

[Questions submitted from Messrs. Rangel and Tanner, Shaw, Jefferson, Doggett, and Ryan to Ambassador Zoellick, and his responses follow:]

**Questions for U.S. Trade Representative Robert B. Zoellick From  
Congressmen Rangel and Tanner**

European Union (EU) biotechnology policies are already costing U.S. corn growers over \$200 million in lost exports. The new EU trace-ability and labeling proposals and the continuation of the moratorium on new product approvals put at risk.

- \$1.2 billion in soybean exports;
- Nearly \$2 billion in export of consumer-oriented food products;
- Over \$120 million of vegetable oils, starches and sweeteners; and
- \$550 million of corn gluten feed (CGF) and other feed ingredients.

That makes biotechnology issues in U.S.-EU trade major issue, potentially involving more than \$4 billion. And that figure does not take into account the trade problems the United States is facing in other countries as a result of copycat legislation, nor the adverse effects of EU policies on the development of the U.S. biotech industry. Given the current problems in the farm economy, our producers cannot afford to take a multibillion-dollar hit.

**Question:**

**In the view of the economic stakes, shouldn't the resolution of unfair or discriminatory biotech trade policies of U.S. trading partners be a high trade priority for the Administration?**

Answer:

Biotechnology is a top priority for the Administration. Biotechnology is but a refinement of the continuing process of agricultural innovation that has for generations been fundamental to American prosperity, and indeed to human welfare around the world. Biotechnology could help us feed and strengthen hundreds of millions of malnourished people, especially in developing countries. It could reduce the need for agricultural chemicals that burden the environment. And it could provide vitamins and nutrition to counter diseases that plague the poor.

The EU's biotechnology policies—the unjustified approvals moratorium and proposed traceability and labeling regulations—put in jeopardy continued agricultural innovation and all of its potential social and economic benefits. Their policies put at risk open trade in agro-food products. Their policies are a threat to farmers around the world. I have been raising these issues on my trips around the world—in Africa, in Latin America, and in Asia—and have found that many share our concerns about the EU's pernicious policies.

I recently met with the House Biotech Caucus to discuss the issue and how to move forward. I look forward to continuing to work with Congress on this high priority issue.

**Question:**

**What is the Administration's strategy for dealing with such discriminatory policies?**

Answer:

Resolving the obstacles resulting from the EU biotech policies is indeed a very high priority. First, the President has on several occasions raised with European heads of government our concerns about the EU moratorium. Secondly, I and other senior officials have raised numerous times our concerns about EU policies with key European Commissioners and national government ministers. Thirdly, I raised the issue in meetings in Geneva with the Cairns Group countries and with African countries—in both cases I explained our concerns, and our interest in working together with these countries to persuade the EU to change its policies. Fourthly, during my trips to Africa, Latin America and Asia, I have raised our concerns at every opportunity about the importance of biotechnology and the dangers of EU policies.

**Question:**

**We understand that European Union (EU) officials have told you that they stand a better chance of restarting the approval process later this**

**year, after new legislation is implemented. Weren't we told the same thing two years ago after those same rules were to be proposed? Why should we believe that the moratorium will be lifted this year without a formal WTO complaint by the U.S.?**

Answer:

You are correct. EU officials have suggested any number of times that they may shortly be able to resolve their biotech approvals paralysis.

And, yes, the Commission has suggested that, after the October implementation date of their new approvals legislation, they might be able to recommence the process of reviewing approval applications—that would mean that the *earliest* any approval decisions could be made would be late 2003.

As you point out, the EU's track record suggests grounds for skepticism that the Commission will actually keep to this schedule. We are accordingly considering closely whether it is necessary to bring a WTO challenge to the EU moratorium. But to pursue a challenge, it would be important that we build public support by, for example, highlighting harmful effects of EU policies on the ability of developing countries to ensure food security and achieve economic independence. In considering whether, when and how to proceed with a WTO challenge, I have been having conversations with industry, agricultural, and NGO leaders, and with Congressional members.

**Question:**

**Aren't several EU Member States demanding that the new traceability and labeling proposals be implemented before new approvals are granted? Please explain why implementation of the new traceability and labeling proposals would not make all U.S. biotech products unmarketable in the EU, thus negating the benefits of restarting the approval process.**

Answer:

Yes, we understand that some European officials have suggested that the traceability and labeling regulations must be in force before allowing approvals proceed. That reasoning, given the plausible date of adoption of the regulations, could mean postponing approvals until, say, 2004.

We are indeed concerned that the traceability and labeling proposals, if adopted in current form, would have the effects you suggest. These proposals would require that a food product be labeled as containing or derived from "Genetically Modified Organisms" (GMOs) even where the product is substantially the same in characteristics, structure and attributes as its conventional counterpart, and even where biotech material is no longer detectable. Such government-mandated labeling, where there are no significant differences between the modified and conventional products, could be construed by consumers as, in effect, a government warning, and would hence be misleading.

We are working closely with USDA and the State Department to raise our concerns with Commission and member state officials, and to argue for market-driven consumer-information labeling along the lines of recent draft FDA guidance on non-biotech claims. Moreover, as noted, I have discussed the labeling issues during my trips to Africa, Latin America, and Asia, and we will continue to work to build broad international support in our criticisms of the European initiatives.

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**Questions for U.S. Trade Representative Robert B. Zoellick From  
Congressman Clay Shaw**

*[FYI: parts of this question go well beyond Singapore FTA negotiations and, I believe, beyond USTR's function.]*

**1. As the lead House sponsor of Seaport Security legislation, I am interested in better coordination between Federal agencies on achieving homeland security objectives, which are vital to Florida as a crossroads of commerce. In reviewing recent statements by Customs Commissioner Bonner, discussing U.S. Customs Service's desire to enhance homeland security by pushing more of the inspection and intelligence gathering offshore to our trading partners' points of origin/transit, how much higher a priority is this going to be for USTR in ongoing and upcoming trade negotiations? Are we continuing to make progress in our FTA negotiations with Singapore in achieving better cooperation on transshipment and other national security and trade law enforcement objectives? Will such national security concerns**

**raise the priority of engaging certain trading partners in trade liberalization talks, beyond the immediate benefits to commerce?**

Answer 1:

In our negotiations with Singapore, USTR continues to place a very high priority on ensuring that the FTA will include commitments that will help address transshipment concerns, particularly through enhancing cooperation on customs matters. We are making good progress in these negotiations with Singapore. I stressed the importance of this issue, particularly the role of information sharing, in a letter to Singapore Trade Minister Yeo last September. This year (February 18–20), I sent the head of the U.S. Singapore FTA negotiations and the USTR lead for customs negotiations to Singapore to address the full range of customs matters, including transshipments. We received excellent cooperation from the Government of Singapore. While we will need to continue work with Singapore on customs cooperation issues in the context of our FTA, we believe our efforts to date are yielding good progress.

**2. I understand my Florida colleague, Senator Bob Graham, submitted a question at yesterday's hearing in the other body, and I would similarly appreciate knowing the answer: the Senate version of TPA contains a section, "Certain Other Priorities," which directs the President during negotiations to remedy market distortions that lead to dumping and subsidization including, among other things, cartels. Cartel practices have distorted international markets in processed citrus and other agricultural commodities. Senator Graham noted that U.S. anti-trust laws would not allow such anti-competitive practices among U.S. firms, nor should we tolerate it from our trading partners. Do you plan to negotiate remedies to eliminate cartel practices, and how do you plan to address them, and if so, how would you go about this?**

Answer 2:

At the insistence of U.S. negotiators, express language was included in the Doha agreement to give us the ability to address in upcoming WTO rules negotiations the trade-distorting practices of our trading partners that give rise to the need to apply our antidumping and countervailing duty remedies. The bottom line is that we have a mandate that will allow us to pursue an aggressive, affirmative U.S. agenda, aimed at preserving the existing rules and getting at the underlying causes of these unfair trade practices. Under the procedure specified in the Doha agreement, we are now working on identifying particular foreign trade-distorting practices, which could include cartels and government subsidies, that we will seek to correct in upcoming negotiations, and we welcome guidance from you and other Members as to particular foreign practices that we should be addressing.

In addition, the United States has identified establishing disciplines on agricultural state trading enterprises as a priority in the WTO negotiations. In particular, we have proposed ending monopoly (single desk) export and import privileges of state trading enterprises, increasing transparency in state trading enterprise operations, and ending government financing authorities that support state trading enterprise activities.

**3. While the TPA gives you the tools to expand trade through U.S. and foreign tariff reductions, there are many unsubsidized U.S. agricultural commodities which have been forced to address unfair imports repeatedly. Will you commit to avoiding U.S. tariff reductions for those commodities which have been faced with dumped and subsidized import competition, like citrus?**

Answer 3:

The United States, just like other countries, needs to be mindful of potential impacts of free trade agreements on import sensitive industries. An important element of H.R. 3005 is the extensive process whereby the Administration consults with Congress on negotiations affecting import sensitive commodities.

H.R. 3005 Section 3(a)(2) states that the President may not use his independent proclamation authority to reduce tariffs on certain import sensitive commodities.

H.R. 3005 Section 4(b)(2) establishes a consultative process that the Administration would need to follow for negotiations affecting certain import sensitive commodities. This process includes:

1. Before negotiations begin, the Administration would identify import sensitive commodities and consult with the Ways and Means, Finance, and Agriculture Committees on the appropriateness of further tariff reductions

on these items, taking into account the impact of such tariff reductions on the U.S. industry. The Administration would also identify products that face unjustified sanitary and phytosanitary barriers.

2. The Administration would request probable economic effect advice from the ITC on the impact of tariff reductions for the industry producing the product and the U.S. economy as a whole.

3. The Administration would notify the above Committees of those products on which USTR intends to seek further tariff liberalization and the reasons for such.

4. After commencing negotiations, the Administration would identify any additional items where USTR intends to seek further tariff liberalization or other countries' tariff cut requests.

Through this process, Congress and the Administration will be working closely together on negotiations affecting agricultural tariffs. In addition, U.S. trade laws, including section 201, antidumping and countervailing duty statutes, provide important mechanisms to protect industries injured by unfair trade practices, dumped or subsidized imported products.

**4. It is my understanding that many countries have exempted import-sensitive products from tariffs elimination in free trade agreements, yet USTR has held the objectives, through its interpretation of WTO Agreements, to seek elimination of all tariffs in any free trade agreement. If our trading partners continue to take an opposite course in their own self-interest during FTAA negotiations, will you seek similar insulation for unsubsidized agricultural industries, like citrus, or have the U.S. stand alone as a matter of negotiating principle?**

Answer 4:

In launching the Free Trade of the Americas (FTAA) negotiations at San Jose, Costa Rica in 1998, Ministers agreed that "all tariffs shall be subject to negotiation" and "consistent with the provisions of the WTO ... to progressively eliminate tariff and non-tariff barriers, as well as other measures with equivalent effects, which restrict trade between participating countries." Subsequently, Leaders, Ministers and the Trade Negotiating Committee (TNC) have set out more detailed work programs and guidance consistent with these general principles.

Over the past year, the Negotiating Group on Agriculture (NGAG) has focused on developing the data and framework that will guide future product-by-product market access negotiations. Thus, there have not been discussions concerning the specific treatment of any product, including citrus. The NGAG has prepared its recommendations on methods and modalities for the tariff negotiations for review and decision by the TNC April, so that the detailed market access negotiations can be initiated by May 15 as agreed to by Ministers in Buenos Aires last April.

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**Questions for U.S. Trade Representative Robert B. Zoellick From  
Congressman William J. Jefferson (D-LA)**

First, let me commend you on your upcoming trip to sub-Saharan Africa. It is my understanding that you will be one of the first, if not the first USTR, to travel to this important region. As one of the Chairs of the African Trade and Investment Caucus, I have followed closely the Administration's efforts to implement AGOA as well as the efforts of sub-Saharan countries to comply with the bill's eligibility criteria. Now that the bill is law, the U.S. must ensure that the objective of stimulating regional economic development and growth is achieved.

- What is your assessment of impact of the AGOA legislation on the sub-Saharan region? The most recent ITC and USTR reports indicate that AGOA has enable SSA countries to attract billions of dollars of much needed investment.

I would also like to reiterate my concerns regarding the pace of AGOA implementation. For example, sub-Saharan beneficiary countries need additional assistance from the United States to meet the stringent customs and visa requirements in the legislation. Currently, only a handful of SSA countries designated as beneficiaries have been certified as eligible to ship apparel products since the effective date of October 1, 2000. Many of the countries are willing to upgrade their customs systems to comply with the

**law; however they need additional technical assistance from the United States to undertake this important task.**

Answer:

My staff and their colleagues at other Washington agencies and our overseas posts have worked to ensure that all AGOA-eligible countries that wish to receive apparel benefits can implement the necessary customs and visa requirements. We understand that these requirements can be stringent, but we believe this is essential both to prevent illegal transshipment and to ensure that the full benefits of AGOA accrue to producers in sub-Saharan Africa. As of March 1, 2002, 15 countries have been certified as eligible to ship apparel products to the U.S. under AGOA. Submissions from seven additional countries are pending.

- **First, is the Administration fully committed to the AGOA II language we included along with the Andean Trade legislation? These provisions are needed to address the implementation concerns that have been voiced by SSA countries and U.S. companies attempting to utilize the AGOA program.**

Answer:

The Administration supports AGOA II provisions that were passed by the House as part of legislation reauthorizing the Andean Trade Preference Act. We believe these provisions will provide significant new benefits to eligible sub-Saharan African countries and further our efforts to promote sustainable economic growth and development in the region.

- **Second, I am also interested in knowing about the resources you have allocated for SSA countries in the way of technical assistance and trade capacity building? We discussed the need to ensure adequate resources for trade capacity building when you testified on the Andean bill last year. I was pleased that you agreed with me this is a priority for USTR.**

Answer:

Technical assistance and trade capacity-building are essential to help sub-Saharan African countries participate fully in the global economy and realize tangible benefits from AGOA. Overall, between 1999 and 2001, the United States provided \$192 million in trade capacity-building assistance to the region. AGOA has been a particular focus of our efforts. For example, as part of the more than \$10 million in new trade capacity-building initiatives unveiled during my recent trip to Africa, I announced \$3.5 million to help the COMESA and SADC countries in eastern and southern Africa take full advantage of AGOA opportunities.

This year, we are also planning four additional regional AGOA training seminars in for eastern, western and central Africa. Seminars we have organized in the past—20 so far—have been very successful. The first two seminars will be held this month in Yaounde, Cameroon and Kampala, Uganda. They will include U.S. private-sector participation. The seminars will focus on areas identified by many African countries as challenges to their efforts to realize tangible benefits from AGOA. These include specific mechanisms to establish commercial partnerships and linkages with the U.S.; resources to finance trade; small and medium-size business development; and economic/regulatory reforms and initiatives to enhance AGOA's benefits. USTR staff will also travel to Burkina Faso this month to consult with the West African Economic and Monetary Union (WAEMU) Secretariat on AGOA and the upcoming trade capacity building seminar on regional integration in west Africa that USTR will sponsor in Washington this June.

- **Lastly, in addition to the benefits of the AGOA, what *other trade initiatives* are you proposing for sub-Saharan Africa in the year ahead?**

Answer:

As you know, AGOA specifically calls for the negotiation of free trade agreements with interested countries in sub-Saharan Africa. During my recent trip to the region, I discussed the possibility of a free trade agreement with my counterparts from the Southern African Customs Union (SACU) countries (South Africa, along with Botswana, Lesotho, Namibia and Swaziland). Established in 1910, SACU is the world's oldest customs union. It is also our largest export market in sub-Saharan Africa, with sales totaling more than \$3.1 billion in 2001. SACU Trade Ministers responded very favorably to the prospect of an FTA—as did President Mbeki of South Africa, President Mogae of Botswana, and members of the U.S. and southern African business communities. SACU Ministers plan to discuss this opportunity among themselves over the next couple of months. If both sides decide to move for-



ward, we will reconvene to discuss a framework for further progress. I look forward to working with Members of Congress on this initiative as we move ahead.

**As you are aware, the Port of New Orleans is concerned about actions pending within the Administration that might result in the imposition of tariffs and/or quotas on the import of steel products into the United States. The Port is the number one gateway in America for the steel import trade, and over 8,600 jobs within the greater New Orleans region are dependent upon that trade. Steel imports have been declining at an alarming rate over the past several years, and any government-imposed restrictions would only further aggravate the loss of transportation-related jobs in the Louisiana maritime community. During the President's visit last month to the Port of New Orleans, he readily stated that "trade is a jobs issue."**

**Ambassador Zoellick, we both fully understand that free trade is the engine that powers the Nation's economy. In selecting a remedy in the Steel 201 case, how much consideration will be given to the negative impact of the imposition of tariffs and/or quotas on ports-based economies, like we have in New Orleans?**

Answer:

- The Administration and the President fully considered the potential impact on steel consumers and ports in the Section 201 steel remedy announced on March 5th.
- The Administration has fashioned the relief to exclude certain steel products for which no relief is necessary at this time. The level of relief provided for each product was also limited to the level needed to provide relief for the domestic industry.
- The Administration has also worked with U.S. steel consumers and producers on excluding foreign steel products from the Section 201 relief that are not available in the U.S. market from domestic producers.
- The Administration was presented with a full range of economic information from interested parties in the Section 201, including economic studies that produce dramatically different results. Studies estimating job losses as a result of the Section 201 are subject to all of the vagaries and imprecisions of economic modeling. Informed judgment must be used when considering such studies or models in formulating policy.
- The Administration considered the quantitative economic evidence, as well as qualitative factors when it formulated its Section 201 recommendation to the President, and this evidence was ultimately weighed by the President in his decision. In fact, I met personally with the ports and was selected Port Person of 2002.

**How much consideration is being given to non-tariff or non-quota remedies?**

Answer:

- In line with the U.S. International Trade Commission (ITC) determination that steel imports have been a substantial cause of serious injury, or threat thereof, to the U.S. steel industry and the ITC's recommendation to impose tariffs as the remedy for most product categories, the President decided to impose tariffs ranging from 8 percent to 30 percent on certain steel products. As required by WTO rules, these tariffs decline over the period of the relief.
- The relief also includes a tariff rate quota (TRQ) on imports of semifinished steel products known as slabs. Under this TRQ, 5.4 million short tons of semifinished slabs will be allowed to enter duty free. The out of quota tariff will be 30 percent.

**Lastly, while the Administration may decide to implement tariffs or additional quotas on imported steel products, I am convinced that this is a reactionary and shortsighted policy. What else is being done to prevent unfair trade in steel at the multilateral or bilateral level?**

Answer:

- The President's steel initiative announced on June 5, 2001, has three elements: (1) initiate the Section 201 investigation; (2) conduct discussions with other steel producing countries to encourage the market-based reduction of excess inefficient steel-making capacity worldwide; and (3) initiate negotiations to eliminate subsidies and other government market-distorting practices in the steel sector.

- We are very pleased with the progress made thus far in implementing the last two objectives and plan to continue to pursue them vigorously. Talks in the OECD on March 13th–15th on reduction of excess inefficient capacity and initiating negotiations to eliminate subsidies and other market-distorting practices went well.
- The long-term solution to the problems faced by the U.S. steel industry and steel industries abroad depends on the elimination of global inefficient excess capacity and market-distorting practices.
- We are urging our steel trading partners to continue to cooperate in solving these issues.

—————  
 Questions for U.S. Trade Representative Robert B. Zoellick From  
 Congressman Lloyd Doggett

Investor-State Dispute Provisions

**1. Foreign investor rights. On February 7, 2002, when you testified before the Ways and Means Committee, I was pleased that in your testimony you agreed that foreign firms should not enjoy greater property rights than Americans have, but,**

**(a) is it true that foreign investors are currently claiming rights in NAFTA tribunals that exceed the rights available to Americans in similar circumstances before American courts?**

**(b) is it true that NAFTA Chapter 11 authorizes greater property rights for foreign firms than those available to Americans under Federal takings jurisprudence?**

Answer 1:

(a) Just as in U.S. domestic legal proceedings, parties that initiate proceedings under NAFTA Chapter 11 may choose the claims and arguments they wish to make. Like plaintiffs before U.S. courts, however, investors who bring complaints before NAFTA tribunals will not prevail unless their claims and arguments meet the applicable legal standard.

(b) No. U.S. “takings” jurisprudence provides rights that are equal to or exceed those available under the expropriation provisions of the NAFTA and our numerous bilateral investment treaties. By contrast, the domestic law of many of our treaty partners provides U.S. investors far *less* protection from arbitrary, uncompensated expropriations than that prescribed in the NAFTA or our BITs. That is a key reason why those agreements are so important.

**2. Diminution of value. Do you believe NAFTA requires compensation if a government measure enacted to protect our health, security, safety, or environmental resources causes only modest reductions in a foreign corporation’s revenue?**

Answer 2:

We understand this question to ask whether a measure of the type you describe would amount to an expropriation subject to compensation under the NAFTA. The answer is no.

**3. Chile. On February 7, 2002, in testimony before the Ways and Means Committee, you stated that you had “not decided” whether to include any significant investor reforms in the U.S.-Chile FTA.**

**(a) What factors are you evaluating that will determine whether you include significant investor reforms in this agreement?**

**(b) When will you let me know of your decision and the basis of your decision?**

**(c) Have you already sought during the U.S.–Chile FTA negotiations to expand the scope of investor protections similar to NAFTA Chapter 11?**

Answer 3:

(a) The United States has not yet completed, and therefore has not presented to Chile, a complete set of investment positions, because we are continuing to examine how we can improve in the U.S.-Chile FTA on the provisions of our existing investment agreements. To this end, we are considering the full range of suggestions that

we have heard from the Congress, nongovernmental organizations, the business community, as well as all interested U.S. Government agencies.

(b) Both our interagency discussions of this issue and our negotiations with Chile are continuing. At the same time, we have been consulting closely with the Ways and Means and other Congressional committees to develop improvements that address the investment negotiating objectives set forth in the respective TPA bills. We intend to continue to keep the committees informed of our progress.

(c) The question appears to be premised on the assumption that the NAFTA provides investors greater protection than that afforded under earlier U.S. investment agreements. We do not believe that is the case.

**Question:**

**4. Authority to preempt. Do you believe that, following a determination by a NAFTA tribunal that the Federal Government is obligated to pay compensation to a foreign investor, the Federal Government is empowered to sue to preempt a state or local law on grounds that it violates a provision of Chapter 11?**

Answer 4:

The question of whether the Federal Government is empowered to enforce Chapter Eleven, or any other provision of the NAFTA, is a matter of U.S. law. The extent of the Federal Government's authority is not linked to any determination by a NAFTA tribunal. In this regard, you may wish to refer to the relevant provisions of the North American Free Trade Agreement Implementation Act and accompanying Statement of Administration Action, which the Congress approved.

**5. Interagency process. Not all Federal agencies apparently share the enthusiasm some have for using NAFTA Chapter 11 as a model for future trade agreements.**

(a) Please provide a copy of all memoranda or position papers provided to the USTR as a part of the interagency review of investment provisions.

(b) Please note all the concerns raised to date in this review process, including but not limited to: opinions on an exhaustion of remedies requirement, the scope of "expropriation," "investment," and "investor" and all other procedural and substantive reform ideas.

(c) Finally, identify fully and specifically who has or is participating in this review process and who they represent.

Answer 5:

Please see answer to question 3.

**6. Supreme Court decisions. In *Loewen v. United States*, a Canadian investor is challenging not just an action by a trial court, but an act of the Mississippi Supreme Court. Do you believe a NAFTA tribunal is empowered to order the payment of compensation to a foreign investor who challenges an opinion issued by any court in this Nation, including the U.S. Supreme Court?**

Answer 6:

International law has long recognized that a country may be held internationally responsible when its court system, including its highest courts, denies justice to a foreign national. Throughout the history of the Republic, the United States has repeatedly asserted claims against other countries for denials of justice by their courts to U.S. citizens. On the other hand, the standard for establishing a denial of justice is quite high and, as a result, cases in which compensation has been awarded for denial of justice have been very rare.

The United States has received relatively few claims that U.S. courts have denied justice to a foreign citizen. It is our expectation, based on historical experience and the high standards of U.S. courts, that few claims of a denial of justice by the U.S. courts will be made, and fewer still will be sustained.

**7. Closed NAFTA process. On February 7, 2002, I asked you if Members of the Ways and Means Committee, watchdog groups, and the press would always have access to all parties' legal memoranda and other submissions filed with a NAFTA arbitration panel. You said you were "not sure" and that last summer's "clarification" may have addressed this issue.**

(a) Please provide a comprehensive answer to this important question since the "clarification" is apparently not clear enough for you to clearly state whether access is permitted.

**(b) On February 7, 2002, you stated that you believed all NAFTA investor-state arbitration tribunals should be open to the public. Why have you not publicly urged our two NAFTA partners to promptly open the tribunals?**

**(c) Will the U.S.-Chile FTA reflect your commitment to openness of the investor-state dispute process?**

Answer 7:

(a) The NAFTA Commission's clarifications reflect a commitment by the three NAFTA governments to make virtually all documents submitted to, or issued by, a dispute settlement panel available to the public. This means that an investor's initial claim, its subsequent pleadings, and the defending government's responses will generally be available to the public. It also means that the views of any interested groups that have submitted "friends of the court" briefs, and any views that a NAFTA government that is not a party to the dispute has submitted to the tribunal will generally be made available to the public. The State Department maintains a website that makes all such available documentation accessible to the public.

Under the trilateral clarification, information that is business confidential or that is exempt from disclosure under domestic law will continue to be protected. These are the sorts of materials that would commonly be removed from the public versions of documents filed in a U.S. court. In addition, some specific arbitral rules regarding the disclosure of information will continue to apply. For example, one set of arbitral rules available to the parties restricts the release of minutes from the hearing without consent of the parties. However, it is U.S. policy in each case against it to seek full transparency throughout the proceedings.

(b) We have urged our NAFTA partners to agree to open Chapter 11 proceedings to the public.

(c) Please see answer to question 3.

**8. Deference. While you may personally believe that some of the pending NAFTA claims based on state and local government actions are frivolous, panels are agreeing to hear the full cases on the merits.**

**(a) Do you believe that investment agreements should include a presumption or principle of deference to government measures similar to the rational basis standard used by U.S. courts?**

**(b) U.S. courts have defined takings in terms of specific situations. Has your office compiled a list in any form of "egregious behaviors" or clearly wrongful acts that should result in compensation based on the experience of American investors abroad? If so, please provide a copy of that list.**

**(c) Do you believe that investment agreements should include a presumption that nondiscriminatory measures enacted to protect our health, security, safety, and environmental resources do not require compensation?**

Answer 8:

Please see answer to question 3.

**9. Tobacco and trade.**

**(a) In all future tobacco-trade discussions, will you commit to consulting with the relevant Federal agencies, including the CDC, to evaluate the potential health impact of changes to trade agreements?**

**(b) If a Federal agency concludes that changes to tobacco trade policy will adversely affect public health, will you commit to not pursuing those changes?**

**(c) Please list all tobacco trade matters since July 2001 that have involved your office. Please include the foreign government concerned and a summary of the dispute. Note whether your office consulted with any Federal agency regarding whether the policy would adversely affect public health and provide me with a copy of the Federal agencies' recommendation.**

Answer 9:

USTR routinely consults with relevant Federal agencies, including the Centers for Disease Control (CDC) and other offices within the Department of Health and Human Services (HHS), on trade issues involving tobacco and tobacco products. Through the formal interagency mechanism for developing trade policy, of which HHS is a member, Federal agencies work to reach agreement on recommended actions and approaches that USTR should take on trade issues. The health policy expertise and active participation of CDC/HHS in this process helps ensure that we accurately assess the health implications of a particular trading partner's tobacco policy and that our positions on tobacco trade issues are informed and balanced and

do not conflict with either U.S. health-based policies or undermine the legitimate health-based policies of our trading partners. Each issue is evaluated on a case-by-case basis taking into account the views of relevant agencies.

USTR has not been involved in any tobacco trade-related disputes since July 2001. Three tobacco trade matters have arisen since that time, on which decisions were made in conjunction with relevant Federal agencies, including CDC/HHS, on the appropriate approach to take:

In September 2001, the Administration considered a request from the government of Indonesia to designate twelve additional products, that included tobacco (HTS 2401.20.57), for benefits under the Generalized System of Preferences (GSP). After interagency deliberation, the decision was made to exclude tobacco from the list of products for which GSP was granted.

In February of this year, the U.S. Embassy in Warsaw requested guidance from Washington agencies regarding correspondence from Phillip Morris that expressed concern over a proposal within the government of Poland to raise the tariff on unprocessed tobacco from 30% to 105%. Interagency deliberations, that included CDC/HHS, produced a recommendation that Embassy Warsaw not make representations to the Government of Poland. There was no information to indicate that the GOP proposal to raise the tariff on unprocessed tobacco intended to treat imports of U.S. product differently from imports from other countries, and the Government of Poland is permitted under its Schedule of Concessions to raise the tariff on unprocessed tobacco to its notified bound rate of 105 percent.

In November 2001, as part of broader deliberations about the U.S.-Chile Free Trade Agreement, agencies considered how to handle tobacco and tobacco products in the negotiations. These negotiations are ongoing.

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Office of the United States Trade Representative  
Washington, DC 20506  
March 29, 2002

The HONORABLE PAUL RYAN  
U.S. House of Representatives  
Washington, DC 20515-4901

DEAR CONGRESSMAN RYAN:

Thank you for your recent letter regarding our investigation of the Canadian Wheat Board (CWB) in a Section 301 case. I appreciate your concern, and certainly agree, that U.S. millers and pasta makers must have access to sufficient supplies of a specific quality of durum wheat to operate their businesses. The objectives of the actions that we announced on February 15 are not to restrict trade but to ensure free and fair trade for millers, consumers and producers of wheat. Enclosed are both the news release and the findings of the investigation.

*Question 1:*

One of the main complaints by U.S. wheat growers is the existence and operation of the Canadian Wheat Board (CWB). Such State Trading Enterprises are not tolerated by the United States and should be eliminated. However, since Canada is a NAFTA partner, why has the existence of the CWB not been brought up before the World Trade Organization? What is the USTR's rationalization for handling this matter?

In response to your first question, state trading enterprises (STEs) are permitted under international trade agreements. In fact, the United States does have STEs which are notified under rules of the World Trade Organization (WTO). Article XVII of the General Agreement on Tariffs and Trade establishes disciplines under which STEs are to act in order to be consistent with the principles of non-discrimination. Our concern with the CWB is that it is a *monopoly* STE with monopoly control of all western Canadian wheat exports and shipments for human consumption. The CWB is able to unfairly compete with U.S. wheat producers and undermines the integrity of the trading system, because it is insulated from commercial risks, benefits from subsidies and special privileges, has a protected domestic market and has competitive advantages due to its monopoly control over a guaranteed supply of wheat.

Two of the actions that we are pursuing reflect your suggestion to pursue the CWB in the WTO. First, USTR will examine taking a possible dispute settlement case against the CWB in the WTO. Second, the United States is committed to pur-

suings comprehensive and meaningful reform of monopoly state trading enterprises, such as the CWB, in negotiations in the WTO.

*Question 2:*

It is my understanding that U.S. millers buy durum wheat from Canada because the U.S. cannot grow enough domestically to meet pasta production needs. In fact, in 15 of the last 15 years, U.S. durum production was insufficient to meet total usage. Further all durum wheat grown in the U.S. is not milling quality. According to the North Dakota Wheat Commission, only 49 percent of the domestic durum wheat crop was milling quality. Combined with the fact that the International Trade Commission found that in 59 out of the last 60 months, Canada has sold durum wheat at prices above domestic durum wheat prices, upon what data is the USTR Section 301 case based that warrants action taken against Canadian durum wheat growers?

In response to your second question, the North Dakota Wheat Commission (NDWC) alleged unfair trading practices of the CWB not only in the U.S. market, but also in third country markets. The NDWC requested that we impose an immediate tariff rate quota (TRQ) on imports of Canadian wheat. We recognized, however, the need of U.S. millers and pasta makers to have sufficient supplies of durum at an acceptable quality. In addition, imposing a TRQ on imports of Canadian wheat would significantly detract from our reform objectives for the CWB during the same period we are trying to build an international consensus to support these objectives. Imposing a TRQ on wheat from Canada could open the United States to a challenge under the WTO or the North American Free Trade Agreement. For these reasons we elected not to impose a TRQ on imports of Canadian wheat.

As we work to ensure that Canada meets its international obligations, we will also ensure that the needs of U.S. millers and pasta makers are met. I look forward to working closely with you to be sure we achieve these goals.

Sincerely,

Robert B. Zoellick  
*USTR Ambassador*

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**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Executive Office of the President  
Washington, D.C. 20508**

**For Immediate Release  
February 15, 2002  
02-22**

**Contact:  
Richard Mills (202) 395-3230**

**United States to Pursue Action Against Monopolistic  
Canadian Wheat Board**

WASHINGTON—Responding to a complaint filed by the North Dakota Wheat Commission (NDWC), U.S. Trade Representative Robert B. Zoellick announced today that the United States will pursue multiple avenues to seek relief for U.S. wheat farmers from the trading practices of the Canadian Wheat Board (CWB), a government monopoly trading enterprise.

USTR also today released an “affirmative finding” that reviews the results of its investigation, details the CWB’s monopolistic characteristics, and describes the steps USTR intends to take to address this issue.

“The government of Canada grants the Canadian Wheat Board special monopoly rights and privileges which give it competitive advantages that hurt U.S. wheat farmers,” said Zoellick. “We agree with North Dakota wheat farmers that Canada’s monopolistic system disadvantages American wheat farmers and undermines the integrity of our trading system. We are committed to using all effective tools at our disposal to stop the Canadian monopoly wheat board from hurting our farmers. We will undertake several strong initiatives, working with producers in North Dakota and others in the wheat industry, to address our problems with the Canadian Wheat Board.”

USTR will aggressively pursue a four prong approach to fight for a level playingfield for American farmers:

- First, USTR will examine taking a possible dispute settlement case against the Canadian Wheat Board in the World Trade Organization (WTO);
- Second, the Administration will work with the North Dakota Wheat Commission and the U.S. wheat industry to examine the possibilities of filing U.S. countervailing duty and antidumping petitions with the U.S. Department of Commerce and U.S. International Trade Commission.
- Third, working with industry, USTR will also identify specific impediments to U.S. wheat entering Canada and present these to the Canadians so as to ensure the possibility of fair, two-way trade.
- Fourth, these short-term actions are complemented with the Administration's ongoing commitment to vigorously pursue comprehensive and meaningful reform of monopoly state trading enterprises in the WTO agriculture negotiations. Those negotiations gained new momentum with the launch in November of the Doha Development Agenda, set to conclude by 2005.

This decision is in response to a petition filed by the North Dakota Wheat Commission in September 2000 under section 301 of the Trade Act of 1974. USTR undertook an unprecedented 16-month investigation examining the practices of the monopoly Canadian Wheat Board. In addition to inviting public comment twice on the investigation, USTR requested that the U.S. International Trade Commission (ITC) examine the competitive practices of the Canadian Wheat Board in the U.S. market and overseas. As part of its investigation, the ITC held a public hearing, requested public comments and pursued multiple avenues to obtain information on the Canadian Wheat Board.

USTR has decided not to impose a tariff rate quota (TRQ) at this time since such an action would violate our NAFTA and WTO commitments, could result in Canadian retaliation against U.S. agriculture, and would not achieve a durable solution or a permanent change to the market distortions caused by the monopoly of the Canadian Wheat Board.

[The USTR "Affirmative Finding" is being retained in the Committee files.]

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[Submissions for the record follow:]

**Statement of the Advanced Medical Technology Association (AdvaMed)**

AdvaMed represents over 800 of the world's leading medical technology innovators and manufacturers of medical devices, diagnostic products and medical information systems. Our members are devoted to the development of new technologies that allow patients to lead longer, healthier, and more productive lives. Together, our members manufacture nearly 90 percent of the \$71 billion in life-enhancing health care technology products purchased annually in the United States, as well as 50 percent of the \$165 billion in medical technology products purchased globally. Our industry enjoys a trade surplus of \$7.1 billion vis-à-vis our trading partners.

**Global Challenges**

Innovative medical technologies offer an important solution for industrialized nations, including Japan and European Union members that face serious health care budget constraints and the demands of aging populations. Advanced medical technology can not only save and improve patients' lives, but also lower health care costs, improve the efficiency of the health care delivery system, and improve productivity by allowing people to return to work sooner.

However, when regulatory policies and payment systems for medical technology are complex, non-transparent, or overly burdensome, they can significantly delay or deny patient access to the latest, state-of-the-art innovations. They can also serve as non-tariff barriers, preventing U.S. products from reaching patients in need of innovative health care treatments.

AdvaMed applauds President Bush's support of international trade initiatives. *We thank the Ways and Means Committee, and the House, for their leadership on passing H.R. 3005 to renew the President authority to reduce tariffs and non-tariff barriers throughout the globe.* It should be extended to ensure further work on regional and global trade negotiations, including the Free Trade Area of the Americas (FTAA), the Asia-Pacific Economic Cooperation (APEC) forum, and the World Trade Organization (WTO). In addition, the President and U.S. Trade Representative (USTR) should use this authority to continue to pursue bilateral trade agreements in the medical technology sector with our major trading partners.

AdvaMed believes the USTR, Department of Commerce (DOC) and Congress should monitor regulatory, technology assessment and reimbursement policies in foreign health care systems and push for the creation or maintenance of transparent assessment processes and the opportunity for industry participation in decision making. *We look to the Administration and Congress to actively oppose excessive regulation, government price controls and arbitrary, across-the-board reimbursement cuts imposed on foreign medical devices and diagnostics.*

### **Continued U.S. Leadership Urgently Needed to Fight Trade Barriers in Japan**

For the medical technology industry, the Bush Administration's efforts with Japan under the U.S.-Japan Partnership for Economic Growth are critical for maintaining access to the Japanese health care market.

After the U.S., Japan is the largest global market for medical technologies at \$24 billion. U.S. manufacturers annually export over \$2 billion to Japan and manufacture another \$6.5 billion in the region for the Japanese market. These statistics are good indicators of our industry's global competitiveness in the field of medical technology and it strongly underscores the importance of critical ongoing efforts with the U.S. Government to open the Japanese market further to cost-saving and life-enhancing medical technologies.

In 1986, U.S. Government leadership began to help pry open Japan's protective and costly marketplace for medical devices under the MOSS trade agreements. Since then, with the help of the Administration and Congress, we have turned a \$100 million medical device trade deficit in 1997 into a \$1.3 billion trade surplus today.

In November 2001, however, Japan took steps that constitute a significant setback in the progress that has been made over the last 15 years in the medical device sector. On December 12, 2001, the Japanese Ministry of Health and Welfare (MHLW) adopted a new pricing policy that includes "foreign reference pricing" (FRP). Effective April 1, 2002, the new policy allows MHLW to cut reimbursements for medical devices based on the overseas price of the same or a similar medical technology.

The U.S. Government and Congress has long opposed FRP schemes, which discriminate against the U.S. medical device industry and fail to recognize the high costs of doing business in Japan. Twice the number of sales representatives as in the U.S. are required to generate the same sales revenue in Japan. The cost of doing business is substantially high; Japan has a multi-layered distribution system between the manufacturer and the hospital; and unique to Japan, the price of technology in Japan includes after-sales service components.

The process by which the FRP proposal was adopted by MHLW on December 12th runs contrary to U.S.-Japan trade agreements, which call for consultation with industry when Japan seeks regulatory/reimbursement policy changes that could have a substantial impact on U.S. industry. Industry was given only *5 days notice* before the policy was adopted in December.

Temporary cuts to reimbursements for medical devices in Japan will do little to address the impending financial situation facing Japan's health care system. Medical devices represent only 7.5% of overall healthcare costs in Japan. Foreign reference pricing will discourage the use of advanced medical technologies—which can actually improve the efficiency and quality of the health care system.

*The U.S. medical device industry is looking to the highest levels of the Bush Administration to exert leadership in getting MHLW to modify its December 12th policy and remove FRP.*

In addition, the Bush Administration's efforts with Japan under the U.S.-Japan Partnership for Economic Growth are critical for achieving further market-opening measures in Japan's healthcare market, including:

- Reimbursement policies that are more responsive to the innovation process, such as:
  - Measures to expedite the coverage, payment and access to brand-new-to-Japan medical technologies (category C2), as per earlier trade agreement commitments;
  - Avoidance of excessive price control measures as a policy means to control overall healthcare spending, focusing instead on the creation of payment categories that are more reflective of the differences in technologies; and
  - Japan should encourage more reimbursement decisions based on foreign clinical data, as well as create a cost-sharing system for any clinical trials required in Japan.



- Streamlined and transparent safety approval procedures, including (but not limited to):
  - Better definitions and criteria within the product classification system;
  - Improved “pre-consultations” process and use of a standardized “checklist” of submission contents to clearly identify requirements prior to application submission; Also, better documentation practices within MHLW on discussions with industry (to avoid misunderstandings and to create binding decisions);
  - Resolution over the longstanding issue over materials characterization and acceptance of biocompatibility tests of materials conducted according to international standards;
  - Better harmonization with Global Harmonization Task Force recommendations in areas such as “adverse event reporting” where Japan is implementing unique and burdensome requirements on manufacturers.

#### **Europe: Seek Appropriate Policies That Improve Patient Access to Innovative Medical Technologies**

Efforts to oversee foreign policies impacting the export and sale of U.S. medical devices abroad should also focus on the European Union (EU). U.S. manufacturers export nearly \$8 billion annually to the EU and maintain a \$3.6 billion trade surplus with the EU. Within the EU, Germany (\$16 billion) and France (\$7 billion) are the largest markets for medical devices.

In the EU, enforcement of current trade agreements is key. The U.S.–EU Mutual Recognition Agreement (MRA) must be fully implemented. Bringing healthcare products to the market faster is an important priority consistent with the protection of public health and the reduction of regulatory costs and redundancy. The medical device industry was disappointed that the MRA transition was not completed by December 2001 and was extended for two years, until December 2003. The European Commission (CEC) should be encouraged to take all proper measures to ensure that the MRA is operational by the end of newly extended transitional period of December 2003.

In addition, European Member States should be encouraged to adopt policies for their health technology assessment (HTA) decisions affecting medical technologies that are transparent and timely, and industry participation should be allowed. U.S. firms, as the leaders in innovative medical technologies, stand to suffer disproportionately from unnecessarily long delays in HTA decisions in Europe.

AdvaMed supports the Safe Harbor agreement struck between the EU and U.S.—an agreement that promises the uninterrupted data flow from the EU to the U.S. The agreement, reached in response to the 1995 EU Data Privacy Directive, provides additional flexibility (along with specific data privacy contracts or compliance with the actual directive itself) for U.S. firms to continue to receive data from their subsidiaries in Europe and/or EU-based companies. AdvaMed and its member companies look forward to working with both sides on implementing the agreement in such a way that supports transatlantic business and economic activities and, in particular, supports industry’s efforts to research, develop, and bring to market medical technologies that offer great promise for patients on both sides of the Atlantic.

#### **Utilize Multilateral Opportunities to Establish Basic Principles to Expand Global Trade and Patient Access to New Technologies**

A primary goal of all economies is to provide high quality, cost effective healthcare products and services to all citizens. The mission, and sovereign right, of a government’s regulatory agency is to oversee the efforts of medical technology manufacturers to ensure that their products are safe and effective. Another mission is to ensure their citizens have timely access to state-of-the-art, life-saving equipment and that compliance procedures are efficient and effective. To further expand patient access to safe and effective medical devices and ensure cost effective regulatory compliance, USTR should seek to ensure that regulatory agencies around the world make their policies and practices conform to the relevant and appropriate international trading rules established by the World Trade Organization (WTO).

Toward that end, member economies should agree to make their medical device regulatory regimes conform to these guiding principles:

- Acceptance of International Standards;
- Conformity/Provision of Transparency and National Treatment;
- Use of Harmonized Quality or Good Manufacturing Practice Inspections;
- Recognition of Others Product Approvals (or the Data Used for Those Approvals);
- Development of Harmonized Auditing and Vigilance Reporting Rules;
- Use of Non-Governmental Accredited Expert Third Parties Bodies for Inspections and Approvals, where possible.

Similarly, many economies require purchases of medical technologies to take place through centralized and/or government-administered insurance reimbursement systems. To ensure timely patient access to advanced medical technologies supplied by foreign as well as domestic sources, member economies should agree to adopt these guiding principles regarding the reimbursement of medical technologies:

- Establish clear and transparent rules for decision-making;
- Develop reasonable time frames for decision-making;
- Data requirements should be sensitive to the medical innovation process;
- Ensure balanced opportunity for the primary suppliers and developers of technology to participate in decision-making, e.g., national treatment;
- Establish meaningful appeals processes.

**Utilize Multilateral and Regional Forums to Eliminate Tariff and Non-Tariff Barriers to Trade that Unnecessarily Increase the Cost of Health Care**

Many countries maintain significant tariff and nontariff barriers to trade for medical technology. Such barriers represent a self-imposed and unnecessary tax that substantially increases the cost of health care to their own citizens and delays the introduction of new, cost-effective, medically beneficial treatments. For example, the medical technology sector continues to face tariffs of 15–20% in Mercosur countries (Argentina, Brazil, Paraguay, Uruguay), 9–12% in Chile, Peru, and Colombia, and 6–15% in China.

The new WTO round launched in November is an important opportunity for the United States to secure global commitments on lowering tariff and nontariff barriers for the medical technology sector. We encourage the U.S. Government to build upon the zero-for-zero tariff agreements achieved in the Uruguay round by securing zero tariff agreements with Latin America and Asia as well.

**Conclusion**

AdvaMed appreciates the shared commitment by the President and the Congress to expand international trade opportunities, as well as the Committee's leadership in passing H.R. 3005. We look to the President and his Administration to aggressively combat barriers to trade throughout the globe, especially in Japan. AdvaMed is fully prepared to work with the President, USTR Ambassador Zoellick, the Department of Commerce, and the Congress to monitor, enforce and advance multilateral, regional and bilateral trade agreements particularly with our key trading partners.

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**Statement of American Apparel & Footwear Association, Arlington, Virginia**

Thank you for providing us an opportunity to present testimony to the Committee on the 2002 Trade Agenda.

The American Apparel & Footwear Association (AAFA) is the national trade association representing apparel, footwear, and other sewn products companies and their suppliers, which compete in the global market.

AAFA's mission is to promote and enhance its members' competitiveness, productivity and profitability in the global market by minimizing regulatory, legal, commercial, political, and trade restraints.

Representing two of the industries that are on the front lines of globalization—apparel and footwear—our association maintains a unique vantage point on many of the questions confronting the Committee this morning. Below, we offer our perspectives on some of these issues.

**Trade Promotion Authority**

AAFA very strongly supports swift enactment of legislation (H.R. 3005) to provide the President trade promotion negotiating authority. We cannot over-emphasize the importance of this legislation to our day-to-day operations. Every day, our members face tariff and non-tariff trade barriers—some erected by our own government and some erected by other governments—designed to keep our products from easily reaching our customers. The Uruguay Round, which saw the integration of textiles and apparel into the disciplines of the world trading regime for the first time, represented important liberalization in this regard. But more needs to be done.

TPA—by providing a trade negotiating mandate from Congress to the Administration and by guaranteeing a smooth procedure to consider resulting trade agreements if the Administration follows this mandate—is precisely what we need. It will enable the Administration to move forward on existing trade commitments, including the

Doha Development Round and the Free Trade Area of the Americas, while undertaking new commitments, such as those envisioned with five economies in Central America. As our negotiating partners weave together a network of free and preferential trade arrangements, U.S. products and U.S. brands remain stranded. Only by approving TPA can our negotiators have the decisive mandate they need to pursue our interests and dismantle trade barriers that keep us from our customers.

But granting TPA by itself is not enough to initiate the necessary market openings that our industries need. The Administration must be directed to follow through to reduce and eliminate tariff and non-tariff barriers that block access to our important markets. We note that, whereas tariffs have been reduced for many products worldwide, they remain extremely high for footwear and apparel. In the United States, for example, textiles, apparel and footwear pay 50 percent of all import duties collected by the U.S. Customs service but only account for 8 percent of all imports. Many other countries have similar stories.

Moreover, we can no longer hide behind the restrictive rules of origin that prevent many footwear and apparel goods from qualifying for the benefit of future free trade agreements because some of the inputs that were used in the manufacture of those goods originated outside the free trade area. We encourage the Committee to exercise its oversight responsibilities to ensure that the evolving Singapore and Chile free trade areas, which the Administration has itself defined as a precedent for future free trade discussions, not perpetuate such restrictive rules and requirements.

#### **Andean Trade Preference Act (ATPA) Renewal and Expansion**

AAFA strongly endorses the renewal and meaningful expansion of ATPA legislation to include apparel and footwear products. Without ATPA extension and expansion, the four Andean nations will gradually see the economic viability of many of their legitimate export industries undermined by the lucrative drug trade since their ability to penetrate the U.S. market depends largely upon preferential access.

We have previously testified before the Subcommittee on Trade that ATPA expansion must be simple, flexible, and of a long term nature to ensure the best results. We believe H.R. 3009—as approved by the House on November 16, 2001—accomplishes this goal. It keeps the underlying program active, while expanding it to include a number of previously excluded products in a commercially meaningful way. This legislation provides significant incentives for real products and will lead to continued as well as new investments in the region. Without that legislation, we will continue to see the Andean nations lose market share and export opportunities, which will make them more vulnerable to the destabilizing effects of the illicit narcotics trade.

The loss of this trade base translates into lost commercial opportunities for U.S. and Andean nations combined. In the past year alone, imports of apparel from Andean nations have dropped by more than 10 percent. As these countries have produced less clothing for export, they have employed less people and have also purchased fewer inputs from the United States, with U.S. textile and apparel cut part exports to the region declining by double digits over the previous 12 months.

#### **Caribbean Basin Trade Partnership Act (CBTPA)/African Growth and Opportunity Act (AGOA)**

We support H.R. 3009 also because it would enact several long-sought and much needed corrections and clarifications to the Caribbean Basin Trade Partnership and African Growth and Opportunity Acts. Those two bills were enacted after lengthy struggles in May 2000. We were proud to be part of the team that fought so hard for their enactment. Our companies are now working to use those provisions to bring about the investment and trade-based growth that was envisioned by the Congressional authors of these two important bills.

Unfortunately, a number of errors and interpretative problems prevent the bills from being implemented fully in a manner intended by Congress. The last two titles of H.R. 3009 fix many of these problems. We were pleased that this Committee took advantage of the movement of H.R. 3009 to advance legislative fixes for these problems and we urge Congress to complete the job when it completes work on H.R. 3009. We also urge Congress to take action on needed fixes that will clarify the intent of the CBTPA brassiere provision and eliminate an arbitrary provision that excludes socks from CBTPA benefits.

Thank you for your time and attention to these important matters.

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**Statement of the American Forest & Paper Association**  
**U.S. FOREST AND PAPER PRODUCTS INDUSTRY'S**  
**TRADE NEGOTIATING OBJECTIVES**

The American Forest & Paper Association (AF&PA) appreciates this opportunity to comment on the Administration's 2002 trade agenda. AF&PA is the national trade association representing the producers of paper, pulp, paperboard and wood products, as well as growers and harvesters of this Nation's forest resources. Our industry employs approximately 1.7 million people in 42 states, with an annual estimated payroll of \$51 billion, and annual sales of more than \$250 billion.

The U.S. forest products industry is deeply involved in the global market. In 2001, exports of U.S. wood and paper products exceeded \$19 billion. Imports amounted to \$33 billion. As detailed in subsequent portions of our statement, for literally decades, we have been trying to level the international playing field for our products. Several initiatives identified in the Administration's trade agenda are very important in that regard.

However, since 1997, mounting distortions in foreign exchange markets, and the increasing strength of the dollar in particular, has virtually overwhelmed all other considerations of market access. It is generally accepted that the dollar today is 25%–30% overvalued. This amounts to a self-imposed 30% tariff on all U.S. exports. This number exceeds the current levels of tariffs—up to 15–20%—which some foreign countries actually impose on our products and which could be removed through trade negotiations.

The **"strong dollar tariff"** also applies to U.S. domestic shipments, with the result that foreign competitors now have a major cost advantage in our home market—magnified in industries such as ours where U.S. tariffs are low or zero. The impact of the overvalued dollar on the U.S. forest products industry has been devastating.

U.S. paper industry exports were down by \$1.5 billion in 2001 from the 2000 level. Imports were lower as well last year—off \$900 million—but they were \$3.3 billion higher than in 1997. Therefore, the U.S. trade deficit in paper industry products has ballooned from just \$273 million in 1997 to \$3.8 billion in 2001. While domestic demand for paper grew by 3.5 million tons 1997–2000, more than 90% of these additional sales went to foreign suppliers. More than 50 paper mills have shut down since 1998 and job losses have exceeded 30,000.

For wood products, the combined effect of weakening exports markets and surging imports has put unprecedented downward pressure on wood product prices in the U.S., forcing many lumber producers and wholesalers out of business. Approximately 20 mills with a capacity of 1.7 billion board feet were shutdown permanently in 2001. Since 1998, the lumber and wood sectors have lost 23,000 jobs. Exports have declined by 16.6% over the past year, accounting for a \$100 million loss. Since 1997, exports have declined by 27%. Moreover, despite an increase in consumption of softwood lumber, 65% of the increase in softwood lumber demand between 1995 and 2001 was met by imports.

Traditional wisdom argues that, while exchange rates fluctuate over time, tariffs are forever. The argument suggests that short-term strategies can address exchange rate effects and tariffs should be regarded as the structural, long-term concern. In this case, however, traditional wisdom has proved a less-than-reliable guide. The normal adjustment triggers—burgeoning U.S. trade deficit, lower U.S. interest rates, slowing U.S. growth—have not worked. The persistence of the overvalued dollar has forced industries, including our own—to close plants. Other industries have moved production facilities offshore.

The overvalued dollar is having the effect of hollowing out U.S. industry. When tariff barriers are ultimately eliminated—starting in 2005 in the FTAA or the WTO for example—some U.S. industries simply may not have the capacity to translate market access gains into export sales.

The Omnibus Trade and Competitiveness Act of 1988 recognizes the nexus between exchange rates and the benefits the U.S. actually realizes from trade agreements. It requires regular monitoring and reporting of potential currency manipulation by other countries. Such actions can rob the U.S. of negotiated market access rights and, at the same time, unfairly advantage foreign suppliers in the U.S. market. Today, there is clear evidence that some foreign governments, to establish competitive advantage for their industries, are manipulating foreign exchange values. These countries—particularly Japan, China, South Korea and Taiwan—have accumulated dollar holdings well in excess of recognized or necessary reserve require-

ments for the purpose of depressing the value of their currencies and maintaining export price competitiveness.

AF&PA believes the relationship between exchange rates and trade policy must be subject to further scrutiny in light of the current, sustained overvaluation of the U.S. dollar. It is important that Trade Promotion Authority (TPA) legislation also deal with the effects of exchange rate fluctuation that can negate the economic benefits of any tariff reductions negotiated by the U.S. on behalf of U.S. industry. The House bill provides for the establishment of consultative mechanisms among parties to trade agreements to protect against currency manipulation by foreign government. We believe this is an important safeguard to ensure that the U.S. realizes the benefits they negotiate on behalf of U.S. manufacturers and strongly support its enactment.

Turning to more traditional negotiating objectives, the U.S. forest products industry has long sought the opportunity to compete on an equitable basis for world markets. For decades, the elimination of foreign tariffs has consistently been our number one priority. Our industry was among the first to agree to the elimination of tariffs in our sector and we originated the zero-for-zero concept introduced in the Uruguay Round.

Unfortunately, the Uruguay Round Agreement didn't produce the level playing field we were seeking: developed countries committed to eliminate paper tariffs over a lengthy 10-year period (by January 1, 2004) rather than the normal 5-year phase-out period. Wood products tariffs were only cut by an average of 28%. Tariff escalation—maintaining higher tariffs on value added products—was not addressed. Moreover, developing countries did not make any commitments to reduce tariffs and continue to maintain very high bound tariff rates on our products.

The Uruguay Round Agreements Act (URAA) recognized the flaws in the Uruguay Round results. It specifically identified the elimination of tariffs on paper and wood products, and other zero-for-zero sectors, as a U.S. negotiating objective to be pursued as a priority matter. The URAA also provided the Administration with the requisite authority to conclude agreements in this area. Since then, little has happened.

As a result, the U.S. forest products industry has lost ground in relation to its major global competitors, particularly Brazil, Indonesia, and Malaysia. A number of countries in Europe, Asia and South America have used tariff walls to build world-class projects, at times supported by government financial aid, which compete with U.S. suppliers both at home and abroad.

Attached are resolutions adopted by the Industry Sector Advisory Committee on Paper and Paper Products (ISAC #12) and the Industry Sector Advisory Committee on Wood Products (ISAC #10). These resolutions spell out the industry's negotiating objectives very clearly: **we are seeking the earliest possible elimination of tariffs on our products and we urge USTR to pursue this objective—with urgency—in every available venue.**

In terms of some of the broader themes outlined in the Committee's request for comments, we offer the following:

- **WTO/industrial market access**—Paper and wood products should be priority deliverables for early sectoral tariff negotiations in the Doha Development Round. Among the new, detailed proposals the U.S. will submit, we urge USTR to include a plan to achieve early results in forest products and other zero-for-zero sectors. The goal should be to conclude the first phase of negotiations within one year of the Doha ministerial. We believe that the delivery of early, concrete results in sectors such as ours will broaden public support for the negotiations as a whole.

We remain concerned that the negotiating mandate in industrial tariffs must not be compromised by references to non-reciprocity for developing countries. Especially since a number of developing countries in Asia and South America have burgeoning world-class, export-oriented forest products industries, and these constitute the main class of countries that have not made any commitment to eliminate tariffs. It is critical that developing countries fully participate in the industrial tariff negotiations and that they commit to the same product coverage and phase out periods as do developed countries.

- **Russian WTO accession**—AF&PA believes the URAA mandate regarding the achievement of zero-for-zero agreements in specified sectors must apply to the pending Russia WTO accession negotiations. We urge USTR to remain steadfast in pressing for zero-for-zero treatment in wood and paper products. We believe the zero-for-zero mandate also applies to comprehensive tariff negotiations with countries such as Poland, Hungary and Romania, especially to offset preferences to the EU.

- **Free Trade Area of the Americas**—AF&PA urges USTR to ensure that the negotiating modalities agreed to later this year will foster sectoral negotiations and, particularly that tariffs on all wood and paper products be identified for immediate elimination on implementation of the agreement.
- **Free Trade Agreements**—AF&PA urges USTR to conclude the pending FTA with Chile as rapidly as possible and to use the forest products tariff approach (elimination of tariffs on all products in the sector immediately on implementation of the agreement) as a template for other agreements. We urge USTR to adopt an aggressive approach to tariff elimination, with particular emphasis on priority countries/areas such as Japan and Korea (wood), ASEAN, MERCOSUR, Central America and India. We would also support early agreements with Australia and New Zealand. For countries with existing or pending agreements with the EU, we urge USTR to ensure that such agreements provide for equalized tariff treatment on implementation.

AF&PA, and our member companies, fully support Administration efforts to open overseas markets for our products. We are working with our collegial industrial organizations in other countries to broaden business community support for a global tariff free environment for our products.

At the same time, we join with the growing ranks of U.S.-based manufacturing industries in identifying the overvalued dollar as the single most compelling threat to U.S. global competitiveness. Urgent and effective action to restore the U.S. dollar to a level, which reflects the underlying fundamentals, is essential to restoring a globally competitive U.S. manufacturing sector.

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**INDUSTRY SECTOR ADVISORY COMMITTEE  
ON LUMBER AND WOOD PRODUCTS—ISAC 10**

**RESOLUTION**

Whereas, The priority objective of the wood products industry in the Uruguay Round of multilateral trade negotiations was the elimination of wood tariffs;

Whereas, The Uruguay Round Agreement fell short of this objective when no agreement was reached to go to zero on wood products tariffs and tariff escalation worldwide locked the U.S. wood products industry in a competitive disadvantage;

Whereas, Tariff escalation remains the most significant overwhelming barrier in all of our priority markets;

Whereas, The Uruguay Round Agreements Act (URAA) identified the accelerated implementation and extension of the zero-for-zero agreements in wood and other sectors as a priority trade objective and provided the Administration with the requisite authority to reach agreements to this end;

Whereas, The Industry Sector Advisory Committee on Lumber and Wood Products (ISAC #10) has determined that the continued existence of tariff barriers represents a major market access problem for our industry globally;

Whereas, The continuing lack of any progress on eliminating wood tariffs since 1994 has put the U.S. wood industry at a competitive disadvantage and has fostered the expansion of production capacity and employment outside of the United States;

Resolved, that the Secretary of Commerce and the United States Trade Representative make the early achievement of zero tariffs on wood products an urgent priority for upcoming trade negotiations with U.S. trading partners.

Specifically, ISAC #10 urges that:

- the elimination of tariffs on wood products be identified as an early deliverable in industrial tariff negotiations conducted under the auspices of the World Trade Organization (WTO). Preparatory work should begin immediately and be conducted with sufficient expedition to ensure that an agreement can be achieved and implemented at an early date;
- the elimination of tariffs on wood products be identified as an early deliverable from U.S. FTA negotiations, particularly those with Chile and other FTAA members. In the case of Chile, the elimination of wood tariffs should go into effect immediately, to put U.S. suppliers on an equal footing with Canadian companies, who have benefited from zero tariffs since 1997;
- the U.S. Government strictly monitor and enforce China's reduction of tariffs on wood products in compliance with its WTO accession agreement and take every opportunity to achieve further reductions down to zero at an early date.

The U.S. wood products industry is proud of its record of environmental stewardship and sustainable forest management practices and supports trade policies that

promote enforcement of domestic environmental laws and encourage improvements in environmental practices.

Lyn Withey  
*Chairman, ISAC #10*  
*Vice President, International Paper*

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**INDUSTRY SECTOR ADVISORY COMMITTEE  
ON PULP AND PAPER**

**RESOLUTION**

Whereas, The priority objective of the paper and paper products industry in the Uruguay Round of multilateral trade negotiations was the elimination of tariffs on paper and paper products by 1999;

Whereas, The Uruguay Round Agreement fell short of this objective. Only the European Union, Canada, Japan, Australia, New Zealand and Korea agreed to eliminate tariffs on paper and paper products—over an extended time period ending in 2004. Important U.S. trading partners in Latin and South America, as well as Asia, made no commitment to eliminate tariffs on these products;

Whereas, The Uruguay Round Agreements Act (URAA) identified the accelerated implementation and extension of the zero-for-zero agreements in paper and other sectors as a priority trade objective and provided the Administration with the requisite authority to reach agreements to this end;

Whereas, The Industry Sector Advisory Committee on Paper and Paper Products (ISAC #12) has determined that the continued existence of tariff barriers on paper and paper products in Europe, Latin and South America and China represents the principal market access problem for our industry globally;

Whereas, The continuing lack of any progress on eliminating paper tariffs since 1994 has put the U.S. paper industry at a competitive disadvantage and has fostered the expansion of production capacity and employment outside of the United States;

Resolved, that the Secretary of Commerce and the United States Trade Representative to make the early achievement of zero tariffs on paper and paper products an urgent priority for upcoming trade negotiations with U.S. trading partners. Specifically, ISAC #12 urges that:

- the elimination of tariffs on paper and paper products be identified as an early deliverable in industrial tariff negotiations conducted under the auspices of the World Trade Organization (WTO). Preparatory work should begin immediately and be conducted with sufficient expedition to ensure that an agreement can be achieved and implemented at an early date;
- the elimination of tariffs on paper and paper products be identified as a early deliverable from U.S. FTA negotiations, particularly those with Chile and other FTAA members. In the case of Chile, the elimination of paper tariffs should go into effect immediately, to put U.S. suppliers on an equal footing with Canadian companies, who have benefited from zero tariffs since 1997;
- the U.S. Government strictly monitor and enforce China's reduction of tariffs on paper and paper products in compliance with its WTO accession agreement and take every opportunity to achieve further reductions down to zero at an early date.

ISAC #12 recognizes that trade liberalization in the forest products sector has a fundamentally positive effect on environmental quality. The U.S. paper industry is proud of its record of environmental stewardship and supports trade policies that promote enforcement of domestic environmental laws and encourage improvements in environmental practices.

Maureen R. Smith  
*Chairman, ISAC #12*  
*Vice President, American Forest & Paper Association*

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**MINORITY OPINION**

We have always held that tariff elimination has the potential to cause harmful environmental impacts when it is conducted in the absence of adequate environmental safeguards. We have advocated that these potential impacts should be adequately assessed and that necessary safeguards should be in place prior to further tariff elimination.

Executive Order 13141 on the Environmental Review (ER) of Trade Agreements, calls for an ER to be conducted for proposed trade agreements such as those being considered here. International norms for credible and effective environmental assessment hold that they should be done prior to, and inform the decision in question. If the proposed “early deliverable” of tariff elimination occurs prior to the completion of an ER, this will contravene these international norms and compromise the credibility of the process. We therefore believe that an ER on industrial tariff negotiations in the context of WTO-related activities and FTA’s should be completed and that the necessary safeguards should be put into place prior to any early deliverable of tariff elimination.

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### Statement of the American Iron and Steel Institute

The American Iron and Steel Institute (AISI), on behalf of its U.S. member companies who together account for more than two-thirds of the raw steel produced annually in the United States, is pleased to provide comments to the House Committee on Ways and Means on President Bush’s Trade Agenda for 2002.

#### Trade Liberalization: Need to Rebuild Public Consensus on Trade

There is a vital need for the Bush Administration to rebuild a new public consensus in support of free and fair rules-based trade. In this regard, to avoid a further undermining of public support for new free trade initiatives, it is essential that the Administration:

- enforce strictly U.S. trade laws and counter serious import injury where it is clearly determined (as in the steel Section 201 “safeguards” case); and
- resist firmly the growing pressures from foreign governments to weaken further international disciplines—and U.S. laws—against injurious, unfairly traded (dumped and subsidized) imports.

A national consensus on expanded international trade can only be achieved (and sustained) when trading rules are *fair, clear and consistently enforced*.

**Strong trade laws, strict trade law enforcement, the countering of import injury and the preservation of fair trade rules all serve the free trade agenda. Unless the public believes that what is being expanded is fair trade, efforts to achieve further trade liberalization cannot succeed. The best way to reverse the erosion of public support for further trade liberalization and to restore a national consensus in support of freer trade is through strong trade laws, strictly enforced.**

Rules-based trade and effective U.S. trade laws, properly enforced, prevent the exporting of unemployment to this country. A strong bipartisan majority of the Congress understands this, and AISI’s U.S. member companies greatly appreciate the continuing strong support of the Congress, including many House Ways and Means Committee Members. We thank you for your support of an effective steel Section 201 remedy, and also for your very clear message of *no further trade law weakening*—whether through:

- a new World Trade Organization (WTO) round of global trade negotiations;
- the WTO dispute settlement process, which is sorely in need of reform;
- regional negotiations such as the Free Trade Area of the Americas (FTAA); or
- bilateral free trade agreement (FTA) negotiations such as those with Chile and Singapore.

#### Steel Crisis: Need for Strong 201 Remedy

As the President recognized when he initiated the steel Section 201 investigation in June 2001, the 201 was a last resort for an American steel industry that had been engulfed by an unprecedented crisis largely not of its own making. This ongoing crisis, as the President correctly recognized when he announced his Steel Action Plan on June 5, 2001, is the direct result of:

- a 50-year legacy of foreign government intervention in the steel sector;
- pervasive steel market-distorting practices worldwide;
- un-addressed foreign economic and steel industry structural problems;
- massive global excess steelmaking capacity—roughly 250 million metric tons, or more than twice the size of the total U.S. steel market.

This has all led to the U.S. steel industry’s current catastrophic condition. Over the past 4 years of crisis, we have witnessed:



- the three highest steel import years in U.S. history in 1998, 1999 and 2000;
- the largest surge of unfairly traded steel imports in history;
- the worst steel price depression in history, with import values and U.S. prices sinking to unsustainable lows;
- 27 steel U.S. company bankruptcies or shutdowns since December 1997;
- over 50 U.S. steel plants and related facilities closed in the past 24 months alone;
- the loss of nearly 44,000 U.S. steel worker jobs since January 1998, with almost 10,000 of these coming in January 2002, which saw the largest monthly rise in lost jobs in more than a decade.

America's steel companies, steel communities and related industries have lost tens of thousands of *real* jobs over the past 4 years due to unfair and disruptive steel imports sold in violation of international rules and U.S. laws. This is in stark contrast to the *theoretical* loss of jobs in U.S. steel using industries predicted by 201 opponents—losses that will never actually occur, since they are based on a flawed economic model using extreme and unrealistic assumptions.

This is not the way market-based trade is supposed to work. Between 1980 and the onset of the current steel crisis, the U.S. steel industry literally reinvented itself. By 1998, we had become a new industry producing new steels, using new equipment and employing new processes. Thanks to over \$60 billion in modernization investments since 1980 and a costly and painful restructuring of all aspects of steel operations, a new U.S. steel industry had by 1998 emerged as a highly competitive, technologically advanced, low cost, environmentally responsible and customer-focused industry.

The past 4 years should have been the best of times for an American steel industry restored to world class status, which in recent years has added over 20 million tons of new, state-of-the-art steel capacity. Instead, we have a national steel emergency caused by a tidal wave of injurious, unfairly traded and disruptive steel imports.

In response to our imports-driven crisis, the U.S. International Trade Commission (ITC) has now ruled unanimously in the Section 201 steel investigation that increased imports have been a “substantial cause of serious injury” to the U.S. steel industry. The ITC has also recommended that steel trade remedies be applied. It is now up to the President to decide on or before March 6 what to do in the national interest.

AISI is convinced that President Bush and his Administration have a unique, historic opportunity, not just to counter import injury in the U.S. steel market, but also to create a lasting solution to the root causes of the U.S. and world steel crisis.

We urge the House Ways and Means Committee and all Members of Congress to send a strong, clear message to the President and his Administration. The message is that:

- The United States can no longer be the WORLD'S STEEL DUMPING GROUND.
- The U.S. steel industry has suffered unprecedented import injury, and should be granted, under our WTO-consistent Section 201 safeguards law, a much-needed time-out from the current crisis environment.
- There should be a 4-year tariff of at least 40 percent on the full range of carbon and alloy steel products where the ITC has found injury.
  - A strong and uniform steel tariff remedy is needed to stop effectively, and to reverse, the serious injury that has occurred.
  - It is essential to restore the U.S. steel industry to health, to enable it to consolidate and continue to restructure and to allow it to do what is needed to invest in new technologies, products and markets.
  - It will serve the long-term interests of U.S. steel using industries.
  - It will benefit the overall U.S. economy and U.S. national security.
  - It is necessary to the success of the President's multilateral steel initiatives, because only a strong 201 tariff remedy will encourage foreign governments and producers to deal seriously with their un-addressed steel sector structural problems and imbalances.
- There should also be industry efforts to work together and with the Congress and the Administration to help develop and enact legislation that removes barriers to steel industry consolidation and rationalization in the United States.
- The long term goal should be a lasting solution to the international steel trade problem: the Administration's multilateral steel initiative at the OECD to reduce inefficient and excess global steelmaking capacity and to remove steel trade-distorting practices worldwide deserves everyone's continued support.

The Administration is right that it is time to get governments out of steelmaking. It is time to end foreign government “targeting” and subsidization of steel, foreign government market barriers to imports of steel and steel-containing products and foreign government toleration of private cartels, as well as other anticompetitive behavior and corruption in the steel sector.

These trade-distorting practices were examined in great detail in the groundbreaking July 2000 Commerce Department study, “Global Steel Trade: Structural Problems and Future Solutions.” The bottom line is that unfair trade practices enabled less efficient foreign steel companies to produce at levels not supported by market forces, to maintain artificially high steel prices in their home markets and to dump unprecedented quantities of steel in the United States and in North America as a whole. Then, after more than 200 antidumping (AD) and countervailing duty (CVD) orders, the Section 201 case became a last resort.

The steel crisis, therefore, holds important lessons for our Nation’s post-Doha trade agenda. The case of steel shows why it is critical to enhance, not weaken, U.S. trade laws. The lessons learned by U.S. steel producers are that, now, more than ever, we must support:

- prompt and strict enforcement of U.S. trade laws;
- modernization and enhancement of these laws in a WTO-consistent manner; and
- preservation of effective international disciplines against unfair trade.

#### **New Global Trade Negotiations**

For many years, the bipartisan position of the U.S. Government has been to support continued multilateral trade liberalization, based on no further weakening of the WTO’s AD/CVD rules. AISI and many other U.S. industries continue to support this position. Our consistent message can be summed up in three words: *RULES-BASED TRADE*.

#### **No Trade Law Weakening Through New Doha Round of WTO Negotiations**

Prior to the WTO Doha Ministerial Conference, the final proposals submitted by other governments made it clear that the ultimate goal of Japan and many other countries is the gutting of U.S. laws against unfair trade. Foreign unfair traders view the AD/CVD laws as the one remaining major obstacle to their unfettered abuse of the open U.S. market. They do not want to see usable U.S. laws against unfair trade.

The WTO’s Antidumping Agreement and its Subsidies and Countervailing Measures (SCM) Agreement were extensively rewritten only 7 years ago and, in the period leading up to Doha, AISI and other industries urged the Administration to resist firmly foreign government pressures to put revisions to these Agreements on the agenda of new WTO negotiations. Notwithstanding our concerns that it would be a serious policy mistake to allow any opening up of AD/CVD rules in new WTO negotiations, the decision at Doha was to include AD/CVD rules in the new round negotiating agenda.

The Administration, to its credit, has continued to stress that it has no intention of allowing U.S. AD/CVD laws to be weakened through new WTO negotiations. The Administration points out that it has an “affirmative” agenda on WTO rules, which includes talking about (1) the unfair foreign trade practices that give rise to the use of AD/CVD laws in the first place and (2) the ways in which other countries’ AD/CVD laws fall short (lack of transparency, due process, etc.).

AISI and its U.S. member companies will continue to support trade liberalization, if—and only if—there is no further weakening of fair trade rules. Thankfully, in recent years there has been overwhelming bipartisan support in the Congress for preserving effective international disciplines and U.S. laws against unfair trade. In particular, we appreciate:

- the bipartisan letter to President Bush last year signed by nearly two-thirds of the Senate, expressing “strong opposition to any international trade agreement that would weaken U.S. trade laws.”
- the House-passed resolution last year endorsed by over 400 Members, urging U.S. negotiators to preserve the effectiveness of U.S. trade laws and avoid trade law weakening agreements.
- the post-Doha letter to the President last year signed by 9 Senators, reiterating that “we should not be discussing U.S. trade laws at the WTO . . . [and] looking for ‘reassurance that this Administration will not agree to any changes in U.S. laws that regulate unfair foreign trade practices.’”

The task now, however, is to *help the Administration make the most of its affirmative agenda on rules*. Trade adjustment assistance (TAA) should be extended and strengthened to deal with workers who are laid off as a result of expanded trade. At the same time, we need to redouble our efforts to avoid trade-related unemployment before it occurs. We can best do that by maintaining and enhancing our trade laws. In light of the decision on rules taken at Doha:

- The Congress must send a strong and unmistakable message to U.S. negotiators, in new Trade Promotion Authority (TPA) legislation, that it will not approve agreements or adopt legislative provisions that weaken in any way America's vital laws against unfair trade.
- The Congress should clarify that, in this "Doha Development Round," it does not support the view that developing countries should be granted "special and differential treatment" with regard to AD/CVD rules, because the WTO should not be promoting development through the use of unfair trade practices—and because the claim that developing countries' legitimate export trade is being shut off by AD/CVD measures has no basis whatsoever in fact.
- The Congress must ensure that the WTO fully adheres to the words in the Doha Ministerial Declaration which say that, in a new trade round, negotiators will "preserve the effectiveness of the instruments and objectives of the WTO's Antidumping and Subsidies/Countervailing Measures Agreements."
- The relevant Congressional Committees of jurisdiction must engage in a direct and thorough review of any negotiations related to AD/CVD laws; U.S. negotiators should be required to discuss with the Committees all proposals to change these laws before any actual negotiation of such proposals takes place; and unless the Committees give specific approval, the United States should not engage in negotiations regarding such proposals.
- The President should commit not to submit for Congressional approval any agreement that requires weakening changes to U.S. AD/CVD laws and enforcement policies—"fast track" or Trade Promotion Authority must not be taken advantage of to speed passage of trade law weakening amendments.
- The Congress should also enact immediately new AD/CVD provisions, which strengthen these laws in a manner consistent with the existing WTO Agreements. Rather than allow trade law weakening, Congress should ensure that U.S. trade laws are as strong as what the WTO allows.

The Doha Round's discussion on rules will occur in two phases. During phase one, countries will identify the key issues that they would like to see discussed. For our part, we pledge to work closely with other industries to provide to the Administration an affirmative priority listing of ways in which the WTO AD/CVD Agreements should be *strengthened* and international disciplines against injurious dumping and trade-distorting subsidies *made more effective*. We also plan to highlight how unfair foreign trade practices in steel and other sectors—not AD/CVD laws—are *the real problem* in international trade.

- We will urge the Administration to work together with other NAFTA governments to encourage countries in Asia and other regions with serious market access problems to eliminate all barriers and anticompetitive practices and to open their markets fully to imports of steel and steel-containing products. Achieving open markets in all major steel producing and trading nations serves the interest of both steel producers and consumers globally.
- We will work with other "zero tariff" U.S. industries to ensure that Brazil and all other major steel producing and trading nations eliminate their steel tariffs immediately. Since the U.S. is among those countries that are already committed to going to zero on steel tariffs by January 1, 2004, this is needed to level the playing field in international steel trade.
- We will work with Members of Congress to develop an effective WTO-consistent remedy against country and product switching by irresponsible steel traders.
- We will work with other U.S. industries and with the Congress, both to identify the implications of the negotiating proposals tabled by other countries and to enact WTO-consistent amendments that make U.S. trade laws more effective.

Whether the Administration addresses steel trade-distorting practices through the Doha Round discussion on rules or through a separate effort to achieve a sector-specific agreement (an international steel agreement to ensure that steel trade in the future is free and fair in all markets), *the same principle must apply*: existing trade laws must not be weakened in any way. The goal is not to discipline the remedies we need to defend against unfair trade. The goal must be to *strengthen those remedies* and to *achieve the highest possible level of discipline* against unfair trade.

### **No Trade Law Weakening Through WTO Dispute Settlement**

It is not just the negotiating proposals of other governments that are putting the WTO—and continued U.S. support of the WTO—at risk. Public support for the WTO is also fast eroding because the current WTO dispute settlement system threatens U.S. trade laws and U.S. sovereignty.

A *thorough overhaul* of the WTO dispute settlement system is urgently needed. Part of the problem is that, in recent WTO panel decisions on trade law issues, agreed WTO standards and limits on panelists' authority have been abused or exceeded. U.S. steel producers support WTO dispute settlement reform, including:

- greater transparency in the WTO dispute settlement process;
- private party participation at WTO panel hearings;
- reform of the WTO panel selection process.

As it stands, WTO panels are creating new international rules—which is beyond their authority—and ignoring agreed standards. Under the existing dispute settlement system, foreign panelists who are often hostile to U.S. trade laws have routinely rejected U.S. trade remedies and have imposed new and, in some cases, very severe limits on the use of trade laws. *No challenged safeguards measure has ever been upheld by the WTO.* Similarly, countries have mounted repeated successful challenges to U.S. AD/CVD measures, obtaining through dispute settlement what the U.S. refused to accept in negotiations. Even when a country fails to achieve all it seeks in its appeal of U.S. trade law relief, there is often a net weakening of U.S. law. This is what occurred in Japan's appeal of U.S. AD duties on hot rolled steel—in spite of this being arguably the worst case of injurious dumping ever.

This attack by unfair traders and the WTO dispute settlement system on U.S. laws and rules to address unfair and disruptive trade must stop. The time has come for Congress to *re-examine the fundamental issue* of U.S. commitment to binding dispute settlement. So far, the experiment has proved a disaster for U.S. trade laws. The recent U.S.-Jordan free trade agreement includes non-binding dispute settlement. We think Congress should give serious consideration to expanding this approach.

We believe it is now essential that Congress insert itself into the WTO dispute settlement process to protect the sovereignty of the United States and to ensure that the positions the U.S. negotiated—and that Congress subsequently enacted into law—are not eroded by WTO dispute settlement bodies. In this regard, AISI wishes to thank those Members of the House who have placed a premium on urging the Administration to develop an early strategy to fix this serious problem before it is too late. The Congress can help in three ways to address the problem of a WTO dispute settlement system that is undermining U.S. trade laws.

- First, it can join the Administration in support of WTO dispute settlement reform, including reform of the panel selection process, greater transparency and allowing concerned private parties to participate in panel proceedings.
- Second, it can support the provision of more government resources and resolve to defend U.S. trade laws in WTO appeals in Geneva. In order to counter the efforts of unfair traders to use the WTO dispute settlement process to undermine our fair trade rules, the Administration must combine diplomatic and litigation efforts and begin to defend much more aggressively the trade laws enacted by Congress.
- Third, it can support prompt enactment of legislation to establish a WTO Dispute Settlement Review Commission. First proposed in 1995 by Senators Dole and Moynihan, such a Commission would be an important first step in reining in the WTO dispute settlement system and ensuring that future WTO panels do not exceed or abuse their authority.

### **No Trade Law Weakening Through WTO Accessions**

AISI's U.S. member companies agree that Russia and other nations of the Commonwealth of Independent States (CIS) should be accepted into the WTO, but only on commercially viable terms. In this regard:

- As was done in the case of China's accession, WTO members should have the right to continue to apply nonmarket economy AD methodology until steel and other key sectors of the CIS economies become fully market-oriented.
- The CIS countries should end immediately all direct and indirect steel subsidies that distort trade, and adhere immediately to all of the disciplines in the WTO Subsidies Agreement.
- As was done in the case of China's WTO accession, a special safeguard should be put into the CIS accession protocols that enables other WTO members, dur-

ing a transition period, to act against market disruption caused by a surge of CIS imports.

- In addition, there must be close monitoring of China's and Taiwan's WTO commitments to ensure that they are being strictly and promptly complied with and fully implemented.

#### **Key Points to Remember about Global Trade Negotiations on Rules**

Japan and other countries that maintain sanctuary markets for their domestic steel industries and tolerate cartels and other anticompetitive behavior want to weaken the WTO's AD rules. Countries that continue to subsidize their inefficient industries want to weaken the WTO's CVD rules.

For more than 50 years, countries have been allowed to use AD/CVD laws to counter injurious unfair trade, because these laws help ensure that *more efficient* domestic producers are not weakened or destroyed by *less efficient* foreign firms. These laws serve the long term interest of customers, consumers, the economy, free trade and the multilateral trading system.

In recognition that 201 steel trade relief is coming, that massive world steel overcapacity still exists and that the United States will no longer be able to be used as the WORLD'S STEEL DUMPING GROUND, foreign countries would be well advised to re-evaluate their past support for trade law weakening through the WTO. In the meantime, the steel industry in the NAFTA region continues to speak with one voice on the need to preserve effective AD/CVD laws. It is the united position of AISI's Canadian, Mexican and U.S. members that we:

- support free trade and open markets;
- support the effective fair trade rules that make them possible;
- support reform of the WTO dispute settlement system; and
- oppose all efforts to put AD/CVD rules on the negotiating table—whether in a new WTO round, the FTAA or new bilateral FTAs.

#### **The FTAA and Regional Trade Negotiations**

In April of 2001, AISI joined with our colleagues in the Latin American Iron and Steel Institute (ILAFA) and submitted to the Sixth Business Forum of the Americas an unprecedented joint position statement on the FTAA by a hemispheric sector. Together with the Brazilian steel industry, we even included a short section on the issue of trade laws in our joint submission. It simply says that, "The trade laws of each Western Hemisphere country should be enacted and applied according to the criteria of transparency, due process and procedures that are consistent with World Trade Organization (WTO) rules ... [and] On the subsidy issue, the negotiations should aim at improving the level of discipline established in WTO rules."

AISI *supports* the ongoing negotiations to achieve an acceptable FTAA. We have long supported the view that, *if it is done right*, further trade liberalization in the Western Hemisphere could yield significant benefits to competitive U.S. steel producers and their world-class domestic customers.

Ironically, it is the *other side* on the trade law issue that is *endangering the prospects for both* the FTAA and a new WTO round. We believe that the Administration understands this, that it wants to see the FTAA and other free trade initiatives succeed, and that it shares our view that effective rules and disciplines against unfair trade serve the cause of free trade.

As a strong and early supporter of the North American Free Trade Agreement (NAFTA), AISI is concerned that public support for the NAFTA has eroded. It is worth recalling that the U.S. Government was unwilling to see AD/CVD laws weakened in the NAFTA, which is a region where we share contiguous borders and where economic integration is well advanced. Yet, even so, public support for the NAFTA is slipping.

The need to avoid trade law weakening of any kind in the FTAA is strongly supported by AISI's entire North American membership. In February of 2001, AISI's Canadian, Mexican and U.S. member companies urged our respective governments to "agree to nothing in an FTAA that would lead to less effective trade laws in the NAFTA region or to any diminution of trade law rights in North America."

#### **There Must Be No AD/CVD Weakening of Any Kind in the FTAA**

This bedrock principle of no FTAA weakening of existing AD/CVD laws means that any trade law weakening proposals should be immediately rejected by the U.S. Government as a total non-starter. Instead, just as in the Doha Round, our government should make it clear that the real issue in international trade is dumping, closed markets, trade-distorting subsidies and private anticompetitive behavior—not

the U.S. laws that the Congress has enacted to counter foreign unfair trade. Therefore, the Administration should insist that other countries in the FTAA:

- open up their home markets;
- eliminate their trade-distorting subsidies; and
- end their private anticompetitive practices in sectors such as steel.

In addition, if any FTAA country, in negotiations with the United States, recommends that the U.S. agree to eliminate, weaken or amend in any way U.S. AD/CVD laws, the only acceptable U.S. Government response should be that:

- There will be no substantive changes of any kind in U.S. AD/CVD laws;
- There will be no extension of the NAFTA's Chapter 19 binational panel AD/CVD appellate process to other FTAA countries; and
- The only subject with respect to trade laws where there is something to talk about is the need for greater transparency and due process in the way other FTAA countries administer their AD/CVD laws.

Accordingly, we commend the Administration for its proposal, tabled at the July meeting of the FTAA negotiating group on subsidies, antidumping and countervailing duties. That proposal would replace a proposed separate FTAA AD/CVD chapter with a single statement that countries reserve the right to use AD/CVD remedies consistent with WTO rules.

#### **The Bracketed FTAA “Draft Chapter” Would Devastate U.S. Law**

What we find in the bracketed AD/CVD negotiating text of the FTAA are suggested changes from other governments that would have a devastating impact on U.S. trade laws, as they would apply to FTAA countries.

Simply put, the draft FTAA Chapter on Subsidies, Antidumping and Countervailing Duties (“Draft Chapter”) is so badly flawed, there can be only one U.S. Government response: total rejection.

Instead of leading to a higher level of FTAA discipline against unfair trade than exists currently in the WTO—which ought to be the goal—the proposed changes, taken as a whole, would lead to weaker AD/CVD rules in the FTAA than in the WTO. The stated ultimate objective would be to eliminate AD measures entirely once the FTAA is established and goods are circulating among FTAA member countries “fundamentally free of restrictions.” In the meantime, the proposed changes would:

- endorse all but the most severely injurious dumping and subsidization by FTAA members;
- make U.S. AD/CVD laws *essentially unusable* against injuriously dumped and subsidized imports from FTAA countries;
- raise serious WTO (most-favored-nation) concerns among non-FTAA countries about trade diversion and discriminatory treatment; and
- make it harder to get relief against unfairly traded goods from all regions.

The bottom line is that the Administration should send a clear, immediate and unmistakable signal to our FTAA negotiating partners that:

- The Draft Chapter and its myriad forms of trade law weakening will never be accepted by the United States in whole or in part;
- Neither the Administration nor the Congress nor the American public will ever accept the Draft Chapter's approach to AD/CVD laws, which is “death by a thousand cuts”; and
- This campaign to try to use the FTAA to weaken AD/CVD laws is damaging public support in the U.S. for the FTAA.

#### **Message to Brazil and Other Trade Law Opponents**

An FTAA should promote freer, *rules-based*, trade—not turn the U.S. market into a dumping ground. This will be a free trade agreement, *not* a customs union or a common market, and it is worth noting that South America's steel producers have used AD law against each other, *even within* the MERCOSUR customs union. An FTAA will not eliminate unequal conditions of competition or the potential for trade-distorting practices. It will lead, we hope, to growing economic integration in our hemisphere and, to the extent that dumping diminishes over time as a result of this increased integration, to a decrease in the need to turn to AD law, as it has in the NAFTA region.

### **Bilateral Free Trade Agreement Negotiations**

Whether the bilateral FTA is with Chile or Singapore or some other country, it is an almost sure bet that the other country will attempt to get special treatment with regard to U.S. trade laws.

### **No Trade Law Weakening Through Bilateral FTAs**

*The exact same points* that apply to the global trade negotiations in the WTO Doha Round and in the hemispheric negotiations to achieve an FTAA apply to bilateral FTAs. Thus, AISI and its U.S. members will strongly oppose any effort to try to use bilateral FTAs to eliminate or weaken AD/CVD rules and other U.S. trade laws in bilateral trade with the U.S. The United States should agree to *no language in any FTA* that would lead to less effective U.S. trade laws or to any diminution of U.S. trade law rights.

### **No Weakening of Steel Buy American Rules Through Bilateral FTAs**

In addition to trade laws, a second major area of significant concern to AISI's U.S. member companies is the need to preserve WTO-legal steel Buy American rules, whether in a new global round of trade negotiations or in regional or bilateral FTAs.

AISI's U.S. members support enhanced foreign procurement procurement opportunities for U.S. firms, especially steel's U.S. customers. Thus, we would like to see prospective FTA countries assume commitments to promote more open access to entities and greater transparency in the government procurement bidding process. At the same time, given the failure of many foreign governments to live up to their existing government procurement obligations—and given the lack of equitable results achieved to-date from government procurement liberalization—AISI's U.S. members remain totally opposed to any weakening of current steel Buy American rules.

With respect to FTAs and government procurement, the NAFTA stands as a model of how to make additional, incremental progress in this area of a kind that AISI's U.S. members support. It achieves progress by providing for greater transparency, higher thresholds and a bid protest procedure.

\*AISI appreciates this opportunity to provide written comments to the House Ways and Means Committee on President Bush's Trade Agenda for 2002, and stands ready to supply any additional information the Committee might wish to have.

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### **Statement of the American Textile Manufacturers Institute**

This statement is submitted on behalf of the American Textile Manufacturers Institute (ATMI), which is the national trade association for the U.S. textile industry. Our industry employs approximately 450,000 workers throughout the United States.

As we stated to this Committee when it held a similar hearing exactly eleven months ago today, we are an industry that is simultaneously a major exporter and one that is deeply impacted by foreign imports. As such, we believe that our country's trade policy should be motivated by principles of fairness and equity. Much of what we said in our statement last year still applies. In particular, we would like to reiterate three basic principles which we believe should govern U.S. trade policy and trade agreements affecting textiles:

- (1) trade agreements must be fair and equitable to the domestic industry;
- (2) trade agreements must be enforceable; and
- (3) the U.S. Government must exhibit the will to enforce trade agreements.

These principles have not changed since we submitted that statement March 7, 2001.

What has changed since that date is that over 100 U.S. textile mills have closed and over 60,000 U.S. textile workers have lost their jobs.<sup>1</sup> Today, the U.S. textile industry is experiencing its worst economic crisis since the Great Depression. Undoubtedly, the U.S. recession and the aftermath of the attacks on September 11th have made things worse, but our industry's primary problem stems from unfair trade and exchange rate policies, particularly as they concern the Asian exporting countries.

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<sup>1</sup>For more information, see the **Textile Crisis** section of ATMI's Web site ([www.atmi.org](http://www.atmi.org)).





mittee's press release announcing this hearing, in the order listed in the press release.

### **1. The President's Trade Agenda and House Passage of H.R. 3005**

President Bush, Commerce Secretary Donald Evans and the House Republican Leadership all made certain commitments to textile state House Members related to the vote on trade promotion authority (TPA). ATMI believes that these promises must be fulfilled by Congress and the Administration without any compromise or further delay. To do otherwise would be an unconscionable breach of trust and call into question why textile state Members of Congress should allow the President to negotiate trade agreements without maintaining Congress' ability to modify the legislation implementing such agreements.

These commitments have been thoroughly documented, and now our industry is watching to see whether and when these promises will be honored. An issue of immediate concern, and one that is directly within the jurisdiction of this Committee, is the signed commitment by Speaker Hastert, Majority Leader Armev, and Majority Whip Delay to Rep. Jim DeMint of South Carolina. In this commitment, the House Republican Leadership pledged

*“to bring no future bills with trade provisions to the House floor until the Trade and Development Act of 2001 (sic) is corrected to require that U.S. knit and woven fabrics be required to undergo all dyeing, finishing, and printing procedures in the United States in order to qualify for benefits under the Caribbean Basin Trade Partnership Act,” and “that this same requirement for dyeing, finishing and printing will be included on (sic) any Andean Trade Preferences Act that contains additional textile preferences before it is considered again by the full House.”*

Please note that this pledge refers to *correcting* the Trade and Development Act, not to weakening it or gutting it as critics have charged. Further, we would like to emphasize that this interpretation of where dyeing, finishing and printing must be done is the same interpretation taken by the Customs Service with respect to the NAFTA agreement and what is known as 807-A trade. It has now become an issue of commitment by Congressional leaders.

### **2. The Success of the WTO Ministerial Meeting in Doha**

ATMI is concerned that the WTO Ministerial Declaration and other documents agreed to in Doha by the U.S. and other WTO members will encourage Asian exporters to keep their textile markets closed. Despite assurances by Administration officials that the U.S. can still demand that large developing countries open their own closed markets, the Doha agreement will make it more challenging to do so.

The U.S. textile industry needs and should have access to those Asian markets that keep out foreign textiles using high tariffs and non-tariff barriers. However, the Doha agreement does not prohibit India and other countries from continuing to hide behind protective barriers while simultaneously enjoying far greater access, and seeking even greater access, to our markets at the expense of U.S. textile jobs.

The ministerial document states that developing countries will be allowed to focus future talks on products of their choice. So-called developed country “tariff peaks” will be a target, and yet most Asian countries will argue that the document protects their own markets, even though they maintain tariffs of 50 percent or more on many products. This is nothing but allowing Asian markets to remain closed to U.S. textile exports while continuing to open the U.S. market further to Asian exporters.

USTR and the Department of Commerce should be commended for their efforts in resisting entreaties to change the terms of the WTO Agreement on Textiles and Clothing (ATC) and thus grant India, Pakistan and other countries unjustified access to the U.S. textile market as an incentive for them to participate in the trade negotiations. Such inducements just to prevent these nations from walking out in Doha would certainly have been unwarranted. However, we are concerned that the outrageous demands by India and a few others to liberalize the ATC have been placed on the agenda for further discussion. We again call on the United States government to re-clarify that it will use its WTO veto authority to block these demands from moving ahead. The U.S. has carried out its commitments under the ATC and that should be the end of the debate.

We also continue to urge that the United States adopt specific objectives and guidelines concerning U.S. textile and apparel tariffs. These objectives must include freezing U.S. textile and apparel tariffs, and forcing Asian and other countries to bring their tariffs down to U.S. levels and remove their non-tariff barriers without delay.

It has been eight years since the Uruguay Round promised to provide access to foreign markets for U.S. textile products. Yet, almost every Asian textile market, as well as many others, remain entirely or mostly closed to U.S. exports. These closed markets include India, Pakistan, Thailand, the Philippines, Indonesia, Brazil and Argentina among many others. Some nations have even added new barriers to U.S. textile exports, despite their Uruguay Round obligations. This inequity must be addressed.<sup>2</sup>

We also remain concerned that the United States has, despite clear sentiment in Congress to the contrary, agreed to allow U.S. laws against dumping, subsidies and other unfair trade practices to be placed on the agenda for upcoming negotiations. After all remaining textile and apparel quotas are completely phased out on January 1, 2005, our trade laws will be the industry's defense against unfair and illegal trade practices. Like many in Congress and in other sectors affected by unfair trade practices, we strongly urge that the U.S. Government reject any efforts to weaken U.S. trade laws.

### 3. Prospects for the FTAA

Regarding a Free Trade Agreement for the Americas, we renew our request that the government create a subgroup within the market access negotiating team dedicated to textile and apparel issues. This has been previously done with every major multilateral negotiation to date involving textile and apparel trade, including the Uruguay Round, NAFTA and the U.S.-Canada FTA. The issues involved in textile and apparel market access, which include rule of origin, quotas, possible transshipments, Customs verification teams and the negotiation of over 1,500 tariff lines, are so technical and detailed that a dedicated sub-group on textile market access is absolutely necessary for a successful outcome.

While ATMI is still considering whether to take a formal position on an FTAA, in general terms we believe the agreement must be fair and beneficial to U.S. textiles, it must have enforceable rules and the government must be willing to enforce those rules. Again using NAFTA as a guide, the textile and apparel rules in an FTAA must have origin requirements that prevent countries outside the agreement from becoming beneficiaries. The rules must also allow for cross-country Customs verification and have reciprocal tariff phase-outs. Enforcement is key; each time that free trade is expanded, the opportunity for goods from outside the free trade region to enter illegally is expanded as well.

### 4. H.R. 3009 (The Andean Trade Expansion Bill)

As clearly stated in our testimony to this Committee last year, H.R. 3009, the Andean Trade Expansion Bill, would cost thousands of U.S. textile jobs at a time when our industry is already reeling from its worst economic crisis since the 1930s.

We are pleased that the Committee acted on one of the arguments we made against the bill when it was before the Committee last October. That version contained language that would have let Andean apparel, using fabrics formed anywhere in the world, enter the U.S. free of duties and quotas. This obvious loophole, which we pointed out prior to Committee consideration of the bill, was finally corrected prior to floor action.

However, the Committee did nothing to correct the other flaws in the bill, as noted below:

- The bill grants duty-free treatment to an enormous amount of apparel assembled in the Andean of regional fabric—nearly one *billion* square meter equivalents annually by 2006—rather than U.S. fabric. Allowing such a huge amount of apparel made of regional instead of U.S. fabric will cause further job losses in the U.S. textile industry.
- The bill does not even require that the Andean apparel be “wholly” assembled in an Andean beneficiary country. Thus, most of the assembly processes could be done in China or other Asian countries, with very limited work (such as sewing a side seam on a shirt) done in the Andean region. This would result in China and other large textile producing countries in the Far East realizing most of the benefits, not the Andean countries, and certainly not the U.S.
- Finally, unrelated to the Andean region, H.R. 3009 doubles the volume of Sub-Saharan apparel that can be made from “regional” or third country fabric. This amendment to the African Growth and Opportunity Act (AGOA) will benefit Asian fabric and yarn producers and severely limit the possibility of U.S. textile exports to AGOA countries and a meaningful economic partnership developing between U.S. textile producers and African apparel makers.

<sup>2</sup>For more information, see ATMI's report “Promises Unkept” at <http://www.atmi.org/Promises.pdf>.

As the House approved this bill by only a narrow margin, we are urging the Senate not to approve its version of the bill because any compromise in conference with such an egregiously flawed House-passed measure would still be harmful to U.S. textiles. We urge the Committee, particularly in light of our industry's current economic crisis, to reconsider and forward to the House a new bill, simply extending for another four years the Andean Trade Preference Act that just expired.

#### **5. Progress in Negotiations to Establish A Free Trade Agreement with Singapore**

We continue to stress that the proposed free trade agreement with Singapore is not equitable or fair because it would give duty-free access for textiles and apparel from Singapore at the expense of U.S. textile producers. The market for U.S. textile and apparel products in Singapore is tiny, and there is no prospect for substantially increased U.S. textile exports to Singapore.

In addition, the agreement would not actually benefit manufacturers in Singapore because, according to the U.S. Customs Service's own reports, Singapore cannot physically produce anywhere near the amounts of textile and apparel goods it is currently exporting to the U.S. In other words, these items are obviously being illegally transshipped through Singapore from manufacturers in China and other countries in Asia. As Singapore officials have refused for years to cooperate in anti-transshipment efforts, what we would have would not be a U.S.-Singapore FTA, but instead a de facto U.S.-Singapore-China-etc. FTA. We recommend that textiles and apparel be removed from the FTA.

Recent news reports indicate that Singapore is trying to use these negotiations to create a back-door entry to the U.S. for goods produced on the Indonesian islands of Batam and Bintam. We oppose this expansion of the negotiations and urge the Committee to do the same.

#### **6. Potential FTA with Certain Central American Countries**

On the matter of an FTA with various Central American countries, we question the need for beginning such negotiations less than eighteen months after the Caribbean Basin Trade Partnership Act (CBTPA) went into effect. All five of the nations identified by the U.S. Trade Representative's Office for possible inclusion in these negotiations are CBTPA beneficiary nations. It would seem more prudent to allow apparel manufacturers in these countries to continue to develop economic partnerships with U.S. textile producers, as provided for under CBTPA, before rushing to establish new relationships and rules.

#### **CONCLUSION**

The American Textile Manufacturers Institute views the trade agenda for 2002 as one containing a great many issues that could cause serious damage to U.S. textile producers and our associates. Any further harm would come at a time when we are already in an unprecedented economic crisis. Accordingly, we urge the Committee and the Congress to recognize the concerns we have voiced in this testimony and to adhere to our recommendations with respect to textile trade policies.

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#### **Statement of the Association of American Chambers of Commerce in Latin America**

The Association of American Chambers of Commerce in Latin America (AACCLA) welcomes the opportunity to submit a statement on President George W. Bush's trade agenda for 2002. The following statement will focus on the trade agenda for the nations of the Americas and its implications for economic reform, growth, and prosperity throughout the hemisphere.

AACCLA is a leading advocate of increased trade and investment between the United States and Latin America. Representing 23 American Chambers of Commerce in 21 Latin American and Caribbean nations, the association's 20,000 member companies manage over 80 percent of all U.S. investment in the region.

#### **The Prize is Slipping Away**

At the start of the 21st Century, the prize long sought by AACCLA's leadership is in danger of slipping from our fingers—namely, the prize of a hemisphere enjoying sustainable economic growth based on private enterprise and open trade. A number of factors explain why this goal remains elusive. First and foremost, the fact that the President of the United States has been forced since 1994 to direct U.S. trade policy without Trade Promotion Authority (TPA) has sapped the credibility of

Washington's efforts to forge a closer trade and investment relationship with our hemispheric neighbors.

At the same time, much of Latin America has forgotten its commitment to serious economic reform, and many governments that seek foreign investment or better access to U.S. markets are reluctant to tackle the structural reforms that are the basis of growth.

The U.S. trade agenda and Latin America's reform agenda are undeniably linked. Both the United States and Latin America need a renewed commitment from government officials and business leaders if our nations are to achieve the dream of a hemisphere united in prosperity and economic freedom.

### **Free Trade for the Americas**

President Bush came to office at a time of high hopes for advocates of greater trade between the nations of the Americas. He set the objective of making this a "Century of the Americas," with the Free Trade Area of the Americas (FTAA) as the cornerstone of this audacious project.

The basic rationale for the FTAA remains strong. Hemispheric free trade will boost economic growth and reduce poverty throughout the hemisphere. It will provide an opportunity to re-energize economic reform throughout the Americas, and it will confirm a shared commitment to the market-opening policies that create the conditions for growth.

The FTAA will encompass 34 nations with over 800 million citizens. Its collective GDP will exceed \$13 trillion. The FTAA will:

- Eliminate existing tariff and non-tariff barriers and bar the creation of new ones;
- Remove other restrictions on trade in goods and services as well as investment unless specifically exempted;
- Harmonize technical and government rule-making standards;
- Exceed World Trade Organization disciplines, where possible;
- Provide national treatment and investor safeguards against expropriation;
- Establish a viable dispute settlement mechanism; and
- Improve intellectual property rights protection.

The North American Free Trade Agreement (NAFTA) offers an excellent preview of the benefits promised by the FTAA. Since the NAFTA came into force, trade between the United States and Mexico has tripled to about \$250 billion per year. Annual trade between the United States and Canada has doubled to over \$400 billion. This explosion in trade has allowed companies in all three NAFTA countries to generate millions of new jobs. The NAFTA is one of the main reasons why U.S. companies generated over 20 million new jobs in the 1990s.

While enhanced competition in the marketplace has led to job losses in some industries, the new, trade-related jobs that have been created tend to provide better pay than the jobs that were lost. Studies show that some 12 million U.S. jobs rely on exports, and these positions pay 13 to 18 percent more than other jobs.

As Ambassador Zoellick has pointed out, the combined effects of the NAFTA and the Uruguay Round trade agreement that created the World Trade Organization (WTO) have increased U.S. national income by \$40 billion to \$60 billion a year. Thanks to the lower prices that these agreements have generated for such imported items as clothing, the average American family of four has gained between \$1,000 to \$1,300 from these two pacts.

### **TPA and U.S. Credibility**

While these benefits are recognized by government officials and business leaders throughout the Americas, many in Latin America have lately come to perceive the United States as veering toward protectionism. Even in the aftermath of the watershed December 6 approval of TPA by the House of Representatives, opinion leaders from Brazil to the Dominican Republic have charged the United States with hypocrisy for professing support for free trade while dragging its feet on the hemispheric trade agenda.

Above all, the fact that the President of the United States lacks TPA has lent credibility to the charge that our country is not serious about entering into new trade agreements. TPA empowers U.S. officials to negotiate trade agreements that the Congress can approve or reject—but not amend. Without TPA, governments around the world will continue to doubt the resolve of U.S. negotiators as they pursue bilateral agreements, regional deals such as the FTAA, and the WTO's Doha Development Agenda.

There are other reasons why the charge of protectionism leveled against the United States has some validity. Last December, for instance, the U.S. Congress al-

lowed the 10-year-old Andean Trade Preference Act to lapse despite broad support in both chambers for trade and private enterprise as a tool to deter the narcotics trade.

But nothing is as important as TPA. Without it, the United States can continue in its role as an important commercial partner for Latin America and the Caribbean. But the prospect of a hemispheric partnership that will deliver economic growth, generate jobs, and raise incomes for all the Americas will remain a mirage without TPA.

The United States is already paying a high price for its inertia on the trade agenda. Since TPA lapsed in 1994, other nations around the world have been busy weaving a spiderweb of free trade agreements. Over 130 regional trade agreements are currently in force worldwide. The European Union has signed at least 27 free trade agreements, and Mexico alone has signed over 32. However, the United States has free trade agreements with just four countries: our two NAFTA partners—Canada and Mexico—plus Israel and Jordan.

Particularly in the Americas, the spiderweb of free trade agreements that emerged in the 1990s threatens to put U.S. companies at a competitive disadvantage. Basically, other nations are negotiating trade agreements that provide preferences for their firms over our own.

Chile is a perfect example. Today, companies from Canada, Mexico, and a number of other countries enjoy duty-free access to the Chilean market. But because U.S. exporters still pay Chile's highest duty of seven percent, American companies are losing hundreds of millions of dollars in potential sales every year. As many people have observed, this is like starting a basketball game seven points behind.

#### **More Reform, Not Less**

If the United States has some work to do to regain its status as a credible partner, so do our neighbors in Latin America and the Caribbean. The bottom line for the region is that there is an urgent need to jump-start the economic reform process. This is especially true for the structural reforms that have been postponed again and again in country after country.

Argentina is a case in point. The U.S. media have been quick to offer their back-of-the-envelope analysis of Argentina's economic collapse. Unfortunately, the conventional wisdom leaves much to be desired. Many of these overnight experts say that a decade of unbridled free-market policies ended in tears for Argentina. They say that too much deregulation and too much privatization finally imposed too much pain on a weary population.

This is nonsense. The reforms that Argentina did carry out helped its economy and its people a great deal. But the reforms it procrastinated—and a dose of bad luck—are responsible for the country's current predicament.

Consider the widely maligned 1-to-1 peg of the peso to the dollar. The decision to anchor the peso to the dollar was made in 1991 amid labor strikes and fears of a military coup. The result was almost immediate success. The peg restored credibility to the peso, reigned in hyperinflation, and brought the first economic stability to that country in our lifetimes. Argentina enjoyed half a decade of impressive economic growth. There is no doubt that the peg outlived its usefulness, but it did enormous good as long as its discipline was followed.

Consider, on the other hand, the reforms Argentina failed to tackle. The country's political system provided no control over spendthrift state governors. The country's rigid labor laws never got the comprehensive reform they need, and in some instances privatization led to the creation of new private monopolies instead of competitive markets.

Argentina makes an easy target, but the list of reforms that have yet to be tackled is long in just about every country in the region. Consider Brazil. The Heritage Foundation/Wall Street Journal *Index of Economic Freedom* writes that in Brazil, "economic development remains thwarted by over-regulated domestic markets that attract little capital, as well as a convoluted and punitive tax code."

Consider Peru. The Office of the U.S. Trade Representative cites the "weakness of government institutions" and explains that "Executive Branch ministries, regulatory agencies, and the judiciary lack the resources, expertise, and independence necessary to carry out their respective duties."

Consider Venezuela. President Chávez approved a package of draconian economic laws in November that so frightened and enraged the public that the country's major business organizations and leading labor unions joined forces in a national strike.

A tour through the region would reveal that the "second generation" reforms long called for have stalled in most countries, undermining investor confidence and gen-

erating economic instability. Latin American governments should look upon Argentina's troubles today and say to themselves: "There, but for the grace of God, go I."

### The NAFTA Example

In this context, it is critical to emphasize that the reform agenda is closely tied to the trade agenda. The connection between the two is best illustrated by the way economic reform in Mexico preceded and energized the negotiations for the NAFTA.

Mexico joined the GATT in 1986, and an entire first generation of economic reforms took place in the late 1980s and early 1990s. Privatization of state-owned enterprises, efforts to restrain inflation, and the passage of laws to protect intellectual property—all were advanced before the NAFTA negotiations drew to a close. Through these reforms, the Mexican government demonstrated its commitment and seriousness of purpose to its negotiating partners in the United States and Canada.

It would be wrong to suggest that Mexico today has entered some kind of nirvana. Much remains to be done. Referring to the country's judiciary, for instance, the U.S. Department of State reports that "corruption, inefficiency, and disregard of the law are major problems," and it notes that specific proposals for reform have not been forthcoming.

But it is clear that Mexico took a great leap forward with the NAFTA. Today, Mexico exports twice as much as Brazil, even though the South American giant has an economy twice the size of Mexico's. After growing by nearly 8% in 2000, Mexico today has followed its northern neighbor into a recession, but it is a North American recession characterized by a contraction of less than 1% of GDP. It is not a classic Latin American recession, in which economies can contract by 5–10% of GDP.

Latin America urgently needs to rededicate itself to a vigorous program of economic reform in preparation for the FTAA. Support for a new generation of reform must come in great measure from local leaders—and not from Washington. But the priorities on the region's economic reform agenda are clear—fostering property rights, making labor laws more flexible, strengthening judiciaries, fixing fiscal sinkholes like Argentina's states, and modernizing regulatory institutions. This is the agenda that cannot wait.

### What Can the United States Do?

Nor can the United States afford to sit on the sidelines: the trade agenda calls for U.S. leadership today more than ever. The good news is that there are a number of fronts on which the United States can move today:

- Quick renewal of the **Andean Trade Preference Act** is imperative. Its lapse looks alarmingly like a display of absent-mindedness on the part of the U.S. Congress. If the act is not renewed soon, literally tens of thousands of jobs will be lost in the Andean countries. It is also critical that the list of products that gain access to the U.S. marketplace on a duty-free basis be expanded, above all to include textiles and apparel. The same treatment should also be afforded to leather goods, canned tuna, and footwear.
- Completing negotiations and winning Congressional approval of the **Chile-U.S. Free Trade Agreement** this year is more important than ever as a sign that the United States stands ready to forge closer ties with the countries of this hemisphere, starting with those that take the lead in reforming their economies.
- Indeed, the United States must show a willingness to engage in **bilateral negotiations** with any Latin American country that is prepared to move forward. President Bush took a positive step last month when he announced that the United States and five Central American countries will explore a free trade agreement.
- It is undeniable that some countries will be ready for a free trade agreement with the United States before others, and we should be honest about this. The Bush Administration should consider establishing a system that will get the **Free Trade Area of the Americas** up and running as soon as possible, but allow countries whose economies are lagging to be phased in over time.
- Finally, and clearly at the top of the "To Do" list for the United States, the Congress must pass **Trade Promotion Authority**. Without it, the United States is a bystander in the game of international trade. But this is no game—the prosperity of our country and our hemisphere is too serious.

### Conclusion

Events in the Americas since September 11 show that in some respects we already are the hemispheric *familia* to which President Bush frequently refers.

Brazil's President Cardoso demonstrated great leadership when he called after September 11 for activation of the Rio Treaty, which describes an attack on one

Western Hemisphere nation as an attack on all. The entire hemisphere stood with the United States, sending a ringing message of sympathy and support.

Nor is the economic outlook all black. Throughout the hemisphere, inflation has fallen from triple and quadruple digits a decade ago to single digits today. While threats to democratic rule persist in some places, it is impressive to observe how thoroughly democracy has taken root in most countries. With a few exceptions, the prospect of rolling back the substantive economic reforms of the 1990s remains a threat, not a reality.

Most heartening of all is the prospect of seeing Trade Promotion Authority approved by the U.S. Congress. We call on the Senate to move quickly to give U.S. negotiators the authority they need to bring home trade agreements that will open foreign markets. American workers, consumers, and businesses are counting on you to bring these opportunities within reach.

The Association of American Chambers of Commerce in Latin America will work day and night to make the case in the United States for approval of TPA while arguing staunchly for a renewed commitment to market-based economic reform in Latin America. Working together, the nations of the Americas can truly make this the "Century of the Americas."

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Washington, DC  
February 4, 2002

The Honorable Bill Thomas  
The Honorable Charles Rangel  
Committee on Ways and Means  
United States Congress  
Washington, DC 20515

Dear Mr. Chairman and Representative Rangel:

I am writing to you today in the context of your hearing on the Bush Administration's trade agenda. I want to first thank you on behalf of my government for all you have done to help promote trade between Bolivia and the other nations of the Andean region and the United States. Such trade is literally an economic and political lifeline for the region.

As you know, Bolivia has been an ally to the United States in its effort to help the nations of the Andean region in the war on drugs. We believe this effort has made Bolivia a regional success story. As part of a cooperative effort with the United States and the other nations of the Andean region, in 1997, Bolivia instituted its five-year anti-drug plan, the so-called "Dignity Plan." When plan began, Bolivia was the second major producer of coca in the world. There were 45,800 hectares of coca plants in Bolivia. In the three years that the plan has been in existence, Bolivia has eliminated more than 90% of coca production in the Chapare region of Bolivia. This region was formerly the largest area of illicit coca production in Bolivia.

Unfortunately, the drug trade created a significant informal sector within the Bolivian economy, accounting for approximately 3.86% of GDP in 1997. This illegal economic activity went beyond generating direct levels of employment. It also fostered economic activity in transportation, trade and industry.

In the last four years, since the implementation of the Bolivian anti-narcotic "Dignity Plan," the country has lost \$370 million due to the reduction of the gross value of coca, and \$230 million due to the added value given to this industry. This amounts to the equivalent of 60% of Bolivia's exports. All of this is extremely significant in a nation with a GDP of \$8 billion.

In addition, this illegal, underground economy has had social and political effects as well. The elimination of this scourge, while clearly the right thing to do, has put a severe strain on the Bolivian government and its people.

As you know, the Andean Trade Preference Act was designed as the trade instrument in the fight against drugs. It was meant as an incentive to lure peasants away from the coca planting to produce and export other legal products.

Because of the economic strain that Bolivia is facing, for the ATPA to help Bolivia in a significant way, it must be as comprehensive as possible. In the decade since its inception, Bolivia has accounted for only about 3.5% of the total ATPA exports to the United States. Unfortunately, this is not enough to make a difference.

Therefore, I want to thank the Committee and the House of Representatives for passing a broad-based bill that would benefit Bolivia, as well as the United States

and the nations of the region. While such an effort would help the Andean nations, the effect of this approach will be negligible to the U.S. textile industry. A 1999 ITC trade report states that apparel imports from the ATPA countries only accounts for 1% of all U.S. textile imports. Further, in general, the study concluded, "ATPA is likely to continue to have minimal future effects on the U.S. economy in general."

We urge the Congress and the Administration to pass as expansive a bill as possible. Increasing exports to the United States could be of real help to Bolivia and its people and to the overall effort to fight narco-terrorism. A strong and prosperous Bolivia is in the interest of both of our nations.

I take this opportunity to present to you, the assurances of my highest personal esteem and consideration,

Marlene Fernandez del Granado  
*Ambassador of Bolivia*

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### **Statement of the Brazil-U.S. Business Council, U.S. Section**

The Brazil-U.S. Business Council welcomes the opportunity to provide a written statement concerning President George W. Bush's trade agenda for 2002. The Brazil Council's statement will focus on the need for more engagement and cooperation between the United States and Brazil as the leaders in the Western Hemisphere and reiterates the pivotal role the approval of Trade Promotion Authority will play in the pursuit of regional prosperity and free trade agreements with other nations.

#### Brazil's Importance in the Western Hemisphere Should Not be Underestimated

Brazil is the fifth largest country in the world, with a total landmass of over 8.5 million square kilometers and a population of approximately 170 million people. Brazil is located in South America and covers a full 48% of its area. In the last decade, the country has undergone a series of reforms and a stabilization program that has positioned it as the most important country and the largest economy in the Americas after the United States and Canada.

Brazil has also embraced globalization by being an active member of the World Trade Organization and playing a key role in the formation of the Southern Cone Common Market (Mercosul) along with Argentina, Paraguay and Uruguay. Brazil is committed to negotiating a Free Trade Area of the Americas (FTAA) by 2005, along with 34 nations in the Western Hemisphere.

Brazil is the U.S.'s 11th largest export market and still growing. Among the developing countries, Brazil has become the second principal destination for foreign direct investment (FDI) flows since 1996, second only to China. Nearly 25% of this FDI comes from U.S. companies. The level of U.S. corporate interest in Brazil reflects the degree to which Brazil has succeeded in opening its market to foreign trade and investment and stabilizing its economy. Under the leadership of the Cardoso administration, Brazil has implemented important constitutional reforms that have opened key sectors of the Brazilian economy to foreign competition and investment. These actions have led to a boom in U.S. direct investment in Brazil, concentrated in the telecommunications, automotive, electrical energy and petroleum sectors.

#### U.S. Must Seize the Moment for the 21st Century of the Americas

In the wake of the Argentine crisis, Brazil Council members feel strongly that the Bush Administration should breathe new life into its goal of making the 21st century the "Century of the Americas" by reaching out to Brazil and making the development of a positive bilateral commercial agenda a top priority. Steps like forging a common approach to agriculture in the WTO, facilitating the movement of business people between our two countries while ensuring security at our borders and making important trade laws available in both languages are good ways to begin creating a new chapter in the bilateral relationship.

#### TPA is Crucial to Maintain Credibility and Momentum for the FTAA

In the trade area, the passage of Trade Promotion Authority (TPA) is a top priority for the Brazil-U.S. Business Council, and we commend President Bush's leadership in helping pass this important legislation through the House of Representatives in December of 2001. Passage of TPA in Congress is crucial for maintaining U.S. credibility with its trading partners and for continuing the momentum for FTAA and WTO negotiations. First, because the U.S. president has not had Trade Promotion Authority since 1994, Brazil and other developing countries have become



skeptical of the U.S. commitment to negotiate bilateral and multilateral trade agreements and argue that the U.S. is not serious about entering in "good faith" negotiations. Secondly, we need to keep the momentum for the FTAA and WTO negotiations. FTAA market access discussions are expected to begin in April of 2002, and a new round of WTO negotiations was launched during the Doha Ministerial last year. Negotiations for both the FTAA and the WTO are set to conclude by 2005, and we must not lose the momentum achieved thus far.

In fact, Brazil and the United States will co-chair the FTAA negotiations starting in October. The U.S. should see this as an opportunity to build and expand on the common areas of interest with not only Brazil, but also other developing countries in the hemisphere.

Moreover, advancing the negotiation of the FTAA is also critical because Mercosul is aggressively moving to advance negotiations with our competitors in the region and in Europe. These agreements would give them preferential access to the Brazilian market and could facilitate the erosion of the U.S. market share in Brazil. In fact, Spain has taken a significant slice of FDI in Brazil, right behind the U.S., with over 17% of average share of investments.

In addition, we would like to underscore the importance of communicating to our partners in Brazil what the bill means for them. It is critical that we reverse the conventional wisdom in Brazil that the current TPA bill is a step back for trade liberalization if we are going to successfully complete the FTAA. Instead, we want to communicate to our trading partners, especially Brazil, that the bill is a sign that the U.S. is committed to pursuing prosperity in the hemisphere and its ability to move forward on trade agreement negotiations with other countries in the Americas.

#### 2002 is Key for Future of Bilateral Relationship

2002 is a critical year for the future of Brazil-U.S. trade and investment. When Brazilians go to the polls in October they will not only be deciding who their next President will be but will be setting the course for the future economic policy of the country. The Brazil-U.S. Business Council will continue to work with the Cardoso Administration to ensure the implementation of critical economic reforms before the end of the year. The Council will also work to promote and communicate its members' priorities to the new Brazilian Administration and hopes the U.S. Government will see this as an opportunity to build stronger ties with Brazil in pursuit of economic growth in the region.

#### Conclusion

Brazil's importance for the hemisphere is clearly demonstrated by its engagement in global and regional trade agreements as well as its growing attractiveness for foreign direct investment. It is also clear that Brazil and the U.S. are moving forward along a path to a stronger commitment in the hemisphere. We salute President Cardoso's leadership after September 11 in calling for the activation of the Rio Treaty stating that an attack on one Western Hemisphere nation is an attack on all. This message of support and sympathy signifies that both countries can achieve a great deal through cooperation.

In order to ensure the continued economic growth and prosperity in the region and the world, we must not lose sight of the FTAA and WTO negotiations. However, we must first secure passage of TPA in the U.S. Congress, not only to send a message to our trading partners that we are serious about the negotiations, but also to maintain our credibility as a leader in the world.

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Established in 1976, the Brazil-U.S. Business Council is the most influential U.S.-based business organization focused on strengthening trade and investment between Brazil and the United States. The U.S. Section of the Council represents the majority of the largest U.S. corporations invested in Brazil and operates under the aegis of the U.S. Chamber of Commerce. The Brazil Section of the Council is managed by the Brazilian National Confederation of Industry in Brazil, based in Rio de Janeiro.

**Statement of the Hon. Eni F.H. Faleomavaega, a Representative in  
Congress from American Samoa**

**Introduction**

As a member of the U.S. House International Relations Subcommittee on the Western Hemisphere, I fully support Andean efforts to curb drug production. However, as the Ranking Member of the House International Relations Subcommittee on East Asia and the Pacific, I believe any trade policy we enact must be fair and non-discriminatory. Whether or not canned tuna is included in the Andean Trade Preference Expansion Act (ATPEA) is a matter of global concern. Thailand, Indonesia, the Philippines, Vietnam, Cambodia, Brunei, Malaysia, Singapore, Lao, and Myanmar recognize that preferential trade treatment for the Andean countries will adversely affect the ASEAN tuna industry. ASEAN member countries also contend that granting duty-free trade benefits to one region at the expense of another could be seen as a discriminatory practice to developing countries, including ASEAN member countries which do not receive any trade preferences regarding canned tuna.

For the U.S. Territory of American Samoa, the issue is also complex. More than 85% of American Samoa's economy is either directly, or indirectly, dependent on the U.S. tuna fishing and processing industries. Two canneries, Chicken of the Sea and StarKist, employ more than 5,150 people or 74% of the workforce. If canned tuna from Ecuador and other Andean countries is given the same preferential trade status as canned tuna from the U.S. Territory of American Samoa, more than 5,000 workers in American Samoa will be at risk.

Although H.J. Heinz, parent company of StarKist, has tried to dismiss our concerns and pretend that the ATPEA will not affect American Samoa, it is important for members of Congress to understand that the ATPEA will affect our local economy. As Star Kist has repeatedly stated, the only market for tuna from American Samoa is the U.S. Therefore, duty-free treatment for canned tuna from Ecuador and other Andean countries equals financial problems for American Samoa. The CEO of Chicken of the Sea has already stated that if canned tuna from Andean countries is given the same preferential trade status as canned tuna from American Samoa, production in American Samoa will be at immediate risk. As Star Kist has repeatedly testified, "a decrease in production or departure of one or both of the existing processors in American Samoa could devastate the local economy resulting in massive unemployment and insurmountable financial problems."

**Growth of the Andean Tuna Industry**

To understand the serious implications this legislation holds for American Samoa, we must first take a look at the growth of the tuna industry in Ecuador and other Andean countries. According to industry analysts, since the enactment of the ATPA in 1991—

Tuna factories in the Andean countries have increased from 7 to 23, up 229%.

Production capacity has increased from 450 to 2,250 tons per day, up 400%.

Direct employment has increased from about 3,500 to 12,500 new employees, up 257%.

Exports to the U.S. have grown from about \$15 million to over \$100 million annually, up 567%.

In the past ten years, the Andean tuna fishing fleet has also grown from about 20 to 90 fishing vessels. Today, the Andean Pact countries control more than 35% of the catch in the Eastern Pacific Tropic (EPT).

In terms of production, Ecuador and Colombia have the capacity to jointly process 2,250 tons of tuna per day.

2,250 tons per day × 5 days (or 240 days per year) = 540,000 tons of tuna or 48.6 million cases per year.

American Samoa processes about 950 tons of tuna per day.

950 tons × 5 days per week (or 240 days per year) = 22,800 tons of tuna or 20.5 million cases per year.

48.6 Andean cases + 20.5 million Samoan cases = 69.1 cases per year.

Given the fact that the U.S. only consumes 48 million cases per year, the Andean countries have the production capacity to supply the entire U.S. market and wipe out the economy of American Samoa. Add to this the fact that labor rates in the Andean countries are \$0.69 per hour and less. In American Samoa the labor rates

are \$3.26 per hour. If Ecuador and other Andean countries are given limitless access to the U.S. tuna market, American Samoa will be priced out of the market place.

#### **What Congress Needs to Know**

The U.S. has NEVER extended duty-free treatment to canned tuna from a country that has the capacity to supply the entire U.S. market place. I think it is also worth noting that the Southeast Asian Nations and Mexico are so concerned about Ecuador ruling the U.S. market that they have hired independent lobbying firms in Washington to protect their interests and represent their views before the U.S. Congress.

Ecuador is also continuing its lobbying effort. Ecuador's Minister of Foreign Affairs, the Honorable Heinz Moeller, has visited with the White House Administration, the Secretary of Commerce, the U.S. State Department, and with key Members of Congress to gain support for the inclusion of canned tuna in the ATPEA.

Minister Moeller also contacted my office and requested a meeting to discuss the matter in further detail. On January 22, 2002, Minister Moeller and I met in my Washington office. Accompanying the Minister was the Ambassador of Ecuador, the Honorable Ivonne A-baki, and other Chief Ministers. The Ecuadorian Delegation shared its concerns about the on-going drug problem in Latin America and made a compelling argument that expanded trade benefits would assist the Andean countries in curbing drug production. Although I want to be helpful to Ecuador in its efforts to curb drug production, I continue to believe that the issue of preferential treatment for canned tuna should be debated on its own merits. I do not believe a discussion about tuna should be couched in the rhetoric of an anti-drug campaign.

However, if Congress chooses to make the debate about drugs, then I want the record to reflect that American Samoa does not grow drug crops. American Samoa does not export drug crops. Our economy, whether up or down, is in no way associated with drug production. American Samoa does not need and has not asked for preferential treatment to rid itself of illegal trade. Instead, American Samoa has built on the principles of fair trade. More than 100 years ago, we established relations with the United States and freely pledged our allegiance to uphold the principles of democracy. More than 40 years ago, we welcomed the tuna fishing and processing industry to our remote islands. We worked, we toiled, we built. Today, our economy is more than 85% dependent on the U.S. tuna industry.

I do not believe American Samoa should now be placed at a trade disadvantage because it has no past or present affiliation with drug production. I do not believe American Samoa should be penalized for practicing the principles of fair trade. The fact of the matter is whether or not canned tuna from Ecuador is given preferential trade treatment has little to do with whether or not drug production in Latin America will be curbed.

Beyond this, Ecuador is not lacking for products or commodities to export. In fact, Ecuador has substantial oil resources and a GDP purchasing power parity of \$37 billion. Ecuador exports \$5.6 billion in products and commodities, including petroleum, bananas, shrimp and coffee. According to some analysts, two-way trade between the United States and the Andean region has more than doubled to \$28.5 billion a year since enactment of the Andean trade agreement in 1992. With this kind of growth, are we really supposed to believe that Ecuador has to corner the tuna market in order to fight the drug war?

I believe it is important for the U.S. Congress to know that Ecuador is rapidly becoming the 3rd largest supplier of albacore to the U.S. If Ecuador is allowed duty-free access, it will become the largest supplier of light meat tuna to the U.S. No matter what others may contend, this will affect the local economy of American Samoa. With labor rates of \$0.69 and less per hour in the Andean countries, American Samoa will not be able to remain cost competitive.

Although the U.S. Territory of American Samoa cannot protect its market-share indefinitely, the concerns of the Territory must not be marginalized. Parameters of fairness and equity must be established. Compromise must be supported. If Congress fails to defend U.S. interests, American workers will be displaced. For every million cases that enter the U.S. duty-free, American Samoa will lose—

- 270 jobs
- \$18 million in processing revenue
- \$5 million in utilities, overhead, local economy
- \$1.5 million in wages
- Thousands of dollars in lost tax revenue

The U.S. tuna fishing fleet will also be forced out of business. The U.S. tuna fishing fleet currently supplies about 90% of the catch used by the canneries in American Samoa. This catch is caught in the Western Pacific Tropic (WPT). If operations

in American Samoa are forced to close or downsize, the U.S. fishing fleet will lose the WPT market. Furthermore, the U.S. tuna fishing fleet will NOT be allowed to fish in the Eastern Pacific Tropic (EPT) because all available fishing licenses in the EPT have already been claimed by Mexico, Ecuador, and other Andean countries.

### **Compromise**

In an effort to expand canned tuna trade benefits to the Andean Pact countries and ensure the continued viability of the U.S. tuna fishing and processing industries, I have worked to build a bi-partisan base of support for compromise. In October of last year, the U.S. House took up H.R. 3009 without a hearing and passed the ATPEA with the understanding that a compromise would be reached on the issue of canned tuna. Congressman Bill Thomas, Chairman of the House Ways and Means Committee, gave me his personal assurances that he would work with me to protect American Samoa.

In December, the Senate Finance Committee considered S. 525. Prior to the markup, Senator Daniel Inouye (D-HI), Senator Daniel Akaka (D-HI), Senator Frank Murkowski (R-AK), Senator Ted Stevens (R-AK) and Congressman Randy "Duke" Cunningham (R-CA) joined me in sending a letter to Senator Max Baucus, Chairman of the Senate Finance Committee. In this letter, we expressed our opposition to the inclusion of canned tuna in S. 525.

We also worked with Chicken of the Sea, Bumble Bee, and the U.S. tuna boat owners to craft a compromise amendment that would help the Andean countries and protect American Samoa. Although Star Kist objected to our compromise, we gathered enough votes to secure its passage. Senator John Breaux (D-LA) was kind enough to offer the amendment. Senator Majority Leader Tom Daschle (D-SD), Senator Max Baucus (D-MT)—Chairman of the Senate Finance Committee, Senator Orrin Hatch (R-UT)—Ranking Member on the Senate Finance Subcommittee on International Trade, Senator John Rockefeller (D-WV), Senator Frank Murkowski (R-AK), Senator Kent Conrad (D-ND), Senator Blanche Lincoln (D-AR), Senator Robert Torricelli (D-NJ), Senator Olympia Snowe (R-ME), and Senator Craig Thomas (R-WY) supported our compromise in a 11–9 vote.

The Breaux amendment offers a duty-free window for canned tuna exports of up to 20% of U.S. domestic production. The compromise amendment also includes a source of origin provision, patterned after the European Union's agreement with the Andean Pact countries, to ensure that all tuna entering the U.S. duty-free is caught by Andean or U.S. flag ships. Chicken of the Sea, Bumble Bee, and the U.S. tuna boat owners support this amendment. Star Kist does not. To date, Star Kist has offered no compromise of its own. Ecuadorian boat owners, however, have agreed to support our source of origin provision.

We have included this source of origin provision because more than 56% of the flag ships in the Eastern Pacific Tropic (EPT) are non-Andean. We have also included it because Ecuador is rapidly becoming the third largest exporter of canned/pouch albacore to the U.S. yet harvests very little of the raw tonnage. In fact, nearly 39% of all albacore is harvested by Japan. Taiwan harvests 27%. The EU harvests 15%. The U.S. harvests 7%. Much of this albacore is caught in the Western Pacific Tropic (WPT) and is off-loaded in American Samoa. However, if Ecuador gets unlimited, duty-free access, albacore will be unloaded in Ecuador and the ATPEA will become an avenue for Japan and Taiwan to gain duty-free access to the U.S. market.

As a case in point, Star Kist recently purchased 1,000 tons of albacore in Taiwan at a retail value of approximately \$7 million and shipped it on the Longshoon to Ecuador. Needless to say, Star Kist is the only U.S. tuna processor that opposes our source of origin provision.

### **About Star Kist**

In August of 2001, when the U.S. Senate Finance Committee held a hearing on the matter of the ATPEA, Star Kist testified. Although Star Kist is the largest employer in American Samoa, Star Kist at no time informed our local legislature, the Governor's office, or my office that it intended to support an international trade measure that would wreak havoc in the global tuna industry and cause insurmountable financial problems for our Territory.

Star Kist, of course, is under no obligation to inform any of us of its intent. However, after a 40-year relationship together, common courtesy dictates that Star Kist would have considered our views and asked for our input before arbitrarily supporting a trade agreement that seriously threatens our way of life. Star Kist maintains that it did not inform any of us because the ATPEA will not affect us.

My friends, the U.S. Congress knows that the ATPEA will affect American Samoa. Ecuador knows. Mexico knows. The Southeast Asian nations know. The U.S.

State Department knows. The Office of the U.S. Trade Representative knows. Chicken of the Sea knows. Bumble Bee knows. The U.S. boat owners know. The ATPEA will affect American Samoa.

Since August of 2001, I have taken American Samoa's case to the House, to the Senate, to the public, to the people. In October of last year, more than 10,000 residents of American Samoa joined me in this effort. In November, the Governor of American Samoa pledged his support. In February 2002, the American Samoa Legislature also decided to support our position of compromise.

### **Conclusion**

As with any trade agreement, I believe it is incumbent upon the beneficiary countries to ensure that they are complying with the requirements associated with preferential trade. Although some have suggested that the source of origin provision in the compromise amendment may not be enforceable or administrable, current law requires all importers of canned/pouch finished goods to provide documentation listing origin of the raw material. All vessels fishing in the EPT are required to register with the Inter-American Tropical Tuna Commission (IATTC) and are identified by flag, vessel, capacity and name. When the vessels off-load their catch at the canneries, the canneries are able to determine whether or not the tuna was caught by Andean or U.S. flag ship. For enforcement purposes, the U.S. Customs would only have to do an occasional audit to ensure that the canneries are in compliance.

I am hopeful that the U.S. Customs Service will support occasional audits of the Andean canneries. For the information of the Committee, recent reports confirm that more than five containers loaded with tuna cans were found to contain approximately 1,600 lbs. of cocaine. The cocaine shipments originated from Ecuadorian canneries and were shipped from Manta, Ecuador to the Port of Vigo. At the cannery site, authorities also found machinery used to process tuna loaded with cocaine.

While it is in the interest of the United States to support Andean efforts to curb drug production, we must not turn a blind eye to reality. Our desire to be helpful must be tempered by common sense and compromise. The compromise supported by the Senate Finance Committee is fair and reasonable. It is a constructive solution to a complex issue. It is a good-faith effort that deserves the support of both the House and Senate.

I thank Chairman Thomas for his willingness to consider the needs of American Samoa. I also thank Congressman Rangel for his tireless support. In this time of national crisis, I am hopeful that the Committee will continue its effort to move this legislation forward in a way that expands opportunities for the Andean countries and ensures the continued viability of the U.S. tuna fishing and processing industries.

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## **Statement of Joe Gaynor, Goss Graphic Systems, Inc., Westmont, Illinois**

### **Introduction**

This testimony is submitted on behalf of Goss Graphic Systems, Inc., of Westmont, Illinois ("Goss"). Goss opposes enactment of H.R. 3557 in its current form. If the United States amends or repeals the Antidumping Act of 1916, 15 U.S.C. § 72 ("the Act"), to conform its laws to decisions by World Trade Organization ("WTO") dispute settlement panels, the changes to the Act should be prospective only, so as not to deprive U.S. companies of vested rights and remedies. Goss urges Congress to satisfy the United States' international obligations, but in a manner that does not deprive U.S. companies of their legal rights. Retroactive repeal as proposed by H.R. 3557 would harm Goss and would harm the United States in future trade disputes. A more detailed legal analysis follows this statement.

### **Goss and the 1916 Antidumping Act**

Goss is one of the few U.S. companies with first-hand experience with the 1916 Antidumping Act. For more than 100 years, Goss has been a global leader in the manufacturing of web offset printing presses for the newspaper and commercial printing industries. Goss is proud of the fact that so many of the newspapers from which Americans get their daily news are printed on Goss presses.

During the early 1990s, Goss increasingly found itself competing with low-priced presses imported from Japan and Germany. These imported presses were being sold in the U.S. market at prices far less than Goss believed they cost to produce. Goss filed antidumping petitions against large newspaper printing presses from Japan and Germany, and won. The U.S. Department of Commerce determined that the for-

eign producers had been dumping their large presses on the United States market by selling the presses here at less than their cost of production. The U.S. International Trade Commission unanimously found that those unfairly traded imports threatened injury to the U.S. industry. The Department of Commerce imposed antidumping duties of 30–62% on imports of large newspaper printing presses from Germany and Japan. Goss was hopeful that, with antidumping orders in place, fair trade would resume and it would recover from the injuries caused by the unfair dumping.

Despite the presence of the antidumping orders, Goss continued to lose sales to dumped imports. As a result, Goss was forced to close down U.S. facilities and lay off hundreds of valued U.S. workers. In 1999, the company sought to reorganize under Chapter 11 of the Bankruptcy Code.

At that point, Goss concluded that the German and Japanese producers were literally trying to drive it out of business. This is exactly the sort of situation the 1916 Antidumping Act was intended to address. The Act provides that, if a foreign company is dumping merchandise in the United States, with the intent of injuring or eliminating a U.S. industry, a U.S. producer can sue in district court for treble damages. The standard of proof is substantial, and the 1916 Act has been used very rarely. Nonetheless, Goss was convinced that its case met the standard.

In early 2000, the company filed a suit under the Act in the U.S. District Court for the Eastern District of Iowa against four foreign printing press manufacturers and their U.S. subsidiaries, alleging that the defendants had illegally dumped their products in the United States with the intent of injuring or destroying the U.S. industry. The suit, which is still pending, seeks damages for unfair dumping that took place starting in 1995, long before the EU and Japan began their challenge in the WTO to the 1916 Act. Significantly, in March 2001, the Federal judge overseeing Goss' suit denied the defendants' motions to dismiss the case. Goss has invested a great deal of money and resources prosecuting its claims in this case, which has now been pending for almost two years.

The impact of the unfair and illegal dumping on Goss, its shareholders and workers has been disastrous. After emerging from bankruptcy in 2000, Goss filed for bankruptcy again in 2001. It has entirely closed its manufacturing facilities in Reading, Pennsylvania and ceased the vast majority of production work in Cedar Rapids, Iowa. Hundreds of U.S. workers have lost their jobs.

Goss can still recover. Goss International Corporation, with backing from an investment consortium, announced its purchase of Goss' assets on February 18, 2002. This investment is important for the continued success of Goss' business and its efforts to rebuild, especially when combined with the damages Goss hopes to recover from its 1916 Act suit. Indeed, Goss believes that it must win its 1916 Act case if there is to be any prospect of reopening the Cedar Rapids plant. A retroactive repeal of the 1916 Act would make this impossible.

#### **The WTO and the 1916 Act**

In an action unrelated to Goss' suit, the European Union and Japan filed complaints with the WTO, alleging that the 1916 Act was inconsistent with the obligations of the United States under the General Agreement on Tariffs and Trade ("GATT") and the Antidumping Agreement. The WTO panels ruled that the 1916 Act was inconsistent with these measures, but only *after* Goss had filed its lawsuit in Federal district court. The WTO Appellate Body affirmed the panels' findings. The United States accepted these results and undertook to make the changes necessary to bring its law into compliance with the WTO.

#### **Retroactivity and WTO Precedent**

To conform to the WTO dispute panels' findings, the U.S. Trade Representative proposed repeal of the 1916 Act. Chairman Thomas introduced H.R. 3557 to accomplish this. This bill repeals the law for pending as well as future cases. There is only one such active case—Goss'.

The WTO panel reports did not require retroactive repeal in order to bring U.S. law into conformity with U.S. WTO commitments. The panels' determinations stated only that U.S. law in its current form was inconsistent with the international obligations of the United States. Nothing in the WTO panel reports or in WTO rules or precedent requires the U.S. to reach back and take away Goss' right to recover for illegal dumping that occurred years before the panel's rulings or compliance deadlines. Indeed, it would be most unusual for a WTO panel to identify what a country must do to bring its laws into compliance with WTO commitments.

The WTO consistently has accepted actions having prospective effect as adequate to satisfy a country's obligations. The attached legal analysis demonstrates that the WTO does not require retroactive repeal of inconsistent laws. Amending or repealing

the 1916 Act prospectively is more than adequate to comply with the dispute panels' rulings, and the United States has no reason to take the extra, unprecedented step of making changes retroactively. The United States has even less reason to take such action where, as here, a U.S. company and U.S. workers would suffer as a result.

Retroactive repeal in response to the WTO panel reports would also set a dangerous precedent for the U.S. and the entire WTO dispute resolution system. Consider, for example, the billions of dollars of additional sanctions that could be sought if complaining countries were able to reach back and seek relief for "subsidies" granted under the U.S. foreign sales corporation law since 1995.

As demonstrated in the attached legal analysis, retroactive repeal of the 1916 Act is also contrary to U.S. legal tradition and public policy.

### **Prospective Repeal**

Therefore, Goss urges Congress to make any repeal of the Act prospective only. If the United States follows this course, it will be in compliance with its WTO obligations.

If Goss is allowed to pursue its case based on illegal dumping that occurred between 1995 and 2001, there would be no basis for trade sanctions or other relief against the United States. If the EU and Japan appealed to the WTO for such relief, they would have to prove appropriate trade damages. In this context, they would need to establish that the prospective-only repeal of the 1916 Act caused a chilling effect on *future* trade. Because Goss' suit only seeks damages for *past* dumping, it is inconceivable that the continuation of the suit would have any adverse impact on future imports. Thus, there is no reason for Congress to reach back and enact a retroactive repeal.

Congress can bring the United States into full conformity with the WTO panel decisions, while preserving Goss' rights, through a simply drafted piece of legislation. Congress should amend H.R. 3557 to provide as follows:

#### **SECTION 1. REPEAL OF THE 1916 ACT.**

(a) REPEAL—Section 801 of the Revenue Act of 1916 (as enacted by 39 Stat. 798), is repealed.

(b) EFFECT OF REPEAL—The repeal of such Section 801 by subsection (a) shall not apply to nor affect any action filed under Section 801 prior to the date of the enactment of this Act.

This amendment would make repeal of the 1916 Act apply as of the date of enactment, and would satisfy U.S. WTO obligations. It also would allow Goss to pursue its remedy to recover damages suffered as a result of years of predatory dumping—injuries that were suffered long before Japan and Europe challenged the 1916 Act. Illegal dumping has caused Goss to lose sales and profits, experience two bankruptcies and close key facilities. Hundreds of U.S. workers have lost their jobs. Fundamental fairness requires that Congress protect existing rights by making any changes to the 1916 Act prospective only.

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## **Attachment**

### **WTO PRECEDENT AND U.S. LAW MANDATE PROSPECTIVE ONLY APPLICATION OF ANY LEGISLATIVE CHANGES REQUIRED TO CONFORM U.S. LAWS TO WTO OBLIGATIONS**

#### **I. The Letter and Spirit of the WTO System Call For Prospective Application**

A prospective-only application of any measure to bring the 1916 Act into conformity is entirely consistent with the rules and policies governing the WTO dispute resolution system. Nothing in the law governing GATT or the WTO requires the United States to reach back six or seven years and retroactively take away rights and remedies that existed during that period. The U.S. Court of International Trade has recognized that the GATT includes no provision for retroactive relief.<sup>1</sup> Indeed, the WTO dispute resolution system is premised on the assumption that prospective compliance in response to an adverse WTO ruling is the most that can be required or expected. The WTO Dispute Settlement Body ("DSB") routinely directs parties to

<sup>1</sup> *Cementos Anahuac del Golfo, S.A. v. United States*, 689 F. Supp. 1191, 1213–1214 (Ct. Int'l Trade 1988).

bring offending laws into compliance by established deadlines; thus, it eliminates inconsistent trade practices from that point forward, not retrospectively.

The DSB took such action in the *Beef Hormones* case, for example, when the arbitrators based the damage award on what they determined to be the amount of hormone-treated beef the United States and Canada could have expected to export to the EU had the hormone ban been lifted on May 13, 1999—the date established by the DSB for EU compliance with the WTO’s ruling.<sup>2</sup> Significantly, the arbitrators calculated the level of nullification and impairment based on *prospective* exports *after* the expiration of the reasonable time period granted to the EU for compliance. The WTO did not provide for any retroactive remedy concerning exports lost prior to the deadline for compliance.

## II. Retroactivity is Inconsistent With WTO Procedures and Would Establish A Dangerous Precedent

Retroactive application of a conforming measure is highly unusual in the WTO system. In fact, the WTO has deviated only once from its standard prospective damage calculation, in a heavily criticized case regarding Australian automotive leather. There, the WTO directed the repayment of subsidies granted prior to the issuance of the WTO panel decision.<sup>3</sup> Members uniformly regard this decision as an aberration that exceeded the dictates of WTO and international law. In fact, the United States, the complaining party in the case, itself stated that the remedy went beyond what it had requested or believed to be appropriate.

A retrospective remedy in regard to the 1916 Act would set a dangerous precedent for future trade disputes. Trade relations and the implementation of WTO remedies already are sufficiently difficult without the added complexity involved in mandating their retroactive application.

For example, Congress repealed the offending portions of the U.S. foreign sales corporation law prospectively only.<sup>4</sup> In that case and others like it, a retroactive repeal could have devastating effects. For example, a retroactive repeal that reached back and invalidated years of tax benefits granted under the prior law would impose literally billions of dollars in additional taxes on U.S. companies who legitimately relied on the state of the law at the time. Congress obviously has not taken such action with respect to the foreign sales corporation law. It should not set a precedent with retroactive repeal of the 1916 Act that could be used to force similar action in the foreign sales corporation matter or in other trade disputes.

## III. Prospective Application is Consistent With U.S. Law

U.S. law also supports the prospective-only application of any measure to bring the 1916 Act into conformity with U.S. WTO obligations. Non-retroactivity is a venerable principle inherited from English common law. The U.S. Supreme Court has spoken clearly regarding retroactivity, finding that “the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic.”<sup>5</sup> The Supreme Court has further stated that:

Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the “principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal.”<sup>6</sup>

Retroactive statutes are “not favored in the law.”<sup>7</sup> Given this presumption, Congress should make the repeal of the 1916 Act retroactive only if necessary to comply with the WTO. It is not.

<sup>2</sup>European Communities—Measures Concerning Meat and Meat Products (Hormones), Decision by the Arbitrators, WT/DS26/ARB (July 12, 1999) ¶ 38.

<sup>3</sup>Australia—Subsidies Provided To Producers and Exporters of Automotive Leather, WT/DS126/R (May 25, 1999); WT/DS126/5 (June 18, 1999); WT/DS126/6 (July 8, 1999); WT/DS126/11 (July 31, 2000).

<sup>4</sup>The ongoing controversy associated with the foreign sales corporation case has nothing to do with the timing of the repeal, *i.e.* whether it was prospective or retroactive in nature. See United States—Tax Treatment For Foreign Sales Corporations, WT/DS108/AB/R, (Feb. 24, 2000); WT/DS108/25 (Feb. 4, 2002); Sections 5 (a) and (c) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, Pub. L. 106–519 (“FSC Act”) (amendment applies only to transactions after compliance period; lengthy transition period exists).

<sup>5</sup>*Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994).

<sup>6</sup>*Id.* at 265 (quoting *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990)).

<sup>7</sup>*Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988).



Goss is seeking damages for dumping which started in 1995, four years before Japan and the EU even requested consultations with the United States regarding the 1916 Act. Complying with the WTO's decisions on the 1916 Act does not require extinguishment of a cause of action that accrued, or a case that was filed, prior to the effective date of any repeal.

#### **IV. Congress Has Mandated A Presumption Against Retroactivity**

Congress itself has codified the presumption against retroactivity in 1 U.S.C. § 109, which provides that the repeal of a statute *will not* extinguish causes of action that already have accrued:

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

Retroactive repeal of the 1916 Act would strip Goss of the substantive rights it held when it filed the complaint. Congress may not simply legislate retrospectively without regard for due process.<sup>9</sup> To do so would be not only fundamentally unfair, but would deny Goss its reasonable expectation of pursuing a claim for relief under the 1916 Act. Such a course of action would directly contravene not only the U.S. Supreme Court but also Congress itself.

Further, Congress may not strip vested property rights from a private (corporate) citizen without implicating Fifth Amendment Takings Clause issues. The Supreme Court has approved such deprivation of vested property rights only in extremely limited circumstances, such as for a public use, upon payment of just compensation, or given clear evidence of prior congressional intent to apply a law retroactively.<sup>10</sup> None of these circumstances are applicable here.

Finally, the Supreme Court has ruled that retroactivity must not deny parties due process.<sup>11</sup> Only a "rational legislative purpose," the likes of which does not exist in favor of retroactive repeal of the 1916 Act, may overcome such a high threshold test.<sup>12</sup> On the contrary, retroactive repeal of the 1916 Act would strip Goss of the substantive legal rights it held when it filed the complaint. Goss would be denied its reasonable expectation of seeing the case through to its natural conclusion. Such a result is fundamentally inconsistent with the idea of due process.

#### **V. Retroactivity and Public Policy**

Retroactive repeal of the 1916 Act is bad public policy. Retroactivity deviates from the public policy goal of allowing cases filed under valid laws to reach their natural conclusions. Should Congress retroactively repeal the 1916 Act, it would do more than upset Goss' settled expectations. It would establish a standard for such behavior in the future. This would mean that no litigant could rest assured that a case filed pursuant to a valid law would necessarily reach trial. Additionally, Congress cannot advocate the explicit contravention of established U.S. and WTO precedent without a forceful public policy reason to do so. No such reason exists here.

#### **VI. The Solution Lies in Prospective Repeal and Trusting the WTO System**

Prospective repeal of the 1916 Act would bring the United States into full compliance with the rulings of the WTO's Dispute Settlement Body. WTO dispute resolution mechanisms provide the parties with the means to resolve any differences resulting from such action. The EU and Japan are frequent participants in WTO dispute resolution and are quite familiar with the governing procedures.

Should Congress adopt prospective repeal, the EU and Japan will have the right to file a protest in the suspended arbitration proceeding. Continued resolution of this trade dispute at the WTO is preferable, however, to retroactive repeal of a U.S. law when such action is not required under the WTO. Keeping the debate at the WTO also would allow the parties to address the key issue of appropriate countermeasures.

The potential liability of the United States is highly speculative. Pursuant to Dispute Settlement Understanding ("DSU") Article 22.4, any countermeasures (*i.e.*, suspension of concessions or other WTO obligations) must equal the "nullification and impairment" of benefits incurred by one party as a result of the other's breach of

<sup>8</sup> 1 U.S.C. § 109.

<sup>9</sup> *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16–17 (1976).

<sup>10</sup> *Landgraf*, 511 U.S. 244, 246, 266, 282–283 (1994).

<sup>11</sup> *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984).

<sup>12</sup> *Id.* at 717.

WTO obligations. Therefore, should prospective repeal of the 1916 Act result in a judgment entered or settlement in favor of Goss, the EU or Japan would have to prove that such a judgment or award constitutes trade damage under the WTO for which the United States might be accountable. Proof of such trade damage would be difficult, if not impossible.

**VII. Conclusion**

Retroactive repeal of the 1916 Act would be contrary to both WTO and U.S. practice and precedent. Retroactive repeal of the 1916 Act is simply not required in order to bring U.S. law into conformity with our Nation's WTO obligations. Retroactive repeal would unnecessarily disadvantage companies such as Goss that filed claims based on laws valid at the time. For these reasons, Goss urges Congress to adhere to WTO and U.S. legal precedent and provide that any amendment or repeal of the 1916 Act take effect prospectively only.

H.J. Heinz Company  
Pittsburgh, Pennsylvania 15219-2857  
*February 6, 2002*

The Honorable Bill Thomas  
Chairman  
Committee on Ways and Means  
United States House of Representatives  
*Washington, DC 20515*

**RE: February 7 Hearing on Administration's 2002 Trade Agenda**

Mr. Chairman and Members of the Committee:

I am writing on behalf of the H.J. Heinz Company—a global leader in the food industry with almost \$10 billion in annual sales, over 40,000 employees and some of the best brands in the business including Heinz ketchup, Ore-Ida potatoes and Star Kist tuna.

Last year, the Ways and Means Committee approved legislation (H.R. 3009) that would extend and expand the Andean Trade Preference Program. Heinz actively supports that legislation and was pleased that the full House has passed it as well. Heinz's support for the legislation is due in large measure to its inclusion of processed tuna as a preference item under an expanded ATPA program. Although the inclusion of processed tuna in the legislation has become a point of controversy, we urge the Committee to continue to support the House-passed version and to insist on the inclusion of tuna when the issue is considered in conference with the Senate.

Tuna is already included as a preference item under both NAFTA and the CBI program. In neither case was its inclusion controversial because, despite claims to the contrary, the U.S. tuna industry has already moved offshore. The last full-scale U.S. mainland cannery was closed by Thai Union (which owns Chicken of the Sea) last year. Other than a small Bumble Bee automated canning line in Southern California (**which cans tuna loins imported from Ecuador at an effective duty rate of only 1.5%**), the only remaining U.S. tuna canneries are in Puerto Rico and American Samoa. The Puerto Rico facility, which is owned by Bumble Bee, announced last year the layoff of half of its 800 employees. Indeed, Bumble Bee is building a cannery in Trinidad to take advantage of CBI tariffs.

In American Samoa, however, the situation is somewhat different. Star Kist has the largest tuna cannery in the world on American Samoa where 2,700 people are employed. Thai Union has a smaller American Samoa cannery that employs about 2,500. We at Heinz/Star Kist have stated repeatedly that passage of the ATPEA will not have an adverse effect on our American Samoa facility. Although Thai Union has stated that passage of ATPA would result in layoffs at its American Samoan cannery, this claim is in direct conflict with sworn testimony Thai Union gave in American Samoa last year. In its testimony before the American Samoa Tax Exemption Board in which Thai Union sought a new local tax exemption for its cannery, Thai Union promised that if the tax exemption were granted, they would invest at least \$16 million in American Samoa and **commitment to this investment and employment on excluding processed tuna from the Andean trade program.**

Finally, environmental groups active on fishery conservation and “dolphin safe” issues support the inclusion of tuna in the Andean Trade Preference Program. Ecuador is the *only* nation in Latin America and the Caribbean to be certified by the U.S. Department of Commerce as in compliance with the Marine Mammal Protection Act and Eastern Pacific tuna conservation measures. To quote the leading environmental group on dolphin-safe fishing (Earth Island Institute), **“By reducing tuna tariffs for Ecuador, Congress can reward that country for their efforts to protect dolphins. Furthermore, by reducing tuna tariffs ... Congress can provide incentives to other nations to protect marine mammals.”**

Mr. Chairman, as you know, the current Andean Trade Preference Program expired in December. I want to compliment you on your Committee’s action to secure passage of H.R. 3009 last year. And I urge you to keep the pressure on to ensure final passage and enactment of legislation expanding ATPA, including tuna, as soon as possible.

Sincerely,

Michael D. Milone  
Senior Vice-President  
CEO—Star Kist Foods

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#### Statement of Mattel, Inc., El Segundo, California

This statement is submitted on behalf of Mattel, Inc. in connection with the February 7 hearing conducted by the House Committee on Ways and Means regarding the U.S. trade agenda. Mattel strongly supports the continued elimination of trade barriers globally, and believes that the enactment of legislation renewing the President’s trade promotion authority (TPA) will play a critical role in achieving this objective by providing a needed impetus to pending multilateral, regional and bilateral trade negotiations. Of these, the most important to Mattel is the new round of multilateral trade negotiations under the WTO that was launched last November in Doha. Within this new round, the company attaches the highest priority to the earliest possible conclusion of zero-for-zero sectoral agreements on toys and other products.

Headquartered in El Segundo, California, Mattel is the world’s largest toy company with 2001 sales of \$4.8 billion in over 150 countries. Mattel has 29,000 employees, of whom 6,000 are in the United States.

Mattel and other U.S. manufacturers of toys are the most competitive in the world, and would stand to reap major benefits from the further dismantling of global trade barriers. Also benefiting directly from a reduction of trade barriers would be the 32,400 U.S. workers employed by the U.S. toy industry.

The U.S. toy industry achieved its position as the world’s leader by combining high value-added domestic operations, such as product design, engineering and strategic marketing, with substantial production overseas. As a result, a large portion of U.S. toy companies’ product lines are manufactured overseas, but even those toys incorporate important U.S. value. In the case of Mattel, that value includes the critical functions of product conceptualization and design, design and development engineering, and strategic marketing that are performed for the company’s worldwide operations by the approximately 1,900 workers at its El Segundo headquarters.

With only 3 percent of the world’s children living in the United States, U.S. toy companies must turn increasingly to foreign markets for industry growth. Although the United States has the largest toy market in the world, the growth in domestic sales by U.S. toy companies has been modest in recent years, reaching \$23 billion in 2000. However, sales by U.S. toy companies in foreign markets (including U.S. exports and sales by overseas subsidiaries) have expanded at a rapid pace, totaling an estimated \$6.0 billion in 2000.

While the toy industry has been successful in penetrating overseas markets, that growth frequently has been limited by significant trade barriers. For example, most major developing country markets throughout the world are protected by tariffs of 20 percent or more on toys. These high tariffs will remain in effect even after the final concessions from the Uruguay Round of WTO negotiations are implemented in 2004.

In addition, while the United States, the European Union, Canada, Japan and Korea agreed to participate in a zero-for-zero agreement on toys under the Uruguay Round, this agreement left much to accomplish. While the United States immediately eliminated its tariffs on all toy categories, the other four countries participating in the agreement excluded several major toy categories from their tariff

elimination commitments. For example, both the European Union and Japan have left in place tariffs on categories accounting for over half of their respective total imports of toys. Since these economies represent the largest overseas markets for most U.S. toy companies, these gaps pose a major continuing problem.

In an effort to build on the Uruguay Round zero-for-zero agreement on toys, Mattel and the U.S. toy industry in 1996 enlisted the aid of the U.S. Government to secure the inclusion of toys in the consultations on early voluntary sectoral liberalization (EVSL) conducted under the auspices of the Asian-Pacific Economic Cooperation (APEC) forum. APEC leaders in 1998 then forwarded these EVSL talks, which covered toys and seven other sectors, to the WTO for final agreement. First known in the WTO as the Accelerated Tariff Liberalization (ATL) initiative, these sectoral talks now are being considered for inclusion in a possible zero-for-zero initiative in the newly launched round of WTO negotiations.

There is a strong consensus among global toy industries for concluding a new zero-for-zero agreement on toys, ranging from the European toy industry to those of 15 APEC countries. Moreover, much of the work required to craft a zero-for-zero agreement on toys has already been completed through the earlier APEC process. In short, the parameters of an agreement are already in place and a "critical mass" of participating countries has already been identified.

What is needed now is for WTO negotiators to step forward and conclude zero-for-zero agreements on toys and other sectors where international consensus can be readily achieved. In particular, Mattel urges that negotiators seek the accelerated conclusion of these zero-for-zero agreements in advance of the completion of the rest of the round, with the goal of finalizing the agreements by the Fifth WTO Ministerial meeting to be held in Mexico in mid-2003. These sectoral agreements can serve as an early concrete signal of WTO members' commitment to a successful round, with the specific commitments made as part of the zero-for-zero agreements to be implemented on a provisional basis and considered an integral part of countries' overall commitments in the new round.

In addition to concluding a sectoral zero-for-zero agreement on toys, Mattel is seeking the deepest possible reduction in those foreign tariffs on toys that will remain following the completion of the zero-for-zero agreement. Assuming the sectoral agreement is concluded along the lines currently envisaged, the primary focus of these follow-on negotiations would be the high tariffs maintained by those countries that do not participate in the zero-for-zero agreement on toys. These are likely to include many Latin American countries, including the major markets represented by Brazil, Argentina and Mexico.

In conclusion, Mattel strongly supports the ongoing efforts of the United States to reduce global trade barriers. In particular, Mattel urges the U.S. Government to secure a sectoral zero-for-zero agreement on toys as quickly as possible as part of the new round of WTO multilateral negotiations.

We appreciate this opportunity to share Mattel's views with the Committee on Ways and Means.

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#### **Statement of the National Electrical Manufacturers Association, Rosslyn, Virginia**

NEMA is the largest trade association representing the interests of U.S. electrical industry manufacturers. Its mission is to improve the competitiveness of member companies by providing high quality services that impact positively on standards, government regulation and market economics. Founded in 1926 and headquartered in Rosslyn, Virginia, its more than 400 member companies manufacture products used in the generation, transmission, distribution, control, and use of electricity. These products, by and large unregulated, are used in utility, industrial, commercial, institutional and residential installations. Through the years, electrical products built to standards that both have and continue to achieve international acceptance have effectively served the U.S. electrical infrastructure and maintained domestic electrical safety. Annual shipments exceed \$100 billion in value.

#### General and Multilateral Issues

- **Trade Promotion Authority (TPA):** NEMA favors quick approval of trade agreement negotiating authority during the second session of the 107th Congress. Over the past four years, the President's lack of such authority not only impeded the Administration's ability to negotiate agreements, but has been in-

voked by many of our trading partners as an excuse to delay real negotiations on opening their markets. Especially in the current economic climate, we must remove this barrier to trade liberalization and leadership by giving President Bush broad “fast-track” authority as soon as possible.

- **Tariff Elimination:** The world-wide elimination of tariffs on electrical products is a basic NEMA goal. We therefore urge the U.S. to pursue tariff elimination for electrical products in all fora, including the new round of World Trade Organization negotiations on reduction and elimination of tariffs on non-agricultural goods, or via regional groups and/or other opportunities as they arise. In addition, WTO members should agree to implement so-called “zero-for-zero” agreements to eliminate tariffs on electrical products as soon as possible, preferably on an early provisional basis with immediate effect until these “Free” tariff rates are bound into the new round’s final concluding agreement.

NEMA also urges the U.S. to push for completion of the second phase of the Information Technology Agreement (ITA-2), which would eliminate tariffs on a wide range of IT items, including some NEMA products. NEMA also supports continued efforts by U.S. officials to expand the membership of the existing ITA and to negotiate accelerated tariff elimination for electrical products under the North American Free Trade Agreement (NAFTA).

- **Energy Services Liberalization** NEMA supports liberalization of trade in energy services, in order to allow more people worldwide to enjoy high quality, affordable energy, and also to provide new opportunities to those energy service and electricity providers who use the equipment made and services provided by NEMA’s members. Thus, NEMA is an active member of the industry coalition campaigning for the inclusion of commitments on energy services in the WTO’s ongoing negotiations on services. NEMA’s primary perspective is that of the industry that provides the equipment and products used to build and maintain electrical energy systems, but many NEMA members are active providers of energy services as well. The liberalization that is good for utilities is also good for our manufacturers, service suppliers, and for the users of electricity. USTR has included energy services in its proposals for the WTO services negotiations and we look forward to continued efforts from the Bush Administration and support from Congress to secure commitments from our trading partners in this crucial area.
- **Transparency in Government Procurement:** Although at Doha WTO members put off beginning negotiations on it until the next Ministerial, we look forward to increased leadership from USTR and Congress in pursuing a WTO agreement. The U.S. has been a leader of efforts to achieve a WTO agreement to make government procurement more open and transparent. Preferences for local companies on the part of host governments, as well as a lack of transparency in awarding contracts, have served to unfairly exclude U.S. companies on countless occasions. It is time for U.S. entities to be able to compete on equal footing with domestic suppliers.

NEMA also urges the Bush Administration to increase efforts to obtain full implementation and enforcement of all signatories to the 1999 OECD Anti-Bribery Convention and the 1997 OAS Convention on Corruption.

- **WTO Technical Barriers to Trade (TBT) Agreement:** NEMA supports the concepts outlined in the WTO TBT Agreement and believes that all countries should implement, to the fullest extent, the obligations outlined there. These obligations include: standards development processes that are transparent and include participants from all interested parties; a conformity assessment system that upholds the principles of most-favored nation treatment (meaning equal treatment in all countries); and national treatment (meaning equal treatment of domestic and foreign products, as well as test laboratories conducting conformity assessment services) in the application of testing and certification procedures.

In addition, the U.S. Government must continue working to dispel the misinterpretation that the use of the term “international standards” in the WTO TBT agreement applies only to International Electrotechnical Commission (IEC), International Standards Organization (ISO) and International Telecommunications Union (ITU) standards. An interpretation should also include widely-used norms such as some North American standards and safety installation practices. Misinterpretation can be disadvantageous to U.S. businesses’ efforts to sell in global markets. Moreover, the importance of openness and transparency are lost when focus is only on those three standards bodies. The Bush Administration must continue vigilant monitoring of our WTO partners to ensure their adherence to their TBT commitments.

- **Opposition to Mutual Recognition Agreements (MRAs):** In NEMA's view, the use of MRAs should be limited and considered only as an alternative for conformity assessment needs when applicable to federally regulated products such as medical devices. MRAs are not the answer to conformity assessment needs in non-regulated areas; if anything, they serve to encourage the creation of unnecessary product-related regulation. In this regard, while we strongly objected to the inclusion of an electrical safety annex in the U.S. MRA with the European Union a few years ago, we are pleased that the Administration has either excluded electrical products from subsequently negotiated MRAs or refused to sign on to any such accords that include them. We look forward to a continuation of that stance.
- **WTO Accessions:** NEMA also hopes for greater progress in bilateral negotiations with WTO accession candidates. NEMA appreciates the ongoing negotiations with **Saudi Arabia** and urges continued emphasis on standards and TBT issues. NEMA representatives traveled to Saudi Arabia in May 2000 to strengthen dialogue with Saudi Arabian Standards Organization (SASO) officials—especially with a former NEMA employee in place as the new U.S. standards attaché in Riyadh—and will continue to develop a cooperative relationship to ensure market access for products made to NEMA standards. USTR should also seize the opportunity for renewed emphasis on negotiations to bring **Russia** and **Ukraine** into the WTO. Although membership is years away for both countries, U.S. leadership is needed to ensure that progress toward that end continues at a reasonable pace and both countries reinvigorate their long processes of legal and economic reform and institution-building.

#### European Union Regulatory Initiatives and WTO Disputes

- **Regulatory Cooperation:** NEMA supports continued work toward a U.S.-EU agreement on Principles for Regulatory Cooperation. This agreement could not be worked out in 2001, but both sides should strive to complete an agreement at least by the time of the U.S.-EU summit in spring 2002.

As we and other industry associations noted in a June 2001 paper for U.S. Trade Representative Robert Zoellick, and as noted in greater detail below, the EU is increasingly establishing regulations that are not justified by available technical evidence and whose cost is not proportionate to intended consumer or environmental benefits. Typically, these regulations are developed with procedures that are not transparent to all stakeholders, including the U.S. electrical manufacturing industry and other trading partners. Further, stakeholders find they have no way to hold EU authorities accountable for the regulations produced. In short, the EU's regulatory process fails to meet applicable international obligations as set forth in the Agreement on Technical Barriers to Trade of the World Trade Organization.

Our industry is committed to working with the Administration, through engagement with the EU on questions of governance and regulatory disciplines, to find solutions to its systemic regulatory problems, ensuring justification, transparency and openness in development of directives, as well as "national treatment" and accountability in their application.

- **Proposed EU Substance Bans and "Take Back" Legislation (WEEE, EEE):** In 2002, the EU is poised to complete two new directives that pose market access barriers for U.S. electrical and electronics products by raising costs and allowing differing standards and procedures among the 15 member states. The first directive addresses take-back and recycling of Waste Electrical and Electronic Equipment (WEEE) while the second, known as the ROHS (Restriction on the Use of Hazardous Substances) directive, would impose bans on the use of certain substances currently used in manufacturing without providing sufficient basis for processes to identify any needed substitutes.

In addition, the Commission's Enterprise Directorate is developing its own Electrical and Electronic Equipment (EEE) directive, which would require manufacturers to comply with a series of requirements throughout the life-cycle of a product. The need for such a directive is questionable and the views of the U.S. Government and U.S. industry should be taken into account by DG Enterprise, especially during this development stage.

NEMA urges the Bush Administration and Congress to clearly identify these measures as serious potential trade barriers and to seek an accommodation that would emphasize rational, cooperative and science-based measures as alternatives to broad-brush regulatory mandates.

- **EU Council Recommendations on Electro-Magnetic Fields (EMF):** In 1999, the European Union issued recommendations that set EMF exposure lim-

its for the general public over a range of frequencies. Member states may provide for a “higher level of protection” than in the recommendations, and thus can adopt more strict exposure limits. Extensive U.S. Government research on low frequencies recently concluded that “the scientific evidence suggesting that ELF/EMF exposures poses any health risk is weak.” Similar conclusions have been made from health risk studies in other countries.

Manufacturers on both sides of the Atlantic have warned their authorities through the TABD process that EMF could potentially become a major point of contention between the U.S. and Europe. NEMA has notified the Commerce Dept. that EU member state implementation of the EU Council EMF recommendations would create a substantial barrier to trade by restricting the free movement of goods, which would severely affect U.S. electrical manufacturing interests. NEMA supports the TABD position that EMF exposure standards must be harmonized internationally. The U.S. Government must continue its efforts to work with the leaders in the EU Commission and in the member states to avoid another trans-Atlantic trade dispute.

- **Implementation of the Electrical Safety Annex of the U.S.-EU MRA:** As previously mentioned, NEMA opposed negotiation of the Electrical Safety Annex to the U.S.-EU MRA because it adds no value to the existing electrical safety systems in the U.S. and EU. The historical record of electrical safety, based on private-sector-promulgated standards and conformity assessment system, is a good indicator that private-sector approaches are successful. The U.S. Occupational Safety and Health Administration (OSHA) NRTL (Nationally Recognized Testing Lab) Regulations call for OSHA accreditation of conformity assessment bodies (CABs). EU CABs can be accredited by OSHA for testing and certifying EU products to U.S. voluntary standards for OSHA recognition in the workplace. In 2001, OSHA granted NRTL-status to a German lab and thereby demonstrated the integrity of its approach, in which EU applicant CABs are given the same consideration as U.S. CABs. The Bush Administration should continue to maintain this OSHA NRTL independence while working with the EU to achieve better understanding of the U.S. position.
- **“Carousel” Retaliation Lists:** NEMA does not consider it appropriate for electrical products to be included among those EU exports assessed 100% retaliatory tariffs as a result of unrelated disputes in the WTO. Our view is that our industry’s products should not be caught up in another sector’s ongoing, potentially escalating impasse, and we have made this position clear to USTR.
- **Foreign Sales Corporations (FSC/ETI) Dispute:** NEMA supported U.S. efforts to resolve this dispute by repealing the old FSC provision and installing a new regime (known as Extraterritorial Income or ETI) while seeking to ensure that U.S. exporters suffer no disadvantages. NEMA has urged its EU counterparts to support a resolution of the dispute over the FSC-replacement law so that products in our industry do not become entangled in a cycle of retaliatory tariff hikes on both sides of the Atlantic. NEMA encourages both the U.S. and the EU to manage the dispute responsibly and to avoid any escalation of tensions.

#### The Americas and Asia-Pacific

- **Free Trade Area of the Americas (FTAA) Talks, Particularly the Negotiating Group on Market Access (NGMA):** Although talks toward the 2005 creation of an FTAA shift into a higher gear in early 2002, NEMA looks forward to continued leadership from the Administration and Congress. NEMA also encourages all FTAA countries to implement customs facilitation measures to which they have already agreed. Moreover, NEMA urges the U.S. to convince the Hemisphere’s countries that any standards and conformity assessment provisions included in an FTAA must mirror the WTO TBT Agreement. NEMA will continue to be engaged in the process and exchange views with its industry counterpart associations throughout the Americas.
- **NAFTA Implementation and Tariff Issues:** Although Mexican tariffs on U.S. electrical products will reach zero in 2003, NEMA is exploring further possibilities for industry consensus on earlier tariff elimination for specific product sectors. Also, with an office in Mexico City, NEMA is well positioned to work with U.S. authorities to monitor and influence the Mexican standards development process for electrical products to ensure that Mexican norms do not act as barriers to U.S. products.

NEMA is becoming very involved in the standards and conformity assessment processes in Mexico. The country is developing 20 to 30 new electrical product standards each year and is moving in the direction of making all of its stand-

ards mandatory. The authorities do accept and take into account public comments on proposed standards; however, a document that has been substantially revised based on public comments may not be circulated for final public review prior to publication as a mandatory standard. Moreover, a standard adopted as mandatory can incorporate by reference another voluntary standard without any public review or comment opportunity. NEMA would welcome the Mexican standards authority's application of consistent and transparent procedures in the consideration and adoption of NOM standards, which directly affect market access for many proven commercial products.

Mexico was required under its NAFTA obligations starting January 1, 1998, to recognize conformity assessment bodies in the U.S. and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies. Mexico has indicated that it is willing to conform to these obligations only when the Government of Mexico determines that there is additional capacity needed in conformity assessment services. So far no U.S. or Canadian conformity assessment bodies have been recognized by Mexico for conducting conformity assessment on most products that are exported from the U.S. and Canada to Mexico. This procedure does not meet the intent of Mexico's NAFTA obligations, serving to protect their conformity assessment bodies and Mexican manufacturers from fair competition from U.S. and Canadian exports into Mexico.

- **U.S.-Chile Free Trade Area:** In 2002, the U.S. and Chile should complete and enact a high quality bilateral free trade agreement. Given the small size of the Chilean economy and the precedent setting benefits of such an agreement, completion of the Chile FTA should be completed expeditiously, and need not await passage of trade negotiating authority legislation. In addition, USTR should continue to discuss ways open up trade with the Mercosur countries (Brazil, Argentina, Paraguay and Uruguay) in advance of the FTAA.
- **U.S.-Central America FTA:** NEMA applauds President Bush's initiative to explore negotiations on a free trade agreement with Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. Once launched, negotiations should result in a high-quality FTA that opens Central American markets for electrical products and energy services, provides complete transparency in government procurement, and spurs progress in the FTAA process.
- **U.S.-Singapore FTA:** The U.S. Government should complete a free trade agreement with Singapore as soon as is practical, taking full account of industry input. This agreement should include an investment chapter, cover energy services, and provide for complete transparency in government procurement.
- **APEC Standards:** NEMA is actively involved in bringing a greater understanding of conformity assessment alternative processes to the region and looks forward to the second round of National Institute of Standards and Technology workshops in 2002 for Asia-Pacific Economic Cooperation forum member countries.

#### U.S. Government Resources

- **Monitoring, Enforcement and Overseas Presence:** NEMA applauds the Administration and Congress for their successful efforts to bring China and Taiwan into the WTO. NEMA welcomes the opportunity to help our member companies take advantage of the market-opening entry of China and Taiwan into the rules-based international trading system and will work with USTR, the Commerce Department, and Congress to monitor and ensure compliance.

The U.S. Government needs to do more than simply reach favorable trade accords; it also needs to be vigilant in making sure that other countries live up to their commitments to foster openness, transparency and competition. In this regard, our view is that the Commerce Department's Standards Attache program should be expanded and fully funded. Likewise, we greatly appreciate the assistance provided by Foreign Commercial Service (FCS) offices abroad, and hope that FCS activities will receive ample support in the years ahead.

With the support of a Market Development Cooperator Program (MDCP) grant from the Commerce Department, NEMA opened offices in Sao Paulo, Brazil and Mexico City, Mexico in 2000. The MDCP is an innovative public/private partnership whose grant budget should be expanded so that more organizations can enjoy its benefits. NEMA looks forward to continuing its close cooperation with the Commerce Dept. on this project.

Similarly, the Bush Administration and the 107th Congress should continue the trend in recent years of reasonable increases in funding and staff of the U.S. Trade Representative's Office to better allow it to more effectively negotiate, monitor and enforce trade agreements.



- **Export-Import Bank Reauthorization:** NEMA regrets that Ex-Im's authorization was allowed to lapse in 2001 and urges Congress to reauthorize it as soon as possible with adequate funding. Failure to do so would leave U.S. companies alone to face competitors armed with the aggressive export financing regimes of European and Asian governments. Exports assisted by Ex-Im Bank help to support hundreds of thousands of U.S. jobs and ninety percent of Bank-supported transactions assist U.S. small businesses.
- **Customs Modernization and Enforcement:** Last year, Congress made an important first step in appropriating funds for the U.S. Customs Service's long-overdue reform of its automated systems. We look forward to further congressional support this year for this vital initiative. In addition, we urge to continued vigilance from the Customs Service in ensuring imported electrical products meet U.S. regulatory standards.
- **"Buy America" Procurement Regulations:** Majority U.S.-content restrictions on non-sensitive electrical products should be re-evaluated in the context of both the increasingly global economy and potential savings. By restricting access to the U.S. market, these restrictions also have the reciprocal effect of disadvantaging U.S. companies seeking to sell into foreign markets.
- **Economic Sanctions Reform:** NEMA supports passage of legislation that would establish a more deliberative and disciplined framework for consideration and imposition of economic sanctions by Congress and the Executive branch. In addition, existing economic sanctions should be reviewed to determine if their effectiveness justifies the costs to U.S. jobs and industries.
- **Export Administration Act Reauthorization:** NEMA supports congressional efforts to enact updated legislation that meets the U.S. need for an efficient, transparent and effective export control system.

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## Statement of George Scalise, Semiconductor Industry Association

### Introduction

Mr. Chairman, Members of the Committee, thank you for the opportunity to provide this statement on U.S. trade policy. My name is George Scalise and I am the president of the Semiconductor Industry Association (SIA). This statement will discuss the new round of World Trade Organization (WTO) negotiations launched at Doha last year. To begin, I'd like to give you some background on the SIA and its members, which will help explain why the new WTO Round is so important to America's semiconductor industry.

### Background

The SIA represents over 90 percent of America's semiconductor industry. Today, the U.S. industry is the most competitive in the world, with more than 50 percent of world market share. More than 50 percent of our members' revenues is derived from overseas sales, and foreign markets are expected to continue growing in importance. Where American chipmakers are able to compete fairly—in markets unencumbered by trade barriers—we are successful. As a result, eliminating barriers to trade and further opening world markets is vital to our industry.

SIA has a long history of active support for trade liberalizing initiatives such as the Uruguay Round, the Information Technology Agreement (ITA) and China's accession to the WTO. Since the beginning of the 107th Congress, SIA has worked to gain support and passage of trade promotion authority (TPA, H.R. 3005) by the Congress. We commend your leadership which allowed for the passage of TPA by the U.S. House of Representatives.

SIA will continue to press for and support further market opening initiatives, including the new round of WTO negotiations. For the new round, it is imperative to continue to make progress toward a further opening of markets under a rules-based system—it is equally vital that we not lose ground in areas like the trade laws. These combined objectives will best serve the macroeconomic purpose of stimulating confidence and growth in international trade.

### The New Round

I believe that the new WTO round can be relied upon to liberalize trade, resulting in significant benefits for the semiconductor industry. Some of the benefits—such as tariff elimination—will be direct. Other benefits in areas such as services liberalization will be indirect. As you well know, the United States is fortunate to have an

extremely strong and talented trade negotiating team, and we look forward to working with that team and supporting them in their efforts to secure market opening benefits. Unfortunately, in addition to working on opening markets, our trade negotiators will also be faced with an extremely difficult challenge—maintaining strong U.S. trade laws in the face of extreme pressure from our trading partners to weaken those laws. They will also have to deal with proposals on competition policy that could lead to excessive foreign government intervention abroad that could damage America's most competitive companies.

#### **Maintenance of U.S. Trade Laws**

As you know, the antidumping remedy is especially important with respect to the semiconductor industry given the history of injurious dumping in our sector. In the mid-1980's, Japanese dumping of DRAMs drove nine of eleven U.S. semiconductor producers out of this segment of the market; one company was driven out of business altogether. U.S. chipmakers are the most competitive in the world—and consistently are very successful in competition with foreign producers who trade fairly. Fortunately most do, but there are occasions when some engage in dumping, which the current international trading rules condemn, and the results can be devastating. The WTO's antidumping rules foster competition, creating an environment in which success is determined by which companies have the best products, technology, and manufacturing capabilities, and not those who sell below cost of production or price discriminate to gain export market share.

Without the remedies provided by the antidumping law, our industry would not be the world leader it is today. One example of this is an outgrowth of the EPROM dumping case in the mid-1980's. The U.S. successfully defended against Japanese dumping of EPROMs, and U.S. companies remained viable competitors in this market as a result. The current large and fast growing market for "flash" semiconductors evolved from EPROMs and U.S. companies are the most successful in this market. This situation would likely be very different today if the EPROM dumping had not been stopped. The same can be said of DRAMs, where today the U.S. is home to only one manufacturer but it is one of the most—if not the most—competitive DRAM company in the world. Without the antidumping laws, this very successful and competitive company could have been driven out of the business.

Manufacturing DRAMs and other advanced semiconductors requires billions of dollars of investments in plant, equipment and research and development—it is vital that the companies that make these investments be able to compete on a fair basis in order to recoup their enormous investments. The antidumping laws as they are structured today help insure that fair competition is possible. No one can take an objective look at the world's semiconductor market today and not conclude that there is vibrant competition resulting in long term, consistent increases in benefits for consumers. This is a direct result of preserving competitors from the destruction caused by dumping.

The antidumping rules in their current form were the result of heated and arduous negotiations between the United States and other WTO members during the Uruguay Round. They represent a hard fought compromise—one that has worked to allow those companies that operate in a fair and open market economy to compete on an equal footing with their foreign competitors. Regrettably, the United States was the only WTO member that opposed the reopening of the antidumping rules. The Doha Ministerial Declaration that was ultimately issued states that WTO members "agree to negotiations aimed at clarifying and improving" the WTO agreement on antidumping, but that any negotiations will preserve this agreement's "basic concepts, principles, and effectiveness" and its "instruments and objectives." We must make sure that these principles, instruments, and objectives are preserved in all respects.

New negotiations on antidumping will, I fear, be extremely difficult. All the current proposals for revisions to the antidumping agreement call for significantly weakening the ability of industries in the United States and abroad to use domestic antidumping laws to offset unfair trade practices. A WTO Ministerial Conference memorandum listing issues to be addressed in the negotiations identifies 13 specific issues to be negotiated related to antidumping rules—these proposals are focused on limiting the discretion of national antidumping authorities to determine dumping margins. Such a move threatens to undermine the consensus in favor of market liberalization and it will undermine support for the WTO if countries can engage in dumping that cannot be effectively offset.

Maintaining strong trade laws—which helps insure that America's chipmakers can compete on the basis of their technological capabilities and product offerings—is vital to the health of the U.S. semiconductor industry. Our negotiators will have

a tremendous challenge before them during the new WTO round—SIA is ready to support them in any way possible during these negotiations.

The House of Representatives passed a resolution by a 410–4 vote just before the Doha Ministerial that called on the President to preserve the ability of the United States to enforce rigorously its trade laws and to avoid agreements which lessen the effectiveness of domestic and international disciplines on unfair trade. If the WTO rules governing antidumping narrow the ability of the United States to maintain its antidumping remedy, it is highly unlikely that Congress would approve the results of this Round of negotiations. That would be tragic. But it is avoidable if the U.S. negotiators are firm.

#### **Tariff Reduction and Elimination**

The Ministerial Declaration issued at the end of the conference launches a new round of negotiations to reduce or eliminate tariffs on non-agricultural goods, especially on products of export interest to developing countries. While this is potentially very promising, the document notes that the negotiations should allow “less than full reciprocity” for developing countries to reduce tariffs. This precept is inconsistent with so-called “zero-for-zero” negotiations to eliminate tariffs in certain sectors, including information technology. The Information Technology Agreement (ITA)—which eliminates tariffs on information technology products—was not specifically mentioned in the Declaration. SIA believes that all WTO members should join the ITA as soon as possible, especially Latin American countries, and we would like to see this goal pursued within the new round. We firmly believe that this is in the best interests of economic development. Undoubtedly, it was a similar exercise of enlightened self-interest that led China to join the ITA as part of its WTO accession process.

#### **Competition Policy**

Competition policy is the subject of an ongoing dialogue within the WTO, and negotiations may be launched after the next WTO Ministerial meeting in 2003. Current discussions in the WTO’s Trade and Competition Policy working group, meanwhile, are to continue clarifying “core principles” of competition policy, including transparency, non-discrimination, procedural fairness, and cartels, as well as internal WTO procedural issues, such as providing developing countries with technical assistance to be able to participate meaningfully in the discussions. The discussions are to take account of the needs of developing countries, where ideally competition policy will be used to create properly functioning home markets.

While this area of discussion has the potential to yield benefits, it is also an area that poses enormous risks and must be approached with extreme caution. Competition policy could be used to make successful foreign firms vulnerable to attacks on the basis of alleged “abuse of dominant position.” It would be very damaging to international trade if new WTO competition policy rules provided WTO sanction for abuses of competition policy measures to protect and promote domestic industries. Most of the competition policy discussion so far has been grounded in theory rather than in a factual examination of the specific barriers to international trade and investments that need to be remedied. Before attempting new international disciplines, it is necessary to understand the dimensions of the problems posed for trade by the absence of competition rules and/or their enforcement in so many markets around the world.

A decision on whether or not to launch negotiations on competition policy after the next ministerial in 2003, along with negotiations on trade and investment, government procurement, and trade facilitation (the so-called “Singapore issues”), has not yet been finalized. According to the Declaration, these negotiations are to start after the Fifth Ministerial, when a decision on negotiating procedures is to take place—a decision to launch these talks will require a consensus on the procedures.

The chief reason that no formal international trade organization was formed after the Second World War was the attempt to include provisions that addressed so-called “restrictive business practices.” Competition policy negotiations pose a very high risk for the future of an open international trading system. Competition policy can easily become an unregulated substitute for antidumping, where the rules and practices are well defined, and could even undermine the protection of intellectual property, a hard-won gain from the last major round of international trade negotiations.

#### **E-Commerce**

Electronic commerce and internet applications have been key demand drivers in the semiconductor industry over the past few years, and it is very important that

the rules governing trade in this area remain as open as possible. The WTO Ministerial Declaration recognizes the new challenges and opportunities for trade brought about by e-commerce, and notes the importance of creating and maintaining an environment which is favorable to the future development of electronic commerce.

U.S. negotiators in Doha sought and won a commitment to maintain the moratorium on customs duties through the next ministerial in 2003. SIA stands ready to support our negotiating team in securing a permanent tariff moratorium, and we encourage them to continue pursuing rules that breed competition and growth in this important area. We believe international agreement should be reached to ensure that electronically delivered goods should receive no less favorable treatment than similar products delivered in physical form and that their classification should ensure the most liberal treatment possible. Governments should refrain from enacting trade-related measures that impede e-commerce. Where regulations are necessary, governments should insure that they are transparent, non-discriminatory and employ the least trade-restrictive means available. Further, because of the great growth potential from e-commerce-based services, the U.S. should seek improved market access and national treatment commitments for a broad range of services, such as telecom and financial services, which can be delivered electronically.

#### **Trade-Related Investment Measures (TRIMS) Agreement**

U.S. chipmakers often face complex rules and requirements when making investments overseas—they may be required to enter joint ventures or transfer technology in exchange for permission to invest and gain market access. The freedom to engage in direct investment is critical to market access for the chip industry, and to the development goals of developing countries. Unfortunately, existing WTO investment rules do not adequately discipline many of the restrictions placed on investment in various countries.

Improving and expanding WTO rules on TRIMS should be a part of the new round of WTO negotiations. In particular, rules should be adopted to prohibit requirements that foreign firms enter joint ventures, or transfer technology or intellectual property, in exchange for market access. These strengthened provisions should encompass not only measures that are mandatory or enforceable under domestic law or under administrative rulings, but instances where compliance is necessary to obtain any approval or advantage.

Trade and investment is supposed to be the subject of negotiations to start following the next ministerial conference to be held in 2003—launching these talks, though, will require a consensus that may be challenging to achieve. But it is in the interest not only of the United States, but also of developing countries, to have international rules that protect investors' rights, as such rules will encourage high tech investment in developing countries.

#### **Trade-Related Aspects of Intellectual Property (TRIPS) Agreement**

As an R&D intensive industry, we are very concerned about the full and effective protection of intellectual property rights. The TRIPS Agreement negotiated as part of the Uruguay Round represented a major advance in the protection of intellectual property (IP). The agreement began the process of improving worldwide IP protection and allowed for staged implementation over the course of a decade. Some developing countries have been trying to delay implementation of their obligations. Failure of such countries to fulfill their commitments from the Uruguay Round makes it less likely that the expected commercial gains for the WTO members that have met their commitments will be realized. In addition, failure to adopt promised IP protections is likely to actually undermine the development objectives of the countries seeking to weaken the WTO's intellectual property protections. We support the full implementation of TRIPS as soon as possible by all countries, including developing countries.

Some WTO members also question whether TRIPS implementation requires "transfer of technology on fair and mutually advantageous terms." Any effort to mandate the transfer of technology must be resisted, as such mandates not only weaken IP protection, but will also discourage foreign-direct investment and the commercially-driven transfer of technology that is essential to economic development in many parts of the world.

#### **Dispute Settlement**

I am afraid that the WTO Dispute Settlement process represents a growing problem for the international trading system. Unfortunately, it appears to be ineffective

against informal barriers to trade of the kind that the semiconductor industry faced with its major competitor in the 1980s and it is curtailing the use of America's trade remedies. The dispute settlement system is legislating new obligations for WTO members that were not agreed at the bargaining table. A more responsible dispute settlement process is badly needed. If it is not achieved, the ability to obtain further market opening could be undermined and the availability of justifiable trade remedies will be further impaired.

The Declaration launches negotiations aimed at "improvements and clarifications" of the Dispute Settlement Understanding based on work done so far and that will continue, with the goal of agreeing on measures by May 2003. The Declaration and the memorandum do not specifically add to the work program currently underway, but allow consideration of "additional proposals." There have been significant problems with Dispute Settlement in the antidumping and countervailing duty law areas, particularly with respect to standard of review, and these problems should be addressed. We are hopeful that these talks will in fact yield the desired improvements to the dispute settlement process.

#### **Taxation**

The current WTO rules on adjusting for indirect taxes—which yielded the recent decision against the U.S. Foreign Sales Corporation (FSC)—have no basis in economics. Direct (income) taxes and indirect (sales, VAT) taxes do not have a different incidence on goods, and yet they are treated differently by the WTO. The former may not be rebated on export and charged on imports, while the latter may be—this disparity in treatment creates an un-level playing field. Any new round should formally remove the discrimination against the rebate of direct taxes, as this is a significant detriment to the United States and may subject U.S. exports to WTO-sanctioned trade retaliation.

#### **Conclusion**

SIA has long supported fair and open trade—where our companies can compete on the basis of market principles, unencumbered by trade barriers, they are tremendously successful. We strongly support a positive new round of trade negotiations, and believe it has the potential to further open markets and improve the global trading system. While we support further opening markets, we urge extreme caution in areas such as antidumping and competition policy—improvements in the current international trading system must not be purchased at the expense of the existing rules and current level of liberalization. This is particularly important as we begin to integrate China into the WTO—the U.S. secured a very strong bilateral agreement regarding the terms for China's accession to the WTO, and these tremendous gains must not be undercut in the process of negotiating a new WTO round. SIA stands ready to fully support the negotiating team from the United States Trade Representative's Office and the Department of Commerce—and we believe they can ultimately bring home an agreement that benefits U.S. industry.

With the right results, I am confident that Congress will approve new agreements reached with the strong majorities that once characterized passage of packages of trade agreements. Your support and ours must not be taken for granted, but it should be expected if the advice that you and the private sector give is really listened to. It is our faith in the active involvement of the Congress and the private sector in the trade agreements process, and the strong positive results achieved in the past that give SIA the basis for its strong support of Trade Promotion Authority. America's high technology manufacturers—including semiconductor makers—have benefited greatly from the agreements concluded in the past utilizing fast track negotiating authority.

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#### **Statement of the United States Association of Importers of Textiles and Apparel, New York, New York**

The U.S. Association of Importers of Textiles and Apparel, USA-ITA, an association founded in 1989, represents U.S. importers, retailers, manufacturers and other companies involved in the textile and apparel business. We are pleased to have this opportunity to address the trade agenda for 2002. Between negotiations and legislation, the trade agenda this year is potentially immense, and USA-ITA member companies will be directly affected by these trade policy decisions.

### Overview

The last year has been a difficult one for the importing and retailing sector of the U.S. economy. While consumer confidence appears to be rebounding, U.S. consumers have always been extremely price and value conscious, and the current economic conditions have compelled U.S. importers and retailers to trim further their already slim profit margins. In the apparel sector in particular, where the extensive system of quotas and high duty rates already add to the costs (including increased compliance and paperwork costs) that must be passed on to consumer, the economic slowdown has hit especially hard, with a number of retailers experiencing bankruptcies, resulting in massive layoffs of workers.

An expansion of trading opportunities, through the reduction and elimination of trade barriers, offers a means for our members to reduce costs, participate in expanded sourcing options and investigate enlarged marketing prospects. For these reasons, USA-ITA members strongly support legislation and negotiations designed to liberalize trade.

The extensive protection offered textiles and apparel has a tremendous impact on our member companies and U.S. consumers. It has consistently resulted in a situation in which textile and apparel trade policy decisions have been considered separate and apart from all other trade policy decisions. However, in less than three years, the international regime for textile and apparel products will be phased out and these goods will be fully integrated into normal trading rules. Therefore, it is essential that the Congress and the Administration begin now to reorient their decision-making processes to treat textile and apparel products like all other goods, in both negotiations and legislation.

### Trade Promotion Authority

Specifically, USA-ITA strongly supports trade promotion authority (fast track negotiating authority) for the President. Negotiating authority is essential to ensure continued momentum on the many international trade negotiations in which the United States is already involved. With the launch of the Doha Development Agenda in the World Trade Organization and forward progress on free trade agreement negotiations with Singapore and Chile, as well as regional agreements such as the Free Trade Area of the Americas and now a possibly more immediate agreement with Central American countries, there are many opportunities for the U.S. to reduce trade barriers for U.S. goods and services. These are particularly important in the apparel sector, where U.S. importers and retailers cope with multiple sources of supply and a large variety of complicated origin rules. These agreements offer the opportunity for USA-ITA members to consolidate and simplify operations and expand into new markets.

In dealing with these trade negotiations, USA-ITA strongly urges the Committee to support a process that treats the textile and apparel sectors as part of the whole rather than as a separate issue. Under the terms of the Agreement on Textiles and Clothing, these sectors are scheduled to be integrated into the normal WTO rules on January 1, 2005. In accordance with that plan, the time has come to stop treating textiles and apparel as a separate negotiation, particularly with respect to elimination of tariff and non-tariff barriers. Instead, USA-ITA supports the inclusion of these sectors in a "zero-for-zero" tariff initiative as part of the Doha negotiations. USA-ITA members would like to sell their goods throughout the world, and the elimination of barriers such as high duties are essential to the achievement of that goal. However, we must be prepared to lift our barriers as well, and a zero for zero initiative makes clear that the United States is sincere in its demands for market access.

In the apparel sector, the U.S. has typically proposed—and obtained—extremely long periods for the gradual phase-out of duties in the context of free trade agreement negotiations. USA-ITA strongly urges a change in this position. As we approach 2005 and a relatively quota-free world, duty rates will be a much more significant factor in sourcing decisions and therefore their elimination is essential for the success of preference arrangements.

In the case of the Western Hemisphere, our proposed FTAs, such as with all 34 countries or with the five Central American countries, some apparel products already have the benefit of unilateral duty-free entry into the U.S. market. For these products, the FTAs should include immediate duty-free treatment. To go from unilateral duty-free treatment to negotiated 10- or 15-year gradual duty reductions is not a means for enticing business with these trade partners. Therefore, it is imperative that FTAs negotiated in this hemisphere do not result in even temporary duty increases. Instead, goods duty-free under unilateral preferences should be duty-free from the outset of negotiated FTAs. In the post-quota world, the U.S. importer com-

munity is going to be looking to make longer term sourcing commitments, and any lapses or delays in duty benefits for this region may result in permanent exclusion from U.S. buyers' business plans.

FTAs within the Western Hemisphere also offer the possibility of uniform origin rules, as opposed to the dizzying variety of rules that have been generated by a U.S. Congress trying to appease competing constituencies, regardless of whether they are logical or make business sense. The NAFTA origin rules, while not perfect, would work in the context of a Free Trade Area of the Americas, because those rules would offer the necessary flexibility for manufacturers to source yarns and fabrics with which to produce finished garments from within the 34 participating countries. Unfortunately, NAFTA rules will not work in the context of the FTA being negotiated with Singapore, because Singapore does not produce the yarns and fabrics with which to produce finished garments. For Singapore, USA-ITA urges the Committee to support a more flexible origin rule, which would allow for the use of inputs from other suppliers within the ASEAN.

#### CBTPA and AGOA, Andean Trade Preferences Act

USA-ITA members also look forward to enactment of improvements to the Caribbean Basin Trade Partnership Act and the African Growth and Opportunity Act, as well as to enactment of an Andean Trade Preference Act that includes benefits for apparel products. The CBTPA is greatly in need of improvement because its limited terms undermine the benefits originally expected under the new law. Instead of expanding trade, the CBTPA has instead had the effect of contracting trade.

The CBTPA obviously has been no panacea for the CBI region. Apparel imports from the CBI are down three percent for the year ending November 2001 compared to the year ending November 2000. When you look at the individual countries, it is apparent that those CBI countries most dependent upon production sharing arrangements with U.S. companies have been hurt the most since the CBTPA went into effect. Meanwhile, those who are least dependent upon production sharing arrangements, because they offer "full package" goods—from yarn or fabric to the finished garment—are actually doing well in this tough retail environment. Compare the experiences of the Dominican Republic and Guatemala: The Dominican Republic is a major 807 manufacturer while Guatemala typically does both cutting and sewing to create the final product. The Dominican Republic has seen its trade in apparel decline in 2001 while Guatemala continues to grow.

From the perspective of USA-ITA, a primary lesson of the CBTPA is that the U.S. cannot engineer new competitive advantages by limiting sourcing options. Instead, it should be seeking to capitalize on existing competitive advantages. Under the CBTPA, benefits are available only for apparel made from U.S. fabric from U.S. yarns and for a limited quantity of apparel made from regional fabric so long as that regional fabric was knit or woven from U.S. yarns. Given the generally higher cost of U.S. fabrics and U.S. yarns, the ability of CBI manufacturers to meet price points required for the products they are capable of producing has been greatly undermined. Many CBI producers have determined that the only way they can meet the price points of the value-minded U.S. consumer is to use non-U.S. fabrics and yarns, and therefore not participate in the CBTPA. And, of course, a lesson also has been sent to the U.S. manufacturers of those fabrics and yarns, because they have not seen the expanded sales they believed would come from such a strict requirement for preferences.

Regrettably, the domestic textile industry continues to try to distort sourcing options. Thus, the Congress is now faced with trying to identify how to implement the "DeMint letter," under which U.S. formed fabrics from U.S. formed yarns also must be dyed, printed and finished in the U.S. in order for apparel cut and sewn in CBTPA beneficiary countries to receive duty-free access to the U.S. market. Revision of the CBTPA, and incorporation of such limitations into legislation to expand the ATPA to apparel products, will not assist the U.S. mill industry. To the contrary, USA-ITA fully expects that this provision will only curtail sales for U.S. mills.

The ATPA legislation provides a significant opportunity for the U.S. Administration and the Congress to demonstrate that they have learned from the experiences of the CBTPA. Whether the Andean countries will be able to expand their business in the United States is directly dependent upon when and what ATPA expansion bill is enacted into law by the U.S. Congress. Legislation identical to what was approved for the Caribbean and Central American countries under the CBTPA—as the Senate has proposed—will inevitably do nothing to encourage business between the U.S. and Andean manufacturers. That is both because of the flaws in the CBTPA and the distinctions between the apparel produced by the Caribbean/Central American region and the Andean region.

Unlike the CBI region, the ATPA countries tend to produce full package tailored goods, rather than basic garments suited to simple assembly operations. The Andean countries, unlike the CBI countries, also have established yarn spinning and fabric making capabilities. Not permitting the Andean countries to capitalize on these assets under a preference program is to ensure that the preference program will be unusable. And if Andean apparel production does not expand, that does nothing to help U.S. mills, U.S. yarn spinners, and U.S. cotton growers to expand sales.

Moreover, even assuming that the House version of ATPA enhancement becomes law, unilateral benefits, such as those provided under CBTPA and proposed under ATPA, are only temporary provisions. These provisions should be the starting point for a negotiated and unlimited term free trade agreement, as a means of providing the necessary permanence and security businesses require. If it should appear that the hemisphere-wide FTAA cannot be implemented before an ATPA enhancement law expires, USA-ITA urges consideration of a smaller arrangement, such as an FTA between the U.S. and the ATPA countries, just as the U.S. is proposing an FTA with the Central American countries, as an interim measure.

#### Bilateral Issues

**Pakistan:** In the wake of the tragic events of September 11, USA-ITA strongly urges the Committee to support steps that could counter a sense of business uncertainty that now hangs over the countries surrounding Afghanistan, particularly Pakistan which has proved itself as a key ally.

Our industry views Pakistan as an important source of goods, but we also must minimize business risks, especially in light of the difficult economic situation. The Administration and the Congress already have delayed providing Pakistan products tariff concessions that could provide an important impetus for maintaining and moving business to that country, with the Administration providing only minimal quota increases in a few apparel categories. USA-ITA urges the Congress to do what the Bush Administration has not done. Providing short-term trade concessions, such as duty reductions for a one-year period, would signal to Pakistan and its leaders that their stance in support of the United States is appreciated.

It also would mean jobs for Pakistani workers, assuring stability in a country where unstable conditions surely have contributed to the terrorist threat felt by our Nation. Significantly, such concessions would not hurt U.S. manufacturers. To the contrary, additional business for Pakistan would come at the expense of other Asian suppliers, not U.S. makers.

**Vietnam:** USA-ITA is extremely dismayed by reports that the Bush Administration is seeking to initiate negotiations with Vietnam to establish quotas on apparel produced in Vietnam. The most recent U.S. Census Bureau data shows that apparel imports from Vietnam in 2001 are down by more than 6% compared to 2000, and are *even less* than in 1999. Surely this miniscule level of trade (0.17% of total U.S. apparel imports, making it the 53rd largest supplier) cannot be threatening U.S. makers. Instead it appears that the Committee for the Implementation of Textile Agreements, CITA, is looking to establish quotas simply for the sake of establishing quotas. The basis for the U.S. textile program has always been to address problems of market disruption caused by increased imports, while permitting developing countries to share in expanded export opportunities. That policy should not change now.

The U.S. apparel importing community is looking forward to developing and expanding sourcing from Vietnam for a number of important reasons. First, the implementation of the Agreement on Textiles and Clothing has not afforded our members the ability to expand sourcing from the most desirable suppliers at the same pace as the growth in the U.S. market. This situation has arisen primarily because the terms for textile and apparel exports from WTO member countries have been set since January 1, 1995, based upon trade patterns in place before the ATC went into effect. As a result, our members are forced to continue seeking new sources of supply to meet the demands of the American consumer.

Second, even new suppliers have been restrained by the United States. For example, about two and a half years after entering the U.S. market (because its products became eligible for Column 1 duties), Cambodian apparel became the subject of a bilateral textile agreement establishing quotas on 24 apparel categories. The ability of U.S. importers to source from Cambodia has been greatly compromised as a result, because many of the quota levels established for Cambodia are insufficient to meet the needs of individual companies.

Third, the demands of the market combined with the limitation of quota restrictions have compelled some in the import community to focus upon suppliers that would otherwise be undesirable. For example, some companies were forced to view Burma/Myanmar as a source of supply largely because garments at the appropriate



price point from their other suppliers of choice are capped. Burma served as an alternative to these countries because it is a WTO member, and therefore the U.S. Government may seek new restrictions only if it complies with the terms of Article 6 of the ATC. Vietnam offers an alternative to Burma, but only if Vietnam's trade is permitted to expand to a level essential to make it commercially viable.

Fourth, the newly normalized trade relationship with Vietnam offers U.S. companies tremendous opportunities to sell into the Vietnamese market, taking advantage of lower tariffs and the elimination of non-tariff barriers and non-transparent regulations. However, the ability of Vietnam to afford American goods and the demand for American goods and services is directly dependent upon the foreign exchange Vietnam will earn by exporting products to the U.S. market. Seeking quotas on Vietnam's apparel exports to the U.S. market, especially before that trade even has the opportunity to develop, will clearly impair the ability of Vietnam to afford U.S. goods and services.

Actions by the Administration to seek a textile agreement with Vietnam now also could destroy the incentive for foreign investment in Vietnam, which Vietnam needs to build new state of the art factories. Those new factories mean sales for U.S. companies producing earthmoving, construction and road building equipment, for U.S. companies involved in providing basic telecommunications equipment and services, and for U.S. banks and insurance firms servicing and financing such projects. Foreign investment in the apparel sector, in particular, also means the importation of a wealth of knowledge regarding respect for the rule of law, including compliance with U.S. legal requirements, and good working conditions. The companies most interested in investing in Vietnam's apparel sector are those with experience in meeting the codes of conduct established by major American brands, all of which are members of our associations.

#### Conclusion

The trade agenda for 2002 is an ambitious one, but its implementation is essential if the United States is to maintain its leadership role in promoting global economic security. USA-ITA looks forward to enactment of trade promotion authority and the Andean Trade Preferences Act as the first steps toward achievement of that agenda, and to signs that both the Congress and the Administration are now ready to end the decades-long era of discriminating against textile and apparel trade. In particular, USA-ITA urges the Committee to strongly support assistance to key allies like Pakistan and to ensure that the Administration resists pressures to discriminate against the development of apparel trade by Vietnam.

